

ANNEX 2: COMPARATIVE ANALYSIS OF RATING SYSTEM

1 Cinema rating systems

From its first appearance, cinema has been widely considered to have an important impact on society in general and viewers in particular. This explains why States have taken care to regulate it strictly, particularly the content. At first, propaganda considerations dictated regulation of content, which was also intended to prevent a challenge to civic education through this medium. However, by the middle of the century the idea had slowly developed that contents provided via the cinema could be harmful to specific groups of society (children, sensitive persons). Some specific rating bodies were then established, generally under the control of the public authorities, and acting as a monopolistic rating provider¹. This pattern is present in all Member States. Ratings issued are usually **evaluative**, assigning a suitable age category, which is decided using either a **non-deterministic** or **semi-deterministic** methodology.

1.1 Austria

Further to Article 15 paragraph 1 of the *Bundes-Verfassungsgesetz* (Austrian Federal Constitution), the legislative branches of the nine federal provinces may enact statutory provisions for the protection of minors. For practical reasons we have focussed here on the legal situation in the province of Vienna, which is typical of all the federal provinces.

Two acts are of interest in the context of protection of minors: the *Wiener Jugendschutzgesetz 1985* (Vienna Minors Protection Act)² and the *Wiener Kinoggesetz 1955* (Vienna Cinema Act)³. The Vienna Minors Protection Act applies to public film presentations, theatre performances, television and video presentations;

¹ exception made for Austria, Portugal and Spain

² Act for the Protection of Minors (Vienna Minors Protection Act of 1985) [Gesetz zum Schutz der Jugend (Wiener Jugendschutzgesetz 1985)] of April 26, 1985, Vienna Law Gazette 1985/34.

³ Act concerning the Regulation of Cinemas (Vienna Cinema Act 1955) [Gesetz betreffend die Regelung des Kinowesens (Wiener Kinoggesetz 1955)] of October 21, 1955, Vienna Law Gazette 1955/18, as amended (last July 31, 1998).

children⁴ under 6 years-old may only attend when accompanied by a *Begleitperson*⁵. Furthermore, Section 9, paragraph 1 of the Act stipulates that children under 6 may only attend presentations to which the Vienna Cinema Act applies if their admission has been approved by the competent authority.

Children over the age of 6 and young people⁶ aged less than 16 years may attend public film presentations, as well as television and video presentations, to which the Vienna Cinema Act applies only if the admission of minors of that age has been approved by the competent authority. Other public film presentations, as well as television and video presentations, may not be attended by children and young people if such presentations may be harmful to minors.

Notwithstanding, children are not allowed to attend public film presentations, theatre performances, television or video presentations after 9pm unless accompanied by a *Begleitperson* or with the approval of their *Erziehungsberechtigte*.⁷ For young people the time limit is midnight.

Section 19 of the Vienna Minors Protection Act states that any violation of this Act is an administrative offence; the amount of the fine depends on the offender's age, and there are no fines for children.

Far more provisions on the protection of minors are found in the Vienna Cinema Act. As a general rule, public film presentations may only be attended by people over 16; however, younger people may be admitted by the municipal authority, which has to take advice from the *Filmbeirat der Stadt Wien* (Film Advisory Board of the City of Vienna). This advisory board is composed of members from the

⁴ Being defined as persons of less than 14 years of age, see definition in Section sub-paragraph 1 of the Vienna Minors Protection Act.

⁵ Parent or other person/institution who/which has the right to raise the child, person who has been legitimately raising the child for a long period or for ever or person over 18 who is entrusted with the care of the child from time to time.

⁶ Being defined as persons aged at least 14 and less than 18. See definition in Section sub-paragraph 2 of the Vienna Minors Protection Act. However, young people who are either married or are members of the Austrian Federal Armed Forces (*Bundesheer*) are not considered to be young people within the meaning of the Vienna Minors Protection Act.

⁷ Parent or other person/institution who/which has the right to raise the child or person who has been legitimately raising the child for a longer period or for ever

Stadtschulrat (City School Council); the *Bundespolizeidirektion Wien* (Federal Police Directorate of Vienna); one educationalist; one expert from the field of youth welfare work; one expert from the field of national education; one representative of a parents' association and one of a youth organisation; two members from the film industry and a maximum of three other members. The members and their deputies are appointed by *Landeshauptmann*, the head of the provincial government.

While the rating bodies can operate at a provincial level, in practice there is much more centralisation. In the Cinema Acts of some provinces there is even an express provision allowing for the transfer of such authority. Section 11 paragraph 5 of the Vienna Cinema Act, allows film ratings admitting under 16's given by other Austrian advisory boards or commissions, which also include members appointed by the provincial government, to be recognised as binding, if the classification is made according to the same principles that the Film Advisory Board of the City of Vienna applies.

Though there are governmental rating entities in the federal provinces, for the sake of simplicity there is also a central *Jugendfilmkommission* (Youth Film Commission), affiliated with the *Bundesministerium für Unterricht und kulturelle Angelegenheiten* (Federal Ministry for Education and the Arts). The Youth Film Commission was established as early as in 1948 and is composed of experts drawn from the following areas: education; protection of minors; youth organisations; parents' associations; churches; and the film industry. In addition, there is one representative from each federal province. The Commission is chaired by the head of the Ministry's competent service.⁸ Film presentations usually take place once a week, and the members of the Commission are obliged to attend the entire presentation.

The regime is **voluntary**: It is up to the film producer/distributor to accept the age limit applied in each province (e.g. 16 years in Vienna). In the event that they want younger viewers to be admitted as well, they may request the *Jugendfilmkommission* to examine the admissibility of younger people

⁸ Section 2 of the Rules of Procedure

The methodology followed by the Commission is **semi-deterministic**. The *Jugendfilmkommission's* Rules of Procedure provide for criteria upon which the opinion is based. However, these criteria are not so detailed as to dictate the commission's expert opinion entirely. The Commission bases its opinion on whether it suspects a film to have a potentially harmful influence on young people; notably on their physical health; their mental and/or moral development; their religious sentiments; and their democratic civic attitude.

Notwithstanding the legal situation at provincial level, the following categories are applied:

Figure 1: Austrian *Jugendfilmkommission* classification system

1	2	3	4	5	6	7
no age limit	Over 6 years	Over 10 years	Over 12 years	Over 14 years	Over 16 years	Over 18 years

It is therefore an **evaluative** system.

The Austrian approach proves that despite responsibilities being divided among smaller entities such as federal provinces, ratings may be carried out on a higher level. However, the present structure is unlikely to be able to cope with the volume of existing and future television programming.

Section 8 of the Youth Film Commission's Rules of Procedure provides for film trailers and other short films (e.g. newsreels, advertising films) to be rated on the same principles as main films (defined as films with a duration of more than 30 minutes).

1.2 Belgium

The rating system for films is a result of a co-operation agreement⁹ between the different linguistic communities and the Bruxelles-Capitale region, which

⁹ Co-operation Agreement of 27 December 1990 between the French Community, the Flemish Community and the Inter-Community Commission of the Bruxelles-Capitale region and the German Community, establishing the composition, rules and functions of the CICF

implemented the *Commission intercommunautaire de contrôle des films* (CICF). Members of this Commission are appointed by the responsible Ministers of each Community.

This Commission has been subject to numerous criticisms regarding its rating system. Indeed the institution works on the basis of a law dated 1 September 1920 issuing only one age classification, which prohibits films. It is the only classification in force. The Commission does not take into account the category of film prohibited to under 12's whereas this category exists in media regulation of the Flemish and French community.

Figure 2: CICF Rating System

1
prohibited to under 16's

Reform of the Commission and the rating system is expected. However, the institutional issue (obtaining an agreement between the different Communities and the Bruxelles-Capitale region) makes the process slow.

1.3 Denmark

The rules applying to cinema are contained in the Film Act of 12 March 1997. The body responsible for classification is the Media Council for Children and Young People (**MCCY**), which was established by the Minister of Culture in April 1997, to replace the State Film Censorship. Chapter 6 of the Film Act of 12 March 1997 establishes the legal setting, outlining the Council's mandate, and its activity is regulated by Departmental Order No. 30 of 16 January 1998. The MCCY is central to the regulation of film and video, and is planning to regulate computer games on CD-ROM as well. It is also part of its mandate to maintain a continuous dialogue with all Danish television broadcasters, in order to advise them on how to guide and inform the public and develop children's media competence. However, private performances and films shown on television do not fall under the jurisdiction of the MCCY.

The MCCY's budget was 1.8 million Danish kroner in 1998. The estimated

income in 1998 from producers and distributors paying for their films to be evaluated is 300.000 Danish kroner.

The MCCY has 7 members. Three of the council members are experts on children; two are experts on the film industry; one represents cultural and/or media views; while the last member represents consumer interests.

The principal task of the MCCY is to evaluate films and videos, analysing their suitability for children. It evaluates films from a general perspective including interaction between the actual story and the special effects, and evaluations are based on the criterion of harmfulness that is stipulated in the Film Act, albeit in very general terms¹⁰.

During the first year of the MCCY's existence, substantial time has been spent on formulating and establishing a consensus on the criteria for assessing harmfulness in film and videos. Given the ambiguity of the concept, the discussions are expected to continue. The notion of harmfulness changes as does the norms and moral of a society.

Age classifications issued are as follows:

Figure 3: MCCY Classification system

1	2	3	4
Permitted for all	For all, but not recommended for children under the age of 7	Permitted for children above the age of 11	Permitted for children above the age of 15

It is important to stress that in the evaluation of films and videos, it is harmfulness rather than suitability that is expressed by the age limits applied. A film may receive a classification for 7-year-olds, due to its lack of harmful content, without

¹⁰ The criterion of harmfulness is reflected upon in Note no. 38 of the Film Act, where emphasis is put on whether the film contain scenes presumed to have a brutalizing effect on children and youth, by weakening their inhibitions towards use of violence. Sexual descriptions contained in the film are also taken into consideration, with a view to restricting admission to children below 7, 11 and 15 years of age respectively. Further interpretations of harmfulness are thus left to the MCCY to administer.

thereby being particularly suitable for children in terms of interesting them or being easy to understand.

In accordance with the Film Act of 12 March 1997 age classification may be circumvented as it is permitted for children of the age of 7 and above to watch any film in the cinema, as long as they are accompanied by an adult. This decision was received with approval within the industry and likewise among parents. The MCCY's understanding is that this rule resolves a situation that the audience used to find frustrating - the fact that they could not decide for themselves what their children should be allowed to see. It allows parents and children to decide jointly what is suitable for the children to watch, thereby applying the same situation to cinema visits as home viewing, where it is the parent who decides which programmes children may watch on television or video.

In addition to this work on evaluation of films and videos, the MCCY's role includes the provision of information, awareness raising and the formulation of guidelines. It co-operates with other institutions performing similar roles (i.e. The Danish Film Institute, public libraries, children's film clubs), in passing on information to teachers, users and parents about suitable films for children and about the importance of raising awareness among users.

1.4 Finland

The first Act on Film Classification in Finland was introduced in 1946. Before that date film distribution was self-regulated by the film industry. According to the Act on Film Classification (299/1965), all films (except when they are broadcast on television) must be viewed and classified by the *Valtion elokuvatarkastamo* (Finnish Board of Film Classification) before they can be shown in public. Only this body has the authority to ban and censor films. All audiovisual programmes to be shown in public are subject to film classification (except when they are broadcast on television or at film festivals exempted by application).

The censors must not authorise for public showing a film or part of a film that is obscene, contains brutal violence, or which is psychologically disturbing (by shocking or otherwise). Films that disrupt public order, threaten public security or national defence, or damage Finland's relations with foreign powers should also be banned. Furthermore, a film must be banned if it obviously violates Finnish law.

The Act on Film Classification is decreed in an exceptional way, by following the constitutional legislative procedure. Preventive film censorship is in conflict with the constitutional right of free speech, and, in addition, many of the criteria articulated in the Act on Film Classification are obsolete.

In 1995, the constitution was revised and a new clause was added to the paragraph on the freedom of speech. According to the new clause, "audiovisual programme restrictions necessary to protect children may be prescribed by law". Since 1995, the film classification system has been under revision, and according to the revised constitution, a Film Classification Act need no longer be decreed following the exceptional constitutional legislative procedure, if it only contains restrictions necessary to protect children - i.e., rating restrictions only.

A committee on film examination finished its report on the revision of the Act of Film Classification for the Ministry of Education on the 3rd April 1998. The new law would aim to unite previous laws and regulations concerning the censorship and classification of audiovisual programmes. At the same time, previous Acts would be rescinded. The committee proposes that films, videos and other audiovisual programmes for adult viewing would be exempted from preliminary examination, but that the showing of such films to people under 18 would not be allowed. Films should include ratings based upon age. All films and programmes should be registered with the *Valtion elokuvatarkastamo* before being shown and distributed. In the proposal, freedom of speech and the equal treatment of different audiovisual media are emphasised. However, programmes violating the penal code should not be distributed or shown. A programme should not be accepted for viewing if it is likely to disturb the psychological development of a child by shocking, or due to its violent or sexual content. Age restrictions set at 7, 11, 15 and general, should be included in television programme information.

According to the proposal there would no longer be a body responsible for censoring and banning films. The criteria of “offensive, disrupting public order, threatening security or national defence; and damaging the nation’s foreign relations” would be abolished. Interactive programme, i.e., video games or computer games that are targeted at audiences of all ages are not currently subject to censorship, but if there were any reason to suspect an interactive programme, under the new proposal it should also be submitted for classification.

The establishment of the proposal for a new Act would mean an improvement in the equal treatment of different media. At the present time, for instance, programmes that may be aired on TV cannot be distributed as videotapes. The proposal has also been praised for its capacity to combine the previous Acts on Film Classification, and the Act Relating to the Inspection of Video and other Audiovisual Programmes. In line with the Constitutional right of free speech (10 §) it limits the restriction of free speech to materials that are suspected of having a potential negative effect on children. However, the proposal has encountered some criticism. For instance, it does not attempt to control the selling or distribution of illegal films. The report is now under revision in the Ministry of Education and will be completed during the winter of 1999.

The current rating system is **mandatory**, since all ratings are necessary by law, and **evaluative**, as it provides a single rating indicator based upon age. As it is based on the opinions of the rating body the system is also **non-deterministic**.

Since 1966, the classification has been executed by the *Valtion elokuvatarkastamo*. The law contains a provision as to the composition of the Board, with screening to be the responsibility of eight censors. The Ministry of Education appoints the chairperson of the board and the other seven censors, who serve for a three-year term, though reappointment is possible. The chairperson and two other censors work on a daily basis, examining programmes for 20 hours per week. Five other censors each work 4 hours weekly.

The Board has to meet the following criteria:

- ❑ equal representation of men and women
- ❑ representation of both the Ministries of Culture and of Finance
- ❑ psychological, psychiatric, and pedagogical expertise
- ❑ expertise in the social sciences and in film art

The basic rating scale is as follows:

Figure 4: Finnish Board of Film Classification rating system

1	4	5	6
G - general audience	Restricted for persons under 16 ¹¹	Restricted for persons under 18	Banned

Three members of the Board, one of whom has to be either the chairperson or vice-chairperson, constitute a quorum. The decisions do not need to be unanimous. Two members of the Board can make a decision provided that they are in agreement and that they don't cut or ban a film. One member can even make a ruling relating to the age limit, if it is agreed to by the distributor or producer. Rating decisions are binding and the penalty for public showing of a film that has not been classified is a fine or the risk of imprisonment for up to six months.

If a film has been authorised for public showing it is not re-checked for home video distribution, except when it has been rated 18, in which case cuts are required in order to acquire a 16 rating. Programmes including hard core pornography or depicting fictional graphic or sadistic violence are rated 18. Films or programmes which contain sexual violence, animal pornography or child pornography are banned. Lower ratings are based upon the quantity and quality of violence, sex, horror effects etc. in films.

The decisions of the Board can be appealed against to the Appeal Board, but the appeal process is open only to distributors or producers. The Appeal Board

¹¹ Age categories 6, 8, 10, 12 and 14 are used. There is also a PG-option "3 years younger may attend if accompanied by a parent (or legal guardian)". The following PG categories are possible: PG-8, PG-10, and PG-12.

consists of eleven members, appointed by the government for a term of three years. The Ministries of Education, Justice, and Finance are each represented by one member. The other members represent different branches of society, e.g., the press, the film industry, film critics, education, and psychology. If a distributor or a producer is not satisfied with the decision of the Appeal Board, they can appeal to the Supreme Administrative Court.

1.5 France

In **France** the *Centre National de la Cinematographie (CNC)* was established in 1946¹². It is a public body under the authority of the Ministry of Culture and is at the same time the “tutelary father” and “nourishing mother” of the cinematographic industry. The Centre is responsible for the classification of cinematographic works¹³. The Minister of Culture issues a certificate after advice from the Commission for the Classification of Cinematographic Works¹⁴. All French and foreign cinematographic works to be screened in France are subject to this procedure.

The classification commission is composed as follows: A president (chosen from the members of the *Conseil d’Etat*) and a substitute president, both designated by Decree of the Prime Minister, as well as 25 permanent members and 50 substitutes, divided into 4 colleges and designated by ministerial order (Ministry of Culture). All are mandated for 2 years.

Figure 5: Composition of Commission for the Classification of Cinematographic Works

First college	Second college <i>professionals</i>	Third college <i>experts</i>	Fourth college <i>youth</i>
5 permanent members and 10	8 permanent members and 16	5 permanent members and 10	3 permanent members and 6

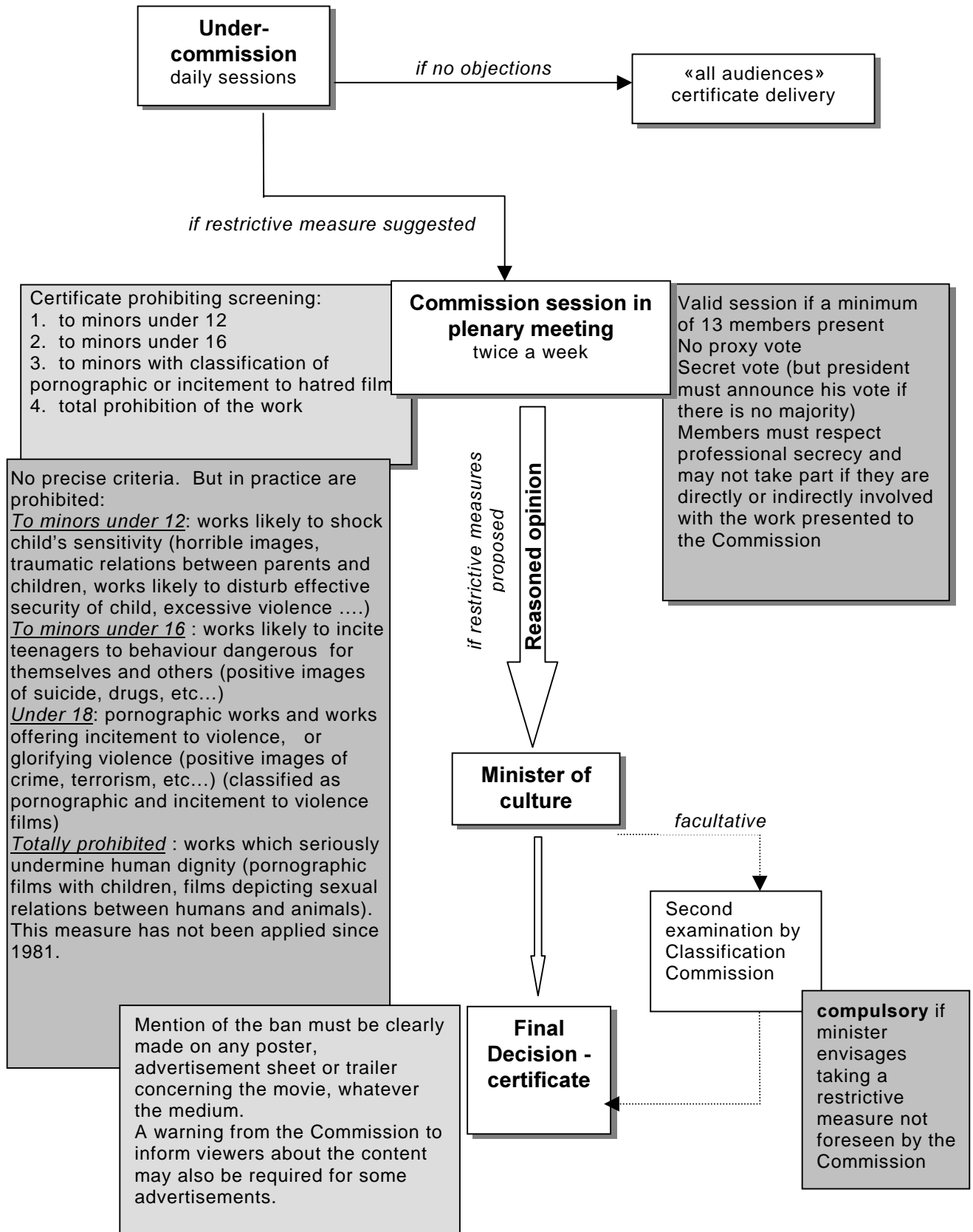
¹² law of 25 October 1946

¹³ Article 19 (Ordonnance n° 45-1464 of 3 July 1945, first article – modified by law n° 92-1477 of 31 December 1992) of the Code of the Cinematographic Industry (Decree n° 56-158 of 27 January 1956 – Law n° 58-346 of 3 April 1958): “The representation and export outside European Economic Community of cinematographic works is subject to obtaining a certificate granted by the Minister of Information”. The certificate is now granted by the Minister of Culture

¹⁴ Composition and functions of this commission are fixed by Decree n°90-174 of 23 February 1990 as revised.

<p>substitutes representing Ministries of Justice, Education, Internal Affairs, and Youth and Social Affairs</p>	<p>substitutes appointed from representatives of the cinematographic profession, after consultation with main organisations or associations of this field</p>	<p>substitutes appointed from proposals made by Ministries of Justice, Education, Internal Affairs, and Youth and Social Affairs</p> <p>1 permanent member and 2 substitutes appointed from nominations by the <i>Conseil supérieur de l'audiovisuel</i></p> <p>2 permanent members and 4 substitutes appointed after consultation with the National Union of Family Associations and the Association of the Mayors of France</p>	<p>substitutes nominated by 18 to 25 year olds and appointed after consultation with the National Council for Popular Education and Youth</p> <p>1 permanent member and 2 substitutes appointed from 18 to 25 year olds, on the grounds of an application list established by the general director of the CNC</p>
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Figure 6: French cinematographic rating procedure



Promotional support made available by distributors to the theatres is also subject to a certificate issued by the commission. Posters of films prohibited to minors under 12 or 16 may only use images or illustrations approved by the Commission.

Specific legal provisions apply when a film is disseminated without a certificate or in infringement of the certificate issued:

- administrative seizure by the film police authorities
- possible judicial proceedings leading to fines, to which may be added a ban (permanent or temporary) from any form of work in the cinematographic industry.

Admission of minors to screenings prohibited to them also constitutes a breach and leads to the imposition of fines¹⁵.

1.6 Germany

Strictly speaking, the only rating/labelling system is the one used by *Freiwillige Selbstkontrolle der Filmwirtschaft (FSK)*¹⁶, the voluntary self-regulation Board for cinema films. The *Bundesprüfstelle für jugendgefährdende Schriften (BPjS)*¹⁷, the Federal Examination Department for publications harmful to minors. This is not a rating body as such, but it is in charge of controlling the legality of cinema films and whether they should be put on an “index”, listing publications which are likely to morally endanger children and young people, and which are prohibited for minors.

The FSK uses an **evaluative** rating system. The films are classified on the basis of age categories included in the law¹⁸:

¹⁵ Decree n° 92-445 of 15 May 1992 concerning access by minors to cinemas.

¹⁶ The legal basis of the activity of the FSK is included in §6 of the law on protection of minors in public places (**JÖSchG**). The FSK was established after the war as an independent department of the *Spitzenorganisation der Filmwirtschaft e.V.* (SPIO). The first classification of a film took place on 18 July 1949.

¹⁷ The BPjS was created on 14 May 1954 on the basis of §8 of the GjSM. It was originally under the administrative control of the Ministry of Internal Affairs, but is now under the Ministry for Youth, Family, Women and Health.

¹⁸ §6II JÖSchG

Figure 7: FSK Rating System

1	2	3	4	5
no age limit	children older than 6	children older than 12	Young people older than 16	young people older than 18

The system is based on legal provisions, which are completed by the examination criteria of the FSK. However, the system is **semi-deterministic** since the FSK enjoys a certain licence in interpreting the criteria under the principle of proportionality.

The FSK calls itself a **voluntary** body. However, every film intended for public screening needs to be rated by the FSK. In the absence of a rating, the film may only be shown to adults.

The FSK is difficult to define precisely within the system. The Federal States reached a specific agreement regarding the protection of minors in films on 1 April 1985, by which they decided to use the FSK as an expert body for rating cinema films. However, the FSK is a self-controlling body under private law, which acts in the name and at the request of the Supreme Youth Authorities in the Federal States¹⁹. The FSK describes itself as well-informed, independent and representative of society. Even if, as is always emphasised, the Supreme Youth Authorities in the Federal States remain responsible for their decisions and no official transfer of rights has as yet taken place, the certification for release is effectively carried out by the FSK. For these reasons, the FSK might be classified as a government rather than an industry system. The Federal States are entitled to reach different decisions and to impose them if they do not agree with a decision made by the FSK. However, this has never happened in practice. The ratings of the FSK are also indirectly valid for the broadcasting of films on television, even if the FSK is only officially authorised for video and cinema.

The working committee is composed of 7 people (the permanent representative of the Ministry, an expert on the protection of minors, 2 representatives of the public

¹⁹ Its specific character is reflected by the wording of the certificate of release: “this film is released by the Supreme Youth Authorities in the Federal States according to §6 JÖSchG of 25.02.1985 to be shown publicly to children and young people from the age of ... years”.

authorities, 3 representatives of the film and video industry (however, they may not be currently active in the film and video industry). A simple majority is required for decisions.

There are two ways of dealing with appeals against decisions made by the FSK:

- - The High Committee (*Hauptausschuß*) is responsible for petitioners who are not satisfied with the result of the examination committee. It is also authorised to adjudicate in the event of there being a minority of the working committee that was outvoted. It is composed in the same way as the working committee with an additional representative each from the public authorities and the film industry.
- - The Supreme Youth Authorities in the Federal States and the SPIO are also entitled to appeal against a FSK decision. In this case, a specific appeal committee (*Appellationsausschuß*) is formed and made up of 1 lawyer (president), 2 experts in the field of protection of minors and 4 examiners nominated by the Supreme Youth Authorities in the Federal States.

Legal provisions are the basis for decisions taken by the FSK. Moreover, the FSK has developed examination criteria to guide their interpretation. Following the examination, a rating certificate is granted. It has to be presented at the cinema counter if requested by the authorities responsible for security. The FSK also organises film screenings for young people to discuss the ratings with the age group concerned. An exchange of experiences also exists with similar organisations examining films in the Netherlands and Austria.

Around 400 cinema films are rated every year and about 600 to 700 video films per year. The FSK also supervises the conformity of advertisements (especially those concerning tobacco and alcohol) to the relevant legal provisions. If the examination committee comes to the conclusion that they are targeted towards minors younger than 16, the advertisements are prohibited for this age group.

The criteria used by the BPjS for the evaluation of cinema films are the legal provisions of the *Gesetz über die Verbreitung jugendgefährdender Schriften und*

*Medieninhalte (GjSM)*²⁰. Further to these provisions, publications that are likely to morally endanger children and young people have to be inserted in an “index”. This includes representation of violence, glorification of the Nazi ideology, incitement to racial hatred, glorification of war, sexual-deviation and pornography. The list of §1 is not exhaustive, media that glorify or play down the consumption of drugs are also considered as harmful to minors. §1(2) contains exceptions to the “index” system. The principle is that media may not be put on the “index” on the grounds of their political, social, religious and ideological content²¹. However, they may be put on the “index” when the danger for minors is not based on the above mentioned reasons.

The system is based on the legal criteria described above, but the criteria are also interpreted on the basis of case-law, which defines certain legal concepts. Since this interpretation necessarily includes an element of subjectivity the system may be described as **semi-deterministic**.

This is **neither a voluntary nor a mandatory system**. The content producer is not required to have the films examined by the BPjS. The BPjS can only review a film on the basis of a request coming from one of the following institutions: (i) *Jugendämter* (youth welfare departments), (ii) *Landesjugendamt* (youth welfare departments of the Federal States), (iii) *Oberste Landesjugendbehörden* (Supreme Youth Authorities of the Federal States) and (iv) The Ministry for Family, Elderly People, Women and Youth. All together there are around 900 authorities entitled to submit a request for examination. Private citizens can only address themselves to these places. Once the BPjS has received a request, it is obliged to examine the publication in question.

