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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE  
EUROPEAN PARLIAMENT, THE ECONOMIC AND SOCIAL COMMITTEE AND  
THE COMMITTEE OF THE REGIONS**

**PRINCIPLES AND GUIDELINES FOR THE COMMUNITY'S AUDIOVISUAL  
POLICY IN THE DIGITAL AGE**



## **Executive Summary**

Digital technologies are bringing about major changes in the audiovisual sector. These will very likely require the adaptation of both the regulatory framework and the various support mechanisms for this sector. It is therefore important that operators and other interested parties in the sector are informed of the Commission's intended strategy over the next five years.

Rapid growth in the audiovisual sector is also predicted. This will involve new forms of content and new means of providing it. It entails considerable potential for the creation of high-skill jobs. It is vital to ensure that this growth benefits the European audiovisual industry and does not simply result in higher levels of imports. (The Community's deficit with the USA in audiovisual trade already stands at 7 Billion Euro annually.) Connected with this is the social and cultural impact of the sector. Televisions are present in 98% of European households and the average European spends over three hours a day watching television. The audiovisual media play a major role in the transmission of social and cultural values and there are therefore major public interests at stake.

Regulatory policy in the sector is aimed at safeguarding certain public interests, such as cultural and linguistic diversity, the protection of minors and consumer protection. These are not called into question by technological development. However, following a wide-ranging consultation in recent years, new regulatory approaches and techniques would appear necessary for the future.

With regard to regulation, the Commission proposes separate approaches to the regulation of transmission infrastructure and content: services providing audiovisual content should be regulated according to their nature and not according to their means of delivery. Adaptation should be evolutionary rather than revolutionary. A balanced approach to public service broadcasting is needed and self-regulatory mechanisms may well play a bigger role in achieving public interest objectives. In the light of technological developments, the Commission considers that certain regulatory questions are likely to pose problems in the near future and therefore warrant further analysis now. These include cultural and linguistic diversity, questions of access to audiovisual content, the protection of minors and advertising.

With regard to support mechanisms, the principles of complementarity between national and European levels, Community added value and adaptability should apply. These are incorporated in the Commission's proposal for a new MEDIA programme. The proposed "MEDIA Plus" programme also takes account of the challenges and opportunities created by the digital age. Coordination between this and other Community actions, such as the Fifth Framework Programme for Research and Development and the "eEurope" initiative will be ensured.

In external relations, and with regard to future trade negotiations in the framework of the WTO, it is vital for the Community and its Member States to maintain their freedom of action in the audiovisual sector if Europe is to retain its cultural and linguistic diversity. Similarly, it is important that the accession countries implement rapidly and in full the Community acquis in the audiovisual sector

## TIMETABLE FOR ACTION

Action	Completion Date
Evaluative Report on the Effect of the Recommendation on the Protection of Minors in Audiovisual and Information Services	September 2000
Report on the Application of the Television Without Frontiers Directive	December 2000
Possible New Guidelines on State Aid To Cinema and TV production	2000
Communication on Legal Aspects Relating to the Cinema Sector	2000
Interim Report on the Community Statistical Information Infrastructure	October 2002
Independent Study on the Impact of Articles 4 and 5 of the Television Without Frontiers Directive (Content Requirements)	June 2002
Study into new Advertising Techniques in Television	June 2002
Review of the Television Without Frontiers Directive	December 2002
Final Report on the Community Statistical Information Infrastructure	April 2005
MEDIA PLUS Programme	January 2001 – December 2005

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## INTRODUCTION

The audiovisual sector is undergoing major changes as a result of the introduction of digital technologies, changes which will very likely require the adaptation of both the regulatory framework and the various national and Community support mechanisms in this sector. It is therefore of vital importance for the operators in this sector to benefit from a clear and predictable policy environment in which to plan investment and develop strategies for their businesses. This is essential if they are to make the most of the opportunities offered by digital broadcasting and production techniques and by new means of distribution and new types of activities, for example, via the Internet.

