

LANGUAGE POLICY IN THE 21ST CENTURY: INTERNET AND THE PROMINENCE OF CATALAN CONTENT IN ON-DEMAND AUDIOVISUAL SERVICES*

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Abstract

Language is a vehicle for the cultural expression of a given community. For decades, the cultural technology with the most social impact has been audiovisual, with television at the forefront. In the end, Catalonia has been able to deploy some precarious but effective policies and instruments to carry out its own audiovisual expression of Catalan. Since the emergence of the Internet, however, audiovisual content on demand accessible from any connected device has become more and more important. This change has handed a considerable advantage to the dissemination of North American content and consequently has led to a significant loss of leverage not only for the Catalan language but also for all non-Anglo-Saxon European cultures and their content industries.

From here, what possible language policy will guarantee the survival and dissemination of Catalan in the new communicative context? The present article provides a key, the key to the way back we might say, from the new Audiovisual Media Services Directive, approved on October 2 (European Parliament 2018). This European standard incorporates the principle of prominence on the Internet for works of European production and for general interest content in audiovisual services on demand (in the form of menus, search engines, recommendation systems, etc.). Thus, prominence could become the European hook from which to hang the legislation and regulatory development that allows the Catalan language to survive in the communicative ecosystem of the 21st century.

Keywords: Audiovisual public services; Internet; audiovisual services on demand; prominence, Audiovisual Media Services Directive (AVMSD).

LA POLÍTICA LINGÜÍSTICA DEL SEGLE XXI: INTERNET I LA PROMINÈNCIA DELS CONTINGUTS EN CATALÀ EN ELS SERVEIS AUDIOVISUALS A DEMANDA

Resum

La llengua vehicula les expressions culturals d'una comunitat determinada. Des de fa dècades, la tecnologia cultural amb més impacte social ha estat l'audiovisual, amb la televisió al capdavant. Mal que bé, Catalunya ha sabut desplegar unes polítiques i uns instruments, precaris però efectivament desplegats, per vehicular les pròpies expressions audiovisuals en català. Però des de la irrupció d'Internet, els continguts audiovisuals a demanda, accessibles des de qualsevol dispositiu connectat, esdevenen més i més importants. Aquesta mutació dona un avantatge formidable a la projecció de continguts nord-americans i, consegüentment, comporta una pèrdua de pes important no sols per a la llengua catalana, sinó també per a les cultures europees no anglosaxones i les seves indústries de continguts.

A partir d'aquí, quina és la política lingüística possible per garantir la pervivència i la projecció del català en el nou context comunicatiu? El present article dona una clau, la clau de volta diríem, a partir de la nova Directiva de serveis de comunicació audiovisual, aprovada el passat 2 d'octubre (Parlament Europeu 2018). Aquesta norma europea incorpora el principi de prominència a Internet per a les obres de producció europea i per als continguts d'interès general en els serveis audiovisuals a demanda (siguin en forma de menú, de cercador, de sistema de recomanació, etc.). Així, la prominència pot esdevenir l'anella europea des d'on penjar la legislació i el desplegament regulador que permetin la pervivència de la llengua catalana en l'ecosistema comunicatiu del segle XXI.

Paraules clau: Servei públic audiovisual; Internet; serveis audiovisuals a demanda; prominència, Directiva de serveis de comunicació audiovisual (DSCAV).

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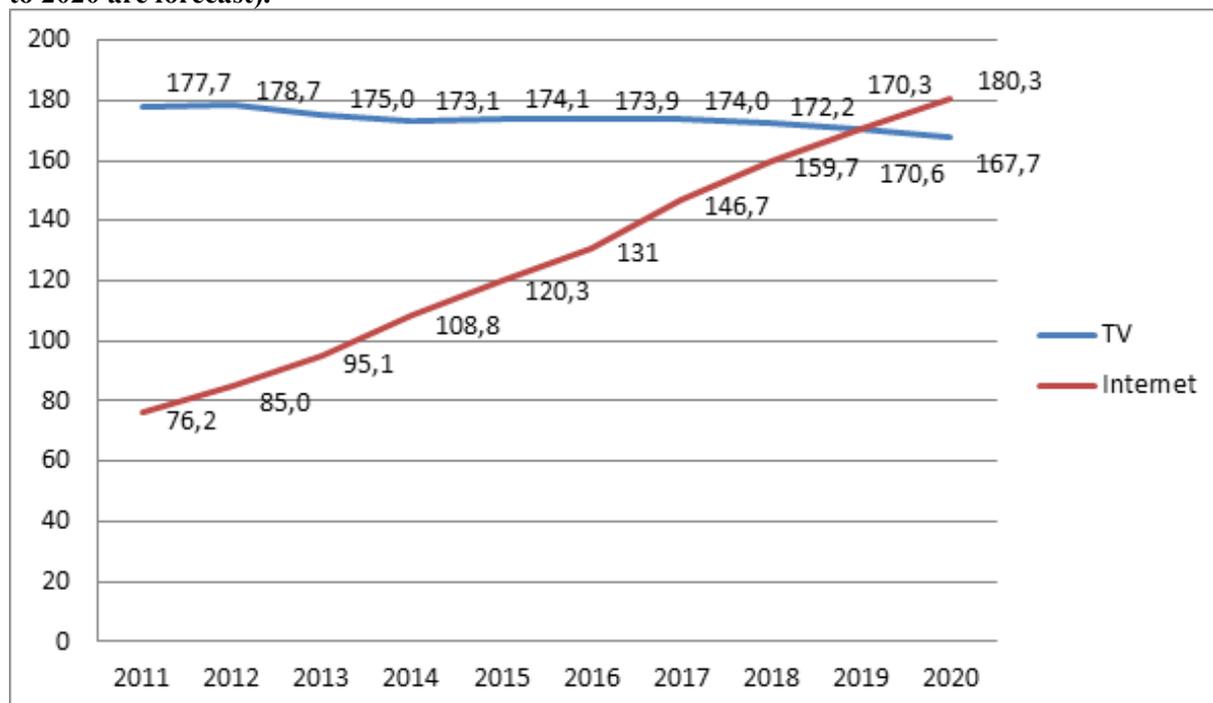
Bibliography

