

Summary: Stakeholder Workshop on Cross-Border broadcasting services. May 13, 2016. Friend's House, London.

This workshop was run as part of the research project 'The UK Communication Industries: the impact of a proposed UK Brexit from the EU' led by the University of Exeter, which is funded by the 'UK in a Changing Europe' Initiative based at King's College London. It was the first of two workshops analysing stakeholder views in the communications sector. The objective of the workshop was to assess practitioner and stakeholder views on what works well and what needs to be addressed in the sector of cross-border broadcasting. This was in the context of current changes in the market and regulation and a possible Brexit. Stakeholders were able to share their understandings of the sector's environment and establish mutual interpretations of what possible future scenarios meant to them. This enabled them to take better control of their own reactions to changes in the future and reduce the surprise element of future events with mutual understandings of different options.

A key finding was that looser controls affecting company behaviour (including product markets, globalisation and technological innovation) had a sizeable effect on company behaviour in addition to regulation. However, EU regulation would have a significant effect on companies' ability to function within the UK. It is clear that a possible Brexit would impact directly or indirectly on all of the above factors. The effect is sufficient enough that companies are considering contingency plans to switch substantial activity to another EU Member State.

The greatest current strengths identified for the UK focused on regulation, EU policy management and market borders. Strengths highlighted for various political, economic, socio-cultural, technological, legal, and environmental factors ('PESTLE') included: UK talents and skills, and a sound intellectual property environment. The most significant current UK weakness was uncertainty over Brexit. This was attributed to legal uncertainty, declines in investment and loss of UK influence on EU policy-making. Online licensing in the case of a Brexit was also regarded as a grave threat to company operation. Scenario building for a Brexit scenario saw some opportunity in loosening UK regulatory mechanisms on a 'right to be forgotten' as applied to new media services. It was noted that Brexit might trigger change in EU-alliances with other discontented Member States. It also could bring about a return to the Council of Europe rules (Conventions) for broadcasting policy making, shifting the forum for Europe-wide agreement. However, the majority view was that Brexit would have an unfavourable effect on the UK with negative effects on investment, capital flight with departure of some broadcasters to other EU Member States. Most stakeholders at the workshop pointed to potential job losses due to a number of factors affecting a post-Brexit market. The EU was seen as a significant regulatory forum which would affect the UK, whether the UK remained or left.

The workshop was prefaced by the provision of three policy briefings authored by Alison Harcourt on current changes in the market, EU regulation and a possible Brexit which were sent out to stakeholders prior to the workshop. There was an introduction on different Brexit scenarios by Catherine Barnard, University of Cambridge, followed by a PESTLE / SWOT Analysis. The SWOT analysis was led by John Howell from the consultancy JH&Co with a prioritisation exercise conducted through the day. Six aspects of cross-border broadcasting were assessed: political forces; economic factors; socio-cultural factors; technological factors; legal factors; and environmental impacts (PESTLE), under which industry stakeholders prioritised variables. Stakeholders identified Strengths, Weaknesses,

Opportunities and Threats (SWOT) matrices for each aspect, which are outlined below. Strengths and weaknesses focussed on current conditions in the UK market. Opportunities and threats centred on future scenarios considering both internal and external variables.

Participants spent time at each table building up the SWOT analysis for each of the 6 aspects of cross-border broadcasting services. Each indicated factors they considered most important for each category. A representative for each category then discussed these priority factors in more detail. The list below summarises strengths, weaknesses, opportunities and threats across different categories as indicated. Each table was managed by academic / consultant participants, namely: Alison Harcourt (University of Exeter) for the Politics table, Richard Collins (City University London) for the economics table, John Howell (JH&Co) for the social table, Maria Michalis (University of Westminster) for the technology table, Judith Townend (Institute of Advanced Legal Studies, IALS) for the legal table and Christina Angelopoulos (IALS) for the environmental table.

Summary of the SWOT tables:

UK strengths

- The UK has established brands with high levels of demand
- The UK has a friendly and consistent regulatory and intellectual property (IP) environment
- The UK has an established sector all round, with wide ranging skills/established firms/ supply chain/relationships
- The UK market size creates a competitive environment and there is competition between platforms
- Creative skills sets and technological skills are very high in the UK
- The UK quality of life attracts skilled employees
- Other UK strengths: transport links, broadband, infrastructure, satellite uplinks, post production facilities, the OFCOM dispute mechanism works well, critical mass.
- Convergence supports labour mobility
- Positive competition raises standards
- The UK experiences positive competition in TV distribution platforms
- Environmental and media organisations work within the same framework
- If the UK remains in the EU it has access to the Digital Single Market (DSM) and cross border portability; this will avoid problems of geo blocking
- If the UK remains in the EU there is legal certainty for investment in both the short and long term.
- If the UK remains in the EU there is consistency in licensing and compliance
- In a Brexit scenario leaving might present opportunity to loosen UK regulatory mechanisms (such as a right to be forgotten) as applied to new media services (e.g. Google)
- In the UK we are now seeing a greater share of European content broadcast
- The current regulatory framework facilitates market access and business opportunities, especially for small businesses and small countries
- The country of origin principle (COO) leads to a common benchmark
- The current system delivers the content that EU citizens are demanding
- There is a vibrant online consumer market in UK
- The EU enables democratisation of content production and distribution
- EU membership enables ease of micropayments for content services

