

Statement of the Position of ARD and ZDF on the Topic Paper for the Liverpool Conference on Audiovisual Policy

Protection of Young People and Human Dignity Right of Reply

I. General Viewpoints

Human dignity is an elementary constitutional principle in Europe. The concept of human dignity was formulated during the course of the Enlightenment in Europe. It is recognized in the constitutions of all European countries. Consequently, the European Court of Justice has expressly raised respect for human dignity to a general principle of EU law (*cf. alone: EuGH, Rs. C-377/98, Slg. 2001, I-7079—Netherlands/Parliament and Council, Margin No. 70*).

Being a universal European postulate, human dignity sets qualitative standards in the field of the media. It represents here a commitment to community welfare in publishing and therefore a medial seal of trust, which in particular includes the medial protection of young people, the prohibition of incitement to hatred and the right to present a counterstatement.

- It goes without saying that human dignity, and with it a European commitment to community welfare in the area of the media, includes the right of children and young people to shape their own personalities without being affected by external factors which would impair their development and to mature into personalities who take responsibility for themselves within the social community.
- Human dignity is also the protected value behind the prohibition of incitement to hatred. Anyone who incites others to hate human beings because of their race, sex, religion or nationality negates these persons' right to be respected as equal members of the whole society and lays the groundwork for social stigmatization and discrimination.
- The right of reply is also a means to protect human dignity specifically designed for the field of the media. Anyone whose affairs are publicly discussed in the media is granted the right to demand publication of his/her own viewpoint at the same position, with the same degree of publicity and before the same forum. Otherwise, the person affected by a depiction in the media would be degraded to a mere object of medial, public discussion, a violation of that person's human dignity.

It is therefore only logical that the medial protection of young people, the prohibition of medial incitement to hatred and the right of reply are handled in a *single* topic paper, that these principles have *universal application* to both linear and non-linear audio-visual services and that they must be regulated in binding and *effective* form.

ARD and ZDF (therefore) propose that the (above-mentioned) fundamental viewpoints be incorporated into the reasons for examination of the newly drafted TVWF Directive.

II. Specific Viewpoints

1. The Regulations Regarding Medial Protection of Young People

In view of the major significance accorded to the protection of children and young people as the future generation of a pan-European society, ARD and ZDF, with respect to medial protection of young people, fundamentally support

- the Council's recommendation of 24 September 1998 for the strengthening of the competitiveness of the European industry for audiovisual services and information services through the promotion of national general conditions for the realization of a comparable level with respect to protection of young people and protection of human dignity (98/560/EC) and
- the proposal for a recommendation by the European Parliament and the Council for protection of young people, human dignity and the right to present a counterstatement with respect to the competitiveness of the European audio-visual media and the European information services industry (KOM 2004/341).

Aside from this standpoint, ARD and ZDF share the opinion of the topic paper that the current wording of Article 22 of the television directive for *linear* audiovisual services is adequate. While it is true that Article 22 of the television directive only sets minimum standards of content for linear audiovisual services, these standards have binding character. Moreover, it is possible for the individual member states, pursuant to Article 3, Paragraph 1, to provide stricter/more detailed provisions for their "national" television companies, thereby allowing for existing cultural differences and the consequent diversity of nuances in laws for the protection of young people in Europe.

In contrast, the topic paper does not put the focus of medial protection of young people on minimum standards of content for the *non-linear* audiovisual services. In addition, in contrast to the linear audiovisual services, for which the member states are required to initiate suitable legal measures for the medial protection of young people, the degree of compulsion for the legal specifications for the protection of young people has been reduced to an optional level ("... the member states are encouraged . . .").

The waiver of this compulsion is in contradiction to the imperative, derived from human dignity, for medial protection of young people which is as efficient and reliable as possible. The member states should therefore be required with respect to the non-linear services as well to initiate suitable measures which will ensure that audiovisual content is not distributed in a manner which will seriously impair the physical, mental and moral development of minors.

In the view of ARD and ZDF, there should not be a waiver of binding minimum standards of content for the medial protection of young people with respect to the non-linear audiovisual services.

The further precautions designated in the topic paper for the non-linear audiovisual services to secure protection of young people, namely, procedures for filtering and determining age as well as for labelling and classifying content, would be possible measures for the fulfilment of the general guarantees which must be prescribed as binding. Their application can lead to a distribution "in a manner" which prevents serious impairment of the development of children and young people. However, one must not overlook the fact that filter and classification systems continue to have weak points.

Filter software is today available from various developers. The software can be set up so that undesired content from individual Internet services is blocked. Some of these filter programs can even be integrated in the Internet Explorer. Aside from the fact that the young people who have grown up with the new electronic media can find ways past such blocks much faster and more frequently than adults would believe possible,

the installation and configuration of this type of filter program also makes considerable demands on the time and expertise of the parents. Simply installing the software program itself is not enough. Configuration settings dependent on age must also be entered as appropriate for each child.

But as a rule even the programming and set-up of the software are not enough. The filter programs have been designed to work in cooperation with the Internet service providers, who must insert control data for the filter software in their hidden program code. This data is what enables the filter program to recognize whether access to the Internet site, in whole or in part, is to be blocked. This means that the operator of an Internet site must assess his content and implement the assessment as a classification in the above-mentioned control data before the filter software will become active at all. There is of course no guarantee that this type of content management by the Internet service provider—if it exists at all—will agree with the content assessment by the parents.

