

REPORT

"Audiovisual Media and Authorities"

Tasks and challenges for regulators in an evolving media landscape in Europe

26 and 27 November 1998

VIENNA



~~Bundeskanzleramt~~

Organised by the Federal Chancellery
with the support of the European Commission

Preface of the Organisers:

During the Austrian EU-Presidency, the expert seminar "**Audiovisual Media and Authorities: Tasks and Challenges for Regulators in an Evolving Media Landscape in Europe**", jointly organised with Directorate-General X of the European Commission, was held at the Vienna Hofburg on November 26 and 27, 1998.

In the media in particular, the use of digital technology leads to hitherto unheard-of potentials for applications and uses as new communication and information services become available. Thus, it seemed indicated to address, in the European context and at a meeting of experts, issues of enforcement which media regulators are faced with at present, and will continue to be confronted with in the future. It was considered useful to do so against the backdrop of the discussion around the convergence of the telecommunications, media and information technology sectors, in particular because the topic had already been introduced at the Birmingham Audiovisual Conference during the UK Presidency, which preceded the Austrian Presidency, and because it had been a significant concern of the Commission's Green Paper on Convergence.

With this in mind, the conference brought together experts from European regulatory authorities, the industry, the European Commission and the academic world for an exchange of practical experience in regulation and theoretical ideas about future regulatory approaches. 230 experts from the above-mentioned fields participated in the seminar. The present report is to document the conference and serve as a basis for further discussion.

By way of conclusion, the Federal Chancellery would like thank the speakers and participants of the seminar most cordially for their important contributions. A special note of thanks goes to Directorate-General X of the European Commission for the financial and organisational support to the project, and to the Austrian Broadcasting Company ORF which, in the course of a presentation of its digital technology and online activities, gave an insight into the far-reaching implications of technological developments that can already be discerned today.

Director-General

Dr. Wolf Okresek

(Head of the Federal Chancellery/Constitutional Service)

GREETINGS TO THE CONFERENCE:

The use of digital technology has enormous implications for nearly all spheres of our life and will decisively change the daily routine in post-industrial societies. Already today, the new communication and information services, particularly the INTERNET, enable us to transfer information from one place on the globe to another thousands of miles away within fractions of a second. New applications and possible uses are emerging, and in many instances the convergence of the hitherto separate branches of telecommunication, media and information technology is becoming apparent. This, however, gives rise to a number of very concrete questions of all-European

The major changes now in progress in the European media environment as a result of the growing use of digital technologies are being monitored with great attention in the framework of the European Union. In its Green Paper on convergence of the telecommunication, media and information technology sectors, the Commission discussed the possible effects of digitisation on regulatory policies, and at the audiovisual conference in Birmingham organised in cooperation with the British Presidency ("Challenges and Opportunities of the Digital Age") a working group devoted much - fruitful - effort to regulatory questions. Even though the present needs for regulation of the audiovisual sector at the Community level would seem largely satisfied with the existing legal instruments, first and foremost through the new directive "Television without Frontiers", it is vital to keep the regulatory framework under constant review, especially in the light of technological advances. In order to draw the necessary conclusions from practical experience, the work of the authorities concerned with the implementation of these regulations is an essential element. At the European level, more exchange of information and views and the intensification of cooperation between national regulatory authorities has an important role to play.

The European Commission is very glad to support the Austrian Presidency's initiative to organise a seminar for experts on "Audiovisual Media and Authorities - Tasks and Challenges for Regulators in an Evolving Media Landscape in Europe". The seminar is an excellent follow-up to previous initiatives, and the Commission hopes that it will provide professional circles and the authorities themselves ample opportunity to exchange the results of their practical experience as well as their vision of the role of audiovisual media regulation and regulators both today and in the future.

European Commission

Marcelino Oreja

Content:

Introductory statement; State Secretary Peter WITTMANN	6
"Cultural and sociopolitical effects of convergence with reference to media regulation - at the national and Community levels"	
Speaker: Francis BALLE (IREC)	10
"New challenges to audiovisual regulatory authorities"	
Speaker: Michael REDLEY (ITC)	21
Discussion (Germany, United Kingdom, Portugal)	33
"What TV and radio operators expect from future audiovisual regulatory authorities" - from the viewpoint of private networks	
Speaker: Jan MOJTO, President of ACT	41
"What TV and radio operators expect from future audiovisual regulatory authorities" - from the viewpoint of public networks	
Speaker: Albert SCHARF, President of EBU	54
"The European Commission's thinking on audiovisual regulatory authorities"	
Speaker: Spyros A. PAPPAS (DG X)	62
"A typology of possible organisational structures of audiovisual regulatory authorities"	
Speaker: Michael HOLOUBEK (Vienna University of Economics)	70
<u>Appendix:</u>	
Speaking note of Greger LINDBERG (EPRA)	83
Speaking note of GI Gerhard WEIS (ORF)	86
Curriculum vitae and addresses of the speakers	93
List of participants	96

Speech of Mr. PETER WITTMANN, Secretary of State

Ladies and Gentlemen,

In my capacity as the member of the Austrian government in charge of culture and audiovisual media, it is my special privilege and pleasure to welcome you to the Redoutensaal of the Hofburg, the former Imperial Palace of Vienna. You may be aware that this wing of the building was almost totally destroyed by a fire a few years ago. The competent authorities immediately decided to restore this stately hall to its former glory and splendour - equipped, however, with state-of-the-art technology and adorned with modern frescoes. I think that the combination of old and new has produced an excellent result.

Ladies and Gentlemen,

The combination of old and new or the integration of new elements into existing structures will also be a recurring theme of today's event. The digital revolution has had great influence on what is technically feasible, and will continue to do so, not only in the media field. However, the social impact of this great technological step forward will not be revolution but evolution, seeking to blend new achievements with old concepts. Let us consider the developments in broadcasting: at present, most European states have a dual system of public service broadcasting and private commercial broadcasters competing in terms of content and economic success. In addition to clear-to-air public service and private channels, various pay-TV services try to stand their ground on the market. Due to the scarcity of frequencies, analogue services met with a technological obstacle which was removed by digital technology so that the problem of frequencies is in fact a thing of the past. Thus, we will be able to receive a wide range of personalised and highly specialised programmes. But will this mean that the major general interest channels will vanish from the market? On the contrary: no matter how fragmented the range of channels becomes, there will always be a need among consumers for content which everybody can discuss because everybody has access to it; moreover, it would be politically disastrous to

democracy if there were nothing but many fractions of the public hardly communicating with one another.

Ladies and Gentlemen,

Although traditional and new media coexist, technological developments have raised hitherto unknown issues in the context of media regulation.

Many of you will now think of the Internet, which has been dubbed the medium of the next millennium by some; indeed, its global dimension is an enormous challenge indeed. Although Web-TV, i.e. broadcasting on the Net, is still in its infancy we may nevertheless deal with the implications this has here and now. To be more specific, we may well address issues of liability: as you know, providers of infrastructure, services, access and content co-operate on the Internet, and they may operate out of different countries. As a consequence, the country of origin principle, which is important for broadcasting under international and Community law, will hardly be applicable.

Moreover, the problem involved in dealing with the Internet is entirely new because a wide variety of services can be supplied and demanded by one and the same person in one-to-one and one-to-many communication on one and the same platform - from any place in the world. In this context, differentiation according to content would be a possible solution, depending on the type of service offered. Regulatory efforts will have to draw distinctions depending on whether the service concerned provides information and is relevant to the shaping of public opinion or whether it carries data only (weather reports, traffic news etc.). As you can see, apart from the problem of defining and categorising services, this is only the tip of the iceberg, since we could also consider minimum standards to be met in all categories.

Ladies and Gentlemen,

The title of this event is "Audiovisual Media and Authorities". The fact that television and radio had to exist within a regulatory framework so far was not only due to technical reasons, since the authorities functioned as the distributors of scarce transmission resources, the reasoning behind regulation has also encompassed other essential considerations of public order. After all, broadcasting involves a mass medium the intensity and potential to influence cannot be compared with any other. In keeping with this, basic consensus has been reached at European level; it is enshrined in the "Television without frontiers" directive, which was recently amended and which is to guarantee that television programmes have to meet certain minimum standards, especially as regards the protection of minors and consumers or the prevention of violence and racism, no matter where in the European Union they are broadcast. The "European Convention on Transfrontier Television" of the Council of Europe contains similar rules for the countries which are not or not yet European Union Member States. While the freedom of the media is a very central concern of democratic policy, and thus one we all share, we also know that certain needs for protection are indispensable from the socio-political perspective and impossible to translate into reality effectively without audiovisual licensing and regulatory authorities. Finally, I am also convinced that the work of these authorities does not constitute an obstacle to media diversity but is in fact the prerequisite for pluralism - a value inherent in the European media landscape which we can indeed be proud of. The regulatory authorities will have to face the technological changes mentioned earlier, they will have to take up the challenge they bring as fundamental socio-political needs and cultural policy requirements continue to exist in spite of the enormous increase in information offered. I am particularly happy that this event will focus on regulation in a wider political context, not only from a technical perspective.

Ladies and Gentlemen,

It is not for me to go into detail here; this is something I will leave to the competent experts, hoping that they will, today, supply us with a wide range of proposals, and possibly also reports from their experience with regulatory work in the digital age. Let me wish you an inspiring and exciting meeting.

Thank you for your attention.

FRANCIS BALLE**Convergence - Culture - Regulation****I The Misconceptions of Convergence**

Convergence is nothing new. The term has been used for several years to describe the outcome of a development which started in the sixties and seventies - the Golden Age of Television - and is continuing.

Between 1960 and 1990, the media underwent more marked changes than at any other time during the 100 or 120 years from the emergence of the first high-circulation newspapers in the years between 1840 and 1860 and the heyday of television in 1960. Given the boom of multi-media and the opening of new data highways during the period from 1990 to 2005/2010, they will undergo even greater changes than in the previous three decades.

1

The phenomenon we refer to as convergence today is rooted in several alliances which came about between 1975 and 1985.

The first one was the alliance of radio and television with cable and satellite technology. It is conventionally thought to have its origins in the birth of HBO (Home Box Office). Radio and television had used satellites as relays in transmissions from one place to the other since 1962/64 but it was only the birth of HBO in 1975 which helped television overcome the obstacle of limited frequencies and develop towards an abundance of channels. At the same time, radio discovered the FM band. In both cases, the price of growth was that diversity had to go for the benefit of specialisation, with a magnificent foursome prevailing: information, sports, movies and children's programmes.

The second alliance, between information technology and telecommunications, was formed in the early eighties. The combination had existed since 1964 but had been

restricted to large institutions such as banks, insurance companies or tourist agencies. Telematics was the word denoting the general dissemination of these options to all, save for a few exceptions, which started in 1978. Written information - texts and graphics - was available online and could be queried as required from then on; this led to the development of a large variety of services. Communication was no longer a one-way street but truly a two-way activity.

The third alliance: as from 1985, the alliance between television and information technology began to bear fruit. At this time, television made an important step towards interactivity. VCR and remote control had paved the way for this in the seventies. At that time, it was already the viewers who determined when they wanted to watch TV rather than vice versa. After 1985, interactivity opened up new perspectives for television: online services were accessible via the TV set. It was as if sound and image had been added to telematics. The more telematics had to offer, the more interactivity developed. Suddenly, the direction was clear: everything was accessible to everybody - movies, services, information - just press a button and it's there, "made to measure".

2

In the early nineties, the objective seemed remote - attainable but remote. And it was by no means clear how to get there. Everybody was discovering a world that had hitherto been uncharted: interactive television, information technology using sound and image, telecommunications offering services other than voice telephony.

After 1992/93, two trends began to develop faster. Firstly, there was the general application of the digital system to all kinds of signals: sound, image and text were gradually translated into the universal language of computer science. And digital technology united the worlds of broadcasting and print media on the same carriers. Multi-media, especially CD-ROMs, have today become universal means of communication: one medium fits all, enabling us to navigate from one form of expression to the other while overcoming the weaknesses of each. Multi-media offers the best of two worlds, of written text and image.

The second trend is to do with networks and their interconnection with a view to interoperability, exchangeability, more "bandwidth". The boundaries between broadcasting via radio waves, cable and satellite telecommunications had been blurred. The data superhighway, one lane or several lanes in both directions, was now looming large on the horizon. Simple metaphor or exciting utopia? Will the Internet, the first network of all networks, also be the ultimate network of them all? At present, we cannot see the wood for the trees.

One the eve of the year 2000, convergence stands for the fusion of these two developments: for the point at which a universal medium capable of merging and uniting text and image becomes accessible via an equally universal network. Technically speaking, the home computer is equipped to do it and the networks also transport signals both ways.

3

The convergence of the two trends, the digitalisation of signals on the one hand, and the linkup of networks on the other, is nothing but a development towards multi-media networks accessible online from a universal terminal located anywhere in the world. In other words: the best of two worlds, of the written word and of audiovisual media, on demand, *à la carte*, without frontiers.

This convergence announces a boom of the service sector, an even greater variety of programmes, an even greater diversity of uses and habits. Will there be one network only? One single universal network? Definitely not, even though this may be technically feasible. The diversity of services, which is possible due to digitalisation and new networks, lends little probability to the vision of the universal terminal to ever come true, makes it even improbable. Some of tomorrow's terminals will be highly versatile but most will only be used for one or two services. Thus, convergence spells not only a greater variety of programmes and services but also an even greater variety of machines.

Never before has the competition among enterprises which try to conquer those promising markets by means of multi-media and the Internet been keener and more relentless. Convergence creates new frontlines of competition where providers from different sectors, often geographically removed from one another and unfamiliar with one another, fight fiercely to meet the same challenges: telecommunications companies, cable TV stations, radio and TV broadcasters, content providers (publishers of books, producers of movies, photographs, leisure time facilities), the home electronics and computer industries (industrial enterprises, suppliers of equipment, computer producers) and software distributors. Six industries or lines of business are fighting to consolidate their positions on what is by now a global market, trying to conquer territories already taken by others or to blaze new trails by offering new services and programmes.

The image of convergence is reductive in nature: after all, it only covers one perspective out of many. It could mislead us because we run the risk of overlooking the gigantic scale of the oversupply of programmes and services it announces, and the stiff competition between the communication titans dominating the sector worldwide. Suppliers are engaged in ever more fierce competition precisely because of convergence - the result or objective being to offer an ever wider range of various services.

II What does convergence mean for the individual - at Community level and at Member State level?

By the interplay of digitalisation and new networks, the media will develop into several directions at the same time.

At first, this development will tend towards abundance, which will be particularly spectacular in the television industry. Exclusively broadcast on radio waves until 1975, it was limited and always a national matter - if not nationalistic - while almost invariably being of general interest and directed at the largest possible audience.

On the eve of the year 2000, this abundance is larger than ever, developing the same way - albeit more or less delayed - as its predecessors, press, cinema and radio. The price of growth has been the same for all of them: diversity.

There is an abundance of content and of paths that lead to it, the types of communication. In between the two original types of communication - one-to-one and one-to-many, private correspondence and public communication - the digital age brought forth a multitude of types of communication belonging to neither of the two, some-to-some communication, which in its basic features is related to the two others, bearing more likeness to one or the other on certain occasions. This is no longer the realm of private exchange, nor is it the realm of wide media coverage. Neither mass medium nor medium of person-to-person communication, these new media enable the emergence of ways of exchange and types of relations previously unheard of. Proximity and distance are thus "re-defined" by modern technologies.

The second direction is progress involving services "on demand" and "made to measure". There are technologies which make it possible to access all kinds of programmes or custom-tailored services directly by pressing a button on a portable device. The wonder of interactivity shrinks space and time, they even cease to exist. And everybody can be a nomad without ever being out of touch with others.

The third direction involves the relationship between local and global. The media are increasingly torn between these two infinite quantities. They try to reconcile the local and the global. They combine newspapers and TV channels on the same carrier. And they may even consider "glocalisation" - a portmanteau word composed of globalisation and localisation - to be the secret of success leading to the conquest of the world market while keeping local or regional specialities of individual countries in mind.

Many versatile media, custom-made to fit individual needs, mobile, local, yet global: suddenly, we re-discover that technology is ambivalent, and like language, that it can do the best or the worst, as Aesop said. Or rather, the best is sometimes worse than

the worst. Do abundance and versatility necessarily mean quality and freedom? Too much choice strangles the freedom of choice. Will originality and newness not be drowned in quantity and presumed diversity as soon as they meet with laziness and indifference?

Things "made to measure, anytime and from any place" is not always the blessing it seems to be. Science, said Aristotle, is the daughter of amazement.

One merit of the mass media is that, by coincidence, they help us find things we were not looking for. However, interactivity always makes you look for things you are already familiar with. Reduced to nothingness, time is passing quickly. However, we need time to think. Speed is dangerous, not just in road traffic. As far as distance is concerned, no matter if the media shrink them or reduce them to nothingness, too, we will be removed from those who are close to us while getting closer, in virtuality, to those who are far away. The person close to us is no longer near and dear if a distant one comes closer.

