



# Liverpool Audiovisual Conference Between Culture and Commerce

20-22 September 2005



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## Conference programme

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### Tuesday 20 September

#### 14.00 Introduction and Welcome

Rt Hon Tessa Jowell MP, Secretary of State for Culture, Media and Sport  
Councillor Mike Storey, leader of Liverpool City Council

#### 14.15 Keynote speeches

Fabio Colasanti, Director-General for Information Society and Media, European Commission  
Mark Thompson, Director-General, BBC

#### 15.00 Break

#### 15.30 INDUSTRY PANEL 'New and evolving business models'

Tony Mary, President & CEO of VRT Belgium  
Nicolas de Tavernost, President of ACT, CEO M6 France  
Damian Reid, Executive EVP, Strategy and Performance, Orange Group  
Karen Thomson, Chairman & CEO, AOL UK  
Roger Lynch, Chairman & CEO, Video Networks  
Riccardo Perissich, Chairman, Telecom Italia Media  
Romain Bausch, CEO SES Global  
Bertrand Méheut, CEO of Groupe CANAL+

#### 17.30 End of industry panel

#### 20.30 Dinner – World Museum

Keynote speech by Francisco Pinto Balsemao, Chairman EPC, CEO Grupo Impresa



## Wednesday, 21 September – WORKING GROUPS

### 09.30 Parallel workshops set 1 – Crowne Plaza

*Rules applicable to audio-visual content services*

Chair – David Currie, Chairman, OFCOM

Wolfgang Schulz, Director, Hans-Bredow-Institut für Medienforschung,  
University of Hamburg, Germany

Boris Bergant, Deputy Director General, RTV, Slovenia and Chairman, Standing Committee on  
Transfrontier Television, Council of Europe

Karol Jakubowicz, Director, KRRiT, National Broadcasting Council, Poland

Rob Borthwick, Public Policy Executive, Vodafone Group

Sylvie Forbin, Director, European Affairs, Vivendi Universal

Jean-Eric de Cockborne, Head of Audiovisual and Media Policies Unit, DG Information Society and  
Media, European Commission

Rapporteur – Ruth Hieronymi MEP, Group of the European People's Party (Christian Democrats)  
and European Democrats, Germany

*Rights to information and short extracts*

Chair – Prof. Michael Holoubek, University of Economic Affairs, Vienna

Carl-Eugen Eberle, Director of Legal Affairs, ZDF, Germany

Krzysztof Wojciechowski, Senior Legal Advisor, TVP, Poland

Alasdair Bell, outside legal counsel to UEFA on EU legal matters

Spiritas Cho, Senior Legal Counsel, Reuters Limited

Eriks Niedra, Executive Director, Beta Fakts, Latvia

Harald Trettenbrein, Head of Sector, DG Information Society and Media, European Commission

Rapporteur – Marie-Hélène Descamps MEP, Group of the European People's Party  
(Christian Democrats) and European Democrats, France

*Cultural diversity and promotion of European and independent audiovisual production*

Chair – Gregory Paulger, Director, Audiovisual, Media, Internet, DG Information Society and  
Media, European Commission

Pascal Rogard, Director General, Society of Dramatic Authors and Composers

Sandra Basic Hrvatina, Chairperson, Slovenian Broadcasting Council & Professor of Communication,  
University of Ljubljana

Christian S Nissen, Media analyst and advisor, Adjunct Professor, Copenhagen Business School  
(former Director-General, Danish Broadcasting Corporation)

Phil Redmond, Creator, Grange Hill, Brookside and Hollyoaks

Phil Jenner, Director, International Public Policy and Government Affairs, Discovery Networks Europe

Valerie Lépine-Karnik, Director, FIAPF, International Assn. of Film Producers

Rapporteur – Henri Weber MEP, Socialist Group in the European Parliament, France

**12.30 Lunch****14.00 Parallel workshops set 2 – Crowne Plaza***Commercial communications*

Chair – Philippe Belingard, Director for Legal Affairs, France Télévisions

Vincent de Dordolot, General Counsel, RTL Group

Patrick Von Braunmehl, Federation of German Consumer Organisations

Emmanuel Joly, Administrator, DG Information Society and Media, European Commission

Malte Lohan, Public Affairs Manager, World Federation of Advertisers

Rapporteur – Gernot Schumann, Director, Media Authority of Schleswig-Holstein and European Affairs Commissioner, Conference of State Media Authorities (Germany), Vice-Chair, European Platform of Regulatory Authorities.

*Media pluralism*

Chair – Matteo Maggiore, Head of European Policy, BBC

Bruno Alves, General Secretary, CEPI

Ebbe Dal, Managing Director, Danish Newspaper Publishers' Association & Chairman of ENPA Cttee of Pluralism in the Media

Robert Gillette, Media Commissioner, Kosovo

Aidan White, General Secretary, European Federation of Journalists

Fabio Colasanti, Director-General for Information Society and Media, European Commission

Rapporteur – Bernat Joan I Mari MEP, The Greens/European Free Alliance in the European Parliament, Spain

*Protection of minors and human dignity, right of reply*

Chair – Evelyne Lentzen, President, CSA, Belgium

Denis Pericic, President of Council for Electronic Media, Croatia

Patrice Chazerand, Secretary-General, Interactive Software Federation of Europe

Michael Rotert, President, European Internet Service Providers Association- EuroISPA

Marcel Boulogne, Administrator, DG Information Society and Media, European Commission

Rapporteur – Mary Honeyball MEP, Socialist Group in the European Parliament, United Kingdom

**17.00 Parallel working groups conclude.****20.30 Dinner – Crowne Plaza**

Keynote speech – James Murdoch, CEO, BSkyB

## Thursday 22 September – final plenary session

### 09.00 Reports of the working groups:

*Shape of future regulation for audio-visual services*

Ruth Hieronymi MEP

*Rights to information*

Marie-Hélène Descamps MEP

*Cultural diversity*

Henri Weber MEP

*Advertising*

Gernot Schumann – Director ULR

*Media pluralism and democracy*

Bernat Joan I Mari MEP

*Protection of minors and human dignity*

Mary Honeyball MEP

### 10.30 Break

### 11.00 Keynote speech – Charles Allen, Chief Executive, ITV plc

### 11.30 Closing session

James Purnell MP, Minister for Creative Industries

Viviane Reding, EU Commissioner for Information Society and Media

### 12.30 End of Conference



## Opening speech by the Rt Hon Tessa Jowell MP, Secretary of State for Culture, Media and Sport

Ladies and Gentlemen, good afternoon, and James, thank you. Ladies and Gentlemen I know that you will be extremely skilfully navigated through the next three days by James as your Chairman.

Now I arrived in Liverpool only 10 minutes ago and I have to tell you that it was not nearly as memorable as the last time I arrived in Liverpool, which was the day on which I had announced that Liverpool was to be the Capital of Culture in the year 2008. On that day when I stepped off the train at Lime Street Station the platform was lined with smiling children waving flags, there was a brass band, there were police mounted on horses and everybody seemed to be smiling. Those of you who are seasoned politicians will know that you will only have one day like that in your political life (laughter), and that was my day.



*The Rt Hon Tessa Jowell MP*

As I was making my way through the adoring throng this little girl stepped out and she had been duly primed to do with the most enormous bunch of flowers that was bigger than she was and as she wrestled to hand it over to me she looked up and said 'Big Lady, who are you?' (laughter). So every time I come to Liverpool I feel that I have to explain that I am Tessa Jowell and I'm Secretary of State for Culture Media and Sport.

And it is my great pleasure to welcome you, on behalf of the Council of Ministers and the European Commission, to this very important European Audiovisual Conference.

When the Television Without Frontiers Directive first came into being, at the end of the Eighties, I think it's fair to say that it referred to a world far-removed from the one we all live in today.

Back in the 80s, if you can cast your minds back, the UK had only had four analogue TV channels, VHS was winning the consumer battle against its Beta-Max rival, no one had heard of DVD and satellite TV was going to be brought in by the BSB squarial, if any of you here can remember that.

But by the start of the 90s, a technological revolution was underway and almost nobody throughout the EU would be untouched by that.

### Talking about a revolution

In 1985, barely 13% of the UK population owned a computer. Today, 13 million families in the UK are connected to the internet, and more than half of them have broadband.