This Communication is intended to contribute towards that predictability by setting out the European Commission's priorities for the next five years as well as the aims and principles of the Community's audiovisual policy for the mid-term future. It follows on from a wide-ranging review of the sector carried out by the Commission over the last two years. Details of this review are given in Section 3. In addition, the Council of Ministers on 28 June 1999 adopted conclusions on the results of the Public Consultation on the Convergence Green Paper<sup>1</sup> which noted the significance of these results for the audiovisual sector, and welcomed the intention of the Commission to present more detailed regulatory principles for the sector in a forthcoming Communication.

Digital technology is already bringing about important social, cultural and educational changes and will bring about even greater changes in the future. Digitisation means not only a quantum leap in the amount of audiovisual content and information available to the citizen, but allows a wide range of new operators to participate in the production and distribution of audiovisual content and information world-wide. For the audiovisual sector major changes are already underway: it is possible that within a decade, analogue broadcasting will have been phased out in many Member States and replaced entirely by digital broadcasting. The impact of digitisation can be readily illustrated. For example, whereas cable TV networks can usually only deliver some 30 to 40 channels using analogue transmission technology, digital cable networks can not only offer hundreds of TV channels but also interactive services, voice telephony and fast Internet access. Satellite services will soon offer the same capacities and even mobile telephones can now offer Internet access and e-mail services. Set-top boxes which offer Internet access via the television at a cost of only a few hundred Euro are already on the market, and in future viewers will be able to arrange their own viewing schedules independently of actual broadcast times.

The Internet best embodies the digital revolution. At increasingly lower cost, the Internet provides access to an amount of electronic content which is, to all intents and purposes, infinite and which is potentially accessible from any point in the world. It represents a host of new opportunities for content providers including creators, producers and distributors in the audiovisual sector. In this respect, digital television is likely to play a key role: digital television services, via a set-top box or

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<sup>1</sup> Results of the Public Consultation on the Convergence Green Paper: Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (Com(1999)108)

through an integrated digital television, may well provide the main route into the home for most on-line content and for e-commerce. These developments could have profound consequences for both Community and Member State policy in the audiovisual sector. In particular, they will pose new challenges to the regulatory framework and call for a re-examination of the regulatory techniques hitherto used for the achievement of general public interest objectives.

## 1. THE AUDIOVISUAL SECTOR - WHY IT MATTERS

### *Economic growth and jobs*

The audiovisual sector has the potential to create hundreds of thousands of high-skill jobs in Europe. According to a study carried out for the Commission in 1997, the industry's overall revenues in Europe would grow by 70% by the year 2005, growth which could entail the creation of up to 350,000 high-skill jobs.<sup>2</sup> The sector directly employed 950,000 persons in Europe in 1995 and this had grown to 1,030,000 by 1997.<sup>3</sup>

The industry's growth potential is in large part due to the development of innovative services based on digital technology. For example, the Commission's Report on the Development of the Market for Television Services in the European Union notes the rapid growth of digital television in the main pay-TV markets<sup>4</sup>. The Digital Video Disc (DVD) market is also expanding rapidly, something which is of particular interest for Europe given DVD's capacity for multilingual versions of the same work. However, it is of particular significance that the development of new services for the provision of audiovisual content, such as pay-TV, pay-per-view, Near-Video-on-Demand (NVOD), is not occurring at the expense of existing means such as the cinema and the video market (both cassette and DVD). Rather than substituting for existing means of providing audiovisual content, it would seem that a complementary relationship exists.

In particular, cinema is undergoing something of a rebirth in Europe: total cinema admissions in Europe rose from 760.45 million in 1997 to 814 million in 1998<sup>5</sup>. This increase would appear to be due at least in part to the growth in the number of cinema screens in Europe (multiplex) as well as improved facilities at cinemas. In parallel the video market in Europe, particularly for the sale of videocassettes, is continuing to grow. Furthermore, the market for video games, whether played on a PC or a television monitor, is also undergoing explosive growth.