1 Evolution of audiovisual habits: from traditional TV to the Internet

We start with market analysis. The source is not academic, but Zenith, a subsidiary of the French parent company Publicis Groupe, the only non-British advertising company included in the so-called “Big Four” group, together with WPP (United Kingdom), Omnicom (USA) and Interpublic (USA). The choice is intentional, since the advertising sector has been one of the first ones affected by the change in audiovisual habits. Its business model is no longer based so much on the impact on mass (and anonymous) audiences through traditional media. This business model inherited from the 20th century has ceased to be effective, after the emergence of the Internet, social networks, the exploitation of big data and artificial intelligence applied to personalized advertising. The new advertising model based on the Internet allows advertising investment to be more personalized and, in theory, more efficient (for an *executive* financial analysis of the new challenges facing the advertising sector, see Garrahan, Daneshkhu & Nicolaou, 2017).

In their annual report *Media Consumption Forecasts 2018*, Zenith (2018) anticipates that the time spent on Internet content (which includes, among others, video services on demand such as Netflix, video distribution platforms such as YouTube and the audiovisual content of social networks such as Facebook) will soon be greater than the time spent watching conventional television. Zenith sets the moment in which daily audiovisual consumption over the Internet will exceed minimum television consumption as occurring in 2019 (170.6 minutes versus 170.3 minutes, see Figure 1).

Figure 1. Minutes per day dedicated to TV and Internet consumption. World average. 2011–2020 (2018 to 2020 are forecast).

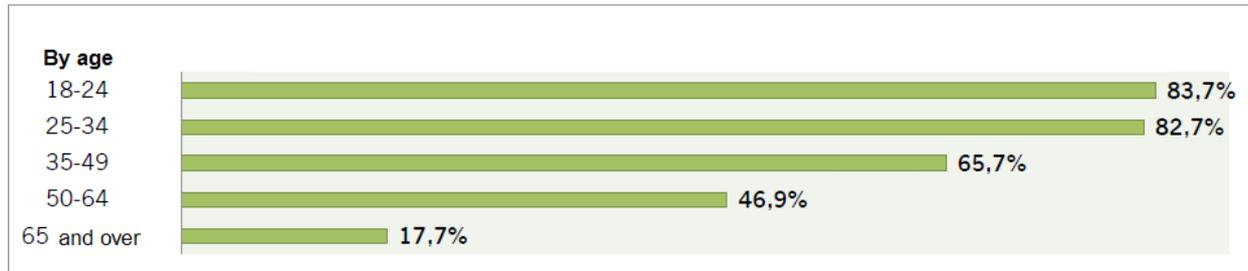


Source: Zenith (2018).

First and foremost, we are facing a change in technology: the main platform for the distribution of audiovisual content will cease to be broadcasting, which uses the radio-electric spectrum for transmissions, and become electronic communication networks, which are fixed (cable, ADSL) or mobile (4G, 5G when it is operational, Wi-Fi and other wireless systems). But this change also involves cultural innovations: we will move from massive, passive and anonymous consumption of audiovisual content to personalized, interactive forms that leave a digital trace. This last aspect marks a series of (not so) new changes: the fragmentation of society, which sees communication systems stop being the nervous system that binds society together, or the questioning of basic rights such as privacy, which are the prices that must be paid for our *triple W consumption* (“Where, when, what you want”).

This tendency is accentuated according to age: minors have a much lower consumption of traditional media (television in the first place) and they are the ones that most connect to the Internet. In contrast, those over the age of 65 maintain the same consumption habits of the 20th century. Catalonia is in line with this current trend (see Figure 2).

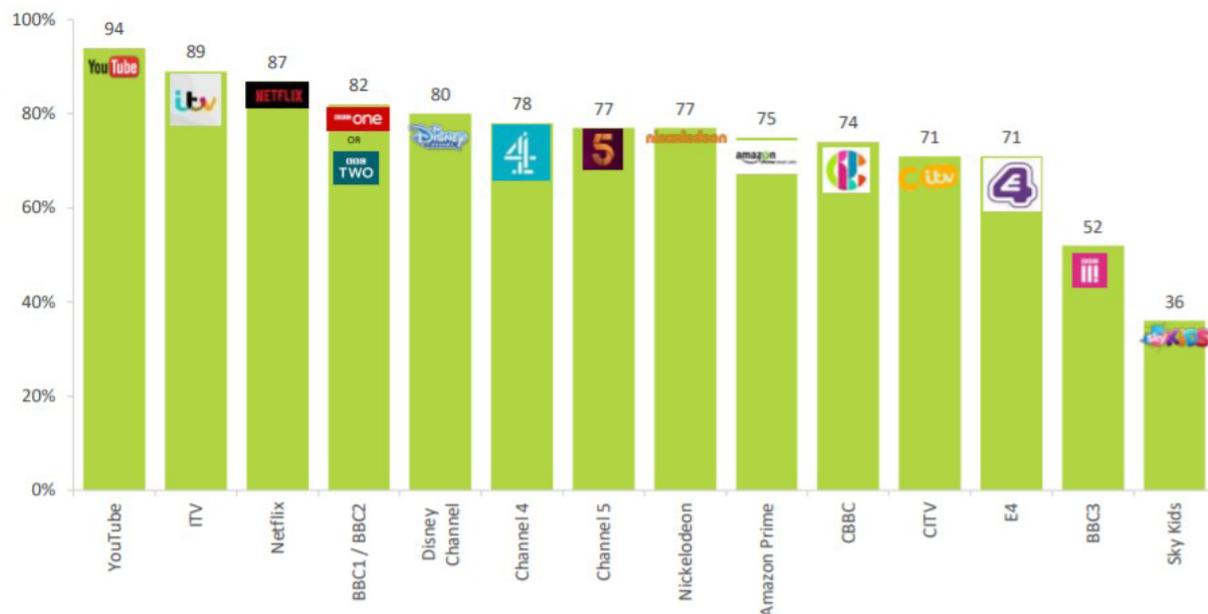
Figure 2. Audiovisual consumption by Internet in Catalonia by age groups. 2017.