Fast forwarding a few years, to 1997 and around 23% of people in the UK owned a mobile telephone. Just eight short years later, there are 61 million mobiles actively being used in the UK and UK companies such as Vodafone and O2 dominate the global market.

So, we are talking about a revolution in the way that we communicate, that we inform and that we entertain.

## Digital switchover

Just last week, at the Royal Television Society Conference in Cambridge, I set out our vision for a Digital Britain, by switching over fully to digital TV by 2012.

So there have never been more channels, more services or more choice for consumers. And as a result, there has never been a more complex set of issues facing both broadcasting and telecoms regulators across the EU.

The Television Without Frontiers Directive was revised in 1997 and it's done a good job of maintaining minimum standards for broadcast content, and applying those standards to multi-national TV broadcasters.

But the job of all of us gathered here today is to ensure that Television Without Frontiers doesn't turn into Broadcasting Without Boundaries, or Commerce without Culture.

## Purpose of the conference

It's not an easy task, which is why we have brought together today more than 400 delegates from across Europe, many of whom are experts in Europe's broadcasting and audiovisual industries.

The main goal of this conference is to try and find the right way of regulating sensibly the broadcasting and audiovisual industries, without stifling tomorrow's innovations or hampering the economic growth of Europe's most creative industries.

Part of our job will be to come up with proposals that reflect the real world, that acknowledge that already, people can get TV and radio through broadband; can book a doctor's appointment or order a pizza through their TV. They can place a bet, email a friend or receive a TV broadcast, just by turning on their mobile phone.

In a sense, that's the easy part, as we pretty well know what we are dealing with. The larger challenge will be to try to imagine what other technological advances are still in the pipeline.

The panel of senior industry people will I hope help us try to figure that one out later this afternoon.

## The Commission's papers

And of course, we aren't starting completely from scratch. On July 11th, the European Commission produced a set of six papers, which suggested replacing Television Without Frontiers with an 'Audio-Visual Content Services' Directive.

I'm not going to go into details about the content of those papers now. Most of you are acquainted with them, and will be able to share your opinions on how they can be turned into workable legislation at the conference working groups tomorrow.

And your opinions and advice are absolutely invaluable. This conference is a learning experience in every possible sense of the word.

We need the help of all the experts in this room to develop proposals that will maintain the importance of public service broadcasting, preserve viewers' access to high quality entertainment and sport, and will encourage innovation and competition right across Europe's media industries. And which will allow commercial and public service broadcasters to flourish together.



## Rules of thumb

So as we discuss our options, we need to keep asking ourselves four basic questions. What are we trying to achieve with this regulation? How will this regulation achieve our objectives? What will this regulation cost? And what benefits will it bring in its wake?

And incidentally, when I talk about costs and benefits, I don't just mean financial. Broadcasting also has immense cultural and social significance that can't be quantified in Euros.

The Commission has recognised this, and the UK applauds them for their determination to provide a full, thorough and wide-ranging assessment of how any new legislation might impact on every single affected sector.

## Conclusion

So in conclusion I must express my gratitude for the help that the European Commission have given us in arranging this event. My officials in the Department for Culture, Media and Sport have been able to work very closely with their colleagues and counterparts in the Directorate for the Information Society and the Media in setting it up. Both to my and the Commission's officials I extend my and I hope also your warmest thanks.

As the Prime Minister has said, delivering the EU's agenda is the main challenge – and the measure of success – for the UK Presidency. This Conference I hope will be seen as a major part of the UK's contribution.

So we have a packed schedule ahead of us at what I'm sure will be an incredibly significant European Audiovisual Conference.

The success of this event will depend on all of you feeling that there has been a full and frank exchange of views, so I'd like to encourage everyone here to participate as fully as they can in the working groups.

Whatever side of the podium you find yourself over the next two or three days, it is in everyone's interests to develop a new Directive that will play to Europe's enormous broadcasting strengths, but will also address our potential weaknesses.

And when as we do, in successive Presidencies, seek to bridge the gap between the deliberations of Governments in the name of the people they represent – and particularly, the deliberations between Governments and the Commission, where that dialogue can be seen to be remote from the people we represent – we have here an opportunity in debating broadcasting and the audiovisual industries to close the gap. That's because the issues that you will face are issues of such significance that there is no household across Europe that will be unaffected by our conclusions in due course.

So that is an enormous challenge, it is an enormous responsibility. But it's also a vivid illustration of the importance of getting this right.

So without further ado, I'd like to hand you over to Mike Storey, the leader of the Council of the Capital of Culture 2008, to officially welcome you to your host city for today's conference.

## Final report of Working Group 1: Rules applicable to audio-visual content services

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*Rapporteur Ruth Hieronymi MEP, Group of the European People's Party (Christian Democrats) and European Democrats (Germany)*

In Working Group 1 our chair, Lord Currie tabled 4 questions.

- the cost and benefit of providing a minimal harmonisation at European level of content regulation for audiovisual content services
- Adequacy of the linear/non linear criteria to distinguish the level of regulation
- Role of self- and co-regulation for the basic tier of regulation
- Jurisdiction



*Ruth Hieronymi MEP*

But the crucial question in our working group was: why do we need a new directive in AV content at all?

Consumer organisations together with public service broadcasters, but also some commercial broadcasters, support revising content rules on television in a comprehensive regulatory framework for all audiovisual content services.

Internet service providers argued against what they call the "extension of TVWF Directive to on-line services". Some of them fear that over-regulating new media could hinder their take up and favour delocalisation outside the EU.

Telecom operators and Internet Service Providers not only refused the "extension" of out-of-date broadcast regulation to the online-sector, but asked that the e-Commerce Directive should cover the "traditional" AV sector.

Primarily the panellists explained the reasons and the background for the new challenges concerning the regulation of audio-visual content.

16 years ago the Television Without Frontiers Directive was adopted in order to allow the free movement of television services throughout Europe. It is based on the principle of regulation by the country of origin made possible by a basic harmonisation of public interest rules.

Today, digitisation and the convergence of technical platforms have made possible the emergence of new services inducing a phenomenon of fragmentation of the offer and of the audience.

The first question we now face is: do we believe it is appropriate to see audio-visual content services covered in future by a directive that can span the bridge between commerce and culture?

If the answer is no, then the solution is simple and lies in e-commerce or the services directives.

But we should also remember that, if that is our conclusion, then we bring this set of services into the scope of the current round of WTO/GATS negotiations on services.

If the answer is yes, if we want to span the bridge between commerce and culture, then we need to act swiftly because without a conclusion, both, or at least one of those other directives will include audio-visual content and there will be no opportunity to argue the cultural case.

And if the answer is yes, then our first task is to ensure that the audio-visual content services that are brought within the scope of the new directive are done so in a way that properly recognises those measures that already exist, rather than imposing new regulation upon them.

I will deal with each of the 4 questions in turn.

### **1. The first question concerned *the cost and benefit of providing a minimal harmonisation at European level of content regulation for audiovisual content services***

Most contributions agree that technological neutrality remains an important principle.

All industry representatives recalled their support of the country of origin principle as the basis for the business models (public service broadcasters, commercial broadcasters, telecom operators, multimedia industry, advertising industry, internet service providers, satellite operators, print press and regulators). But the country of origin principle is not possible without some minimum harmonisation. This is how you create a level playing-field. It was argued that an extension of the scope could be in the interest of the industry, provided that there is indeed the risk of diverging national regulation within Member States for e.g. video on demand services.

But, as I said before, it is important that audio visual services should be brought within the scope of the new directive in a way that properly recognises the measures that already exist, so that we do not impose additional regulation. When the directive is done in this way, there should be no significant additional cost, but the benefit of free movement, based on the principle of the country of origin, could be realised by the service providers.

Some of the public policy objectives pursued in broadcasting continue to be relevant in the on-demand world. In any case, technological change makes it increasingly difficult to draw a clear line between different types of services.

Together with newspapers and internet service providers they argue that this essentially would create another layer of regulation in an area already subject to legislation, without any real justification. There would be no added value in it and market failure had not been demonstrated. New regulation only should be introduced after a thorough regulatory impact assessment had been undertaken.

Representatives from the press demanded clear rules for services containing moving pictures as well as other content.