This growth in the sector poses two challenges. First, it is necessary to ensure that the legislative framework allows the audiovisual sector to maximise its potential for growth and job creation in Europe, whilst continuing to safeguard general interest objectives. Secondly, the Community must maximise the competitiveness of the

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<sup>2</sup> Norcontel : "Economic Implications of new Communication Technologies on the Audiovisual Markets" [http://europa.eu.int/comm/dg10/avpolicy/key\\_doc/new\\_comm/index.html](http://europa.eu.int/comm/dg10/avpolicy/key_doc/new_comm/index.html)

<sup>3</sup> COM (98) 0590 final: Report to the European Council - "Job opportunities in the information society : exploiting the potential of the information revolution "

<sup>4</sup> COM (1999) 540, pursuant to Article 6 of Directive 95/47/EC of the European Parliament and of the Council of 24<sup>th</sup> October 1995 on the use of standards for the transmission of television signals (O.J. L 281 , 23/11/1995 p. 0051 – 0054).

<sup>5</sup> Screen Digest, September, 1999. In 1988, total admissions in Europe were down to 592.72 million.



European audiovisual industry in order to ensure that digitisation does not simply result in a flood of imported or archive (repeated) material. The European audiovisual industry must remain capable of providing quality audiovisual content that is of relevance and importance to European citizens

In this context, one must recall the simple fact that the European audiovisual market remains overwhelmingly dominated by American productions. The annual EU trade deficit with the USA in this sector is approaching 7 billion Euro<sup>6</sup>. American productions account for between 60 and 90% of Member States' audiovisual markets (receipts from cinema ticket sales, video cassette sales and rentals and from sales of television fiction programmes), whilst the respective European share of the American market is of the order of 1 or 2%. Quite apart from the economic significance of such figures, they also have cultural implications. Preserving Europe's cultural diversity means, amongst other things, promoting the production and circulation of quality audiovisual content which reflects European cultural and linguistic identities. In fact, when it is available, European television audiences show a clear preference for audiovisual content in their own language and which reflects their own cultures and concerns: the challenge is therefore to ensure that programming of this nature – which is usually more expensive than imported material - continues to be available.

### ***The social, cultural and educational impact of the audiovisual sector***

Whilst the economic aspects and the job creating potential of the sector as outlined above are clearly major elements to be taken into account in the elaboration of Community policy, it is the social and cultural role of the audiovisual media that forms the point of departure for policy making. The social impact of these media is very significant: it is their defining feature and as such is central to any policy which addresses them. This social impact is evident from the role of television alone. Household penetration of television sets in Europe is of the order of 98% and the average European watched some 205 minutes of television a day in 1998, up 6 minutes on the previous year.<sup>7</sup> For children the figure is even higher. It is the major source of information and entertainment in European societies. This said, the continued importance of radio as medium should not be overlooked. Europeans listen to radio as much as they watch television and continue to use radio as an important source of information: significantly, the radio medium is considered by citizens to be more trustworthy than either television or the printed press.<sup>8</sup>

The audiovisual media play a central role in the functioning of modern democratic societies. Without the free flow of information; such societies cannot function. Moreover, the audiovisual media play a fundamental role in the development and transmission of social values. This is not simply because they influence to a large degree which facts about and which images of the world we encounter, but also because they provide concepts and categories - political, social, ethnic, geographical, psychological and so on - which we use to render these facts and images intelligible. They therefore help to determine not only *what* we see of the world but also *how* we see it.

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<sup>6</sup> This figure refers to American billions, i.e. 7000 million Euro.

<sup>7</sup> Analyse annuelle, IP, 1998

<sup>8</sup> Eurobarometer 48, October-November 1997.

