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What challenges for the publishing industry in the digital age? Commission opens public consultation

Representing the professional interests of over 41,000 German journalists, the Deutscher Journalisten-Verband (DJV), would like to make some comments to the staff working paper

7. CONSULTATION – QUESTIONS FOR THE SECTOR, CIVIL SOCIETY AND PUBLIC AUTHORITIES

(1) Does this paper accurately describe the main indicators for competitiveness across different publishing segments?

The Commission's staff working paper describes a modern understanding of the concept of competitiveness as it is said in the paper. According to this concept competitiveness also includes the sustainability aspect. In this sense, the Commission's Communication on Industrial Policy defines competitiveness as the ability of the economy to provide its population with high and rising standards of living and high rates of employment on a sustainable basis. The main indicators are described as:

- productivity/employment
- specialisation,
- trade openness,
- costs and revenues and
- distribution conditions.

The Commission staff working paper describes only general indicators for competitiveness, even if these general indicators are explained with examples from the publishing segments. A description of the main indicators for the competitiveness of the publishing industry should contain also – distinguished by segments – the training of the employees, especially the training of journalists and the journalistic success. The journalistic side of the competitiveness of the publishing industry is completely neglected in staff working paper. The DJV has therefore the opinion that the description of the condi

As the staff working paper does not pay the necessary attention to the journalistic side of the competition the role of publishing industry as a watchdog of democracy and freedom of opinion and information as well as cultural diversity is neglected. In regard to the fact that the staff working paper makes the reference that Media policy in support of competitiveness needs to take full account of these and other important aspects of publishing this is not understandable.

The staff working paper points out, that the continuous and timely availability of statistical data on the key economic indicators of the sector is important for the assessment of the performance and competitiveness of the European publishing industries. Unfortunately the current statistical situation offers reasonable if imperfect coverage, even for the ten new Member States and that most of the statistical data is only available with a time lag of two to three years, which limits the usefulness of the data when assessing current trends and problems. Therefore the description of the competitiveness of the different publishing segments is not accurate. The staff working paper makes a reference to the fact that for some countries the data is almost systematically not available or is even more outdated.

(2) Are there any further issues you would add in respect of publishing, notably with regard to the policy approaches set out in the Commission's recent i2010 communication?

The policy approach set out in the Commission's recent i2010 communication formulates in general a strategy for the further development of the digital economy. The initiative 2010 does not tackle special aspects of publishing. Like no other industry the publishing industry as a knowledge based industry and as a main factor for information and opinion building follows other patterns. The special importance of publishing for democracy has to be taken in consideration.

It is for example doubtful, whether it is necessary to create a single legal framework on the European level for publishers and broadcasters in regard to the fact that publishers and broadcaster are due to the language active on national markets. In regard to the business side the publishing industry has to participate in the Internal Market like other industries but the legal framework of the EU has to pay consideration to the special conditions of the publishing industry. This applies for example in regard to advertising regulations and the deregulation of the postal services.

It might be that further liberalisation of postal services may result in a reduction of distributions costs for print products. Looking only at the cost factor of the postal services neglects the importance that postal distribution of newspapers and magazines has to preserve press freedom

In similar way the staff working paper neglects the importance of individual authors working freelance in the publishing segments. These aspects of the competitiveness of the publishing industry were taken into consideration with the statistical data of the staff working paper. To achieve a realistic image of the competitiveness of the publishing industry these facts should be added to the paper.

(3) Are current industry structures across all segments likely to survive the transition to electronic value chains? What are the major barriers and threats to publishers during the transition? What are the opportunities for publishers arising from new information and communications technologies?

The staff working paper describes the publishing segments as very competitive. Also in comparison with the USA. This applies for all main indicators of competitiveness.

The DJV has the opinion that publishers and broadcasters will be as successful in the electronic markets. Publishers and broadcasters are the first who can deliver edited information, knowledge and other content. They are a key industry for the information society, even though the electronic editing of the content is still in an experimental phase the media companies will develop the right distribution channels for the information society under the condition that they can use the content. They will only obtain them if the employment conditions of the journalists are acceptable and especially their author's rights are protected. The DJV believes that for the time being not in all member states these conditions exist. This also proofed by the fact that the Gross Domestic Product in the ten new member states is smaller than that in EU 15.

(4) How will business models evolve and how far will Digital Rights Management systems be essential for their successful implementation?