Many contributions asked for clarification of the relation of the new instrument to the e-Commerce Directive.

Commercial broadcasters indicated that they could support a Content Directive if the level of regulation was lower than the present Directive, especially in relation to advertising rules.

## 2. Adequacy of the linear/non linear criteria to distinguish the level of regulation

Public service broadcasters and representatives from consumers and civil society organizations indicated that the distinction between linear and non-linear services appears to be a workable basis for a definition and is likely to remain valid for the foreseeable future. However, some commercial broadcasters, telecom operators and ISPs consider that non linear services should more clearly defined. One panellist suggested a definition of “audiovisual media services”, and a regulator suggested a variant of “edited services”.

The two tier approach is considered to be a very good way forward in the view of public service broadcasters, who stress that similar rules have to be applied to all linear services. The five obligations outlined in the issues papers are supported by those who accept the idea of a comprehensive regulatory framework.

Representatives of the content industry asked for the inclusion in addition of cultural objectives in the basic tier obligations, which was a major concern for others. This is strongly opposed by others in particular ISPs.

Newspapers are concerned that electronic newspapers with audiovisual elements might be subject to two different regulatory regimes.

None of the participants argued in favour of the inclusion of radio in the scope of future regulation. EBU however states, that if Community action is envisaged it should be in sector specific instrument and not the Services Directive.

None of the comments received proposed an alternative to the distinction between linear and non-linear services and corresponding tiers of regulation of varying intensity. Some ISPs, cable and telecom operators proposed to apply only the e-Commerce Directive to non linear services. However, some other telecom operators explicitly supported the two tier approach and acknowledged the benefit of legal certainty for development of new services.

But there was no agreement around the detail of the possible linear / non-linear split, and almost everybody indicated that a clarification of the different borders is both urgent and indispensable if we are to make real progress. Our chairman called for regulators and governments, those who would have to draft and implement any rules, to be urgently involved in developing such proposals. In particular, these proposals need to be realistic and future-proof.

## 3. Role of self- and co-regulation for the basic tier of regulation

In the on-line world, we have already in 19 EU member states a range of measures including general or specific legislation or self regulatory instruments and codes of conduct are already used to regulate some social issues like the protection of minors.

Many contributions from telecom operators, internet service providers, self-regulatory bodies and a regulator see a case for European-wide objectives and principles that could be supported by self- and co-regulatory models.

Advertisers particularly strongly supported such schemes.

Therefore it is essential that the new directive should encourage and support self and co-regulation, rather than seek to replace it, as well as placing proper weight on national law. However, it was stressed that co-regulation might be an adequate instrument to implement a future Directive.

Some representatives of consumer and civil society organizations expressed doubts about the effectiveness of self-regulation mechanisms on the other hand. The Commission explained that in the case of co-regulation there was a clear empowerment of public Authorities and effective sanctions. It was concluded that the study on co-regulation commissioned by DG Information Society and Media should provide in depth information on this regulatory concept.

#### 4. Jurisdiction

In reaction to the concerns expressed by some Member States about circumvention of national rules, nearly all stakeholders (private and commercial broadcasters and radios, telecom operators, multimedia content providers) stressed the importance not to weaken the country of origin principle.

With respect to concrete measures (clarification of the establishment criteria, codification of case law of the European Court of Justice, extension of Article 2a) there was no clear preference and it seems that one single measure would not solve the different national problems.

Our attention was drawn to the problems of content which originates from beyond the EU, and the need for any regulatory framework to deal with it effectively. We also recognised the need not to create a framework which would have the perverse effect of driving content suppliers “off-shore” to avoid regulation.

### Conclusion

First, if we wish to span the bridge between culture and commerce, we must act.

Second, I know there is a discussion about support for European works on non-linear services. But that debate will be meaningless if we have not first agreed among ourselves on the need for a directive to cover audio-visual content.

Third, the orientations given by the Commission go in the right direction, but we need clarification on several crucial points, in particular:

- What are the proper criteria to distinguish (a) audiovisual services from others and (b) linear from non linear services, in a clear, consistent and future proof way.
- What do we mean by co-regulation?

## Final report of Working Group 2: Rights to information and short extracts

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*Rapporteur Marie-Hélène Descamps MEP, Group of the European People's Party (Christian Democrats) and European Democrats (France)*

Minister, Madame Commissioner, Ladies and Gentlemen,

I have been particularly happy over the last two days to participate with you in the work dedicated to the revision of the TVWF Directive and more precisely the part of it which relates to rights to information and short extracts.

I would like to thank the Commission and the Board for having invited me.

Please allow me to thank you all for your contribution and for the clarity of your respective statements.



*Marie-Hélène Descamps MEP*

### **Our report consists of two sections:**

1. Article 3a concerning events of major importance
2. Short extracts

#### **1. Article 3a**

The majority of the participants confirmed their support to the current terms of article 3a.

The German public channels still support the adoption of a minimum list at community level contested by others with respect to the principle of subsidiarity.

The Member States are divided between those who are in favour of attributing decision-making power to the Commission and those who are opposed while awaiting the decision of the Court of Justice.

The obligation to adopt a list of major events was almost unanimously rejected, also on the basis of the principle of subsidiarity.

The same applies, and for the same reasons, to the definition of the "substantial part of the public".

We will now pass to the second subject of the analysis document, short extracts, which has seemed manifestly more open to conflict.

#### **2. Short extracts**

For those entitled, access to short extracts is guaranteed by the terms of existing regulations or agreements and, consequently, community regulations in the matter no longer apply. This assertion is



contradicted by the majority of public broadcasters, for whom the lack of harmonisation at European level of the national rules is an obstacle to access to short extracts.

At the same time, the press agencies consider that the "small" broadcasters can only access short extracts via themselves and, in so far as they do not have access, these broadcasters are penalised although their activity is essential for the pluralism of the media.

The proposal from the experts to guarantee non-discriminatory access to short extracts has been rejected for two reasons:

- on the one hand, even for those who support the proposal, this measure would be limited to Member States who have a device favouring access to short extracts;
- on the other hand, for those who oppose the proposal, no added value would result from it in the light of the provisions already existing.

The positions of the participants diverge considerably on the proposal to adopt a right to short extracts at Community level. The opponents maintain that no real problem has been observed at the level of the internal market of a nature to justify the intervention of the Community. By contrast, the partisans of the proposal consider that the current conditions of territorial negotiation of broadcasting rights should be balanced by a Community framework facilitating this access to short extracts.

A keen discussion took place on the question of knowing whether or not press agencies should be included in the field of application of the right to short extracts. The private and public channels, along with those with an entitlement, are resolutely against, despite the plea of the Reuters representative in favour of the "small" broadcasters who do not have the means of expressing themselves in the Community debate.

To conclude I would add that, in the event that the right to information is recognised in the Directive, the necessary criteria to be determined at Community level which are most frequently raised are the following:

- a reasonable length of extracts, maximum 90 seconds;
- freedom of choice of extracts by the summary broadcaster;
- insertion solely in news journals regularly programmed;
- identification of the source;
- inclusion in the context of traditional broadcasting;
- exploitation limited in terms of time.

## Final report of Working Group 3: Cultural diversity and promotion of European and independent audiovisual productions

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*Rapporteur Henri Weber MEP, Socialist Group in the European Parliament (France)*

Minister, Madame Commissioner, Ladies,  
Gentlemen,

I would like to thank the Commission and the Council for having invited me to take part in this interesting work, particularly the workshop dedicated to cultural diversity.

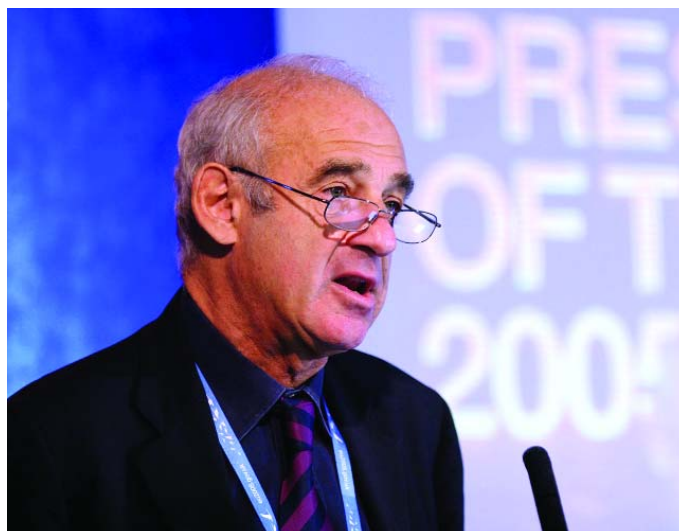
My report has been greatly facilitated by the general consensus which has been expressed around the notion of cultural diversity. All those involved have affirmed their support to the production and broadcasting of European works.