Source: Centre for Opinion Studies (2018), quoted by the Catalan Audiovisual Council (2018).

In addition, among minors, the first options for audiovisual consumption on the Internet correspond to new actors, from the USA and of a global nature, such as YouTube and Netflix. The local offer, being the Internet version of traditional television channels, which are well known and recognizable, does not attract the attention of younger audiences. In order to illustrate this trend we will cite the United Kingdom, which enjoys a very mature communication system, with a very solid regulatory structure and, above all, with a public audiovisual service respected by all of Europe and the world. So, when it comes to accessing audiovisual content online, British children aged 12 to 15 place the sum of BBC1 and BBC2 (and their Internet service, iPlayer) in fourth position with regard to brand awareness (see Figure 3).

Figure 3. Brand awareness of content providers among children aged 12 to 15 in the United Kingdom, when connecting to the Internet. As percentage. 2017



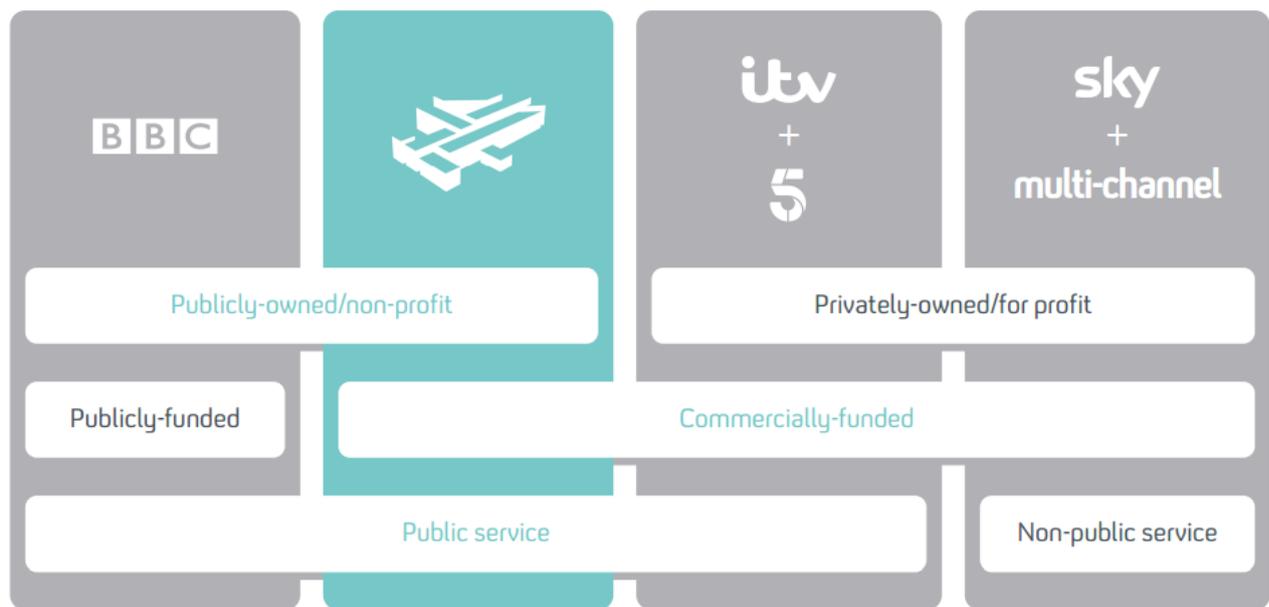
Source: Ofcom (2018).

The set of online services cited in Figure 3 includes diverse operators. On the one hand, we find YouTube, Netflix and Amazon. These are OTT operators (*Over-the-top* operators or free-transmission operators), which are subject to a minimum of regulation and, therefore, enjoy regulatory asymmetry in relation to traditional television. Thus, OTTs are not subject in the same way as television channels to the European Directive on Audiovisual Media Services (AVMSD) and its corresponding transposition to the legal system of each

state. Television channels such as the BBC and ITV have more stringent obligations than the OTT operators in relation to original local production, the promotion of European production, the protection of minors or informative pluralism, among others.

In front of the OTT operators, Figure 3 includes the online services corresponding to the television channels which are, by order of preference in the list, ITV, BBC, Channel 4 and Channel 5, together with their thematic channels or *portfolio channels* (CBBC, CITV, E4 and BBC3). It should be noted that in the United Kingdom, public service is provided both by state-owned corporations (BBC and Channel 4) and privately owned, who manage the service indirectly through an administrative license (ITV and Channel 5). In exchange for providing public services subject to regulated obligations, television corporations receive certain benefits, especially access and use of radio spectrum (a scarce public resource essential for broadcasts in DTT), and coverage of their channels in EPG or electronic program guides. In addition, the BBC receives direct public financing thanks to the *licence fee*, a tax that all households have to pay to receive television services (for more information, see Ofcom 2015, especially the Introduction).

Figure 4. Main channels and TV platforms and their characteristics (coverage: England)



Source: Channel 4 (2017).

In comparison, we see that in the Spanish State private television channels also had a public service nature. Law 10/1988, of May 3, concerning private-owned television channels, and which allowed their creation, defined them as “concessions for the indirect management of public service television” (see Preamble and Articles 2, 8 and 18). A lack of regulatory development subsequent to this law favoured the “omission” of this precept. Media such as Telecinco (now Mediaset) and Antena 3 (now Atresmedia) advanced an irregular interpretation of principles such as freedom of expression or freedom of business over applicable audiovisual legislation. In the end, the public service nature of Mediaset and Atresmedia was repealed by Law 7/2010, of March 31, concerning general audiovisual communication, approved in the 9th Spanish Legislature, under the second Zapatero Government. In this law, “public audiovisual service” is identified with “audiovisual service under public *ownership*”. This evolution has undoubtedly conditioned the configuration of the communication space in Catalonia.

