

# Welcome to the Hybrid age!

Strategies, Challenges and Opportunities in  
Hybrid Broadcast Broadband

Geneva, 1-2 December 2010


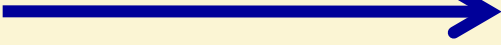


## Legal and regulatory issues related to hybrid/connected TV

1. content standards
2. access to platforms
3. remit and funding
4. copyright
5. content integrity

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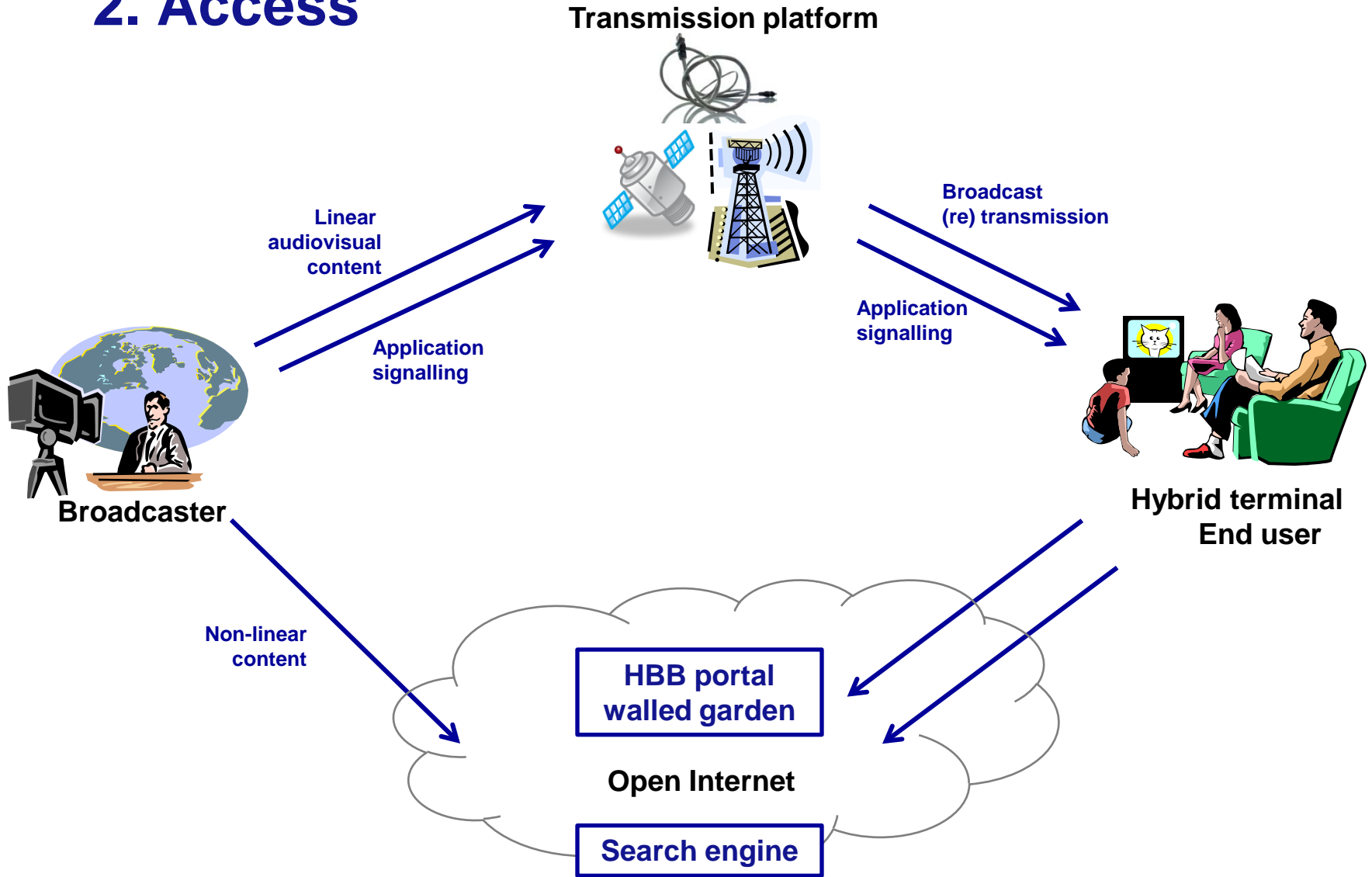
# 1. Content standards