Torn between to infinite quantities, between what is near and what is far, between the local and the global, the media raise the perennial question of identity, in a way that is more urgent and disturbing than ever. The question following from this addresses our relation to the other, for the radical uniqueness of all the cultures and civilisations forming the global village. Who am I? What is important to me? What do I have to defend and what do I want the others to see? If you have no answer, you run the risk of being carried away by the mainstream, of being submerged and subverted by other cultures. Culture is the bridge between the universal and the individual. It is the tension between the two. Each culture, and each identity, is defined by its relationships with the others, it must be open and self-contained at the same time. There must only be gates that can be opened and closed. The more global communication becomes, the greater is the need of the individual to defend his/her own identity, his/her own culture. However, if you want to preserve cultural diversity in the global village, you must disseminate universal values. If relativism prevails, if the universality of certain values is wiped out, the nations or civilisations

will become intolerant and intolerable for each other, and a situation similar to tribal wars will arise. In fact, certain media have developed towards uniformity by globalisation and thus awakened the primal fear of the other in the individual.

III. What is the audiovisual policy to be pursued at European level and at the level of the Member States?

Technology has no predetermined destiny. When a technology, a future medium is created, it is neither given a mission nor directions where to go. It does not "do the thinking" for us, it only proposes. Man disposes. Business is not a matter of destiny, either. It is a means towards an end and not an end in itself. True wealth lies in the people themselves, said Jean Bodin. Economists will take a long time before they know the value priceless things can have.

What is it that has to be done to preserve the diversity of cultures and languages without falling prey to absolute relativism, without ever making concessions as regards the universality of our shared values?

The basic principles of any action taken in this fields remain unchanged.

"Freedom of communication" is the most important principle underpinning public action: the freedom of every person to obtain information, to express him/herself, to communicate. Safeguarding this freedom requires us to respect two other principles: the first one is that there must necessarily be certain limits to the enjoyment of this freedom in public, but that these must not exceed a certain extent, the second one being that everybody is entitled to enjoying this freedom without discrimination.

The second fundamental principle is the optimal use of technologies so that everybody has access to a versatile, high-quality European range of programmes and services respecting the cultural and linguistic diversity of Europe.

The third principle is that artists, authors and performers must be protected and they must be given rights that enable them to derive an income from their work. This is crucial to when it comes to creating a framework conducive to the production of programmes and services.

The advent of the digital age may not change anything about the principles which the rules governing the media refer to but it does highlight the role of the media in Europe against the backdrop of the world of tomorrow.

The European countries have many fortes. The smallest among them are often those which open up most to the others. Foreign channels have major audience shares in Austria, Belgium, the Netherlands, Scandinavia, Luxembourg, or Switzerland. Certain transnational stations are "localising" some of their programmes: for example, there is the regional window on MTV Europe or the Swiss window on Sat 1. Audiences everywhere prefer their own language, their own culture.

In a certain sense, Europe has the right size and diversity. Given this wealth of diversity, it may be able to find easier access to the larger market of cinema and television, provided that it stands united. While America is not making much progress there, it is by no means a coincidence that more European films have been shown in the movie theatres in the past few years. In 1997, the market share of European films was 30% in Spain, 35% in France and 40% in Italy. Moreover, Europe should not only expect the Central and Eastern European countries to become new customers but should also consider them full-fledged partners to join the European effort. After all, the existence of public service broadcasters not exclusively oriented on the logics of the market are a concern common to all European countries. The challenges of the digital age are the same for all countries of the world: quantity does not necessarily spell quality, proximity may be obtrusive and speed can be dangerous. Eventually, the globalisation of the media does not automatically mean that everybody subscribes to the Universal Declaration of Human Rights and political liberties. The benefits and fortes which Europe owes to its history certainly make it

more apt to take up the challenges before the others and in a better way than the others. The digital age offers Europe an opportunity of becoming the site of a cultural renaissance, a salutary renewal of thinking.

What is the audiovisual policy that will help us take the opportunity? In shaping it, we must take the development of technologies into account, and necessary adjustments of the legal provisions governing their facilities and uses must be made. We must never yield to the temptations of a *tabula rasa* and consequently take all necessary steps to enhance the media in terms of numbers and versatility at the same time. The press, the audiovisual media and telecommunications are each subject to their own sets of rules determining their organisation and the way they function - to each medium its own legal framework. This model, or issue, is obsolete today. The alliances formed after 1975 called it into question while digital technology and its consequences finally led to its doom.

The legal framework must no longer be based on the technology or the medium concerned but the type of communication the respective technology serves.

Is it the provision of certain programmes, services and information to an anonymous audience? Can we access this public communications market easily? Are the programmes and services reserved for an audience of subscribers? Or is it more of an exchange between two persons, comparable with "private correspondence"? In the digital age, the types of communications in between the two opposites of publicity and private correspondence have multiplied considerably.

Unnoticeably, the object of the rules has changed: the closer we get to the limits of oversupply, the less we direct attention to the content disseminated and the more we are interested in the types of communication which, in the final analysis, are what lends importance or meaning to content. There is a difference between the numbers of viewers watching a pay-TV channel and a free general-interest channel.

Abundance also leads to a change in the object which the rules are directed at.

While broadcasting media become ever more numerous, external pluralism, i.e.

competition, prevails over "internal pluralism". From now on, competition is important, its organisation and sanctions against everything that is or may be an obstacle to it, is what counts.

Everything converges - the technological developments and the requirements of freedom - so that legal provisions develop towards regulation. Never has regulation been more inalienable and legitimate. Legitimate because communication is both a fundamental right and an industry, and because it seems indicated to separate those who govern and the audiovisual media from one another. In the digital age, regulation seems all the more required as the general principles of freedom and equality have to be adapted to ever more versatile modes (means, types) of communication. The point is to design a right "differently" as it has actually become an entirely different right - one that is mostly contractual in nature, "made to measure" by independent experts according to procedures and with goals in mind that are fundamentally different from what the law-makers wanted.

If asked instead of the expert, neither legislators nor judges would have an answer to all the questions concerning a certain mode of communication: Will competition be hampered by limited market access? Depending on the answer, access to the market will either be entirely open, or require a licence, or simply a prior declaration. Where exactly will a certain mode of communication be situated on the scale between the two original models of publicity and private exchange? Depending on the answer, more or fewer, more or less mandatory restrictions will be imposed on the freedom of opinion and expression. Convergence must not be a pretext to model the system of audiovisual media along the same lines as the telecommunications sector.

One question remains: What will the division of labour between the national and European authorities look like? The Internet, CNN and MTV have become symbols of the digital age. Transnational, continental and worldwide networks are mushrooming. The legal framework must encourage and maintain competition at national, regional and international level. However, the need to preserve cultural and

linguistic diversity throughout Europe requires the strict application of the principle of subsidiarity, which in turn comes with a need for constant co-ordination among the Community Member States. Each state is in charge, especially as regards its public service broadcasters. What are the tasks these have to fulfil? What do they have to offer which private broadcasters do not have? Which of the activities pursued by private stations have to be done differently? How should public funds be allocated so that they are available for the tasks that come under the heading of public services?

Eventually, it is up to the governments of the individual countries to preserve their cultural heritage. In this context, cultural heritage should be taken to mean everything the past has given these countries as well as everything cultural workers, artists and intellectuals have a calling to defend and present in their works.

Failure to do so will be the undoing of society as it will no longer be able to survive the way it is. How can we thus protect what society considers the expression of its own ingenuity without violating the laws governing the global economy?

This is doubtlessly the most difficult challenge to be faced in the coming years. Market economy and democracy are inseparable: both are equally needed for the ideas, the preservation and fertility of a civilisation. However, both do not always suffice by far.

MICHAEL REDLEY
Secretary and Director of Administration
Independent Television Commission

New challenges to audio-visual regulatory authorities

1. I have been asked to address today the issue of new challenges to audio-visual regulation. There are plenty of such challenges. But there are also plenty of independent audio-visual regulatory authorities in Europe, each with its own tradition and basis in law. The ITC is only one of them, and I see many friends from other bodies in the audience today. I applaud the initiative of the Austrian Presidency in organising this gathering. It often seems to me that there is a great source of expertise and advice in the independent regulatory bodies which is inadequately heard amid the hubbub of special interests and governments in Brussels and elsewhere. I look forward very much to hearing their views in the discussion to follow.
2. I wouldn't presume to speak for others, or to claim that the UK's experience is for export. The United Kingdom has in many ways an unusual experience in the audio-visual field, with long experience of commercial broadcasting and a public-private mix based exclusively on licence-fee funding for the main public broadcaster, the BBC. The Independent Television Commission regulates the commercial but not the licence-fee funded public sector of television. It regulates television, but not radio. What I offer is a case study of television regulation in the UK, though I will try not to be too parochial in dealing with it.
3. So, on to the challenges, of which there are in fact so many that it is hard to know where to start. Lets look briefly at some of them.
4. Digital television is now operating in the UK on the terrestrial as well as satellite platforms, to be joined next year by cable. This means an increase in the number of services to be licensed and regulated as to their content, although less than one might think because much of the material is duplicated

from one platform to another. The true novelty is a very substantial enhancement of the pay offering, relative to what in North America is called „free TV“. With pay TV and the competition which it brings, there is created a challenging new area for regulation. The task of ensuring that a wide range of services is available to viewers consisted previously in insisting where possible upon diversity of content among a fixed number of services. In the multi-channel situation with themed services, to achieve the same result the focus shifts to the terms on which services are offered to viewers. The ITC has for example recently completed a major examination of the way in which channels are bundled for sale by distributors, and has defined the limits of what it will allow. The distributor and the programme provider are no longer one and the same person, although they may be. Ironically enough, greater emphasis on the market has meant that the details of commercial relationships which would previously have been matters for the entrepreneur alone are now subject to greater regulatory scrutiny than ever before.

5. At the same time television is entering upon a redefinition of what it is. As well as a one-to-many „mass“ experience, using telecom return paths to start with it will be capable of providing personalised services, one-to-one, sometimes called „me TV“, for those who are prepared to pay for them. Enhancements to the capability of television have occurred continuously throughout its brief history, through colour, improvements to sound, teletext, the video-recorder, subtitling and audio description for the deaf and sight impaired and so on. But something which changed television permanently from a mass experience to one akin to making a private phone call would clearly be something altogether new. A paradigm shift if you like. As if all that was not enough, we also have via the Internet the possibility that television programmes carried by it will simply be an undifferentiated piece of information to be accessed or not by the individual at will. The entity on which so much devoted regulatory emotion has been lavished over the years is suddenly no longer the dominant means by which society comes to terms with itself, but simply one among a number of such means.

6. Actually doubt about whether it is practical to regulate television any more even if you want to isn't the end of the difficulty. Under the full blown version of the convergence scenario, the very entity on which audio-visual regulation has focused, broadcasting, has itself evaporated.
7. These are challenges indeed, and I won't disguise from you that convergence, meaning the capabilities of telecommunications, information technology and broadcasting coming together in new forms of media, creates difficulties as well as opportunities for television regulation. I want to suggest, however, that the broader issue this raises is really not for regulators to solve, but for governments under whose auspices regulation operates and for the societies which regulation serves.
8. Let me be more precise, because the thought here is a crucial one. Within European governments (and I think I am right in saying that the phenomenon is replicated right across Europe), there has for many years been a tension between the consideration of broadcasting and telecommunications issues. There is a tendency for those steeped in the telecommunications tradition to be concerned primarily with capital investment, advancing technology and the economics of the firm. For them economic analysis of markets and the creation of competition between producers are the essential stock in trade. Following this approach, sectoral regulation is for the most part a temporary phenomenon which will wither on the vine once effective competitive markets in telecommunications have been established.
9. In the broadcasting tradition of public policy on the other hand, there is a range of cultural and social as well as economic issues to be considered. The key issue is the programme services delivered to viewers to educate, inform and entertain. The focus is more on the household and on family and wider social values than on the firm, on the services delivered rather than apparatus or systems, and the concerns are those of quality, diversity, impartiality and

protection from offence. The ongoing nature of these issues, together with adjudicatory function which inserts social values and consumer protection into the economic processes of producing and distributing programmes, point to a more permanent and less transitory form of regulation for broadcasting than for telecommunications.

10. While television is a business whose scale is measured in hundreds of millions, telecommunications is a business valued in tens of thousands of millions. The conjunction of the two, were it to occur on terms set by the convergence hypothesis, would result, as Mark Twain said, as sure as eggs are eggs, in the dominance of the values of the larger over the smaller. Coming from where I do, you'd no doubt expect me to deplore this possibility. Indeed I do. It should also be remembered that competition economics is the common heritage of both the traditions, not the exclusive possession of only one of them. The regulation of commercial television in the interest of viewers cannot be done effectively without the consideration of economic issues and industry structures alongside culture and content. This has become even more apparent to us in the UK with the advent on a large scale of pay TV.
11. Now it is simply fanciful to suppose that audio-visual regulation can itself find a way through the maze of challenges it currently faces without there being first of all some reconciliation of the two traditions I have outlined. At the moment they are embodied on what often seems to be a mutually antagonistic basis in the very process of governments, in Ministries of Industry, Economics and Culture and in Directorates General in Brussels. I want to suggest that perhaps the biggest single challenge facing audio-visual regulation at present is the existence, unreconciled, of the different traditions, each with their different agendas for the future. It seems unlikely that one will see off the other. Both are part of the national traditions of Europe and, it seems to me, both must be enabled to contribute on the basis of mutual respect.

12. In the UK we have fairly formalised and regular meetings, known as the Group of Three, between the ITC, its telecoms equivalent, OFTEL, and the Office of Fair Trading, which is the guardian of general economic regulation. I gather a similar arrangement is in prospect in Germany. This will help to identify differences and go some way to resolving them. But no amount of cutting and pasting of regulatory functions, including for example the creation of a single regulator for convergence which is sometimes mooted, will resolve the issue unless there is a new readiness to work together at the fundamentals of the problem.
13. I'd like now to refer briefly to some of the facts as they appear from within the audio-visual tradition, which, it seems to me, the reconciliation I have advocated must incorporate.
14. First of all the new types of one-to-one services I referred to earlier may be slow to emerge; and when they do emerge, they are likely to be, at least for the foreseeable future, marginal to the main diet of television. These new services have been predicted for some time. Many of them will prove to be technically possible, and many are conceptually fascinating. But viewers are creatures of habit and tradition. They value choice in itself if the price on the product is right, but will often exercise whatever choice they have in traditional directions. Even after some years of multi-channel television, the overwhelming preponderance of viewing, even in multi-channel homes in the UK, is to four or five of the longest established channels. When viewers look at a TV set, they see a TV set. When they look at a PC, they see a PC. They will not readily change the uses to which they put these devices, even if each was able to perform the functions of the other - which they can't. Viewers are in fact likely to take up most readily those additional features of digital television which enhance its traditional use such as electronic programme guides, near video-on-demand and pay per view. And even then they will adopt those services at prices that they are willing to pay and at their own speed.

15. What of the Internet, believed by some to spell the end of traditional sectoral regulation? It is certainly true that the Internet is not easy to put into a regulatory box. It defies convention. But we take the view after thinking about it carefully that the Internet may well not be an alternative delivery medium for broadcast television. The Internet's infrastructure is not designed for delivery of audio-visual content and it unlikely that the improvements currently underway or being considered to the Internet backbone will alter this. It will remain more efficient to broadcast audio-visual content point-to-multipoint by traditional delivery media. Added to this is the fact that the TV set, and the traditional method of viewing it from a distance, is not conducive to viewing Internet content.
16. The challenge of the Internet is a more immediate one for audio-visual regulation where it appears, as it already does for those with the necessary specialised equipment, on the television screen. We are considering whether and how our regulatory apparatus may need to be adapted to cope with this. We believe licensees who carry Internet-delivered material as part of their television service will want to help with this. We would expect them to develop a marking system clearly visible on the screen to indicate the presence of one-to-one rather than broadcast-delivered material so that viewers are aware of the difference. Whether telecom delivered material should itself be subject to regulation (or to forms of self regulation) is certainly a matter for future discussion.
17. The general model we have in mind for new services is one where they complement the traditional services provided by television. Just as radio did not dispense with newspapers, and television did not replace radio, so, when its price and ease of use make it suitable for a mass audience, the Internet will be used in at least partial substitution for the existing media, but will not replace them. New audience research evidence for the UK shows that young people value the many new audio-visual products which are available. But the

new products have scarcely if at all displaced traditional television in the affections of this significant segment of the audience for the way convergence is to develop. We also believe that regulatory frameworks in essentially their existing form will be able to cope, protecting viewers and remaining valid for some time to come.

18. The second issue I want to consider in reflecting on the challenges posed by convergence is the role to be played by regulation as opposed to competition. Of course competition has an enormous part to play in identifying and providing the services which viewers want. As I mentioned before, we would yield to none in our appreciation of the importance of market forces and the incentives they provide. It has often been suggested that regulation in the past was simple a product of spectrum scarcity. Now that scarcity has gone, so, it is argued, should regulation. I believe myself that scarcity was an excuse for, rather than the real reason behind, regulation. Television is a powerful medium in a key position to influence for good or ill and to offend. Particularly with generalist channels whose success can be measured as much by reach as by audience share, there is not one audience for its services but many. I would not argue that licensees who provide these generalist services are incapable of providing them to appropriate standards themselves. In its day to day regulation, the ITC relies upon responsibility taken by its licensees to ensure that they consider, understand and address viewer expectations. What regulation provides is a framework – particularly valuable at a time of rapid change – which also allows intervention to take place if things go wrong, whether in terms of a loss of diversity or a falling of content standards, for example, or with a failure of consumer protection.
19. One also has to remember that consumer protection regulation on television goes wider than offence to viewers. In the European tradition, it also embraces judgements about fairness, impartiality and misleadingness in advertising. Public concerns in these areas are not likely to diminish in the future.