Therefore, all the television channels cited in the United Kingdom have public service obligations, more or less strict depending on the case, but which in the matter of content includes investment in original production, independent production (outsourced to the private sector as a driver of industry), production of regional content and for each nation, decentralized production (*Made-out-of-London TV programming*) and the promotion of European audiovisual production.

Now given the trends in the habits of audiovisual consumption, especially among younger audiences, a phenomenon is encountered which is in no way neutral. That preferences tilt from the television networks of the country to their online services, subject to a set of public policies, and then in favour of global operators of a North American origin with a much looser regulation, has important consequences. Both from an industrial and cultural point of view, and, in the case of Catalonia, a linguistic point of view. In this article we will focus on the consequences that these changes have for the Catalan language, and especially the amendments and adaptations required by audiovisual policies in Catalonia in the face of the new panorama.

2 The prominence of content as a regulatory principle. The United Kingdom and the new Audiovisual Communication Services Directive

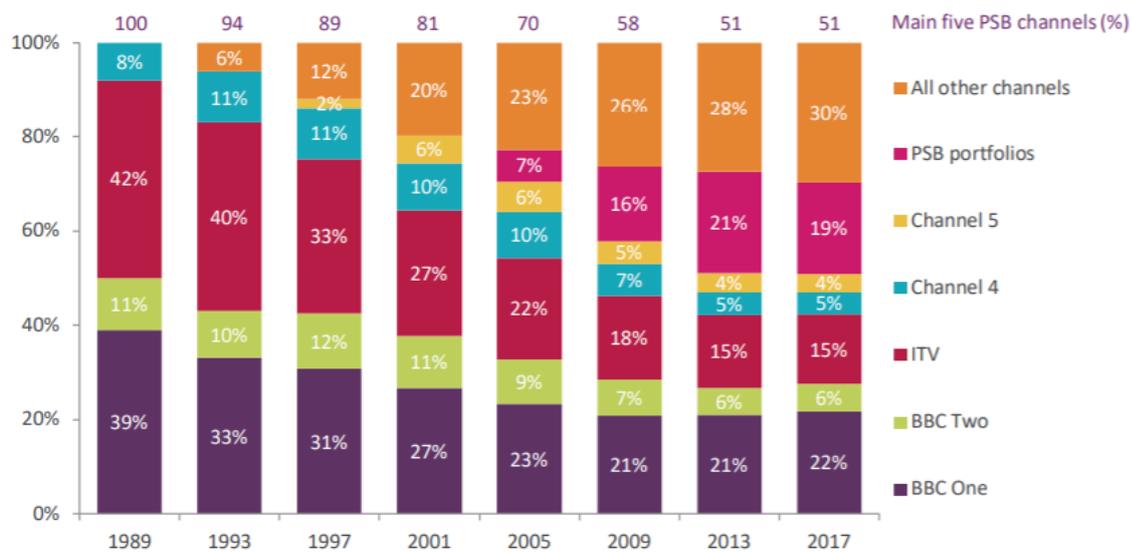
2.1 The shaping of prominence as a legal principle in the United Kingdom

In this article we start with the regulation of the public service in the United Kingdom (and in particular, the legal concept “prominence of the public service”), because it is a successful case in terms of regulatory policies. Established by the Communications Act 2003 (CA 2003) and deployed by the British regulatory authority (Ofcom), it is a legal concept with an itinerary, which could be a key part of audiovisual and linguistic policies in Catalonia.

As explained in this section, in 2012 the BBC proposed updating it and expanding its scope. Indeed, the report *PSB prominence in a converged media world* opened a debate that is still on-going in the United Kingdom. On the other hand, it is remarkable that the European Union has borrowed the concept of prominence in the new European Directive on Audiovisual Media Services (AVMSD), which is expected to enter into force by the end of 2018 or at the beginning of 2019. This incorporation into the AVMSD means the principle of prominence will be incorporated into the legal systems of the member states. From here, if a good legal and political strategy can be developed, it could become the hook from which to hang updated legislation on language policy in Catalonia with regards to audiovisual content. That is why the genealogy of the principle of prominence needs to be analysed from the beginning.

In the United Kingdom, the migration of Hertzian analogue television to DTT began in October 2007 and was completed in October 2012. The *digital switchover* was accompanied by a measure that assured the visibility of public service channels in the new communication ecosystem. Given the multiplication of the digital television offer and the subsequent fragmentation of audiences, there was a need to maintain the social impact of the public service. Otherwise, the social benefits of a service funded with public money and given certain advantages would be distorted. Thus, CA 2003 and Ofcom established that the DTT offer incorporated specificities in the EPG (or electronic programming guides, which offer the viewer on-screen menus of available channels for changing channel). In particular, the EPGs had to be configured by default with the public service channels in the first positions on the programme menus. By virtue of articles 45(5), 73, 74(2) and above all 310 of the CA 2003, the principle of the prominence of public services in the digital multi-channel context was established. From here, Ofcom determined that “an ‘appropriate prominence’ permits a measure of discrimination in favour of PSB channels [*public service channels*]” (Ofcom 2004). As has been mentioned, this measure can be considered to be a successful case, since the migration from analogue television to DTT did not greatly affect audiences of public service channels, as has been the case in other European countries in general (see Figure 5).

Figure 5. Audiences for terrestrial broadcast television from 1989 to 2017



Source: Ofcom (2018).

In December 2012, almost 10 years after the approval of CA 2003, the BBC published the *PSB prominence in a converged media world* study, commissioned by the Communications Chambers consultancy (Foster & Broughton, 2012). This report assumed the irreversible success of the prominence of public service in the DTT environment, but warned of new risks. The communicative ecosystem had already begun to change at that time and new ways to access content were found. Audiovisual consumption was no longer only through traditional television, but also, and increasingly, through the various types of on-demand services. And this fact had important consequences.

Since the emergence of the Internet and the dissemination of broadband, the audiovisual and telecommunication sectors have converged into a new macro sector where the logic of telecommunications has been imposed. This means that priorities in communication policies become ones related to connectivity, infrastructure and the regulation of competition between network operators. The advent of the connected society, bearer of an ultimate and renewed modernity, is not politically neutral. Audiovisual public service, a factor in creating social structure during the last few decades, is no longer at the forefront, and neither is its associated regulatory principles. So, where does public service fit into this new paradigm?

