

RTÉ Response to Television Without Frontiers Directive (September 2005)

General Summary

- RTÉ welcomes the opportunity to make a submission to the Commission's Issues Papers on the Television without Frontiers Directive. RTÉ has actively participated in consultations, expert groups and contributed to other submissions on the same topic, including the EBU.
- The 'Television Without Frontiers Directive' (the Directive) is the key legislation regulating the free circulation of television services across the European Union. At its core lies the objective that viewers continue to have access to a rich variety of European programmes. This principle becomes ever more important at a time when niche and premium services achieve phenomenal growth and 'global content village' evolves from concept to reality.
- Another core element of this Directive is the 'country of origin' principle which makes it possible for viewers to freely receive television channels and services licensed in any one of the EU Member States. RTÉ recognises that this internal market objective – the free circulation of services - lies at the heart of the directive and needs to be achieved. This should not, however, be to the detriment of delivering a high level of protection for viewers and consumers in the European Union.
- RTÉ considers that these core principles enshrined in the Directive are important and should be maintained. There is a need for a minimum set of common support measures for Europe's production industry. However it must also be recognised that the domestic or national regulatory measures must a) be able enhance or complement these minimum support measures and b) be adhered to by all audio-visual content services which target that market.
- RTÉ agrees that the Directive needs to be adapted to take account of technological developments and new content services. Recent technological developments have blurred the distinction between different types of services (broadcasting and new media services) and between the regulation of infrastructure and content.
- RTÉ notes that the Commission recognises the necessity of an 'integrated approach to information society and audio-visual media policies in the EU' to take account of the convergence that is taking place. This 'integrated approach' provides an important and timely opportunity to clarify the objectives and scope of future European Audio-visual policy.
- The Directive should not be limited to removing the obstacles to the internal market but should also take account of general interest objectives in this area such as access, cultural diversity and media pluralism.
- Public service broadcasters have a requirement to meet a broad programming remit which includes, substantially, news, current affairs and sports (as well as education, cultural and entertainment programming) yet broadcast regulation, through this Directive, does not recognise the value of such a broad remit.

- RTÉ suggests that the provisions which support cultural diversity (e.g. Articles 4 & 5) be re-evaluated in the context of this debate. RTÉ contests that the exclusion of news, current affairs and sports programming from the applicability of quotas is an overly narrow interpretation of what constitutes a European or Independent work. European and Independent Quotas should recognise the broad remit that is the pre-requisite of a Public Service Broadcaster.

ISSUE PAPER: Commercial Communications

(Issue 1) Common Rules on Audio-visual Commercial Communications

1. RTÉ agrees that it may be appropriate to extend qualitative rules to non – linear services. (As mentioned in previous section any extension of the scope of the directives – leading to a new definition of audio-visual services must be consistent with existing Directives such as eCommerce and Unfair Commercial Practices).
2. RTÉ supports the proposal of a basic tier of qualitative rules applicable to all audio-visual commercial communications but with application rules commensurate with each category of audio-visual content service.
3. RTÉ agrees with the definitions as outlined in the Issue Paper but seeks some clarification on the definition of Sponsorship. RTÉ suggests a further clarification in the definition to draw clear parameters around which undertakings that would or would not qualify. For example a broadcaster, ‘who may be engaged in the production of audio-visual works’ generally but not in that specific programme, could be prevented from sponsoring another programme.

(Issue 2) Rules on Human Dignity and Protection of Minors in Commercial Communications

4. RTÉ considers that the existing provisions are appropriate and should in principle be extended to non-linear services. RTÉ agrees that such rules should also apply to sponsorship slogans. In reality most Members States, such as Ireland, have stricter legislation in place in the area of advertising. The protection of minors must remain a shared responsibility if it is to achieve the desired results.
5. RTÉ supports the proposals to extend the provisions of Article 22a to non-linear audio-visual services. RTÉ supports maintaining the status quo as per Article 23 of the Directive with regard to linear audio-visual services as proposed by the Commission. RTÉ favours the extension of these rules to non-linear services subject to adapting the provisions to the technical and editorial characteristics of these new services. In this context, the Council of Europe Recommendation 2004 (16) of 15th December 2004 on the right of reply in the new media environment is an appropriate basis to work on.