20. Increasing consumption of pay TV does to some extent alter the expectations of regulation. Audience research has confirmed the point to us recently. Filtering devices and the signposting of content will provide useful additional tools for viewers in deal with the multiplicity of services. Public education will have a part to play. But there is every sign that viewers, especially parents, will continue to expect and value content regulation as a backstop for their own control of the set in the home.
21. Finally among the matters with which competition cannot deal for itself there is the creation of a solid framework which allows competition to work in the interests of viewers as well as shareholders. Economic regulation is not concerned just with ensuring fair and effective competition, but with creating the environment which encourages investment in programming as well as in the necessary infrastructure. To deal with convergence, regulation needs to be capable of facilitating as well as setting standards and applying them. It needs to be technically literate and well informed about new developments in the marketplace. Finally in the world of convergence it must be able to react to the needs of a situation which is constantly developing , in order to secure the best possible deal for viewers who are the main clients of regulation.
22. A third set of issues I wanted to mention under the heading of challenges posed by convergence arises out of the public service tradition in national television services which is a European wide phenomenon. I think it is valuable to recognise the diversity of ways in which the public service tradition can be realised. In the UK we have public services in a number of forms: licence fee-funded; by means of a statutory corporation, Channel 4, which is funded by advertising; and by successful bidders for commercial licences which contain significant public obligations.
23. Will public service obligations have a place in future on commercial television? We would say „yes“. Free TV will remain the provider of mass television,

which provides an important platform for the delivery of public service objectives. In the UK the commercial channels undertake much of the regional and minority language broadcasting. They have often taken the lead in innovating with technical improvements such as signing and audio description. Channel 4 has a special remit to provide programming not provided on other commercial channels. These are valuable contributions, which in any case have their own commercial rationale, providing a unique selling proposition in the case of regional broadcasting for example, against the blanket footprints and niche approach of satellite services. The regulation which underpins public service provision goes with the grain of commercial imperatives and harnesses them to the public interest.

24. I would now like to mention globalisation, which arises increasingly as a matter for concern in association with convergence. Television which draws on the values and interest of the public which it services is likely to be the best sort of television. It is for this reason that we regard support for a strong and diverse domestic production industry which alone can create such television as an important underlying purpose of regulation. Television is and remains a medium which operates most effectively close to its viewing audience. National audiences are likely to prefer nationally originated programming in their own language over imported product where its production values at least match what can be provided from elsewhere. This, at least, is the UK experience to date.
25. It is not obvious, if this is true, that the multiplication of services and the movement to pay-TV will necessarily undermine domestic production, or that the globalisation of European broadcasting will cause European broadcasters to cease to address the interests of European audiences. The lower production and transmission costs of digital should enable more services using a wider range of domestic product to find their way on to screens. Our experience is that new entrant channels rely on product from the cheapest sources to start with. But as they become established, they tend to invest,

slowly at first but increasingly, in their own locally originated product, which they see as the best way to do what they must do to grow further, which is to differentiate themselves from the competition in the eyes of a discerning viewing public.

26. I know that globalisation is a major source of concern. It is certainly one of the issues which regulation must address. I will be interested to hear other views on the subject during the discussion.
27. Finally, and by way of summary, I would like to refer to regulatory structure. I have already suggested that a single regulator dealing with telecoms matters as well as broadcasting matters is unlikely to work, at least while the separate traditions remain at odds with each other at the level of governments. But even then, we would have to be clear that telecoms concerns did not predominate. The danger otherwise is that broadcasting regulation becomes the Friday afternoon job of the third tier of management. I have also tried to suggest that the way to address the challenge created by convergence is not to separate content from economic regulation because the two are crucial components of each other, particular in the pay TV world.
28. I would like to go further, though, and to put myself forward as a positive advocate of the sectoral approach to regulation, which deals so far as possible with all matters arising in relation to, say, television under a single jurisdiction. Under this sort of system it has proved possible in the UK to mobilise skills and disciplines necessary to bring about significant shifts in the underlying systems of broadcasting. Economists, lawyers, engineers, programme and advertising experts have all made a contribution, under clear strategic directions and in a fast moving commercial environment, in helping to bring digital terrestrial television into existence in the UK. The same has been true of other major structural exercises in the past, for example when the commercial television system was established in the UK on the basis of licences in 1991. But the same approach shows its strengths from day to day

with the many issues, large and small, with which television regulation is faced.

29. It is sometimes argued – I heard the case presented at a symposium at the Bertelman Institute at Gutesloh fairly recently –that convergence is so fast moving that only the entrepreneur with a direct stake in the action is capable of keeping up with it. Governments and regulatory bodies will by definition prove wanting with their slow plodding ways and cautious approach to innovation. Hence the emphasis laid, as I understand it by parts of the European Commission, on the benefits of self regulation, i.e. the media industry managing itself – for at least the foreseeable future. The argument is sometimes heard that content may be a different matter, but commercial certainty requires that there be a single guiding hand for infrastructure across all sectors of the media.
30. Now I don't know about governments. All I can say is that unless you can create and empower the right kind of regulation, you will not get the right sorts of frameworks established. One of the difficulties of the exercise we are undertaking at present is that everyone is trying to guess how far the public will buy into the convergence proposition. When we actually know the answer to this, we will also know what to do about regulation. But certainly to allow friction between the telecoms tradition and the broadcasting tradition to shape developments, will not create the decisive and the quick-acting strategic focus which is needed. There may be good reasons for self regulation. But a self serving argument on behalf of industry to do with the inadequacy of plainly inadequate regulation does not sound to me a particularly good reason.
31. Just one final concluding observation, I do think it is time – perhaps rather overdue – for the cultural and social sides of the argument on broadcasting regulation to stand up and be counted. Viewers show in the surveys we conduct in the UK that they value highly the regulation which they currently have. This fact needs to be treated as part of the solution rather than as

though it was somehow part of the problem. The danger is that the challenge of convergence will be addressed too late for this to be done.

32. My hope is that we can work to find a new consensus based on mutual respect for the two traditions I have outlined. My fear is that we will think that there will be a later chance to achieve this, and find that the only opportunity we had has passed us by.

Statement by Viktor HENLE, German regional media authorities

Mr. REDLEY's statement has shown that despite all differences regarding the regulatory framework, there are both problems that we have in common and a largely common approach towards solving them. From the viewpoint of Germany's regional media authorities, the reason for these differences is the fact in particular that we have been living with a multi-channel system for a long time and have perhaps been able to gain experiences of a somewhat different nature. Of course, we too are considering how the technological change will effect the tasks of the regulatory authorities. Basically, however, we are of the opinion that in regulating the media market there is a core area which will also remain unchanged under future technical conditions.

A few remarks in this respect:

- * First, the media are both an economic as well as a cultural factor because their spreading and reception always entail cultural and economic consequences as well.
- * Second, from our point of view, media power always needs control, primarily by preventing concentration, because media concentration has a direct as well as an indirect influence on the opinions and values of the population and hence on the democratic decision-making process in general.
- * Third, also in future, we will have to make sure that everyone takes an equal part in the media, which means that a right is created to equality of communication opportunities, so to say, both for providers and users.
- * Fourth, we take the view that the media too must not violate human dignity and that absolute limits for the protection of human dignity must be set for the media as well.

* This leads us to principle number five: minors and minorities deserve particular protection! That is why the media as well as society as a whole have specific obligations in this respect, such as privacy protection, youth protection, consumer protection and data protection.

What effects can the foreseeable changes in the media landscape have on media regulation as a whole, not only in Germany but in all of Europe? We feel that licensing, as a ticket for entering the media market, will lose in importance. At the same time, however, questions of how to realise the equality of communication opportunities are pushing to the fore. In future, the problems of securing access to the various platforms of the digital audio-visual media will be more significant in regulatory terms than issuing a license. The problem of a multi-channel landscape requires the provision of assistance and orientation to the users. For the regulatory authorities, this creates a new core task: the task to convey media competence! A task that we, as the regional media authorities, have come to understand fully only recently. We must put the users into a position which enables them to handle the multi-channel system responsibly. In regulatory terms, this task must be seen as an indispensable counterweight to the progressing commercialisation of the media market. We must not forget, however, that it also has an enormous effect on preventive youth protection and the reduction of the media concentration impact. We feel that the regulatory authorities' task to convey media competence is an indispensable key competence of the evolving information society.

The huge increase in the content of traditional mass and network communication requires the regulatory authorities to be much more heedful than hitherto. For this to be done in a meaningful way, it needs the involvement of further actors but also the employment of more resources. All this points into the direction, as Michael REDLEY already said, of self-regulation. Self-regulation, however, will only work if it is embedded in a legal framework. Self-regulation works effectively only with regulatory pressure behind it, to say it frankly. We call this regulated self-regulation. The opposite would be self-regulating regulation, which means self-regulation devoid of a legal framework.

Also, we need to improve our regulatory tools in terms of information capability in that we act not only in a regulatory but also in an informative capacity. For some time now, we have published - and this is an ideal we got from ITC - a program report which in particular analyses the development of Germany's TV sector. We are increasingly sponsoring research projects and looking for problem solutions in the field of self-regulation.

These changes show that media regulation consists not only in the interpretation and application of media laws. In future, media supervision will increasingly take place in a pre-legislative setting and serve as a counselling and moderating instrument. This, of course, also requires us, as regulators, to redefine our position, to increasingly network our planning activities, to continually observe and assess the technical, program-related and economic developments. But we need a higher degree of professionalism, too, - also as far as economic activities are concerned. Here, we must not forget that we as regulators have new possibilities at our disposal to shape media regulation. The more so, as we as regulatory authorities are neutral and moderating instances between the market players with their different interests. Also in future, we should regulate by means of positioning. These are processes which we are currently testing in Germany in the digital sector where we are also largely lacking the legal framework. To me, regulation by positioning primarily means the publication of basic position papers, where we enter into a dialogue with all market participants, explain our ideas, raise our demands and - in a dialogue with all parties involved - try to find common solutions within a general framework. For this purpose, we, as Michael REDLEY already said, have set up a Digital Working Group that will deal with the issues of the access to the technical services of the digital systems, which means the payment and navigation systems, just like with the program services, including above all the problem of programming and marketing. In addition to the regulatory authorities, this Digital Working Group includes the regulatory bodies for communication and the postal service and the Federal Cartel Office as the authority responsible for competition matters. What we want to initiate is an increased exchange of information because the convergence of regulation is not yet

a convergence proper, but there are convergent elements that belong together. Also, we want to speed up the procedures of the multiple competence structures, and we want to work out possible solution by self-regulation in this field as well.

Today, it has repeatedly been said that the convergence which we have in the TV sector is not so much a convergence of content but rather a convergence of media companies; if you look at the markets in Germany, Great Britain, France, partly also in Italy, you see trans-frontier interest structures. Of us, this demands - and Greger LINDBERG already said so - a "Europeanisation" of media regulation by cooperating much more intensively than before. In doing so, we are also well on the way to a better mutual understanding of our partly very complex media systems. Today's conference is an important step in this direction and crowned by success. Thank you.

Statement by Ms. Carolyn MORRISON, United Kingdom:

On behalf of the Government of the United Kingdom, I would like to thank you very much for this opportunity to exchange views. I have no comment to make but would like to put a question to Mr. REDLEY. In recent publications and presentations, I have seen that we were swamped with quotations from the past, going back to Bill GATES who said in 1991 that we only needed x-bites per second to serve the normal use of a PC. And some years later, he develops capacities that are much greater than he himself envisaged. Mr. REDLEY said that the Internet would presumably not be the alternative provider system to TV in the near future. However, what I take from individual studies is that things have changed since radio, TV, mobile telephones, etc., were developed and that today the starting time or the time people need to adjust to a new technology is becoming shorter and shorter. At the moment, we know that we have only very little time before the Internet comes up with a sufficient frequency range enabling it to also sent TV products with an increasingly acceptable quality. You concluded your statement, which I enjoyed very much, by saying that we needed an adequate regulatory framework in order to get quick answers, and you also mentioned that self-regulation would not necessarily be the

best way. Could you perhaps tell us in greater detail what you feel would be the correct framework?

Mr. Michael REDLEY:

I have expanded my considerations in this statement only up to the limits of broadcasting. I do not think that there are regulators who believe that one-to-one communication can be regulated just like broadcasting. And I also think that we have no idea yet where this will lead us. It may be that we will see soon that the Internet is generally accepted, and it may be that the public responds to the use of the Internet by social groups who employ it for purposes we cannot endorse. Where does the trend lead to? In North America, this is currently a topic of heated discussions, and considerations have progressed very far. In the last five years, there has been a break with the view that the Internet cannot be regulated, and now the opinion prevails that something has to be done. I am certainly not advocating a future where the Internet is strictly regulated - under the roof of broadcasting regulation. I think that broadcasting as a medium in its own right will continue to exist, and I have concentrated on trying to find out the consequences for this traditional medium, and in this respect convergence is one of the themes that need to be addresses. I feel that we can only wait and see. None of us knows where we are headed for, and once we know it, we will also know what to do. I started out from the assumption that at the moment we are under heavy pressure to find ways of dealing with this problem, perhaps by setting up working parties and trying to get to grips with the problem. However, all this needs to be done very carefully. We must always caution and say: Watch out, it will take longer than we think today. There are new technological trends that influence this development. In particular, I am thinking of the second generation of mobile telephones, which adds mobility to interactivity in a new way. This casts a completely new light on the role which TV plays in the field of interactivity. So, I think that broadcasting will remain, that we will continue to regulate it, and that we then must find ways to tackle the new areas as well.

Statement by a Portuguese delegate:

Let me join the British colleague in thanking you. I would like to address an issue that is of particular concern to us at the moment. "Us" in Portugal, but I also believe in other states that are in the transition from the analogous to the digital system. In particular, I mean licensing. There are two schools of thought. The one wants to give priority to those who have always been well established in the market, which means the broadcasters that have been in existence for a long time and have given proof of their quality. And there is the second school that advocates a greater freedom of the market in this respect and says that every newcomer should have the same rights in order to be able to enter into full competition with the established companies without anyone being discriminated against. This means that the existing broadcasters would be put on an absolutely same footing with the newcomers. May I ask Prof. BALLE and Mr. REDLEY to answer this question.

Mr. Francis BALLE:

Thank you very much for this question. The answer has in fact already been given by the representative of Germany's regulatory authority, and I may thank him for his explanations. He said that the regulator has to cope with new things, in parallel with the development of technology. Over the last 20 to 30 years, we have experienced such a shift of emphasis in the audio-visual sector. For the monopoly of the public providers, the shortage of frequencies was the alibi. They argued that this was the reason why the strict control of the audio-visual sector was necessary and had to be maintained. When this control was subsequently relaxed and removed, there was still a shortage of frequencies, and we did not yet have this rich variety. First, the shortage had to be distributed, and this was the justification of the existence of the regulators who had to be independent personalities. They distributed licenses, the distribution being tied to specific rules laid down in guidelines. Now, one has no longer to deal so much with the issue of licenses, and this was said in a fair manner by Germany, because we are now entering the paradise of diversity. It is no longer a matter of distributing a shortage. But this is no reason for abolishing today's

regulatory authorities. They have not lost the justification of their existence, quite to the contrary, for the control of content must be ensured also in future. What must be clear to us is that this control must not only be carried out by the legislature. The legislature must set the framework. However, it needs to be ensured that the youth is protected, that the protection of minorities is guaranteed, etc. It is not up for discussion that we need a democratically defined framework within which regulation takes place. But regulation now must be much more focused. Today, regulation is more required than ever, more indispensable than ever and hence as legitimate as in the past. Especially in an environment where the law must be adapted to individual situations.

If previously the shortage of frequencies was a readily used alibi for regulators, there is another alibi today which we have to beware of, namely to use the existing multitude as a pretext to curtail the public broadcasters. As already said, we need to control content, and in this respect it is necessary to define legal limits by laws that have been created in a democratic manner. However, the possibilities we have today must not be an alibi to weaken the control of TV programs and the new forms of communication in the field of "one-to-one communication" either. In this respect, I fully agree with you. Market and competition must be regulated so that competition is not restricted by either side, the user and the provider, and no obstacles are created. For this purpose, competition law no longer suffices, but we need a special competition law for the audio-visual sector, and this establishes the legitimacy of the regulatory authorities. Today, however, they are concerned with other topics than in the past, and this will not change in future.

Mr. Michael REDLEY:

Let me very briefly address your question, for which I would like to thank you very

office and apply for a license. You need not indicate the race of your dog, its colour or name, but you simply get a license, and on the reverse side of the license paper there is a list stating the conditions the dog's owner must observe. This system has been abolished, but we had something similar. We have a satellite service, license service - and whoever gets such a license may start working under British law if he has sufficient satellite capacity, but satellite capacity is not in short supply and is beyond the control of British authorities.

