

# **Children and Young People in the new media landscape**

***Stockholm, 13 February 2001***

## **European Commission orientations for future developments**

by

**Jean-Eric de Cockborne**

Minister,

Ladies and Gentlemen,

I would like to start by congratulating the Swedish Presidency initiative to organise this event. The protection of minors and young people in the new media landscape is a complex issue that has important consequences for the future of our European societies, and where initiatives must be taken in the context of fast-moving and fundamental technological and economic changes.

Originally, there were only few broadcasters in the Member States and broadcasting was terrestrial. Regulation fell exclusively into the competence of the Member State the broadcaster was located in. With the introduction of cable networks and satellites the situation has changed; broadcasters are not limited anymore to a specific Member State. The resulting need for establishing a Community framework has been dealt with by the establishment in 1989 of the Television without Frontiers Directive, later amended in 1997. The Directive establishes the fundamental principle of regulation by the country of origin. For that purpose, it coordinates a number of regulatory issues, in particular the protection of minors from harmful content, both in the programmes themselves and in advertising material, without limiting the protection to advertising specifically destined to minors.

**The 3<sup>rd</sup> Report** on the implementation of the Directive concludes that the

Directive continues to function effectively as a means of ensuring the freedom to provide television services in the Community. Nevertheless, whilst the Directive is currently achieving its objective, it is clear that, largely as a result of the introduction of digital technology and the development of the Internet, access to audiovisual works is undergoing a profound change. The nature of these developments is such as to call for a review of certain provisions in the Directive. For example, digital technology permits a wide range of new advertising techniques for which the current provisions may not be appropriate. Digital technology also allows for a vast increase in the number of available channels, and hard-disk recording technologies allow viewers effectively to construct their own viewing schedules. Increased viewer control has the potential to alter usage patterns and may have implications for the measures in the Directive concerning notably the protection of minors.

Following the request of Article 22b of the Directive Television without Frontiers that the Commission investigates the issue of parental control of television broadcasting, a study was carried out by a consultant (Oxford University). It concluded that digital television offered in comparison to analogue technology the chance to develop far more reliable, sophisticated and secure filtering systems. It further stressed that technical measures could not completely substitute for broadcaster responsibility and that a harmonised approach was to be ruled out because of the cultural diversity which characterises the European audiovisual market; however, common descriptive criteria would allow audiovisual content to be described in similar ways, whilst leaving the evaluation of such content to the competent national and regional authorities. The study further came to the conclusion that there was a need for rating systems used in the different media – cinema, television, video games, Internet – to be brought more into line with each other and made more coherent.

The development of the Internet has further complicated the situation for protecting minors. Whereas in traditional broadcasting - analogue or digital - the individual broadcaster is easily identifiable, it is difficult and sometimes impossible to identify the source of content on the Internet. Access to harmful and illegal content is easy and can even occur without any intention. In response to this challenge, the Council adopted in 1998 the Recommendation on the protection of Minors and Human dignity, which calls for the establishment of national self-regulatory frameworks, supplementing the regulatory frameworks, in order to enhance the protection of minors and human dignity in the broadcasting and Internet sectors. The Commission will publish in a couple of weeks a Report on the application of this Recommendation.

Finally, in order to promote a safer Internet, the European Parliament and the Council adopted on 25 January 1999 the multiannual Community Action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (the Safer Internet Action Plan), which provides funding for measures dealing with illegal and harmful content on the global network. Projects cover in particular the creation of a European network of hotlines, support for self-regulation and codes of conduct, rating and filtering mechanisms and awareness campaigns with respect to the potential of the Internet and its drawbacks.

### **Where do we go from there ?**

The Commission has indicated a number of principles for future evolution in its Communication on **Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age** of December 99.

It argues that technological developments do not call into question the **continuing need for measures to meet certain public interest objectives (in particular political pluralism, cultural diversity, protection of minors and human dignity, and advertising standards)**. However the means which we use to achieve these goals may have to be adapted in the light of technological and market developments. The basic rationale for regulation should be the failure of the market to achieve these objectives.. This means that regulation must be proportionate and must not go beyond what is strictly necessary to achieve these objectives. New instruments must be considered, such as **self-regulation** by the **operators themselves, where appropriate on the basis of guidelines laid down by the public authorities**. This is an appropriate and up-to-date approach to preserving the balance between the **essential principle of commercial freedom** and the **preservation of legitimate public interest objectives**. We must avoid over regulation which might hinder the development of the markets and harm Europe's competitiveness. In this sector above all, we need to safeguard vital public interest objectives without stifling innovative services and the development of a competitive European electronic content industry.

The dominant feature of the new media landscape is the convergence between sectors which were formerly distinct. The consequence is that there should be an **appropriate regulatory, and/or self-regulatory framework for all content**, however this content is accessed, **rules that should be clear to all operators** and which will therefore ensure **legal certainty** to all those concerned. In practice, this entails a graduated approach to the regulation of content services, according to the **degree of choice and control exercised by the end user**, on a scale going from

free-to-air broadcasting to pay services on the Internet..