The audiovisual industry is therefore not an industry like any other and does not simply produce goods to be sold on the market like other goods. It is in fact a cultural industry *par excellence*. It has a major influence on what citizens know, believe and feel and plays a crucial role in the transmission, development and even construction of cultural identities. This is true above all with regard to children.

## 2. AIMS AND MEANS OF THE COMMUNITY' S AUDIOVISUAL POLICY

It is for these reasons that the broadcasting sector, one of the main vectors of audiovisual content, has, since its inception, been subject to specific regulation in the general interest. This regulation has been based on the same principles, which are in turn based on common values, such as freedom of expression and the right of reply, pluralism, protection for authors and their works, promotion of cultural and linguistic diversity, protection of minors and of human dignity, consumer protection. All Member States have imposed public service obligations, which are implemented in particular by public service broadcasters. Regulation of the sector is increasingly carried out by bodies or institutions independent of government. Furthermore, Member States have implemented financial and other support instruments intended to promote the creation, production and distribution of audiovisual works.

The audiovisual policy of the European Community has incorporated these principles and common objectives and developed its own instruments according to its particular competence, notably as regards the freedom to provide services and support for the industry.

At the regulatory level, the "Television without Frontiers" Directive<sup>9</sup> established a legal framework ensuring the freedom to provide television broadcasting services in the Community, taking due account of certain well defined general interests (in particular: the protection of minors, the promotion of cultural diversity and consumer protection). As regards support measures at European level, the Media I and Media II programmes complemented and built on actions by Member States by supporting training, project development and the distribution of European works. Finally, the Community has always attached great importance to promoting technological innovation in the audiovisual sector, for example through Directive 95/47/EC on the use of standards for the transmission of television signals<sup>10</sup>, which aimed to establish an appropriate regulatory regime for the start-up phase of new digital television services. Equally, the Action Plan for the promotion of Wide Screen (16/9) Television<sup>11</sup>, contributed to the take-off of this market and there were specific actions on new technologies in the Media I and Media II programmes.

Whilst the digital revolution poses new challenges to European Union audiovisual policy, the fundamental goals of this policy remain the same, namely: to encourage the production and distribution of European works, by establishing a secure and

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<sup>9</sup> Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council; OJ EC L202/60 of 30.7.1997.

<sup>10</sup> See footnote 4

<sup>11</sup> Council Decision 93/424/EEC of 22 July 1993 on an action plan for the introduction of advanced television services in Europe, OJ EC L196/48 of 5.8.1993

stable legal framework to guarantee the freedom to provide audiovisual services on the one hand, and through appropriate support mechanisms on the other.

However, developments in the sector call for the principles and the objectives of Community policy to be set down in more detail. Moreover, Community policy must henceforth mobilise more than just the traditional market players (cinema, radio and television): there are new players whose contribution will be important if the digital revolution is to benefit the European citizen. This concerns, for example, the producers of new forms of audiovisual content, in particular for the purposes of information, education and cultural diversity.

### **3. PRINCIPLES FOR REGULATION OF THE AUDIOVISUAL SECTOR IN THE DIGITAL AGE**

The wide-ranging review of audiovisual policy recently carried out included a number of important consultative and analytical exercises, in particular:

- The Commission Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation, published in December 1997.<sup>12</sup> This led to an extensive two-stage consultation. The outcome is summarised in the Commission Communication on the results of this consultation.<sup>13</sup>
- The European Audiovisual Conference, co-organised by the Commission and the British Presidency of the EU, in Birmingham in April 1998.<sup>14</sup>
- The setting up of a High Level Group on audiovisual policy by Commissioner Marcelino Oreja in 1997. The Group published its report, entitled "The Digital Age" in October 1998.<sup>15</sup>

On 10 November 1999, the Commission also launched a major review of the regulatory framework for electronic communications infrastructure. In its Communication "Towards a new Framework for Electronic Communications Infrastructure and Associated Services: the 1999 Communications Review"<sup>16</sup>, the Commission proposes a new framework to cover all communications infrastructure and the services associated with that infrastructure. This Communication, which does not address questions concerning audiovisual content, posits five general principles for regulatory action. These are that regulation should be:

- Based on clearly defined policy objectives;

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<sup>12</sup> Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation, COM (97) 623, 03.12.1997

<sup>13</sup> See footnote 1.