The BPjS is a Federal authority with quasi-judicial functions under the administrative control of the Federal Ministry for Women and Youth. However, further to §10 GjSM, its members do not comply with instructions as regards the examination procedure of the films.

²⁰ Law on the dissemination of publications and other media morally harmful to youth

The competence of the BPjS is limited to films which have not previously been rated by the FSK, e.g. films which were either not presented to the FSK or which were refused a rating. The BPjS is also responsible for publications and other media. The decision to put a film on the “index” is published in the Official Journal; otherwise the decision is not valid. The classification in the “index” is not strictly speaking censorship, as these publications remain available to adults. The legal nature of this classification is an administrative act²². Consequently, it can be challenged before the administrative courts. Further to §§3-5 GjSM, the classification of a film on the “index” creates limitations regarding its delivery, presentation, circulation or advertising. More precisely, the film’s appearance on the “index” means it is prohibited to show or disseminate the films to children and youth. Parents may not be held responsible under criminal law if they show indexed material to their children because of their constitutional prerogatives as parents. However, if parents infringe their custody rights, the Youth Authority may, according to §1666 of the Civil Code, request appropriate action from the court dealing with matters relating to guardianship. Criminal prosecution is a matter for the police or the state prosecutor.

To assess the work, examiners sit in a committee of 12 people (or 3 in the case of an obvious risk to young people). The committee members are people with specialised knowledge and representatives of different sectors of German society²³. The examination is not open to the public. This system is State specific and is not designed to provide classification at the European level.

1.7 Greece

The rating system is the responsibility of the Cinematography Commission, which consists of officials from the Ministry of Culture. It is **mandatory** in the sense that, the producer is required to have all films rated by an agency. Broad legal

²¹ However, media including content which is contrary to the Constitution may not take advantage of this principle.

²² further to 35 VwVfG (Verwaltungsverfahrenordnung)

²³ The BPjS is composed of :

□ full time members: the president, vice president, two lawyers and five assistants.

provisions relating to content apply in the absence of specific provisions for cinema regulation. It is a criminal offence to ‘sell, distribute, exhibit, fabricate, transport, export, import and generally circulate documents, publications, articles, sketches, pictures, drawings, seals, photographs, motion pictures or any other forms of objects considered to be indecent or obscene’²⁴. Indecent or obscene material is defined as that which ‘according to general public sense, is offensive to public shame’.²⁵ The same provision states that ‘works of art are not indecent or obscene unless specifically offered for sale, hire or distribution to people under 18 years of age’.

Though the Greek Penal Code²⁶ restricts the import for commercial use of indecent or obscene works of art, court rulings in 1983 under these regulations held that pornographic films, although unsuitable for most public cinemas, catered to specific tastes. Thus, if shown in specialist adult cinemas where minors (i.e. under-18s) were prohibited, they did not constitute violation of statutes. Such cinemas are now widespread in most Greek cities, with notices at entrance points barring under-18s.

Despite the regulations, in the last decade very few films have been confiscated after screening for violating public decency (particularly pornographic films). There have been a few incidents in which authorities closed down adult cinemas for admitting under-18s.

The procedure for classifying films is **non-deterministic**. Ministry officials classify film and script submissions on a simple pass or fail basis.²⁷ However, the ratings issued are **descriptive**.

□ honorary members (50 members representing different groups of German society and 40 members representing the Federal States).

²⁴ Article 29 of Law 5060/31 of 1931 (this law has been neither amended or repealed) on obscene and indecent material

²⁵ Article 30 of Law 5060/31

²⁶ Article 86

²⁷ It should be noted though that Articles 2 & 36 of Law 1597/86 set up a ‘Youth Board’ with the aim of classifying films according to the following classification system: (a) suitable for youths under 17 years of age; (b) limited suitability; (c) unsuitable; and (d) extremely unsuitable.

However, that classification system never came into effect and the ‘Youth Board’ was never appointed due to ministerial non-decision-making.

Since in 1993/94 local authorities took over former police functions in licensing cinemas, it is reasonable to assume that the classification system will be placed in their hands in due course. Given that no significant incident has occurred during the last decade, expectations of the introduction of a more sophisticated classification system are limited.

1.8 Ireland

The body responsible for the classification of films in Ireland is the Official Censor of films established by 1923 Act. The rating procedure applied by the Censor is **non-deterministic**, depending on the view of the individual censor. The system requires all films for public viewing to be submitted in advance to the Censor with a view to obtaining a certificate. The Censor can grant such a certificate in full, or with conditions attached, or can refuse to grant one. Where conditions are imposed, they might relate to the class of viewer or place of viewing. A certificate can be refused altogether if the film or part of it is indecent, obscene or blasphemous, or tends to inculcate principles contrary to public morality or is otherwise subversive of public morality.

There is no definition of indecent, obscene or blasphemous in the Act. However, the Censorship of Publications Act 1929 contains the following definition of "indecent": "...shall be construed as including suggestive of or inciting to sexual immorality or unnatural vice or likely in any other similar way to corrupt or deprave.

Where part of a film falls into any of these categories, the Censor is obliged to indicate which part to the applicant, who may then remove the offending part or appeal to the Appeal Board. Once a certificate has been granted no other pressure group may prevent its being screened publicly."

The Appeal Board consists of nine people and operates with a quorum of four. It has power to affirm, reverse or vary the Censor's decision, and since 1965 has been reconstituted to allow it to grant limited certificates itself in the case of films that have already been rejected.

The certificate ensures that a film may be shown, but an age classification system, introduced in 1965 and later amended, also applies:

Figure 8: Age classification for films in Ireland

1	2	3	4	5
Gen fit for viewing by persons generally	PG Fit for viewing by persons generally, but in the case of a child under the age of 12 years, only under parental guidance	12 Fit for viewing by persons aged 12 years or more	15 Fit for viewing by persons aged 15 years or more	18 Fit for viewing by persons aged 18 years or more

The rating system applies to all films, and, by amendment Act of 1925, advertisements. Advertisements and trailers for films must also display the appropriate age category.

There is no uniform identity card system in operation in Ireland but children and young people seeking admission to cinemas are often challenged as to their age by cinema staff.

Producers are obliged to submit films for certification and to pay a fee to have the film categorised. The whole system was designed to be self-financing, by imposing fees on applicants for a certificate. The advantage is that the scheme is not a drain on the Exchequer. However, as the fees have increased over time to meet increasing costs and staff wages, the price of obtaining a certificate (approximately £700 for an average length film by 1988) has posed a problem for smaller films. Trying to recoup the outlay, as well as meeting advertising and promotion costs, can be difficult for small or alternative films showing at fringe venues. Various alternatives have been mooted, including linking fees to gross revenue, but since measures of that nature would involve the large American mainstream films essentially subsidising the rest, they have not been uniformly welcomed.

Fees are recoverable in the event of a successful appeal or if a ban is revoked. Where a certificate is refused and an appeal is either not sought or unsuccessful, the situation may be reviewed after a period of seven years²⁸.

Due to the financing system there is sufficient capacity to deal with any volume of material, subject to the fees not becoming prohibitive for all but the large American outlets.

There is no indication of any change being contemplated specifically with regard to control of content. The biggest development in this regard has been the inclusion of the Censor's office within the Freedom of Information Act 1997, which will allow more transparency into the whole process. However, the Government has recently established a Film Industry Strategic Review Group, whose terms of reference appear to be broad enough to cover control of content. The terms of reference include:

- carrying out an objective evaluation of the effectiveness of the existing schemes and to make recommendations in regard to future measures and incentives to develop the industry;
- analysing and identifying the fundamental issues facing the industry and to make recommendations in regard to future measures in support of the film and television industry; and
- formulating a strategic plan for the future of the sector in the next decade.

The Group has invited submissions from interested parties (notice published in the national press on 27 October 1998)

As to the sanctions, under the 1923 Act it is an offence, punishable on summary conviction by fines, including daily fines (per diem) for continuing offences, to show an uncertified film in public or to permit one to be shown in breach of the terms of a limited certificate.

²⁸ Censorship of Films (Amendment) Act 1970.

1.9 Italy

The Italian cinema rating system is **evaluative** and **mandatory**. Relevant guidelines concerning the rating system nature and process are set out in Article 21.6 of the Constitution, Articles 528 and 529 of the Criminal Code, Law 161/1962, and Presidential Decree D.P.R. 2029/1963.

Film screenings within the State's territory are subject to the release of a certificate, which has to assess the suitability of the work's content according to a set of fixed guidelines. Article 1.2 of Law 161/1962 sets out that a special censorship committee operating within the Prime Minister's office grants the certificate after prior examination of the film²⁹. Before releasing the certificate the committee has to evaluate, among other things, whether the film is suitable for minors given their particular sensitivity. In addition, Article 667.2 of the Criminal Code sets forth that, in order to (i) produce; (ii) introduce into the territory of the State; (iii) export; or (iv) trade films³⁰ prior notice to the Police Authority is necessary.

Therefore, in Italy (i) no films may be produced or distributed without prior notice to the Police Authority; (ii) no films may be screened without the prior release of a certificate by the censorship committee; (iii) cinema managers are held liable whenever minors attend the screening of a film certified as unsuitable for them; and (iv) cinema managers are held liable whenever, given the age-limit certificate, they do not verify the age of the audience they admit.

The Italian cinema rating process is somewhat **semi-deterministic**. It is based upon an (allegedly) objective methodology (i.e. examination of the submitted work

²⁹ Article 668 of Criminal Code ("*Non-authorized performances of films*") establishes that anyone who screens films, which have not been submitted to prior censorship, in a public space, is held liable with a fine of up to ITL 600,000 or imprisonment for up to six months. Finally, Article 15 of Law 161/1962 reads that infringements of Article 5 (concerning films that have been granted a limited-age certificate or a certificate of non-suitability for minors) are punishable by a fine of up to ITL 50 Million. The same penalty is provided for screenings of films not submitted to prior censorship or denied a certificate, or screened in a different version than the one censored (Article 15.3).

³⁰ The offender is liable with a fine up to ITL 1 Million or imprisonment for up to 1 month whether or not the violation is perpetrated against the Public Authority's order.

in compliance with the contents guidelines provided by the Law³¹). The broad definition of the committee's criteria (such as, for example, the public morality principle) allows its interpretation to vary according to social changes and sensitivity, with the result that the rating process is ultimately based upon the committee's opinion.

When a film's content is assessed obscene or against public morality a certificate is denied and the film may not be released.

Article 9 of Presidential Decree No. 2029 of 11 November 1963 (D.P.R. 2029/1963) adds further criteria for censorship with the purpose of protecting minors' sensitivity and development. It sets out that films, even where they do not offend public morality, are to be denied a certificate of suitability for minors when they: (i) contain vulgar content; (ii) encourage immoral behaviour; (iii) depict erotic or violent scenes against human beings or animals; (iv) refer to hypnotic phenomena or disturbing surgical operations or to the use of drugs; (v) promote hatred and revenge; and (vi) induce to imitation of crimes or suicide³². The Administrative Court of Appeal³³ has ruled that, in compliance with Article 9 of D.P.R. 2029/1963, the seriousness of vulgar or violent scenes - which determines denial of a certificate for minors - may be adequately assessed *only* if referred to the specific context in which those scenes are depicted.

The censorship committee is a Special Committee operating in the Department of Entertainment of the Prime Minister's Office, which is authorised to assess films³⁴. This committee in turn is composed of 8 sections; the composition and functions of which have been recently re-drafted³⁵. Accordingly, each section of the censorship committee must be composed of 8 members, among which 2 must be

³¹ (i) Article 21.6 of the Constitution, which prohibits all publications, performances and other expressions against *public morality*; (ii) Article 528 of Criminal Code, which declares liable those who show *obscene* films; and (iii) Article 6 of Law 161/1962, which provides for the denial of a certificate whenever the film represents, as a whole or in singular scenes, an offence to public morality and, (iv) case law interpreting all such provisions

³² The committee's assessment of the degree of seriousness of such elements will determine the suitability of the film for minors over the age of 14 or over the age of 18.

³³ Consiglio di Stato sez. IV, judgement of 30 September 1988.

³⁴ Law 161/1962; Law 203/1995; Legislative Decree 8/1998.

³⁵ Legislative Decree No. 8 of January 8, 1998 and Law No. 203 of 30 May 1995.

representatives of parents' associations. The remaining members are experts from other domains (such as the law³⁶, psychology or pedagogy), 2 representatives of the cinema industry and 2 experts on cinema (such as journalists or authors). Certificates are granted by each section upon approval by the majority of their members³⁷.

The previous composition and functions of the censorship committee raised various complaints among the public and, in particular, among parents' and viewers' associations³⁸. The fact that representatives of cinema interests (such as producers, distributors and cinema managers) were included in the membership, while representatives of children's interests were not, was deemed to be the major reason for the release of an excessive number of certificates that did not comply with contents regulation and were thus injurious to the community's general interests. Moreover, before Law 203/1995 each section could issue a certificate upon its approval by a simple majority of the members *present*. It is worth mentioning, in light of this rule, that many critics argued that only the representatives of cinema interests were in the habit of attending all examinations, whereas members appointed to safeguard general interests, such as judges or Professors at University of Law, were too often absent. Therefore, certificates were granted following a brief evaluation carried out mainly by cinema representatives; and, consequently, very few films were denied a certificate. Notwithstanding Law 203/1995, the censorship committee is to date still operating under its previous composition³⁹. New sections have not yet been appointed for a number of bureaucratic reasons. According to the Associazione Genitori (**A.G.E**), one of the most representative Italian parents associations⁴⁰, the bureaucratic slow pace is due to the interests of cinema's powerful lobbies, which prevail over those of the community. The main difference from the past will be the membership of parents' representatives and the new majority required to vote on a certificate. This will likely lead to a different interpretation of content

³⁶ A University of Law Professor chairs censorship committees.

³⁷ Article 4 of Law 161/1962

³⁸ Membership of parents' representatives was only recently provided for by Law 203/1995, with the purpose of balancing different interests at stake.

³⁹ Established by Law 161/1962

regulation and a more accurate and strict valuation of submitted works, which will not be able to obtain a certificate as easily as before.

Figure 9: 3 possible censorship committee outcomes:

1	2	3	
Suitable for all	unsuitable for all	age limited	
		over the age of 14	over the age of 18.

In the event that the committee does not provide a decision within the prescribed time frame, the certificate is issued automatically under the rule of “silent-consent”⁴¹, established in order to avoid bureaucratic inactivity which could damage applicants⁴².

When the work is assessed as “unsuitable for all” the applicant⁴³ may appeal to the second-degree committee, which is formed by two sections of the first-degree committee different from the one that made the first evaluation. The second-degree committee may issue a new evaluation of the film, possibly subject to modifications in some scenes, sequences or lines, balancing public interest with the producer/distributor’s economic concerns⁴⁴. Should the appeal be rejected by the second degree committee, the applicant has the right to take legal proceedings against the committee’s decision before the Administrative Courts (i.e. Administrative Tribunal and Administrative Court of Appeals), the decision of which prevails over the challenged decision (Article 8).

Whenever a film has been granted a certificate of “unsuitable for minors” by the first degree committee, provided that they have re-edited and modified the work, the applicants are allowed to request a second examination in order to achieve a

⁴⁰ One or two members of A.G.E. will probably be represented among the members of the new censorship committees.

⁴¹ Article 6 of Law 161/1962

⁴² Applicants are producers, distributors and importers.

⁴³ According to Law 161/1962, applicants can appeal against the decision issued by the first-degree committee only when a certificate has been denied or has been assessed “unsuitable for minors”.

⁴⁴ In this case too, in the event that the second degree committee does not provide a decision within the prescribed time frame, a certificate is issued automatically under the rule of “silent-consent”

broader certificate and thus access a broader audience⁴⁵. The Administrative Court of Appeal, in fact, has ruled that the right provided by the Law for works which do not obtain a certificate may be extended to those that are given a restricted (age limited) certificate⁴⁶. Some commentators have argued against this interpretation of the law. In fact, Article 11 of DPR 2029/1963 (integrating Law 161/1962) reads that “works which do not achieve a certificate may be re-submitted for a new examination, provided that they have been re-edited and modified in some scenes, when modifications clearly guarantee that the work represents a different and new edition”. As a result of the Administrative Court of Appeal’s interpretation, interested parties have developed and perfected the practice of creating new versions of their work in order to obtain less restrictive certificates. Therefore, it is now possible to find in the market many different versions of same film: one suitable only for people over 18, one suitable for people over 14 and another suitable for all. The availability of different versions is important in light of the requirement that only works that are suitable for all, or granted an age-limited certificate may be broadcast on television. However, while this practice ensures the work’s exploitation in all media, it makes it more difficult to monitor each version in use⁴⁷.

As to the current capacity of the censorship sections to examine the work submitted, the decision concerning the number of films to be examined during each section meeting is discretionary, and the responsibility of the Officers within the Department of Entertainment of the Prime Minister’s Office.

There are currently various proposals for change, of which the most important are:

- The governmental Bill 3180⁴⁸ of March 1998: states that the present censorship regulation is no longer adequate in the current social context, nor does it comply with the principle of freedom of expression. The Bill, therefore, is

⁴⁵ It is possible to take legal proceedings against the second-degree decision before the Administrative courts.

⁴⁶ *Consiglio di Stato*, judgement 734/1977.

⁴⁷ In Italy any version of the film (even versions which have been denied a certificate) is protected by copyright (Law No. 633, 22 April 1941) given that the law does not limit the author’s protection to works which comply with public morality and public order principles.

meant to avoid freedom of expression being subject to limitations such as those constituted by certificates denying public performances of films. Moreover, it deems that the constitutional “public morality” principle can be appropriately guaranteed and pursued by the provisions concerning suitability of films for minors, and by the existing provisions of Articles 528 (obscene performances) and 668 (unauthorised performances) of the Criminal Code. The Bill, therefore, through modifications of Law 161/1962 provides that: (i) certificates may no longer prevent films from being screened; (ii) certificates may only refer to the suitability of a film for minors.

- A new proposal for change has been recently drafted by the Associazione Nazionale Industrie Cinematografiche Audiovisive e Multimediali (**ANICA**),⁴⁹. It aims at replacing Law 161/1962 and its “limited-age” provisions, which are deemed, according to the President of ANICA, to be the main problem of censorship in Italy. It is inspired by the existing US rating system and is based on an understanding that cinema should be treated differently from television. While the audience makes a discretionary choice when visiting a cinema, it has no control over what programmes are broadcast on television. Its only method of control is to turn on or off the television or switch channels. Given this discretionary choice preventive control of a cinema film’s content is not necessary. The proposal sets out a new voluntary rating system where the producer is also a self-rating content provider. It has been argued that this self-regulatory scheme, to be implemented by cinema associations, would most likely lead to a greater sense of responsibility on the producer’s part. In fact, producers have already promised to make efforts to safeguard the sensitivity of minors by co-operating with all parties dealing with children⁵⁰. As to age limits, the proposal seeks to modify the existing thresholds (14-18 years of age) which are deemed to be too strict and not appropriate in the new social context, in which parental guidance concerning a film’s contents should be preferred and

⁴⁸ To date, the Bill is still under Senate examination.

⁴⁹ ANICA, is the Italian association of cinema industries which represents most of the producers and distributors operating in the Italian market.

⁵⁰ It is worth noticing that A.G.E representatives object to this proposal on the grounds that it is exclusively aimed at increasing the earnings of the cinema industry and discarding all existing content regulations.

implemented. Accordingly, prohibitions for minors should be articulated in the following way:

- (i) “P.G.”: suitable for children with parental guidance;
- (ii) “P.G. 13” : suitable for children over 13 with parental guidance;
- (iii) “R” prohibited to minors under 17;
- (iv) “NC”: prohibited to minors under 18.

1.10 Luxembourg

The *Commission de surveillance* is the public body in charge of film classification⁵¹. It consists of 2 sections, and is composed of a President, 4 permanent members and 2 substitute members (in practice film critics, representatives of cinema theatres and civil society as well as one lawyer). A vote is valid if only 2 of the members are present.

The ministerial regulation of 28 November 1977, issued by the Ministry of Education and Cultural Affairs, provides guidelines on the procedure to follow for a certificate to be granted⁵². The release of a film authorised to under 17’s is subject to a prior demand that must be made one month before the date of its first release at the latest⁵³.

The Government may pronounce the prohibition of the “screening of any movie that engenders a scandal or is likely to jeopardise tranquillity and Public Order”⁵⁴. This classification system is original in that the Commission may “recommend to youth audiences some films with cultural or educational value”⁵⁵.

As to the classification itself, 2 categories exist:

⁵¹ See Grand-Ducal Order 14 November 1925 modifying the Order of 16 June 1922 mandating the establishment of the law of 13 June 1922 concerning monitoring of cinema establishments and public screenings.

⁵² Ministerial Ruling of 28 November 1977 concerning: a) the submission of a request to proceed with a cinema screening accessible to minors under 17; b) the publication and dissemination of the decisions of the *Commission de surveillance*; c) the recommendation of films with cultural and education value to young people.

⁵³ Article 3 of Ministerial Ruling of 28 November 1977.

⁵⁴ It is, however, the responsibility of the judicial authorities to pronounce penal sanctions.

⁵⁵ Article 4 of the Ministerial Ruling of 28 November 1977.

Figure 10: *Commission de Surveillance* Rating System

1	2
movies prohibited to minors under 14	Movies prohibited to minors under 17

1.11 The Netherlands

The *Wet op Filmvertoningen* (**WOF**), the Act on Film Exhibition, provides the legal framework for the Dutch film industry. The Act, which dates from 5 January 1977, was set up principally to abolish classification for adults and to integrate a new rating system for youth.

The rating body is the *Nederlandse Filmkeuring* (**NFK**), the independent Dutch Board of Film Classification. The rating is chosen by a majority of votes of at least 3 members⁵⁶ but 5 members are preferable.⁵⁷ In selecting the Board (out of at least twenty and up to forty members of the NFK) an attempt is made to include a diversity of ideologies, expertise, age, sex and region.⁵⁸ The members of the NFK are appointed by the Minister of Public Health, Welfare and Sports.

Age categories are as follows:

Figure 11: NFK Rating System

1	2	3
All	12 and over	16 and over

Films are classified according to the Board's evaluation of their potential to damage persons under 12 or under 16. The Act on Film Exhibition states that children under 12 or 16 will only be admitted to public showings of films that have been rated in their respective categories. However, rating is **voluntary**; film distributors may decide for themselves whether or not to submit a film for rating, but films which are not submitted are automatically rated as “16 and over”, and may therefore only be shown in public to persons over 16 years of age. The Act

⁵⁶ Article 2 paragraph 5

⁵⁷ Article 15 paragraph 3. Buwalda, W. (1997), *Leeftijdsclassificatie en productvoorlichting; de audiovisuele branche in Nederland. Justitiële verkenningen: Film- en videogeweld*. 3, p. 79. Deventer: Gouda Quint BV.

allows for films to be given a rating of “12 and over” and “all ages” on the condition that appropriate cuts are made, but this has not so far happened, since NFK policy states that “cuts will be avoided as much as possible”.

The Act on Film Exhibition also states that films that are shown in cinemas open to everyone must have an age certification. The ratings decisions of the Board are binding instruments. Article 1; paragraph 3 states that the cinema entrance must clearly display the age limit. Cinema managers or film distributors who do not comply with a given decision of the Board, are committing an offence, and may consequently be punished with imprisonment of up to two months or a fine.⁵⁹

If at least 2 members of the Board object to the rating result, a request for reclassification can be made. This request for a second rating can also be made by the person submitting the film. The members involved in the first rating process may not participate the second time round.⁶⁰

In 1997 about half the films released were submitted for rating.⁶¹ Economic reasons are probably an important factor in choosing not to submit a film: film distributors must pay 35 guilders for every 5 minutes for the rating process, and a rating of “16 and over” often attracts more adults (and even minors) to the film than a lower rating would. There are therefore films that, though officially inadmissible to minors, could have been open to them, if they had been submitted for classification. The Board believes that another reason for not submitting a film is that film distributors object to having their films rated and prefer a self-regulatory classification system.

The rating of the NFK is somewhat controversial for the liberal Netherlands; it is widely believed that children or their parents should decide for themselves what

⁵⁸Notitie (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 11. Rijswijk: Ministry of Public health, Welfare and Sports, directie Jeugdbeleid.

⁵⁹ Article 6, WOF.

⁶⁰Buwalda, W. (1997), *Leeftijdsclassificatie en productvoorlichting; de audiovisuele branche in Nederland. Justitiële verkenningen: Film- en videogeweld*. 3, p. 79-80. Deventer: Gouda Quint BV. Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

⁶¹Nederlandse Filmkeuring, Jaarverslag 1997 (in press). Den Haag.

films they do or do not want to see. The *Raad voor het Jeugdbeleid* (Council for Youth Policy) has suggested substituting classification with the provision of greater information about the product (whether film, television or video).⁶² At the moment the appropriateness of the age classification system, which is used by all media sectors, is questioned, particularly the rating “all ages”. The independent Dutch Institute of Psychologists suggested extending the ratings to include a category for “6 (or 7) years of age”; a classification already used by most other European countries. The Dutch Video industry is experimenting with using the “Parental Guidance (PG)” classification⁶³, used by several Anglo-Saxon countries, in combination with the “all ages” classification.⁶⁴ The Board of Film Classification believe that consumers should be better informed and are also considering introducing this classification, as well as the label “child friendly/family film”, to accompany the “all ages” category.⁶⁵

The age classification is issued following a **semi-deterministic** methodology. For rating the Board uses its guidelines and classification forms with the following criteria: frightening scenes, brutalising violence, drugs, pornography and an open criterion, which may be used by the rating provider in a film specific context. The latter is sometimes used for discriminating between aspects of a film or for the showing of excessive pornography. Guidelines are as follows:

- the individual scenes should be judged in the context of the whole film but trailers, promo's and commercials are judged on their own merits, without reference to the feature film
- the Board shall not enforce its right to make cuts to films and
- the Board aims to make as many films as possible available to young people, insofar as they are not likely to result in mental “damage”.

Furthermore, the Board uses a score form with criteria for damaging material:⁶⁶

⁶²(1996). Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

⁶³*Notitie* (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 15. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.

⁶⁴*Raad van Toezicht Videovoorlichting, Jaarverslag 1997*, p. 5. Oudekerk a/d Amstel: Aeroprint/J.K. Smit & Zonen.

⁶⁵*Nederlandse Filmkeuring, Jaarverslag 1997* (in press). Den Haag.

⁷⁰⁶⁶*Commissariaat voor de Media* (1997), *De Omroep Gekeurd, bijlage*. Hilversum.

Figure 12: NFK Score Form

Score 1, General	i) Intimidation ii) The risk of excessive identification iii) Insufficient understanding of the theme
Score 2, Fear	i) Tension without means of escape ii) Shocking effects iii) Bad ending/open ending
Score 2, Violence	i) Horrible ii) Malicious iii) Sadistic
Score 3, Film contains elements of:	i) Sadism ii) Fascism iii) Racism iv) Sexism v) Discrimination vi) Other forms of humiliation vii) Violence viii) Political extremism ix) Alcohol or drug abuse

The NFK expects the rating system to expand, due to discussions of media violence becoming common in society. As a result of these discussions, the NFK has for a few years been asked to rate films for television, which is not part of its remit.

1.12 Portugal

In Portugal, there are two bodies rating cinema: the *Secretariado do Cinema e do Audiovisual (SCA)*, a non-commercial Catholic body, and the *Comissão de Classificação de Espectáculos (CCE)*, a government body.

The SCA analyses film content, and publishes its analysis and ratings in the *Boletim Cinematográfico*. It has been operating for 40 years. The system is **voluntary**, developed by an independent Catholic entity, and no one has to take its views into consideration. It uses a **non-deterministic** method of rating, based on the moral judgement of the rating body, and the ratings issued are a mixture of **descriptive and evaluative**. On the one hand, a judgement is made about the film. This subjective judgement is expressed in terms of age category; i.e. the SCA decides the age groups for which the film is suitable to be shown. Moreover, the SCA also attempts to describe the film content and provides an abstract of the film plus a

moral and aesthetic comment. Occasionally, it characterises actors and performances. The rating system includes 4 categories⁶⁷:

⁶⁷Until the mid-1980s, there were six categories. To the current list were added a further two: 'for adults with serious reservations' - considered 'harmful to the large majority of the viewers' - and 'condemnable' - films that, 'by their content, constitute a serious moral attack or defend blameworthy theories that pose severe danger to the audience'. According to those responsible for the SCA, the 'condemnable' rating may still be used in the case of pornography and in other 'really exceptional' cases.

