

Introduction

Ofwatch is an organisation that represents the interests of adult service consumers in the United Kingdom. Although much regulation is aimed at controlling adult content, the views of the consumers who are affected by this regulation are rarely heard. Ofwatch aims to change this.

This response concerns paper 5 Protection of Minors, Human Dignity and Right of Reply and elaborates some of the points covered in our earlier submission on paper 1 Rules applicable to Audiovisual Content Services.

Protection of minors

The principles described in issue paper 5 are entirely reasonable; however as with so many issues the devil is hidden in the detail. In particular the statement that, “member states are responsible for defining this notion in accordance with their national legislation and moral values”. The specific notion referred to being incitement to hatred, but this is equally applicable to other issues such as protecting minors from pornography.

The principle that minors should be protected has quite rightly never been in any doubt, but the degree of protection required, the value of freedom of expression and the balance between these issues has. National margins represent these differences and the differences are now so large, at least where pornography is concerned, that for all practical purposes each member state applies its own rules. The regulation of pornography is 99% margin and 1% principle.

The fundamental problems of child protection caused by new technologies such as IPTV will not be resolved by extending the TVWF directive to include non-linear content. The real problem is not capturing these new technologies within the scope of the directive but dealing with the challenge that new technologies present to the very notion of national margins and the vigorous struggle that is likely to result in attempts to regain control.

Various financial, commercial and technological barriers have helped bolster the ability of member states to apply a variety of different national margins in some areas. For example the total domination of UK satellite broadcasting by Sky/Astra has greatly hindered public access to continental European adult services in the UK. Such European services can be accessed, but require additional receiving and decoding equipment that creates a significant barrier to consumers that only small numbers currently cross and which the Government tolerate.

IPTV will remove these barriers and make European adult services easily accessible to millions of British citizens. British adult service consumers will greatly welcome the enhanced ability to avoid the unwelcome censorship imposed by Ofcom, but fear that the British Government will take vigorous action to reassert its “national margin” and attempt to block access to such services. It may rightly be argued that these matters are for the British people and British Government to resolve, however this case raises important issues for the protection of minors under the TVWF directive that will require action at a European level.

1) IPTV content originating from a single nation that is available internationally *cannot* be regulated according to multiple nation standards regardless of the desire of various member states to impose different rules, considerations and/or protective measures. The role of the nation state in protecting children from pornography must give way to parental protection. This fundamental limitation must be recognised and accepted.

2) Not only will it be difficult to block IPTV services it is wrong in principle to do so.

The principle of subsidiarity should allow individual adults a “personal margin of appreciation” as the most appropriate and local authority in deciding matters of suitability and harm for themselves and their families, especially in cases where content is specifically sought, where protective measures are in place and where higher authorities are unclear of how to proceed (as is all too clear from many of the inconsistencies apparent in UK regulation).

3) Attempts to reassert national margins in order to protect minors will be ineffective, but will create wide spread problems in other areas. Understanding the true reasons behind some demands for change should inform the debate over how to proceed.

However noble the intention, watering down the country of origin principle in an attempt to protect minors will not prevent European adult services from being received in the UK, but it will create significant regulatory and legal uncertainty and complexity where none existed before to the detriment of all. The country of origin principle should remain unchanged.

4) The impact of new technologies on national margins deserves greater comment and discussion. This is particularly relevant in the case of pornography where the national margins are so large and protecting minors where emotions run so high. A statement by the commission would be welcome.

Linear and non linear services

As far as protecting minors is concerned it would be far better to impose some form of PIN protected/free to air distinction rather than use the linear/non-linear distinction. Even though the requirements to protect minors would apply to *all* services a focus within the directive on protection rather than format to distinguish services would undoubtedly be of benefit in increasing the overall amount of protection.

If the distinction between linear and nonlinear services has been made to allow less regulation where viewers have greater control, there should be less need for control where audience expectations are likely to be satisfied. Where a random group, views variable content there is more need for regulation, but where a self selecting group views expected content there is less need for regulation.

If the linear/nonlinear distinction is to be used then careful consideration must be given to define what constitutes a single 'selection' for the purposes of non-linear services. In the case of broad interest services the selectable unit must be relatively small to ensure expectations can be met, whilst on narrow interest services a larger selectable unit of content should be acceptable. Audience expectation should always be the guiding principle. To illustrate the point, a day of cricket should be selectable as a single non-linear choice, but a group of films should only be selectable as a single unit if the nature of the content of each is clearly described before selection.

Protecting minors and protecting reason

The principle of protecting minors is universally accepted and the proposed regulation is entirely reasonable, *provided it is appropriately interpreted*, something that on past experience has been elusive. The problem is not one of harm but perceived harm. Perceptions of the harm caused by pornography are now so divergent that the directive has become almost meaningless in this area. This is well illustrated by the case of violent pornography where content considered acceptable to *broadcast* in Italy is in danger of becoming an offence to even *possess* in the UK. Specifically services such as Extasi (now ceased transmission) and the current debate in the UK following the murder of Jane Longhurst concerning violent pornography.

Whilst there is unlikely ever to be total agreement much greater effort should be made to reach some further form of consensus to help build central policy and reduce national margins. If nations cannot agree even on what is appropriate to protect minors then there is little hope. We must choose between further agreement and a more unified approach to protecting minors with diminished national margins, or business as usual in an increasingly open and diverse world which will undoubtedly antagonise national margins and Government perceptions leading to increased restriction and censorship.

Regulation of audiovisual content must be kept in proportion to its impact. We should remember that the primary responsibility for protecting minors from harm always has and always will reside with parents, who should be supported rather than directed in this role and that television is but a tiny part of the hazards of modern day living. Regulatory activities must concentrate on empowering adults by signposting, filtering and educating not on micro managing, prohibiting and censoring.

Regulation is intended to be a benefit for citizens not a hindrance. Failure to directly address the fundamental conflict between national margin and free communication will lead to irrelevant and ineffective regulation. Half hearted attempts at preventing adults from watching what they want in order to protect the children that they may not have from harm that may not exist are futile.

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