<sup>14</sup> See [http://europa.eu.int/eac/bg-intro\\_en.html](http://europa.eu.int/eac/bg-intro_en.html) for details on the outcome of the Conference.

<sup>15</sup> "The Digital Age: Report of the High Level Group on Audiovisual Policy"

Office for Official Publications of the European Communities, Luxembourg. (ISBN 92-828-4690-3)  
[http://europa.eu.int/comm/dg10/avpolicy/key\\_doc/hlg\\_en.html](http://europa.eu.int/comm/dg10/avpolicy/key_doc/hlg_en.html)

<sup>16</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions "Towards a new Framework for Electronic Communications Infrastructure and Associated Services: the 1999 Communications Review" COM (1999) 539 Final, 10.11.99

- Be the minimum necessary to meet those objectives;
- Further enhance legal certainty in a dynamic market;
- Aim to be technologically neutral<sup>17</sup>, and;
- Be enforced as closely as possible to the activities being regulated.

These principles are also valid in the domain of audiovisual content regulation. However, they need to take account of the specific nature of the sector in the way set out below.

#### (1) The principle of proportionality

The principles of necessity and proportionality, as laid down in the Treaty and developed by the case law of the European Court of Justice with regard to the freedom to provide services, form the basis for the relevant Community regulatory instruments for the audiovisual sector and more generally for the Information Society. The principle of proportionality requires that the degree of regulatory intervention should not be more than is necessary to achieve the objective in question. This principle is exemplified by the relevant Community instruments: television broadcasting services are covered by the "Television without frontiers" Directive and by other instruments on intellectual property and the protection of encrypted services<sup>18</sup>, whereas audiovisual and information services other than broadcasting services are covered by the regulatory transparency mechanism adopted in 1998<sup>19</sup>, soon to be supplemented by a Directive on electronic commerce<sup>20</sup>.

Applying the proportionality test requires an in-depth analysis of the service concerned. For example, the degree to which an individual user can exercise choice and control over the content received must be taken into account. This would mean that the regulatory approach with regard to, say, the protection of minors for a scheduled free-to-air television service would entail a different regulatory approach to that for an encrypted Pay-per-View Service which required a user ID and a method of direct payment.

Taking into account the results of the consultations to date, the Commission considers that, far from having to reinvent a new regulatory framework for audiovisual content, the Community can best manage the changes taking place by building on its existing instruments and principles and where appropriate, through promoting initiatives for self-regulation.

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<sup>17</sup> Technological convergence means that services that were previously carried over a limited number of communication networks can now be carried over several competing ones. This implies a need for technological neutrality in regulation: identical services should in principle be regulated in the same way, regardless of their means of transmission.

<sup>18</sup> The Directive on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (Council Directive 93/83/EEC, OJ L 248 of 6.10.1993, p. 15) and the Directive on the legal protection of services based on, or consisting of, conditional access (Directive 98/84/EC of the European Parliament and of the Council, OJ L 320 of 28.11.1998, pp. 54-57)

<sup>19</sup> The European Parliament and Council Directive 98/48/EC amending for the third time Directive 83/189/EEC laying down a procedure for the provision of technical standards and regulations.

<sup>20</sup> Common Position adopted 7 December 1999

## (2) Separation of transport and content regulation

The review process and in particular the consultation on the Green Paper on Convergence established a consensus on the need for separate approaches to the regulation of the transport of electronic signals and the infrastructure used for this on the one hand, and the regulation of content including audiovisual content on the other. In the Commission's view, this implies:

- a need to ensure that content regulation is in accordance with the specific characteristics of given content services, and with the public policy objectives associated with those services;
- a need to ensure that content regulation addresses the specificity of the audiovisual sector, building on current structures;
- Application of an appropriate regulatory regime to new audiovisual services, recognising the uncertainties of the marketplace and the need for the initial investments involved in their launch while at the same time maintaining adequate consumer safeguards.

