



July 2005

## Issues Paper for the Liverpool Audiovisual Conference

### Protection of Minors and Human Dignity Right of Reply

#### ISSUE 1: PROTECTION OF MINORS

According to Article 22 of the Television Without Frontiers (TVWF) Directive, Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. On the other hand, programmes which are likely to impair the physical, mental or moral development of minors may be broadcast where it is ensured by selecting the time of the broadcast, or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts. The control at Community level in this respect is limited to a control of proportionality of the measures taken to implement this provision.

The Directive is complemented in this area by the “Recommendation on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity“ (the 1998 Recommendation), which covers all audiovisual and information services, including online services.

The Commission Communication “i2010 – A European information society for growth and jobs” adopted on 1 June 2005 stresses that one of the main challenges in order to achieve a Single European Information Society is to make all platforms delivering contents “safer from fraudsters, **harmful content** and technology failures”.

The broad consultation process in 2003 resulted in the **Communication on the future of European regulatory audiovisual policy**<sup>1</sup>, which proposed that in the medium term a thorough revision of the “Television without Frontiers” Directive might be necessary to take account of technological developments and changes in the structure of the audiovisual market. It concluded that the Commission would consult experts on whether any changes to content regulation in general might be necessary at Community level.

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<sup>1</sup> COM(2003)784 final.

The 2003 Commission Communication concluded that at the basis of the rules on the protection of minors and human dignity, which are laid down in the Directive, there are fundamental principles which could be seen as policy objectives valid for any kind of delivery of audiovisual services.

As a follow-up to both the public consultation on the TVWF Directive of 2003 and the second evaluation report<sup>2</sup> on the 1998 Recommendation, the Commission adopted a *proposal for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in the European audiovisual and information services industry* on 30 April 2004<sup>3</sup>.

The subject of the protection of minors has also been discussed within Focus Group 1, which dealt with the regulation of audiovisual content in a broad sense, as well as in bilateral contacts with stakeholders.

### **1.1. Provisions with respect to linear audiovisual services**

Based on the comments received during the consultation process, the Focus Groups and in bilateral contact with stakeholders, it would seem that in respect of linear services, the current wording of Article 22 of the TVWF Directive would probably suffice.

### **1.2. Provisions for non-linear audiovisual services**

As to the option for the new directive to cover non-linear audiovisual services, the consultation process demonstrated a consensus for the possible basic tier of rules to cover in particular protection of minors and human dignity<sup>4</sup>. This would mean having the same principles as for linear services transposed in adequate rules for non-linear services. The wording could follow Art 22 of the TVWF Directive, for instance along the lines of:

“Member States shall take appropriate measures to ensure that audiovisual content services are not distributed in such a way that might seriously impair the physical, mental or moral development of minors.

In respect of non-linear audiovisual content services Member States are encouraged to put in place systems of co-regulation or self-regulation as well systems of filtering, age verification, labelling and classification of content.”

## **ISSUE 2: INCITEMENT TO HATRED**

Article 22a of the current TVWF Directive provides that Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or

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<sup>2</sup> Second evaluation report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity - COM(2003)776 final , 12.12.2003 – [http://europa.eu.int/comm/avpolicy/legis/reports/com2003\\_776final\\_en.pdf](http://europa.eu.int/comm/avpolicy/legis/reports/com2003_776final_en.pdf)

<sup>3</sup> COM(2004)341, 30.04.2004 - [http://europa.eu.int/comm/avpolicy/legis/key\\_doc/legispdffiles/com04-341-en.pdf](http://europa.eu.int/comm/avpolicy/legis/key_doc/legispdffiles/com04-341-en.pdf)

<sup>4</sup> See Issues Paper on the Regulation of Audiovisual Content.

nationality. The Member States are responsible for defining this notion in accordance with their national legislation and moral values.