It is indispensable if one wants there to be a European awareness, a feeling of collective belonging, a pan-European culture, as Christian Nissen said, without which the subsequent progress of the Union will be difficult. It is also excellent, as Phil Jenner, Director of Discovery told us, for the health of audiovisual businesses. In effect, TV watchers demand national productions and operators have every interest in supplying these to them, which they are moreover doing more and more. For Phil, the quotas have become useless, the operation of the law of supply and demand is now sufficient to fill them, and even exceed them.

On the contrary, the majority of those involved have insisted on the necessity of reaffirming articles 4 and 5 of the Directive, in a European Union of 25 and soon of 27, on the validity and importance of these quotas. Valérie Lépine-Karnik, representing the International Federation of Associations of Film Producers (which includes both independent and major American producers), emphasised the very positive effect of article 5 on the development of independent production and asked for a progressive increase in the quotas from 10 to 25%. Other players have proposed stricter monitoring of the application of these quotas and denounced the laxity which exists today. The proposal of the Commission that we should now fall back on control by the method of statistical samples was not convincing. Some people proposed that only stock broadcasting should be included in the figures for quotas and that flow broadcasting should be set apart.

Finally, a debate on the necessity of a more precise definition in the directive of the status of the independent producer did not manage to reach an agreement. There is still no consensus on giving legal value to the three indicative criteria mentioned in recital 19.

Therefore if there is a large consensus for retaining – while improving – the status quo as regards the regulation of linear services, the situation becomes more complicated as soon as one looks at the new services, the non-linear services. This involves the essential challenge of revising the directive. Can one, should one subject the non-linear service operators to obligations of supporting the creation and broadcasting of European works?



*Henri Weber MEP*

A large part of those involved replied: yes, that's possible; yes, that's necessary. Gregory Paulger, in the name of the Commission, reminded us that this is clearly not a case of regulating the Internet. What it does mean, stressed Pascal Rogard, Director of the Society of Authors, Composers and Playwrights, is imposing obligations of investment in the original production on operators offering non-linear audiovisual services to the public. Taking account of the specific characteristics of each medium, and also taking account of their stage of development. Several participants mentioned the intervention of Nicolas de Tavernost on Wednesday afternoon, when he stated that there was no contradiction at all between regulation and development of enterprises, as proved by the success in France of M6 and many others.

To those who objected that such investment obligations cannot be applied to a sector in its infancy, a number of participants underlined the size of many of the operators concerned; giants of telecommunications or Internet access providers. They mentioned the possibility of adopting a gradual, developing approach as was the case in a number of countries with the arrival of cable and satellite channels. Some also quoted the example of the recent agreement which will cause French operators of video on demand services to finance the production of content, to a level of 2% of their turnover. Others commented that the revised Directive would not come into effect until 2010. At the rate at which the new non-linear services are developing, it is probable that the young shoots of today will have become sturdy plants by this date.

The proposal is therefore the following: to introduce obligations of investment in the production of original European works, established as a function of turnover, allowing for minimum thresholds and a progressive increase for all operators of non-linear audiovisual services. As Jean Cazes of the Federation of Film Distributors emphasised, the operators of new services need the security of the law and it would be appropriate to give them an indication now of the measures which they will be subject to in 2010. This is an argument in favour of clear measures today instead of a simple card-marking clause.

As Pascal Rogard emphasised, this approach is indispensable if one is to maintain a balance between operators and not disadvantage the traditional broadcasters as compared with the new arrivals, who are the telecommunications operators and Internet access providers. Henry Ingberg, for the Belgian Government, maintained that, in the name of the principle of technological and commercial neutrality, it would be necessary to maintain the device of quotas and apply it to the new services whenever possible.

But the defence of cultural identity and diversity in Europe does not boil down simply to questions of quotas and articles 4 and 5 of the "Television without frontiers" Directive. The march towards uniformity and mediocrity can put up with quotas, even strengthened ones.

The surest guarantee, explained Christian Nissen, lies in the defence of the European audiovisual model. This model is characterised by a fertile balance between a strong public audiovisual service and a dynamic private commercial sector. With the competition between these two poles pulling the whole of the audiovisual system upwards, always on condition that the public channels are really fulfilling their missions and not aligning themselves with the commercial channels, as is sometimes the case. Phil Redmond, British producer, illustrated this principle with passion.

Sandra Basic Hrvatin, Slovenian regulator, insisted on the necessity of protecting all minorities and or recognising the value of cultural diversity in the creation of a unified Europe which is strong in its plurality. But she also reminded us, in reply to those who consider that the blossoming of content on the Internet is itself a guarantee of diversity, that having freedom of choice is certainly essential, but it is still necessary

that the choice is made between different options. I would add that, as we have been reminded by one participant, cultural diversity must also be accessible to everyone, including the disabled and that it is important to introduce measures favouring subtitling, sign language and descriptive audio.

In the name of the French Government, one participant asked that the new Directive should provide for a contribution by the non-linear services to the promotion of cultural diversity and European production and stated that this was the main challenge of the revision.

The debate of this conference is absolutely essential. I am delighted at the position that the Commission has taken in favour of a draft Unesco agreement on the diversity of cultural content and artistic expression, and we hope that this same ardour to defend cultural diversity will inspire a revision of the Directive which will enable us to maintain and develop a quality European creation sector which is accessible to all citizens on all media.

## Final report of Working Group 4: Commercial communications

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*Rapporteur Gernot Schumann, Director ULR – Media Authority of Schleswig-Holstein, Conference of States Media Authorities (Germany)*

### Chairman's Introduction

The Chairman, Philippe Bélingard from France Télévision, welcomed the group and the panel members introduced themselves. The Chairman opened the workshop by introducing the themes of the issues' paper and posed some key questions, namely:

1. Concerning the concept of 'Commercial Communication', he questioned its potential to cover a wider range of advertising forms.
2. He addressed the proposed basic tier of qualitative rules for all commercial communications.
3. He also referred to the definition of 'surreptitious advertising', which he considered to be too imprecise and marked his preference for the criterion of undue prominence.
4. He also spoke about public health considerations and asked what do the consumer groups think about this.
5. He turned to the identification and separation principles and asked if the separation principle should be deleted and if there should be quantitative and qualitative restrictions for product placement if it is eventually allowed?
6. He addressed the role of co-regulation and self-regulation within the framework of a specific legislation with a view to ensure a Europe-wide level-playing field.
7. He raised the issue of the applicability of quantitative rules also to non linear services?
8. He questioned the suggested abandonment of the daily advertising limit and its possible implications for thematic channels.
9. Eventually, he turned to the issue of insertion of advertising during programmes. He added a warning not to create one set of rules for feature films and another for television films. He considered that the prohibition of insertion of advertising within children's, religious, news and current affairs programmes of less than thirty minutes should be maintained.



*Gernot Schumann*

### Commission's Statement

Following the Chairman's opening remarks, the Commission official, Emmanuel Joly, reported on the written contributions of the various stakeholders.

## Panellists' Presentations

Representative of European Consumers' Organisation, Patrick von Braunmühl:

- Agreed with the proposed technological neutrality of regulation but opposed downward harmonisation.
- Fiercely supported the principle of separation and expressed doubts on economic benefits of product placement.
- Said there was a need to keep the 20% rule of daily and hourly advertising.
- Called for a more sophisticated and progressive view of regulation.
- Asked how to fund commercial broadcasting in the future when traditional advertising spots are in decline.
- Concluded that product placement and sponsorship may be the answer and
- Advocated a lighter touch regulation approach especially in order to fulfil the aims of Lisbon Agenda.