- Digital technology reduces entry and running costs for broadcasting

UK weaknesses:

- In case of Brexit, there would be a loss of UK influence in the EU
- If the UK leaves the EU it loses influence on policy developments e.g. future Audio-visual media services directive revisions and the Digital Single Market
- If the UK leaves the EU there will be no control / no say over regulation of broadcasting with no vote in the Council of Ministers.
- In case of Brexit, there would be vulnerability to hostile regulation from other Member States
- In case of Brexit, the UK might be affected by other Member States' different views on salt, sugary foods and child protection provisions. For example, broadcasters who choose to move away from the UK but continue to broadcast to the UK might bypass UK HFSS advertising restrictions.
- In case of Brexit, there could be job losses and revenue declines
- The EU focuses on micro-regulation of broadcaster operations rather than media freedom. This is driven by path dependency in the pre-established legal competence of the EU due to rather than the needs of the sector and consumers.
- currently AVMSD fails to adequately address cultural diversity and media freedom
- currently there is a lack of mutual recognition of OSH qualifications for AV technical staff
- currently training of producers, technicians, etc. in a fragmented, outsourced market is problematic
- currently, there is no portability without regulatory change
- increasingly individualised consumption makes attracting advertising harder
- Migration leads to less homogenous demographics demanding more niche content
- Very limited demand for cross border access
- Absence of a venture capital culture
- Lower consumer appetite in other EU territories for online consumption and e-commerce
- National characteristics of domestic TV markets replicated in DTT/Spectrum
- Lack of readily accessible funding for innovation
- Infrastructure constraints in other European territories

Opportunities:

- Brexit would simplify life for firms supplying domestic content in the UK
- A potential Brexit fall in sterling would lower prices
- Brexit may trigger change in EU-alliances with other discontented Member States
- Migration to online delivery platforms
- EU wide scale broadcasters
- In case of Brexit there may be an alternate European hub (s), e.g. Berlin, Amsterdam, Dublin, Glasgow.
- In case of Brexit US firms could relocate to cultivate political relationships with new champions (Germany, Ireland, Italy)
- Brexit is seen to have negligible effect on labour standards / working conditions for journalists

- Harmonisation of working conditions in AVMS sector might be possible without the UK vote block. It has been historically difficult to establish European wide minimum standards for journalism. Working groups for social dialogue were established in 2006/7 and 2010 before AVMS Directive revisions between the ACT/EBU/EFJ but there was no legal force. European works councils with EFJ / EURO-MEI were a failure as there was a lack of communication between European level organisations and national unions.
- Subsidiaries of large international conglomerates have many bases and can switch from one state to the other for tax and regulation purposes
- Tax regimes in EU Member States have a significant effect on determining company location. This also determines headquarters for location investment. The UK scores above average but not at the top end on tax attractiveness compared to other Member States. E.g. the Netherlands, Luxembourg and Ireland were identified as having better tax relief than UK
- If we stay in the EU the UK will have continued influence on AVMSD II and the Digital Single Market, etc.
- Return to the Council of Europe rules (Conventions) in the event of a Brexit. This could signal a shift in forum for agreement
- without the UK, EU Member states would be able to strengthening implementation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions internally to the EU and with third states
- In the scenario of a Brexit: there would be competitive advantage. Companies are already EU compliant; there would be flexibility to work nationally to different criteria
- Digital technology allows for penetration of content into markets where that was not previously possible
- Emergence of English as a common global language facilitates service distribution
- A move towards more individualised content consumption is an opportunity for cross border content provision
- Brexit might enable greater mobility (physical and cultural), which would be an opportunity for trans-frontier distribution of content
- Migration demands more diversity of content and the UK is in a good position to service diaspora communities globally (e.g. Bollywood awards)
- Personalisation of advertising allows more individual, tailored distribution of content
- Use strength in online strengths (tech/consumer) to bypass national regulation constraints
- Internet/digital distribution allows providers to better serve niche markets and reach bigger new audiences
- Other Member States have no High in fat, salt or sugar (HFSS) advertising restrictions. Local licenses in Central and Eastern Europe would enable companies to avoid the UK HFSS currently required with UK based licenses.
- A move to Ireland would lower taxation for companies
- A move to the Czech Republic would lower licence fees as licenses are very cheap in the Czech Republic. This is why many licenses are increasingly issued in the Czech Republic for Central and Eastern European states to broadcast to e.g. Hungary
- A move to Spain represents a lower content requirement with only 10% of programming required for licenses in Spain
- Online services could present an opportunity as well as a threat for companies as expansion to online services widens the market.