Specifically, the BBC report raised the following argument sequence:

- In a communication ecosystem with media convergence (audiovisual media + telecommunications), traditional patterns of diffusion and consumption change.
- In addition to conventional television, content is consumed by means of connection to electronic networks (Internet).
- These new forms of communication allow new operators onto the market, which reduces the prevalence of public services.
- The new intermediaries between user and content (“*content gateways*”) are becoming increasingly important.¹

¹ A “*gateway*” refers to any intermediary between the audiovisual content and the audience. Gateways offer a selection of content to the public through the design and organization of a menu, a guide or any system of recommendation to the user, that prioritise some content above others. The new intermediaries include IPTV (or audiovisual services offered by telecommunications operators, such as Telefónica’s Imagenio), on-demand content services (such as Netflix), video distribution platforms (such as YouTube) and social networks which broadcast audiovisual content (like Facebook).

- Traditional DTT EPGs are no longer the only user-content interface and new ways of ordering, presenting and promoting content to users have been added. Recommendation systems or search engines are highlighted.
- Curiously, the report introduced the term *discoverability*, a concept from the field of library science and documentation. It refers to the ability of content to be discovered in a very extensive catalogue or database, especially in digital repositories and other online tools (see Somerville, Schader & Sack, 2012). The BBC applied it, without defining it, to the capacity that public service had to have on the Internet.
- With the objective of guaranteeing an appropriate prominence of the public service in the future, the BBC report stressed that an update to CA 2003 would be necessary. It made it clear that the system of prominence had to be applied to any technological platform and interface, whether it be a table of DTT channels or an on-demand service menu. And that it had to be done in a coordinated way within the European sphere. In the Internet environment, public service must also receive appropriate treatment as a service that has a general interest. Thus, in a connected context, public service should have at least one icon/button on the first page of any guide or its equivalent (BBC, 2012).

The debate has not gone away. In 2016, the Department of Culture, Media and Sport (DCMS, of ministerial rank) of the British Government opened a public consultation on the advisability of updating the EPG regulation. “Discoverability of content is set to become an increasingly challenging area to regulate as convergence and advanced search functions allow viewers a greater range of ways to find and explore content.” (DCMS, 2016). It also noted that, apart from the traditional DTT EPG, new interfaces for catch up TV or on demand content appeared. This included digital platforms such as Sky or YouView, and also manufacturers of smart TVs (Samsung and Panasonic) with their own Internet access technology. An objection to this situation was that the new system of access to content was not subject to regulations of prominence of public service and, therefore, there was a case of asymmetry when regulating the same content depending on the distribution technology.

In July of that year, the DCMS set out its position, which could be summed up with “the issue is worthy of analysis and monitoring, but for now we will not modify the regulations.” The Government accepted the novelty of the situation and its risks, but chose not to introduce regulatory changes. The change was too recent, the technological landscape and consumer habits were evolving very rapidly and the measures could pose important technical difficulties. In addition, some of the new content gateways, such as the makers of smart TVs Samsung and Panasonic, have a global market perspective and a unilateral state regulation could distort this reality. *Wait and see*.

In 2018, British regulator Ofcom relaunched the debate with its document *Public service broadcasting in the digital age. Supporting PSB for the next decade and beyond* (Ofcom 2018). The starting point of this report is the confirmation that the prominence of the public service in the EPGs of conventional television is a previous regulation to the generalization of new online audiovisual services (such as Netflix’s on-demand offer and the smart TVs of Panasonic or Samsung). However, it is true that in the UK the public service offer in connected environments is very visible, but this is not due to the effects of regulation, but rather to the result of commercial negotiations between those same public service providers and the platforms. While there is an interest on the part of the audience to access this content, it is reasonable to maintain the situation. But this is circumstantial. Therefore, while society and public power consider that public service has a value that must be preserved beyond market dynamics, a regulation will need to be implemented.

In the immediate future, the prominence of the public service in EPGs will continue to be important, observes the Ofcom document. But, nevertheless, the British regulator suggests a review of the regulations by the end of 2018. In accordance with the provisions of the new Digital Economy Act of 2017 (and in particular its Article 95), the institution will propose recommendations for a possible extension of the current regulations to on-demand services, and these should be followed closely. “If Parliament considered that the prominence of on-demand services is crucial for the future health of public service providers and could only be achieved through regulation, it would be necessarily be [based] on primary legislation”. Ofcom admits, however, that

this initiative should be embedded in an international debate and, in this sense, echoes the current debate in Germany and the Bund-Länder-Kommission proposal for convergence of media. This proposal includes a new legal framework that would broaden the prominence of the public service to the new platforms, in order to guarantee the variety and plurality of content (see Bund-Länder-Kommission, 2016). In any case, however, after Brexit, this international coordination becomes more complicated for the United Kingdom.

2.2 The principle of prominence leaps to Europe

The most notable thing in the whole process of developing the prominence of public services on the Internet is that this political idea jumped borders and installed itself in European institutions. In 2013, the European Parliament published the Report on Connected TV, which assumed the need for a favourable regulation for public service in a connected environment. The novelty of this report was the introduction of a concept related to prominence, “findability”. This is a term that comes from web design and informational architecture, which denotes the ability of users to identify an appropriate website and navigate through its pages, to discover and retrieve relevant information resources (Morville, 2005; Spagnolo, Bolchini, Paolini & Di Blas, 2010). In the report, the European Parliament applied findability, without defining it, to the content of public services in the unlimited Internet environment.