Figure 13: SCA Rating System

1	2	3	4
'For all'	'For adolescents and adults'	'For adults'	'For adults with reservations'
films that are entertaining and easy to understand	films that present a complexity that makes them hard to be understood by children, that may hurt their sensibility or distort their vision of the world	films that, due to their structure or content, may not be totally understood or adequately analysed by adolescents, films that contain problems which are not proper for individuals without full maturity and experience of life	films that present gravely distorted situations, being its level of violence and/or degrading exploitation of matters which may hurt the viewers sensibility

The SCA analysis and ratings are published in the *Boletim Cinematográfico*, and frequently in local newspapers with close links to the Catholic Church. The SCA classifications are also provided to distribution and exhibition houses⁶⁸. Moreover, the national private television channel, set up by Catholic associations, *Televisão Independente* (TVI), broadcasts the ratings given by the SCA⁶⁹. Though the rating system has a reduced impact at national level, as the SCA views are usually conveyed by the regional/local press (mainly controlled by the Catholic Church), it may influence readers in terms of the films they should or should not see.

The CCE is an agency of the *Ministério da Cultura* (Ministry of Culture). It is regulated by the Law-decree 106-B/92 of the 1st of June. This piece of legislation gives the Commission deliberative power in terms of age and quality rating of films. In addition to the classification of films, it may issue opinions about proposed legislation in this field. The Commission has up to 45 members, including representatives of ministries with responsibilities in the film arena; representatives of civilian associations and representatives of film industry interest groups (the latter may only express their views in the Commission plenary meetings). The CCE is organised in sections: i) age rating; ii) quality rating; iii) pornographic and non-pornographic rating. There is also an appeals sub-

⁶⁸Research confirms that occasionally managers of cinemas believe that the SCA classification originates from the government, not from a Catholic association.

⁶⁹This information was provided by the Head of SCA, Eng. Jorge Perestrello.

commission that examines and rules on submitted appeals and may alter or uphold the previously applied rating.

The system is **mandatory** because no film may be exhibited to the general public without being classified. Indeed, it is the responsibility of the *Inspecção-General das Actividades Culturais* (Inspector General of Cultural Activity), the autonomous administrative service with general responsibilities in the area of media regulation, to make sure that all films exhibited are properly rated and to monitor the observance of the ratings. The rating system is legally defined and therefore it has force of law throughout the national territory. In accordance with the 'spirit of freedom' of the post-1974 revolution era, the rating system is primarily of an informative nature. The audience and educators are made aware of what is appropriate for different age groups and are also informed whether a film is 'pornographic' or not. They may also be given information about a film's 'quality'. The adopted classifications are provided in information about the films. Nevertheless, the implementation of the legislative construct depends mostly on the role educators perform⁷⁰.

Every three months, there is a Commission plenary meeting. It is the plenary which approves the rating criteria to be observed; though the Ministry of Culture is able to change them if it does not agree. The rating procedure is **non-deterministic** because the rating is not the result of an 'objective' methodology, but rather the expression of the panel's views and sensibility. When a film is presented to the Commission in order to be classified, the president selects a panel, usually constituted by five *vogais* (elements of the jury). The panel watches the film and, taking into account the written criteria mentioned below, each of its members provides his/her opinion. The panel discussion is meant to reach a consensus. If a consensus is not possible, there is a simple majority vote. However, panel members who voted against the winning classification may appeal

⁷⁰ Until the 1970's, the view was punitive and authoritarian. Thus, for example, Article 15 of the Law-decree 41051 of 1 April 1957 stated: 'Parents, educators or indeed anyone who allows or facilitates the access of minors to films contra to what is written in this Law-decree will pay a fine of 100 to 1000 Portuguese escudos, and if the action is repeated, they may be imprisoned for up to three months.'

to the “Appeal sub-commission”⁷¹. Appeals are however extremely rare, and generally panels decide by consensus. Appeals from civilian groups and the film industry are even scarcer.

Though the panel considers specific aspects of film content, the ratings issued are **evaluative** since the decision is taken according to the panel's opinion of the appropriate age groups to see the film. The current age rating system dates from 1982 and there are five categories.⁷²

Figure 14: CCE Rating System

1	2	3	4	5
'For over 4's'	'For over 6's'	'For over 12's'	'For over 16's'	'For over 18's'
short and easy to understand; for this age group, films should not provoke fear and should not conflict children's fantasies	films that, due to their theme and/or length, are not adequate for lower age groups	films that, due to their length or complexity, may cause excessive fatigue and/or psychological trauma to the previous age groups	films that excessively explore sexuality and physical and/or psychological violence	pornographic movies and/or films which explore pathological forms of physical and psychological violence ⁷³

The 'pornographic' label is applied to a film which persistently and superficially explores 'sexual situations and acts with the main purpose of arousing the spectator' and has a 'low aesthetic quality'. However, in 'Soft-core' films there is no graphic exhibition of genitalia and sexual acts are simulated. 'Hard-core' movies include graphic presentation of genitalia and sexual acts are not performed or acted, but real.

Finally, films might also receive a 'quality' stamp for being distinguished by their artistic, thematic, pedagogic and technical aspects.

⁷¹ The information concerning the rating/labelling process was provided by the President of the CCE, Eng. António Xavier.

⁷² Established by Article 2, No. 1 of the Law-decree 196/82 of 21 September 1982 and later regulated in *Portaria* 245/83 of 3 March 1983.

⁷³ It is interesting to note that in the Law-decree 41051 of 1 April 1957, films 'for adults' (over 17 year olds) were those which, although respecting the minimal conditions required to get authorisation from the CCE, might be harmful to the spiritual education and the moral and intellectual development of young people. Moreover, films for adults are those with the potential dangerously to excite youth sensibility and imagination, and those that might suggest fundamentally wrong notions about life and historical facts (article 8).

The Commission is supposed to classify all types of videograms (analogue and digital), thus including cinema, videos, video and computer games. Nevertheless, video and computer games are not rated, although there is some concern about this. No rating system is applied to advertising.

The maximum volume of programming this system can accommodate depends on the potential enlargement of the Classification Commission. This is a political decision that may be taken only by the Ministry of Culture. So far, no concerns have been expressed regarding the Commission's organisational and economic capacity to deal with the volume output.

1.13 Spain

The rating body responsible for film is the *Instituto de Cinematografía y Artes Audiovisuales (ICAA)*, an autonomous body deriving its authority from the Ministry for Education and Culture. Though the Autonomous Communities, the regional political entities, have the right to assume responsibility for films produced in their own region, only Catalonia has done so⁷⁴. A company with headquarters in Catalonia, which owns the exploitation rights in a film, may choose whether to have the film rated by the Catalan Department for Cultural Affairs or by the ICAA, with the exception of films that may be classified as "X" films, which can only be rated by the ICAA. If a film is rated in Catalonia, the rating provided will be valid throughout Spain. In practice, the Director General of the ICAA rates nearly all films.

Films are rated by the Director General of the ICAA, after obtaining the opinion of the *Comisión de Calificación de Películas Cinematográficas (CCPC)*⁷⁵, which also belongs to the ICAA. The CCPC has been performing its functions since 1983⁷⁶. Its creation completed the transition from the severe censorship that existed until

⁷⁴ See Catalan Decree 495/1983, of 3 November 1983, on the rating of films and audio-visual works.

⁷⁵ See Article 16.2 of Decree 81/1997.

⁷⁶ See the abrogated Decree 1067/1983, of 27 April 1983.

General Franco's death in 1975 to the current total freedom, with the Commission now playing an advisory role only.

The Director General of the ICCA is proposed by the Minister for Education and Culture and appointed by the Council of Ministers⁷⁷. The CCPC, which assists the Director General, consists of 9-12 members: the Director General of the ICAA himself; the head of the Ministerial Department for Promotion of the Film Industry; and 7-10 members who are appointed for a two-year period by the Minister for Education and Culture from nominations made by the Director General. These members are chosen from people related to the film and audiovisual industry who are fit to carry out this duty⁷⁸.

The system is **mandatory** for content producers, who are required to submit their works to the ICAA before distributing, showing or advertising them⁷⁹, and to indicate clearly the rating provided. The decision adopted by the rating authority is compulsory vis-à-vis the company that has asked for the film to be rated, so this company may not change the rating given by the Director General of the ICAA.

It is also **mandatory** for film distributors and exhibitors to show the film's rating in all advertisements for the film, at the box-office of the cinemas where it is being shown, and before the commencement of the film screening⁸⁰. However, entrance to cinemas on the grounds of age may not be prevented, as the classification is a **mere recommendation** for parents. The only exception to this is "X" classified films, whose exhibition is restricted to cinemas with a special licence, to which the entrance of children under 18 is prohibited⁸¹. Advertisements for pornographic films or films depicting gratuitous violence ("X" rated films) must not include any graphic representation, and must clearly state that the film may only be seen in cinemas with a special licence. The name of the film may not explicitly show its pornographic or violent nature. Trailers and advertisements for these films can

⁷⁷ See Article 6 of Decree 7/1997, of 10 January 1997, on the structure and functions of the ICAA (Decree 7/1997).

⁷⁸ See Article 17 of Decree 81/1997.

⁷⁹ See Article 16.1 of Decree 81/1997, and Article 13 of the Ministerial Order 7 July 1997.

⁸⁰ See Article 15 of Decree 81/1997, and, for films rated "X", Article 6 of Law 1/1982 and Article 19.1 and paragraphs 3, 4 and 5 of Article 20 of Decree 81/1997.

only be shown in the cinemas rated “X” and in the cinema section of newspapers or other media⁸².

Advertisements for films to be shown in cinemas must also be rated, following the same system used to rate films.

This system is State-specific: the Spanish authorities must rate all films and audiovisual works distributed in Spain, and the rating provided by these authorities is only valid in Spain.

Though officially, according to Decree 81/97, the Director General of the ICAA is responsible for rating films, in practice the films are usually rated by the CCPC, which adopts its decisions by a majority of the votes cast, and the Director General makes this decision his own. The rating given is stated in a formal Resolution from the Director General. If the film distributor does not agree with the rating given to a film, the film is usually viewed for a second time before the Director General of the ICAA adopts a final Resolution. This Resolution is an administrative act, which can be appealed before the jurisdiction for suits under administrative law. The system is **non-deterministic**, depending upon the decision of the Director General, made after obtaining the opinion of the CCPC, which also follows a non-deterministic approach.

To prevent the marketing of a film being impeded in the event of there being too many films for the CCPC to rate at any time or the rating process taking too long, Decree 1/1997 establishes the principle that, if no rating has been provided within a month, it should be understood that the ICAA accepts the rating proposed by the applicant⁸³.

The rating system is an **evaluative** system providing a single indicator according to a standard of harmfulness based upon age groups⁸⁴.

⁸¹ See Article 1 of Law 1/1982.

⁸² See Article 6 of Law 1/1982.

⁸³ See Article 16.2 of Decree 81/1997.

⁸⁴ See Arts. 15, 16 and 17 of Decree 81/1997.

Figure 15: ICAA Rating System

1	2	3	4	5	6
Specially recommended for children	For all	Not recommended for children under 7 years	Not recommended for persons under 13 years	Not recommended for persons under 18 years	“X” rated films (pornographic films and films that make a defence of violence) ⁸⁵

With regard to “X” rated films, it must be said that in practice only pornographic films are given this rating, while films depicting gratuitous violence are rated as not recommended for children under 18 years.

This rating system provides ratings for all existing films. In 1997, 456 films were rated, as well as 115 short films and 346 advertising spots of films to be shown in cinemas. 201 of the films rated came from the USA, and 76 from Spain. Since its creation in 1983, the CCPC has rated more than 5,000 films.

Given that the organisation of the CCPC could be changed to increase its rating capacity, by increasing the number of members or creating sub-commissions within the Commission, and given that ratings may be given implicitly if the Commission has not opposed the rating proposed by an applicant within one month, it is likely that the existing system would be able to accommodate all films and audiovisual works falling under the jurisdiction of the ICAA in the future; that is to say all those which are shown in cinemas or distributed on video cassettes.

Infringement of the provisions relating to “X” rated films (prohibition of screening these films other than in cinemas with a special licence; prohibition of access to these cinemas by persons under 18 years old), or breach of the provisions related to advertising of “X” rated films are regarded as serious violations, and are punished with a fine of 500,000 to 5,000,000 pesetas (3,000 to 30,000 Euros).⁸⁶ Infringement of the remaining rating provisions is regarded as a

⁸⁵ See the Seventeenth Article of the Order of 7 July 1997

⁸⁶ See Article 9.2.c) and Article 10.1.b) of Law 17/1994.

minor violation, and is punished with a fine of up to 50,000 pesetas (3,000 Euros)⁸⁷.

The Director General of the ICAA imposes the sanction for minor violations, and the Minister for Education and Culture sanctions serious violations⁸⁸, without prejudice to the sanctioning power of the authorities of the Autonomous Communities with responsibility in this field⁸⁹.

1.14 Sweden

The body responsible for rating cinema works is the *Statens biografbyrå* (National Board of Film Classification). The rules regarding classification are set out in the Examination and Control of Films and Videograms Act. The examination is **mandatory**, and all films must be approved and classified by *Statens biografbyrå* prior to showing in a cinema.

Section 1 of the Act states that “the content of films or pre-recorded video recordings (videograms) shall be examined and approved by the National Board of Film Classification prior to showing at a public gathering or entertainment”.

However, Section 2 of the Act envisages some exemptions where films and videograms

- are broadcast by radio,
- are broadcast by cable⁹⁰,
- consist of advertisements for goods or services,
- are shown at trade fairs, exhibitions or sporting events, unless the showing in itself constitutes a public gathering, or

⁸⁷ See Article 9.3.b) and Article 10.1.a) of Law 17/1994.

⁸⁸ See Article 21.3 of Decree 81/1997.

⁸⁹ See Article 10.3 of Law 17/1994 and Article 21.3 of Decree 81/1997. According to Article 21.2 of Decree 81/1997, the proceedings to impose a sanction are to be conducted according to the Decree on Administrative Procedure for the Imposition of Sanctions of 4 August 1993. It is initiated by the Director General of the ICAA, who appoints a civil servant to investigate the facts of the case, without prejudice to the capacity of the Autonomous Communities with responsibility for rating films to determine their own administrative procedural rules and to decide who shall initiate and carry out the proceedings in their territories.

- are shown at a museum in conjunction with the museum's normal exhibition activities and are of a documentary nature⁹¹.

Finally Section 3 states that “the National Board of Film Classification may, for the purposes of a film festival or other artistic or non-profit making event, authorise the showing of films and videograms to persons over the age of 15 although they have not been examined and approved for showing. Such authorisation may be made subject to any conditions that the Board considers necessary.”

Statens biografbyrå is an authority under the domain of the Ministry of Culture. Its remit is based on law, ordinance and instructions. It can decide to ban or cut a film, but the film can still be released on the home video market. It must be emphasised that the Board does not take any action on religious or political grounds, nor does it act as an arbiter of taste, banning “bad” and passing “good” films. Its task is to judge whether films, or film sequences, are liable to have a brutalising effect on the audience. In other words, it determines whether they are likely to make young people more indifferent to violence and more inclined to accept violence as a natural or even appropriate way of solving problems. The Board’s judgements are based on expertise and experience.

The age limits that have been fixed take into account the likelihood of children in the various age groups being exposed to “emotional shock”. Only a very limited amount of violence is allowed in films for young children. The censors also pay special attention to scenes that may have a very upsetting or terrifying effect, particularly where they involve characters with which children easily identify. This includes scenes that are difficult for children to understand and are liable to cause confusion and fear. A case in point are foreign films with subtitles that children cannot read or cannot finish reading before they disappear.

⁹⁰ provided that such broadcasts are retransmissions of satellite broadcasts or of broadcast transmissions or constitute autonomous broadcasts within the meaning of the Public Cable Transmissions Act (1991:2027) as amended by SFS 1991:2031 of January 1, 1992

⁹¹ As amended by SFS 1991:148 of July 1, 1991.

The classification system is **evaluative** and **semi-deterministic** in the sense that the criteria laid down by law leave a certain margin of judgement to the censors.

The ratings that may be assigned to a film are:

Figure 16: *Statens biografbyrå* classification system

1	2	3	4
allowed for children	from 7 years	from 11 years	from 15 years

In addition, *Statens biografbyrå* may ban a film from public showing as well as demand that a certain sequence or sequences be cut in order to be approved for showing. The criterion for determining the age limits for children is whether the film “causes psychological damage”⁹². The criterion for the limits for adults is whether the film “has a brutalising effect on the audience”⁹³.

Persons who have not attained the minimum age fixed by the *Statens biografbyrå* shall not be admitted to public gatherings or entertainments where a film or videogram is being shown, except when they are accompanied by a person over 17 years

1.15 United Kingdom

The British Board of Film Classification (**BBFC**) is an **independent, non-governmental** body, which exercises responsibilities over the cinema, which by law belongs exclusively to the local authorities. The Board was set up by the **film industry** in 1912 in order to bring a degree of uniformity to the standards of film censorship imposed by the many very disparate local authorities. The aim was to create a body which, with no greater power than that of persuasion, would seek to make judgements which were acceptable nationally.

⁹² Section 5 of the Act: The content of a film or videogram shall not be approved for showing to children under the age of 7, 11 or 15 years if it is liable to cause children in the relevant age group emotional shock.

⁹³ Section 4 of the Act states that : (1) The content of a film or videogram, or a part thereof, shall not be approved for showing if the events are depicted in such a manner and in such a context as to have a brutalising effect. (2) The assessment shall take particular account of whether the film or

Statutory powers remain with the local councils, who may overrule any of the Board's decisions on appeal. In practice this rarely happens, and the local licensing conditions give the Board's categories legal status. A film distributor can however ask a local authority to award a local category for any film, whether it be one banned by the Board, passed by the Board in a category unacceptable to the distributor, or not seen by the Board at all.

Every film is viewed by at least two examiners, who write reports justifying the decision they have reached. In cases of doubt or disagreement, the film will be referred to another team, usually with a principal officer present at the screening. The Board views every film destined for public distribution in Britain, and in recent years it has seen around 400 films annually⁹⁴. Specialist staff are employed to view foreign language works. A principal officer, any one of whom may be asked to view a film or video on appeal, must ratify all decisions. The President or Vice-Presidents will be consulted on difficult works, including those which may be refused a certificate altogether, and it is usually the case that such films are seen by most of the examining team before a final decision is taken.

The Board does not rely on a written set of guidelines but operates a system of precedent, so that every decision is taken in the light of previous ones. The BBFC's view is that context, treatment and the intention of the filmmaker are as important as the actual images shown, so that a list of prohibitions is unhelpful. Virtually any theme may be accepted if the treatment is responsible, and the same images may be acceptable in one context but not in another. The same applies to the boundaries between categories, although there are quite rigid rules on the sort of language allowed in the junior categories.

In questions of classification, the BBFC is primarily concerned with the protection of children, and the age-based category system was changed in 1982⁹⁵ so as to

videogram contains explicit or protracted scenes of severe violence to people or animals or depicts sexual violence or coercion or presents children in pornographic situations.

⁹⁴ See <http://www.bbfc.co.uk/>

⁹⁵ For many years (from 1913) there were only 'U' and 'A' categories, in 1951 the 'X' was added, restricting audiences to those over 16. In 1970 an 'AA' was introduced limiting audiences to 14

reflect changes in society, and to provide clear and concise information to parents and the public generally. Only if a film fails to fall naturally into one of the following categories will cuts be considered:

and over, and the age for admittance for 'X' films was raised to 18. In 1982, the 'AA' was changed to '15' and the 'X' renamed '18'.

Figure 17: UK Rating System

1	2	3	4	5	6
'U' (Universal – Suitable for All)	'PG' (Parental Guidance)	12 +	15 +	18 +	'R18'
No theme, scene, action or dialogue that might be construed as disturbing, harmful or offensive	Mild violence; occasional brief non-sexual nudity; bed scenes but no serious suggestion of actual sexual activity; limited scatological language, but no sexual expletives; no drug use or condoning of immoral behaviour unless mitigated by context (e.g. comedy); no undue emphasis on weapons (e.g. flick-knives).	Implications of sex (within a relationship or in a humorous context); stronger language, but only a rare sexual expletive; more realistic violence limited in length and intensity, but no drug use.	Themes requiring a more mature understanding Full-frontal nudity in a non-sexual context; impressionistic sex; more extensive use of expletives; mildly graphic violence and horror with some gore. Soft drugs may be seen in use, but not so as to condone or normalise. As with lower age categories, no details of harmful or criminal techniques, e.g. how to break into cars, pick locks, etc.	Themes requiring an adult understanding (e.g. complex sexual relationships, controversial religious subjects); explicit simulated sex (or in some educational contexts real sex); full nudity in a sexual context; non-glamorised use of hard drugs when justified by characterisation or narrative; frequent use of sexual expletives; graphic violence, provided that it does not encourage sadistic pleasure or glamorise dangerous weapons	Consenting, non-violent sex depicted with a degree of explicitness limited only by the law

It is an offence for the cinema manager to allow minors to view films with an age restriction, for which he or she would be liable to lose his or her cinema licence.

The Board does not receive any subsidy or grant either from the film industry or from government. Its income is derived solely from the fees it charges for its services; calculated by measuring the running time of films or video works submitted for certification.

2 Video rating systems

2.1 Austria

No specific measures for the protection of minors from harmful video content have so far been taken in Austria, though from time to time there is an initiative aimed at filling that gap. For instance, the social democratic Austrian youth organisation, *Kinderfreunde*, has recently launched a campaign, which, according to its title ("*Kein Mord am Bildschirm*" – "No murder on screen"), focused on television broadcasting activities, but also dealt with the video sector, calling for an obligation to label brutal content also on video and computer games.⁹⁶

There is no rating mechanism in place, but general provisions on devices harmful to minors (cf. Section 18 of the Vienna Minors Protection Act: Children and Young people are not allowed to acquire, possess or use devices which could endanger their respect for human dignity) and on pornography apply.

2.2 Belgium

The only provisions in force for video rating are the criminal ones. Criminal liability comes from Article 383^{bis}⁹⁷ and 380^{quinquies}⁹⁸. It provides criminal sanctions against the dissemination of a pornographic film. The "*cour de cassation*" extended the "*bonne moeurs*" case-law application to dissemination of videotapes, even though Parliament has not issued specific provisions. The rating system used for film screenings does not apply to video dissemination.

2.3 Denmark

Rules applying to video content are contained in the Film Act of 12 March 1997 and are exactly the same as the ones existing for cinema works (see Section 1).

⁹⁶ More information on the anti-violence campaign can be found at <http://www.kinderfreunde.at/aktionen/kmordabs.html>.

⁹⁷ law of 13 April 1995

⁹⁸ law of 27 March 1995

2.4 Finland

The Act on the Classification of Video and Other Audiovisual Programmes was passed in 1987. Prior to this the video industry had its own self-regulation body, called the *Videoleivityksen valvontalautakunta*. The option exists to revive this body whenever necessary.

The Finnish Board of Film Classification also examines videos and the classifications applied are:

Figure 18: Finnish Board of Film Classification video rating system

1	2	3
G (general)	restricted for persons under 16	Banned

There is effectively only one rating. Otherwise, the programme is either passed for all or banned for all. If the programme has been or would be rated 18, it is banned on video.

The decisions may be accompanied by rating recommendations. Thus, “Titanic”, for instance, was rated 12 for cinema viewing, whereas on video it is exempted from classification and automatically passed for general audience viewing with the rating recommendation 12. The difference between rating decisions and rating recommendations is that rating decisions acquire the force of law, whereas recommendations do not.

The system is **mandatory**. No audiovisual programme may be offered for sale or for rental to the consumer unless passed by the Finnish Board of Film Classification. Home video classification concerns all linear audiovisual programmes - VHS, laserdisc, DVD, etc. - as long as they are commercially distributed for private use. There are a number of exceptions, most importantly:

- programmes that have already passed film classification
- interactive programmes including videogames and CD-ROMs
- programmes produced by the Finnish Broadcasting Company

Additional content that may be exempted from classification includes education;

science; product information; music; sport; documentaries; programmes for small children; travel; nature; and religion. The classification board may also order those programmes to be screened.

The criteria of restriction applied in video censorship include obvious violations of the law, obscenity, violence, and psychologically disturbing material. There are therefore fewer categories in video censorship than in film censorship. According to Antti Alanen, the manager of the Finnish Board of Film Classification, there is an urgent need to reform this aspect of video censorship. The boom in hard-core pornography sweeping the Western world has also struck Finland, where hard-core pornography gets the highest rating, i.e., restricted for persons under 18. This means that there is effectively a video prohibition on pornography in Finland, which has led to the emergence of a huge black market with all its ramifications. Pornographic home videos are naturally submitted neither for classification nor for registration since they would be banned. Instead, police time is taken up with the seizure of pornographic material, and court time with the subsequent trials.

The Finnish Board of Film Classification will continue in its supervisory role but only for the setting of age restrictions. The need for the liberalisation of video censorship has been widely accepted, not least for practical reasons. Furthermore, television companies are not willing to follow the classifications of the Board of Film Classification.

2.5 France

Strictly speaking there is as yet no regulation regarding video classification. As to cinematographic works edited on video tapes the Decree of the 23 February 1990⁹⁹ requires producers of video tapes to display the certificate granted by the Commission for Classification of Cinematographic Works on the packaging. Video classification has only been dealt with under Fiscal Law, following the adoption of Article 18-4 of the Finance Act, 29 December 1984, which makes the transfer of rights in works distributed on video, which are pornographic or incite to hatred, subject to VAT (at the highest rate).

⁹⁹ Title II, Article 5, al. 3

Nonetheless, where the video has not been released in the cinema prior to its distribution as a video, it does seem that, under the provisions of the New Criminal Code (article 227-24¹⁰⁰), the producer may be obliged to issue warnings dedicated to the protection of minors. In addition to this article of the New Criminal Code, a law was adopted recently on the protection of minors¹⁰¹. This law applies to any work transmitted in either magnetic format, digital format with optical reader recognition, or semiconductor support, such as videotapes, videodiscs or electronic games. When, due to its pornographic character or its depiction of crime, violence, incitement to ethnic hatred, drugs etc., such a work may endanger youth, the administrative authority (Ministry of Internal Affairs) may prohibit (via ministerial order and after having consulted the Commission) its distribution to minors or its advertisement by any means (other than in premises prohibited to minors). These prohibitions must be mentioned on each unit of the edited and distributed copies. However the decrees need to be finalised (in consultation with the *Conseil d'Etat*) before the area and modalities of the application of this law can be known precisely.

Nevertheless, and despite the absence of clear regulation in this area, the *Syndicat de l'Edition Vidéo* has developed a **self-regulatory** system:

Figure 19: *Syndicat de L'Edition Vidéo* system

Code of ethics¹⁰², article 6
<p>«Members of the 'Syndicat' undertake to operate with the following rules in mind:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Edited works, as well as the graphics used either for the cover of the tape or its promotion, shall respect human dignity; <input type="checkbox"/> When the editor considers that the edited work contains scenes, which are shocking or likely to upset the viewer, a warning explaining the content must be displayed;

The classification is issued directly by the different video editors. It is not a visual icons system but only displays of information/recommendations (editors do not

¹⁰⁰ When a message of pornographic or violent nature is likely to be seen by a minor a 3 year jail term or a fine of FF500,000 may be imposed.

¹⁰¹ Law No 98-468 of 17 June 1998 concerning the prevention and repression of sexual infractions as well as the protection of minors.

¹⁰² Code approved by the General Assembly of the *Syndicat de l'Edition Vidéo* on 25 March 1995.

believe they have the legal legitimacy to act as censor). There are no guidelines, and no precise or harmonised criteria.

For non-cinematographic works the *Syndicat* refers to the classification system of the *Conseil supérieur de l'audiovisuel (CSA)*.

2.6 Germany

Video films are rated either by the FSK under the same procedures as for cinematographic films, or by the BPjS, whose authority is limited to video films which have not been rated by or were not presented to the FSK, or those rated '18'. The "index" creates limitations regarding the circulation of the videos. They may only be shown in places where children or young people do not have access to them. Similarly, indexed videos may not be sold or rented outside shops, ordered by mail, rented in public libraries, or transmitted through electronic information or communication services. Middlemen must also refer to the above-mentioned selling restrictions.

Video games are subject to *Unterhaltungssoftware Selbstkontrolle (USK)*, the Entertainment Software Self-Regulation Body, which refers to the age categories included in the relevant legal provisions (**evaluative**). It also refers to the decisions made by the BPjS.

The USK has developed objective points for the age classification of computer and video games¹⁰³. For instance, a game is always said to contain gratuitous violence if the player is placed in the role of the killer, if the death of opponents is rewarded, if the idea of the game is exclusively to display aggressive behaviour, and/or if the effects of violence are clearly shown. The USK makes its decisions following the provisions of the BPjS and the FSK, which are mentioned in the USK criteria. These criteria clarify the points of examination. However, the decisions regarding the ratings are **semi-deterministic** in that they are based on the opinions of the examination committee according to these criteria.