Representative of Commercial Broadcasters, Vincent de Dorlodot from RTL:

- Expressed concerns about securing the financing of free-to-air television in the future, due to the decline in spot advertising.
- Said that there was no need for more advertising minutes, but supported flexibility on insertion rules and on the way that advertising spots are allocated over a day.
- Advocated new advertising techniques and product placement, provided that they were well-regulated.

Representative of World Federation of Advertisers, Malte Lohan:

- Pointed out that self-regulation is useful as an additional layer of regulation within a legal framework because advertisers can not continue to operate in a legislative vacuum.
- Expressed support for maintaining overall limit on advertising, albeit with flexible insertion rules.

Representative of German Regulatory Authorities, Gernot Schumann:

- Expressed concerns about the impact of product placement on the level of trust people place in linear services and the correct functioning of TV as a public opinion-former in democratic societies.
- Warned against the serious implications of product placement such as "plot-placement" and "branded entertainment".
- Stressed the principle of separation and said that this should be left untouched.

Now, I would like to turn to the points raised from the floor against the background of the report of the Commission official on the written contributions to the issues' paper.

## Qualitative Rules

The written contributions reflect that there are stakeholders who oppose to an audiovisual content directive (Telecom operators, publishers and some advertising organisations) and the adoption of the definition for commercial communications.

A majority of stakeholders (consumers, broadcasters, advertisers, the industry and Member States) is in favour of a basic tier of qualitative rules on human dignity, protection of minors and public health applying to all audiovisual commercial communications whatever the platform delivery and technology being used. This was confirmed in a point from the floor by a representative of the Swedish commercial broadcaster TV4.



The representative of Eurocare argued that article 15 concerning advertising of alcoholic products should be adapted, given changes in consumption and society. Similarly, in view of the growing problem of childhood obesity, the representative of the European Heart Network advocated the introduction of rules on food advertising.

## Identification, Separation of Advertising and Product Placement

Extensively discussed was the issue of **product placement**. Three positions can be identified:

1. Firstly, a favourable approach reflected by the written contributions of a group of commercial broadcasters, telecom operators, advertisers and sales houses. During the discussion from the floor, it emerged that commercial broadcasters would support product placement, but argued that it would remain a marginal form of funding. The European Group of Television Advertising added that product placement should be allowed provided that there is clear identification, no influence on editorial content and no undue prominence. The Association of Commercial Television welcomed the Commission's position on product placement.
2. Secondly, Public Service Broadcasters and some Member States have a nuanced position. They pleaded for strict regulation, for example identification at the beginning of the programme and a ban of product placement in some programmes, such as children and news' programmes. In the discussion, the European Broadcasting Union advocated the need for strict rules, in particular the criterion of undue prominence. The representative of the European Alliance of Listeners and Viewers took a pragmatic approach. He said product placement is here to stay. In his view, there should be a common form of identification at European level, monitored by co-regulation. He also suggested that product placement should be prohibited in publicly funded Public Service Broadcasters services. The representative of Swedish broadcaster TV4 said that the regulation of product placement would benefit the Swedish broadcasting landscape as it would allow for more imported programmes to be shown. 3) Thirdly, some Member States, journalists and publishers' organisations were clearly against product placement. This was echoed in the discussion by representatives of German Public Service Broadcasters, German print media publishers and of the Italian press.

In order to allow product placement as a form of "advertising", it was asked whether the **principle of separation** could be abandoned. A representative of the European Brands Association said that the principle of identification was vital but the principle of separation was less important. However, in their written contributions, Member States and regulatory bodies, Public Service Broadcasters, publishers and consumers have opposed this orientation, since separation is considered key by them.

## Co- and Self-Regulation

In their written contributions, stakeholders especially advertisers stressed the role of co- and self-regulation and asked for an explicit recognition of self-regulation in the future legislation. However, some Member States and consumers' associations indicated that it cannot replace regulation, while Public Service Broadcasters pleaded for more discussion on the basis of the on-going study on this issue. In the discussion, the representative of a Spanish self-regulatory body stressed that in Spain, self-regulation has always operated within the regulatory framework and that has been on-going co-operation with statutory authorities.

## Quantitative Rules

In their written contributions, commercial and public service broadcasters welcomed abandoning the **daily limit**, but the PSBs also asked for an impact assessment. However, some Member States, regulators, publishers and the consumers' organisations opposed this abandonment. During the discussion from the floor, a representative of a subscription TV channel also expressed concerns especially for thematic channels.

In their written contributions, most stakeholders supported the **hourly limit**. Some commercial broadcasters and advertising associations would, however, support a lighter touch inspired by the Commission's Interpretative Communication of 2004. In the discussion, a representative of the Italian press pleaded for the inclusion of telepromotions within the hourly limit. A delegate from a Public Service Broadcaster proposed the possibility of adapting some rules on duration to the non-linear environment. The representative of the German association of commercial broadcasters also expressed a desire for more flexibility on hourly and daily limits.

As far as **insertion of Advertising is concerned**, commercial broadcasters and some advertising associations supported, in their written contributions, the suggested increased flexibility of rules on insertion. During the discussion, a representative of European film distributors said that broadcasters that show non-national European films should be rewarded with a relaxation in the rules of insertion.

However, Member States would keep the principle that advertising should be inserted between programmes and that insertions during programmes should be subject to some limitations. Instead of having the current 20 minutes rule, they supported a max. number of breaks (i.e. 3). Publishers and consumers' organisations are against any kind of relaxation of the current rules.

In the discussion, a representative of a Belgian Public Service Broadcaster supported the view that the principle of insertion between programmes should be maintained but that isolated spots should be allowed. The EBU representative pleaded for more flexibility on insertion rules, while advocating the preservation of limitations for specific genres of programmes. At the same time, he suggested that such rules might also apply to non-linear services.

To conclude, let me say the following. On the one hand, we had some controversial discussions. On the other hand, one could feel that the participants were willing to reach balanced solutions. I am sure that we would have reached them if we had continued the discussions during some more hours.

## Final report of Working Group 5: Media pluralism

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*Rapporteur Bernat Joan I Mari MEP, The Greens/  
European Free Alliance in the European Parliament  
(Spain)*

In the discussion about Media pluralism different issues arose. Perhaps the main subject is a matter of definition, or what do we mean by 'media pluralism' and whether in each culture / country it can have a different meaning. Some of the main subjects included the role of public service broadcasting and its contribution towards pluralism, the relationship between the Media and political power, the impact of the Media on economic competition, the inter-relationship between cultural diversity and pluralism, and the impact of the developments in technology on media and society, the matter of transparency, the working conditions of journalists throughout Europe. It was also discussed what should be the role of the EU in media pluralism.



*Bernat Joan I Mari MEP*

### Definition of 'pluralism'

There was a discussion about whether pluralism should be defined in different ways in accordance with regional / national / cultural perspectives. In the same way, about the role of the EU in this definition, and that we have had the proposal of how to define 'pluralism' more precisely in order to decide which instruments are relevant to handling issues in an adequate way. New members states tended to have different notions of what pluralism means than the older members of the Union. There is a danger of applying double standards when dealing with pluralism issues.

### Relationship between the Media & political power

The whole discussion has been proof that there are many political aspects implied in the matter of media. It is very clear that the relationship between politics and the media is sensitive, and we have to improve the rules so that freedom of expression is increased, both within the media and in society in general.

### Impact of the media on economic competition

Discussions arose on how to regulate competition policy in relation to the media. One the one hand it was suggested that the Commission should take greater account of pluralism issues and especially the Amsterdam Protocol. On the other hand, it was underlined that the media has to follow market and competition rules.

A controversial question was whether there is a relationship between concentration of media and quality of content, and the majority did not see such a direct relationship. Concentration could mean a poorer quality of content and the participation of independent producers can enrich broadcasting and newspaper services.

There were discussions on how European media can compete in the global market whilst obeying European laws on market concentration. The media also has to compete against new players such as telecom companies, but within a tighter regulatory framework. This could have a negative effect on the creation of European audio-visual content.

Fabio Colasanti explained that European Treaties limits the EU's ability to propose new media concentration rules as this is the responsibility of member states. There were some calls for more powers of regulation for the European Parliament.