In the case of digital television, we are facing a new dilemma, as it is tried to transfer what is provided on analogous television to the digital sector, and this means that the existing broadcasters must transmit digitally as well. In the transition phase, we must of course also convince the viewer that he should buy digital equipment, and this is that the success of digitised television depends on. Digitised television is not necessarily better but it opens the way for a more diversified use of the technology. So, in Great Britain we have decided to give the existing broadcasters the right to distribute services. This right has been granted to six multiplexes, and new providers have meanwhile also registered.

The multiplex licenses are issued in the following way: in order to provide under the multiplex system, it is again necessary to get licenses which you can get easily under the dog-license system. These licenses are unlimited, you pay an annual fee, and if you don't need the license any longer, you give it back.

JAN MOJTO
President of ACT

**Expectations of Broadcasting Operators regarding the Work of the
Regulating Authorities of the Future
from the Perspective of Private Broadcasting Operators**

Ladies and Gentlemen,

Last week, when I began to prepare the complex issue which I will discuss today, I first tried to find a suitable motto for my presentation. The early onset of winter this year proved particularly helpful in this respect.

I read in a newspaper that the city administration would start using salt to prevent slippery roads. The issue dealt with in the article was: How much salt was needed for that purpose? The result was not "the more salt, the clearer the roads" but rather that smaller amounts would bring about an optimal result, a positive side-effect being that this does imply an excessive burden for the shrubs and trees planted alongside the road.

So I had a motto for my presentation: **Less can be more!**

What I am trying to show you in only 20 minutes is that the present regulations and their application are over-salting the roads of competition and are thus endangering the growth of the delicate plant called "digital television".

Let me address this issue from the point of view of an undertaking that is confronted with a host of regulations in everyday life. Our experience with the platforms DF1 and Premiere is not unusual in this respect. I can assure you that Canal+, BSkyB and other private television operators can give you a similar report. I hope that at the end of my presentation, I will have convinced you that "less can sometimes be more".

I. Multiple Regulations

A central issue for the introduction of digital platforms is the question of accessibility of third suppliers to this infrastructure, viz. to the set-top-boxes and the services required for digital broadcasting. Since this issue is so important, it has not only been considered by various application authorities but has also repeatedly been taken into account in regulatory provisions.

Let me start out with the highest European level, the European guardians of competition headed by of Mr. Van Miert.

Not matter whether a merger or a complaint by a competitor is to be considered, the European competition law stipulates that in case of a dominant market position, access must be granted without any discrimination.

It is exactly this issue which has been regulated *again* in greater detail at the European level, i.e. in Directive 95/47/EC on the Use of Standards for the Transmission of Television Signals. It lays down in Article 4 (c) that - I quote - "*Member States shall take all the necessary measures to ensure that the operators of conditional access services ... offer to all broadcasters, on a fair, reasonable and non-discriminatory basis, technical services enabling the broadcasters' digitally-transmitted services to be received...*". This provision was implemented in Germany by the Telecommunications Transmission Act.

This double regulation was still considered inadequate in Germany.

In the Broadcasting State Treaty, which in Germany constitutes the framework for broadcasting operators, s. 53 again stipulates - in almost the same wording as the Telecommunications Transmission Act - an equal, adequate and non-discriminatory access. The competent media authorities in the German *Laender* consider it an important issue that this paragraph is to be applied by taking into account media law aspects.

In Great Britain, a similar conflict has emerged between the telecommunications authority OFTEL and the media authority ITC.

For an undertaking, this means that *three* different authorities determine the question of accessibility side by side on the basis of *different* legal provisions, and in doing so, may come to different conclusions.

To make things even more difficult, the German federal system requires operators to obtain a separate broadcasting licence for each individual *Land*. Accordingly, 15 licence applications had to be made and 15 procedures were conducted in the case of DF1. Nevertheless, DF1 can merely operate on the basis of pilot licenses for each individual *Land*. Each licence is also dependent on concrete conditions to be fulfilled for being granted access to the digital platform.

And last but not least, *national* competition law would also apply. Fortunately though, no one has yet thought of that possibility thus sparing DF1 and Premiere the effort to abide by such rules as well.

My first conclusion and demand regarding regulatory practices is that examinations by several authorities of *one and the same issue* should be avoided. Once is enough! This would create legal certainty for all those involved. The European and national levels should coordinate their activities in this respect.

II. Proceedings and their Duration

It is a well-known fact that new technologies have an increasingly shorter life span and that technological developments change more rapidly than ever before. This means a much higher investment risk for enterprises, which is feasible only if a new technology can be put on the market within a very short period of time. Each delay can ruin a project's economic success.

Let us now return to the above mentioned example: From the very beginning, DF1 opted for a specific technology on the basis of an *autonomous* decision. Premiere did so somewhat later on as did the German Telekom. It is certainly undisputed that an undertaking is free to take such a decision; nor is it illegal for several undertakings to opt for the same product. Nevertheless, it was possible under the anti-trust law to prevent Premiere and the German Telekom from marketing activities during the entire proceedings.

This was certainly good news for the Microsoft company, which is currently developing a competitive model for set-top-boxes and was probably glad that a direct competitor had thus lost more than one year.

Let me clearly show you the consequences of such proceedings. Although the technology at issue was in full compliance with the legal provisions and the undertakings were able to and did use the said technology once the proceeding had been concluded, technical progress had been halted *for six months* thus reducing the lead over non-European competitors.

In the field of broadcasting, licensing procedures may have a similar effect. DF1, for example, has not been granted a final licence to date. It is only thanks to the cooperation of some media authorities in the German *Laender* that DF1 has been granted pilot licenses requiring an application for their extension every 3 to 6 months. I am sure you can image that such a situation creates considerable legal uncertainty and requires enormous efforts on the part of the company.

This brings me to my second conclusion and demand on the regulators: Like in the field of telecommunications, the authorities should also in the field of broadcasting, avoid as far as possible to rely on *ex ante* procedures, such as licensing procedures. The requirement to report violations as well as monitoring activities by the authorities or an intervention in case of complaints are usually sufficient means of control to secure compliance with the law. If a licensing procedure is indispensable, it should be conducted within a very short period of time.

III. Regulation Coherence

The digitalisation of infrastructures and the possible compression in the field of data transmission enable the transportation of different contents - be it a moving picture or the spoken and written word - via various infrastructures and their presentation on the screen. The contents will include a wide range of services.

It is irrelevant from the consumer's point of view which transport technology is used. He/she will probably be unaware in future of the type of infrastructure that is being used. The companies will opt for the technology that is most favourable to them, this may vary depending on the time of the day.

As a result of this development, there is a strong need for a modern type of regulation in order to enable the necessary coherence. Let me give you a few examples:

The first one relates to **advertising**:

The "Television without Frontiers" Directive contains detailed advertising regulations. It not only lays down clear time limits but also calls for a separation between content and advertising. It follows that a television operator is not free to define his programme since interruptions for advertising must exactly comply with this legal provision. On the other hand, there are no time limits or separation provisions for contents which are not covered by the "Television without Frontiers" Directive.

The incoherence of these regulations becomes particularly obvious in a comparison between three different cases: **n-tv** in Germany is a news channel which provides also stock exchange information running along the bottom edge of the screen. As a result of the principle of separating content and advertising, no ads can be put on the crawl roll. This was expressively decided by the media authorities of the *Laender*.

The **Bloomberg Channel** has recently been granted a licence in Germany. Bloomberg is a special information channel from the United States which is also transmitted via television. Unlike n-tv, this channel has a fixed division with the moving picture being surrounded by a clearly separated frame on which stock exchange data but also sponsoring and advertising contents are shown. It would be quite natural to believe that this channel is also subject to the same advertising restrictions. Far from that, the authorities have decided that the moving picture is to be considered separate from the surrounding frame and that the frame itself does not constitute broadcasting and is consequently not subject to the above advertising restrictions.

Finally, if we look at an **Internet**page, no matter which one we choose, we will see that although there are currently only few moving pictures, the division is similar to that of the Bloomberg Channel, viz. we can also see a frame around the information provided. For Internet pages, too, there are no restrictions neither in the form of a necessary separation nor time limits for advertising.

If we take into account the fact that these different services will increasingly enter into direct competition via the screen and the viewer will switch from one service to the other using his remote control, the question arises as to what actually justifies the different treatment of broadcasting operators.

This difference in treatment is putting broadcasting operators who are dependent on advertising revenues, at a concrete disadvantage against their new competitors. Coherent advertising regulations must therefore be established and applied to all services in future.

The second example I would like to mention here concerns the **quota regulations for European productions** set out in the "Television without Frontiers" Directive. It will take only two to three years for the Internet technology to be able to transmit moving pictures of a quality similar to that of broadcasts transmitted via the wide-band cable. In fact, this is also the period currently required for amending legal

provisions. The consumer will then not only have the opportunity to choose between various channels financed through advertising, general or specific programmes but will also be provided with various pay-TV services, ranging from pay-per-month to pay-per-view options. Moreover, he/she can choose individual films from the video-on-demand service. This is already possible today with regard to audio programmes.

The quota regulation enshrined in the "Television without Frontiers" Directive only applies to television programmes. The consequences are obvious. Compliance with this directive means additional and considerable financial burdens for European broadcasting operators. Moreover, it is quite impossible for certain specific channels, to comply with these provisions. Can you image a "western" channel with a 50% input of European westerns?

The situation is quite different if we take, for example, Hollywood-Majors. By using Internet technology, they will build up infrastructures that serve the same purpose as the digital European platforms and will make their contents directly available via the video-on-demand service. In doing so, they do not have to comply with any quotas. The viewer will then be free to chose the film he/she is interested in.

In speaking of coherence, I am trying to convince the regulator that competition will in future take place at the international stage. Restrictions, such as quotas leading to a unilateral discrimination against European media enterprises, are reducing their competitiveness. The **audiovisual** industry as a whole certainly does not benefit from such a situation.

Instead, the European programme industry should be promoted by other instruments and mechanisms that are increasing its competitiveness through investment incentives.

Finally, I would like to discuss a very sensitive issue, viz. **the protection of young persons**. Here the same conditions apply as in the previous examples. As regards television programmes the general rule is that contents that are harmful to youth

must not be broadcasted at certain transmission times. This is not so with regard to Internet contents.

Let us now consider again the example of digital platforms in Germany. From the 1st of January onwards, all contents which may contain elements that are harmful to young people, must be pre-coded in pay-TV programmes. This means that for being granted access to such contents, the viewer must - as is the case with a cheque card - enter a secrete four-digit code. As a result of this technical equipment, pay-TV programmes will ensure a better protection of young persons than is guaranteed by television programmes for which no code is required or by videos from libraries or on-line services. The time limit must, however, still be observed in accordance with the legal provisions.

I would like to discuss this issue from a private broadcaster's point of view. Investments for protection systems for young persons amount to several million German marks. There will only be an incentive for such innovative measures if the regulator is flexible enough to take them into account. *Otherwise*, an enterprise will at least re-consider its decision to make such an investment.

Many opponents submit that broadcasting has a much higher sphere of influence than the Internet and other services. We must not forget, however, that this argument is an argument of the past. Within less than two to three years, i.e. the period required for amending a law, the Internet will offer a picture quality similar to that provided by television and will be used by a similar number of viewers. There will thus also be a converging degree of influence.

The importance of the information available to us via the Internet is already obvious today. The Starr Report on the Lewinsky case published on the Internet has, for example, been read by several million Internet users worldwide and has thus become a topic of international dimensions.

In this context, I would like to raise another demand, i.e. the need for a modernisation of the regulatory framework that applies to the contents and services provided via broadcasting and the Internet. The aim is to cut through the dense network of regulations and to create a coherent regulatory framework covering both the "old" and the new media. With regard to the "Television without Frontiers" Directive, this means a liberalisation of advertising regulations, an adaption of the youth protection regulation and the abolition of the quota regulation.

IV. The Dual System

Let me finally discuss an issue which must in any event be addressed by a representative of the private broadcasting industry these days. This is the role of public broadcasting and its tasks in the Digital Age. Here, too, a careful evaluation is required.

Ladies and Gentlemen,

Our aim is not to make life difficult for an unpopular competitor but rather to adjust the dual system to the new developments. For this reason, I would like to make a few demands on the regulators also in this respect.

Public broadcasting and private broadcasting have entered into a direct competition in the attempt to attract more viewers. This has also been expressively confirmed by Mr. Scharf acting as representative of the EBU within the framework of the Oreja Group. If you look at the programming of individual channels today, you will see that some programmes are provided by a public broadcaster in one Member State while *exactly the same* programme is provided by a private operator in another state.

The arguments voiced again only recently, i.e. that public broadcasting operators render outstanding services as they invest a lot more into the European programme industry than their private competitors, must be seen in relative terms today. In France, for example, Canal+ has made an important contribution to the production of

French cinema films. In Germany, too, private broadcasting operators are currently "overtaking" their public competitors as far as investments into the European programme industry are concerned.

Finally, the "better quality" argument must also be seen in relative terms. Please, allow me a polemic remark in this respect: When I look at the game shows provided by the Italian RAI channel or by other public broadcasters in Europe, I *cannot* see a higher quality approach at all.

It must therefore be said that the way in which public broadcasting is seen by society, does to some extent no longer correspond to the actual situation.

But there is also another aspect to be considered. If one looks at the announcements in the newspapers, one can almost every day read about a public European broadcasting operator announcing a new project in the Digital Age. They do so with regard to the creation of digital platforms, pay-TV services, on-line services and business TV. These announcements always go hand in hand with the demand that public broadcasting operators must also be actively involved in the latest developments.

It has not been disputed so far that the transition from an analogous transmission technology to a digital one cannot take place without public broadcasting. But this can certainly not mean a diversification of public broadcasting into new purely commercial markets with the assistance of public funds.

This would not only deprive commercial operators of any chance to assert themselves against such distortions of competition. How can, for example, a newly established innovative company succeed with its Website service against a public broadcasting operator relying on 35 million German marks from public funds.

Such a development would also lead to a further adjustment of public broadcasting to commercial activities. This would also considerably hamper the development potential for certain markets. It is high time for all of us to be aware of our responsibility and to seriously discuss the future tasks to be fulfilled by public broadcasting in this new environment in future.

This brings me to my fourth demand:

The regulator should give us a clear and unambiguous definition of the functions and tasks to be fulfilled by public broadcasting in our society. This definition cannot only contain general guidelines but should also address framework conditions for the structuring of programmes. This function is to be clearly separated from commercial activities such as business TV or on-line services. The costs should be borne by the state and should be proportional to the task to be fulfilled. In my point of view, public broadcasting operators should, if any, be able to participate in purely commercial activities on a very limited basis only. Otherwise, there will always be a risk of losing sight of their most important tasks. These tendencies have also become obvious in the case BBC. Such activities must in any event be pursued in separate organisational units and without cross-subsidies.

It is basically the task of the national regulator to clearly define the structure, tasks and suitable form of financing and to provide for the possibility of entering commercial markets. Only the regulator will be in a position to take suitable decisions having regard to the national situation and historic developments. This does not even rule out the possibility of investing private broadcasting operators with the fulfilment of this public task.

Nevertheless there must be - and also is - a monitoring body, i.e. the European competition authorities. Let me put it the other way round: The clearer the tasks, functions and financing of public broadcasting are defined in legal provisions by a Member State, the fewer irregularities will be found in the course of the reviewing control.

V. Optimal Regulations for the Digital Future

I have already repeatedly referred to the increasingly rapid development and would like to recall the example of the digital platforms DF1 and Premiere in this respect.

In connection with the question of granting access to third persons, the competitors, in our case ARD, have repeatedly demanded a neutral form of presentation of the electronic programme guide EPG. Although the companies have long since undertaken to implement this demand accordingly, discussions are currently being waged at the national level for its concrete legal implementation. I can assure you that until such a regulation has been adopted, entirely new questions of accessibility to a platform will be the subject of discussions.

And finally I would like to give you another example which shows that outdated regulation is a hindrance to further development. A broadcasting operator in Germany must also obtain a permission for transmitting cable TV programmes via the wide-band cable for each *Land*. This is due to the application of legal provisions which neither take into account the liberalisation of telecommunications nor the digitalisation of TV cables. No adequate "must-carry" provisions have so far been adopted by the regulator. It is unclear to what extent the present regulation is still legally valid in the light of the new situation.

This brings me to my last demand on the regulator.

The legislator should adjust itself to the dynamics of new situations. This means that the regulation must be confined to the formulation of basic principles, such as non-discriminatory access to a platform. Within this framework, the concrete structure should be defined by concrete agreements in which the companies commit themselves to adhering to specific rules.

Ladies and Gentlemen,

Let me briefly repeat my demands:

"Less is more" means:

1. abolishing multiple regulations and multiple controls,
2. accelerating and simplifying procedures,
3. modernising, i.e. liberalising the regulation of broadcasting in order to achieve a coherence with on-line services,
4. providing for a re-orientation of the task of public broadcasting by taking into account the requirements of the Digital Age,
5. providing for an orientation of the regulatory authorities towards formulating basic principles.

Ladies and Gentlemen,

Less can indeed sometimes be more!!!

