



SUBMISSION TO THE CONSULTATION ON THE REVIEW OF THE „TELEVISION WITHOUT FRONTIERS” DIRECTIVE

Issue Paper on “Commercial Communications”

Endemol

Endemol is a leading international developer and producer for television and online platforms. The company, headquartered in The Netherlands, has subsidiaries and joint ventures in 23 countries, including all major European and Latin American markets, the United States, Russia, South Africa and Australia. Since the summer of 2000, Endemol is part of the Telefónica Group.

Our mission

Endemol aims to be a global leader in developing and exploiting creative and market-driven content across traditional and new media platforms, including linear and non-linear services.

Our objective

Endemol welcomes the consultation on the revision of the Television without Frontiers-Directive (TVWF). The pace of change in the media landscape continues to accelerate and makes a **modernization of the existing rules** under the TVWF-Directive necessary. This relates particularly to the **very detailed advertising provisions** in the Directive, which no longer correspond with the possibilities of the “empowered” consumer in an interactive environment. In addition, **new forms of advertising** have come up, which need to be covered under a legislative framework. It will be important to respond to these changes and come forward with a **flexible legislative framework** for the next years. Independent producers are dependent on the revenues gained from marketing and sponsorship of programmes, as these permit investment in creative programming and thus contribute to the development of European independent works. Against this background, Endemol would like to ask the Commission to take into consideration the following points:

I: Rules common to all audiovisual commercial communications

- **The concept of audiovisual commercial communications:**

Endemol believes that an **extension** of the scope of the Directive to new media platforms is necessary to respond to the latest technological developments. In order to guarantee legal coherence and clarity in a future framework, Endemol would therefore like to express its support for the adoption of a new definition of “**audiovisual commercial communications**”.

Endemol believes in the suggested approach of **graduated regulation** as a means to extend the Directive to the **non-linear environment**. Based on this concept and in line with consumer’s interests, Endemol supports the proposed two-tier regulatory approach. It should be differentiated between the application of **minimum requirements** to all content services and more detailed rules to be applicable to advertising and teleshopping spots.

- **Rules on Human Dignity and the Protection of Minors:**

Endemol considers the respect for **human dignity** and the **protection of minors** as **fundamental principles** of the media landscape. These principles should not only be ensured on traditional media platforms, but also on new media services. Endemol would therefore like to express its support of extending these provisions also to the **non-linear environment**.



- **Identification of commercial communications in general, including sponsored spots:**

Endemol believes that it is of great importance in the media landscape **to distinguish** between editorial content and advertising or teleshopping. The principles of “**identification**” and “**separation**” should thus also be applied to an extended TVWF-Directive. This would be of particular relevance in a new media landscape, in which new forms of advertising play a significant role.

While maintaining basic principles to protect the consumer, it should at the same time be ensured that the future legislative framework is sufficiently flexible. As one of the **leading multimedia content producers**, Endemol calls for a **relaxation** of the rules on **product placement**. These should be updated so as to be in line with the **changed technological environment**. **Coherence** should be ensured between the TVWF-Directive and the “Unfair Commercial Practices Directive”, according to which product placement is already allowed. It should be noted, however, that a **clear identification** at the beginning of the programme should be guaranteed. Furthermore, it should be ensured that product placement complies with the provisions of Articles 12 and 16 TVWF.

As correctly pointed out in the Issue Paper, however, it is possible that the product placement practice might affect the **editorial independence** of a broadcaster. In order to ensure media independence and enable not only broadcasters but also independent producers to make use of revenues in the advertising market, Endemol would like to point at the possibility of giving **exclusivity** in this respect to independent producers.

- **Application of the rules:**

Endemol welcomes the Commission’s efforts to modernize the currently very detailed advertising provisions in the Directive. Endemol believes that self-and co-regulation are the best means to respond to the challenge of on-going technological developments and high consumer safeguards at the same time.

II. Quantitative rules on television advertising

- **Hourly and daily advertising limits:**

The quantitative rules on advertising will be particularly affected by the changed media environment and the “empowered consumer” has the means to circumvent these. The updated TVWF-Directive should reflect these changes and introduce greater flexibility. However, due to the nature of non-linear services, it would be clear that quantitative rules could not be applied to the non-linear environment; here use should be made of qualitative provisions instead.

- **Insertion of advertising:**

Endemol understands the broadcasters’ wish to have greater flexibility with regard to the **insertion of advertising spots** during programmes. Given the pressure on f. ex. **spot advertising** and **new forms of advertising** in and around programmes, Endemol would welcome a relaxation of these provisions. It should be noted, however, that these rules should be maintained for certain clearly defined categories (such as religious shows etc.) while they could be relaxed for others. This would be in line with the technological development and contribute to a modernization of the framework.

We believe that support for independent producers is crucial to the success of the development of the European audiovisual industry. We therefore hope that our views will be taken into account when the European Commission comes forward with its proposal to modernize the TVWF-Directive.