

Subgroup 3 – 2020 Terms of Reference (ToR)	
Name of Subgroup	Ensuring prominence and non-discriminatory access of audiovisual media content to all platforms (Findability)
SG Chair	Maria Beltcheva, CEM (Bulgaria)
WS Leader	Zsuzsa Karsai, ALIA (Luxembourg)
Background	<p>The most recent market and technological developments (new distribution channels, the proliferation of audiovisual content, etc.) have generated calls to reflect on whether rules would be required to facilitate prominence of general interest content (i.e. ensuring its findability). Viewing habits, especially those of younger generations have changed significantly, and people have moved to other, portable devices to watch audiovisual content. It is therefore important for Member States to implement, in line with EU law, measures that safeguard the visibility of general interest content.</p> <p>The revised Audiovisual Media Services Directive (AVMSD) mentions in the recitals media pluralism, freedom of speech and cultural diversity among the defined objectives under which the prominence of general interest content shall be ensured.¹ Furthermore, in Article 7a, the AVMSD gives Member States the possibility “to take measures to ensure the appropriate prominence of audiovisual media services of general interest”², meaning content from both public as well as commercial media service providers. Although this provision is only of an optional character, it should have a positive impact on the findability/appropriate prominence of general interest content available on platforms under the jurisdiction of an EU Member State distributing audiovisual media services in the EU (e.g. Internet access providers, cable operators, connected TVs, online platforms).</p> <p>Ensuring prominence of content is also one of the two new obligations to be imposed by Member States on providers of on-demand audiovisual media services in the context of the promotion of European works under Article 13(1)³ of the AVMSD. Securing the prominence of European works now complements the providers’ obligation to secure a minimum share of 30% of European works in their catalogue. Recital 35⁴ of the</p>

¹ Recital 25: “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.”

² Article 7a: “Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest.”

³ Article 13(1): “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.”

⁴ Recital 35: “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

	<p>Directive suggests several solutions that can be adopted to ensure effective prominence of European works within on-demand audiovisual media services. The recital also encourages the labelling in metadata of such works so as to easily identify the European content and facilitate its visibility and findability by means of search engines and other AI tools of the media service providers.</p> <p>The difference in the binding nature of the two provisions under examination should be noted. While Article 7a only opens an opportunity for Member States to take measures to ensure appropriate prominence of general interest content, Article 13(1) contains an obligation for Member States to ensure prominence of European works.</p>
<p>Subgroup scope and purpose</p>	<p>As a continuation of the previous work done by ERGA,⁵ and while the revised AVMSD is being transposed, the Subgroup shall examine the possible measures that Member States may take in the transposition of Article 7a and Article 13(1).</p> <p>The work of this Subgroup should enable the development of a best practice approach, in order to strive for the highest possible degree of consistency when implementing such measures as regards audiovisual media services.</p> <p>Focus:</p> <ul style="list-style-type: none"> • Article 7a AVMSD <p>The Subgroup shall aim to facilitate a common understanding of the scope of this provision (i.e. the type of services that would fall under Article 7a, as well as the criteria to determine what constitutes audiovisual media services of general interest).</p> <p>The Subgroup shall also reflect on potential appropriate measures, which would guarantee that audiovisual media services of general interest are given appropriate prominence, for example within Electronic Program Guides (EPGs) and connected TVs environments and on other similar distribution platforms.</p> <p>Lastly, the Subgroup shall also address what type of regulatory approaches Member States can take regarding the prominence requirements and which criteria to take into account.</p> <ul style="list-style-type: none"> • Article 13(1) AVMSD <p>With the aim of collecting existing best practices and facilitating the practical understanding of the concept of prominence, the Subgroup shall examine the following questions:</p> <ul style="list-style-type: none"> - What do media service providers currently do in order to ensure appropriate prominence of European audiovisual works? - Which measures have already been adopted by NRAs, and how do they work?

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.”

⁵ ERGA 2018 Analysis and Discussion Paper to contribute to the consistent implementation of the revised AVMS Directive (see in particular Proposal 20 and 33 of the Paper, p.15).

	<ul style="list-style-type: none"> - How can NRAs verify the efficiency of the afore-mentioned measures taken by the service providers? <p>To this end, the Subgroup shall carry out an industry survey to identify existing prominence measures in relation to European works taken by providers of on-demand audiovisual media services in various countries, also in light of the current regulatory frameworks, where appropriate. The results of the survey could serve as a basis for the Subgroup to develop guidance on how regulators can appropriately verify services' compliance with Article 13(1).</p> <p>Purpose:</p> <ul style="list-style-type: none"> • To prepare a summary and general guidance on the current legislation, approaches, practices and measures in the Member States in relation to the findability of general interest content; • To conduct an industry survey in order to identify existing prominence measures in relation to European works taken by providers of on-demand audiovisual media services, and to develop guidance on how regulators can appropriately verify compliance with those measures; • To organize a workshop in order to identify the current views of stakeholders on the matter of prominence of audiovisual media services of general interest on various platforms and on the matter of prominence of European works within the catalogue of on-demand media audiovisual service providers.
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Deliverables

<p>Deliverables of SG3</p>	<p>Deliverable 1: Overview document in relation to Article 7a</p> <ul style="list-style-type: none"> • <u>Objective</u>: To give an overview (summary and general guidance) on the current legislation, approaches, practices and measures in relation to Article 7a of the AVMSD (scope, type of obligations, technical implementation, assessment criteria, etc.) that ensure that audiovisual media content of general interest has access to and appropriate prominence on platforms. • <u>Due date</u>: End of the working year • <u>Publication</u>: Yes
	<p>Deliverable 2: Overview document in relation to the prominence rule of Article 13(1)</p> <ul style="list-style-type: none"> • <u>Objectives</u>: To collect existing industry best practices in terms of ensuring prominence of European works within the catalogues of on-demand audiovisual media service providers. To develop guidance on how regulatory authorities can assess the performance of media service providers; • <u>Due date</u>: End of the working year • <u>Publication</u>: Yes

Deliverables of SG3	<p>Deliverable 3: Workshop of the Subgroup (WS Leader: ALIA, Luxembourg)</p> <ul style="list-style-type: none"> • <u>Objective</u>: To focus on the transposition of Article 7a and of the prominence rule of Article 13(1). To identify: scope, state of affairs, definitions (e.g.: general interest content/service, appropriate prominence, proportionate obligations, etc.) challenges, best practices. Focus on online platforms (on-demand services, VSPs, telecoms). • <u>Method</u>: The workshop will rely on the discussion of the panellists: external experts invited from different sectors (representing broadcasters, academia, IT/AI, on-demand service providers, VSP providers) and, if available, on presentations of best practices from NRAs. • <u>Date, venue</u>: Q3/Q4 2020, Brussels
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Work flow for Subgroup 3 (internal and external milestones)

Date	Action / Deliverable
3 March	First meeting of SG3: Organisation of the work and agreement on the responsibilities for the planned activities and deliverables of the SG3.
End March / Beginning of April	Written procedure for adoption of ToR Second step: Electronic Vote
Beginning of April	First Meeting of Drafters of SG3 (online)
29 April	Extended ERGA Board Meeting
8 May	Second Meeting of Drafters of SG3 (online)
13 May	Contact Network Meeting
4 June	Plenary Meeting
Q2/Q3/Q4	Workshop (Deliverable 3)
Beginning of September	Second meeting of SG3
12 November	Contact Network Meeting
2-3 December	Plenary Meeting (Adoption of the Deliverables)