¹⁰³ These criteria have been developed on the basis of the provisions of 31 GjSM and are very similar to them.

In principle, the USK exerts a **voluntary** control. However, this voluntary character is limited by the fact that German department stores have adopted a policy of offering only USK rated products to their customers. The aim of the USK is to guarantee the protection of minors by means of voluntary self-regulation on the part of the suppliers, even before the products are released. By awarding its stickers the USK attests that a given software is suitable for distribution and complies with the legal provisions regarding the protection of minors. The USK only acts at the request of producers. The suppliers and manufacturers who are members of *Verband der Unterhaltungssoftware Deutschland e.V.* (VUD)¹⁰⁴, the Association of Entertainment Software in Germany, recognise the USK as their self-regulation body for software available for purchase and other public use. It is also supported by the Association for the Support of Young People and Social Work.

As to its structure, the USK is composed of a *Beirat* (Advisory Council), which is the policy-making and controlling body of the USK, and expert examiners. The Advisory Council is made up of members of various groups of society, from, for instance, the field of science, politics, culture, and the protection of minors.

The expert examiners must not be active in the computer hardware or software industry. They are independent and their function is honorary. They are only reimbursed for their expenses. They are obliged to attend the advanced training events organised by the USK, which relate to evaluations and examining activities and also advanced training on selected areas of assessment of computer and video games. They are selected on the basis of their professional experience and training.

The USK's other role is to provide information and clarification for the public regarding the opportunities and risks involved for children and young people from

¹⁰⁴ The VUD is composed of developers, distributors, licensees from the entertainment, information and educational software industry, such as Acclaim Entertainment GmbH, ACTIVISION, ak tronic Software and Services, ART DEPARTMENT GmbH, BLUE BYTE Software GmbH etc. The members do not submit their products themselves but give them to VUD, which submits them to USK to be rated.

the use of entertainment software and interactive media. Parents and families are one of the main target groups for this work. The USK tries to encourage them to have an independent influence on the media socialisation of their children.

In principle the USK examines all submitted software for its content and permissibility. The USK decides:

- whether the software is a comparable image carrier in the meaning of §7 JÖSchG,
- whether its content complies with the provisions of the Criminal Code¹⁰⁵
- which age classification should be assigned to it and whether a title should be prohibited.

Instruction books and the sales packaging are examined along with the software and the USK awards **age classifications** at the following levels:

Figure 20: USK Rating System

1	2	3	4	5
No age restriction	suitable for ages 6 and over	Suitable for ages 12 and over	suitable for ages 16 and over	not suitable for persons under the age of 18

The USK considers that these age group categories should be updated¹⁰⁶.

The USK's assessment is displayed on the product by means of stickers. There is no legal obligation relating specifically to the USK rating. However, the relevant general legal provisions regarding rating are complied with by the USK, partly because of the fear of bad publicity following the attribution of an inappropriate rating. This prevents voluntary regulatory organisations acting in the interests of the companies financing them.

¹⁰⁵ §86a, 130, 131, 184 (3)

¹⁰⁶ However, they regret that current theories regarding psychological development have not been studied in a sufficiently scientific manner on the basis of the computer game practices of children and young people.

The ratings of the USK are not binding in the legal sense, but only provide information for parents or retailers. As a consequence, shops buying USK rated products are not obliged to follow the USK decision.

Since its creation, the USK has classified 3500 titles¹⁰⁷. 17 titles were not rated, as they were considered not compatible with the relevant legal provisions. As to its capacity, it is limited because of the size of the organisation. Only 5 people are employed and they receive requests from 195 organisations from 6 countries. They consult 27 experts and there are 7 observers. An average of 15 films is examined per week. The products classified by the USK constitute 90% of the entertainment industry's market. This proportion is only 50% for console programmes. The USK guarantees that an examination will take place no later than 21 days from application for a rating, and the applicant is informed of the results by fax. There also exists a special express procedure, which only takes 5 working days. The costs of the examination are defined in an agreement between the VUD and the ¹ *Förderverein für Jugend und Sozialarbeit*, the association for the promotion of social and youth work. The rating system does not apply to advertisements.

The USK is a national system, but the fact that Germany is the second biggest market in the field of entertainment software for PC after the USA motivates foreign firms to participate in this voluntary self-control organisation.

2.7 Greece

The group responsible for rating videos is the Cinematography Commission, and the same classification applies to video as that which covers films.

2.8 Ireland

The Film Censor's role was extended to cover video by the Video Recordings Act of 1989

¹⁰⁷ Figure of August 1998

Video classification is mandatory - application must be made for a supply certificate declaring the video work to be fit for viewing. Unlike with film, there is no provision for cutting videos, removing scenes or dialogue. Either the video will receive a certificate as it is or it will be refused one.

Video outlets require a licence and can be prosecuted for operating without a licence or in contravention of it, or for supplying uncertified videos. There is no penalty for supplying videos in breach of the age classification. Unlike the certification system, the age classification is not a binding system; it is intended only for guidance. When this system was adopted, there was disquiet that it would not go far enough towards controlling the availability of adult videos or “video nasties” to children, but the legislators felt that a binding system would be difficult to enforce.

The parliamentary debates include discussion of the problem of striking a reasonable balance between the viewing rights of an adult and the quite clearly damaging effects of inappropriate material on children. Primary control was expressed as resting with the parents, not the State, which discharged its duty in providing guidance through the classification system.

A certificate will be granted unless the video work:

- ❑ is likely to cause viewers to commit crimes;
- ❑ is likely to stir up hatred;
- ❑ may deprave or corrupt viewers, by reason of the inclusion in it of obscene or indecent matter;
- ❑ depicts acts of gross violence or cruelty (including mutilation and torture) towards humans or animals (s.3.1).

In the period 1991-4, nearly 1,400 titles were refused certificates under the Act.

Despite the reference to "gross violence" as a ground for refusing a certificate, there is no definition in the Act of either "violence" or "gross violence". Also, the exemption for video games has caused some debate and disquiet. Since they are not included in the Act, video games are subject to self-regulation or to the

regulatory systems in the countries from which they originate, including age classifications.

The Act sets out a classification system, designed to indicate the suitability of the video for viewing by children. The age-based system, as amended, uses the same categories as for the cinema. A schedule to the relevant Statutory Instrument illustrates how the symbols denoting each class should be designed. The classification operates hand-in-hand with the certification system, in that the certificate includes a statement of the appropriate age. This is intended for the guidance of parents and video wholesale, retail and lending outlets.

All videos must be classified except those which, taken as a whole, are designed to inform, educate or instruct, or are concerned with music, religion or sport, or are video games. In these cases a certificate need not be sought unless the video contains matter that might be grounds for refusal of a certificate.

As in the case of the public viewing of films, it is an offence to supply, offer to supply, or possess with a view to supplying, a video work for which a certificate is not currently in force, unless an exemption under the Act applies. Penalties vary with the particular offence but include fines of up to £1,000 on summary conviction, and periods of imprisonment

2.9 Italy

The certificate granted to a film permits it to be shown in the cinema and in any other medium (thus including home video) throughout the State's territory. However, obscene and pornographic films specifically produced for distribution only as home videos are also available on the market. These works also have to be submitted for prior examination by the censorship committees, and are normally granted a certificate of "unsuitable for minors" (**mandatory**). Accordingly, they may be rented or sold only to individuals over 18. Finally, Article 75 of R.D. 773/1931¹⁰⁸ states that "anyone who produces, even periodically, motion pictures

¹⁰⁸ Royal Decree No. 773 of 18 June 1931 concerning general provisions for public safety.

must give prior written notice” to the Public Authority (i.e. the Police) in order to be granted a licence.

There is no specific content-related regulation in Italy addressing video games, nor any specific rules concerning parental control systems that may be applied in this domain. Nevertheless, regulations on games in general are applicable to video games and their respective differences are not taken into consideration. Thus, rules on games in general apply to leisure and ability video games, both aiming at players’ enjoyment; rules on gambling (or games of chance) apply to gambling video games (or games of chance); rules on games incompatible with the public interest apply also to video games with content incompatible with the public interest; finally, the regulatory framework on billiard-rooms applies anytime video games are provided. According to Article 110 T.U.P.S., the authority (i.e. the mayor of the town) may prohibit (video) games where deemed incompatible with the public interest. In such cases, criminal provisions apply, punishing the licensee of the billiard-room where such games are available (Article 723 of the Criminal Code). General provisions concerning indecency and obscenity set forth in the Criminal Code, such as Article 528 and 725 also apply in this domain where the video game contains such material.

2.10 Luxembourg

Only criminal provisions apply. It is compulsory to have a separate room for videotapes prohibited to minors.

2.11 The Netherlands

Formal provisions for the video industry are provided by the Constitution’s provision for the protection of freedom of speech¹⁰⁹, the Act on Film Exhibition and the Penal Code.¹¹⁰

Protection of freedom of speech applies to videos but the legislator can lay down rules regarding the showing or screening of videos to people under 16 years of age

¹⁰⁹ Article 7 paragraph 3

¹¹⁰ Articles 240, 240a and 240b

for the protection of good morals. Article 240a of the Penal Code states that providing and showing a picture or object to a person younger than 16 years of age, the viewing of which may be assumed to be damaging to a minor, is punishable. When videos are shown in public, the Act on Film Exhibition applies. However, as the rental of video films is not considered to constitute a public showing, a rating system like the one for films cannot be introduced for rental videos. The responsible Secretaries of Justice and Culture have stated that the articles 240 and 240a of the Penal Code concerning the penalisation of pornography only apply when a video is shown in public and that penalisation is not possible when videos are rented or sold. If the video has a pornographic picture on its box, articles 240 and 240a may apply, and the video retailer/lender has to take this into account when placing these videos in his store. If the video contains child pornography, its sale and trade, which includes rental, is punishable according to article 240b of the Penal Code. This exception is made in the hope that penalisation of the rental of child pornography will protect minors against exploitation for the purposes of pornographic production.¹¹¹

The introduction of preventative limitations on viewing in order to protect minors was discussed with Parliament by the Secretaries for Justice and Culture at one time.¹¹² The Cabinet was of the opinion that minors run the risk of being damaged, but in the *Notitie Jeugdbeleid* of 1984, its memorandum on Youth Policy, it stated that Government should not in principle involve itself in private matters. Parents are expected to be responsible for the care of their children; government should, at most, create the best circumstances for them to be so. Consequently, the Cabinet has rejected any suggestion of legislation in this area.¹¹³

Nevertheless, the Cabinet did propose **voluntary** labelling of videocassettes to provide more information on their contents, including information on potential harm. As a result, the *Gemengde Commissie Videovorlichting* (Committee on

¹¹¹(1996). Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

¹¹² Letter of the Secretary of Justice and the Secretary of Culture to Parliament; '*Notitie Jeugd en Video: een kwestie van voorlichting*'; Tweede Kamer 1985-1986, 19519, nrs. 1-2, p.10

¹¹³(1996). Prepared to the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

Information on Video) was set up, which has advised on a labelling system. Based on this, a “gentleman’s agreement” on self-regulation was reached on 14 October 1991 between the former Ministry of Welfare, Public Health and Culture and the video industry. The latter was represented by the *Nederlandse Vereniging van Producenten en Importeurs van beeld- en geluidsdragers (NVPI)*, the Dutch Federation of Producers and Importers of Image- and Sound Carriers and the *Nederlandse Video Detaillisten Organisatie (NVDO)*, the Dutch Organisation of Video Retailers.

The *Raad van Toezicht Videovoorslichting (RvtV)*, the Supervisory Board of Video Information, which was established by the industry itself, is the entity responsible for this self-regulatory rating system. It meets once every six weeks, and its initial role was to monitor the self-regulatory system. On 6 May 1996, the “gentleman’s agreement” was tightened into the *Convenant en Reglement Videovoorslichting* (Covenant on Video Information), because of the popularity among minors of the video film, *Faces of Death*, which showed fatal accidents and killings. This time the Government party responsible was the State Secretary for Public Health, Welfare and Sports, and the agreement was also signed by the *Nederlandse Vereniging Grammafoonplaten Detailhandelaren (NVGD)*, the Dutch Federation of Record Retailers). As a result:¹¹⁴

- the labelling showing the age classification will be examined by the RvtV
- the labelling showing the age classification will be attached on the front and back of the video cassette in the same way,
- computer games as well as videos will be rated by age,
- video retailers will be more vigilant about the age of persons to whom they rent or sell extremely violent videos,
- self regulation will expand to shops other than video stores, such as department stores,
- complaints may be addressed to the RvtV
- the RvtV may impose fines up to an amount of 5,000 Dutch guilders.

¹¹⁴ Groebel en Smit (1996), *Media en Geweld*, rapport in opdracht van het Ministerie van Onderwijs, Cultuur en Wetenschappen, OCenW, p.65. Utrecht: Universiteit Utrecht. Vakgroep Massacommunicatie.

The rating system is **descriptive** and **evaluative**. It is evaluative in the sense that standard age classifications are given – “all ages” “Parental Guidance recommended”, “12 years and over” and “16 years and over”. The criteria used for rating, and described in the Covenant on Video Information, are the same as those used by the Dutch Board of Film Classification, including an open criterion which may be used by the classifier in a film specific context. The criteria are defined in the Covenant as follows:

- frightening scenes are those which are unexpected and are alien to the general ambience of the audiovisual work, and which could cause excessive terror or anxiety. This does not include those scenes, which are necessary to the story line and are resolved within it;
- brutalising violence, which has no motive and is used as a negative and destructive tool;
- the use of drugs shown in an attractive way, or in a way that suggests they are “not as bad as they are made out to be”. This does not apply to audiovisual works meant to warn youth about the damaging consequences of using drugs;
- pornography, where the object is to stimulate sexual arousal without showing revealing intercourse.
- open criterion; used to identify racism and discrimination, offensive use of language, continuously frightening ambience and other disturbing elements which are not mentioned in the other four criteria.

The rating system is also descriptive because one of the goals of the RvtV is to provide the best possible video information for the protection of minors and for consumers in general. Therefore, a genre classification of video films is also given, including: Children and Youth; Family; Drama/Classic; Humour; Sports; Music; Educational; Science Fiction; Action adventure; War; Western; Thriller/Crime; Horror; Racy Humour; Erotic and Pornography. In addition, the accompanying cover text has to give an honest impression of the video’s content.

The classification system could be described as a **deterministic** process. The use of a score form results in a classification and a genre definition, and the score form is given to the RvtV at least 6 weeks before the release of the video film so that the Board will be able to take action where necessary.

The rating of video films is **voluntary** for those importers/producers who are not members of one of the organisations ratifying the Covenant on Video Information; members of those organisations have to comply with the rules and regulations for Video Information. The ratings decisions are, however, not binding instruments.

2.12 Portugal

In Portugal, video films are rated in precisely the same manner as films exhibited in public cinemas and are covered by the same legislation. The rating of videos is **mandatory** and the *Comissão de Classificação de Espectáculos (CCE)* is the body responsible. Video films on the commercial circuit have to have an 'official' stamp with the following information: title, record number, copy number and the classification attributed by the CCE. Specific rules regarding presentation and distribution of videos were set up in the Law-decree 39/88 of 6th February 1988.

If videos are copies of films that have already been rated for cinemas, they are automatically rated by the CCE, except for those films shown prior to the Law-decree 396/82 of 21st September 1982. If the video film has not been distributed in public cinemas, it is classified by the CCE by the same procedure as for cinema films.

2.13 Spain

The responsibility for rating other audiovisual works belongs to the same bodies that have the responsibility for rating films (the Director General of the ICAA and the CCPC; and, in Catalonia, the Department for Cultural Affairs, which in practice hardly rates any audiovisual work at all).

The main problem for the rating authorities is software. According to the ICAA, there is neither the political will nor the means to rate software. The ICAA believes that self-regulation in this field could be the best possible solution, and in fact, a new association of software producers and distributors has been established, the *Asociación de Distribuidores y Editores de Software de Entretenimiento*. Its main goal is to protect the intellectual property rights of its members, but it also

plans to adopt a common framework within the industry for a voluntary rating of software products.

State Decree 2332/1983 regulates the sale, distribution and public exhibition of audiovisual material in general. According to this Decree, all audiovisual material must be rated before being advertised, distributed or sold to the public¹¹⁵, unless it is a mere reproduction of a cinema film, in which case it is possible to use the rating given by the CCPC for cinema screening. As with cinema films, content producers are obliged to submit all audiovisual works to ICAA for rating¹¹⁶. The rating must appear clearly on the boxes of the audiovisual works, and if the rating is “X”, the box must have a notice stating “Only for persons over 18”¹¹⁷. Audiovisual works rated “X” may not be sold, rented or given to minors, and they may not be within reach of children in premises where the entrance of children is not prohibited¹¹⁸. Advertisements and packaging of these audiovisual works shall not include graphic representations or titles that explicitly show the pornographic or violent nature of the audiovisual work in question¹¹⁹.

State Decree 488/1988 regulates public exhibition (e.g. on buses, aeroplanes, hotels, etc.) of audiovisual works distributed in video format¹²⁰. If audiovisual works distributed on video are exhibited in public, they must previously have been rated¹²¹. Audiovisual works distributed on video format that have been rated “X” or recommended for persons above 18 may not be shown to the public on premises where children under 18 are allowed to enter¹²².

The admission of minors to premises where their entrance is prohibited is punishable by the local council with fines up to 50,000 pesetas (approx. 300

¹¹⁵ See Article 1 of Decree 2332/1983, of 1 September 1983, and also Article 16 of Decree 81/1997 and Article 13 of Order of 7 July 1997.

¹¹⁶ See Article 16.1 of Decree 81/1997, and Article 13 of the Ministerial Order 7 July 1997.

¹¹⁷ See the Article 16 of Order of 7 July 1997.

¹¹⁸ See Article 19.2 of Decree 81/1997.

¹¹⁹ See Article 19.2 of Decree 81/1997.

¹²⁰ See Article 1.2 of Decree 448/1988, of 22 April 1988 (“Decree 448/1988”).

¹²¹ See Article 2.1 of Decree 448/1988, and also Article 16 of Decree 81/1997 and Article 13 of Order of 7 July 1997.

¹²² See Article 2.2 of Decree 448/1988, and also Article 8 of Law 1/1992, of 21 February 1992.

Euros)¹²³. A breach of the provisions relating to selling, renting or giving “X”-rated audiovisual works to minors or displaying them within reach of children is sanctioned by the Director General of the ICAA, with a fine up to 500,000 pesetas (approximately 3,000 Euros)¹²⁴.

According to the CCPC, all audiovisual works must be rated, regardless of the distribution format. However, it is not clear what constitutes an audiovisual work. Clearly, all cinematographic works fall into this category, whether they are distributed in cinemas, or on video, CD's, DVD's, CD-i's, etc. All videos are also considered to be audiovisual works. As regards software or interactive works, the ICAA says that they may be considered to be audiovisual works, but that the rating authority is not prepared to perform its tasks in relation to products of this nature. So, while some Autonomous Communities expressly prohibit the distribution of pornographic or violent video games or other audiovisual materials, there is no rating system for products of this nature.

The system is therefore **mandatory** vis-à-vis the owners of exploitation rights of audiovisual works. As regards the public, the ratings merely provide a recommendation, with the exception of audiovisual works rated “X”, which may not be sold, rented or given to children.

The rating procedure is **non-deterministic** and follows the same process as for films. The ratings are expressly applied after the CCPC has seen the audiovisual work concerned, but it is also possible to obtain a rating implicitly. Decree 81/1997 establishes that, if an audiovisual work has been given to the CCPC for classification, and no rating has been provided within a month, it is understood that the ICAA accepts the rating proposed by the company that has requested a rating for the audiovisual work¹²⁵. The ratings issued are the same evaluative age based system as for films. The existing rating system provides ratings for all videos distributed in Spain. In the first semester of 1998, 1379 videographic works were rated in total.

¹²³ See Articles 26, 28.1.a) and 29 of Law 1/1992, of 21 February 1992.

¹²⁴ See Article 9.3.b), Article 10.1.a and Article 10.3 of Law 17/1994.

With regard to video, the volume of programming that the rating system will accommodate may be increased by the creation of committees with rating capacity within the CCPC or an increase of the number of its members for example. As a government entity, the State has the legal and economic resources to increase the capacity of the existing system: This will depend upon the rating needs of this sector and upon the political will of the Minister for Education and Culture.

2.14 Sweden

The law applying to videograms is contained in the Penal Code, chapter 16, section 10, and reads as follows:

“It is a criminal offence to depict sexual violence or coercion or explicit or protracted severe violence to people or animals in photographs or in films, videograms, television programmes or other moving pictures, with the intention of distributing such pictures or such depictions, unless this is justified in view of the particular circumstances.”

The distribution of scenes of unlawful violence is a criminal offence under the Law on Freedom of Expression, which means that only the Office of the Chancellor of Justice can act as public prosecutor and that such proceedings are always jury trials. When charges are brought against a distributor or retailer, the National Board of Film Classification must notify the Office of the Chancellor of Justice of its opinion. Charges cannot be brought in the case of films that have previously been approved by the Board. It is also a criminal offence to sell or hire out video films containing realistic depictions of violence to persons under the age of 15.

Over the years, the debate has also led to the following rules:

- Voluntary advance examination of video films intended for sale or hire to the public. This option is used as a precaution, since charges can be brought against films that have not been examined. Advance examination is only compulsory in the case of video films shown at public entertainments.

¹²⁵ See Article 16.2 of the Decree 81/1997.

- ❑ Compulsory registration by the National Board of Film Classification of distributors of video films for private use.
- ❑ A copy of every film (i.e. every film of which at least 10 copies are distributed) must be sent to the National Archive of Recorded Sound and Moving Images.
- ❑ A regional supervisory organisation that reports to the National Board of Film Classification monitors compliance with these rules and ensures that unlawful representations of violence disappear from the market.

The rating system which has come to be applied to videos which are sold or hired to the public in Sweden can in practice be divided into four parts or forms:

- ❑ The age category which a film is assigned when it is examined in advance by the National Board of Film Classification is the same as when it is offered as a hire or purchase video. This is **voluntary** with the exception of films containing realistic depictions of violence for hire or sale to children under 15.
- ❑ The distributor **voluntarily** submits the video film for examination by the National Board of Film Classification in order to avoid any future legal proceedings.
- ❑ The video distributor assigns his own an age category. This is **voluntary** with the exception of films containing depictions of realistic violence that are for hire or sale to children under 15.
- ❑ A video film may be distributed to persons 15 years of age or older if it has not been deemed to violate the above-mentioned law (Penal Code, chapter 16, section 10). Since this is compulsory, some films are banned from distribution.

Age limits for the classification are the same as the ones used for cinema. In addition, sometimes the distributor also uses the over 18 age limit. As long as the age categories are taken from the National Board of Film Classification, the rating is evaluative and semi-deterministic. In some cases, when the distributor himself assigns the categories, there may be non-deterministic limits.

2.15 United Kingdom

All video works sold in the UK (unless specifically exempted) have to carry a rating issued by the British Board of Film Classification.

The BBFC uses the same age-based classification system as for film but the video industry has asked for an additional category, to be used for works to be stocked on the children's shelves of video shops: 'Uc' – Universal - Particularly suitable for young children. It is a criminal offence to supply an age-restricted video to someone below the relevant age.

Unlike for films, the BBFC ratings for videotapes are legally binding, but distributors may appeal against decisions to the Video Appeals Committee, an independent body set up as a requirement of the Act.

The Video Standards Council (**VSC**) advises its members on how to comply with the BBFC classifications. It was established in 1989 as a non-profit making body to develop and administer a Code of Practice designed to promote high standards within the video industry. In 1993 its brief was expanded to promote high standards within the computer games industry. VSC membership represents all segments of the video and games industries and on the retail side has over 8000 registered retail outlets across the country. VSC supplies its retail members with a whole variety of in-store display items designed to remind staff and customers about the law relating to video and games. It also provides staff training guidelines, which include a staff training video for use by video and games retailers.

3 TV rating systems

3.1 Austria

Broadcasting activities are subject to a federal law, and to its restrictions. At present, there are two possible bases for television broadcasting activities:

- The *Bundesgesetz über die Aufgaben und die Einrichtung des Österreichischen Rundfunks*, commonly referred to as *Rundfunkgesetz* (Broadcasting Act), provides the legal basis for the Austrian public broadcaster, *Österreichischer Rundfunk (ORF)*. It dates from 10 July, 1974, and has recently been amended¹²⁶ to conform with the new Television Without Frontiers Directive. The Broadcasting Act covers terrestrial, cable and satellite broadcasting.
- The 1997 *Bundesgesetz mit den Bestimmungen über den Kabel- und Satellitenrundfunk*, commonly referred to as *Kabel- und Satelliten-Rundfunkgesetz* (Cable and Satellite Broadcasting Act), serves as the legal basis for private cable and satellite broadcasting activities; a basis for private terrestrial television broadcasting, however, is still missing. A controversial amendment aimed at integrating this type of broadcasting activity and changing the name of the Act to *Privat-Rundfunkgesetz* (Private Broadcasting Act) could not be passed with the aforementioned amendment to the Broadcasting Act but is still under discussion in Parliament. The warning obligation laid down in Article 22 paragraph 3 of the Television Without Frontiers Directive as amended can be found in Section 16 paragraph 3 of this Bill.

Up to now, no legislative distinction between analogue and digital television broadcasting has been drawn. However, as it is likely that there will only be one licence for private country-wide television broadcasting, some interested parties advocate delaying the introduction of private terrestrial television broadcasting until digital television has superseded analogue television.

¹²⁶ Federal Act to Amend the Broadcasting Act and the 1993 Amendment to the Broadcasting Act (*Bundesgesetz, mit dem das Rundfunkgesetz und die Rundfunkgesetz-Novelle 1993 geändert werden*), Federal Law Gazette 1999 I 1.

The ORF was the first German-language broadcaster (voluntarily) to adopt principles and guidelines regarding violence on TV (*Richtlinien zum Thema Gewalt im Fernsehen*). These guidelines date from April 1993 and have remained in force and unchanged ever since. Apart from other measures to protect minors and human dignity, the ORF has introduced a watershed¹²⁷ of 8.15pm, before which all programmes must be appropriate to the whole family. As a rule, films which have been rated "16 and over" by the *Österreichische Jugendfilmkommission* (Austrian Commission for Film and Youth) are not broadcast earlier than about 10pm. If an exception is made at all, then substantial editing takes place. The ORF also takes the recommendations of the *Österreichische Jugendfilmkommission* and other renowned institutions (e. g. German *Freiwillige Selbstkontrolle Fernsehen* [FSF]) into account and cuts films according to what these institutions put on the Index.

Since 1 January 1999, when the latest Amendment to the Broadcasting Act entered into force, the ORF has also applied a rating system consisting of three parts, which is partly inspired by the new Television Without Frontiers Directive. At present, no such activities can be observed on the part of the private Austrian (cable or satellite) television broadcasters.

The Austrian legislator decided to take up nearly *in extenso* the provision issued from the Directive and the ORF opted for the permanent visual symbols. The three signs used by the ORF are **evaluative**, they do not carry information on the contents. Although the ORF's watershed is based upon the recommendations given by the *Österreichische Jugendfilmkommission*, there is no objective methodology regarding application of the visual symbols. The process may therefore be defined as **non-deterministic**.

The three different symbols introduced by the ORF each consist of bold black sign framed by a square.

¹²⁷ There are no legal provisions on "harbours" or "watersheds". The ORF, however, voluntarily introduced time zones in its 1993 Guidelines.

Figure 21: ORF visual symbols

Not for children	X
Only for adults	O
Recommended for children	K+

The third symbol has been introduced at the request of the body representing the (listeners and) viewers, *Hörer- und Sehervertretung*. Whereas the two restrictive symbols are shown on the screen, the recommendation is only given in the ORF Teletext, in press releases and via the Internet.

This rating system is not applied to advertisements. Standard advertising contracts give the ORF the right to refuse to broadcast an entire advertisement for (among others) reasons of protection of minors, but do not give the right to insert visual symbols.

The system is **mandatory**. The Austrian implementation of the new Television Without Frontiers Directive being in force, the ORF is obliged to rate the contents of its programmes. However, at present, the ORF is the only broadcaster obliged to provide a warning/identification. As, according to its own press releases, the ORF is in the habit of checking all films irrespective of the hour at which they are broadcast, the new regime should not cause a capacity problem.

3.2 Belgium

The adoption of visual icons is underway. Otherwise there are no definitive systems in place, as the French and German Communities are currently debating the matter. The Flemish Community appears to be distancing itself from the discussion, probably due to the fact that it fears the adoption of visual icons being circumvented by VT4, which broadcasts its programmes from outside Belgium, but is dedicated to the Flemish audience.

Belgium used to use the white square but does not seem convinced by its efficiency. It appears that “It more often offers the attraction of forbidden fruit, and there are greater numbers of viewers than usual when it is present on the

screen”¹²⁸. Nevertheless, the white square has never been officially rejected and has not completely disappeared from the screen.