During the public consultation in 2003, most stakeholders who commented on the subject of prohibition of broadcasts containing incitement to hatred for reasons of race, sex or nationality were satisfied with the provision as it stands. Some stakeholders argued that co-regulation or self-regulation would be inappropriate in this area. A number of stakeholders called for further reflection on appropriate measures against discrimination for reasons of race, sex or nationality, whilst other stakeholders emphasised the need to carefully balance the fundamental right to free speech with measures taken in this regard.

However, digital technologies have complicated the task of the regulatory authorities given the increase in the number of programmes. The recent discussions in the light of incitement to hatred in broadcasts coming from outside the EU and the French cases “Al Manar” and “Sahar 1”<sup>5</sup> confirms the importance of regulation in this respect.

The subject of incitement to hatred has also been discussed within Focus Group 1 as well as in bilateral contacts with stakeholders.

## **2.1 Provisions with respect to linear audiovisual services**

Based on the comments received during the consultation process, the Focus Groups and in bilateral contact with stakeholders, it would seem that for linear services, the current wording of Article 22a of the TVWF Directive would probably suffice.

## **2.2 Provisions for non-linear audiovisual services**

As to the option for the new directive to cover non-linear audiovisual services, minimum obligations were discussed with experts. The wording of such a provision could be along the lines of:

“Member States shall ensure that audiovisual content services do not contain any incitement to hatred based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

As already mentioned above, the Member States would remain responsible for defining the notion of incitement to hatred in accordance with their national legislation and moral values and for balancing the fundamental right of freedom of expression with measures taken in this regard.

There was no controversial discussion about this issue, and it was concluded that minimum obligations, such as the one described above, were widely supported by the consulted experts.

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<sup>5</sup> See IP: 05/325 and Memo 05/98  
<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/325&format=HTML&aged=0&language=EN&guiLanguage=en>  
<http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/98&format=HTML&aged=0&language=EN&guiLanguage=en>

### **ISSUE 3: RIGHT OF REPLY**

According to Article 23 of the current TVWF Directive, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies.

During the 2003 Public Consultation, most of the stakeholders who commented on the right of reply in respect of television services found that the provision as it stands is appropriate and that no additional regulation is necessary. Some stakeholders considered that a right of reply applicable to all electronic media should be developed.

In the 2003 Communication the Commission decided to take up the idea that the right of reply should be applicable to **all media**. It was decided to enshrine the right of reply in the Recommendation on the protection of minors and human dignity.

As already mentioned under point 1, the Commission adopted a *proposal for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in the European audiovisual and information services industry* on 30 April 2004.

Furthermore, the subject of the right of reply has also been discussed within Focus Group 1 as well as in bilateral contacts with stakeholders.

#### **3.1. Provisions with respect to linear audiovisual services**

Based on the comments received during the consultation process, the Focus Groups and in bilateral contact with stakeholders, it would seem that in respect of linear services, the current wording of Article 23 of the TVWF Directive would suffice or be slightly reworded.

#### **3.2. Provisions for non-linear audiovisual services**

Should the option be chosen for the new directive to cover non-linear audiovisual services, an option would be to have a provision on the right of reply in respect of non-linear audiovisual services. This would mean the introduction of measures in the domestic law or practice of the Member States in order to ensure the right of reply or equivalent remedies in relation to audiovisual content services, without prejudice to the possibility to adjust its exercise to the particularities of each type of medium.

There was no controversial discussion about this issue within Focus Group 1, and it was concluded that minimum obligations, such as the one described above, were widely supported by the consulted experts.

The Directorate-General for Information Society and Media of the European Commission invites you to make observations to this issues paper by 5 September 2005. Please submit your comment in a generally readable electronic format. All submissions

will be published on the Commission's website if not requested otherwise. If you would like your contribution to be treated confidentially, please indicate this at the top of the first page of your submission. Should you want to add a cover letter please do so in a separate document. In case your comments exceeds four pages please start your submission with an **executive summary**. All submissions should be mailed to the functional mailbox of the Audiovisual Policy Unit of the Directorate-General for Information Society and Media: [avpolicy@cec.eu.int](mailto:avpolicy@cec.eu.int).