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## **Revision of the Television without Frontiers Directive - EC proposal for an Audiovisual Media Services (AVMS) Directive**

The above trade associations jointly represent the European e-communications service providers industry. We represent over 1200 companies who employ more than a million people in Europe.

### **Which new media services are potentially covered by the draft new Directive?**

In the Commission's proposal, the revised Directive would apply to video on demand services, mobile video services, online video games and any commercial internet website which includes a significant audiovisual component.

Within these categories there is a huge range and variety of content types. The falling costs of audiovisual production combined with the ease of making content available online is leading to the emergence of an "alternative" media industry.

At the same time, new technologies are blurring the distinction between amateur and commercial content, and between niche material and mass media. It is already possible for the author of a video blog to obtain advertising funding with a few mouse clicks, and to build a million-strong audience as the result of a "viral" process of personal recommendations.

### **Why are e-communications providers concerned by the proposed new AVMS Directive?**

E-communications providers are responding to their consumers' demands for more personalised content by developing and putting on the market innovative content-based offerings, such as webstreaming, interactive digital television and mobile TV. These new services and their business models are evolving rapidly to meet consumers' imagination. They are all currently subject to regulation under the E-Commerce Directive and should be allowed to continue to grow under this proportionate regulatory regime, without being hampered by additional and unnecessary burdens.

There is no case for extending broadcasting regulation to new media as there is no evidence of current or future problems regarding, for example, the protection of minors. This is in large part due to the self-regulatory codes that new media providers have developed from the outset.

In addition, new media providers enable the distribution of a diverse range of content and European works in a way that is not possible with traditional media. These new services allow users to develop their own content, fostering creativity across Europe which encourages culture, education and knowledge. Rather than creativity being dominated by the few, innovative technological developments are allowing everyone to participate equally.

Given the highly dynamic pace of the online world, and the vital role that SMEs play in developing new services and providing new jobs, imposing additional regulation on creators and service providers would clearly undermine the Lisbon agenda. While technology lowers entry barriers for new players, the proposed regulations will raise them again.

#### **Are online audiovisual services already regulated and how?**

Online audiovisual services are already subject to important qualitative rules through the E-Commerce Directive, EU consumer protection and existing national legislation, covering protection of minors, advertising and right of reply.

In addition, in accordance with the European Council Recommendation on Minors of 1998, e-communications providers have contributed to setting up self regulatory mechanisms, such as codes of conduct, and co-regulatory instruments to deal with public policy issues. These are already implemented in Member States and involve participation and representation of all relevant stakeholders. Examples include the UK Internet Watch Foundation's code of conduct for UK video on demand (ATVOD) and the Code of Conduct for Minors' Protection on the Internet in Italy.

#### **Why should online audiovisual services continue to be covered by the E-Commerce Directive?**

As well as setting consumer protection rules, the E-Commerce Directive also establishes an Internal Market for the cross border provision of on-demand services. Subject to well defined and limited exceptions, the country of origin principle allows an e-communications service provider to offer pan-European services whilst complying with the rules of the country in which it is established.

So, although the Commission argues that the proposed AVMS Directive is necessary to establish an Internal Market for new audiovisual media services, it is, in fact, already firmly established by the E-Commerce Directive.

Indeed the proposed revisions to the TVWF Directive, as currently drafted, would foresee exemptions from the country of origin principle, which differ and go beyond those foreseen in the E-Commerce Directive. Therefore, instead of removing obstacles it will actually provide room for Member States to create new obstacles to the development of a pan-European playing field for new services.

**What is the role of e-communications providers in promoting public policy interests, such as protection of minors, and what are they currently doing?**

In the traditional broadcasting world, “broadcasters” stand out as the single point to which regulation need be applied to ensure public policy interests. A central flaw in the Commission’s proposal is that it assumes that an AVMS is the single point in the new world. That is not the case and is one of the sources of confusion in the Directive.

But it also ignores the variety of players that are already active in protecting public policy interests and notably of children. In particular, e-communications providers have developed advanced technological solutions that are increasingly used to protect minors from harmful content. Most IP or mobile TV offerings include in-built parental control options that allow parents to block children’s access to undesired channels or programmes.

The revised TVWF Directive does not address the complexities of the new media world and fails to acknowledge the steps that e-communications providers are already taking to secure public policy interests.

**How do new online audiovisual services contribute to the promotion of cultural diversity and European works?**

Unlike traditional distribution channels, which are limited in the amount of content they can offer, online services offer huge opportunities for European and independent content. Alongside the most requested titles, cinematographic works with a more limited circulation, as well as specialized catalogues and genres, such as short films and documentaries that are routinely sacrificed by traditional television programming will be more freely available.

Promoting online services is therefore the most appropriate way to stimulate a wider diffusion of European audiovisual works. The problem facing regulators is not how to force the provision of European productions, but rather how to ensure their availability for new distribution channels.

Although the Commission recognizes that content quotas are not appropriate in the online world, its proposal obliges Member States to ensure that providers of non-linear services promote access to European works where this is practicable and by means left to the Member States’ discretion. This would allow a Member State to impose quotas or investment obligations on providers of non-linear audiovisual services, which would create uncertainty and discourage investment in the development of new services.

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