This white square is part of a larger system. The broadcaster RTBF has, for example, established double control system, which is still in use. The Director of Programmes invites producers to provide a list of the programmes that may be problematic. In addition, a procedure of graduated warnings is in force:

- **implicit reservations:** the continuity announcer draws attention to any aspects of the programme that are likely to shock a significant part of the audience (violent or erotic images, rude language, particularly negative treatment of certain topics...). These warnings do not imply a value judgement on the part of RTBF;
- **explicit reservations:** the RTBF takes a position. The word “reservations” is clearly expressed (programmes with risky material, but for which broadcasting is justified by their artistic or informative nature);
- the **white square** reinforces the **explicit reservations**. It is displayed throughout the programme.

VRT uses a similar system that depends in principle on channel directors. However, channels under the jurisdiction of the Flemish Community are in favour of acoustic warnings.

Canal Plus Belgique is the only channel to adopt its own visual icons system. However, this system does not appear on the screen but only in its TV guide. It uses a colour code as follows: green (for all), yellow (when there are some reservations about the programme), red (adults only). This system is quite similar to the road code, and it is argued that it is therefore more easily comprehensible to viewers

The newly adopted French visual icons system has led the Belgian political authorities to aim towards a system that will not create too much confusion for viewers. Nonetheless, the Advisory Committee of the CSA argues that the French

¹²⁸ “La violence à la télévision” Study conducted by the French Community of Belgium, p 64.

system is not totally adaptable to Belgium due to different regulations, namely those regarding admission to cinemas¹²⁹. However, “the adoption of some of the icons used by the French broadcasters and widely distributed in Belgium would facilitate message comprehension for the viewer”¹³⁰.

A visual icons system is in the process of being adopted. However, a full range of initiatives has preceded it. To win the support of all the interested parties (public authorities, broadcasters, representative associations, educationalists and parents) is one of the priorities. To this end, broadcasters from the French Community (RTBF, RTL, TVI, Canal Plus Belgique) are represented on the Advisory Committee. The system to be adopted will have the approval of all parties involved in advance.

The French Community Parliament is supposed to adopt a decree that incorporates into domestic law the new “Television without Frontiers” Directive. The Advisory Committee has just announced its position¹³¹. However, this proposal will be modified due to the new French system.

The duration of the icon on the screen will depend on the category in which the programme is classified. For the programmes rated orange triangle but broadcast prior to 22.00 the icon must be present throughout the programme. This is also the case for all programmes rated in the “red square” category, whatever time of day they are broadcast. The programmes rated “orange triangle” but broadcast after 22.00 need only display the icon at the beginning of the broadcast and after each break. This rating system may be adopted in principle, subject to a new debate to take the French changes into account. With broadcasters having been involved in its development, application of the ratings system should be respected all the more since it is their responsibility to classify the programmes.




¹²⁹ In Belgium a single category exists (prohibited to under 16’s).

¹³⁰ *Les cahiers du CSA n° 2*. Meetings between the CSA of the French Community, and the French CSA have been organised to discuss this.

¹³¹ Opinion n° 4/98 of 10 June 1998 is published in *Les cahiers du CSA n° 2*.

Fictional programmes broadcast by public or private broadcasters, as well as encrypted programmes, may be rated according to these 4 categories:

Figure 22: French Community's suggested Television Rating System

Categories	Public	Duration
No icons	All audiences	
Orange Triangle 	Parental guidance Fictional programmes, which due to number of scenes or to their overall character are likely to harm sensitivity of minors under 12.	<i>For programmes prior to 22.00</i> For the duration of the broadcast (including credits) for unencrypted channels and for one minute at the beginning of the broadcast for encrypted channels (including credits) During trailers (at minimum when announcing title of film and its broadcasting time. These trailers must not contain images likely to harm sensitivity of youth audience). <i>For programmes after 22.00</i> For 1 minute at the beginning of broadcast (including credits). For 15 seconds after each break During trailers (as above)
Red square 	Prohibited to minors under 16 Works of an erotic nature or depicting intense violence	<i>For programmes prior to and after 22.00</i> Throughout the broadcast (including credits) During trailers (at minimum when announcing title of film and its broadcasting time. Trailers must not contain images likely to harm sensitivity of youth audience).
Full red square 	Prohibited on channels other than encrypted Works of pornographic nature and/or containing gratuitous violence	<i>For programmes prior to and after 22.00 and only on encrypted channels</i> Throughout the broadcast (including credits) During trailers (minimum when announcing title of film and its broadcasting time. Trailers must not contain images likely to harm sensitivity of youth audience).

According to the CSA, the visual icons system is the responsibility of the broadcasters. Nevertheless, the regulatory body has made the following recommendations to the Government:

- It is the responsibility of the broadcasters to consider the impact that their programmes may have on the physical, mental and moral growth of minors.
- Visual icons must be accompanied by media and multimedia literacy. It is essential to develop real education skills among viewers and educators to work towards a critical understanding of images.
- Co-ordination between broadcasters in the French Community, the CSA and the Inter-Community Commission for Film Control is desirable.
- Visual icons should cover all kinds of fictional programmes in the broadest sense of the term. But they should not apply to news, which is covered by internal codes of ethics and the conventional provisions of the different channels.

Parallel with the adoption of these icons, broadcasters from the French Community have undertaken to set up an internal commission for the classification of films.

Alternative methods, as expressed in Article 22.3 of the TWF Directive, will be applied in Belgium, the Flemish Community having opted for the acoustic warning, and the French Community for the visual symbol. It is difficult to tell at present whether the Flemish Community will follow the French Community in adopting a visual icons system, but debates preceding the adoption of the Decree of 28 April 1998 show a lack of enthusiasm regarding icons. Nonetheless, it must be acknowledged that the Flemish position will depend to a large extent on the European environment. If legal mechanisms warrant a common rating system for all the Flemish speaking channels (the VT4 case), then nothing should prevent such icons (this is what the French Community is attempting to establish for French speaking channels). The Flemish position is not one of categorical opposition, but a reflection on the effectiveness of the system in the European context.

3.3 Denmark

Television in Denmark has a long tradition of public service broadcasting, originating with the beginning of radio broadcasting in the 1920s. Danmarks Radio (**DR**), at the time called *Statsradiofonien*, was created in 1925, around the time of the passing of the first Broadcast Act. One of the fundamental criteria in programme production and selection is that programmes should be generally of an enlightening and cultural nature.

The principle of enlightenment - historically conceived as a high-brow cultural discourse - has been challenged by the deregulation of broadcasting in Denmark. In cultural terms, a broad Danish consensus exists vis-à-vis prohibitive measures, where the general opinion is that prohibitions attract attention, radical actions and feelings, and, in some cases, may lead to criminal behaviour. “Forbidden fruit” is often considered attractive and tempting, so antipathy towards prohibition and detailed regulation is widespread.

Regulations regarding television (and radio) content are contained in the Broadcasting Act of 19 February 1998. A preparatory political agreement anticipates the development of digital terrestrial television and will be renegotiated in the year 2000. The Act gives the two national public service broadcasters, Danmarks Radio and TV2 increased economic liberty. On the other hand, their public service obligations have been extended and are to be accounted for in their annual reporting, as proof of fulfilment of their duties.

With explicit reference to the question of harmful content to children, chapter 2, § 3 in the Act stipulates as follows: “The possessor of a broadcasting licence must ensure that no programmes are transmitted that could damage to any serious degree the physical, mental or moral development of minors, exercising particular control over programmes that include pornography or unjustified violence. This also counts for programmes that can damage the physical, mental or moral development of minors, unless it is ensured – by choice of programming hours or by installing of technical devices - that minors will not watch or listen to the programmes.”

With regard to children, all pornographic films are automatically rated at 16 years and above by the Programme Departments of the broadcasters. However, the Broadcasting Act contains no explicit regulations concerning the question of violence, nor any paragraphs explicitly referring to control of programme content.

An informal watershed of 21.00 is used by *Danmarks Radio*, and there is also a standard provision for all broadcasters that programmes considered harmful to minors may only be shown after midnight. The guidelines used by *Danmarks Radio* are inspired by the *European Broadcasting Union (EBU)*. The normal procedure is acoustic warnings before films or TV series that may be harmful to children. Also, trailers for violent films are no longer shown during children’s programmes – as sometimes happened in the past – but mostly during programmes aimed at an adult audience.

No explicit control mechanisms regulate the programme scheduling policies of the

public service institutions. They themselves decide on suitability and/or possible harmfulness of programmes, on a self-regulatory basis.

However, the Minister of Culture, Elsebeth Gerner Nielsen, has recently instructed the broadcasting companies to operate a clearer line of information and orientation in order to prevent children from being exposed to harmful content on television. As a consequence of the Minister's communiqué, Danmarks Radio has clarified the following to their Departments: in both fiction and news programmes that contain harmful content and that are broadcast in prime time, the speakers or programme hosts must warn the viewer about the harmful content. The initiative from the Minister is not a legal initiative, but a policy guideline. Thus, it falls within what one might call the formulation of an ethical code of conduct. Subsequently, Danmarks Radio has defined how to implement it for itself. Danmarks Radio's code of conduct will be included into their new/revised rules and regulations, which are to be adopted in February 1999.

3.4 Finland

The Finnish Broadcasting Company, *Yleisradio* (**YLE**) is the national public service broadcaster that offers the Finnish audience two nation-wide TV channels. YLE's primary sources of financing are the television licence fees and the operating licence fees. It is state-owned and supervised by an administrative council elected by Parliament. It does not require an operating licence since its operations are based on the Act on *Yleisradio Oy*. YLE owns the nation's broadcasting networks, transmitters, and links.

Since 1993, YLE has offered two channels, TV1 and TV2, whose programming carries no advertising. Two other nation-wide television channels, MTV3 (*MTV Media Oy*) and *Nelonen* (Channel Four Finland) are commercial. They pay the operating licence fees, which are typically allocated to YLE. Cable television operators no longer require an operating licence, but must register with the Telecommunications Administration Centre.

Traditionally, no rating systems have been applied on Finnish TV. The Administrative Board of the YLE accepted the following five programme policy

rules in March 1987 (at this time the YLE operated on two channels and sold broadcasting time to a commercial company, MTV, which provided the programming for channel three):

1. YLE and MTV will be cautious in the selection of programmes likely to convey violent behaviour models and calculated violence. Also single serial films should be previewed and banned, if necessary. Continuous discussion should take place over the definition of the limits of programme practices.
2. YLE and MTV should release more programme information to newspapers. Product information concerning TV programmes should also be further developed. TV companies ought to answer questions appertaining to TV violence in their programmes on the basis of present research findings. Parents should be informed of the effects of TV violence. Research funds of the YLE will be directed to studies on TV violence.
3. The YLE and MTV are committed to observing the 9pm watershed and broadcasting programmes unsuitable for children at later hours. Companies have to inform their audiences about the watershed policy effectively.
4. Positive attitudes to life and human dignity should be preferred in programme selections, as well as programmes promoting non-violent behaviour. Programmes conveying a respect for life and non-violent attitudes should be preferred in the selection of programmes for a young audience in particular.
5. The commercial channel, MTV, should also apply the principles of programme policy mentioned above.

Broadcasters have applied the 9pm watershed. In addition, auditory announcements have been used in some cases to warn when a forthcoming programme contains shocking or violent material that could cause distress to some viewers.

On 22 September 1998, the Finnish Parliament approved government proposals for the following: an Act on Television and Radio Operations; an Act on the State Television and Radio Fund; an Act on the Amendment of the Act on *Yleisradio Oy*; and the proposal for certain technical amendments to the Act on Telecommunications Administration and the Copyright Act. This legislation

replaces the Radio Equipment Act of 1927 and the Cable Transmission Act of 1987, and incorporates the European Union's television directive into Finnish legislation. The Act, which emphasises freedom of expression and diversification in programme output, came into force on 1 January 1999.

In line with Article 22.2 of the Television Without Frontiers directive, the section concerning programmes harmful to the development of children (§ 19) obliges a broadcaster to broadcast programmes with sexual or violent content that may be harmful to children's development at a time when children generally do not watch TV. If programmes unsuitable for children are broadcast, an announcement must be made prior to transmission relating to this, or it must be indicated by means of a symbol throughout the transmission of the programme.

Section 25 deals with the protection of children under 18 from television or radio advertisements. According to this section, advertisements should not cause moral or physical harm to children. The Telecommunications Administrative Centre (TV programmes) and the Consumer Ombudsman (advertisements) are to supervise compliance with the act with respect to the protection of minors.

In compliance with the new Act on Television, all national TV companies, i.e., YLE, MTV3, and the *Ruutunelonen* (Channel Four Finland) have agreed on joint national frameworks for the self-regulation of television programmes unsuitable for children. From 1 January 1999 programmes will be divided into two categories, (1) those permitted for children under 16 years, and (2) those unsuitable for children under 16. Each company is responsible for the coding of its own programmes. Ratings will be made by certain boards or by people responsible for programme selection or editing.

As set out in Article 22.2 of the Television without frontiers directive, companies have committed themselves to applying the 9pm watershed in programme distribution. In line with Article 22.3, acoustic announcements indicating that the programmes are unsuitable for children, will be made prior to their showing. In addition, TV companies must provide newspapers and teletext services with regular programme information, with special symbols indicating the programmes

unsuitable for children. Television companies have agreed to pay attention to the content and distribution times of the trailers of programmes that may have possible harmful effects on children. YLE, MTV3, and Channel Four Finland have committed themselves to using similar programme symbols and codes.

By having a standard of harmfulness and by providing a single rating indicator based upon age, the rating system of TV programmes in Finland is **evaluative**. It is a **non-deterministic** rating process, because the ratings are based upon opinions or judgement. The rating system is also **mandatory**, since it is regulated by law.

The ratings are made by the programme producers. Company programme policy personnel and programme purchase personnel will be responsible for the coding. This system can be expected to accommodate only the fictional programming of each company and will not be applied to advertisements¹³².

3.5 France

There is no specific law for television broadcasting regarding the protection of minors. Specific regulations are contained in the “Youth” directives of the *Conseil Supérieur de L’Audiovisuel (CSA)* dated 5 May 1989. The law of 30 September 1986 on freedom of communication states simply in Article 15 that the CSA oversees protection of childhood and adolescence in programmes broadcast by audiovisual services.

The first television rating system was implemented in November 1996 by broadcasters on the initiative of the CSA after several months’ dialogue between public authorities, industry, family and viewers associations.

Figure 23: Implementation of Television Rating System




October 95	Opening of dialogue with broadcasters on the means to reduce violence on TV
July 96	Undertaking by broadcasters near the CSA to implement a three-point

¹³² Regulations concerning the protection of children are included in the new law on television (744/1998, section 25): Television and radio advertisements may not cause moral or physical harm to children. It is forbidden e.g., to show children in dangerous situations in TV and radio ads.

	system of protection of minors: <input type="checkbox"/> Programme classification <input type="checkbox"/> Time scheduling for the more violent programmes <input type="checkbox"/> Display of visual icons corresponding to the classification
October 96	Implementation of a common visual icons system between TF1, France 2/3 and M6, with Canal + keeping its own icons.
November 96	Introduction of system

The adopted rules were inserted in channels' licences. Once implemented it is up to the broadcasters to apply the system and the responsibility of the CSA to monitor application. To this end the CSA created an *Observatoire de la signalétique*, in charge of monitoring all rated programmes to assess the appropriateness of the rating applied, as well as the time scheduled for broadcasting. Some differences between the CSA and the broadcasters regarding the appropriate ratings have generated regular meetings between these two parties. When the CSA considers a rating to be particularly unsuitable it examines the programme in plenary session and addresses written opinions to the broadcasters concerned.

Figure 24: The 1996 Rating System

Category I All viewers	No restrictions
Category II Works containing scenes likely to harm young viewers <i>Parental Guidance desirable</i> Symbol: 	Broadcasting time is at the discretion of the broadcaster, but this work may not be broadcast during children's programmes. Particular attention to be paid to trailers for these works, when broadcast near children's programmes.
Category III Cinema works prohibited to under 12's, as well as TV works likely to disturb young viewers, notably when programme contains systematic or repeated psychological or physical violence <i>Parental Guidance essential, prohibited to under 12's</i> Symbol: 	To be broadcast after 22.00. Exceptionally, broadcast of such work may be possible before 22.00, if icon is displayed throughout. Such exceptions are not permissible on Tuesdays, Fridays, and days preceding non-working days. In addition these works may not be broadcast near children programmes.
Category IV Cinema works prohibited to under 16's, as well as TV works of erotic nature or containing intense violence, likely to impair physical, mental or moral growth of under 16's <i>Adult audience, prohibited to under 16's</i> Symbol: 	To be broadcast after 22.30. Trailers for these works must not contain scenes likely to harm youth audience sensitivity, and may not be broadcast before 20.30.

Category V Pornographic or extremely violent work, likely to seriously impair physical, mental or moral growth of minors	Complete prohibition
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Each broadcaster created a viewing committee to process and issue the rating.

Figure 25: The Rating Process¹³³

France 2	Internal commission composed of channel's staff - session every week. Experts appointed by the broadcaster make notes on the programmes to be broadcast. The internal commission examines the notes to establish classification. The different criteria, on the basis of which the notes are made, were established according to a study conducted by a specialist institution, mandated by the CSA to understand how violent images are perceived and what their impact on children might be (qualitative investigations that were made in schools generally by the teacher). If there are any difficulties the Commission refers to other members of the channel. Regarding the danger of subjective assessment France 2 said it has tried to identify objective criteria based on extremely rigorous principles already in existence (conditions and circumstances of depiction of violence, identification with heroes, "reading keys" of violence).
France 3	Internal commission composed of 6 members (consider that freedom and responsibility of the broadcaster is in any case subject to delegation) The broadcasting time is not a variable that is taken into consideration for the rating; meaning that the same criteria are applied whatever the envisaged time schedule. Commission tries to take into account evolution of mentalities.
TF1	Internal commission composed of one representative per programming unit (approx. 10 members). The members are in charge of rating their own programmes. This is checked by 2 people, one of whom is the programming Director, who give a favourable or unfavourable opinion (in most cases the opinion is favourable). If there is debate, arbitration is made at the level of the General Direction or the President.
M6 ¹³⁴	2 committees - selection committee: external committee composed of mothers and young people (representative of the M6 audience) who watch every programme prior to taking the decision whether to buy it. This committee gives a qualitative assessment as well as an initial classification of the programme in category 1, 2, 3 or 4. The decision to buy the programme is made according to its quality and to the icon that will apply. - screening committee: external committee composed solely of mothers (with children under 12 who watch a lot of TV) who watch the programmes a second time 4 to 5 weeks prior to broadcast (films, whether or not prohibited to under 12's, TV films, documentaries or magazines which could cause problems, as well as series that are broadcast in the first, second or third part of the evening). This committee confirms or modifies the first assessment regarding the icon to be displayed. The committees do not make the decision, but make proposals and provide arguments. The final decision is made by the Programming Director, or, if there is dispute, the Assistant General Director in Charge of Programmes, the General Director or the President.
Canal +	Follow the rating of the Film Classification Board when a film is broadcast. Occasionally Canal + rates a film more strictly. There is no screening commission as such. The person responsible for programming watches the programmes and may receive opinions from the various programming units. If a debate occurs, there is no arbitration as the stricter opinion prevails. For films prohibited to under 12's there is no restrictive regulation applying to Canal+ ¹³⁵ . But the decision has been taken not to broadcast them during times where parental control may not be exercised.

¹³³ For further information, see "*Médias et protection de l'enfance*", CSA, décembre 1997.

¹³⁴ First free-to-air to adopt a signalling system in 1989.

¹³⁵ Canal+ is broadcast in an encrypted form.

ARTE	<p>Arte is part of the Groupement Européen d'Interêt Economique (GEIE), the European Grouping of Economic Interests, that consists of a French company, La Sept and all the German public broadcasters (ZDF + ARD stations). It is not specifically the broadcasters that rate the programmes but the content providers (who are mostly broadcasters themselves in their own country, except La Sept). So each broadcaster providing a programme to Arte must</p> <ol style="list-style-type: none"> 1) verify if the programme is adapted to a youth audience 2) indicate to ARTE GEIE the ideal broadcasting time. <p>Nonetheless there is a commission, the <i>Conférence des programmes</i>, which deals with contentious issues and other programmes of ARTE. A member of this commission is responsible for the protection of minors, and is completely independent. They must be consulted if any doubts are raised regarding a programme.</p> <p>The most important difference from other channels comes from the (international) Treaty creating Arte, which states clearly that Arte is not subject to any Government or administrative authority. This is why Arte does not apply the visual icons system.</p>
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A new visual icon regime was adopted in 1998 and implemented by terrestrial broadcasters from September that year. It makes a clear distinction between unencrypted and encrypted channels.

Figure 26: The 1998 Rating System






Categories	Unencrypted programmes	Encrypted channels
Category I All viewers 	no restrictions	no restrictions
Category II Works containing scenes likely to harm young viewers. <i>Parental Guidance desirable</i> 	Broadcasting time is left to the discretion of the broadcaster, but this work may not be broadcast during children's programmes. Particular attention to be paid to trailers for these works when broadcast near children's programmes.	Broadcasting time is left to the discretion of the broadcaster, but particular attention must be paid to the fact that programmes dedicated to a youth audience, as well as programmes and trailers broadcast immediately after the said programmes do not contain scenes likely to harm young viewers.
Category III Cinema works prohibited to under 12's, as well as TV works likely to disturb young viewers, notably when programme contains systematic or repeated psychological or physical violence <i>Parental Guidance essential, prohibited to under 12's</i> 	To be broadcast after 22.00. Exceptionally, broadcast of such work may be possible before 22.00, if icon is displayed throughout. Such exceptions are not permissible on Tuesdays, Fridays, and days preceding non-working days. In addition these works may not be broadcast near children programmes.	Broadcasting time is left to the discretion of the broadcaster, however, particular attention must be paid to the fact that programmes dedicated to youth audiences, as well as programmes and trailers broadcast immediately after the said programmes do not contain scenes likely to harm young viewers
Category IV Cinema works prohibited to under 16's, as well as TV works of erotic nature or depicting intense violence, likely to impair physical, mental or moral growth of under 16's <i>Adult audience, prohibited to under 16's</i> 	To be broadcast after 22.30. Trailers for these works must not contain scenes likely to harm youth audience sensitivity, and may not be broadcast before 20.30.	May not be broadcast on the Wednesday before 20.30, on Saturday or Sunday morning. Trailers for works containing violent scenes or scenes likely to harm sensitivity of youth audience may not be broadcast during the unencrypted part of the programme schedules as well as on Wednesday before 20.30, on Saturday morning or Sunday morning.
Category V Pornographic or extremely violent work, likely to seriously impair physical, mental or moral growth of minors 	Complete prohibition	May not be broadcast during the unencrypted part of the programme schedules. May not be broadcast either between 5.00 and 24.00

Figure 27: Modalities for the display of the visual icon for unencrypted

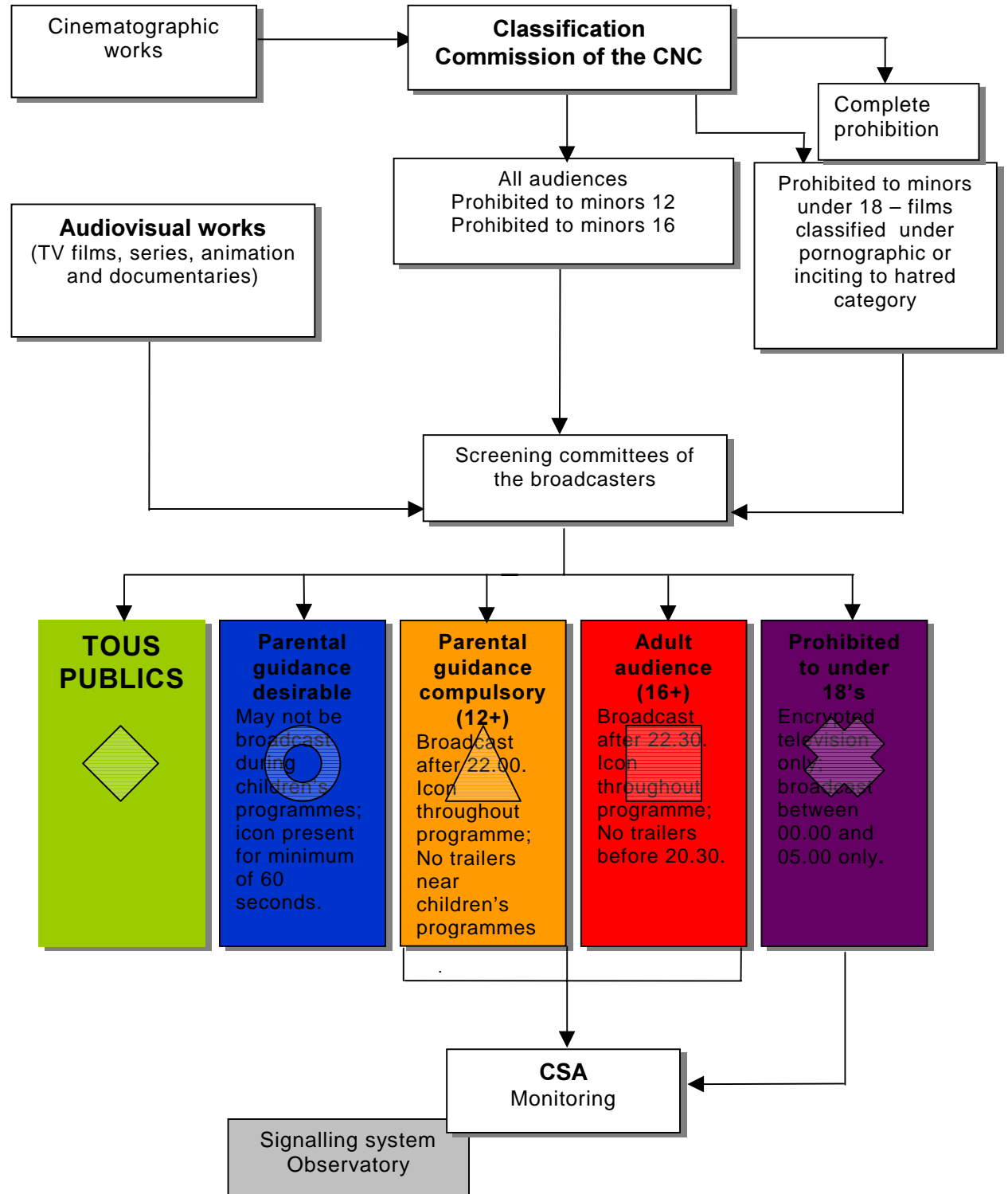
channels

Trailers
Visual icon through all the duration of the trailer
Programmes
<p>Category II - Visual icon for a minimum of 60 seconds at the beginning of the programme or during the credits and at least 10 seconds after each break. The warning «parental guidance desirable» must be displayed for at least 10 seconds at the beginning of the programme or during credits.</p> <p>Category III - Visual icon throughout the programme. The warning «parental guidance essential», or where relevant, mention of the prohibition for under 12's¹³⁶, must appear for at least 10 seconds at the beginning of the programme or during the credits.</p> <p>Category IV - Visual icon throughout programme. The warning «adult audience», or in where relevant, mention of the prohibition for under 16's must appear for at least 10 seconds at the beginning of the programme or during the credits.</p>

¹³⁶ Decree of 22 February 1990, article 5, alinéa 2 states that in the case of a cinematographic work being broadcast by an audiovisual service, the audience must be informed of the certificate released by the film classification board, both during the broadcast and the trailers as well as in the TV guides.

Figure 28: Signalling System

applicable to all broadcasters – but only used at the moment by terrestrial broadcasters



3.6 Germany

The German system for television rating is composed of a combination of:

- **cinema ratings** (FSK) based on age limits, observing watershed set by the legislation,
- **voluntary ratings** by a self-regulatory organisation, *Freiwillige Selbstkontrolle Fernsehen* (FSF) for private broadcasters (using the watershed) and controlled by the regional regulatory authorities; and
- a system of self-regulation for public service broadcasters also using the watershed.

There is consequently no unified approach. The system is also characterised by the importance of self-regulatory mechanisms. With the exception of the system used for cinema films, there is no ‘individual rating system’ as used in the US or in France. Researchers as well as broadcasters and regulators are not very keen on the idea of introducing visual or acoustic warnings. They fear the effect of the so-called ‘forbidden fruit’ towards minors, i.e. that the minors would be made aware that they should not watch the programme and thus be enticed to watch this particular broadcast.

