

Issue Paper 5 Protection of Minors and Human Dignity, Right of Reply

As the Issue Paper notes that Articles 22, 22a and 23 of TVWF are probably sufficient for linear broadcasting services, we assume that the status quo will prevail for our broadcast services.

These provisions are a useful expression of a broad consensus within European media and society; that on the one hand children must be protected from unsuitable content, but equally that censorship should be avoided and that adults should remain free to view legal content. In particular, the extreme protectionist measures currently witnessed in US broadcast media should be avoided at all costs. The EU has to strike a balance between protecting minors and respecting adult viewers - while remembering that children are present in only a minority of European households.

For non-linear services, assuming that the decision is taken to move to an “audiovisual content” model, our main concern would be about whether in practice it will be possible to enforce the minimum standards enshrined in the basic tier of regulation on services which are likely to be non-licensed by Member State authorities.

As we mention in our response to Issue Paper 1, we are unsure that the linear/non-linear model will prove sustainable in practice. Specifically on the issue of Protection of Minors, we assume that action in this area will build on the EU Recommendation of 24 September 1998. Given that there is an existing EU Commission proposal for a new version of this Recommendation, as the Issue Paper notes, we would like the Commission to clarify the exact relationship between the proposal for a Recommendation of 30 April 2004 and the future Audiovisual Content Directive: is there a real added value in having two instruments in this area?

We are however also unsure that the strict linear/non-linear distinction, if it is eventually introduced in legislation, will reflect market reality and consumer expectations in this area. For example, the Issue Paper’s proposed wording in Article 22 is that:

“in respect of non-linear audiovisual content services Member States are encouraged to put in place systems of co-regulation or self-regulation as well as systems of filtering, age verification, labelling and classification of content”

Our concern with this approach is that while this is probably an appropriate approach for non-linear services (subject only to how it could be enforced), these are precisely the measures being taken by digital pay-TV operators. Broadcasters have to carry out exactly the same balancing act, protecting minors while not preventing adults from viewing legal material, as do our regulators. A good example is Premiere in Germany and Austria, who will this month introduce a specially-

designed remote control for children. This allows parents to choose which channels will be available on the children's remote¹.

Yet this form of self-regulatory initiative would, according to the proposed wording of Article 22, only be envisaged for "non-linear" services, even though many pay-TV services will – as we understand it – be classified as "linear". But the classical tools of linear broadcasting such as a watershed may be less appropriate or effective in pay-TV than the self-regulatory systems of classification and filtering suggested as examples for non-linear services.

As we have commented in our response to the Issue Paper on content regulation, there will be a need to develop more flexible regulatory tools in the future rather than rely on a one-off distinction between linear and non-linear services. While services akin to and potentially substitutable for broadcasting should be regulated as such, regulation will need to be shaped so as to avoid an artificial cut-off between "broadcast" and "non-broadcast" services. The need for greater fluidity between the two tiers of regulation applies equally in the important area of protection of minors. Subject to these issues being resolved, we look forward to continuing to contribute to European policy in this important area along the general lines set out in this Issue Paper.

Association of Commercial Television
Brussels
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¹ Premiere Press Release of 16 August 2005, "Kinder an die Macht: Neuentwickelte Fernbedienung von Premiere".