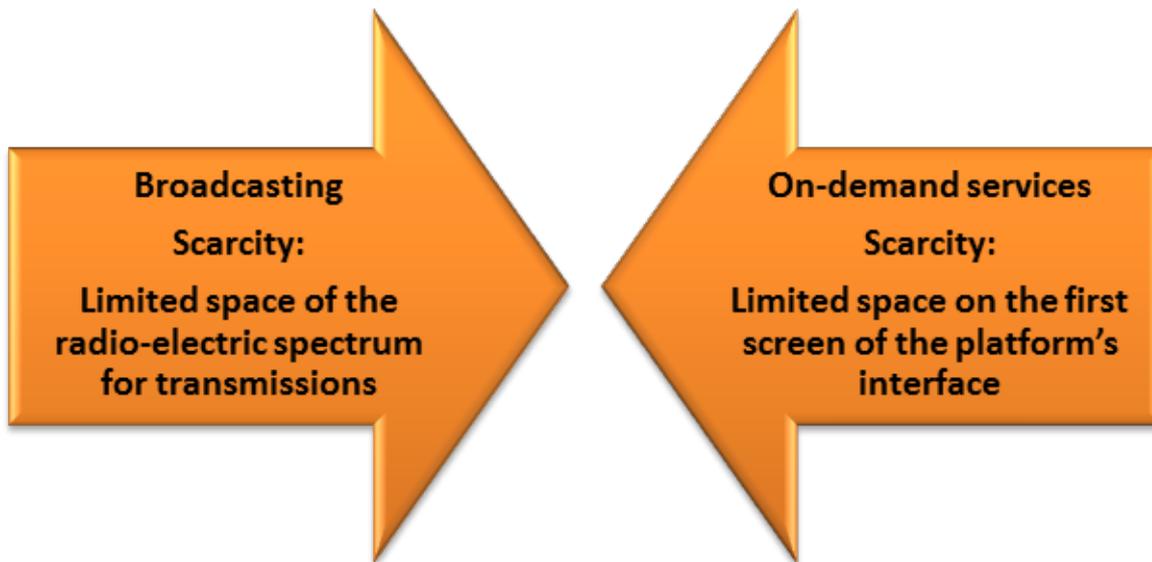
Existing ‘Must-carry’ rules need to be supplemented with ‘Must-be-found’ rules. Those content providers should be given an appropriately privileged status with regard to findability on hybrid platforms (including portals, home pages and EPGs) to which the Member States assign a public broadcasting remit or which help to promote objectives in the public interest, such as ensuring media pluralism and cultural diversity, or which undertake to carry out duties which maintain the quality and independence of reporting and promote diversity of opinion. (European Parliament, 2013)

Shortly afterwards, the European Commission opened a public consultation titled *Green Paper – Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values* (European Commission, 2013). It is interesting to review the argument presented in the responses by the European Broadcasting Union (EBU).²

The EBU recalled that thanks to the Internet and the convergence of the audiovisual and telecommunications sectors, the limitation on the ability to transmit content was overcome. The Internet is based on unlimited technology, unlike broadcasting, which uses the scarce and limited resource of the radio-electric spectrum. Therefore, thanks to the Internet, the bottleneck of a finite and limited capacity in the distribution of contents no longer exists. But there is now another bottleneck, which is the dependence of the user on interfaces that manage and order the overabundance of content on the network. In search engines, OTT websites, web portals and EPG, the first access page is essential. *This is the new scarcity*. Due to this scarcity of space on the first screen, the EBU maintained, the services and content that EU Member States consider to have social, cultural or political value must be prioritized. Gateways that redirect the consumer to certain content, for strictly commercial reasons, should be avoided as they remove the public service offer. In this way, findability/prominence for this type of audiovisual content on the Internet is a logical evolution of traditional Must-carry norms. Finally, the EBU called for regulation on the European scale on the findability/prominence of public service content in a connected context (European Broadcasting Union, 2013).

² The EBU is the organization that brings together public service audiovisual media in Europe, with a total of 73 members from 56 states. Its role as a think tank and lobbyist in defence of the public service is significant. There are three Spanish members: RTVE, SER and Cope. The CCMA is not part of the EBU other than through Catalunya Música, which participates in the project for the exchange of classical music.

Figure 6. Broadcasting versus on-demand services: different scarcity models



Source: own elaboration from European Broadcasting Union information (2013).

It should be noted that, as with other agencies, the Catalan Audiovisual Council (CAC) also responded to the European Commission's consultation (2013), in line with the report of the European Parliament (2013). In its responses, the CAC also included a reference to the need for favourable regulation of public service in a connected environment: "In the case of Catalonia, language must be a fundamental criterion when it comes to establishing which public service and general interest content will enjoy privileged visibility. Thus, content in Catalan must appear as the first option for the user connected to Catalonia on all distribution platforms" (Catalan Audiovisual Council, 2013). The next section of this article is dedicated to how to undertake this generic notion. Before that, however, we will explain how the debate has evolved and how the principle of prominence has been incorporated into the new Audiovisual Media Services Directive (AVMSD), as requested by the EBU.

Indeed, on May 25, 2016, the European Commission presented the initiative to modify the AVMSD, within the framework of the Strategy for the Digital Single Market (European Commission, 2016). The initial proposal extended the jurisdiction of the Directive: in addition to including conventional or linear television (such as TV3, 8TV and traditional broadcast channels) and on-demand services (such as TV3alacarta and Netflix), it also incorporated video distribution platforms (VDP, such as YouTube). VDPs have no editorial responsibility for the content they publish, but they store, organize, tag and propose to users based on their previous consumption by use of algorithms. The regulation proposed by the Commission for these platforms referred to the protection of minors and the persecution of content that incites hatred, violence or discrimination.

There was a certain debate about whether social networks, such as Facebook, should also be incorporated within the scope of the new AVMSD. In its contribution to the process, the Council of the EU explicitly included them, by adding Recitals 4, 5 and 6 (European Parliament 2018). The proposal was accepted by the other two counterparts, the Commission and the European Parliament. Thus, the modified Directive regulates all types of audiovisual content, regardless of its distribution platform.

The definitive text of the Directive contains many new features, but the one of most interest here is the fact that the Commission takes on the concept of "prominence", makes it its own and applies it to on-demand audiovisual services. And from this initial proposal, both the Council and the European Parliament take it up.