The FSF makes a judgement about content using legal standards of harmfulness. It recommends an appropriate broadcasting time depending on the age for which the programme is suitable and the likelihood of parents being present to watch with their children. The system is based on the opinions of the rating body (the examining board). However, the opinions of the rating body are based on certain principles for examination of broadcasts (*Prüfgrundsätze der FSF*), which have been developed by another organ of the FSF, the Committee (*Kuratorium*). These principles (especially §19 to §23) give guidance for scheduling broadcasting times. The principles also encompass a series of criteria aimed at helping the assessment of programmes (**semi-deterministic**). For example, children must not be made emotionally insecure, be frightened, or be disturbed because of a drastic depiction of violence or the blurring of reality and fiction. Broadcasts must not lead to social or ethical disorientation of children, e.g. through the identification with violent characters or through the portrayal of strategies based on violence to

resolve conflicts. These principles are mainly formulated for fictional programmes, which constitute the majority of the examined material.

The system is **voluntary**. Private broadcasters who are members of the FSF submit programmes if they have not been rated (by the FSK) or if they have any doubts regarding the validity of the rating.

Following a strong public debate about the increase in sex and violence on the screen, German private television channels decided to set up the FSF in November 1993 following the model of the FSK for cinema. Their aim was to create a structure to render the necessity for stricter legal provisions useless and to stop or reduce the public discussion regarding the level of violence within their programmes. Several private broadcasters manage this organisation, established in April 1994¹³⁷. Its aim is to limit the portrayal of violence and sex on television to protect the moral, spiritual and mental development of children and young persons over and beyond the limits set down by law. This is expressed by Article 19 section 1 of its regulations for examination: “the objective of the examination is to prevent the impairment or endangerment of minors, particularly ethical disorientation by means of television”. Public service broadcasters have refused to participate in the FSF thus far. They claim that the examination of programmes by an external organ would be a threat to their programme autonomy (French broadcasters claim the same). They are critical of the work of the FSF¹³⁸.

Private broadcasters submit all programmes that raise questions regarding the protection of minors to the FSF. Broadcasters submit broadcasts mostly in two cases:

- films that are on the “index” as, in order to broadcast them between 11pm and 6am, broadcasters need to put their justification in writing and to communicate it upon request to the regulatory authority. In this case, they also communicate the FSF findings to the regulatory body.

¹³⁷ such as (among others) Kabel 1, DSF, n-TV, Premiere, Pro Sieben, RTL, RTL 2, Sat1 and VOX.

¹³⁸ Inge Mohr, *Jugendschutz im Fernsehen*, Media Perspektiven 1/98.

- request for exception to the watershed. In this case, the regulatory authority will decide on the exception, but the FSF findings are communicated to the competent authority by the broadcasters as the basis of the request for exception.

The decision whether a programme shall be submitted or not is made by the Commissioners for the Protection of Young Persons, representing the private broadcasters. The commissioners have to send an application to the FSF stating the time the broadcaster intends to show the film. The examiners have then to decide whether the request may be accepted. They can also recommend a later time for transmission or suggest cuts to be made or advise the channel not to broadcast the programme at all. Their decision requires unanimity and they have to lay down their reasons in a report. The reports are then sent to the channels and, on request, to the Committee and the *Landesmedienanstalten*. The decision can be appealed against to an Appeal Committee (*Berfungsausschuß*) that is composed of seven particularly experienced examiners. The Appeal Committee decides by simple majority. The Committee or the regulatory bodies can call upon the Appeal Committee if a decision is to be revised. In special cases, the FSF committee can be directly called upon to revise the Appeal Committee's decision. Examinations take place almost every day. An examining board decides on about approximately 3 films per day.

In the case of a broadcaster's request for an exception to the watershed, FSF recommendations are communicated to the competent regulatory authority, which can refuse them. However, the authorities have to take them into account in their decision as stipulated by the Agreement on Broadcasting.

In addition, members of the FSF Committee and the regional regulatory bodies are entitled to submit programmes. The FSF has also to pass on complaints from the public to the Committee. In addition, the FSF also monitors programmes every 3 months to check whether any films or series should have been submitted to them.

The recommendations of the FSF are not binding. Nonetheless, the FSF has two sanctions at its disposal in the case of non-application of their decision. The first

one is the ability to oblige the broadcaster to broadcast their findings. This is considered as a most efficient threat, as private broadcasters fear bad publicity. However, it never happens in practice. The other sanction is exclusion from the FSF. This sanction is not really practicable, especially when it concerns an important broadcaster paying a considerable membership fee to the FSF. As to the enforcement of FSF decisions, there is no specific institutional structure to check whether they are followed or not by broadcasters. However, in practice, the FSF operates an internal control of the application of their decisions by broadcasters.

The FSF is composed of 3 organs:

- *Vorstand* (Executive board) Members of the executive board are representatives of private television channels. They are responsible for the rules and finances of the FSF but do not have any influence on the examinations.
- *Prüfungsausschuß* (Examining boards) assess programmes on a voluntary basis prior to their transmission in order to establish whether they are potentially harmful to minors. More precisely, an examining committee composed of 3 persons examines broadcasts. At the moment, there are about 70 examiners who work in various areas of media education. They do not work full time for the FSF. About half of the examiners also belong to the committees of the FSK and the BPjS.¹³⁹
- *Kuratorium* (Committee) is composed of: media scientists; media critics; people working in the field of protection of minors; the standing representative of the Supreme Federal Youth Authorities at the FSK; the chairperson of the national examination board for publications potentially harmful to minors (BPjS); 11 neutral persons and 4 representatives from the television channels. The regional regulatory authorities have chosen not to be represented within the Committee even if they were able. The tasks of the Committee are wide-ranging. The Committee has developed the FSF examination regulations, which regulate almost all the examination procedures, as well as criteria for

¹³⁹ If either the cinema or video version of a film submitted to the FSF is on the “index”, and if it is to be decided whether the film can be broadcast after 11pm or 12pm or not at all, then a member of the BPjS has to be on the examining board.

assessing programmes. The Committee is also responsible for selecting examiners.

In 3 years (from April 94 to 31 March 1997) an average of 55 cases per month were dealt with. Since its creation in 1993 and till 1997, 1975 programmes have been examined, mainly series, TV-films and fiction. 762 requests were refused. Since members of examining boards do not work full time for the FSF, their availability to examine programmes depends on their respective employers. Consequently, flexibility is a necessary requirement when considering possible appointments for the examining boards. The FSF does not examine advertisements.

3.7 Greece

Greece has no history of ratings or warnings concerning content on television. It therefore has no more detailed or stricter rules than those of EC Law concerning content harmful to minors do.

Following viewers' complaints, some private TV channels (i.e. Sky TV and Star TV) have in recent years introduced an acoustic warning for programmes containing violent or pornographic scenes which are shown during peak times. The acoustic warning is not accompanied by a visual indication of ratings before the programme is broadcast. The acoustic warning is not the norm and has certainly not established a pattern in the Greek broadcasting scene.

In line with Article 22 of the TWF Directive, Law 2328/95 provides for programmes that could harm to a limited extent (and not seriously) the physical, mental or moral development of minors to be allowed to be shown after 21.30 (less harmful) and after 24.00 (more harmful).

3.8 Ireland

At present the two main bodies responsible for the regulation of content on TV are the RTE Authority, established in 1960, and the Independent Radio and Television Commission (**IRTC**), established in 1988. The IRTC is to be restructured and its role expanded under new legislation currently being drafted.

Although there is a range of statutory obligations, which broadcasters must respect, the ratings system (to the extent that it exists) could be said to be voluntary. Statute and codes of practice govern advertising, all of which is vetted beforehand. Advertising which would be likely to breach either statute law or provisions of the code of practice is not accepted. For example, the refusal of RTE and the IRTC to broadcast, in accordance with legislation, an advertisement for a religious event, was upheld by the Supreme Court earlier this year. Outside of television controls, advertising generally is governed by the Advertising Standards Authority of Ireland (**ASAI**), which monitors and regulates advertising in all media. Its members are the advertising agencies, and an annual levy is imposed, as are sanctions for breach of standards.

The system most used by the national public service broadcaster (the first national commercial television station only began broadcasting in September 1998) is simply not to select offensive or objectionable material in the first place. The requirements and responsibilities imposed in broadcasting legislation, along with its references to the national culture, demand that this be so.

Films and soaps, for example, are vetted well in advance. Where films or programmes contain violent or explicit sexual scenes or strong language verbal warnings are given beforehand or the strong language is bleeped out. Generally, however, the national public service broadcaster and, thus far, also the commercial sector simply choose suitable programming, conscious of the national psyche and moral and religious feelings.

The ratings system, to the extent that it exists at all, could be said to be descriptive and non-deterministic. It is simply indicated at the beginning of a programme that it contains explicit sexual scenes, sometimes harrowing scenes that some people might find upsetting, or that it contains strong language. It may be stated that it is not suitable for children but no age category is indicated.

3.9 Italy

Until 1990 the law did not provide for any content-related regulation directed at

broadcasters, and the only specific provision was Article 13 of Law 161/1962, establishing the prohibition of broadcasting films which were denied a certificate or which were certified as unsuitable for minors under the age of 18. Law 223/1990 was the first to introduce a set of rules to be implemented by all broadcasters in compliance with the EC Directive 89/552/EEC. The law, in particular, provided a system of watersheds to protect minors from harmful or unsuitable films and programmes.

Section 10 of Article 15 of the Law 223/1990 deals with general programming and reads that broadcasters must not show programmes "which harm the psychological and moral development of children, contain gratuitous violence or pornography, or induce racial, sexual, religious or national intolerance". Commentators argued that this provision is more strict than the one formulated in the EC Directive. Section 11, 12 and 13 of the same Article deals with minors and the broadcasting of motion pictures. Section 11 reads that "it is prohibited to broadcast any motion pictures, which have been denied a certificate or have been certified as unsuitable for minors under the age of 18". Section 13 states that films that have been certified by the censorship committee as unsuitable for minors under the age of 14 can be broadcast only within a strict time period (between 10.30pm and 7.00am).

Law 327/1991 implements in Italy the European Convention on Transfrontier Television. It states that the latter's provisions have to be applied to every programme broadcast or re-broadcast either by a terrestrial, cable or satellite broadcaster. Article 5 sets forth that every transmitting party has to ensure that all programmes are compatible with the Convention's provisions. In particular, Article 7 reads that all programmes must be respectful of human dignity and fundamental rights. Moreover, these programmes cannot:

- ❑ be against decency;
- ❑ have a pornographic content; and
- ❑ excite violence or promote racial hatred.

Furthermore, any programmes likely to prejudice children and adolescents' physical, psychological, and moral development cannot be broadcast when, given the time of performance, children are likely to watch them.

Finally, with Law 451/1997, the Parliament instituted the following authorities:

- A Parliamentary Commission for Minors, whose responsibility is to monitor and control the implementation of existing regulations concerning minors' protection. In particular the Parliamentary Commission is entitled to request any information, data and documents from any person or entity dealing with minors' rights or development. On the basis of the material collected, the Commission refers to the Parliament, at least once a year, the results of its activity, advising on and proposing supplementary provisions and modifications to the regulations in force, if deemed appropriate or necessary.
- The National Centre for Minors, operating within the Prime Minister's Office, whose responsibility is to prepare a plan concerning any measures necessary to protect minors' rights and development.

The Fininvest - Mediaset Group, in compliance with the Federation of Radio Television Commercial Broadcasters (**FRT**) code of conduct, introduced a labelling system (i.e. visual symbols) on its networks to guide parents in the monitoring of programmes suitable for minors. As to their level of acceptance, it is difficult to assess whether they are duly followed by viewers or not - particularly given the limited information available so far about the audience. However, their presence at the beginning of every programme is likely to offer parents additional guidance to programmes' content as well as to awaken their attention.

The Code also states that the members of FRT are committed to broadcasting programmes inspired by positive civil and human values, respecting individual dignity, guaranteeing that these programmes do not contain scenes which might be disturbing to children and avoiding television or cinema trailers and promotional sequences unsuitable for children. Members are also committed to a ban on advertising of any products whose use might be harmful or dangerous for minors, such as drugs or tobacco products, during a protected slot (from 4 p.m. to 7 p.m.) or during any programme for children. Advertisements or trailers shown in the protected slot must, in all cases be free from any scenes which might be disturbing for children and young teenagers. Members are also committed to preventing the showing of any content, which contradicts the values of respect for human dignity,




during the fifteen minutes immediately before and after programmes dedicated to younger viewers.

Observance of the Code is guaranteed by a committee, set up by the signatory broadcasters and associations, and made up of six representatives from each group. The Committee examines any reported infringements of the Code, and promotes and organises outreach programmes aimed at raising critical awareness of the television message on the part of parents, teachers and educationalists.

In addition, in January 1994, Canale Cinque implemented a colour coding system. Since 16 February 1997, Italiana Uno and Retequattro have joined in Canale Cinque's colour coding scheme, using the same classification criteria and the same graphic symbols.

The so-called "traffic light" system is represented by the following three symbols:

Figure 29: Canale Cinque Visual Icon System

Not suitable for children	 (A child is represented in the circle)
Parental Guidance Advisable	 (A child and an adult are represented in the circle)
Suitable for all	 (A child is represented in the circle)

As far as broadcasting of films is concerned, the rating granted for cinema viewing applies. Television films and fictional programmes that, given the violent or sexual content, may significantly impair minors are subject to Law 203/1995¹⁴⁰, which states that producers, distributors and broadcasters who intend to transmit them during the daytime must apply to the censorship committee in order to obtain a certificate to do so. It is worth noting that, to date, this provision has not yet entered into force, because of the delay in appointing the competent sections

that will operate within the censorship committee. These sections will have the same composition and duties as the censorship sections that review films for cinema presentation.

Law 249/1997 entrusts the Authority of Communications with powers (i) to monitor compliance with laws relating to advertising, including the enactment of specific regulations governing subject matter; (ii) to guarantee that provisions concerning minors' protection are observed¹⁴¹; (iii) to consider advice and initiatives from the new *Consiglio Nazionale degli Utenti (CNU)*, a committee operating within the Communications Authority. The latter is composed of experts appointed by associations representative of different consumer categories. According to the law, these experts have to be specifically qualified in the legal, sociological, psychological or educational field and should be distinguished in the field of promotion of rights and dignity of individuals and needs of minors. It is worth noting that this *Consiglio* is entitled not only to advise but also to propose initiatives related to broadcasting.

The Code of Conduct adopted in 1997 sets forth an **evaluative** and mainly **non-deterministic** rating system. It states that although broadcasting of fictional programmes and films has to comply with all existing laws and regulations, it must also comply with self-rating guidelines established by each broadcaster in order to evaluate whether a film or a programme is deemed suitable for minors' physical and psychological safety. According to the Code, each broadcaster must entrust a supervisory committee to operate within its networks. Each committee will guarantee the broadcaster's implementation of all existing rules and will provide the broadcaster with a set of guidelines necessary to carry out the required evaluation of films and programmes. To date, however, the signatories have not appointed their internal committees. The delay is partly due to concerns about the guidelines' content, which each broadcaster will have to adopt in order to comply with the Code's provisions.

¹⁴⁰ Law No. 203 of 30 May 1995.

¹⁴¹ In this case the Authority must consider the provisions set forth by the existing self-regulatory codes and the opinion held by the parliamentary commission entrusted to monitor broadcasting services.

In general, bills on rating systems make reference exclusively to terrestrial operators, broadcasting general programmes. The following proposals exist:

- According to the “Proposal in favour of friendship between children and TV”, a self-regulatory Committee should be instituted, the tasks of which should be the following: (i) to advise the Communications Authority with reference to the implementation of a set of guidelines concerning visual symbols to be enacted by any broadcaster; (ii) to monitor broadcasters’ activity; (iii) to apply appropriate penalties to broadcasters; and (iv) to publicly disclose the applied penalties. As far as monitoring of broadcasters is concerned, the Committee should be entitled to carry out investigation of them when: (i) they do not use visual symbols concerning the suitability of the programmes broadcast; (ii) symbols are utilised irregularly or not sufficiently; (iii) television advertisements do not comply with standards concerning their suitability for minors; (iv) programs not suitable for minors are broadcast during a prohibited time period.
- According to a Bill drafted in 1996 by Senator Salvato, a committee of Guarantors should be instituted, operating within the Office of the Prime Minister. The committee should be competent in the following matters: (i) verify that TV programs do not prejudice moral or physical development of minors, suggesting or inducing them to intolerance and discrimination based on race, sex, religion or nationality; (ii) promote studies and research; (iii) identify time period suitable for minors under the age of 16; (iv) prohibit during that time period broadcasting of unsuitable programs; (v) apply penalties to broadcasters that infringe orders.
- Bill 115/1994¹⁴² concerning programs suitable for minors, stated that prior content censorship should be applied to broadcasters in order to protect minors from images, messages and language inducing or suggesting violent conduct.

¹⁴² Bill 115 of 21 April 1994.

3.10 Luxembourg

The public authorities are in favour of a self-regulatory regime. Regulatory measures may invite broadcasters to adopt a visual icons system without mandating what this obligation may contain.

Provisions of the new “Television without Frontiers” Directive have not yet been incorporated into domestic law. Debate, at this stage, seems to favour a flexible formula, which would aim to take up the provisions of Article 22. The actual trend is to allow broadcasters to organise their own signalling system. The choice between an acoustic warning and visual icons is left to the discretion of the broadcasters. Nevertheless, the *Conseil national des programmes* (CNP), in the case of “*Die heilige Hure*”¹⁴³ has expressed its preference for the French system.

In addition, the CNP salutes “the fact that in France trailers for the works must not contain scenes likely to harm the sensitivity of the youth audience”, whereas on RTL these kind of films are “publicised throughout the day by means of advertising slots, which awaken the curiosity of a child and youth audience to whom they are not directed”.

3.11 The Netherlands

In 1983 the following was added to Article 7 of the Dutch Constitution:

"Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast."

In 1985 a proposition was made for a Media Act, which was implemented in 1987. The *Commissariaat voor de Media* (CvdM)¹⁴⁴ became the executive institution responsible for monitoring compliance with the Act by the public and commercial broadcasters of television or radio. In 1989 the European directive, “Television without Frontiers” appeared, and in 1991 the Media Act was amended. In a press

¹⁴³ Cf. point V for the Opinion of the CNP.

¹⁴⁴ <http://www.cvdM.nl>

release of 13 February 1998, the Dutch Ministry of Education, Culture and Sports announced that the European directive would be incorporated into Dutch legislation.¹⁴⁵

The CvdM's other tasks are to stimulate discussion, co-ordination and co-operation between those organisations, which the Media Act has made responsible for the programmes of national broadcasters, and business,¹⁴⁶ to provide the responsible Minister with relevant information,¹⁴⁷ as well as with an annual report¹⁴⁸.

The CvdM consists of one president and two to four other members, who are appointed and discharged by Royal Decree and by nomination of the responsible Minister. The appointment is for a period of five years and it is not possible to be reappointed. All decisions are made by a majority of votes. The Minister approves the budget and the annual financial balance.

The Media Act provides the formal regulatory framework within which the CvdM regulates the content of Dutch radio and television. The Act does not address the issue of human dignity, and there are only two articles concerning the protection of minors. The first, Article 52a, paragraph 2b, states that the broadcasting of programmes for children younger than 13 years of age may not be sponsored. The second, Article 53, applies to all licensed television broadcasters, and deals with the time of broadcasting of films (or parts of films). The article states that films that have been rated by the NFK¹⁴⁹ for an audience over 12 years of age may not be shown before 8pm and that films which have been classified "16 and over" may not be broadcast before 10pm. Furthermore, the age classification must be announced before broadcasting. A classification given by the NFK is binding.

The CvdM takes the view that, where there are unclassified parts of a film, which has been rated by the NFK, the overall rating should apply. Should a broadcaster

¹⁴⁵ <http://www.minocw.nl/pers98/9802018.htm>

¹⁴⁶ Article 9a

¹⁴⁷ Article 9b

¹⁴⁸ Article 9c

wish to show these parts at an earlier time than the classification permits, it should have these parts classified by the NFK. The CvdM's opinion is that it will actually become possible for broadcasters to have unclassified parts of films rated or old films re-classified. Though it has been suggested that Article 53 could be interpreted as permitting an unclassified violent part of a film, which has an overall classification, to be broadcast at an earlier time than allowed by the article for the whole picture, this is contrary to the intention of the legislator. Such an interpretation is also not in accordance with the NFK's understanding: that classification of a film applies to the whole film and individual scenes must be seen in the context of the film. In addition, the CvdM takes the view that the provisions of Article 53, with regard to broadcasting times, leave no leeway to make exceptions for other programmes, such as news programmes or even film review programmes showing extracts from films. The question is raised, when monitoring compliance with the article by these kinds of programmes, as to whether the object of protecting minors is more important than freedom of the press.¹⁵⁰ In fact, the article may be viewed as contradicting Article 7, paragraph 2 of the Constitution, which concerns freedom of speech, and which forbids prior inspection of radio and television programmes. There has not been a legal review of this conflict, probably because it has not yet been enforced.

Article 53 applies in the same way for films, film clips or other programme parts (for example, film quizzes, and television advertising), which are not rated by the Board and which the broadcasting organisation thinks are not appropriate for viewers younger than 12 or 16 respectively. The broadcasters themselves may decide whether the rest of their programmes are appropriate or not. Every year the Media Authority examines the broadcasting times of unclassified parts of films and other programmes and reports on them in the Annual Report.¹⁵¹

Although the broadcast organisations are not obliged to, they are requested by the CvdM to announce the age classification before broadcasting a film, whether

¹⁴⁹ Dutch Board of Film Classification (See Cinema section)

¹⁵⁰ *Commissariaat voor de Media* (1996), *Beleidslijn Televisie en Jeugd*, p. 3. Hilversum.

¹⁵¹ *Commissariaat voor de Media* (1996), *Beleidslijn Televisie en Jeugd*, p. 4. Hilversum.

classified by the NFK or the broadcast organisation itself. The public broadcasters comply with this request.

Article 53 of the Media Act is part of a section that applies to the public broadcasters, but its requirements are extended to commercial broadcasters by Article 71g, paragraph 1. Article 73, paragraph 2 states that if a pay-TV programme shows films or parts of films classified as “12 and over” or “16 and over”, the broadcaster must announce the classification before the showing.¹⁵²

In letters of 21 December 1995, the CvdM called on all Dutch broadcasting stations to comply with article 53 of the Media Act. The letters stated that the CvdM would take “appropriate measures”, should broadcasters not comply with the regulation. Article 135, paragraph 1 of the Media Law states that the CvdM can impose an administrative sanction (a fine of up to 50,000 guilders) if a broadcaster does not comply.¹⁵³

The CvdM have examined how the public and commercial broadcasters comply with their responsibilities for rating films and other programmes, as well as the decision on broadcasting times, and reported its findings. In its conclusions the Authority stated that most Dutch public broadcasters comply correctly with their responsibilities. However, they found that, as far as the Dutch commercial broadcast organisations were concerned, there is not sufficient compliance. Furthermore, the report indicated that two commercial broadcasters and a Dutch Music Channel needed serious interference with their programming policy to comply with their responsibility.¹⁵⁴

In May 1995, the Under-Secretary for Culture wrote a letter asking a representative of the public broadcasters, the *Nederlandse Omroepstichting (NOS)*, to reflect on measures to prevent harmful effects from violent programmes. The overriding opinion is that parents/guardians are responsible for the protection of their

¹⁵² *Commissariaat voor de Media* (1996), *Beleidslijn Televisie en Jengel*, p. 2. Hilversum.

¹⁵³ (1996) Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

¹⁵⁴ *Commissariaat voor de Media* (1997), *De Omroep Gekeurd*, p. 13. Hilversum.

children against television violence: however, the Under-Secretary suggested the addition of programme guides containing information on the violent content of programmes. In its response, the NOS stated that public broadcasters are well aware that violent programmes may damage children, but they took the view that the increase of violent programmes is due to the commercialisation of television. The NOS reject the proposal for information about violence in programme guides, due to the subjective nature of such information, but promise to keep the issue constantly in mind.¹⁵⁵ In the meantime according to the CvdM, the public broadcasters are prepared to publicise the film's classification in the programme guides and on teletext services.¹⁵⁶

The blueprint, "*Niet voor alle Leeftijden*"¹⁵⁷, prepared by the Ministry of Public Health, Welfare and Sports, states that the State Secretary of Education, Culture and Science is deliberating with the NOS and the Vereniging voor Satelliet, Televisie, radio programma Aanbieders (**VESTRA**), the organisation representing commercial broadcasters, on a self-regulatory system to enable the implementation of the European Directive. It is probable that *Nederlands Instituut Classificatie Audiovisuele Media* (**NICAM**), the Dutch Institute for Classification of Audiovisual Media, will be set up. The Act on Film Exhibition would then be substituted by a system of self-regulation.

As far as advertising is concerned there is no specific legal framework but a self-regulatory system provides some rules. The *Stichting Reclame Code* (**SRC**)¹⁵⁸ is an organisation representing all parties involved: broadcasters, newspaper organisations, advertising agencies, etc. It is the SRC's objective to ensure responsible advertising, and to achieve this it has drawn up an Advertising Code. This Code, together with a number of special codes for particular product types sets out the conditions to which advertising must adhere.¹⁵⁹

¹⁵⁵ (1996) Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

¹⁵⁶ *Commissariaat voor de Media* (1996), *Beleidslijn Televisie en Jeugd*, p. 5. Hilversum.

¹⁵⁷ *Notitie* (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 23. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.

¹⁵⁸ Foundation Advertising Code

¹⁵⁹ (1996). Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

If an individual is of the opinion that a certain advertisement does not comply with the code, he or she can report a complaint by writing to the SRC. If it finds that the complaint is justified, the SRC will recommend that the advertisement in question not be used again. Because all organisations involved in any way in advertising are represented in the SRC, and most of them adhere to the Code, an advertisement or campaign will effectively be banned as a result of such a recommendation.

The sections in the Code concerning the protection of human dignity and minors are¹⁶⁰:

Section 2

Advertising must be in accordance with the law, truth, good taste and decency.

Section 3

Advertising may not be contrary to the public interest, public order or good manners

Section 4

Advertising may not be gratuitously offensive, or entail a threat to mental and/or physical public health

Section 13.1

Advertising that is evidently aimed (partly or totally) at minors, should not contain elements in word, sound or image, that may harm minors in any way, or by which advantage is taken of their inexperience or naivety.

Section 13.2

Television-advertising may not cause minors moral or physical damage and must, for their protection, therefore meet the following conditions:

- a) it may not directly stimulate minors to purchase a certain product by taking advantage of their inexperience or naivety;
- b) it may not directly stimulate minors to persuade their parents or others to purchase advertised products;

¹⁶⁰ Idem.

- c) it may not take advantage of the special trust that minors have in parents, teachers or others;
- d) it may not, without good reason, show minors in dangerous situations.

3.12 Portugal

Prior to the 1974 revolution there was no need for a rating system since the sole broadcasting operator, RTP, had its own in-house censors who decided what could and could not be broadcast. The growth of more risky programming after 1974 brought about the introduction of a simple warning symbol, '0', and a verbal warning before the showing of violent, shocking or pornographic programmes. There was also an understanding that 'daring' material could be broadcast late at night with a permanent warning symbol.

RTP had sole responsibility for the use of these warnings and the watershed. Even the official cinema classification did not enforce a warning, but operated as a guideline. However, as RTP remained under the close scrutiny of the government there was no need for detailed external rules or legislation regarding content. Legislation introduced in 1990 and 1998¹⁶¹ placed restrictions on the broadcasting of violent, shocking or pornographic material, but has not attempted so far to define these concepts and no regulatory body has had the will or resources to enforce the legislation.¹⁶² The entry of private operators into the market increased the violent and shocking content of overall television output as all broadcasting companies fiercely fought for audiences.

Having no means to diminish the levels of violent material in the broadcasting system, the *Alta Autoridade para a Comunicação Social* decided to promote an agreement between the three operators about the representation of violence on

¹⁶¹ The first Television Act (Law 58/90), Article 17 deals with forbidden programmes. It states that pornographic and obscene programmes are prohibited. It is also forbidden to broadcast programmes which may encourage violence, crime, or which generally violate the fundamental rights, freedoms and civil rights provided by the Portuguese Constitution. Under the same article, any programme that might shock sensitive individuals and minors must be broadcast after 10pm. All violent/shocking content must be accompanied by verbal warnings and a '0' symbol. The current television law (31-A/98 which revokes law 58/90) has not introduced important changes at this level

¹⁶² *Alta Autoridade para a Comunicação Social, Direcção Geral da Comunicação Social* - later *Instituto da Comunicação Social*

television. The agreement, signed on 9th July 1997, states that in view of their social role, constitutional and legal obligations, television operators have decided to take the following measures concerning the representation of violence:

- ❑ Broadcasters shall identify with a common symbol programmes which are not suitable for sensitive elements of the public to enable the public to make informed choices.
- ❑ Broadcasters shall inform viewers about the common symbol in the press releases they provide to television magazines as well as in advertisements/announcements about the forthcoming programmes requiring such a symbol.
- ❑ Broadcasters shall prepare two promotional slots for violent series or films - one with no violent images to promote the film or series before 10pm and another one with material acceptable for the period after 10pm. Both slots should include the symbol identifying its characteristics.
- ❑ Broadcasters declare they will pay particular attention to promoting, on the air or by other means, programmes for children and young people in order to keep parents and educators adequately informed.
- ❑ Apart from fiction and entertainment, the agreement looks at factual programmes. At this level, broadcasters state that the journalistic representation of violence will follow ethical rules and will not explore pain, morbid feelings or sensationalism.