On this basis, **we will launch a number of studies and a far-reaching public consultation** to ensure that the Directive continues to provide the **necessary flexible and clear legal framework for this sector** as well as associated activities

I would therefore like to focus on some of the work being undertaken at present, in the context of this **evaluation and the possible proposal for a new Directive in 2002.**

Article 16 of the Directive provides that television advertising should not cause moral or physical detriment to minors. When the Directive was reviewed, **the Commission gave an undertaking to carry out a study on the impact of television advertising and teleshopping on minors.**

The **aim of the study is to provide a complete picture of the legislation, regulation and other administrative practices in respect of advertising and teleshopping to children;** that is, a sort of "snapshot" of the situation across the Member States. **The study will also chart the evolution of such provisions** taking as its starting point the situation that existed before the adoption of the Directive. **In this way the Commission will be able to identify if any "trends" are apparent in terms of the handling of this issue at a national level.**

In particular, the **study will identify those provisions that are further reaching than those of the Directive** and the reasons for their adoption, as well as any draft provisions and the reasons underlying their proposal.

**The consultant has been asked to focus on a number of key issues** relating to:

- The **underlying principles** that apply to **national legislation** on television advertising and teleshopping
- Whether there are any **differences in treatment between different media** (for example between free-to-air and payTV, or between television and the press).
- The **age limits that apply in respect of television**, and whether **differences exist between television and other media.**
- The **existence and handling of any complaints** and the systems that exist for their resolution.

The **study was launched last year**, and the **final report should be available next**

**month.** Certain issues stand out, because of the **strong differences that exist between the Member States**, but also **within Member State legislation in respect of different types of sector, or law.** For example, the **definition of a "child" in terms of age varies not only from Member State to Member State, but also in terms of different service that may be advertised** (such as telecommunications or financial services). Our analysis will seek to establish the reasons that exist for these differences.

I would like to stress that **the principles that I have outlined before are fully applicable to the issue of the protection of minors**, and in respect of advertising : in particular, regulation should be limited to what is indispensable. Where some advocate that **further regulation** should be imposed on the sector, the **burden of proof** lies with those who support this view to show that such an approach would be indispensable. Such a proof must be particularly strong when the issue is not regulation, but full prohibition of certain economic activities. This is true for example in respect of complete prohibition of certain types of advertising, as has been stressed on a number of occasions by the Court of Justice.

To take an example, to justify a ban at Community level of television advertisement directed at children, it would be essential in particular to demonstrate that such a measure :

1. Would be **indispensable, i.e.** that existing provisions in the TWF Directive have failed to reach their objective, e.g. because they would give too much flexibility to Member States;
2. Would be **proportionate** to the objective to be achieved, and that no other, less restrictive measures, can achieve that objective;
3. Would not **discriminate** against television as compared to other media. This could imply that the measures would have to extend to all media, including the Internet; obviously issues of feasibility and again proportionality of such measures should be carefully assessed;
4. Would not be **in contradiction with other policy objectives.** There is a clear consensus that the European Media landscape combines public and commercial broadcasters; the latter should not be deprived from appropriate source of financing, if it is expected that quality children programming is available on commercial channels. Much of the funding for children's programming comes indeed from the associated advertising. Without such funding, broadcasters would

either have to remove children's programmes (with the result that they would watch adult programming!) or buy cheap, foreign imports, of lower quality than children's programming "made in Europe".

### **Review of the directive**

This issue will in any case be considered in the context of the Review of the Directive. As I said earlier, this will be conducted in a fully open way, and all interested parties will be able to contribute.

Three major studies in the fields covered by the Directive, have been launched. The first of these will evaluate the impact of measures to promote the distribution and production of European television programmes. It will, in particular, evaluate the effectiveness of the European content obligations in the Directive as against other measures. The second study will be a very broad one. It will analyze the recent technological and market developments in the sector and attempt to identify cause and effect relationships. It will provide the Commission with a set of likely scenarios for the future development of the market. The third study will examine the development of new advertising techniques, in particular with a view to how a separation between advertising and other forms of content could be achieved.

These will not be "ivory tower" type studies. They include an obligation for the contractor to conduct a series of workshops in Brussels next year, in order to allow for input from all interested parties.

At the beginning of 2002, the Commission will publish a consultation document based on the results of the studies. It will in addition conduct a series of hearings in 2002. At the end of that year we shall publish a Communication on the results of this consultation, together with any necessary proposals for amending the Directive.

In doing so, we shall have to bear in mind the fact that it usually takes at least 3 years for Commission proposals to evolve into legislation implemented by Member States. The Commission therefore has to take into account the likely developments in the market and has to ensure that Community legislation is flexible enough to be "future-proof". In this sector above all, we need to safeguard vital public interest objectives without stifling innovative services and the development of a competitive European electronic content industry.

### **The question we need to answer**

To conclude, I would like to sum up the challenges we face in one general question:

Does digital technology mean that, rather than thinking in terms of freedom to provide television services, we should think in terms of a more liberal regime governing freedom to provide electronic content services?

This is not a rhetorical question. The Commission does not know the answer and has certainly not come to any conclusions. I wish to stress again that the key element in the review will be openness. The Commission attaches great importance to receiving the advice and views of all those concerned. In this context, I look forward to a close and fruitful co-operation with all organisations and authorities represented here today.

Thank you.