Thus, once the AVMSD is in force, the principle of prominence will be set and consecrated, and the member states will have to incorporate it into their legal systems. From here:

- The EU states will have to give prominence to works of European production in on-demand services (Recital 35 and Article 13 of the new document).
- The EU states may take measures to ensure an “appropriate prominence of audiovisual media services of general interest” (Recital 25 and Article 7a) (see Table 1).

Table 1. Modified Directive on Audiovisual Media Services (AVMSD): prominence of European works and general interest audiovisual, in on-demand services

Prominence of European works in on-demand services	Prominence of general interest content
<p>Recital 35</p> <p>Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that they are given sufficient prominence. The labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers. Prominence involves promoting European works through facilitating access to such works. Prominence can be ensured through various means such as a dedicated section for European works that is accessible from the service homepage, the possibility to search for European works in the search tool available as part of that service, the use of European works in campaigns of that service or a minimum percentage of European works promoted from that service’s catalogue, for example by using banners or similar tools.</p> <p>Article 13</p> <p>Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30% share of European works in their catalogues and ensure prominence of those works.</p>	<p>Recital 25</p> <p>Directive 2010/13/EU is without prejudice to the ability of Member States to impose obligations to ensure the appropriate prominence of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity. Such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in accordance with Union law. Where Member States decide to impose rules on appropriate prominence, they should only impose proportionate obligations on undertakings in the interests of legitimate public policy considerations.</p> <p>Article 7a</p> <p>Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest.</p>

Source: European Parliament (2018).

Another significant contribution of the new AVMSD is a highlighting terminological awareness. Very often the three terms prominence – findability – discoverability appeared in official documents interchangeably. Sometimes, there was also added a fourth, accessibility to the content of public services. This generated polysemy, since accessibility is mainly a principle of inclusion for people with sensory impairment, through subtitles, sign language and audio description. In this sense, the choice of the Directive in this field is clear: it establishes prominence as a single term and removes discoverability and findability, related concepts, but which were used intuitively and which were not operating from a regulatory point of view. In fact, these two words do not appear at any point in the definitive text of the amended Directive. The best example of this interest in setting the terminology is found by comparing the proposal of the European Commission with the Article that should come into force (see Table 2).

Table 2. Setting of the term “prominence” in the new AVMSD

Text of the proposal from the European Commission (2016)	Definite text of the AVMSD, agreed between the European Parliament and the Council of the European Union
<p>Recital 38</p> <p>This Directive is without prejudice to the ability of Member States to impose obligations to ensure discoverability and accessibility of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity. Such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union law. In this respect, Member States should in particular examine the need for regulatory intervention against the results of the outcome of market forces. Where Member States decide to impose discoverability rules, they should only impose proportionate obligations on undertakings, in the interest of legitimate public policy considerations.</p>	<p>Recital 25</p> <p>Directive 2010/13/EU is without prejudice to the ability of Member States to impose obligations to ensure the appropriate prominence of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity. Such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in accordance with Union law. Where Member States decide to impose rules on appropriate prominence, they should only impose proportionate obligations on undertakings in the interests of legitimate public policy considerations.</p>

[Note: Author’s emphasis in bold].

Source: European Commission (2016) and European Parliament (2018).

On October 2, 2018, the European Parliament approved the revision of Directive 2010/13/EU (or Audiovisual Media Services Directive, AVMSD) (European Parliament 2018). After the formal adoption by the Council, the Directive will enter into force on the 20th day after its publication in the *Official Journal of the European Union* and the member states will have 21 months to transpose it into their legal system.

It is at this moment that the Government and Parliament of Catalonia may consider the development of updated and current audiovisual regulations (including questions of language policy), in accordance with their current competencies (or possible future ones) and respecting the principles of the Directive.

3 Conclusions: the prominence of content in Catalan on the Internet. Legal and political opportunities

The principle of prominence has been incorporated into the EU acquis through the modification of the Audiovisual Media Services Directive. This means establishing a political intervention on the algorithms that manage the content of an audiovisual on-demand services platform.

It also means recognizing and clarifying that the universe of the Internet has two layers of regulation: On the one hand it is an access market and requires legislation on issues such as infrastructure and interconnection. But above that level a market of audiovisual content is developed. This twofold reality of the Internet (telecommunication networks and audio-visual content) is peculiar with respect to other access markets, such as energy. And this is relevant to Catalonia, whatever the political-legislative framework that it may have in the future for the design and execution of its own digital policies. Whether the status quo of the 1978 Regime is maintained, or whether there is a reform of the Spanish Constitution to shield the cultural and linguistic competences of the Government of Catalonia, or whether an independent republic is proclaimed, the prominence of public service on the Internet tied to the Catalan language is a nuclear element. In spite of its technological nature, it is a fundamental aspect of the cultural and linguistic policies of the Government of

Catalonia, and it must be clear that it is part of its systemic competency corpus, regardless of the structuring of power that may happen in the future.

In principle, with the political status quo, the Government of Catalonia should be able to define its own public service, including in the field of on-demand services. The Spanish Constitution (Article 149.1.27) establishes that competences in the audiovisual sector are distributed between the State (that approves the basic legislation) and the autonomous communities (that develop it). This option would require a generous reading of the aforementioned article of the current Constitution, accompanied by a basic legislation of the Spanish Government that was inclusive and sustained over time in relation to the powers of the Government of Catalonia in the matter. But seeing how several processes have developed in the audiovisual sector in Spain, such as the migration of analogue television to DTT, this does not seem likely.³

If we consider a possible constitutional shield as a hypothetical outcome of the Spain–Catalonia conflict, it should be clear that the competences in language and culture integrate all cultural forms, and especially the new forms of audiovisual consumption. This includes on-demand audiovisual services, video exchange platforms, the audiovisual content of social networks and all those equivalent services that may arise in the future. These competences, moreover, would not be only designed and executed from the policies within Catalonia, but also from the participation of the Government of Catalonia in the European and international forums where the agreements which then pass down to the states are discussed and approved. The process of modifying the AVMSD is a good example of this need, but it is not the only one.