The staff working paper rightly describes an adequate protection of copyright to digital content as a critical factor of competitiveness of publishing companies. This is not only a problem of piracy. More essential is an adequate protection of the author's rights of authors. They are – the European Federation of Journalists (EFJ) and the DJV made reference to this since years – exposed to the piracy of publishers and broadcasters because not in all member states they participate in an effective contractual author's rights protection. The Hugenholtz Study of 2003, which was published by the Commission, proofed that authors in Europe are not protected by the national author's rights rules against unfair contractual conditions. An effective protection against unfair conditions and the possibility to receive a fair remuneration for the use of protected works is a condition for the long term success of the media.

The competitiveness of the media depends to a great part also on the question, whether creative and good informed authors are offering their works for publication. This will only happen if these works are paid adequate and the rights of the authors are used in a fair way. The DJV has the opinion that only those business models will be successful on long terms which fulfilled these demands.

DRM systems should not be seen exclusive from the perspective of big media companies. These media companies might be able to protect by technological standards those protected works which are published by them and to use also DRM systems effectively.

DRM systems will be not able for a long time to protect the rights of authors effectively and alone. Authors need to enforce their rights and to secure their income through the protection of collecting societies. DRM systems can not substitute for this protection. If the European legal framework is to be changed in the framework of the i2010 to strengthen the competitiveness of the media companies this should be taken also into consideration.

The nature of the link between diversity of ownership and diversity of content

(5) How far is there tension between the need for open outcomes in economic terms at a time of rapid technological change and the political desire to support democratic values including diversity?

In all member states the freedom of the media is one the constitutional cornerstone of the respective form of government. Press and broadcasting freedom are constituent for their democratic development. This is also valid for the European Union. The staff working paper mentioned the role of publishing as a watchdog of democracy and freedom of opinion and information as well as cultural diversity (Article 151 (4) of the Treaty and Article 11 of the EU Charter of Fundamental Rights). Therefore the DJV has the opinion that this question can only be answered that a tension between the concept of deregulation at a time of rapid technological change and the democratic value of the media can only be solved in favour of the last. The democratic values including diversity are a political precondition for the democratic development of the EU. All regulation in the area of competition have to respect media freedom and media diversity. The concrete question neglects this indispensable condition for the further development of the EU.

(6) How far is diversity of content and ownership likely to be self-sustaining in fully electronic markets, given for instance lower entry barriers to citizens' direct participation (eg Blogs)?

The direct participation of citizens in the building of opinion is for the democracy in the single member states and in the EU indispensable. In regard to the constitutional tradition in most member states this is not a new understanding. The technological developments – for example Blogs – are making this participation easier. Communication from peer to peer is subject to other conditions than communication via the media. Media companies on one hand have to maintain their editorial independence; on the other hand they are bound by media legislation which is not relevant for the communication of individuals. This will not change in fundamental in the electronic markets. Electronic media for example have to preserve the right to privacy as well as journalistic duty to tell the truth. The same applies to Blogs and other forms of electronic communication if they have a journalistic approach.

(7) In converging markets, from the perspective of publishing, what approaches would you suggest for co-existence between the two different traditions of regulated, licensed broadcast media and unlicensed press?

The DJV believes that the coexistence of the two different traditions of regulated, licensed broadcast media and unlicensed press will maintain also in convergent markets. Broadcasting regulation is justified by the fact of shortage of frequencies, cost of investments and the kind of media presentation. These reasons are not valid for the print media. Even though the shortage of frequencies and the cost of investments are less important now the impact of broadcasting is still valid for broadcasting regulation. These different approaches for the different media sectors have led to regulations which will be valid for the sectors also in the future.

The technological development of electronic forms of communication could make it necessary to think about to combine or to develop new regulations for them. This has been done in Germany with the „Mediendienste-Staatsvertrag“ and the „Teledienstegesetz“.

Electronic media are in regard to their availability and the possibility to call on demand more comparable with broadcasting than with print media. Therefore it seems to be appropriate to develop regulations similar to broadcasting rules. But it is not justified to apply the broadcasting rules for the electronic media.

Advertising; integrated media policy

(8) In relation to advertising regulation, what are your reasoned preferences in relation to the different instruments available, voluntary self-regulation, co regulation and statute law?

The DJV is in favour of voluntary self regulation.

(9) From the perspective of publishing, what are the main issues that an integrated media policy – i.e. one that covers all media sectors - should address?

The publishing sector is affected by many different types of European legislation, ranging from advertising restrictions to the protection of intellectual property rights. The competitiveness of the publishing sector depends highly on its constitutional status and democratic value. An integrated media policy has therefore not only to safeguard the journalistic independence but also to secure adequate working conditions in all sectors of the publishing industry and secure that

author's rights and moral rights of journalists are protected vis-à-vis third parties and also against media companies.