The broadcasting sector has market power over independent producers and there could therefore be abuses of dominant positions in the programme supply market. Competition regulation was not seen as the remedy for all of these problems. The TVWF Directive and the Media Programme help and could potentially have a positive impact.

### **Cultural diversity and pluralism**

Specific problems were noted for stateless ethnic and national groups, language groups and constitutional regions. For these groups, European regulation would be preferable to national regulation, as in some cases these groups are divided throughout several nation states and their broadcasters are following different countries' rules. For example, Catalans, Basques or Hungarians. There is also an inter-relationship between the needs of funding and the situation of minorities.

### **Impact of the developments in technology on media and society**

The increase in the number of channels and media platforms was not seen as something that would necessarily improve media pluralism or improve quality of content.

### **Role of public service broadcasting**

Public service broadcasters have been recognised as an important player ensuring media pluralism. Nevertheless, commercial broadcasters also contribute.

### **Transparency**

One of the main issues has been the transparency of media ownership. It is very difficult to know who owns the media, especially in most of the new member states. It is necessary to make information available so that it is clear whether a monopoly exists.

### **Working conditions of journalists throughout Europe**

A general worsening of working conditions throughout Europe was noted as more journalists are placed on short-term contracts, but especially where media owners are established in one country and their staff are operating in other countries. There can be different treatment in one country than for a journalist with equal work in another country. However, one audience member noted that journalism remains a popular career choice for graduates.

## Conclusion

Discussions on pluralism led us to discuss the model of the European Union that we would like to build. The aim is to have a clear definition of media pluralism so that there can be further discussion on which instruments are relevant for solving the related problems.

The idea of a 'European observatory' was supported.

It was stressed that the Commission should clarify and publish the criteria it uses to assess the impact of the EU instruments on media pluralism could be improved.

A stronger role for the European Parliament was seen as being vindicated by some representatives, and also a more relevant role for all the European institutions on the basis of the European Treaties.

## Final report of Working Group 6: Protection of minors and human dignity, right of reply

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*Rapporteur Mary Honeyball MEP, Socialist Group in the European Parliament (United Kingdom)*

The current “Television without Frontiers” Directive aims to promote the development of a European broadcasting market whilst also ensuring the respect of certain general public interest objectives, through commonly defined minimum rules.

In order to give you a complete overview on each subject, I will summarise both the discussions within the meeting as well the feedback from the consultation as presented by the Commission to our working group.



*Mary Honeyball MEP*

### Protection of minors

*Feedback from the consultation:*

Based on the comments received, there seems to be quite a broad consensus that the current wording of Article 22 of the TVWF Directive is sufficient.

Also there appears to be support for having the same principles apply to non-linear services from Member States which responded, public service broadcasters, religious organisations and consumers' and viewers' organisations.

However, most commercial broadcasters, telecom operators and organizations which represent the press are against having the same principles apply to non-linear services. They consider that self-regulation is the most appropriate answer for these services.

*Feedback from the meeting:*

Some stakeholders argued that Article 22(1) of the current Directive, which says 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 is ambiguous, not applied in practice and should therefore be reworded. Others argued in favour of a strong enforcement of this provision.

Some also argued that in a few years there will be only non-linear content. One Member State even argued that the proposed measures would lead to delocalisation of non-linear services. It was also argued that content cannot be judged without the context in which it is made available. Apparently research has shown that users are not always shocked by content which they seek out themselves in on demand platforms. It can be argued however, that the context which exists in the linear world is removed by technological developments such as Personal Video Recorders equipped with hard-disks or in the non-linear environment as such.



## Role of self- and co-regulation

### *Feedback from the consultation:*

The idea of strengthening self-regulation seems to be strongly supported by a wide variety of stakeholders. Others consider that only co-regulation is acceptable and one religious organisation argues that there is no room for self-regulation in this field.

### *Feedback from the meeting:*

It was pointed out that self-regulation was not static, but has evolved over the years. Some argued that co-regulation could impair self regulatory codes of conduct. Denis Pericic explained the Croatian Council for Electronic Media approach: Rather to promote the use of self-regulation than to impose sanctions. Michael Rotert pointed out that EuroISPA supported end-user filtering, since others are unreliable, and argued that the e-Commerce Directive combined with self regulation is sufficient. End-user empowerment and education are both key. However, Patrice Chazerand from ISFE argued that the public-private partnership which was at the basis of the PEGI (Pan European Games Indicator) rating system seems to be co-regulation as defined by the Commission. As a conclusion there appears to be a strong call for a definition of the concept of co-regulation since many stakeholders have diverging opinions of what co-regulation actually entails.

## Rating or classification

### *Feedback from the consultation process:*

As to rating or classification, there are some suggestions for a common European rating system in order to ensure efficient consumer information or at least stronger harmonisation of content classification for audiovisual content in the EU. Others support cross-media classification and argue that the EU should either support or investigate the possibilities for the use of uniform content descriptors (pictograms).

However, others argue that a single mandatory or voluntary content classification for audiovisual content in the EU is unnecessary and inappropriate. In any case, there should be due regard for the cultural differences and characteristics of each national rating system.

### *Feedback from the meeting:*

As to rating it was agreed that the PEGI system had the advantage of operating in a Greenfield market, where there was no legacy of rating bodies focused on different platforms. It was also argued that flexibility of any rating system is very important and some thought that this flexibility could only be guaranteed by self-regulatory bodies. The idea of a space or domain for minors on the internet was also raised.

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

Repeated instances of incitement to hatred do more than express ideas or express dissent; rather, incitement to hatred often promotes and results in fear, intimidation and harassment of individuals or groups, or worse.

However, 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” confirms the importance of regulation in this respect. Furthermore, there is quite a lot of audiovisual content available on the internet which could be classified as content which incites to hatred. It should be borne in mind that broadcasts from channels such as “Al Manar” are frequently available via the internet as well.

*Feedback from the consultation process:*

Most stakeholders who commented on Incitement to hatred agree that the current wording of Article 22a of the TVWF Directive is sufficient for linear services.

There also appears to be support for having the same principles transposed into adequate rules for non-linear services. This comes mainly from Member States, public service broadcasters and religious organisations as well as from some commercial broadcasters.

However, the main commercial broadcasters’ association and the main organizations which represent the written press are against rules for non-linear services.

*Feedback from the meeting:*

Concerning incitement to hatred coming from outside of the EU via non-EU satellites, one stakeholder argued that a solution should be sought on a worldwide basis. This could take place in the form of an “Ethical charter” to be adopted by associations of broadcasters. Some argued that the wording of article 22a is not in sync with other texts of the acquis and that it, therefore, be reworded.

## 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**.

*Feedback from the consultation process:*

Regarding the right of reply, certain key players share a common front. The Member States that responded to this part of the consultation, together with public service broadcasters and religious organisations all agree that the current wording of Article 23 of the TVWF Directive is sufficient for linear services. Only the main organizations that represent the written press are explicitly against the current Article 23.

Based on the comments received, supporters of Article 23 want the same principles transposed into adequate rules for non-linear services. Some commercial broadcasters also take this line.

However, there is substantial opposition to the extension of Article 23 to non-linear services. It includes one Member State, the main commercial broadcasters’ association and the main organizations that represent the written press, most telecom operators and ISPs. Another Member State argues that in any case the possibility of “equivalent measures” should be kept.

*During the meeting* it was stressed again that the leeway which the addition of these words gives, is essential to accommodate different national situations or implementations. Another stake holder argued that compliance with rules on the right of reply (in a non-linear environment) would bring substantial costs. It was also argued that the issue paper did not contain enough information on how the right of reply should work with respect to non-linear services.

## Conclusion

Due to the arrival of the internet and other (digital) technologies the world has changed considerably over the past few years. Nowadays, children are more digitally literate than their parents. However, the protection of minors remains a shared responsibility, between parents, industry and regulators. In this changing environment the parents need to be empowered to make informed choices for their children. Co-and self- regulation should clearly play a significant part in this matter. Rating and labelling of content as well as systems of filtering combined with media literacy will also go a long way to address these important issues.

## Closing session: James Purnell MP, Minister for Creative Industries

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We have now reached the final session of what I think – and I hope you will agree – has been a fascinating and worthwhile conference. It is an event which the United Kingdom Presidency has been glad to host.

