Channel 4 Response to Consultation on the TVWF Directive

Channel 4 welcomes the opportunity to respond to the Commission’s consultation on the review of the Television Without Frontiers Directive.

Channel 4 is unique – a public service broadcaster funded entirely by commercial means. Although established by Act of Parliament, Channel 4 has never received any public funding. Instead, it has financed its range of innovative and distinctive programming through advertising and other commercial revenues.

As the channel’s future strategy is based partly upon establishing new pay and free-to-air channels and developing ancillary on-line services, all complementary to the main Channel 4 service, we would like to see the evolution of broadcast media in the EU be as open and flexible as is compatible with responsible regulation.

Channel 4 welcomes the UK government’s comments on the Directive and find ourselves in broad agreement with much of what is set out in the responses both of the UK government and of the UK’s Independent Television Commission.

With regard to the six specific themes of the Commission’s consultation, our comments are as follow:

**Theme 1  Access to events of major importance to society**

The ‘listing’ of major events should continue to be an issue for individual member States. We agree with the UK government that “the burden of proof should be on the Commission if it disapproves of a member State’s list” and we agree with the UK’s ITC that the issue of public access should take precedence over single market objectives of provision. We do not believe that listed events rules should be applied retrospectively.

**Theme 2  Promotion of Cultural Diversity**

We support the existing quotas for broadcasters of 50% for works of European origination and 10% for independent production. Channel 4 is required by national UK regulation to significantly exceed both figures and, in practice, exceeds even these higher domestic requirements by some margin. Nevertheless, we do not believe there is an argument for increasing these quotas at European level.

**Theme 3  Protection of general interests in advertising**

On the basis of long-established and successful practice in the UK, we believe that co-regulation, or what the UK government calls in their response “accredited self-regulation” provides a solid basis for the future of regulation in this area.
With regard to Article 10, we strongly support the principle of ensuring that television advertising and teleshopping should be “readily recognisable as such”. This is an essential principle of viewer protection. However, we do not believe that isolated advertising spots are disadvantageous to viewers and their use is best left to the editorial discretion of the broadcaster. For example, 30-second breaks arise naturally in the rhythm of live cricket coverage and isolated advertising spots need not intrude on the viewers’ enjoyment or interrupt the flow of the game.

With regard to Article 11, and following directly from the point made above, the nature of, for example, a cricket game which may last for several days, or a Grand Prix race which may last for some hours, means that there may be no natural breaks in the flow of a sporting event and the insertion of adverts is best left to the editorial discretion of the broadcaster. Respecting the integrity and value of programming is paramount in Channel 4 decisions on the insertion of advertising breaks, but over-prescriptive regulation can be counter productive. We do not believe that the detail of the “20 minute rule” is necessary or sensible, particularly in a short half hour programme. If anything, it is likely to militate against the viewer’s enjoyment.

With regard to Articles 13 – 15, we believe that the existing rules and self-regulatory codes are proving effective and there is no need for further restriction, particularly when television advertising faces ever-growing competition from less regulated forms of electronic media.

With regard to Article 17, we see no need to impose further regulation than presently exists. Editorial and creative independence are vital to the brand value and identity of a broadcaster such as Channel 4 and while we accept advertiser-funded programmes, we never, in any circumstances, allow advertisers to dictate decisions as to content or scheduling.

With regard to Articles 18 and 18a, we believe it is essential to keep open the potential for commercially funded free-to-air broadcasters to develop new forms of commercial funding, without in any way compromising the principle of maintaining a clear distinction between editorial and advertising content. Although we strongly support ad minutage rules, if we are to see an environment in which new and traditional forms of advertising co-exist, we also need to accept a degree of flexibility in their implementation.

**Theme 4 Protection of minors**

Channel 4 believes that the regulatory system for British television works well, with a clearly established nine o’clock watershed separating family and adult viewing, clear expectations from audiences of the sort of programming they can expect from each channel, and effective regulatory bodies in the form of the Independent Television Commission and the Broadcasting Standards Commission (shortly to be subsumed into Ofcom).
Channel 4 is opposed to the idea of a universal programme classification scheme, such as the NICAM scheme underway in the Netherlands referred to in the Commission’s discussion paper. Channel 4 believes that different channels have distinct identities on which their relationships with their viewers are built. A universal classification scheme would be a blunt and bland instrument that ignored the varied and diverse ways in which viewers interact with the channels they watch.

UK legislation provides for people who have complaints over fair treatment or invasion of privacy to take them to the Broadcasting Standards Commission (or in future, Ofcom) and to receive a hearing that may result in a finding against a broadcaster and a requirement to broadcast a statement of findings (and in future possibly receive a fine). Channel 4 believes this system works well. However, the channel would be reluctant to see such a system extended to the on-line environment without very clear consideration of the different nature of on-line publication. The channel also believes that in practice it would be difficult to distinguish between ‘professional on-line media’ and ‘non-professional on-line media’.

**Theme 5  Application**

We agree with both the UK government and the ITC that the country of origin principle remains vital. We further agree with the ITC that if there is to be a national regulators group it should focus on the resolution of practical issues.

**Theme 6  Short Extracts**

We agree with the UK government that where regulation is needed in this area it derives more appropriately from the Copyright Directive than the TVWF Directive. In practice, arrangements concerning the use of short extracts work largely on the basis of voluntary codes and agreements, and existing arrangements give rise to very few complaints or abuse. We do not believe that change is required.

**Scope of the Directive**

Channel 4 agrees with the UK government that there needs to be further consultation on the definition and scope of television services. However, Channel 4 believes that the definition of ‘television licensable content service’ contained in the UK’s Communications Bill is too widely drawn, allowing webstreaming services that are accessible via digital television but not directly linked to it to be classified as television rather than on-line services. Further consultation on this complicated issue would be welcomed.

*Channel 4 Television*

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