<b>Hybrid</b>	<b>Broadcasting (linear)</b>	<b>Audiovisual on-demand</b>	<b>Other on-demand</b>	<b>Examples regulated areas</b>
<b>Rules for broadcasting</b>	<i>Detailed rules</i> 			Insertion and duration of advertising, exclusive rights, news access, impartiality
<b>Rules for audiovisual media services</b>	<i>Graduated rules</i> 			Protection of minors, promotion of European works
<b>(AVMS Directive)</b>	<i>General rules</i> 			Audiovisual commercial communications, sponsorship, product placement, hate speech
<b>Horizontal rules (criminal and civil law)</b>	<i>Rudimentary rules only</i> 			Pornography, defamation

# 1. Content standards- challenges for broadcasters and regulators

- **Protect the quality and safety of the broadcasting environment**
- **Enable viewers to distinguish between the different regulatory environments and levels of protection. Manage viewers' expectations**
- **Ensure level playing-field among operators**
- **Increased responsibility for portal providers and other aggregators and intermediaries?**

# 2. Access



## 2. Access rules

### Limited legal safeguards (access rights) exist

- **Telecom law:** net neutrality principles; access to networks and certain facilities (APIs) - not to content portals/platforms
- **Media law:** depending on national rules
  - obligation for network operators to transmit services ("must carry"), e.g. including application signalling
  - obligation for content aggregators to include (linear or non-linear) content in their offers, e.g. on HBB portals
  - presentational aspects of electronic programme guides
- **Competition law:** in cases of anti-competitive foreclosure, depending on market power ("essential facilities")
- **No guarantee that hybrid devices support a particular standard (e.g. HbbTV)**

# 3. Remit and Funding

- **Ensure legal basis for public service activities**  
European State aid rules require clear definition of remit and - as the case may be - a prior public value test (for "significant new services")
- **Prevent undermining of broadcasters' remit or funding**  
Risk that intermediaries or other parties capture the broadcasters' audiences, insert their own advertising into or around broadcasters' pictures, etc.
- **New opportunities for commercial funding?**  
Online behavioural advertising (OBA) - within the limits of data protection rules. Revenue-sharing?

## 4. Rights clearance

- Catch-up and other non-linear services are on-demand use



- This use requires explicit permission from all right holders in any piece of content, including e.g. mere background music
- European (and national) copyright framework does not provide for the same systems of rights clearance as exist for broadcasting
- Contractual solutions remain preferable, but **legislative support still needed** (**EBU Copyright White Paper** - lobbying ongoing)

# 4. Measures to prevent piracy

➤ **Issue is not HBB itself, but easier Internet access**

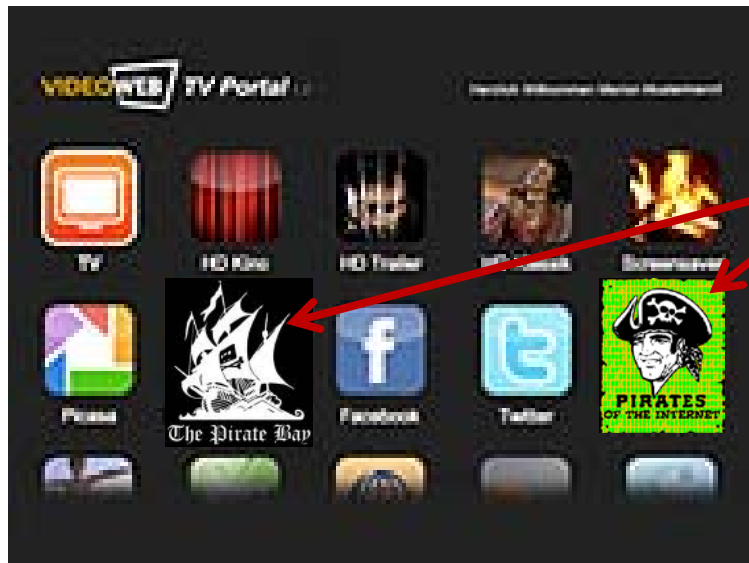
- Illegal copying/distribution mainly in PC network environment