Whatever the political future of Catalonia (status quo, reform or split), an acute expertise will be required in the updating of audiovisual regulations as the driver of the language, as the definition and implementation of a public service model in Catalonia has several obstacles. First of all, Catalonia is part of the Mediterranean communication model, which is conditioned by shortcomings in the consolidation of the communications market, journalistic professionalism, guarantees of media independence in relation to power and is subject to “uncontrolled deregulation” processes in the sector on the part of the state (Hallin & Mancini, 2007). In this context, we find internal obstacles (the temptation of governments to patrimonialize the public service) and obstacles related to Spain (the inclusion of Catalonia in a state without an independent regulatory culture that watches over the public service).

In this sense, we must point out Resolution 3/VI of the Parliament of Catalonia concerning the audiovisual media of Catalonia (Parliament of Catalonia, 1999). This is the fundamental document for subsequent legislative reforms, the foundation of the CAC as an independent regulatory authority (Law 2/2000), of the Audiovisual Communication Law of Catalonia (Law 22/2005) and of the Law of the new CCMA (Law 11/2007). With regard to public service, the Resolution established two basic principles: an independent and transparent governance system, based on management by expert professionals, on the one hand, and a stable, sustainable and multi-year financing model, on the other. Resolution 3/VI, then, was a step in changing the political and communication culture of Catalonia, embedded in the Mediterranean tradition described by Hallin and Mancini.

In addition, the definition of public service has a European dimension. There is also a complex issue here, which is embedded in the widespread difficulty of defining and updating the public audiovisual service, the cornerstone of European societies in the 20th century, in the new connected global society. In any case,

³ On digital migration to DTT, we will cite the Audiovisual Report in Catalonia 2016, presented by the CAC to the Parliament of Catalonia. Its executive summary reads:

“In 2000, there were two Catalan language channels (TV3 and 33), compared to five Spanish channels (La1, La2, Antena 3 TV, Telecinco and Canal+). However, the development of the exclusive competencies [in telecommunications] of the Spanish State in the planning of the radio-electric spectrum (Article 149.1.21 of the Spanish Constitution) has further unbalanced the television landscape in Catalonia. Currently, after digital swith over towards DTT, there are 8 Catalan channels to 32 Spanish channels. If we total the audiences for all channels, we see that digitization has clearly reduced the audience for Catalan television channels: In the year 2000, the share for TV3 and 33 totalled 26.1%, while in 2016, the total percentage for Catalan televisions in decreased to 18.7%. A very different thing has happened to Spanish television stations in Catalonia: in 2000, the cumulative audience of those five channels was 69.0%. In 2016, the 32 channels resulting from the licenses granted by the central government totalled 70.4% of the audience.” The exclusive competencies in telecommunications, in this case the planning and allocation of the radio-electric spectrum, have caused the Spanish State to legislate in a certain direction (Catalan Audiovisual Council, 2017).

however, there is consensus that the public service is based on four pillars: content, information, language and culture, and industry and technology (see Table 3).

Table 3. Pillars of audiovisual public service

<p>Content</p> <p>The public service must provide innovative and quality content, without losing sight of its purpose as a universal, transversal and mass service. In a fragmented market, public service continues the mission of generating community among individuals in society.</p>
<p>Information</p> <p>Public service is essential for critical and informed citizenship and should therefore be shaped in a plural and honest way. It must also be particularly scrupulous in the application of the principle of editorial responsibility.</p>
<p>Language and culture</p> <p>The public service must replace market deficiencies in the production and dissemination of content in the audience's own language. In medium or small audiovisual markets, the market does not always guarantee provision of content in the audience's own language on all distribution platforms. This happens with the Catalan language, but also in the case of other languages in the EU. This market failure justifies a large-scale public intervention, through the deployment of the public service and its regulation, to guarantee this right, which is not satisfied by the market.</p>
<p>Industry and technology</p> <p>Public service must be the driver of the audiovisual industry itself, as well as a driver of research applied to new technological applications in the field of production and distribution of audiovisual content.</p>

Source: own elaboration from Petit (2017).

We have already mentioned that in the consultation process with the European Commission (2013), the CAC had already pointed out that “language must be a fundamental criterion when it comes to establishing which public service and general interest content will enjoy privileged visibility in a connected environment” (Catalan Audiovisual Council 2013). They ratified this in *Llibre blanc de l'audiovisual a Catalunya* (“White Paper on Audiovisual Content in Catalonia”), presented to Catalan Parliament on January 23, 2017, which details a set of measures for the application of audiovisual policies in the immediate future. In Chapter 4 of this document (“Development Strategies”) 53 strategic actions were listed, which resulted in a total of 135 actions/recommendations. And one of these referred to the prominence of content in Catalan on electronically connected screens (see Table 4).

Table 4. Recommendation in *Llibre blanc de l'audiovisual a Catalunya* in relation to the prominence of content in Catalan on digital platforms

<p>4. Development strategies</p> <p>A. Strategic action axes</p> <p>Action A.1.5.</p> <p>To monitor that European regulations and international agreements in the EU recognize the need to preserve and promote linguistic diversity in the era of digital communication in order to ensure the necessary development of public policies for the promotion of recognized minority languages such as Catalan or Aranese.</p> <p>Actions/Recommendations: (...)</p> <p>Achieve acknowledgement of the appropriately privileged status of languages such as Catalan in relation to its prominence and findability on digital platforms, so that content in Catalan appears as the first option for the user connected in Catalonia on all platforms for the distribution of on-demand audiovisual services.</p>
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Source: Catalan Audiovisual Council (2016: 267).

The elements are on the table, therefore, to begin the legislative and regulatory rollout that guarantees that cultural expression in Catalan in the 21st century is properly dealt with and receives the prominence it is due on electronically connected screens. We are in the perfect moment to launch such a process. Although many predicted that events would evolve otherwise, we can affirm that we are at a foundational moment, both internally (for rethinking what we want the country to be in the next few decades), and at a European level (with a new AVMSD containing favourable surprises for regulation in Catalonia). The steps outlined by Ofcom for the immediate future will undoubtedly be, again, a reference to follow. In addition to the technical expertise, however, a political boost will also be needed to begin to specify, in Catalonia, the measures set forth here.

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