Thank you!

Albert Scharf
President of EBU

"What TV and radio operators expect from future audiovisual regulatory authorities" - from the viewpoint of public networks

Mr. Chairman, Ladies and Gentlemen,

I would like to apologise specially to the members of the EBU for not speaking in one of the two official languages, but since I am from Bavaria, I would feel somewhat strange using English or French in Vienna.

Public service broadcasters are familiar with the topic of regulation in the widest sense of the word, and their attitude to it is not as anxious and sceptical as that of our commercial competitors. We have been subject to regulation from the start, we owe our very existence to regulation and we also depend on it. To be exact, we depend on the legislative acts which establish public service broadcasting, determine its tasks, shape its structure, organise supervision and provide for funding. All these principles are familiar to us, the whole wide range Mr. Mojto rightly presented in a more detailed description of the regulatory concept just a little earlier, from European level to national implementation on the basis of laws or EU directives or other norms. It is nothing to write home about for us and yet it is important because everybody present here and speaking at this meeting knows that it is a minefield. I am in favour of regulation to the extent required by the object, i.e. the function of the media at the respective stage of technological development. I am not talking about regulatory overkill here, duplication and triplication of efforts by different or sometimes even the same authorities. In this context, I certainly agree with Mr. Mojto! However, my opinion based on long-standing experience is that I would rather have a little more than too little. I would rather have a little more bite than no teeth at all. And the street is a little too slippery for my taste without de-icing salt, Mr. Mojto. It is easy to trip and fall. Public service broadcasters have always been quite happy when they travelled on roads clear of ice, as it were. I think that we can agree - on the basis of what has

been said here, and by many others in Europe and elsewhere - that the convergence we are talking about, the convergence of technological structures for the transmission of media content is in itself no argument in favour of dropping regulation. Nor is it necessarily an argument in favour of introducing new regulation and what is more, it is by no means an argument in favour of saying: since technologies converge, regulatory competencies also have to converge in places where technology is dealt with.

Thus, it will come as no surprise to you when I take a very determined stance in saying - and Mr. Mojto obviously also assumes this - that sector-specific regulatory competencies are basically the most sensible solution because each sector, the content-related media, the technical sectors of telecommunications and the regulation of competition are subject to their own rules and must maintain these, even though the legal spheres may collide or occasionally overlap. In such cases, some basic political understanding must ensure that it is clear which regulatory competency takes priority, or is preponderant. In the media field - and this is what I also gathered from the introductory paper held by the Secretary of State - this must be a matter of responsibility for content enshrined in fundamental rights. Whatever relates to content must open up a perspective for other regulatory efforts which are then basically additional services required to translate into reality the mission of the media to provide content. In other words, the regulation of new technologies giving access to new technologies that provide media content - and this is how I see broadcasting in the widest sense of the word, communication directed to the general public, without going into detail about the subtleties of where mass communication ends and private communication starts on the Internet. This would keep us glued to our seats in this beautiful hall for another two days. Let me word it as a thesis: I assume that it is mass communication even if individual relationships develop as a result. Old-style broadcasting in terms of ways and quality is no different because the person who switches the set on is involved as an individual. Nevertheless, the programme is directed to all and thus, an effect of mass communication is implied; in the light of what we, at least in Europe, meanwhile consider a general understanding of the weight given to meaning, this requires freedom of information for a society

based on liberties. To my mind, this basic thesis is still the main approach to and the main legitimisation for any regulatory competency, but only to the extent to which it is necessary to defend such objects of legal protection. Of course, one could say that such safeguards are no longer required as hundreds, if not thousands of new ways open up. I disagree. Again, I am evolving a kind of thesis here. On the contrary, providers must continue to exist which are obliged, by regulatory means - by legislation or otherwise - to guarantee plurality of opinion, objectivity and comprehensive information for a mass audience, as required by democracy. As things become indeterminable, irreconcilable and arbitrary, there is even more of a need for precautions to ensure that society is provided with reliable pluralistic information, even though there may be no more obligations, and it does not depend on economic and entrepreneurial imponderabilities whether services which swamp us from all around the globe continue to exist or not. Hence I say: reliability is the key, across the ages and beyond the chances of shareholding sales and the like! From this angle, I do not mean that the regulatory competency of legislators - let me put it like that - is no longer involved, and when I say legislators, this sounds like a national matter, and that is what I mean. First and foremost, national legislators must be in charge of such media, regulators at the heart of the matter, who have the same cultural and social identity, who are not only conversant in linguistic terms but also familiar with the mentality of the media, not some distant global regulator who knows all the European directives but has to leave their implementation to the national regulatory bodies. I am saying this while I know and agree to what Mr. Mojto said, that there must be coherence in terms of definitions and meanings of concepts. It is also in the interest of co-operation among regulatory authorities, which was mentioned this morning, if this is prepared in a co-ordinated effort at European level. We cannot allow country A to use a term one way and country B to use the same term differently or not at all, and that many decentralised authorities examining cases and taking decisions in one and the same country interpret concepts differently in the North, South, East and West. Reliability must be ensured whenever laws are applied, this is a basic prerequisite in the enforcement of laws and it is also part of the topic we are concerned with - although I know that many questions of definition are a hard nut to crack. Such coherence would have to be established Europe-wide, and I am

touching a difficult subject here. Media managers have a habit of getting their fingers burnt ever so often. In this context, there may well be directives about how to define this or that in public service broadcasting pursuant to European law, or to be more specific, national definitions of the tasks and funding of public service broadcasting. Why not provide some guidance as regards the application of law, there is nothing to be said against it. What we fought over in the past few weeks was contents, not facts per se. But there is no law against fighting over issues, and in this respect, we occasionally differ from our friends in the ACT! I do not know if there are any bad things Mr. Mojto wrote and did not say today, so it is both difficult and easy for me not to respond immediately. Anyway, dear Mr. Mojto, there is a brochure on the table in the back which we both contributed to, and if today you say something different from what is in the publication, all I can say is that was what we agreed upon. It is guidance for regulatory efforts. All I want to do here is plead in favour of the principle not to consider media regulation from the purely technical angle or the economic angle, in terms of competition law. After all, the notion of competition in the journalistic sense does not correspond to the notion of competition in the economic sense as it underpins normal European or Member State laws on fair or unfair trade practices. Competition in the journalistic sense incorporates a special element of diversity because it is about diversity, the plurality of opinions, of information, the flow of information. It is not competition among major players, and not among a few only, but many! And content regulation, i.e. the protection of the processes shaping content, not censorship, also encompasses regulating access to the means by which one can today address the public in the audiovisual field. Thus, it is a matter of course to us that European or national broadcasting regulation today will also deal with the digital platforms which cannot be the property of some randomly formed monopoly because they are the key to using new technology for mass communication. The more experience one gathers about the pitfalls of coming to an understanding - self-regulatory methods, as they say - the more one is encouraged to do what I alluded to at the beginning: when in doubt, be a little more precise and discerning than absolutely necessary so you do not find yourself left with empty hands and nothing but hollow phrases one day. Of course, more precise definitions of terms such as equality of opportunity, non-discriminatory open access, or

interfaces, must be established when the final decision as to what can and cannot be done with the system is taken there. In an instrument as important as mass communication, this must not depend the imponderabilities of one or the other preliminary development. There are lots of details to be hotly debated - but today, the point is to identify what will in principle be part of the regulatory framework, the set of rules. In this context, I think that, given the responsibility of media regulators for the media, the technical instruments must also be encompassed, and any separate authority in charge of technical regulation must be bound to political decisions under media law taken by other authorities. At least, there must be one set of rules so that - as set forth in German constitutional law - practical conformity is achieved when two objects of legal protection, two instances, two competencies clash. However, technology must not dominate, and in terms of regulatory competency on the market, anti-trust legislation must not overshadow everything else we consider important for a society based on liberties. When regulation touches upon the freedom of opinion and information, this involves objects of legal protection which, according to the traditions of the Enlightenment and the founding fathers of the United States, are also inalienable prerequisites for any other kind of freedom, especially the freedom of activity and trade; hence, the problem of competency must eventually be solved in keeping with the predominant object of legal protection.

As I have said, regulators should be close to the media they are in charge of. Even though there have been positive examples of the opposite, I do not think that the same regulators should be in charge of public service broadcasting (regulation meaning supervision, control and implementation of the set of rules) and private broadcasting alike. The same legislator - yes, but after that, different authorities could make sense if the prerequisites for this are met; this was a point where the debate became very heated, covering everything down to supervision and checks into legal obligations. Sometimes, there are various reasons why it is useful for an independent authority, unbiased vis-à-vis individual programme providers, to be aloof of the interests these may have while it also does not have the right to take drastic measures which an internal supervisory body has - including the dismissal of persons in charge or withholding funds etc. This is e.g. something that can happen

under the structure of the German broadcasting companies, or what the Board of Governors of a chartered corporation such as the BBC can do. There are many examples. One should, however, avoid having both external and internal supervision because this is a waste of resources and leads to conflicting objectives and disagreement on facts that are of little use. One thing has always been called for and it is indeed part and parcel of public service broadcasting regulation - I presume Mr. Pappas will also talk about it later, and it was also reflected in Mr. Mojto's appeal to us - it is a detailed description of the tasks public service broadcasters have to fulfil and how they are funded. For me, the calls for proportionality and transparency are not a problem, although this might be surprising to some, but there must be a clear definition of what these mean. It must be clear what we spend our money on and we must not spend more money from public sources than we need to fulfil our tasks. AS an aside, I wish we had the money we really need at our disposal, that is all I can say! Due to budgetary constraints, there are no public funds we could use for other purposes. Financing, to the extent that it comes out of the budget, is also handled in different ways in different countries, and the underlying criteria vary. In Germany, there even exists a court ruling that deals with this matter, and I do not think any British government would allocate to the BBC more license fee funding than the government or Parliament thinks it needs to fulfil its task as a public service broadcaster. All of this can be incorporated in legislation unless it has already been introduced, it is part of the whole thing and not disputed at all. However, and this is another important question Mr. Mojto and I will probably agree on, we want the regulators to ensure that the media can act independently, autonomously and freely. In a ruling of the German Supreme Constitutional Court dating back to, I believe, 1972 provides the classic wording everybody should heed because it is based on the notion of law underpinning a liberal democracy: For constitutional reasons, the state is obliged to organise broadcasting in such a way that it remains free from state intervention. The supervisory tasks which have to be fulfilled to safeguard the basic regulatory framework of broadcasting must be fulfilled in such as way that socially relevant groups and institutions are involved, as is the case in Germany and elsewhere; in any event, it must be done in a way ensuring that no state broadcaster develops - easier said than done. Wherever there is an impression that such close

relation to the state exists - I am choosing my words carefully here - a common opinion should be reached in Europe when public service broadcasting is redefined, and used to regulate regulation.

In this context, I would like to recall the recent resolution adopted in this hall by the Council of Ministers of Culture which was due to a decisive Austrian initiative - even though you may imagine that it was not greeted with enthusiasm everywhere and that certain unfriendly responses could be felt, a situation not unlike the one after the Protocol to the Treaty of Amsterdam came about. Not everything that is to the point in political terms in the context of regulation is also as useful as one might wish it to be, but the political will behind it is so impressive that defence mechanisms may perhaps wane after a certain period of time. Independence as such is an important feature of regulation, not only independence from the state. The audiovisual media and the regulations governing them, as well as the calls for their pluralistic organisation, must be packed into a framework that will not expose them, in all probability, to bias and intervention by other powers. A free market economy shows tendencies towards concentration, this has been a well-known fact for long. However, it is also a market that is very sensitive to monopolies, oligopolies, especially if these are not organised for the whole of society, as it used to be, but are in the hands of one or a few. The ruling of the German Federal Constitutional Court quoted earlier and another ruling of the same court have pointed to this in a very intelligent and accomplished way when work on new media law started in the eighties. The wording is an admonition and it can be quoted over and over again without losing its currency: it is very difficult or even impossible to reverse unfortunate developments once they have set in. This is also something media regulators should take good note of, it was true ten or fifteen years ago, and it is still true today.

This example shows very well that such developments and tendencies harmful to society and even democracy can only be avoided by content-related media law, not communications law that is determined by technological or economic aspects. Pure anti-trust legislation, pure telecommunications laws will not help. I am very much

aware of the global impact of anything happening in this context today, and whatever national or European regulators do can be subverted, at least where globally networked infrastructures are concerned. However, this does not release us from our duty to create the closest possible approximation to an ideal state for the formats and models in our own regulatory field. Thus, we would at least have something in store in the context. To say right from the start - and I am imputing this - values which are important to us in Europe are not respected elsewhere, so let's drop them, too - this cannot be it! If this is the case, we must create European model identities and make it clear that we are standing up against the loss of values occurring elsewhere by doing it better. Regulation must be a basis and an instrument for this.

Thank you.

SPYRIDON A. PAPPAS**Director General for Information, Communication, Culture and Audiovisual (DGX)****The European Commission's thinking on audiovisual regulatory authorities**

The European Commission's thinking on the role of audiovisual regulatory authorities is based on a dual approach in terms of time. First there is the present, that is the role of regulatory authorities in the implementation of existing regulation. Then there is the future, that is how the role of audiovisual media authorities should evolve over, let's say, the next decade. I will examine each of these aspects in turn.

To begin with the present, what is the European Commission's thinking on the role of regulatory authorities in today's European audiovisual landscape? The answer is short: it's vital ! And I will explain why this is so from a purely Community point of view, without detracting from the role regulatory authorities each play in their national environments.

Since 1989, the European Community has equipped itself with a regulatory framework the cornerstone of which is the "television without frontiers" Directive. The purpose of this directive is to coordinate national rules to the extent that is necessary to ensure the free circulation of television broadcast services in the Community. The rules in question are those that are designed to achieve legitimate public interest objectives, in fields such as advertising, sponsorship, teleshopping, protection of minors, public order, promotion of European programmes, etc. This framework was up-dated by the adoption last year of the new Directive. One of the main innovations is to extend the coordinated fields to cover the issue of major events. The new directive must be transposed into national legislation by the end of this year. A further review, covering the period up to the end of the year 2000, is provided for by the directive itself.

Conclusion: the European Community disposes of a stable, technology neutral, regulatory framework valid for at least the next three years. So why do I describe the role of the national regulatory authorities as vital in this regard ?

Quite simply because without such authorities in each Member State, the Directive will not work. In the Community scheme of things, the Community legislator (the European Parliament and the Council of Ministers) adopts Directives, which the Member States must transpose into national legislation. The Commission checks this is done correctly. But the process does not stop there. The national legislation has to be effectively applied. In our experience, and given the nature of broadcasting as a unique social, cultural and economic activity, this can only be done on a day-to-day basis by specialised regulators. These are the people who are best equipped to ensure, at national level, the effective application of Community rules, given the room for manoeuvre such rules leave for adaptation to the specific characteristics of each national broadcasting landscape. The Commission has now nearly ten years experience in implementation of the Directive. Quite clearly, the quality of implementation has been highest in those Member States which have a regulator (independent of both the government and the operators) equipped with the means to effectively apply both national and Community rules. This is why it is the Commission's duty, both for the present and the near future, to encourage Member States to set up or maintain effective audiovisual media regulators. To our satisfaction, this has been done, or is in the process of being done, in almost all Member States.

Furthermore, the Commission considers that, in order to contribute to a common understanding and a consistent application of the rules across the Community, it is necessary to encourage cooperation between national regulators. The "Contact Committee" set up by the new Directive can play an important role in encouraging such cooperation. Moreover, suitable framework for this cooperation is provided for by the "European Platform for Regulatory Authorities" (EPRA). This platform was set up on the initiative of the authorities themselves, and now has a membership of 25 from across wider Europe, including nearly all European Union countries. It is proving

to be an increasingly effective platform for cooperation that the Commission will continue to encourage.

Now let's turn to the future. We all know that the audiovisual media are in a process of rapid development with the advent of digital technology. What will this change?

Firstly, let me emphasise that the legislative systems in place in the Member States, while showing a high degree of diversity, also have much in common. Besides the impact of Community measures such as the television Directive, the origins of this common tradition can be found in one of the landmark agreements between post-war Western democracies, that is the European Convention on Human Rights. Article 10 of the Convention recognised the freedom to impart and receive information, and the responsibilities that go with the exercise of this freedom.

Thinking about the future is not, in this field, something that should be done lightly in the euphoria of technological progress. This is why the Commission has recently undertaken a series of in-depth consultation procedures.

In December last year, it adopted the Green Paper on the Convergence of the telecommunications, media and information technology sectors, and thereby launched a wide consultation process. From an audiovisual policy point of view, what do we learn from this process, as set out in the interim Working Paper adopted by the Commission in July?

Well, from this point of view, the emphasis would be on 6 aspects:

1. There is agreement on the reality of technological convergence, but views differ as to its speed and its impact on markets and services.
2. Most commentators prefer an evolutionary rather than a revolutionary approach to regulation.
3. There is general recognition of the continuing role of sector-specific rules in securing public interest objectives, particularly in the audiovisual sector. Such

rules, or the way they are applied, will need to adapt and there will be increasing reliance on self-regulation.