➤ **But widgets/apps may be leading the audience to pirate websites**

- Influence via prior approval?
- "Notice-and-take-down" procedure

➤ **DRM for broadcasters' own content?**

- For broadcaster to decide, platform-based and case-by-case





## 4. IPR protection (for content and signal)

### ➤ Content : Protection via copyright

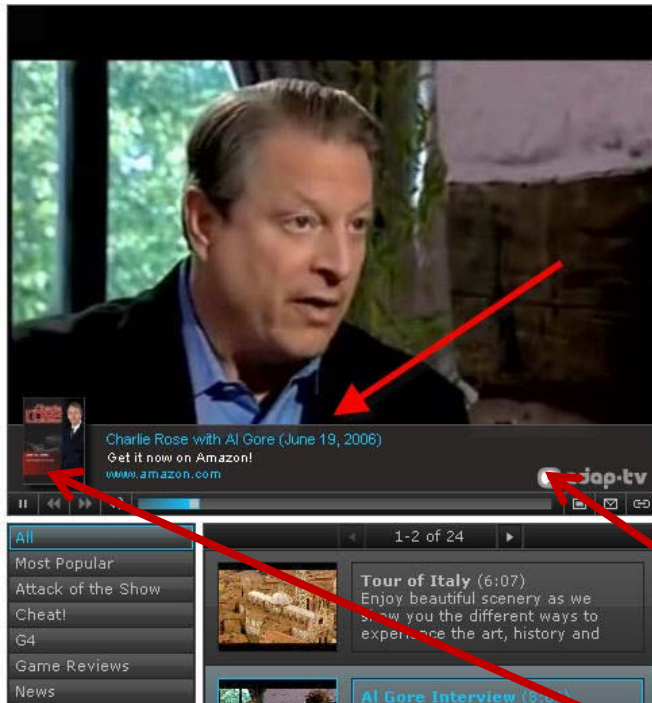
- But: limited safeguard for screen integrity (only in cases of prejudice to reputation of the author)

### ➤ Signal: Protection via neighbouring right

- But: not against alteration of signal display (perhaps in future?)

### ➤ Other IPR:

- Trademark law: e.g. in cases where the broadcaster's logo is concealed
- Unfair competition law: e.g. in cases of replacement of original advertising



## 5. Integrity of Content



Overlay of non-linear content

- Overlaying unwanted multimedia ("pop ups") on a television picture could be a disaster – for viewers and broadcasters
- Overlays must always be controlled by the broadcaster
- In any case, third-party material should only appear upon the viewer's request

## 5. Integrity of Content



Overlay of non-linear content

- Broadcasters need protection against insertion of advertising and other exploitation of their services
- Few legal safeguards exist under IPR law, competition law and media law

## 5. Integrity of Content



- Other smart ways of taking over the screen...
- Broadcasters need to build leverage in negotiations with industry

Shrinking of linear content  
Google TV application

The logo for HbbTV, featuring the letters 'HbbTV' in a grey, sans-serif font. Above the 'b's are three small colored dots: red, green, and blue.The logo for Google TV, with the word 'Google' in its multi-colored font and 'tv' in a grey, lowercase font.The logo for youview, with the word 'youview' in a blue, lowercase, rounded font.

## Main options for broadcasters to defend their legal interests

- in view of different platforms/technical systems
  - in the absence of clear/comprehensive legislative solutions
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- seek protection by design ("protection dès la conception")
  - negotiate with other stakeholders
  - agree joint positions of broadcasters (e.g. France, WBU)
  - call on regulators
  - go to court

# Relations with Industry

## ➤ Broadcasters and CE manufacturers

e.g. application signalling (e.g. HbbTV), presentation on manufacturer's portal, integrity of content



## ➤ Broadcasters and Internet companies

e.g. accessibility of broadcasters' content, integrity of content, data protection/access to user data



## ➤ National cross-industry platforms

e.g. competition law/State aid, content standards/protection of minors