I want to start by extending our thanks to Commissioner Reding and all of her officials for their help in preparing the conference.

I would also like to thank all of the panellists and our rapporteurs and our Chairs, who did such a sterling job reporting the important discussions we had yesterday.

And I hope that you've all found the conference stimulating and useful.



*James Purnell MP*

### **Need to re-examine Television Without Frontiers (TVWF)**

Before we draw to a close, I think that it is worth pausing to take stock of the issues with which we have been dealing over the last two days and of the challenges and opportunities that face us.

The Television Without Frontiers Directive has delivered significant benefits to consumers and producers, both in economic and cultural terms. Europe has benefited from a single market in TV services which has also enabled the industry to prosper.

Consumers have benefited also. They have benefited from an increased range and variety of programming, and the protections of various sorts which the Directive has given.

But there is one theme which has run through all our discussions, and it is the way that technological change in the period in which we have been operating and the period which is to come has forced the pace of change throughout all of these industries.

I will return to this theme in a minute. But it is also right to say that it even without this rapid development of technological change we would have had to revisit this Directive anyhow. Parts of it are getting on for being 20 years old.

We would have had to re-assess it to see how well it was standing up against the requirements of the television industry and of consumers.

We would have needed to see how far the Directive was succeeding in terms of its goals of promoting trans-frontier broadcasting in tandem with cultural diversity and the development of the European programme industry.

## Working groups

We have of course done these things over the last two days. Our working groups have also been looking at the other issues which were set out in the issues papers provided by the Commission on 11 July.

The groups have discussed access to information, short news extracts and listed events. They have discussed the Country of Origin principle and the regulation of advertising.

They have looked at important questions of media pluralism, ownership and democracy. They have considered how best to protect young people from undesirable content, and how to facilitate rights of reply for the public.

## Reports

This morning, we have heard excellent summaries, I am sure you will all agree, of these discussions. On behalf of the Presidency, my warm thanks to all of those involved in preparing the reports.

I am sure that they will be of great value to the Commission in taking forward their proposals and considering the next stages for the Directive.

## Technological change

As I said, we would always have needed to reassess the Directive in the light of developments. But what makes this task particularly important – and particularly challenging – is the enormous pace of change in the technological base of the industry.

Of course this was recognised before. The preamble to the 1997 revision of the Television Without Frontiers Directive mentions 'the opportunities for growth in the audiovisual sector opened up by new technologies'.

But I think the difference between 1997 and 2005 is that whereas then we were predicting convergence, today we are experiencing convergence.

As we have heard, we are now in a world in which television and on-demand services can be delivered down telephone lines and viewers can have access to TV over the internet. The development of both fixed and mobile telephony is accelerating those changes.

The high-level industry panel from whom we heard on Tuesday gave us an excellent insight into those developments.

## Challenges

With all these rapidly changing developments it would of course be foolish for us to try and predict the future. But I think we can be clear about one thing.

That is that convergence and the blurring of boundaries between previously separate media will continue to produce challenges and that the Directive will have to be framed in a way which will cope with those changes over the next 10 years.

The challenges go to the very core of the way in which broadcasting is regulated. Of what we mean when we talk about broadcasting, and what it is exactly that distinguishes broadcasting from other forms of communication.

## Scope

These are difficult issues. The issue of scope clearly produced a wide array of visions in the group that discussed it yesterday.

In the UK, we have tried to cope with this by having a technology neutral definition of a “television service”. We have tried to make it future-proof by providing flexibility in the Communications Act, to amend the definition should technological change require that.

Defining the scope of future regulation is, of course, at the heart of the issues we have been discussing. The Commission has proposed that a revised directive should be underpinned by a new concept of ‘audio-visual content services’ with, as we have been hearing, different regulation applying to what are termed “linear” and “non-linear” services.

Ruth Hieronymi MEP has already given us an excellent summary of a very lively discussion on this topic. This session, together with the industry panel which opened the conference has, for me, highlighted some important issues which will need full consideration in the next stage of debate.

For example, if we take the key objectives of TVWF as being to secure the single market, to protect consumers and cultural diversity, we can ask ourselves, I think, the following questions:

Can the distinction between linear and non-linear be made, or has it already been overtaken by technological change and new business models?

There was a very clear difference of view in the working group from yesterday between in particular traditional broadcasters and, in particular, the providers of new services, and I think it is important that this difference is bridged if we are to move this debate forward in a constructive fashion.

We should also ask ourselves when we should level regulation down, rather than level it up.

We should ask ourselves what role co-regulation and self-regulation can play. And I think there may be a particular opportunity here for co-regulation and self-regulation to bridge that divide between traditional broadcasters and the providers of new services.

Of course the ultimate in self-regulation is regulation by the viewer, the “off-switch” as Richard Hooper was quoted as saying. The issue was raised in the working groups of how far we need to regulate for protection and how far we provide audiences themselves with the tools to control what they do want to watch and what they do not want to watch, and what they do not want their children to watch.

I am not going to go through all of the other issues, which have already been summarised by our rapporteurs, but I would just like to pick up one or two points which have struck me as particularly important.

## Advertising

Firstly, advertising. As Gernot Schumann so clearly explained this morning, there has been much discussion of the potential challenges for advertiser funded broadcasting. The potential impact of personal video recorders is one which has led to a great amount of debate amongst providers of free-to-air broadcasting. There has been a wide range of views expressed on this.



On the one hand, there is the question of whether some of the rather detailed quantitative rules in the directive might be relaxed.

On the other hand, there are divided views on the acceptability of new techniques of product placement. I am sure this latter issue should be thoroughly considered.

But one strength of the current Directive is in ensuring a clear and distinct difference between programming and commercial promotions, so that as Charles Allen said, “audiences know when they are being sold to”. This separation, I believe, is absolutely vital to maintaining the confidence of consumers in the editorial integrity of programmes. It seems to me those are important principles that we should consider.

### **Public service broadcasting (PSB)**

Secondly, in terms of public service broadcasting, I was particularly interested to hear the report of yesterday’s discussion on cultural diversity, which is a crucial element of TVWF. The new environment does present challenges to the continued delivery of public service broadcasting.

But, as Mark Thompson pointed out on Tuesday, extending regulation is not the only option here. We also have the important tools of public ownership and investment in diverse, high quality content – particularly via public service broadcasters – and that, I believe, has a vital role to play as we go forward into an all digital world.

### **Costs and benefits**

The final theme I would draw out is the importance of weighing up the benefits of any new regulatory instrument against the costs and burdens it imposes. In this context, I welcome the Commission’s intention to produce a full regulatory impact assessment of its forthcoming proposal.

New regulation must be effective and enforceable. But, to deliver the Lisbon agenda, it also needs to be flexible, to encourage the growth of European businesses and European markets.

### **Conclusion**

These are just some of the issues we have discussed at this conference. There is still some way to go in resolving them, but I hope that the discussions we have had here over the last two days have given us the best possible basis for developing a common way forward.

I know that this event will play an important role in informing the further work of the Commission this year and of the Austrian Presidency next year.

So my thanks again to the Commission – particularly for all the efforts that you have made to engage an extremely wide range of stakeholders in today’s conference – and to the indefatigable conference organisers who I am sure you will all agree have done a fantastic job in ensuring the smooth running of this conference.

Thanks also to the interpreters for their tremendous help throughout the event.

And finally, my thanks to all of you for travelling so far to take part in this conference and your extremely keen engagement in our discussions over the last couple of days.

So many thanks and I hope you have enjoyed coming to Liverpool and to the North West. As an MP for Manchester, I hope we will welcome you again over the next few years and in particular in the run-up to City of Culture in 2008 in Liverpool.

But it is of course right that the final word should go to Commission Reding. So, therefore, I would like to introduce our final speaker, Commissioner Reding.

Many thanks.

## Closing session:

## Viviane Reding, EU Commissioner for Information Society and Media

Ladies and Gentlemen,

I am very happy to have the feedback from yesterday's working groups and to have heard the rapporteurs this morning. I want to thank to Presidency, and in particular Minister James Purnell and Secretary of State Tessa Jowell. I thank the members of the European Parliament who have contributed – some of them as "rapporteurs" – to the conference and who have given me their support in audiovisual policy for many years.