In applying the distinction between transport and content, particular attention must be paid to questions relating to consumers' access to content, for example with regard to EPGs and "must carry" rules<sup>21</sup>.

## (3) General interest objectives and the regulatory approach at the European level

The principles and the methodology of Community law are highly relevant to the development of a stable and legally secure regulatory framework. This is a *sine qua non* for the efficient operation and development of the market for audiovisual content in the Community. This framework must also guarantee effective protection of society's general interests, such as the freedom of expression and right to reply, protection for authors and their works, pluralism, consumer protection, the protection of minors and of human dignity and the promotion of linguistic and cultural diversity.

The Commission considers that the digital revolution does not call into question the need for audiovisual policy to identify relevant general interests and, where necessary, to protect them through the regulatory process. Technological developments, however, call for ongoing evaluation of the means and methods used, in order to ensure that they continue to be proportionate to the objectives to be achieved.

Audiovisual policy is concerned with services providing audiovisual content intended for the public: such services constitute "communication to the public"<sup>22</sup> and

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<sup>21</sup> See Section 4.2

<sup>22</sup> The concept of "communication to the public" is already found in Community law, for example in the various Directives on copyright. The definition of television broadcasting given in Article 1(a) of the Television Without Frontiers Directive is based on the concept of "television programmes intended for reception by the public".. On the other hand, services aimed essentially at enabling private

may affect certain general interests associated with the media sector as a whole (for example, with regard to copyright and neighbouring rights, protecting the integrity of artistic works, the protection of minors, of consumers, cultural diversity and so on).

Whilst the means of distribution (whether point to multipoint, such as broadcasting, or point to point, such as Video on Demand) clearly remains crucial, some new types of service may also require other factors to be taken into consideration when assessing the necessity and proportionality of any regulatory approach.

A graduated approach to regulation will be required to deal with the general interests affected by each type of service. The basic rationale for this regulation should be the failure of the market, real or potential, to reach these objectives (except in certain cases, such as the protection of minors or copyright, where market forces are not adapted to the achievement of such objectives). It should take into account the commercial or non-commercial nature of the transactions involved and the degree of control and choice which can be exercised by the users.

#### (4) Recognition of the role of public service broadcasting and the need for transparency in its financing

Public service television plays an important role in the Member States of the European Community: this is true with regard to cultural and linguistic diversity, educational programming, in objectively informing public opinion, in guaranteeing pluralism and in supplying, on a free-to-air basis, quality programming. The integration of public service broadcasting in the new digital audiovisual environment requires a balanced approach. The future of the dual system of broadcasting in Europe, comprising public and private broadcasters, depends on the role of public service broadcasters being reconciled with the principles of fair competition and the operation of a free market, in accordance with the Treaty, as interpreted by Protocol n° 32 on the system of public broadcasting in the Member States. This means that:

- Member States are free to confer, define and organise the public service remit and to decide how their public service broadcasters are to be financed (whether by licence fee, State funding, dual funding, etc.);
- the public service remit, as defined by the Member States, shall be consistent with the Community interest with regard to services of general economic interest (as assessed by the Commission);
- the funding scheme, as decided by the Member States, shall respect the principle of proportionality and not affect trading conditions and competition in the Community to an extent contrary to the common interest, in accordance with Article 86 (2) of the Treaty, as interpreted by the Protocol (while the realisation of the remit of that public service shall be taken into account) and the case law of the Court of Justice;
- while the definition of the public service remit and the related funding scheme is the responsibility of Member States, the Commission has the duty to ensure that

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correspondence (such as e-mail) do not normally affect such general interests and the protection of privacy can only be legitimately limited where activities forbidden by criminal law are concerned (for example, with regard to the communication of child pornography).

these are compatible with the Treaty, as interpreted by the case law of the Court, in respect of both state aid rules and the freedom to provide services.