(Issue 3) Rules relating to Public Health considerations:

6. RTÉ supports the view that current rules on tobacco and alcohol are justified and should be applied to all audio-visual services. RTÉ considers there is additional

scope for co-regulation and self-regulation at member state level to further interpret and apply principles and rules pertaining to public health.

(Issue 4) Identification of Commercial Communications in general, including sponsored spots:

7. RTE is of the view that the provisions under Article 10 relating to identification should be maintained and should be extended to non-linear services.
8. The principle of separation between editorial content and advertising is important and should be maintained. Viewers must be able to recognise commercial messages in the linear and non-linear services that they receive. That said, broadcasters must also be allowed to offer advertisers opportunities for commercial communications with more flexibility than was the case in the past.
9. It is difficult to predict at this stage how such commercial communications will evolve with the use of new technologies. In such circumstances where the principle of identification is fully applied, RTÉ considers that the principle of separation may not always have to be the central element in addition. As audiovisuals services begin to be delivered by more sophisticated and more creative means, such a 'flat' rule of separation becomes difficult to implement. The key is to clearly identify the advertisement. In addition users of audio-visual services are becoming more 'media literate' and discerning and retain more power when accessing such services that they would have in the past with traditional linear services (i.e. users may not switch, click or fast forward).

(Issue 4) Identification of Sponsored Content in Particular:

10. Existing provisions should be maintained and extended to new services. RTÉ believes that a clear identification of a sponsored programme is sufficient for viewers and that any additional 'warning' system would confuse users.
11. RTÉ notes the concept of legitimate product placement in the Directive on Unfair Commercial Practices adopted in May 2005 and believes that such a practice of 'product placement', needs to be addressed in the context of the TV Directive. Given the ever increasing use of this form of commercial communications, particularly by content industries outside of the EU, the regulation therefore needs to be a) meaningful and effective and b) not discriminate against producers of original content against suppliers of acquired programming.

(Issue 5) Application of the Rules on Commercial Communications:

12. RTÉ accepts that the most effective approach to regulation in the areas of audio-visual content services is to ensure that a clear framework is established at European Level with principles that meet the objectives of the audio-visual industry.
13. Greater consideration needs to be given to the role of co-regulation in such a rapidly changing marketplace. If clearly defined and specified - as regards

application in a transfrontier context - it could prove a valuable complement to the core principles in the Directive.

14. Some member states can already demonstrate the positive effect of co-regulation, which brings about co-operation by all stakeholders in consultation with the relevant authorities, thus ensuring better compliance and a level-playing field. Public Services Broadcasters practice self-regulation through setting their own guidelines for programme standards and content (such as Producers Guidelines, Advertising Codes etc). These standards may be higher (or lower) than those applicable to the wider broadcast sector. Co-regulation however has the advantage of creating a more level playing field in a way that responds to the market and ensures buy-in from all stakeholders.
15. RTÉ would also consider that the results obtained on the application of qualitative rules in areas such as public health and protection of minors appear to be satisfactory. It would not therefore seem necessary to introduce any additional control mechanisms as the issue paper proposes.

(Issue 5) Hourly and Daily Advertising Limits:

16. RTÉ believes the provisions in place continue to be appropriate. As is currently the practice it is more appropriate to have further provision refined at national level rather than at Community level where harmonisation would be extremely difficult.
17. As far as extending it to non-linear services is concerned RTÉ submits that quantitative limits would make little sense for 'on-demand' services.

(Issue 6) Insertion of Advertising:

18. RTÉ sees no problem in relaxing the rules on insertion provided the clear identification of advertising is maintained. And it agrees that such rules should be extended to non-linear services though users of non-linear services will have greater control over their viewing (e.g. whether they have to view the advertising inserts).