The presence of a visual symbol '0' throughout the duration of a programme denotes violent/shocking content. Such material should be broadcast after 10pm, and is accompanied by verbal warnings.

3.13 Spain

Though TVE, the national public service broadcaster, applied an age-based rating system from 1963 until the mid-eighties for sexually explicit films, it was considered to be too strict, and a product of old values and the spirit of censorship prevalent during the Franco regime. For this reason some Spanish broadcasters are resistant to the idea of rating, anticipating negative public reaction. However, others, such as *Antena Tres*, and consumer associations, such as Confederación Española de Asociaciones de Amas de Casa, consumidores y Usuarios

(**CEACCU**), Agrupación de Telespectadores y Radioyentes (**ATR**) and Asociación Usuarios de Comunicación (**AUC**), consider that many parents would welcome some kind of guidance as to whether programmes are suitable for their children. They argue that visual warnings are not censorship as they are not compulsory vis-à-vis the parents, but just a useful tool.

Article 17.2 of Law 25/1994 states that programmes that may be harmful to the physical, mental or moral development of minors or and any that include pornographic scenes or gratuitous violence, shall include both visual and acoustic warnings about their contents. Broadcasters may simply provide a warning, but they can also provide ratings, which give parents more information about the kind of programme broadcast. However, in practice only a few broadcasters provide warnings or ratings, and no sanction proceedings have been brought against television broadcasters for the infringement of legal provisions related to warnings. The broadcasters that do provide any warnings or ratings are mainly TVE, Canal Plus, and the digital satellite television platforms, *Via Digital* and *Canal Satélite Digital*. *Antena Tres* is currently studying the implementation of a warning and rating system, that will soon come into operation.

The same Article states that the slots dedicated to trailers of programmes that may be harmful to the physical, mental or moral development of minors or, in any case, all those that include pornographic scenes or gratuitous violence, must include both visual and acoustic warnings about their content. However, in practice neither warnings nor rating systems used by broadcasters have been applied to advertisements.

TVE classifies some of its programmes (mainly films, but sometimes also television series, sitcoms, etc.) according to an **evaluative, non-deterministic** rating system, based upon age groups that are very similar to those used for the rating of films¹⁶³. The ratings appear at the beginning of the programme, and after the advertising breaks.

¹⁶³ There are only some minor changes: for example, instead of using a "-13" age group, TVE uses "-12".

Canal Plus uses an **evaluative, non-deterministic** rating system to rate its films, based upon the same age groups used by the CCPC. The age groups are identified by means of coloured keys: green key - for the public in general; blue key, -13; orange key: -18; violet key - "X" rated films. These keys appear before films are broadcast, as well as on Canal Plus teletext and in the magazine sent by Canal Plus to its subscribers.

Via Digital classifies all the programmes provided by this satellite digital TV platform. It uses a **non-deterministic** rating system, based upon two rating criteria: an **evaluative** criterion, based upon age groups: (all members of public, -14, -18) and a **descriptive** criterion (documentaries, sports, series, sex, etc.). The rating information appears at any time by pressing one of the remote control buttons. The rating information is also included in the printed TV guide sent to customers.

Canal Satélite Digital uses a **descriptive, non-deterministic** system, which differentiates between different content categories: documentaries, films, series, information, sport, etc. In each of these categories, there are sub-categories. For example, in films there are sub-categories such as drama, comedy, horror, musical, science fiction or "X" rated films. There is a category called "various", which is used for programmes that do not fall easily into a specific group, and also for programmes which have not been specifically classified. The rating information available, as well as some explanation of the programme's content, can be made to appear on the screen at any time by pressing one of the remote control buttons. The ratings are also included in the printed TV guide sent to customers.

According to Article 6 of Catalan Decree 265/1997, Catalan Cable TV operators must use visual warnings (a red triangle for programmes which may harm the sensitivity of minors due to their physical or psychological violence or eroticism; two red triangles for programmes which may harm the sensitivity of minors, due to their pornographic nature or gratuitous violence). The warnings must be shown during the first five minutes of those programmes that include violent or sexually explicit scenes. Cable TV operators will start to provide their services in Catalonia

soon.

It is relatively easy to classify programmes according to the most commonly used rating system (age groups), especially when taking into account the fact that films and videos have already been rated by the CCPC. However, there has been a dramatic increase in the production of television programmes, and it is difficult to foresee how this system may be applied to the volume of future production. The feasibility of applying this system (or more complex and useful ones, such as those used by digital platforms, which also include a description of the content of the labelled programme) will depend on the determination of whoever is responsible for rating the programmes: digital platform operators or the producers of the programmes broadcast by the platform.

3.14 Sweden

The legislation for television was developed in a similar way to that for radio; that is, in a contract with the State the public service broadcaster *Sveriges Television* (SVT), was mandated to meet certain standards for the content of programmes. The major principle applied to the relationship between the company and the State then, and to a certain extent today, is called “regulated independence”.

During the period 1986–1996, Swedish legislation was amended to accommodate satellite and commercial private television in addition to public broadcasting services. The amended legislation enabled cable networks to distribute different television channels transmitted by satellite. Commercial broadcasters were allowed to relay terrestrial-based transmissions on condition that they agreed to satisfy certain standards relating to content.

The new Radio and Television Law, which came into force at the beginning of 1997, replaces several previous laws, which regulated terrestrial, cable and satellite broadcasting. The Radio and Television Law contains regulations on, *inter alia*, permits and registration, certain general standards relating to content for different forms of broadcasting, advertisements and sponsoring, as well as examination and supervision. The law also regulates the standards applying to companies broadcasting by permission of the Government.

All terrestrial channels require a permit from the Government to broadcast; currently only two companies (SVT and TV4) have such a permit. SVT broadcasts on two channels and TV4 on one channel. The conditions for receiving a permit stipulate that the company must exercise their broadcasting rights in an impartial and objective manner. Furthermore, the broad principles of freedom of expression and freedom of information shall apply to television. In addition, the company shall take into account the specific influence of television in making decisions on the subjects and type of programmes it broadcasts, as well as in determining the times of broadcast. This refers, *inter alia*, to the need for caution in the production of programmes as regards violence, sex and drugs or subject-matter, which appears to be discriminatory against people of a certain gender or ethnic background. These conditions for a permit are obligatory.

The regulations of the Radio and Television Law also apply to television companies based in, and broadcasting to, Sweden from satellite. In addition, these companies must register their activities with the *Radio och TV-verket*, the Department of Radio and Television.

Television companies and cable network operators make their own decisions as to the programmes they broadcast and the broadcast times. They do so on the basis of the Radio and Television Law, the regulations in the conditions for permits (where applicable), as well as the practice of the *Granskningsnämnden*, the Swedish Broadcasting Commission. In chapter 6, paragraph 2 of the Radio and Television Law it states: “Programmes with protracted and realistic depictions of violence or with pornographic pictures may not be broadcast on television at such a time or in such a manner that entails a significant risk that children will see the programmes, unless this is justified in view of the particular circumstances.” In practice, the rules oblige companies to schedule programmes after 9pm, when the content might frighten or agitate children. A warning may also be given directly before the programme is broadcast. In certain cases, companies use the age categorisation which *Statens biografbyrå* applies to films shown in cinemas in Sweden.

When the content of television programmes might be seen as violent or in any

other way objectionable to the public or certain portions of the public, in general an oral warning is given at the same time as programme announcements. This system has been used since the early days of Swedish television.

Television stations are also regulated in retrospect by the *Granskningsnämnd*. If they violate the above-mentioned law, the *Granskningsnämnd* publicises its ruling. It can also, in certain cases, oblige the companies to publicise its decision, as well as apply to the court for a judgement on a particular fine or penalty.

At present, changes to the existing control and regulation system for television broadcasts are not being widely discussed, although some attention is being given to the question of the Swedish prohibition on advertising directed at children under the age of 12. The current discussion regarding digital TV focuses mainly on questions of terrestrial versus satellite broadcasting, access to frequencies, the distribution of permits and technical standards. No special juridical treatment of digital TV has so far been developed.

It is likely, however, that the Swedish public would not approve of a visual symbol being displayed on screen during the entire broadcast of a film. On the other hand, the Swedish public might accept an acoustic warning followed by a notice about, for example, an age limit.

3.15 United Kingdom

Statutory control resides with the Independent Television Commission (**ITC**), and each programme licensee has to comply with its code requirements. Under its powers, derived from the Broadcasting Acts of 1990 and 1996, the ITC:

1. issues licences that allow commercial television companies to broadcast in and from the UK – whether conventional aerials, cable or satellite receive the services; and whether it is delivered by analogue or digital means. These licences vary according to the type of service, but they all set out conditions on matters such as standards of programmes and advertising;
2. regulates these services by monitoring broadcasters' performance against the requirements of the ITC's published licences and codes and guidelines on programme content, advertising and sponsorship and technical performance.

- There is a range of penalties for failure to comply with them;
3. has a duty to ensure that a wide range of television services is available throughout the UK and that, taken as a whole, these are of a high quality and appeal to a range of tastes and interests;
 4. has a duty to ensure fair and effective competition in the provision of these services;
 5. investigates complaints and regularly publishes its findings.

The Board of Governors of the BBC is responsible for ensuring that BBC programme makers observe the Producers' Guidelines. The Governors review the content of the Producers' Guidelines annually and revise them as necessary. In addition, they regularly monitor the BBC's compliance with the Guidelines, with a formal review taking place twice a year.

Furthermore, complaints about violence, sexual conduct or a matter of taste and decency will be considered by the Broadcasting Standards Commission (**BSC**) members (appointed by the Secretary of State for Culture, Media and Sport). In reaching a decision, the Commission's code of practice and research into public attitudes are considered alongside the material and its context. Complaints must be made in writing and need to be made within 2 months of a television broadcast.

The watershed has been in use in the UK by terrestrial broadcasters for nearly 30 years¹⁶⁴. It is set between 9pm and 5.30am, and within that period there are progressive gradations in programme content. Most cable and licensed satellite services operate with the standard 9pm – 5.30am watershed, with the exception of specially encrypted services with restricted availability to children, which have two watersheds: one at 8pm (equivalent to the 9pm change on other channels) and

¹⁶⁴ Although British TV has a "watershed" hour of 9pm for material not considered suitable for children, almost all children over 11 watch after that time. 60 per cent of those over 5 watch after 9pm during the week, and 80 per cent do so at weekends. Almost 83 per cent of 13 and 14-year-olds (and 60 per cent of all children) have TVs in their bedrooms. 62 per cent watch TV before school every day. One in four children owns a VCR and uses it to tape late-night "X-rated" programmes (in 1994 only 14 per cent owned VCRs.). Boys aged 7 and 8 are the most likely to engage in illicit taping.

Source: annual survey by ChildWise Monitor, a youth survey group. Reported in *The Ottawa Citizen*, April 13, 1998

another at 10pm, when material of a more adult nature may be shown. Other cable and licensed satellite services are expected to follow similar standards to the terrestrial channels.

The ITC believes Pay Per View services give subscribers greater choice over what is available to view in the home. Given their stricter security systems (PIN Code), the watershed is not so necessary. Provided that a suitable protective system exists, “18” rated films are permitted to be broadcast at 8pm, and “12” and “15” rated films may be shown at any time. Similar arrangements will apply to variations of the Pay Per View system, such as (Near) Video on Demand.

The Joint Working Party on Violence on Television, established in 1996 by the BBC, the ITC and the BSC, following a meeting with the then Secretary of State for National Heritage, examined measures for protecting viewers from harmful content. In its report it concluded, with regard to acoustic warnings, that: “Though mindful of the risk that too frequent advisory information can diminish its impact, it urges the broadcasters to continue to improve the amount and quality of advice they give to viewers. For example, it found that the wording of some warnings was unnecessarily elliptical. Descriptions applied to programmes such as 'hard-hitting', 'candid' and 'uncompromising' are too vague to be of any real use. Broadcasters still have some way to go in increasing the transparency of wording to ensure that viewers clearly recognise warnings about material which may upset or concern them (whether sexual, violent or involving strong language). Viewers need specific information on which they can act. Broadcasters have to find ways of delivering this, while avoiding forms which turn information into an inducement to younger viewers.”¹⁶⁵

Concerning the use of symbols the Working Party did “...not wish to discourage the adoption of these techniques if broadcasters judge that they are helpful to their viewers, but believes that they have certain drawbacks. Symbols are a very basic

¹⁶⁵ *Violence and the Viewer: Report of the Joint Working Party on Violence in Television 1998*, BBC, BSC and ITC.

and limited mechanism, which may not be as effective as a specific description of problematic content¹⁶⁶.

Pre-transmission clearance and rating of commercials is handled by an organisation set up and funded by the broadcasters themselves, the Broadcast Advertising Clearance Centre (**BACC**). With the exception of some categories of local advertisements, representatives of the BACC must view every television commercial before approval for transmission can be given. Approval may be subject to conditions regarding transmission times, e.g. the watershed. The BACC works closely with the ITC and is constantly taking decisions based on the requirements of the ITC Codes. The resulting “case-law” is reflected in its Notes of Guidance¹⁶⁷, which offer detailed explanation of how the principles set out in the ITC Codes are interpreted, based on practical day-to-day experience. They also contain a statement of the broadcasters’ own principles in areas where these go beyond the basic requirements of the Codes. The final arbiter of acceptability remains however the ITC.

¹⁶⁶ The debate about parental control, and especially visual sign posting, is dominated within the UK by the so-called “Red Triangle” paradigm. In 1986, Channel 4 showed a series of films known unofficially as the “Red Triangle” series. These were all 18-rated films, which would previously have not been shown on television due to their explicit content. A red triangle in the left-hand corner of the screen “sign posted” the film throughout its duration. The idea was that this would deter those who were easily offended from watching. However, it had the effect of attracting viewers, and the series became something of a cult. The National Viewers and Listeners Association was appalled, and lobbied MPs. As a result a Home Affairs Parliamentary Committee hearing took place on the matter, in which the Committee was said to be appalled by graphic scenes of buggery in one of the films. The “Red Triangle” series was never reprised after that controversy, and it has left a strong reluctance to introduce visual symbols in the UK.

¹⁶⁷ See <http://www.bacc.org.uk>

4 Internet rating systems

4.1 Austria

In Austria, there is no code of practice specifically dealing with on-line services. However, general rules of civil law, copyright law, criminal law, media law, telecommunications law, trade law and other areas of law are mandatory and apply to all on-line services. There is no Austrian institution which systematically rates content available on-line with a view to protecting minors.¹⁶⁸

Though filtering software is easily available via the Internet¹⁶⁹, it does not play an important role in Austria. One reason may be that filtering software which blocks Web pages with offensive words is of limited use when it only recognises English. However, the main reason seems to be that at present, the percentage of Austrian households with Internet access is still not very high¹⁷⁰, and children who surf the Web without an adult present are not as common as in other countries, either at school or at home. Those parents whose children do surf the Web on their own do not seem to be aware of what children may come across on the Internet – or they simply do not care. There is much discussion about illegal content (mainly child pornography) but very little discussion about harmful content.

As early as in 1997 the *Bundesministerium für Inneres* (Federal Ministry of the Interior)¹⁷¹ established a central office to which “netizens” could report Web or news group content which they deemed illegal (*Meldestelle Internet*). Nowadays there are two such offices: one fighting children pornography (*Meldestelle Kinderpornographie*) and the other fighting neo-nazi activities (*Meldestelle NS-Wiederbetätigung*). As well as traditional means of communication, these organisations can be notified by e-mail of texts or pictures thought to be illegal.

¹⁶⁸ In the US there are such sites, e. g. <http://www.cyberangels.org>. Cyberangels is the name of a volunteer Internet watchdog organisation that maintains lists of kid-friendly sites.

¹⁶⁹ See <http://www.cyberpatrol.com> (Cyber Patrol), <http://www.netnanny.com> (Net Nanny), <http://www.surfwatch.com> (SurfWatch) and some others.

¹⁷⁰ For up-to-date figures see Austria Internet Monitor at <http://www.integral.co.at/aim>.

¹⁷¹ The Ministry's home page is located at <http://www.bmi.gv.at>.

Only recently the Internet Service Providers Austria (**ISPA**)¹⁷² established their own hot line¹⁷³ for the same kinds of illegal material. According to a statement on the ISPA Web site, notifications concerning other kinds of illegal content will not even be processed, let alone harmful but legal content.

4.2 Belgium

The code of ethics for telecommunication services established a rating system based on prefixes, whereby, for example, the prefix *077* is automatically applied to adult services. Moreover, Article 20 specifies that the “content of the services dedicated to minors must be adapted to their age and must respect their rights and interests”. In addition, “services dedicated to minors and the promotion of these services must not contain any information that may harm or exploit their credulity, their lack of experience or discernment”.

Belgacom has also proposed a free blocking system for services with the *077* prefix to the population of Belgium. The labelling system is judged to be too complex for the Internet. Given its international nature, a global solution is preferred.

4.3 Denmark

So far the discussions in Denmark have mainly been inspired by the approach of other countries. There is a prevalent fear that the censorship practised in other countries may also be the route taken in Denmark, which would run contrary to the Danish way of thinking.

The abuse of time spent on school computers by children who use it for chatting or to find "forbidden" home pages causes problems for teachers. According to a number of interviews with teachers, they are of the opinion that all they can do is appeal to children to use the Internet for "reasonable" purposes only, as the Internet has so much potential for learning that it is of no use to impose particular prohibitions.

¹⁷² The ISPA's home page is located at <http://www.ispa.at>.

The same is true of libraries. There are no common rules for libraries vis-à-vis controlling children's use of computers, but the librarians appeal to the children's sense of responsibility. Some libraries are conducting experiments to find out how they may use filters or other control devices.

For family use, some computer experts have publicly suggested that - even if there are several computers in the family - it should only be possible to use the Internet on one common family computer. In this way parents will have a degree of control.

4.4 Finland

No content legislation for on-line services has been completed in Finland, but such services are dependent of the requirements of law and order. Normal sanctions may be applied if criminal activities emerge on the Internet. The Constitution, the Penal Law and the Civil Law can all be used to prosecute crimes on the Internet. For instance, a young man was charged this year in Finland for offering paedophilic materials via the Internet.

The majority of pornography, however, is not free of charge, and is therefore only accessible by registering giving a credit card number, which generally prevents children from accessing those sites.

In the proposal for law prepared by the Committee on Freedom of Speech at the Ministry of Justice (3/1997) a liberal attitude and horizontal treatment of all media is suggested. The proposal has however several problematic points, which have been widely criticised, particularly by information technology professionals. For example, the committee proposes that network publications should have editors of full legal age, and that on-line programmes should be recorded for three months. The proposal leads to interpretation problems as well as problems of unequal treatment of different users of the Internet according to their age.

¹⁷³ Tel. 07110/900121, E-mail hotline@ispa.at. More information can be found at <http://hotline.ispa.at>.

In 1997, the working group TIVEKE, at the Ministry of Transport and Communications published a report concerning public communication on information networks. In this report two new concepts were adopted to clarify the handling of public communication on information networks: public personal network communication, and content distribution (mass communication). However, public personal network communication cannot be totally excluded from the sphere of rules on electronic mass communication. According to the working group, more efficient control would be directed towards communication that is large-scale, professional and regular.

The TIVEKE working group maintains that the self-regulation of information networks (Internet) signifies co-operation between parties involved on information networks to prevent the publication and spreading of harmful and criminal content. The objective is for the Internet as a community to restrict the spreading of harmful and criminal materials within the network. The working group suggests that content regulation should be realised solely by bodies who have the right to carry on such measures. Such bodies are content producers, final service providers, users and authorities. Those who technically transmit data have no right to restrict the transmission of data. Unauthorised restriction may qualify as a disturbance offence in the field of electronic communication.

Measures relating to regulation of content recommended by the TIVEKE working group are as follows:

- ❑ content producers and final service producers shall prepare common rules on what kind of content is not acceptable to produce and publish
- ❑ as regards users and minors, the opportunities of parents and teachers to have influence on the content being received will be increased
- ❑ courts will be given authorisation to impose the exclusion of criminal contents from publicity or to have content distribution interrupted
- ❑ co-operation between the authorities of different countries shall be encouraged to prevent distribution of criminal content
- ❑ the activities of authorities can be supported by establishing hot-line services

The development of an effective control system has so far been discouraging. The

realisation of a coding system covering different Internet contents is very difficult. No national entity is responsible for the rating system for on-line services. The vital questions at present: Who should provide the ratings needed for technical devices? What is unsuitable for children? Who should supervise coders? Under what circumstances would it be possible to shut down a site? The Finnish Internet Association maintains that it is up to content producers to provide the ratings. However, producers' self-regulation is ineffective. On-line service experts maintain that a preliminary screening is not possible.

4.5 France

General laws, such as the Criminal Code, apply to protection of minors on the Internet, particularly Article 227-24, which states in its first line that "To manufacture, transmit or disseminate, by any means and whatever the medium, a message depicting violence or pornography or likely seriously to damage human dignity, or to trade with such message, is punishable by a three year prison sentence and a F500,000 fine, where this message is likely to be viewed or seen by a minor".

However, apart from child pornography¹⁷⁴, there are no specific provisions regarding regulation of the Internet for the purposes of protecting minors from harmful content.

Nevertheless, the so-called "*Loi fillon*" of 26 July 1996,¹⁷⁵ establishing a legal framework for the telecommunications field, introduced, *inter alia*, the obligation for anyone, whose business is to provide connections to one or more audiovisual communication services, to offer its clients technical means, which permit them to either restrict access to certain services or to select them. This provision was integrated into the Law of September 1986 relating to freedom of communication, and constitutes its new Article 43-1.

¹⁷⁴ Article 227-23 introduced by the law n° 98-468 of 17 June 1998. Official Journal of 18 June 1998

¹⁷⁵ Law n° 96-659 of 26 July 1996 art. 15. Official Journal of 27 July 1996.
<http://www.internet.gouv.fr/francais/index.html>

Recently, the *Conseil d'Etat*, the supreme French administrative jurisdiction, published a report dedicated to the Internet and digital networks.¹⁷⁶ It noted that existing texts, the Criminal code or specific laws were sufficient to punish infringements relating to civil rights, data or consumer protection. It noted also that the first case law had transposed traditional rules to the network.

In France, self-regulation by Internet operators has been the subject of several proposals and initiatives, but no concrete solutions in the matter of content deontology have been reached. There was an attempt within the Law of 26 July 1996 to create a *Conseil Supérieur de la Télématique*¹⁷⁷ and to make the deontology framework more precise, but these provisions were invalidated by the Constitutional Council¹⁷⁸

In March 1997, the so-called "Beaussant report", from the *Groupement des Editeurs de Services en Ligne (GESTE)*¹⁷⁹, introduced an Internet Charter,¹⁸⁰ the main aim of which is to set up an Internet Council. It contains a section dedicated to illegal content and another relating to harmful content.

According to the Charter, the Internet Council would be the recipient claims relating to illegal content from users and providers and could even act on its own initiative. In the event that the Council judged the content to be illegal, it would inform the author or the person responsible for the site concerned, recommending them to modify or suppress it. If the offender did not comply with the recommendation, the Council might request technical providers to suppress or block access to the contentious content.

As for harmful content, the Charter states that providers should make a commitment to permit users select information according to their own wishes. To this purpose, providers should promote both filtering mechanisms and rating regimes, and apply certain principles, such as respect of human dignity, the

¹⁷⁶ *Rapport du Conseil d'Etat: "Internet et les réseaux numériques"* - adopted by the General Assembly of the *Conseil d'Etat* on 2 July 1998. <http://www.internet.gouv.fr/francais/index.html>

¹⁷⁷ Council overseeing the telematics

¹⁷⁸ *Conseil Constitutionnel*, Judgement of 23 July 1996.

¹⁷⁹ Association of on-line publishers

¹⁸⁰ See <http://www.planete.net/code-internet/ccode2.html>

rejection of any discrimination against opinions, race, sex, etc., and the rejection of any exploitation of minors, especially of a sexual nature.

However, this project did not receive significant support from operators and users.

A new text called "*Le Manifeste*" was published in July 1997. It is a short document, which defines founding principles for self-regulation and recommends the implementation of a flexible, consultative and pluralistic self-regulatory organisation.

Finally, some professional associations, such as the *Association des Fournisseurs d'Accès et de Services Internet (AFA)*¹⁸¹ and GESTE, undertook their own initiatives: AFA wrote a code of conduct¹⁸² while GESTE confirmed its proposal to create a supervisory body.

The AFA code of conduct contains a specific provision relating to the protection of minors, which states that subscription is refused to minors unless with express authorisation from a person exercising parental authority. On the other hand, as in the Internet Charter, AFA members must offer means for filtering content to their users. The code of conduct also states that when a user is made aware of illicit or harmful content they should refer it to the access provider concerned. The access provider should request the client to modify the content if it contravenes the contract signed by the client. If the client does not comply, the access provider may suppress the content or terminate the contract.

Since 1996 several reports have been published, which mention, *inter alia*, the need to promote self-regulation among operators and to involve State authorities in the creation of either a self-regulatory body, a hot-line and an Observatory, or, under private law, an Agency regulating the Internet.¹⁸³ However, no proposals have yet

¹⁸¹ AFA is composed of the following Internet Access/on-line services Providers: AOL Berstelmann France, Cegetel, CompuServe, FranceNet, France Pratique, France Telecom Interactive, Grolier Interactive, Imaginet, Infonie, Internet Way.

¹⁸² <http://www.afa-france.com/html/actualites/index.htm>

¹⁸³ "*L'Internet : un vrai défi pour la France*" - Patrice Martin-Lalande. Report to the Prime Minister - avril 1997. <http://www.telecom.gouv.fr/francais.htm>

been concretised, and discussion of how to classify Internet sites has not yet begun.

However, as in the other Member States, filtering software is available for users, but it is largely impractical as it is intended for English language sites.¹⁸⁴ In addition, a report by the *Conseil d'Etat* noted that only few Internet operators apply the new Article 43.1 of the Law of September 1986, which requests them to provide their clients with the technical means to filter content. Finally, no hot-line mechanism has been created and there are no concrete initiatives for information campaigns, warning and informing users about a safe use of the Internet.

4.6 Germany

The only rating/labelling system is the one developed by the USK. Other organisations such as the *Freiwillige Selbstkontrolle Multimedia Dienstleister e.V.* (FSM) or the BPjS do not grant ratings but control the acceptability of the service pursuant to the relevant legal provisions. Services are illegal if they present an obvious moral danger to children or youth. However, these provisions include a range of undetermined legal concepts. As a consequence, the question of whether a service presents an obvious moral danger to children or youth might be interpreted in a different way by the different controlling bodies. The assessment decides merely whether the service is legally acceptable or not. In the latter case, there is no further classification of the service, but the service provider is told not to offer the contents in question any longer.

The agreement between Federal States on media services states that legal acceptability is not determined by the judgement of the controlling body, but based on objective criteria (**deterministic**). It leaves room, however, for interpretation, which necessarily includes subjective components. Case law offers common guidelines, but it is hardly developed in the on-line field.

"L'entrée dans la société de l'information"-A.Joyandet, P.Hérisson, A.Türk - September 1997). *Rapport d'information du Sénat* - September 1997. <http://www.telecom.gouv.fr/francais.htm>

¹⁸⁴ However, Cyber-patrol is currently preparing a French-speaking version of its filtering software.

Service providers are legally obliged to respect the provisions concerning the protection of minors in their services (**mandatory**). However, they have the choice whether to appoint a commissioner for the protection of minors or to allow a voluntary organisation such as the FSM to take over this task for them.

The FSM is financed by its members, which are several media associations and firms such as *Deutsche Telekom*, the Microsoft network or *Pro Sieben Media AG*. Since mid-November 1997, 200 media companies have declared that they will follow the code of conduct developed by the FSM. Members of the FSM must apply the code of conduct and its rules regarding complaints.

Users address complaints concerning illegal content to the Complaints Committee of the FSM. Complaints can only be addressed electronically by completing an electronic complaint form on the web-site of the association further to §3 II of the FSM rules. This rule thus conforms to point 2d of the “indicative guidelines for the implementation at national level of a self-regulation framework for the protection of minors and human dignity in on-line audiovisual and information services”, included in the **Recommendation of the Council of 28.05.1998**, which requires that complaints should be sent and received without difficulties (telephone, e-mail, fax).