4. The need for a smooth and rapid transition to an all-digital environment is underlined, but views differ as to whether this can best be achieved through a coordinated European approach or at purely national level.
5. Issues concerning access and gateways such as conditional access systems, EPGs (Electronic Programme Guides), and APIs (Application Programme Interfaces) have been highlighted as areas which may need regulatory attention in the near future.
6. Above all, there was agreement that the demand for premium audiovisual content would increase, and the measures to foster European production should be strengthened

The European Parliament recently adopted its opinion on the Green Paper. It recognised inter alia the importance of the audiovisual sector and noted that cultural products cannot be dealt with in the same way as other products. The Parliament recognised the continuing role of television broadcasting in our societies and considered the existing regulatory framework to be satisfactory and appropriate. A recent study by the Fraunhofer-ISI research institute in Karlsruhe backs this up. It predicts that in the year 2015 radio and TV broadcasting will still account for 68% of media consumption, expressed in terms of time spent in a market where overall media consumption will have increased from about 6 to 7 hours a day.

In taking this approach, the Parliament concurs with the Communication adopted by the Commission just last July called "Audiovisual policy: next steps" in the follow-up to the Birmingham audiovisual conference. Both the Parliament and the Commission have emphasised the need to foster European audiovisual content. The Parliament pragmatically requested the Commission to put forward proposals to strengthen the MEDIA programme to this end.

Indeed, the availability of content is a theme common to much recent thinking on convergence. This is certainly the case in the Report of the High Level Group on

Audiovisual Policy that was released last October. This Group, chaired by Commissioner Oreja, was composed of high level personalities from public and private broadcasting, regulatory authorities, the cinema industry and the creative community, from a number of different countries. Their Report, entitled "The Digital Age: European Audiovisual Policy" will undoubtedly have a major influence on policy making in this area.

The Group takes the view at the outset that the audiovisual sector is both vital and special. Among many other things, it adopted a number of recommendations on the future regulatory framework. These are based on the concept that there will continue to be a fundamental distinction between public and private communication. This is not a distinction between infrastructure and content services, but a distinction within the area of content services, which, the group considers, underpins the regulatory framework in this field. A service which provides information aimed at the public (or a section of the public) and/or content which has copyright attached to it, is communication to the public and the same public interest principles apply as those that underpin current broadcast regulation. A service which provides the facilities for private correspondence between users does not raise the issue of content regulation or of copyright (except, possibly, breach of copyright) and the issue here is that of protecting the confidentiality of private correspondence.

On regulatory authorities, the Group considered that:

- Whether there is one regulator for technological aspects and another for content aspects, or a unified regulator administering both sets of rules, is for national governments to decide; the Group was not in favour of a European regulator for content.
- Where there is more than one regulator in Member States, they will increasingly need to cooperate between themselves and with the competition authorities;
- European-level cooperation between national regulators should be encouraged to ensure mutual understanding and a degree of consistency; in this respect the

Group considered the European Platform for Regulatory Authorities (EPRA) that I have already mentioned to be an appropriate forum;

- The Group also recommended that, at a global level, it is essential that the specificity of the sector continues to be recognised and that the principle of the "cultural exception" be applied in international trade negotiations. This, in the minds of the Group, is not a slogan, but aims at well-defined objectives (for example that the Community and its Member States should remain free to encourage European audiovisual production without having to subsidise, as well, the Hollywood Majors);
- It is clear that EU competition rules are not designed, or able, to ensure that all legitimate public interest goals are met in the audiovisual sector. Rules relating to cartels, abuse of dominant positions or State Aids cannot ensure, for example, that the content of broadcasts is not harmful to minors nor contains incitements to racial hatred;
- Thus, for the Group, there is a clear case to be made that the regulation of services providing content cannot be dealt with in purely economic terms. The key element is rather the nature of the service and whether it constitutes communication to the public or private correspondence.

These processes have led us, in Directorate General X responsible for audiovisual policy, to some preliminary conclusions on the future role of regulatory authorities.

One of the prime tasks of these bodies today is to issue broadcasting licences with regard to a set of public interest goals such as ensuring pluralism, making sure that minors are not exposed to harmful programme material, ensuring consumer protection, and so on. Licence conditions may also include public policy objectives such as cultural and linguistic diversity.

The broadcasting sector is going through something of a revolution with the advent of digital. What does this change? Although it does not detract from the public interest goals I have just mentioned, digitisation and the ever-increasing number of services will require regulatory adaptation and improvements. We are seeing the

emergence of lighter, simpler systems operating in a graduated way as a function of the pervasiveness of the service: e.g. pay-per-view TV only requires a minimal level of regulation, whereas free-to-air television will continue to need a higher level of regulation in the general public interest.

Moreover, in the proposal for a directive on e-commerce the Commission adopted just last week, it did not consider that specific prior licensing procedures were needed for on-line services. The Commission nonetheless recognised, in its proposal, the continuing need for legislative measures aimed at achieving the general public interest objectives with which we are so familiar in the broadcasting sector. It also recognises, in the explanatory memorandum, that "Webcasting" remains a broadcast service when the Internet is merely used as another technical platform for transmitting television services.

The Internet poses daunting challenges for the regulatory framework. However, for regulatory purposes, there is a fundamental difference between the Internet and broadcasting. In the latter case, it has always clearly been the broadcaster (who is easily identifiable) that is legally liable for the content of his broadcasts and, in both international and community legislation, it is the country of origin principle that applies. The Internet environment functions in a different way, involving various different operators which may be located in different countries for the same service. The Commission, in its draft directive, proposes Community solutions to the questions of liability and of which Member State has jurisdiction. These are based on the application of the legislation of the country of establishment of service providers.

The regulatory framework for broadcasting will continue to develop in parallel. In order to evolve without the need for constant adaptation and the consequent lack of legal security, it should be more based on objectives than on detailed rules, with the monitoring of the achievement of these objectives being entrusted to the relevant regulatory authorities. Such objectives should include pluralism, the need to provide for quality content, respect for linguistic and cultural diversity and the protection of minors. In addition, clear rules and safeguards are needed to ensure open, non-

discriminatory and equal access both for competing providers and for users to digital networks and services. The framework should also be conducive to fostering European, national and local audiovisual production.

In conclusion, the consultation the Commission has carried out and in particular the Group chaired by Mr. Oreja have underlined the fact that digitisation of the electronic media will bring immense benefit to consumers and companies; its advent will be greatly facilitated by a climate of confidence that a clear, predictable and strictly proportionate legal framework can help to provide.

Thank you.

MICHAEL HOLOUBEK**Organisational Structures in Audiovisual Media Regulation****I. Organisational Structures - A Typology****A. Competencies**

1. Infrastructure Administration
2. Regulation of Market Access
3. Market Supervision

B. The Functional Position of the Regulatory Authority

1. Administrative Function
2. Judicial Function
3. Legislative Function

C. Organisational Forms

1. Self-Regulation
2. Governmental Administration
3. Courts
4. Independent Regulatory Authorities

II. Evaluation**A. Organisational Structure - A Matrix of Competencies, Functions and Organisational Forms****B. Tendencies of Development**

1. Imperative and Structural Regulation
2. Governmental Administration Turning into "Agency Concept"

C. Convergence

1. Competencies
2. Regulation as a "Sum Total of Case-by-Case Decisions" or "Supervision"?
3. "Form Follows Function"?

I. Organisational Structures - A Typology

If we try to devise a typology of possible organisational structures for regulatory authorities (not just one of organisational forms), such a structural typology must necessarily reveal the features determining the organisational structure of regulatory authorities. Since the context we are moving in is a legal regulatory framework, my typology will be based on three legal characteristics: firstly, competencies, i.e. the competencies of the regulatory authorities, secondly, the functional positions of the regulatory authorities in the separation of powers underpinning the state, and thirdly, the possible organisational forms of regulatory authorities.

A. Competencies

1. Infrastructure Administration

Typically, the task of audiovisual regulatory authorities is to administer the associated infrastructure. This encompasses the administration of frequencies (for example, negotiations with neighbouring states or within international bodies, and determining how certain frequency bands are to be used), or authorisations for the installation of broadcasting stations or cable networks. Criteria of efficient resource allocation or neighbourhood and environmental protection are in the foreground here. I would, however, like to emphasise that I do not consider the allocation of frequencies to individual users or issues of open network access to be part of this.

2. Regulation of Market Access

The second competency that is characteristic of media regulators is the regulation of access to the market. In this context, a number of different instruments have to be taken into account: licensing and reporting procedures, frequency allocation, site sharing obligations, must-carry rules or common carrier requirements, to name but a few. Typically, market access regulation in the context of audiovisual media takes two shapes:

a) *Organisation-specific*: This aspect of market access regulation emerged from the

The third typical competence of media regulators is to do with ongoing market supervision. The following three objectives are most widespread:

a) *Safeguarding fundamental rights*: The protection of minors or personal rights are as much part of this as the protection of democratic institutions. For this reason, I would also consider media regulation in the context of elections part of this objective.

b) *Safeguarding competition*: The second typical objective of market supervision is to ensure competition, i.e. trade-practice regulation. This encompasses limiting the expansion of an enterprise and the supervision of compliance with advertising times or fair and equal conditions of access to end users (key words: programme guides, set-top boxes) or access to content (key word: exclusive rights).

c) *Safeguarding "extraneous objectives"*: These objectives usually correspond to the "extraneous objectives" encountered in market access regulation - fundamental principles of programmes, programme-related requirements, the encouragement of certain types of content.

B. The Functional Position of the Regulatory Authority

When we look at the functional position of the regulatory authority within the framework provided by the separation of powers, the functions typically associated with a regulatory authority can be found to correspond to all three powers:

1. Administrative Function

The administrative function of regulators is the primary and also most comprehensive one, typically including infrastructure administration and market access regulation.

2. Judicial Function

Media regulators also perform a judicial function, in particular in the context of market supervision, where they fulfil tasks similar to those of courts in arbitration.

3. Legislative Function

In the context of audiovisual media regulation, a rule-making function corresponding to general legislation is performed; it is usually found in the development of journalistic or programme-related standards or "codes of good practice".

C. Organisational Forms

In describing typical organisational forms of media regulation, I am deliberately starting below the level of general law-making. However, we must not forget that the legislative and - due to the "constitutional nature" of media law - constitutional courts are important regulators in the context we are dealing with. At the level below the legislative branch and the constitutional courts, the following four forms of regulation can be distinguished:

1. Self-Regulation

Firstly, there is self-regulation. It is a particular specificity of public service broadcasting. In a broader sense, one could also consider it a kind of self-regulation if the competencies of governmental authorities in charge of regulating trade practices in the context of market supervision are exclusively subject to the options other market participants may exercise to enforce their rights. The question as to whether there is governmental regulation of trade practices is thus left to the decision of the market participants themselves.

2. Governmental Administration

The second form of organisation media regulation may take is the shape of a governmental administrative authority. It is characteristic of this type of organisation

that it is embedded in the structure of an overall system of administration and due to its hierarchy takes instructions from the highest, political level of the administration unless this level is in charge of performing the regulatory function itself.

3. Courts

Courts and thus independent judges may also be considered as typical organisational forms of media regulation. This may be the case where courts have actual jurisdiction, e.g. in many issues concerning the protection of fundamental rights (key word: regulation by civil and criminal courts). Competition law also comprises many rules under which courts also have jurisdiction in the media landscape. Moreover, cases in which courts have a task of reviewing comprehensively, i. e. in legal and factual terms, the regulatory decisions of administrative instances should also be considered here. In these cases, which are characteristic of extended administrative jurisdiction, regulatory competencies pass to the court, at least when disputes arise.

4. Independent Regulatory Authorities

The organisational form which currently represents the European standard in media regulation and which is primarily thought of in the context we are dealing with is the independent regulatory authority. It is characterised by its - at least relatively - independent position, i.e. the fact that it is not part of the actual structure of governmental administration, and that it has apparatus which does not serve any other body at its disposal. As regards the board or person/s governing the independent regulatory authority, two criteria seem characteristic of appointments to these positions:

a) their *independence*, which is at least "*equivalent to that of a court*", that is to say a certain tenure and rules limiting the removability and transferability of those working for the authority;

b) an element of *democratic representation*

organisational structures should not be generalising because there is a risk that the answer will largely be in favour of conserving the existing one.

B. Tendencies of Development

1. Imperative and Structural Regulation

As results from the above findings, the nature of media regulation seems to be both "imperative" as well as "structural" in approach. This should be taken to mean the following: To reach its objectives, media regulators typically rely on two instruments - one is "competition", for which reason they have to take regulatory measures to ensure functioning competitive structures (structural regulation), the other is interventionist (establishing and funding public service broadcasting, limited time for commercials, programming principles etc.) so as to ensure certain services of the media the provision of which is not left to demand in a competitive environment (imperative regulation).

This is where a major difference between media and telecommunications regulation can be identified. In telecommunications, regulators have largely substituted one instrument by the other. Whereas formerly, "services for the public" were provided by public enterprises, competition - regulated accordingly - has taken over today.

However, we should not overlook the fact that a development towards more competition and regulation of trade practices has commenced in audiovisual media regulation, with forms of imperative regulation stepping back to a certain extent.

2. Governmental Administration Turning into "Agency Concept"

Another development hardly to be overlooked is found in the organisational form regulatory authorities can take: Oriented on the American "agency" concept, this development is markedly influenced by a tendency towards the "independent regulatory authority". Let me refer back to the matrix of organisational structure in

media regulation, since this development comes with a concentration of competencies and function in one organisational form. This should not only be taken to mean a cumulation of competencies in these independent regulatory authorities, but also points to a feature of their functional position. They combine a traditionally administrative function with legislative and frequently also with judicial functions. No general trend can be established as regards the question whether there is more of a development towards "horizontal" regulatory authorities across the media landscape or whether sector-specific regulation will continue to prevail. Apparently, the decision for a certain organisational form will only be taken once the question for the "regulatory philosophy" and the instruments meaningful for one service or the other has been answered.

C. Convergence?

What are the conclusions to be drawn from the present typological inventory as regards the developments summarised under the heading of "convergence"?

1. Competencies

If my typological findings are correct, the current status quo in terms of competencies and thus also criteria and objectives of media regulators is that media policy is cultural policy and democracy policy on the one hand, and economic as well as competition policy (and hence structural policy) on the other. This is where it presently differs from telecommunications policy. It has largely remained undecided if and to what extent one regulatory approach or the other will be applied to new media; moreover, the decision will not be the same for all new media but has to be taken for each "new medium" on its own.

If we assume that legal regulation is always an instrument of social control and not an end in itself, and that it (and thus the regulatory objectives and regulatory competencies that go with it) are based on laws and not the logical consequences of

factual circumstances, the question of convergence is first and foremost a matter of political decision-making and not the logical consequence of technical developments.

The decision reached does not necessarily have to be the same for all features of the organisational structure in media regulation. We can leave it up for discussion if certain broadcasting services of the digital age (video-on-demand, home shopping) should be subject to the same regulatory philosophy as generally accessible, full-fledged programmes. In this context, I would rather draw a distinction according to the identity- or communication-shaping function of the services. Against the background of information selection as an important point in the context of information transmission, one must, however, also ask if those providing a selection of information on the Internet (in the future) should be subject to a different regulatory philosophy than voice telephony services.

In short: The extent to which a legal regulatory framework should maintain or even create divergence as to content for certain kinds of media-based communication when there is technical convergence is to be left to political decision-making and thus to a valuation from the democracy, cultural and economic policy angles.

2. Regulation as a "Sum Total of Case-by-Case Decisions" or "Supervision"?

Regulation is presenting itself as a case-by-case activity. In this sense, it also relies on instruments relating to individual cases, such as orders of the authority equivalent to laws. Under the rule of law, there are good reasons for doing so. However, regulators, run the risk of considering their work a sum total of case-by-case decisions or, in a nutshell, to sometimes neglect reflection for the benefit of action. Institutionalised measures ensuring ongoing market observation and thereby resulting in a kind of supervision of the "object of regulation" are not only rare, they are also at risk of being overshadowed by topical events.

However, it seems to me that sufficient knowledge about market conditions gathered by means of in-depth market observation is a necessary prerequisite for meaningful reforms of organisational structures.

In this context, it also ought to be highlighted that future organisational structures will have to fulfil a minimum of requirements so-called "self-learning systems" should meet. For a legal regulatory framework, this means in particular that the legal determinants of regulation should not be bound to fast-changing facts such as technical categories but that they should define criteria and objectives as well as instruments of regulation in relation to the objects of legal protection. The instruments must in particular be sufficiently flexible to ensure that objectives are reached in an environment of constant change. This should not be underestimated as a challenge to the capacity for innovation which forms of legal action have, as well as a challenge to supplementary systems to guarantee the separation of powers and the rule of law because such a legal framework of media regulation oriented on principles also implies discretionary margins.

My opinion is that in such a situation of change it may be useful to develop adequate organisational structures from competing systems. Only when sufficient experience is available can we, to my mind, begin considering harmonisation or community-wide standardisation of organisational structures in the field of media regulation.