- Solutions to COO problem: companies to make micropayments (tax)
- European Commission plans to tighten cooperation between regulators in AVMSD draft. This represents an opportunity in case of remain.
- Most Favoured Nation (MFN) exemption as negotiated by the European Commission under GATS could disappear for the UK in the event of a Brexit. Exemptions include: “distribution of audiovisual works”; “production and distribution of audiovisual works through broadcasting or other forms of transmission to the public”; “production and distribution of cinematographic works and television programmes”; “production and distribution of television programmes and cinematographic works”; “television and radio broadcasting services”; “audiovisual services”: and “production and distribution of cinematographic works and television programmes”. These are quite different to the general exemption for cultural goods under GATT

Threats:

- Mass departure of broadcasters in event of a Brexit (because of loss of legal rights)
- Potential disruption in licensing arrangements, potential disruption in staffing too (EU staff who have not sought UK citizenship)
- If there is a Brexit it will open up more legal/regulatory questions to be resolved (cost, time, etc.)
- A Brexit would create uncertainty. Britain would not be at the table negotiating future targets
- The rise in power of the millennial generation globally poses a threat to the balance of power to China, India, US. With Brexit, Berlin is likely to take over as a European broadcasting base
- Producers could shift their operational base (e.g. Berlin) away from the UK.
- The referendum threatens UK credibility in Europe.
- Media is a key driver in awareness of environmental issues. Brexit could limit reach of certain channels if constrained in reporting
- Uncertainty chills investment
- Loss of competitiveness (tax) vis-a-vis Luxembourg, Ireland etc. post Brexit
- Loss of goodwill, jilted partner effect in the event of a Brexit
- Different level of protection in different countries makes cross border AVMS production more expensive and more complicated
- Different interpretations of regulation regarding protection of minors (COO change effect) could affect broadcasting to the UK
- Interpretation of discrimination is culturally specific (COO change effect). A move of channels away from the UK to local licensing could affect programming output due to respective EU Member State government pressures
- Post Brexit, without UK influence, EU regulation becomes more parochial and more restrictive
- Brexit means less online protection
- Generally, a lack of agreed professional standards in fragmented sector allows fringe players to undermine standards
- Future problems of privacy but this could be partially solved by EME DRM standard for HTML
- Threat to European smaller broadcasters (viewed as American dominance)
- Danger that Brexit will make the UK market parochial
- Emergence of English as a global language may favour particular competitors with home advantage/the production of single language content

- Demand for content that reflects the national identity with Brexit might be harder to cater to minority interests
- Broadcasters are losing control over consumer information. Control is moving towards third parties
- Shift from EPG to date search
- Emergence of new gatekeepers, power shifting towards big technology firms
- Competition in TV distribution platforms will be reduced if there is no DTT because of spectrum changes
- If there is a change to the COO definition under AVMSD revision, decision-making for mergers and acquisitions will be automatically relocated to other Member States even if the UK remains
- If there is a change to COO definition, companies could experience political pressure from some Member States over news reporting
- The European Commission's time frame for disputes will be tightened under AVMSD
- TTIP is potentially dangerous for public service broadcasters. Audio-visual services are currently off the agenda due to Lamy, but they could return.
- TTIP could affect labour standards.
- In the event of a Brexit restrictions on free movement constrains the job market
- Protection of minors is not an issue for subsidiaries but it is for e.g. advertising on alcohol watersheds (if the European Commission proposes this)
- Differences between SMEs and larger groups. SMEs are more flexible and find it easier to move. Large particularly domestic-oriented corporations with many staff find it harder to move.
- COO change to licensing to Hungary could affect content decisions. Orban is eroding the level of essential freedoms so much that the danger if someone worse came into government, there could be greater problems.
- Political engineering is flanked by the changing market. Labour law contracts are changing. Freelance workers more common. Production companies are changing contracts and outsourcing jobs. An example of a production company in Hungary was given where 250 jobs were outsourced over the last year.
- The Polish Ombudsman (The Commissioner for the Protection of Civil Rights) speaking in Oxford this year stated that 100 journalists were dismissed across the sector newspapers broadcasting private and public service broadcasting. An ethical journalism network was set up as a result
- Media professionals are working 2.5 jobs per person according to a European Journalism Centre report.
- No transparency in ownership for large MNCs in most Member States according to OSI/InfoAccess reports.
- Issue is over portability of content across borders. European Commission says that broadcasters do not own copyright of live events however industry stakeholders largely disagree.
- European Commission to release copyright proposal 2016 September. The Paramount outcome will affect this. http://europa.eu/rapid/press-release_IP-16-1530_en.htm. This will determine whether it is forbidden to offer things to anyone outside the territory or not. The European Commission objects to the fact that broadcasters are granted 'absolute territorial exclusivity' e.g. to Sky UK and/or other broadcasters and this eliminates cross-border competition between pay television broadcasting.
- COO and rules on discriminatory practices will go into CatSab.

- Twitter rights for the NFL were viewed as positive development as it provides greater competition. There have always been aggregators
- Broadcasters cannot afford to buy sport but use it to sell other things. This goes beyond the value of sport / intrinsic value of sports experience
- There is no single market for sport. The single market works well with uniform demand. The sport content model cannot be compared to the music model as pan-European sport does not erode over time but its value disappears immediately
- European Commission watersheds on alcohol advertising
- Netflix registered in the Netherlands escapes French content production requirements. Will the European Commission do anything about this?