The Commission has received and analysed the many submissions to the Issues Papers and the last two days of intense and enriching debate have provided further crucial input to our collective thinking. This comes after an in-depth consultation process which started back in 2003. The consultation triggered a large debate. I am very glad about this. The debate gave rise to many passionate statements, sometimes largely inspired by fantasy.

I have listened, always with interest, sometimes with amusement. Now, the listening phase is over, and the time for work on concrete texts has come. So far, nothing has been decided. But decisions will be drafted in the coming weeks and presented to the European Parliament and the Council at the end of the year. So it is time for you to relax a little bit and to regain some energy for the debate on concrete texts, not on speculation.

This European Commission under President Barroso strives for better regulation. This implies careful political and economical impact assessment of key proposals, screening of proposals to check their compatibility with the Lisbon strategy and roll-back of unnecessary or outdated legislation if not in line with our competitiveness and jobs goals. Co- or self-regulation has an important part to play especially in this field.

The modernisation of the legal framework for audiovisual services in the single market is an integral part of this commitment to better regulation. At the same time, it contributes to the Lisbon agenda and is a crucial component of the new i2010 policy strategy adopted by the Commission in June.

Pictures in general and moving pictures combined with sound in particular go right to the heart of how people think, act and decide. The importance of television and of audiovisual works in our economies and societies, combined with the need to ensure the free movement of these services in Europe, are the reasons why specific rules on television were adopted in 1989 with the "television without frontiers" directive.

The audiovisual world since then has changed and will carry on changing: One of the latest developments is delivery on mobile platforms. This is why we have to adapt our rules for audiovisual content so that they continue to answer to societal needs, help the creative industry to develop and thus foster cultural diversity.



*Viviane Reding*

I am determined to find the best possible, future-proof balance between a light burden on industry, in order to boost Europe's competitiveness and to encourage successful cross border services on the one hand, and on the other hand the pursuit of undisputed public policy objectives, such as protection of minors or the fight against racial hatred.

I have heard and read here and there, that Brussels intends to regulate the Internet, to introduce new red tape. Frankly, this is nonsense! Never ever has the Commission had such a foolish idea! But let me ask you some questions: who in this room is in favour of child-pornography on the new media? Who stands for the freedom to spread incitement to racial hatred on the new media? If one of the service providers present here in this room considers that these abuses are just business-as-usual, he should stand up and take the floor.

It is the duty of the Commission to propose a framework under which these shared European values are protected. But I have no intention to "regulate the Internet"!

It is first and foremost in the interest of our industry and services to have a clear set of Europe-wide rules. The alternative is a patchwork of national rules and case law, contradicting each other and making cross border business increasingly difficult for both providers and users. This is why I want to have better regulation. I am talking about one single, basic framework instead of at least 25 different legal regimes. This is the condition for an effective country of origin principle – for me a cornerstone of the European audiovisual policy. This would obviously be an opportunity in terms of legal certainty and of opportunities offered to the industry to provide cross-border services and develop new business models. It would mean fewer burdens and less regulation, not the opposite!

Let me be clear: I am convinced that nascent markets and services should have the biggest possible freedom to develop. That is why, for example, I have convinced the national telecom regulators in the EU to have a "light touch" approach on Voice over IP. This "light touch" should also be the rule for new audiovisual content services. And it works: see how these issues are being dealt with here in the United Kingdom, with the Association on Television on-demand (ATVOD) entrusted with the duty to self-regulate video on demand services.

Minister, ladies and gentlemen, I see three main options as for the future legal framework for audiovisual content. Option one is, not to change anything. It says: let's consider that the rules adopted for the audiovisual landscape of 1989 will remain valid in the converged audiovisual landscape of 2010. Option two is to tidy up the 1989 Directive as we already did in 1997. Option three is to propose a new directive, future-oriented towards the needs of both the industry and the consumers in the near future. Such a new audiovisual content directive would:

1. reaffirm the values we share as Europeans
2. adopt a "light touch" for new audiovisual services, while giving them the opportunity to take advantage of the country of origin principle.
3. modernise and simplify rules in the field of traditional television

It is obvious that a Directive can only provide high-level objectives and principles. It does not replace implementation by national Governments and Regulators, and co- and self-regulation with industry and other stakeholders. This last point is very important: whilst it remains desirable to pursue some key public policy objectives like the protection of values, this must be achieved in the on-demand environment by encouraging the industry to take ownership and responsibility.

Ladies and gentlemen, what I want to present now is my assessment and my conclusions with regard to the various contributions the Commission received on some of the issues at stake, and in particular on the scope of the directive, advertising rules and values.

Let me begin with some remarks on the scope of the future legal framework for audiovisual services. It seems to me that nearly everyone agrees that ensuring a level playing field among platforms delivering similar audiovisual content falls into the remit of the European lawmaker. In any case, technological change and convergence lead to a multiplication of services. It is necessary to have a technologically neutral regulatory approach, taking into account the degree of choice and control of the consumer. That is why we make a clear distinction between linear and non-linear services and I am glad to see that many of you support this approach. We will of course have to test this against the reality of a complex and fast-moving market and refine the legal definitions in the coming weeks on the basis of the discussions we had here in Liverpool.

The Issues Paper on advertising addressed many different subjects and I want to deal with the most topical of them. The issue of product placement has been very controversial. My opinion on this issue is that one should be honest towards consumers. Product placement is a reality, but we lack clear rules. Consumers should have the right to know what kind of content they are watching. Our goal should be to increase consumer information, while acknowledging that product placement is a form of advertising, and that it should not interfere with editorial independence. Furthermore, having clear rules for product placement would secure new revenues for Europe's audiovisual industry, contribute to boost our creative economy and thus to reinforce cultural diversity.

While speaking about advertising, I want to insist again that this is an area where co- and self-regulation have made enormous progress in many of the EU Member States. Look for example at the Charter put in place by the European Advertising Standards Alliance.

The increasing sense of responsibility of the industry could in my view lead to deregulation in the field of advertising. One possibility is a relaxation of the rules concerning insertion and daily advertising limits. I take note that Member States which have expressed a view on the "issues paper" support the need to give more freedom to broadcasters in that respect.

Concerning protection of minors and incitement of hatred, there seems to be quite a broad consensus on the current balance foreseen in the TVWF Directive. Member States, public service broadcasters, religious organisations and consumers' and viewers' organisations have all expressed the view that these values should obviously apply to non-linear services as well, and not only to traditional television. But this does not impede Member States in adopting a co-regulation approach when implementing a possible new directive.

Least but far from the least, cultural diversity: You know how attached I am personally to the promotion of cultural diversity. Indeed, in my previous portfolio, I launched the process leading to a unified European position on the UNESCO Convention on cultural diversity which has every chance of being adopted next month. As regards the Directive, there is a broad consensus that the rules in place have provided a stable and flexible framework for the promotion of European and independent production. They represent a compromise which was reached after long and hard negotiations and reflect the interests of all parties concerned: of the content supply industry but also of the broadcasting sector and primarily the interests of the viewing public which depends – at least in a linear environment – on the offer of diverse and high quality scheduled programmes.

The issue of what to do in the non-linear environment is more controversial. While we can, I believe, agree on the objective of a vibrant European audiovisual production sector reflecting the diversity of our cultures, it is clear that transmission time quotas such as those in Article 4 – are not an option. On the other hand, it is clear that the Directive should provide for the free circulation of non-linear services in the internal market in a comprehensive way and needs to address this issue.

Ladies and Gentlemen, I am very grateful for your contributions – written and here at the conference. I will now report the results of this conference to my fellow commissioners and the Commission will come to a conclusion in the next few months. If we want to succeed in defining the right legal framework for our industry and our citizens, if we want to succeed in boosting Europe's creative economy, Member States, industry and stakeholders must be ready to adopt realistic views and be prepared to compromise.

In any case, be sure that the future legal framework will be a flexible instrument, the best possible balance between the maximum freedom for our industry to take full advantage of the single market and general interest principles. Be sure that it will aim at increasing legal certainty and competitiveness of our telecom and audiovisual industries. Be sure that it will aim at creating the conditions for a wide distribution of rich digital content – reflecting our cultural diversity – on many platforms. Be sure that the future legal framework will help Europe to lead the world in this crucial field of culture and commerce.

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