A further problem is the large number of filter programs on the market. No Internet service provider can reasonably be expected to offer this complicated and expensive support for all of the filter programs on sale. Furthermore, various filter programs themselves are worthless if the extension “.de” is not at the end of the URL, closing the circle of enormous difficulties in the control of global Internet sites.

Additional responsibility must be assumed, now as in the past. Although the industry and service providers have certain obligations in this matter, the parents bear the greatest burden of responsibility. This is why virtually all of the European countries take the position that the control of the media consumption by children and young people is an essential duty of the parents and the family.

As far as the non-linear audio-visual services are concerned, the third element, alongside the minimum standards for content in terms of medial protection of young people and the possible implementation actions, is the *responsibility of the parents*. They make a decisive contribution to the protection of young people. The parents must have the courage to educate their children about the media. They must observe their children whenever the latter use non-linear audio-visual media, especially the Internet. But they themselves must also be instructed and knowledgeable about the media and the responsible use of these media. So there is a demand for media competence which will enable parents to introduce their children to the use of the media appropriate for their age.

ARD and ZDF propose supplementing the planned regulation for non-linear audiovisual services in Paragraph 2 by encouraging the member states to seek suitable measures, especially media competence and media training programmes, which will enable children and young people to use the services responsibly.

While on the subject of preventive medial protection for young people, the development and implementation of a *seal of approval* for especially good children's sites on the Internet should be considered. This type of seal of approval would enable parents to recognize without further ado Web sites which are especially suitable for children. The seal of approval could be issued by national institutions in each of the member states which would be granted the authority to issue the seals and would regularly discuss their experience with one another. This would enable the appropriate consideration of differences in national traditions and cultures. However, the national issue of the seal should include a pan-European recognition of the seal of approval so that—parallel to the international orientation of the Internet—it would also be effective across national borders. In view of the transnational significance of the issue of the seal, the decisive criterion for the awarding of the seal of approval would have to be harmonized to the extent that the service providers and their online services would introduce children to the competent and responsible use of the medium Internet; possible approaches could be:

- Offering attractive, topical, interactive Internet sites free of charge and without advertising

- Giving practical tips for secure surfing on the Internet, secure chatting and responsible use of the Internet in general
- Pointing out the dangers on the Internet which can come from viruses, worms, dial-up programs, etc.
- Explaining the function and possible uses of the Internet
- Communicating knowledge appropriate for children concerning the philosophy and legalities during the creation of an Internet site
- Offering examples and tips on the critical consideration of Internet content
- Setting up an "Internet contact point" to which children can report if they have problems or unusual events occur
- Giving the children space to reflect, to make suggestions and to offer criticism of the site
- Giving the children the opportunity to shape the content themselves
- Offering moderated chats and forms, whereby the moderators are aware of their responsibility and have been trained accordingly
- Giving children, as far as possible, a content-related reply to their e-mail questions
- Subjecting the links on the site to a special editorial examination to determine that the content of the linked sites is also free of charge and without advertising, is oriented to children or concerns topics which interest children
- Alerting the children when they leave the site that they are "now leaving" the "protected pages" via a link

If this type of seal of approval were accompanied by special responsibility and duties of the industry and service providers, as described in the introductory recommendations and initiatives, this complex would, in the opinion of ARD and ZDF, properly serve the European legal principle of human dignity in the area of medial protection of young people.

2. The Regulations Prohibiting Incitement to Hatred

The prohibition of incitement to hatred regulated for linear audiovisual services in Article 22a of the television directive is adequate.

ARD and ZDF favour an analogous extension to non-linear audiovisual services.

However, it is proposed that both regulations be harmonized with regard to wording to prevent misunderstandings which would otherwise be possible. The wording of the current Art. 22a should be taken as an orientation so that the prohibition for the non-linear audiovisual services would also refer to the clearly defined properties "race, sex, religion or nationality".

3. The Regulations Regarding the Right of reply

ARD and ZDF are fundamentally in favour of the proposal to develop further for *all* audiovisual media the right of reply codified in Art. 23.

ARD and ZDF regard the right of reply regulation for linear audio-visual services contained in Art. 23 to be adequate and are therefore in favour of the introduction of an analogous provision concerning non-linear audiovisual services. However, the following must be taken into account:

The right of reply in Art. 23 of the current version grants a right to present a or to equivalent actions for each and every natural or legal person whose legitimate interests—especially honour and reputation—have been compromised by unfounded allegations in a television programme, regardless of nationality.

The right of reply is intended to ensure that an individual is not degraded to a mere object of public discussion in the media. This right to describe the person's own viewpoint aims to allow the individual to co-determine how he/she, or circumstances affecting the person, is presented to the general public. It is therefore decisive for the exercise of the right of reply whether allegations about a person have been publicized (at all) in a medium. This is why the right of reply has been designed as a media law claim in accordance with the principle of "balance of power" between media and the affected persons. It is intended to provide an opportunity to contradict published allegations by a counterstatement of the perceived facts without a complex examination of their truth content. On the contrary, the question as to whether the allegations are true or false, or legal or illegal, is irrelevant in this case. For this reason, the property "false" (allegations) should be deleted in Article 23 as well as in the planned parallel regulation for the non-linear audiovisual services.

ARD and ZDF are in favour of extending the right of reply to non-linear audiovisual services. ARD and ZDF share the conviction that the right of reply must be regulated by law. The legal regulations must take into account the special circumstances of the medium in each case for the realization of reply.