Ensuring this balance at national and European level is fundamental, in particular to allow European public service broadcasters to fully exploit the possibilities offered by new information technology but also to fulfil more effectively their respective public service remits, which should, in any event, be defined by Member States.

#### (5) Self-regulation: a complementary process

Establishing a stable regulatory framework in an environment of rapid development entails further reflection on the role that self-regulation can play as a complement to the regulatory frameworks established by public authorities. The following lessons have emerged from the debate so far<sup>23</sup>:

- Whilst it is for governments and public authorities to define public interest objectives, to lay down requirements concerning the level of their protection and to adopt the regulations necessary for this effect, the operators and the users concerned can nevertheless contribute to the achievement of these same public interest objectives through the development of self-regulatory measures within the overall legal framework. Such measures can obviate the need for detailed regulation.
- Self-regulation at both national and Community level can be a good example of application of the principle of subsidiarity, as long as it does not lead to fragmentation of the Internal Market. Conversely, the development of codes of conduct at Community level should be encouraged.
- Self-regulation is more suited to certain fields than others. An example where self-regulation is likely to be less desirable and feasible is copyright, where the financial stakes are such that the rights holders will continue to need the protection of the law.
- Self-regulation must not be allowed to be used by major incumbent operations to define "rules of the game" that are best suited to their own interest to the detriment of smaller competitors and/or new market entrants.

#### (6) Regulatory authorities

The various consultations carried out at the European level lead the Commission to posit certain common guidelines for the development of regulatory authorities in the audiovisual sector:

- regulatory authorities should be independent of government and operators;

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<sup>23</sup> The German Presidency held an important seminar on self-regulation in the media at Saarbrücken on 20-21 April 1999. See <http://www.eu-seminar.de/> for the results of this seminar. On 27 September 1999 the Council adopted Conclusions on the role of self-regulation in the light of the development of new media services. OJ C 283/2 of 6.10.99

- content issues are essentially national in nature, being directly and closely connected to the cultural, social and democratic needs of a particular society; in line with the principle of subsidiarity, therefore, content regulation is primarily the responsibility of Member States;
- technological convergence requires increased co-operation between the regulators concerned (communication infrastructures, audiovisual sector, competition);
- regulatory authorities can contribute to the development and implementation of self-regulation. In this respect, the Commission will examine the utility of establishing a specific forum for European-level co-operation between regulators, operators and consumers in the audiovisual sector.

#### **4. ACTION IN THE REGULATORY FIELD**

On the basis of these principles, the Commission intends to develop the following actions.

##### **4.1. The Television Without Frontiers Directive**

Adopted in 1989, the Directive was revised in 1997 to take account of technological and market developments. Member States had until 30.12.98 to implement the Directive and the Commission's immediate priority, in line with its role as guardian of the Treaties, is to ensure that the Directive is correctly implemented and rigorously applied.

Since its inception, the Directive has provided a stable and secure legal framework for broadcasting services in the Community. Whilst future technological and market developments may require revisions to its provisions, the Directive remains today an effective instrument for point-to-multipoint communication and is well adapted to the current state of the market and technological developments.

**A report on the application of the Directive is required by the end of 2000.** In accordance with Article 26 of the Directive, a **second report is required 2 years later.** This will take into account technological developments in the sector as well as the results of **studies carried out for the Commission into the protection of minors and on advertising aimed at minors.**<sup>24</sup> Any necessary revisions to the Directive will be proposed in this context. Article 25(a) of the Directive also requires an **independent study into the impact of the Directive's provisions concerning the promotion of European works to be carried out by June 2002.** This will provide input for the report due by the end of 2002. In addition, it will provide an opportunity for an overall examination of regulatory and support instruments for the promotion of cultural and linguistic diversity with regard to the audiovisual sector.

