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TELENOR COMMENTS TO THE ISSUES PAPER FOR THE LIVERPOOL AUDIOVISUAL CONFERENCE – PROTECTION OF MINORS AND HUMAN DIGNITY AND RIGHT OF REPLY.

Telenor ASA is the largest provider of telecommunications services in Norway, and has substantial international operations. Telenor provides a broad range of services over a variety of infrastructures, including fixed, mobile, satellite, cable and broadband/IP. The Telenor group has subsidiaries in several EEA countries, such as Denmark, Sweden, Finland, United Kingdom, Austria, and Hungary. Telenor distributes and transmits Audiovisual Content Services via all of the above said infrastructures. In addition Telenor acquires rights to content to be utilised as Audiovisual Content Services. Telenor is also a provider of satellite uplink, encryption and other services related to its distribution and transmission services.

Below Telenor presents its views on the Issues Paper for the Liverpool Audiovisual Conference (Protection of Minors and Human Dignity Right of Reply) (the “Issues Paper”). The comments and observations are presented in the same chronology as set out in the Issues Paper.

Protection of Minors

Introduction

The TVWF Directive provides for the Member States a right to take appropriate measures to ensure that television broadcasts that may be harmful to minors can be stopped.

It is important for us to underline that it is advantageous to all entities active in the Audiovisual Content Services markets that proper protection of minors are implemented, since such protection is a responsibility that lies upon the society as such. We assume that this is an intention shared by all Member States.

The regulatory regimes in the European countries are, however, quite different in respect of the protection of minors. The differences in regulation on for instance pornography, between countries like Norway and the UK on one side and Germany and Denmark on the other are quite material. This results in differences when it comes to the actual impact of the freedom of reception as currently set out in the TVWF Directive.

While it cannot be ignored that the different platforms are regulated very differently in respect of content harmful to minors, the level of protection offered by European content providers and network operators against harmful content is already high.

Telenor has operations in EEA countries characterised by comprehensive and strict regulation on audiovisual content over electronic networks on all platforms. Telenor has in addition implemented a wide set of self-regulatory measures to protect minors against possibly harmful audiovisual content. This includes filters against child pornography transmitted by mobile phones and the Internet, parent control for TV programmes etc.

We therefore believe that the proposal to extend the application of the Directive to non-linear services is neither necessary nor appropriate to achieve an adequate level of protection of minors in Europe. The challenges rather arise from audiovisual content offered by non-European content providers – challenges not properly addressed by the suggestions in the thematic paper.

Provisions with respect to linear services

On this issue we refer to our comprehensive comments in respect of article 22 and article 2 a.) on the Issues Paper on Material and Territorial Competence. As set out therein we do not believe that article 22 and article 2 a.) are sufficient to protect minors. We rather believe that they create advantages to Member States with a lenient legislation on the issue at hand.

Provisions for non-linear services

As mentioned above, we do not believe the time is ripe for extension of the TV Directive to non-linear services as suggested in the thematic papers. If such a comprehensive approach is chosen, we would, however, like to point to the following: The suggested text includes the term “distribute”, whilst article 22 use the term “broadcast”. To “distribute” the Audiovisual Content Service may take place by more than one party. It is important that the party responsible for the content is the party to which any remedies should apply. Hence, it should be made clear that the primary responsible is the “editor” of the service and not for instance the transmission provider, the distributor etc. Moreover, it should be clarified whether this regulation applies to distribution of primary cross-border transmission of such services or only to distribution that may be classified as retransmission.

In respect of non-linear services we approve of self-regulation and the other measures suggested. However, we also believe that, in digital networks in particular, such measures could be appropriate regulation for the linear services to some extent and encourage the Commission to consider this as part of the revision of the Directive. In digital networks parent control mechanisms are available, which could provide useful and appropriate tools for such measures. Combined with age verification and labelling we believe that good opportunities are provided for the protection of the minors from a practical angle.

Measures

As described in our comments to the Issues Paper on Rules Applicable to Audiovisual Content Services, Norway has implemented new legislation providing a number of measures targeted at protection of minors. However, such measures are wide and there is an obvious risk that they may reach wider than expected and/or intended, i.e. a decision in one case may have effects on the market or in situations they were not meant to cover. Such indirect consequences should be avoided.

Based on the above, we urge the Commission to consider issuing guidance on which measures that shall be available to the Member States under article 2 a.) ref. article 22. The measures available should be proportionate to the intention of article 22, the urgency of the matter and the level of necessity for protection in each case. Additionally, when specifying the available measures the Commission should take into due consideration all relevant interests that may be represented in each case.

Incitement to hatred

Our principled opinion of protection of minors as set out above applies to this issue as well (see section 1). However, we have not experienced that material differences between the Member States on regulation are present in this respect.

Right of reply

On this issue we support the Commissions' conclusions

Yours sincerely,

Harriet E. Berg (sign)
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Telenor ASA