However, it should also be mentioned that this comes with a risk of divergent developments. If my observations are correct, the question for the urgency of reforming the organisational structures is answered differently in the EU Member States. In this context, the point will be to weigh the act of waiting for proven knowledge as a basis for legal changes against the act of averting imminent danger so as to avoid irreparable damage. Opinions differ about one decisive matter - whether only fundamental rights justify "blindfolded reforms", or whether ensuring that objectives extraneous to the market - which have hitherto been characteristic of the audiovisual sector - are fulfilled warrants or even requires steps to be taken faster. In contrast to the protection of fundamental rights, for which there is usually a

safety net of regulatory civil and criminal justice, the so-called objectives extraneous to the market mostly come under the exclusive jurisdiction of media regulators.

3. "Form Follows Function"?

These regulatory policy decisions have a certain impact on the organisational form of the regulatory authorities, and this addresses the third significant feature of organisational structure, i.e. organisational form. It does not appear to be a coincidence that the criterion of "independence" is for the most part found in the telecommunications sector where the preponderant philosophy is one of "trade-practice regulation". For regulators, in the audiovisual field "representation" is the criterion that carries more weight. This suggests that different competencies - structural regulation and imperative regulation - as well as criteria determining the design of the organisational form of a regulatory authority - independence and representation - are somehow interlinked. In keeping with this, the development of organisational forms found in the regulation of audiovisual media from governmental administrative authority to independent regulatory authority seems to be paralleled by an introduction of structural trade-practice regulation in addition to imperative regulation, sometimes even with increased weight. It might just be possible that the principle "form follows function" also goes for the organisational form of regulatory authorities.

It will be interesting to observe if and to what extent regulatory authorities for audiovisual media and telecommunications with uniform organisational forms - as they e. g. exist in Switzerland or Italy, also converge in terms of "regulatory philosophy", or if and in which points they will be able to maintain regulatory structures that diverge sector-specifically in terms of content. Perhaps the opposite is true: "function follows form"?

APPENDIX:

Statement of

Mr. Greger LINDBERG

**European Platform of Regulatory Authorities (EPRA)
c/o European Institute for the Media, Kaistr. 13, D - 40221 Düsseldorf, Germany
Tel: (0049 211) 90104-44; Fax: (0049 211) 90104-56**

I would like to thank the organisers very cordially for giving me the opportunity briefly to introduce the EPRA and its work. EPRA stands for European Platform for Regulatory Authorities, which is the European association of broadcasting authorities. After all, broadcasting regulators are concerned. Here is a topic that still needs to be dealt with because broadcasting and media fuse with one another to an ever growing extent, but we will get back to that later on.

The purpose of the organisation is to create a structure for an exchange of opinions. We have 24 members. I assume that more will join next year, and we also have several observers participating in the meetings. At the latest meeting in Aix-la-Chappelle all EU Member States and several Eastern European countries were represented, or rather, people from all across Europe. The EPRA meets twice annually. Last time, we had discussions about European policy, and convergence was the central topic. We tried to discuss convergence from the practical point of view, and we also talked about issues of privacy and invasion of privacy. The EPRA secretariat is located in Düsseldorf and will be enlarged in the near future.

Regulatory authorities must talk to one another, they must be aware of the fact that there are others out there. It is difficult to bring regulatory authorities together because national traditions differ greatly and in our discussions we frequently come to the conclusion that we agree on being unable to agree. However, exchanging information and explaining one's own point of view alone helps us a lot. If we cannot agree, it is at least important to know and understand why that is so, and why other authorities must act the way they do. As you know, regulatory authorities in one country may often be in charge of one broadcaster which has little in common with the country and her economy, whose entire flow of information is directed to an

audience in another country, and this makes it specially important for regulatory authorities to exchange information. Even though we may not always like the others' decisions, it is good to know why they were taken. Often enough, you have at least what is called an "aha experience" when you listen to and look at different approaches. The point is not to create a European super-regulator; on the contrary, what is involved for me here is a practical application of the subsidiarity principle. In the past few years, the EPRA has continued to grow and to admit new members, so I believe that members are of the opinion that it is a useful forum. If you have not joined yet, think about it, we will certainly be glad to invite you to our next meeting. One thing is sure, at least some of the Central and Eastern European countries have found it quite helpful to be able to rely on such a structure. Last time, a delegation said: "It helped us overcome our isolation. The opportunity to become part of this forum of broadcasting regulators in Europe was of great assistance to us." I think that this will probably be true of many of our Eastern European colleagues, even though the markets in some of their countries are more advanced than some in Western Europe. I think it is a fact that an organisation such as ours will initially be more useful for smaller countries because at first, what the bigger countries are doing is more important for the smaller ones than vice versa. New developments, new technologies also come to bear on larger markets first. However, it is important to take up discussions with other colleagues in Europe early because otherwise, those who are the first to be confronted with a problem will find a solution, and that solution will be for all of us.

Thus, we would be faced with a *fait accompli*, and this is precisely what the EPRA is trying to avoid by discussions at an early stage. Everybody who comes to EPRA meetings to listen to what other colleagues have to say will go home and find it a real gain. Let me also add a few personal comments on the work of the EPRA - my personal opinion, nothing that has been agreed upon within the association: I think that the next step for the EPRA will very well consist in calling upon the major broadcasting regulators and asking for help because they have larger resources and also because they know more about the various developments in the market. The "Big Three" are EPRA members, playing their role. However, I think that the EPRA

could benefit, if the "Big Three" or everyone who would also like to belong to the "big ones" participated more actively in the future. May I am wrong, but I believe that a European structure such as the EPRA can only continue to develop if it is also given really specific support by the major regulators. In turn, we will also have to have something to offer for these authorities. This is not a process of education, we do not want to educate anybody or one another. Everything is about discussion, exchange of information, which also becomes ever more important for the major regulators. And I think that major regulators will also be able to benefit from this discussion.

Thank you.

Speech by GI GERHARD WEIS (ORF)

Bundeskanzleramt, Vienna, 26th November 1998

Mr. State Secretary!

Ladies and gentlemen!

There has been a lot of talk recently about the so-called Digital Revolution. But not often is there the possibility of discussing this subject with such a highly-qualified circle of experts. I would therefore like to start by thanking you most cordially for the invitation to do so.

Josef Broukal, our specialist for "Modern Times", has given you a compact overview of the numerous activities unfolded by the ORF in the field of digital television and the Internet.

I want to take this opportunity to give a short description of the challenges facing the ORF in view of the upheavals in the Austrian and the international media landscape, and to explain our standpoint on the most important issues.

On the one hand there is the question of introducing digital terrestrial television and on the other the question of the role which should be played by a public-service broadcaster in the Internet field.

Before going any further I want to anticipate one further basic point: ongoing technical developments in the electronic media - characterised by terms such as

"internationalisation", "duplication", "technisation" and "commercialisation" – naturally create a need for alterations and developments in the associated legal framework.

It has always been the case that technical development leads the way and its integration into the legal structure follows later. For instance, the media-political questions regarding broadcasting in Austria were not embedded in law until 42 years after the first radio broadcast.

The disadvantages resulting from a lack of clear, legal requirements are being felt now in the field of digital satellite television and the dispute concerning a unified standard for decoders, with individual producers offering exclusive technical solutions which prevent, or impede, the reception of competing systems. In this case technology has advanced, but freedom of information and consumer-friendliness have taken a step backwards.

In order that legislators can create competitively-neutral and developmentally-encouraging framework conditions close contact should be maintained with the media sector. That is the special benefit of this gathering. So I am grateful for the opportunity to present the ORF viewpoint.

For us the Digital Revolution has two aspects:

First: The challenges which the ORF (partly as a consequence of its public-service programme responsibility) has to accept. That we are ready to accept them was shown quite clearly, I think, in Josef Broukal's demonstration.

Second: (and this is closely linked with these challenges) the new technologies signify great opportunities for the ORF. Making the best possible use of these opportunities is one of the essential survival strategies for a media institution, such as the ORF. That we have so far been thoroughly successful in this respect is shown by the example of ORF ON, our news-channel on the Internet. With nearly five million page-views in October alone this year this is clearly the most successful content provider in Austria.

An early utilisation of new technology is not at all unusual in the ORF, however. I would like to recall that early in the eighties we were the first television station in Europe to offer with Teletext (videotext) an additional digital service to analog television. The introduction of the VPS-signal (VPS stands for "Video Programming System") on television in 1988, and the RDS-system ("Radio Data System") on radio, also in 1988, were just two further innovations in this field.

A development which has been continued to the present day. New technological processes are regularly adapted to ORF needs. Just a few examples: in 1997 we started up DARC (Data Radio Channel), a method, similar to RDS, for using analog terrestrial frequencies for the transmission of digital data. The ORF employs this additional digital service for its Differential GPS-service (GPS stands for "Global

Positioning System"). In this way car-drivers throughout Austria can call up their geographical co-ordinates at the push of a button.

In the satellite field analog transponder capacities are used for digital radio transmission. For example: ADR (or Astra Digital Radio).

Pure digital television and digital radio are absolutely certain to come in future. Analog transmissions will, sooner or later, be completely ended. All distribution paths (cable, satellite, terrestrial) will be digital.

In the satellite field, as Josef Broukal has demonstrated, the ORF has already gone digital. And in the cable sector, too, network operators, such as „Telekabel Wien,, are planning a digital start in 1999. Still unsettled is the terrestrial field. A decision has yet to be taken about when and how entry should be made into the digital age.

And this brings me to the first core-problem I mentioned earlier: The introduction of digital terrestrial television.

In the Teletext (videotext) sector ORF was the first broadcaster on the continent to include this additional digitalservice. Up until today Teletext is a popular source of additional information to the television programme for the public.

In the terrestrial television sector Austria and the ORF are now confronted with similar challenges: that is to say using the available frequency resources for the creation of a new digital terrestrial programme bouquet. From the public's point of

view we have to provide a painless, i.e., smooth, transition from the analog system to the digital one. This could involve – just as during the switch over from AM to FM twenty years ago – a lengthy period of parallel operation for both systems.

During the introduction of the digital, terrestrial television I see the following contradiction which will have to be solved: the new digital technology makes it possible to transmit hundreds of digital programmes. For the introduction of digital, terrestrial technology, however, it will be necessary to utilise existing, internationally coordinated frequencies. And they, as we all know, are in short supply.

And there lies one of the challenges for the media policy of individual countries, and for you as regulators.

Many countries, such as Germany and the USA, have set time limits for dropping analog television and radio. Other countries, such as Great Britain and Sweden, have already introduced regular operation of digital terrestrial television, or will shortly be doing so.

All of us – whether legislators or broadcaster enterprises – are challenged by the international development.

The second subject to which I drew attention at the beginning of my talk is the question of what rôle the ORF has to play in the Internet field and on-line:

The progress made in wired data transmission led to the introduction of the new Internet medium. Its further, and future, development – from the media, social and technical and legal aspects – cannot even be estimated at present. In this field too, as Josef Broukal showed in his demonstration, the ORF is very active.

As a broadcasting enterprise the ORF sees, in line with the majority of experts, the possibility of creating a "quasi-broadcasting" medium by means of which the core-responsibilities of the legal programme obligation of the ORF can be fulfilled. I would just refer to the information and opinion-forming function of the on-line services.

Information is a core responsibility of public-service broadcasting enterprises. That is why the ORF in its ORF ON on-line service likewise has a comprehensive information service for the provision of which natural synergies are utilised. This new ORF information service – and this is the quality it can offer ahead of its rivals – is put together observing the same principles as are used for ORF radio and television programmes. That is to say the principles of objectivity, impartiality and plurality.

We view the responsibility for providing an on-line service in accordance with these standards as a necessary complement to the radio and television programmes and as a part of our legal obligation.

Ladies and gentlemen,
Mr. State Secretary!

Let me conclude by summarising once more the two most important challenges which I see in connection with digitalisation:

1. The future belongs whatever happens to digital television. This will have an effect too on the terrestrial field. In order to enable the public to experience the smoothest possible transition to the new technology it will be sensible to arrange for parallel operation of both systems. During this phase the problem of shortage of frequencies will continue to play a rôle, at least in Austria. That is one of the challenges which will have to be solved in the near future.
2. The importance of new media such as the Internet will increase enormously. Seen from the point of view of the ORF and, above all, of its audience, I consider it essential that the public-service broadcaster should also have all the possibilities of utilising the new technologies.

I wish you, ladies and gentlemen, an exciting and stimulating conference, and thank you for your attention!

Curriculum vitae and addresses:

Francis BALLE

Institut de Recherche et d'Etudes sur la communication (IREC)
83, bis rue Notre Dame des Champs
75006 PARIS

Born in 1939; Docteur d'Etat es-Lettres, Institute for political science, Paris;
1963-1965 professor for philosophy in Oran, Algeria; 1967-1972 university assistant
of Raymond ARON, Sorbonne; since 1972 professor for political science at university
Paris 2; 1976-1986 director of „Institute Francais de Presse“; 1981 visiting professor
of Stanford University California; since 1986 director of IREC - Institut de
Recherche et d'Etudes sur la communication; 1986-1989 vice-chancellor of the
university of Paris; 1989-1993 Member of the CSA - Consul Superieur de
l'Audiovisuel; 1993-1995 director of information and new technologies at the ministry
of national education.

Michael REDLEY

Independent Television Commission (ITC)
33 Foley Street
LONDON W1P 7LB

Born in 1948; Ph.D. in History at Cambridge University and M.Sc in Economics at the
London School of Economics; worked in the Ministry of Defence as well as the
Treasury; joined the Independent Broadcasting Authority (IBA) in 1987; since 1989
Chief Assistant to the Director General; since 1990 Head of Licensing of the
Independent Television Commission (ITC); responsible for all aspects of
broadcasting legislation and licensing regimes; ITC's Secretary and Director of
Administration.

Jan MOJTO

Association of Commercial Television in Europe (ACT)
7 square Amiorix
B-1000 BRUXELLES

Born in 1948 in Nitra, Slovakia, study of history and literature in Bratislava, Munich and at the Institut Europeen d'Administration des Affaires, Fontainbleau; active as a journalist; since 1980 working for the KIRCH-Group; since 1982 Head of production office of TaurusFilm GesmbH & Co., responsible for all programming aspects; member of the supervisory board of Mediaset S.p.A. (Mailand) as well as chairman of the supervisory board of SAT1 GmbH (Berlin); president of ACT - Association Commercial Television in Europe.

Albert SCHARF

European Broadcasting Union (EBU)
Ancienne Route 17a
Case postale 67
CH-1218 Grand Saconnex GE

Born in 1934 in Munich; study of Law; in 1962 nomination to the Bavarian Ministry of Finance; in 1966 designation to legal director of Bavarian Broadcasting; 1973-1982 chairman of the legal commission of the European Broadcasting Union (EBU); since 1983 EBU-president, honorary professor for media law and director of the institute for communication at „Hochschule für Fernsehen und Film“; since 1990 general director of Bavarian Broadcasting; since 1996 president of „Hochschule für Fernsehen und Film“.

Spyros A. PAPPAS

European Commission
Directorate General X
Rue de la Loi 200
B-1049 BRUXELLES

Born in 1953 in Athens, studies and degrees in Law, Administrative Law and Public Law at University of Athens; Panteios School of Economic and Political Sciences and University of Paris I, Pantheon-Sorbonne; 1979 Certificate in Community Law, 1981 working in the legal office of the Prime Minister, 1982 Member of the Central Commission for the Drafting of Laws; 1983 „Maitre des Requetes“ at the Council of State; 1984 Member of the Supreme Council of the Church of Greece as a

representative of the Council of State; 1985 Secretary-General of the National Centre of Public Administration; 1986 Degree in Political Science, University of Athens; 1987 Advanced Management Programme, Fontainebleau; 1988 Associate Professor at the European Institute of Public Administration (EIPA), Maastricht; 1989 Director of Faculty at EIPA; 1990-1995 Director-General at EIPA; 1992 Professor of European Law at EIPA; 1995 Director General for Consumer Policy at the European Commission; 1996 Barrister at the Supreme Court and the Council of State; since 1997 Director General - DG X „Information, Communication, Culture and Audiovisual Media“.

Michael HOLOUBEK

Wirtschaftsuniversität Wien
Institut für Verfassungs- und Verwaltungsrecht
Althanstraße 38-45
A-1090 WIEN

Born in 1962 in Vienna; study of jurisprudence; 1987-1996 university assistant; 1989/90 collaborator at the Constitutional Court; in 1996 habilitation in „Public Law“; 1997/98 visiting professor at the institute for technical law and environmental law, university of technics in Dresden; since 1998 professor in „Public Law“ at the institute for constitutional and administrative law, Vienna university of economics.