The FSM’s procedures for dealing with complaints are also in accordance with the guidelines. §4 of the FSM rules requires a pre-examination of the complaint. If the complaint is admissible, the decision procedure takes place after hearing the position of the content provider¹⁸⁵. The author of the complaint is informed of the outcome of the procedure¹⁸⁶. If the content provider does not conform to the sanction, the service provider is informed¹⁸⁷. If the Committee concludes that the service is acceptable, this conclusion is not binding for the competent authorities. However, if the FSM concludes that a service is a violation of the legal provisions then they initiate the procedure described below.

¹⁸⁵ further to §5.

¹⁸⁶ further to §6 VI

According to the guidelines, providing for dissuasive measures proportionate to the nature of the violations should strengthen the credibility of the code of conduct. Further to §6 of the FSM rules, the following measures may be taken, according to the gravity of the violations:

- comment with a request to remedy the situation
- expression of disapproval or
- reprimand (this reprimand must be published by the service within one month)

If the member does not comply with the sanction or, if, despite repeated requests, it does not remedy the situation, it may be excluded from the FSM. Serious instances of child pornography are to be reported to the police¹⁸⁸.

Considering the ever-increasing number of documents on the Internet as well as its international character, it is impossible to have complete control of this media. The FSM staff is also small (1 lawyer who judges the acceptability of the complaints, 3 ordinary members and 3 alternate members who form the Examining Board). The Executing Board is composed of a President and 5 other people. The success of the FSM depends considerably on the number of its members who support its work and thus wish to fulfil in this manner their legal obligations in the field of the protection of the minors. In addition to this, though the FSM may act against a member on its own initiative, it mostly acts on the basis of complaints. It is therefore also important that users, who can contact the body if they chance upon web pages likely to be harmful to minors, accept it. Since its creation, the FSM has received 185 complaints. In 35 cases, the service providers or the service supplier deleted the text or images in question or locked Internet access to them. Similar results have occurred in other countries after the FSM contacted the service providers¹⁸⁹. It receives approximately 30 to 40 complaints per month.

¹⁸⁷ §7 I.

¹⁸⁸ epd medien (Nr. 57) 1998, 21.

¹⁸⁹ See 188

The FSM controls advertising on the Internet but in a rather superficial way. Rather than taking over this role from the *Werberat*, the body responsible for advertising, they co-ordinate with it to supervise advertising.

According to §7 GjSM, information and communication service providers are members of the USK if they submit their contents to it for rating and if they install a link on their website which refers to the USK. However, this is not common practice so far. The USK has supervised network contents and on-line games since 22 August 1997, using the same procedure as for video games. It provides a classification by age groups and a report. It charges a fee for examining websites of:

300 DM for a maximum of 25 pages

500 DM for a maximum of 75 pages

750 DM for a maximum of 100 pages

1000 DM for a number of pages exceeding the limit of 100.

In addition to the voluntary bodies the Ministries for Youth and Family supervise the application of provisions concerning the protection of minors according to §18 I of the *Mediendienste-Staatsvertrag*¹⁹⁰, which applies to media services. This system is not based on classification of the content, but on a legal evaluation, and these authorities are not obliged to perform a general and minute supervision. They act usually on the basis of complaints or other indices. They are entitled to control content and to prohibit it partly or completely, but do not have the powers to demand content changes. Violations can lead to the imposition of a fine amounting to 500.000 DM.

The *Jugendschutz.net* was created in Wiesbaden in October 1997 as a Joint Office for the protection of minors in on-line media. The central office co-operates closely with the respective competent offices in each Federal State. *Jugendschutz.net* tries to locate content that might be dangerous for the minors on the Internet with the help of a browser, the so-called ‘software for the protection of minors’ developed

¹⁹⁰ The Agreement between Federal States on media services, which came into force on 1 August 1997

specially for this purpose. When such pages are located, *Jugendschutz.net* contacts the respective provider, so that the latter can modify or delete the content within a determined period of time. This organisation operates as a representative central office, or national contact office, as suggested by the recommendation of the Council.

At Federal level, since the implementation of the *Informations und Kommunikationsdienstegesetz (IuKDG)*¹⁹¹, the BPjS is responsible for the examining and “indexing” of Internet content which is likely to harm minors. The BPjS works in co-operation with the highest authorities of the Federal States, which have created an office for the protection of minors in on-line services on the basis of the Agreement between the Federal States on media services. The BPjS can only act on the basis of a request emanating from the Ministries of Youth of the Federation and of the Federal States and the authorities responsible for young people (*Jugend-* and *Landesjungendämter*).

The Agreement states that a publication put on the “index” may not be transmitted or made available through electronic information or communication services. This interdiction does not apply if technical measures have been taken to ensure that access within Germany is restricted to users of legal age. It is still unclear as to which technical measures should be taken, given the quasi-absence of case law. The BPjS considers that the so-called “Adult-sex system” according to which the user must give a credit card number to have access to content, is enough for commercial providers of pornographic content. The BPjS has already made use of its new authority.

The BPjS is financed by the Federation, pursuant to §8III of the GjSM. Two BPjS examiners specialise in the on-line field, but the organisation has a limited number of computers with Internet access.

¹⁹¹ The Federal Act establishing the general conditions for information and communication services, which came into force on 1 August 1997

§5 GjSM states certain restrictions and prohibitions in the field of advertising. A provider may not advertise the fact that its service has been put on the “index” or is about to be inserted in the list. This provision exists to avoid the inclusion of the service in the “index” being used for the purpose of positive advertising.

4.7 Greece

The body responsible for rating on-line services in Greece is the National Telecommunications Commission (NTC),¹⁹² which is an independent body, administratively and financially self-contained, under the supervision of the Minister of Transport and Communications. It was set up by the Telecommunications Act - Law 2246/94 of October 1994. Among its principal tasks is the supervision of the telecommunications and on-line markets, the assignment of numbers to service providers, and the delivery of opinions to the Minister of Transport and Communications regarding the granting, renewal, modification, suspension, extension and revocation of licenses.

The NTC has not identified any rating system. It took some steps to initiate policy in June 1997 by publishing an Internal Report on ‘Illegal and Harmful Content in the Internet Globally’. It appointed a Steering Committee to take a closer look at this issue and proposed the setting-up of a group that would be responsible for pursuing self-regulation. No further action has been taken since.

4.8 Ireland

Regulation of on-line services in Ireland has now been vested in the office of an independent telecommunications regulator, who recently has produced a number of reports governing various aspects of telecommunications, including the provision of broadcast services. The only legislative development has been the promise of a Bill to deal with defamation on the Internet, which has not yet been published, and the enactment of Child Trafficking and Pornography Act 1998.

The Act contains a definition of child pornography as follows:

¹⁹² In the case of VOD, it is also the responsibility of the Ministry of the Press and the Mass Media to introduce a rating system.

“Child pornography means -

(a) any visual representation -

(i) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity,

(ii) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or

(iii) whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child

(b) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity,

(c) any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or

(d) any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of *section 3*, irrespective of how or through what medium the representation, description or information has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation, description or information produced by or from computer graphics or by any other electronic or mechanical means but does not include -

(I) any book or periodical publication which has been examined by the Censorship of Publications Board and in respect of which a prohibition order under the Censorship of Publications Acts, 1929 to 1967, is not for the time being in force

(II) any film in respect of which a general certificate or a limited certificate under the Censorship of Films Acts, 1923-1992, is in force, or

(III) any video work in respect of which a supply certificate under the Video Recordings Acts, 1989 and 1992, is in force.”

However, the Act does not deal specifically with the control of access by children to pornography. An amendment to the Bill, which would have dealt specifically with this issue, was defeated by a large majority at committee stage. Similarly,

suggestions that the issue might be dealt with in a Children Bill were also rejected. Concern was expressed about the placing of child pornography on the Internet using websites, associated with cartoon characters, regularly accessed by children, and also about the exemption of video games from the Video Recordings Acts, particularly in light of the violence depicted in some of them. Nonetheless, the general view of the legislature appeared to be that possible legislative control was not an immediate priority. It is expected that the matter will be addressed in the Report of the Working Group on the Illegal and Harmful Use of the Internet, which is due to be published in the near future. It has been suggested that the term “video” be defined in sufficiently wide terms in the Video Recordings Act 1989 to apply to computer disks¹⁹³. It is possible that that Act could, therefore, be used to combat pornography in the same way as the corresponding Act in England has been used¹⁹⁴.

4.9 Italy

The Ministerial Self-regulating Code is presently in a state of “*impasse*”. As a result all connected or collateral projects, such as the implementation of a content rating system, are on hold for the time being. It is worth mentioning that at a different and non-institutional level, the collaboration between the Information Science Degree Course of the University of Cesena (who prepared the operating environment) and the *Association Città Invisibile* (who defined the rating system) has recently given birth to a pilot Italian rating agency: IT-RA¹⁹⁵.

The IT-RA rating system is **evaluative** and **voluntary** and uses the PICS system. It grants PICS labels to content providers who autonomously rate their documents, by completing a form on-line. Based on the level at which the content rated by the content providers, IT-RA issues the relevant PICS label (metadata), which is then associated with the Internet content. When access to the document is sought the software browser reads the level of each category and blocks access

¹⁹³ Kelleher and Murray, *Information Technology Law in Ireland*, Dublin 1997

¹⁹⁴ *Meechie v Multi-Media Marketing* (1995).

¹⁹⁵ Information available on <http://www.csr.unibo.it/ra>.

when the level is higher than that chosen by the user. The IT-RA applies to advertising as well.

Figure 30: IT-RA Rating System

Content Category	Level 0	Level 1	Level 2	Level 3	Level 4
Violence	No express or implied violence	Materials denouncing violation of human rights - not harmful to minors	Implicitly violent	Expressly violent	Inducing or inciting to violence
Sex	No references to sex	Scientific material on sex and sexuality - not harmful to minors	Alluding or relating to erotica	Moderately sexual and non explicit	Sexually explicit and pornographic
Language	No vulgarity	Materials on the use and diffusion of dialects - not harmful to minors	From time to time vulgar or dirty	Vulgar and/or blasphemous	Verbally violent
Advertising	No advertising	Advertising but not harmful to minors	Also advertising products for minors	Subliminal advertising contents	Prevailing and express advertising contents
Religion	No references to religion	Material on religion	References to a particular religion	Proselytical religious references	Religious or non religious intolerance
Politics	Not political	Material on politics - not harmful to minors	Generic political references	References to political associations	References to political parties
Racism	No racial references	Racial material – not harmful to minors	Subliminal racial references	Explicit racial references	Inciting to racial hatred
Didactic	Highly didactic and based on accurate scientific materials appropriate for minors	Highly didactic and based on accurate scientific materials appropriate for adults	Medium didactic with good scientific basis	Low didactic with poor scientific basis	Non didactic

4.10 Luxembourg

For on-line services Common Law is mostly applicable, though the Criminal Code may apply. The trend is to favour a self-regulatory system. However, the CNP has intervened with new media such as Internet on line services. In its opinion of June 1998, it justified its intervention by commenting that “neither the Ministry of Communications, nor the post and telecommunications companies, nor any other

State organ feels responsible for nor concerned by content on the Internet and on line services”. However, the CNP recognises that “the Internet phenomenon” does not fall within its authority from a legal point of view, as it is neither a radio nor television programme, nor a programme distributed via cable.

Self-regulation and international solutions are considered essential to render a control system really efficient. According to the CNP, the success of filtering systems, such as PICS, will mainly depend on support provided by parents and educators, the local, national and international authorities.

4.11 The Netherlands

In the Netherlands there are no formal provisions for the control of on-line services other than the Penal Code. Where necessary articles 240a and 240b of the Penal Code may apply, but since the principle of freedom of speech is seen as one of the most important pillars of the Dutch Constitutional State, prior censoring of opinions by the Government is not desirable. Interference on constitutional grounds is possible only in the case of the abuse of freedom of speech. The Constitution thus does not have official rules concerning its applicability to different on-line services.¹⁹⁶

As yet, no licence is required for Internet providers and the legal liability of illegal content is not clear. The President of the District Court of The Hague ruled in a copyright case that Internet access providers are not in principle responsible for the content or information offered through their infrastructure. Action against service providers would only be possible where the provider is perfectly aware of the illegal activity. As far as penal liability is concerned the Minister of Justice stated that, as well as action to prevent illegal material, self-regulation should play an important role. The Government principally takes the view those citizens, users and educators have responsibility for themselves. The Minister of Justice is considering a limitation of the penal liability of the provider. Through a change to articles 53 and 54 of the Penal Code, she hopes to ensure that the same liability

¹⁹⁶. (1996). Prepared to the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

will exist for providers as for publishers and printers. If the Internet provider can point out from whom the illegal content originates, the provider will not be prosecuted.¹⁹⁷

Self-regulation does already exist regarding illegal information on the Internet. The *Nederlandse Vereniging van Internet Providers* (**NLIP**)¹⁹⁸ co-ordinates the industry and represents most of the Internet providers in the Netherlands. The NLIP's policy towards illegal content on the Internet is as follows:¹⁹⁹:

1. Dutch Internet providers, represented by the NLIP, will try hard (in co-operation with the police, judiciary and European and international institutions) to eliminate illegal information from the Internet, as far as possible and as soon as possible within the legal framework. Illegal information is information that has been prohibited by Dutch law.
2. Illegal information put on the Internet cannot be totally prevented, either by Government or by Internet providers, who have even less authority. One reason for this is the Constitution's rules forbidding prior censorship and defending freedom of expression. The other is the international character of the Internet. As most of the illegal information is from abroad it is impossible to control.
3. In order to take action, different reporting points have been established by Internet providers and individuals.
4. Action may only be taken against information providers operating within the borders of the Netherlands, as the Dutch Constitution applies. Reports implicating foreign information providers will be forwarded to reporting points existing in the country from which the material originates.

A working group was set up in which the Internet providers, the *Divisie Centrale Recherche Informatie* (**CRI**)²⁰⁰ and Internet users were represented. This group created the framework of procedures and criteria, which were used for the

¹⁹⁷ <http://www.meldpunt.org>

¹⁹⁸ Dutch Federation of Internet Providers

¹⁹⁹ <http://www.nlip.nl>

²⁰⁰ Central Division of Research Information

foundation of the first Reporting Point for Child Pornography in Europe on 20 June 1996.

The reporting point procedures are:²⁰¹

1. An Internet user reports the dissemination of child pornography on the Internet to the reporting point.²⁰²
2. The reporting point receives the message and responds (automatically) to the reporter.
3. The reporting point checks the report.
4. If the report meets certain criteria (see below) a warning is sent to the creator of the illegal content. This Internet user will be requested to stop transmitting the content.
5. If the Internet user disputes the warning, a second letter follows, which explains that the reporting point is not the place for discussion nor responsible for providing an explanation.
6. If the Internet user does not reply, or does not stop sending the messages/illegal content within a period of 24 hours, the report will be sent to the local police.

Before sending a warning to the Internet user, a report must meet the following criteria:

- It must concern child pornography, as stated in article 240 of the Penal Code.
- It must concern distribution from Dutch territory.
- It must concern public distribution on the Internet.

On 21 March 1997, a second Reporting Point became operational, intended to deal with and prevent racial discrimination, anti-Semitism and revisionism within the Dutch borders of the Internet. As far as racism is concerned, Article 137d of the Penal Code could apply. A third Reporting Point for consultation on illegal material on the Internet has been set up.

²⁰¹ <http://www.meldpunt.org>

²⁰² meldpunt@meldpunt.org

The Minister announced that reports of the Reporting Point for Child Pornography received by the CRI would be investigated sooner. The national bureau of the Public Prosecutor will play a co-ordinating role. After a first examination by the CRI, reports may be handed over to the national bureau of the Public Prosecutor for the purposes of opening an investigation. When, in the course of the investigation, the location of the suspect in the Netherlands becomes known, the judicial hearing can be handed over to the appropriate district court of the Public Prosecutor.

Finally, the Minister takes the view that expertise from outside the police and judiciary is also important. Therefore, well co-ordinated co-operation is needed between the Internet Service Providers, the Internet Reporting Points and other organisations concerned with child protection on the one hand, and the responsible Ministries, police and the Public Prosecutor on the other.

4.12 Portugal

No national group or entity is responsible for the rating system for this medium, and no systems of content control (e.g. ratings, bans, watersheds, etc.) are in use. Some Internet users might be using blocking systems such as the Platform for Internet Content Selection (**PICS**)²⁰³, but no studies have been done to ascertain their number. Among dozens of informal enquiries made to Internet users in Portuguese academia, no one was aware of PICS or indeed any other system to control content on the Internet.

4.13 Spain

There are no provisions in Spain related to a rating system for audiovisual contents distributed via Internet. The draft of the *Convenio de autorregulación para el buen uso de Internet en España* proposed by the Ministry for Education and the Asociación de Usuarios de Internet (**AUI**) merely states that if there are many complaints about the content of the website of one of the subscribers to the code of conduct, the

²⁰³ A set of technical standards whose goal is to establish a common label, readable by any software, and that can be used to convey any kind of rating. PICS is being developed by the World Wide Web Consortium, an independent American consortium, and has already been accepted by most players in the on-line service markets.

person in charge of that website will indicate in the homepage that the website in question contains material that might harm the sensibility of its users.

The AUI, in its website, says that it favours the use of PICS. As for labelling, AUI simply indicates that content providers may voluntarily rate their websites according to the criteria (age groups, kind of content, etc.) established by some companies, such as Netshepherd, RSACi or SafeSurf. None of these systems is specifically aimed at the Spanish public, and none of them has gained support among on-line services or content providers.

4.14 Sweden

There is no legislation, which limits or hinders the use of on-line services by children and adolescents. The service providers are not obliged to obey any legal limitations than those in the general law. When the first type of automatic data processing was discussed in the 1960s, no need for legislation was suggested other than the protection of rights relating to authorship.

The new Act on Electronic Billboards makes Internet providers responsible for the prevention of further dissemination of criminal material on their servers.

The law does not apply to providers of networks or other connections for the transmission of messages or other devices needed to use the connections, transmission of messages within an agency or between agencies or within an enterprise or a legal group of enterprises, services protected by the Freedom of Press Act or the Freedom of Expression Act or messages intended only for a certain receiver or a fixed group of receivers (electronic mail).

Providers are also obliged to remove or otherwise prevent continued dissemination of certain categories of messages from their services. This is the case if an incoming message obviously falls under the provisions of the Criminal Code that deals with instigation to crime, agitation against groups of people, child pornography or unlawful depiction of violence.

It is established that the service supplier, in order to be able to fulfil his obligation

to prevent dissemination, should have reasonable supervision over his service, taking into consideration its scale and purpose. As a general rule, providers of electronic notice-boards are not obliged to screen all incoming messages, but if a provider is informed that he is assisting dissemination of criminal material, he must act to prevent further dissemination.

If the provider, either intentionally or through gross negligence, does not prevent further dissemination of a message belonging to these categories, he shall be sentenced to a fine or to imprisonment for not more than six months or, if the crime is serious, not more than two years. This does not apply if the provider can be sentenced according to the Criminal Code or the Copyright Law.

In Sweden censorship before publication is not allowed and the proposed law will not introduce such a practice. Actions concerning criminal material in electronic notice-boards will only be prosecuted after publication, as is the case with books, films and other traditional media.

The State Computer Inspection Authority, *Datainspektionen*, is responsible for monitoring violations of personal integrity, and for implementing the computer law by authorities, companies, organisations and private persons. The law took effect in 1973; however, it is the police who are responsible for criminal investigation in cases of computer hacking of a home-page or child pornography on the Internet or another open network.

4.15 United Kingdom

The Internet Service Providers Association (**ISPA**) was formed in 1995 and established a Code of Practice after a meeting with the Home Office in January 1996. The former Science and Technology Minister stated at this meeting that the UK Government's "position is that we would want to encourage the industry to develop a system of self-regulation which might address these areas of concern, rather than considering statutory options. UK Internet Service Providers must devise a Code of Practice to control access to illegal and unsuitable material or face increasing political pressure for curbing legislation." Moreover, on 14 August 1996, the Department of Trade and Industry (**DTI**) issued a press release, in

which it was suggested that ISPA should “co-operate in developing services” that are able to make use of features such as **PICS**, which makes it possible to rate every web page according to its content.²⁰⁴

Some organisations, such as universities, already had “acceptable use” policies in place, and Demon Internet, a major UK Service Provider, had (as a reaction to a newspaper article) developed its own self-censorship policy using the new PICS standard. Finally, following a seminar organised by the Internet Developers Association, the Internet Watch Foundation (**IWF**) was created²⁰⁵. This is an independent organisation set up to implement the proposals jointly agreed by the government, the police and the two major UK service provider trade associations, ISPA and LINX. It aims to enhance the enormous potential of the Internet “to inform, educate, entertain and conduct business” by hindering the use of the Internet to transmit illegal material, particularly child pornography, and encouraging the classification of legal material on the Internet, in order to enable users to use it according to their own requirements. Since April 1997 the IWF has been funded by the UK industry on a subscription basis, and is controlled by a Management Board drawn from the subscribers and a Policy Board drawn from a wide range of stakeholders in the Internet, including industry, child and education, consumer, libertarian and other media organisations.

The IWF’s initial role was to operate a hotline service for users to report illegal material on the Internet. However, their experience of combating illegal material has exposed two aspects of user needs, which a hotline service alone cannot satisfy:

- (a) It is not possible to quickly remove all illegal material, particularly that which originates from outside the organisation’s home country;
- (b) There is a lot of material that must be classified as legal, which is offensive to many users and considered unsuitable or harmful for their children.

²⁰⁴ See DTI Press Release P/96/636, 14 August 1996

²⁰⁵ The original R3 *Safety-Net* proposals can be seen in full at <http://www.ispa.org.uk/safetynet.shtml>

In order to begin to tackle these problems, the IWF set up an Advisory Board early in 1997, with a brief to develop a rating system for the use of UK Internet user, but which takes the Internet's global nature into account²⁰⁶. The system is intended to use the PICS system, which will enable users to set parameters for the material they wish to be accessible by their terminal. All other material will be filtered out. This system will permit parents to allow their children unsupervised access to the Internet, having already set limitations on accessible material.

The Advisory Board published its Rating Report²⁰⁷ in March 1998, with the following recommendations:

“IWF recommends that a world-wide rating system is developed which is based on a global approach for the description of content in objective terms, free from any particular cultural values and voluntarily applied to content by its providers. For Internet users there should be an easy-to-use filtering system built into their browser software which allows them to choose if and how to apply filtering, and their own criteria for the blocking of unwanted material. To assist users in their choice, we also recommend that 'off-the-shelf' profiles be introduced so that a familiar classification of content, such as the equivalent of a film certificate rating, can be chosen. IWF recognises that such a system will need to be attractive to content providers as well as equipment suppliers, service providers and browser producers in order to get it developed and implemented.

From a UK perspective, the categories of material which are described in the content label (and hence can be filtered) should include nudity, sex, violence and language, as in the present Recreational Software Advisory Council (**RSACi**) system, but with some amendments to the detailed definitions. We suggest that there should be additional categories covering exposure of personal details; making financial commitments; various forms of intolerance; potentially dangerous subjects (including, e.g., promotion of

²⁰⁶ See <http://www.iwf.org.uk/rating/rating.html#advisory>

²⁰⁷ See http://www.iwf.org.uk/rating/rating_r.html

tobacco, alcohol or drug misuse) and other adult themes. We also pose the possibility of users being able to choose to over-ride their selected limits for factual news and documentary, science or art.”

In parallel with the work of the Advisory Board, and with its support, IWF has been involved in establishing a European consortium of organisations, Internet Content Rating for Europe (**INCORE**), to promote aspects of self-regulation and rating in support of European Commission policies and plans. Following the positive support to rating and filtering from the Global Information Networks Conference in Bonn in July 1997, IWF helped found an International Working Group on Content Rating (**IWGCR**).

5 Horizontal Treatment of Media

Of all the Member States, only the Dutch have examined seriously the potential for horizontal treatment of the four media – film, video, television and on-line services. An interdepartmental working group was set up by the Ministries of Home Affairs and Justice, the Secretaries of Public Health, Welfare and Sports and of Education, Culture and Science to discuss the protection of minors from harmful content in audiovisual media. Its policy was formulated in a blueprint document entitled "*Niet voor alle leeftijden; Audiovisuele Media en de Bescherming van Jeugdigen*" ("Not for all ages; Audiovisual Media and the protection of minors", 1997).

As far as horizontal treatment is concerned, the working group proposed that, for better protection, the existing system of age rating should apply to the audiovisual industry as a whole. In addition, the system needed improving, with the development of rating values, rating criteria and age limits, augmentation of expertise and information about (the application of) classification methods, product information etc. The working group recommended that an independent private institution should be responsible for these activities on behalf of the whole industry. Such an institution could: operate as a national support centre, consult producers and providers of audiovisual media products, report and evaluate every year compliance with the agreements made for each industry and recommend

improvements. The recommendations of the working group mean that a central self-regulatory-system encompassing each industry in the audiovisual media sector may be introduced.²⁰⁸

The industries must be encouraged to take responsibility for setting up an institution. However, because of the importance of improving the age classification system, the working group suggests subsidising a separate, possibly independent institution for this purpose.

In early 1997 the **RvtV**, took the initiative by implementing a discussion with:

- the public broadcasters, represented at first by a delegation of the Audiovisual Platform (AVP),
- **VESTRA**²⁰⁹ representing the commercial broadcasters,
- NVPI Interactive and NVPI Film²¹⁰,
- the *Nederlandse Federatie Cinematografie* (**NFC**).²¹¹

The discussion was about the propositions of the RvtV and the blueprint document '*Niet voor alle leeftijden*'.²¹² One of its propositions was that the independent support institution to be founded should exist of three departments: one Supervisory Board, an executive bureau and an examining committee for classification.

When approached, the *Nederlandse Omroepstichting* (**NOS**)²¹³ and the NVPI said that this institution should be a foundation called the *Nederlands Instituut voor Classificatie van Audiovisuele Media* (**NICAM**).²¹⁴ It could become operational in a short time. According to the blueprint, it is evident that the institution should have expertise in the area of values, criteria, classification methods and information. In its

²⁰⁸ Notitie (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 16. *Rijswijk*: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.

²⁰⁹ Association for Satellite, Television and Radio Programme Providers

²¹⁰ *Nederlandse Vereniging van Producenten en Importeurs van beeld- en geluidsdragers* (Dutch Federation of Producers and Importers of Image- and Sound Carriers)

²¹¹ Dutch Federation for Cinematography

²¹² *Raad van Toezicht Videovoortlichting, Jaarverslag 1997*, p. 3. Oudekerk a/d Amstel: Aeroprint/J.K. Smit & Zonen.

²¹³ Dutch Broadcasting Foundation

²¹⁴ Dutch Institution for Classification of Audiovisual Media

Annual Report of 1997 the NVPI proposed setting up a database, which would contain all classification data to enable keeping track of updated decisions. The first rating given would be the normative one, but it would not necessarily preclude discussions about alternative classifications.

As regards the film, video and multi-media industries the self-regulatory-system proposed by the interdepartmental working group will leave no place for the *Nederlandse Filmkeuring* (NFK)²¹⁵ and the *Wet op Filmvertoningen* (WOF).²¹⁶ Instead of classification being made according to the grounds established by the Act, the film industry itself will be responsible for rating and ratifying agreements on classification. The Government will discuss with the organisations represented in the RvtV a broadening of the agreements in the *Convenant en Reglement Videovoorlichting*²¹⁷, to date covering only video film, multi-media and computer games, to include an agreement on film. This seems logical because the NFC is already represented in the RvtV and because the importers/distributors of cinema films and video films are in most cases the same.²¹⁸

As far as the television industry is concerned, the Secretary of Education, Culture and Science is deliberating with the NOS and the VESTRA about a self-regulatory system for the protection of minors from harmful content on television. In the end this is likely to lead to the implementation of the agreements and the European Directive. The criteria of the international broadcasting unions, the EBU and the ACT, are taken very seriously.²¹⁹

According to the RvtV's Annual Report of 1997, NVPI Interactive (which represents about 13 multi-media publishers) proposed extending the current age rating, as stated in the Regulations on Video Information, to other media.

²¹⁵ Dutch Board of Film Classification

²¹⁶ Act on Film Exhibition

²¹⁷ Covenant on Video Information

²¹⁸ Notitie (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 16-17. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.

²¹⁹ Notitie (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 17. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.

The blueprint document does not say much about the on-line services industry. It mentions that the NVPI and the **NLIP**²²⁰ will discuss a system of self-regulation, including a code of conduct in co-operation with the other parties. When asked, the NLIP stated that, as yet, no serious discussions between the Internet Providers and the NLIP had taken place.

²²⁰ Dutch Federation of Internet Providers