

Protection of minors and human dignity: right of reply.

The revision of the TVWF Directive is largely concerned with determining jurisdiction, content rules about commercial communications to protect consumers, and the promotion of European creative content. But the subject matter of this issues paper directly addresses fundamental issues of free speech.

2. The UK strongly supports action to protect minors and believes that a range of measures need to be taken if such action is to be effective. The UK agrees with the propositions in this paper about the continuation of the TVWF rules on the protection of minors and the protection of human dignity as they apply to what the papers describe as 'linear services' (that is, to short-cut a long debate which belongs elsewhere in our response, effectively traditional TV style services, delivered over whatever platform).

3. As the paper says, it is important to see what else can be done to improve the arrangements in respect of programming which offends against Articles 22 and 22a of the existing Directive and which originates from outside the EU. The cases of *Al Manar* and *Sahar 1* which the paper cites were in the UK's opinion dealt with very effectively by the authorities in France, to whom jurisdiction under the rules of TVWF belonged.

4. But these episodes exposed a mismatch between the TVWF jurisdiction rules and the realities of digital satellite broadcasting technology, and the removal of this mismatch would make effective enforcement easier. The UK would support the suggestion which has been made in the Council that the TVWF jurisdiction rules be re-examined with this issue in mind.

5. The UK agrees that, as suggested at 1.2 and 2.2, 'non-linear' services ought also to be subject to controls designed to protect minors and prevent the appearance of hate speech and similarly undesirable material. But, as may be deduced from other parts of our response, we are far from convinced that the revised TVWF or 'audio-visual services' Directive is the right place for rules of this sort which might better be addressed through the general law.

6. We also share the view expressed in the paper that there should be room for Member States to define the notion of 'incitement' in line with their own national legislation, moral values, and law on issues of freedom of expression. There is a central core in these areas which all Member States will have in common, but there will inevitably at the margins be a degree of subsidiarity which properly reflects individual States' history and experience, even though that might on occasion lead to one Member State allowing material which another might not.

7. We would in particular point to the crucial role which self-regulation can play, as already happens in the United Kingdom in respect of child pornography. The Internet Watch Foundation, funded by the industry and to which all major providers subscribe, identifies sites which contain offending material and communicates with UK service providers, who remove them, or with international agencies to take action.

8. The success of this programme shows in our view how effective self-regulation, backed up by a Member State's own national criminal law, can be in such circumstances.

Right of Reply

9. Constraints on free speech in order to protect minors and human dignity are justified under the European Convention on Human Rights. But the "right of reply" is in an entirely different category. It has no basis in the Convention. Indeed it is

not a right at all, but one process for constraining untrue statements in the media which might have an effect, possibly significant, on an individual's life.

10. National laws addressing defamation, whether by libel or slander, are designed to discourage calumny through the threat of damages to compensate for the impact of defamatory remarks. Such laws apply to all media and indeed to remarks made in any context, whether within services subject to the Treaty or not.

11. What a "right of reply" or equivalent provides is a simple and cost-effective mechanism for achieving redress in more minor cases. This can therefore be seen as socially desirable rather than essential. As required by TVWF, the UK has an equivalent remedy in relation to broadcast services. We see no overwhelming argument for retaining this provision at EU level, since the use of the UK system by overseas viewers is limited if not non-existent. On the other hand, we would not press for its deletion.

12. In respect of the proposal to extend the right of reply to non-linear services, the UK has a very different view. We have aired this already during discussion in the Council of the 'Recommendation... on the protection of minors and human dignity and the right of reply...', which the Commission's paper mentions under Item 3.

13. In the UK, the principal equivalent to a right of reply applying to non-linear audiovisual services relates to those publications which are subject to the Press Complaints Commission (PCC). The PCC is a self-regulatory body whose code of practice binds all national and regional newspapers and magazines; the code applies to printed and on-line versions of the relevant publications and includes the following requirement: "a fair opportunity for reply to inaccuracies must be given when reasonably called for." There is no statutory basis to this.

14. The UK takes the view that for the EU to apply a 'right of reply or equivalent remedy' to Internet services is both unnecessary and potentially very harmful. Anyone can say anything on the Internet. A person who considers himself maligned by something which has appeared there can set up his own website or blog (to give but two examples) to rebut it.

15. We do not wish to rehearse all the arguments which we have made in our response to the Commission's fundamental paper on 'rules applicable to audio-visual services', where this is one of the key areas of concern for the UK. But it seems quite clear both to the UK Government and to UK industry that there is a very serious risk here of burdening the EU's developing Internet, mobile, and other digital platform industries with regulation – whether at national or EU level – which may seriously harm their ability to compete with operators outside the EU and affect their ability to meet the targets set by i2000 and the Lisbon Agenda.

16. The paper closes by remarking that 'there was no controversial discussion' about this in the relevant focus group. We have to say that the reaction of the UK industry to this aspect of the July 11 papers was quite different.