Participants

AAS Nils Klevjer (European Audiovisual Observatory, Strasbourg)
AFONSO Anabela (IPACA, Lisboa)
AITKEN Jane (UK Representation to the EU, Brussels)
ALEMANY Marie Josée (Audiovisual Council of Catalonia, Barcelona)
ANDENØS Ivar (The Mass Media Authority, Frerikstad)
ARNOLD Hans-Henning (VOX Film- und Fernseh-GmbH & Co KG, Köln)
AXELIUS Marie-Jeanette (Swedish Broadcasting Commission, Haninge)
BAER Jean-Michel (European Commission - DG X/C, Bruxelles)
BALLE Francis (Institut de Recherche et d'Etudes sur la Communication, Paris)
BARAKA Anissa (Bundeskanzleramt, Abt. II/3, Wien)
BARNA Attila (National Radio and Television Commission, Budapest)
BATIC Natascha (Parlament, Wien)
BAUER Heinrich (Österreichisches Patentamt, Wien)
BAUER Thomas A. (Institut für Publizistik, Wien)
BAUMANN Marie-Louise (Unabhängige Beschwerdeinstanz für Radio und Fernsehen, Bern)
BAUMGARTNER-GABITZER Ulrike (ORF-Kuratorium, Wien)
BERGER Maria (Europäisches Parlament, Brüssel)
BERGMANN-FIALA Alfreda (Telekabel-Wirtschaftskammer, Wien)
BOLLARDT Gerhard (ORF, Wien)
BOULIN-GHICA Irina (Prime Minister's Office for European Coordination, Paris)
BREITENECKER Markus (MediaGruppe Austria, Wien)
BROUKAL Josef (ORF, Wien)
BROWN Paul (Association of European Radios (AER), Brussels)
BRUCKENBERGER Johannes (APA - Austria Presse Agentur, Wien)
BRUGGER Sepp (Regionalradio- und Kabelrundfunkbehörde, Wien)
CARDARELLI Vincenzo (European Commission - DG X, Bruxelles)
CHRISTODOULOU Andreas (Press and Information Office, Nicosia)
CITROEN de KERUENOEL Victoire (European Commission - DG XIII, Bruxelles)
CLOB Wolfgang (Institut für Europäisches Medienrecht, Saarbrücken)
COUTINHO Maria Manuela (Haute Autorité pour la Communication Sociale, Lisboa)
DAUM Pierre (Le Monde Diplomatique, Wien)
DÉOM Valérie (Ministère de la Communauté Française de Belgique, Bruxelles)
DOMENECH Gemma (Audiovisual Council of Catalonia, Barcelona)
DONAUBAUER Georg (Industriellenvereinigung, Wien)
DÖRFLER Edith (Ludwig Boltzmann Institut für österr. Kommunikationsgeschichte, Wien)
DUMERMUTH Martin (Bundesamt für Kommunikation, Biel)
EBERLE Carl-Eugen (ZDF, Mainz)
EBNER Michl (EU-Parlament, Brüssel)
EGERMAIER Thomas (Bundesministerium für Wissenschaft und Verkehr, Wien)
ELLUL Antoine J. (Malta Broadcasting Authority, Hamrun)
ERO Liisa (Ministry of Transport and Communications, Helsinki)
FELICEANTONIO Lisa Di (Autorita per ne Garanzie nelle Comunicazioni, Italien)
FERNANDEZ José Beaurront (Comisión del Mercado de las Telecomunicaciones, Madrid)
FERREIRA Assis (Instituto da Comunicacao Social, Lisboa)
FIDLER Harald (Der Standard, Wien)
FIEDLER Heinz (ORF-Kuratorium, Wien)
FISCHER Karl (ORF, Wien)
FISCHER-SEE Rainer (ORF, Wien)
FLACHER Mélanie (Ambassade de France en Autriche, Wien)
FRANCESCHINI Laurence (Conseil Supérieur de l'Audiovisuel, Paris)
FRANK Nicola (EBU, Brüssel)
FREIHOFNER Gerald (Hörfunkbeirat, Wien)
FRELAND Valéry (Ministere des Affaires Etrangères Sous-direction des programmes, Paris)

FUCHS Brigitte (ORF - Journalistengewerkschaft, Wien)
GALLINO Davide (Autorità per le Comunicazioni, Rom)
GERETSCHLÄGER Ingrid (Allianz für Medienkompetenz, St. Pölten)
GERL Matjaz (Broadcasting Council of the Rep. of Slovenia, Ljubljana)
GLUDOWATZ Walter (ORF-Kuratorium, Wien)
GOERENS Pierre (Ministère d' Stat. Service des Médias et de l'Audiovisuel, Luxembourg)
GOLLIA Rudolf (Bundesministerium für Inneres, Wien)
GÖGÜSGER Sevki (Turkish Radio-Television Supreme Council, Ankara)
GRANDOSEK Matthias (Arbeiterkammer Wien)
GRCAR Vincenc (POP TV - Pro Plus, Ljubljana)
GRUJBAROVA Jarmila (Council of Slovak Republic for Radio & TV Broadcasting, Bratislava)
GRÜNEWALD Thomas (Bundesministerium für Justiz, Wien)
GUIMOND Pierre (Kanadische Botschaft, Wien)
GUNNARSDOTTIR Karitas H. (Ministry of Education, Science and Culture, Reykjavik)
GUNTVEDT Olav (Ministry of Cultural Affairs, Oslo)
HAHN Georg (Internet Service Provider Austria, Wien)
HALLER Herbert H. (Wirtschaftsuniversität, Wien)
HALLSTEDT Håkan (Ministry of Culture, Stockholm)
HAUSJELL Fritz (Institut für Publizistik, Wien)
HAUTALA-KAJOS Kristina (Ministry of Education, Helsinki)
HEINZE Matthias (RTL Television, Köln)
HENLE Victor (Thüringer Landesmedienanstalt, Arnstadt)
HENTSCHEL Kurt (MedienCampus Bayern e.V., München)
HEREMANS Barbara (Cabinet du Ministre Flamand des Médias, Brüssel)
HINK Robert (Regionalradio- und Kabelrundfunkbehörde, Wien)
HITSCHMANN Karl (Internet Service Provider Austria, Wien)
HOFMANN Karoline (FPÖ, Wien)
HOLOUBEK Michael (Regionalradio- und Kabelrundfunkbehörde, Wien)
HUBNER Helmut (Kommission zur Wahrung des Regionalradiogesetzes, Wien)
HUGHES David (European Commission - DG X, Bruxelles)
JANISCH Wolfram (Société Européenne des Satellites, Chateau de Betzdorf)
JASEMOVA Antonia (Slovak Television, Slow. Rep.)
JAUK Wolfgang (Bundesministerium für Wissenschaft und Verkehr, Wien)
JEDLICKA Wolfgang (Kommission zur Wahrung des Rundfunkgesetzes, Wien)
JOOSTEN Sven Hugo (Österreichische Philips Industrie GmbH, Wien)
JUNGWIRTH Christian (Orange 94,0 - Das Freie Radio, Wien)
JURENEC Marjan (POP TV - Pro Plus, Ljubljana)
JUST Natascha (Österreichische Akademie der Wissenschaften, Wien)
KÄPPLER Wolfgang (Bundesministerium des Innern, Bonn)
KIRCHBERG Ines (European Public Policy Advisers, Deutschland)
KIRCHNER Gunda (Arbeiterkammer, Wien)
KLEIBER Monika (Universität für Bodenkultur, Wien)
KNEISSEL Katrin (Bundeskanzleramt, Wien)
KNOLL Norbert (Österreichisches Institut für Wirtschaftsforschung, Wien)
KOGLER Michael (Bundeskanzleramt, Wien)
KOPECKY Heinrich (Wirtschaftskammer, Wien)
KOSONEN Ismo (Ministry of Transport and Communications, Helsinki)
KOSTNER Oliver (Publizist)
KOSTOPOULOU Maria (Hellenic Audiovisual Institute, Athens)
KOVÁČ Peter (Council of Slovak Republic for Radio & TV Broadcasting, Bratislava)
KÖNIG Erich (Bundeskanzleramt, Wien)
KRAMMER Karl (Wien)
KRATKY Gerhard (Liberales Forum, Wien)
KRESS Michael (Kommission zur Wahrung des Regionalradiogesetzes, Wien)
KUBICKOVA Slavomira (Slovak Television, Slow. Rep.)
KYSELA-SCHIEMER Gerda (Donau-Universität Krems)

LACINA Vera (Arbeiterkammer, Wien)
LAGA Gerhard (Wirtschaftskammer, Wien)
LANG Roland (Arbeiterkammer, Wien)
LATZER Michael (Österreichische Akademie der Wissenschaften, Wien)
LEHR Gernot (Rechtsanwalt, Hamburg)
LENTZEN Evelyne (Conseil Supérieur de l'Audiovisuel de la Communauté Française de Belgique, Bruxelles)
LINDBERG Greger (Swedish Broadcasting Commission, Haninge)
LIU Po-Wen (Telekom Control GmbH, Wien)
LOPEZ Elena Martin-Asin (Instituto de la Cinematografía de las Artes Audiovisuales, Madrid)
LUKASEK Kurt (Regionalradio- und Kabelrundfunkbehörde, Wien)
LUSSER Josef (ORF, Wien)
MAIER Wolfgang (TV-Media, Wien)
MALZANINI Bernd (Kommission zur Ermittlung der Konzentration im Medienbereich, Potsdam)
MARASZTO Andrea (Bundeskanzleramt, Wien)
MAUTNER-MARKHOF Maria-Charlotte (Kommission zur Wahrung des RRG, Wien)
MAZANEK Kurt (ORF-Kuratorium, Wien)
McLEAN Norman (Broadcasting Standards Commission, London)
MEISSNITZER Heidi (Europäische Kommission)
METELKO Siegbert (ORF-Kuratorium, Wien)
MICHEL Eva-Maria (WDR, Köln)
MINTOFF Lino (Broadcasting Authority Malta, Hamrun)
MIZZI Charles (Broadcasting Authority Malta, Hamrun)
MOJTO Jan (ACT, Bruxelles)
MOOSMANN Peter (ORF, Wien)
MORRISON Carolyn (Department for Culture, Media and Sport, London)
MÖWES Bernd (Bundeskanzleramt, Bonn)
MÜFTÜOĞLU Günes (Turkish Radio-Television Supreme Council, Ankara)
NICOLAIDES Elli (Conseil National de Radio-Television, Athens)
NUSSBAUM Angelika (ARGE Daten Organisation, Wien)
NYAKAS Levente (National Radio and Television Commission, Budapest)
OBERMAIR Anna (WIFO, Wien)
OHNEMUS Elisabeth (Medienbüro der österreichischen Bischofskonferenz, Wien)
OKRESEK Wolf (Bundeskanzleramt, Wien)
OTHEGUY Pascal (Prime Minister's Office for Audiovisual and Juridical Matters, Paris)
PAPAGIANNAPOULOS Giannis (Griechisches Fernsehen, Ag. Paruskevi)
PAPAYANNAKOPOULOU Olympia (European Commission, Bruxelles)
PAPAYANOPOULOS Yannis (Ministry of Press and Mass Media, Athens)
PAPPAS Spyros A. (European Commission - DG X, Bruxelles)
PATEISKY Günter (ORF, Wien)
PAULGER Gregory (European Commission - DG X, Bruxelles)
PELZ Dorotheé (ACT, Bruxelles)
PETERSEN Vibeke G. (Ministry of Culture, Copenhagen)
PIROTA Joseph (Broadcasting Authority Malta, Hamrun)
PLESCHIUTSCHNIG Gerhard (Arbeiterkammer, Wien)
POTACS Michael (Institut für Rechtswissenschaften, Klagenfurt)
PREINFALK Hans (Arbeiterkammer, Linz)
PRULL Franz (Bundesministerium für Wissenschaft und Verkehr - Oberste Fernmeldebehörde, Wien)
REDLEY Michael (Independent Television Commission, London)
REISSNER Christoph (Wirtschaftskammer, Wien)
REVESZ Mihály T. (National Radio and Television Commission, Budapest)
RIEHL Frederic (Bundesamt für Kommunikation, Biel)
RODRIGUEZ Jesús Petrement (Comisión del Mercado de las Telecomunicaciones, Madrid)
RONGE Christoph (Regionalradio- und Kabelrundfunkbehörde, Wien)
RÖBL Renate (ORF, Wien)
RUDAS Andreas (ORF-Kuratorium, Wien)

RULLENS W.M. (Ministry of Transport, Public Works and Water Management
Telecommunications and Post Department, EX The Hague)

SALOMON Eve (Radio Authority, London)

SCHAFFELHOFER Walter (Verband Österreichischer Zeitungen, Wien)

SCHARF Albert (EBU, München)

SCHULTZ Sylvia (VIVA-TV, Köln)

SCHUPPICH Walter (Hörer- und Sehervertretung, Wien)

SCHWANDA Herbert (Bundesministerium für Unterricht und kulturelle Angelegenheiten, Wien)

SECIK Ivan (The National Center of Media Communication, Bratislava)

SLAVIKOVA Natasa (Council of Slovak Republic for Radio and TV Broadcasting, Bratislava)

SLOMINSKI Peter (Österreichische Akademie der Wissenschaften, Wien)

SLOVAK Friedrich (Regionalradio- und Kabelrundfunkbehörde, Wien)

SPUDICH Helmut (Salzburger Nachrichten, Wien)

SONNELAND Helge (Ministry of Cultural Affairs, Oslo)

SOURLAS Paul (Griechischer Nationalrat für Radio und Fernsehen, Athen)

STAMMLER Dieter (Deutschland Radio, Köln)

STEINERT Fiona (Orange 94,0 - Das Freie Radio Wien)

STELMACH Judith (ORF, Wien)

STEYSKAL Peter (ORF, Wien)

STOMPER Bettina (Wirtschaftsblatt, Wien)

STOPPACHER Maria (Bundeskanzleramt, Wien)

STREIT Georg (Rechtsanwalt, Wien)

STREITENBERGER Wolfgang (Ständigen Vertretung der Europäischen Kommission, Wien)

STROBL Pius (ORF-Kuratorium, Wien)

SZIZZ Judit (National Radio and Television Commission, Budapest)

TELLES José (Instituto da Comunicacao Social, Lisboa)

THEODOSSIS Gevassimos (Ministry of Press Mass Media, Athen)

THURNER Thomas (Orange 94,0 - Das Freie Radio Wien)

TRAIMER Matthias (Bundeskanzleramt, Wien)

TRAPPEL Josef (Prognos, Basel)

TRETTER Hannes (Ludwig Boltzmann Institut für Menschenrechte, Wien)

TWIST Nicholas (Botschaft Irland, Wien)

ULRICH Andreas (Bundeskanzleramt, Wien)

UKROW Jörg (Staatskanzlei des Saarlandes, Saarbrücken)

VALAIS Sophie (Centre National Cinema, Paris)

Van der MEULEN L. (Commissariaat voor de Media, Hilversum)

Van de VELDE Paul (Ministerie Vlaamse Gemeenschap, Brussel)

VANGSGAARD Charlotte (Danish Satellite and Cable Board, Copenhagen)

VLACHOU Maria (Ministry of Press and Mass Media, Athens)

WAGNER Gerhard K. (Verband für Informationswirtschaft in Österreich, Wien)

WEBER Hermann (Bundesministerium für Wissenschaft und Verkehr, Wien)

WEIS Gerhard (ORF, Wien)

WESSELY Karin (Rechtsanwältin, Wien)

WIEDEMANN Verena (ARD-Verbindungsbüro, Brüssel)

WIESINGER Bernhard (Hörfunkbeirat, Wien)

WINDHAGER Maria (Regionalradio- und Kabelrundfunkbehörde, Wien)

WITTMANN Heinz (Regionalradio- und Kabelrundfunkbehörde, Wien)

WITTMANN Peter (Staatssekretär für Europa, Sport und Kunst, Wien)

WOLF Franz Ferdinand (Privatradio Verband, Wien)

WÖGERBAUER Harald (Regionalradio- und Kabelrundfunkbehörde, Wien)

WRABETZ Alexander (ORF-Kuratorium, Wien)

YARDIMCI Nuran (Turkish Radio Television Supreme Council, Ankara)

ZANGER Georg (Rechtsanwalt, Wien)

ZEGER Hans (Arbeitsgemeinschaft für Datenschutz und Informationsrecht, Wien)

ZEINSTR Helga (Ministry of Education, Culture and Science, Zoetermeer)

ZELEZNY Vladimir (TV Nova, Prague)

ZENS Jean-Paul (Ministire d'Etat Service des Medias et de l'Audiovisuel, Luxemburg)
ZIMMER Daniela (Arbeiterkammer, Wien)
ZIMMERMANN Daniel (ACT, Bruxelles)
ZOLLMANN Benjamin (Ministry of Culture, Praha)
ZÖRNER Franz (Kommission zur Wahrung des Regionalradiogesetzes, Wien)
ZUPA Ivan (ORF, Wien)

„In the digital age, regulation seems all the more required as the general principles of freedom and equality have to be adapted to ever more versatile modes of communication.“

Francis Balle

„I know that globalisation is a major source of concern. It is certainly one of the issues which regulation must address.“

Michael Redley

„My first conclusion and demand regarding regulatory practices is that examinations by several authorities of *one and the same issue* should be avoided. Once is enough!“

Jan Mojto

„I think that we can agree - on the basis of what has been said here, and by many others in Europe and elsewhere - that the convergence we are talking about, the convergence of technological structures for the transmission of media content is in itself no argument in favour of dropping regulation.“

Albert Scharf

„The Commission considers that, in order to contribute to a common understanding and a consistent application of the rules across the Community, it is necessary to encourage cooperation between national regulators.“

Spyros Pappas

„Only when sufficient experience is available can we, to my mind, begin considering harmonisation or community-wide standardisation of organisational structures in the field of media regulation.“

Michael Holoubek