



August 2005

ENPA response to the Issue Paper for audiovisual conference in Liverpool:
Protection of Minors and Human Dignity and Right of Reply

ENPA is a non-profit organisation of 5100 titles from 24 European countries (plus one observer member), representing the interests of newspaper publishers to the European Institutions. More than 120 million copies of newspapers are sold each day and read by over 235 million people in Europe.

ENPA is glad to have the chance to respond to the Issues Papers on the Television without Frontiers Directive 89/552/EEC). It is essential that newspapers' voice is heard during this consultation. We have replied separately to the Commission questionnaire inquiring about the potential economic impact of this Directive on newspapers. We hope that the Commission services will take all of ENPA's responses collectively into consideration (also in consideration of our letter of 10 May 2005 on the subject of commercial communications in this Directive) when managing the draft final text for the revised Directive).

ENPA recommends the Commission to read this ENPA position paper simultaneously with our response on the scope of the Directive (rules applicable to audiovisual content services).

Protection of minors:

ENPA believes that the current provisions in the Directive on the protection of minors are sufficient. There is no need for defining detail at EU level, where Member States are able to define appropriate detail upon the current basis. ENPA fully supports the efforts by Member States to ensure the protection of minors, and publishers are willing to inform on what are acceptable limits without foregoing the freedom of speech. Where the Commission has suggested a new wording in its Issue Paper on page 2, advising to add a specific provision for non-linear audiovisual content, ENPA does not consider that the Directive should make specific statutory rules particularly where internet content is concerned. Therefore, the Commission's suggestion to rely on self-regulation whenever possible is highly important to include in the text of the Directive. ENPA advocates self-regulation in both commercial and editorial content and to this end is a member of the European Advertising Standards Alliance (EASA) supporting effective self-regulation systems across Europe. ENPA members also oppose state intervention in editorial content, where that intervention could be deemed as censorship or forcing publishers to practice self-censorship.

Discrimination:

ENPA does not see that further measures are necessary at European level to address discrimination. It is not within the remit of the EU to legislate on matters which affect editorial content. This is a national level competence and this was made clear recently at EU

level when discussing the draft Directive¹ on implementing the principle of equal treatment between men and women in the access to and supply of goods and services. It was evident, according to Commissioner Diamantopoulou, that there is no EU competence to legislate how the media and advertising should editorially portray men and women. This is still relevant at present as the Treaty has not been altered in this respect.

Right of reply:

ENPA refers the Commission to our position paper on “scope of the Directive” in particular for this aspect.

However, it remains to say that a statutory right of reply applicable to all media under this Directive is not desirable. The first choice should always be for the possibility of self-regulation mechanisms to be used. The Council of Europe already in December 2004² recommended to Member States to introduce a right of reply, with full respect for self-regulatory systems. The Commission need not take further action under the Television without Frontiers Directive.

Self-regulation is the best way of guaranteeing a solution on the Internet and new media services for the person seeking the reply, as this type of thing would be impossible to regulate effectively over the Internet in particular, i.e. to find every single article on the entire Internet which may be subject to right of reply is impossible.

ENPA finds it important to highlight again to the Commission how the introduction of a right of reply at the level of non-linear audiovisual services could cause problems for publishers for their online versions of newspapers whereby if an audiovisual short clip is shown, this may be subject to a different right-of-reply regime to that of the online text accompanying the clip. ENPA therefore recommends excluding newspapers in all their forms from the Directive, in the interest of ensuring legal certainty, and trusting newspapers to continue the traditions of self-regulation as have been effectively applied up to present.

We hope that the European Commission will take our position carefully into consideration and we remain at its disposal for any further information that it may require.

Brussels, August 2005.

¹ COM(2003) 657.

² Recommendation Rec(2004)161, Council of Europe.