

## Comments

### on the Commission Consultation on Rules Applicable to Audiovisual Content Services – Issue Paper 5

The German Association of Information Technology, Telecommunication and New Media, BITKOM, represents 1,300 companies, around 700 of which are direct members, generating an approximate total turnover of €120 billion and employing some 700,000 jobholders. Among them are producers of terminal equipment and infrastructure systems as well as suppliers of software, services, new media, and content. More than 500 direct members belong to the medium-sized business sector. BITKOM has committed itself to improving the general regulatory environment in Germany and in the European Union, modernizing the educational system and advancing the information society.

The Commission Communication “i2010 – A European information society for growth and jobs”, adopted on 1 June 2005, announces that the Commission will propose by the end of 2005 a “revision of the Television without frontiers directive to modernise the rules on audiovisual media services.” Four Focus Groups met between September 2004 and February 2005 and produced six issues papers.

BITKOM welcomes the opportunity to comment on the issue papers. BITKOM fullheartedly supports Commissioner Viviane Reding in her commitment to maintain a solid, forward-looking regulatory scheme for cross-border television. BITKOM generally favours a liberal approach to the future regulation of audiovisual services. The Lisbon strategy, in which communications services, in particular new services, form an important cornerstone, suggests a regime that will help foster the development of new and emerging communications services in 2010.

In contrast, the current *TVWF Directive* is characterized by a high degree of regulatory intervention. Today, broadcasting is one of the most heavily regulated industries in the European Union. BITKOM urges the European legislator not to extend this narrow regime indiscriminately to new and emerging services. Newly emerging services are often fragile in nature and their successful development may be seriously endangered by heavy-handed regulation. The need for in-depth-regulation of new services must therefore be assessed carefully on the basis of a case-by-case analysis. BITKOM especially emphasizes the need for liberal rules in the field of advertising – it is the commercial basis of existence for broadcasters and other media.

BITKOM believes that a special emphasis should be put on self-regulatory regimes. Due to the fast pace of both the broadcasting and the online sector, self-regulatory regimes generally tend to work better than the less flexible approach of a too detailed legislation.

Our core question that we would like the Commission to address more often, i.e. before *any* legislative action, is:

**What is the added value of legislative action in the light of existing rules?**

This examination is clearly mandated by the “Better Regulation” programme. We are surprised how rarely the Commission actually addresses this question in the instant revision process.

## ■ Executive Summary

- **Material Competence:**
  - **An overarching directive regulating all audiovisual media is not justified.** Audiovisual services are governed by the Electronic Commerce Directive and the Communications Package, together already forming the “first tier” the Commission envisions. We urge the Commission to address the question of added value of a new, additional framework which has not been done so far.
  - **Suitable criteria for any two two-tiered approach, that is, for the distinction between the regulation of traditional broadcast and new services, should be the degree of user choice and user control.** From a policy point of view, they are more appropriate than a mere distinction between linear and non-linear services. Under the criteria of user choice and control, new services must not be governed by the regime for traditional broadcast. Instead, some services currently governed by the TVWF may have to be shifted to a lower tier.
- **Territorial Competence:**
  - **The country of origin principle must be maintained.** It has proven to be a market- and development-friendly rule and has largely contributed to strengthening the European media base. It is at the core of the TVWF Directive and a necessary condition for the creation of an internal market for television broadcasts. Its adoption in the Electronic Commerce Directive has prompted a similar success story as in the market of traditional television.
  - **Modifications of Artt. 2 (3) and 2a TVWF are not justified.** In spite of minor interpretations problems, these rules have proven to work well. Language is not a suitable criterion to determine an intent to evade legislation.
- **Cultural Diversity:**
  - **Quota obligations are inappropriate for new services.** Due to practically non-existent entry barriers, pluralism is inherent to the technical characteristics of these new services.
  - **Quota obligations for traditional television are obsolete.** Growing diversity in the area of traditional television requires a re-evaluation.
- **Commercial Communication:**
  - **No new definitions are necessary, nor is an inclusion of all audiovisual commercial communication into the scope of the TVWF justified.** The Electronic Commerce Directive already governs all forms of electronic commercial communications. Again, we urge the Commission to discuss any added value of additional definitions and regulations.
  - **Existing qualitative advertising restrictions must be re-evaluated and not be extended to new services.** New services offer numerous effective and for the industry less burdensome ways so protect minors or other groups.
  - **Existing quantitative advertising restrictions are obsolete and cannot reasonably be imposed on new interactive services.** The growing degree of user choice and control has made any kind of quantitative restrictions unnecessary. Their application in an interactive environment does not make sense.

- **Protection of Minors and Human Dignity:**
  - o **Due to the successful work of self-regulatory bodies, no further legislative interference is justified.** Instead, any interference would jeopardize effective self regulation<sup>1</sup>.
  
- **Right of Reply:**
  - o **Harmonisation is not justified.** Remedies for “assertion of incorrect facts” (Art. 23 TVWF) exist in Member States for all forms of media because they stem directly from the general protection of personal dignity.

#### ■ **Issue Paper 5: Media Pluralism – What should be the European Union’s Role?**

We agree with the Commission’s conclusion “that many different measures are in place at different levels in order to safeguard pluralism”. There is no need for special legislation governing media concentration. Rather, an abuse of media power could be prevented by a systematic application of general antitrust laws that should apply to media power in the same way as to all other economic power.

Berlin, Germany, 10 August 2005

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<sup>1</sup> Hereafter, “self regulation” is understood as voluntary industry cooperation in order to ensure public policy goals; cooperation consists of industry code of conducts, joint implementation of policy actions or cooperation with governmental authorities.