##### **4.2. Access to audiovisual content**

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Study on Parental Control of Television Broadcasting, March 1999

[http://europa.eu.int/comm/dg10/avpolicy/key\\_doc/parental\\_control/index.html](http://europa.eu.int/comm/dg10/avpolicy/key_doc/parental_control/index.html)

Call for Tenders for a Study on the Impact of Television Advertising and Teleshopping on Minors OJ 99/S 139-102855



The audiovisual sector has been traditionally subject to certain rules which have aimed to guarantee access to certain types of content which, left to the market alone, may not always be made available. These rules may require adaptation in the future in the light of technological and market developments.

With regard to cable networks, for example, so-called "must carry" rules have obliged cable operators to make available certain television channels. In most cases, these channels have been operated by public service broadcasters. Given the limited capacity of cable in an analogue setting, "must carry" rules have involved a delicate balance between the achievement of important general interest objectives (pluralism, programming in minority languages and so on) and maintaining enough free capacity in the cable to provide access for other services. This issue is dealt with in the 1999 Communications Review<sup>25</sup>.

In a digital broadcasting environment, access to audiovisual content is not simply a question of whether certain content is accessible, but also of whether content is *readily* accessible. To navigate through the multitude of content on offer in a digital broadcasting environment, the viewer will require an Electronic Programme Guide (EPG). This will not only allow the viewer to navigate through the channels and services available, but will also offer previews of television programmes and facilitate pay-per-view and Video-on-Demand services. It will also be able to carry advertising and to support sophisticated and reliable filtering systems for the protection of minors. Clearly, the design and operation of such EPGs can influence both the presentation and availability of audiovisual content. As such, EPGs raise important questions with regard to pluralism, cultural diversity and other general interest objectives. Similarly, the Application Programme Interface (API)<sup>26</sup> plays an important role here: it is the API which decides which EPGs may be installed in decoders and digital televisions.<sup>27</sup> Technical developments may, however, lead to a situation where viewers can choose from a range of EPGs: should this be the case regulation should be reassessed in line with the principles of necessity and proportionality **At this early stage, when market and technological developments are highly unpredictable, the Commission does not propose any specific action for the audio-visual sector, but notes that this is an area to be monitored closely.**

Access to content may also raise questions of affordability: where there may be a danger of social exclusion (resulting in a society of information "haves" and "have-nots"), consumers should have access to the content in question at an affordable price. The Television Without Frontiers Directive, for example, allows Member States to ensure that events of major importance for society are available on free television.

### 4.3. Copyright Protection and the Fight against Piracy

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<sup>25</sup> Ibid. footnote 16, section 4.2.4

<sup>26</sup> The Application Programme Interface (API) can be compared to a computer operating system: it defines how software applications are managed and displayed.

<sup>27</sup> "Must carry" rules, APIs and EPGs also raise significant questions with regard to access to infrastructure and the services associated with providing such access. See the 1999 Communications Review, (ibid. footnote 16), section 4.2.5 and the Commission Report on the Development of the Market for Digital Television in the European Union, (ibid. footnote 4) for an analysis of these issues.

The Internet makes possible new ways and means of distributing audiovisual works, and digital technology makes it possible to make perfect copies of such works. This means that the protection of copyright and related rights and the fight against piracy must constitute a central element of audiovisual policy. Piracy has already reached proportions that are likely to cause serious economic harm to the rights holders of audiovisual works. However, anti-piracy legal measures at national level are not enough to fight this plague effectively<sup>28</sup>. A European and/or international framework must be used to ensure that intellectual property rights are respected on the Internet (for example, the Commission's proposal for a Directive on Copyright and Related Rights in the Information Society enhancing the protection for authors, performers and phonogram producers in the digital environment and implementing the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty adopted in December 1996,<sup>29</sup> whilst ensuring at the same time the proper functioning of the Internal Market). **The Commission considers the rapid adoption of the proposed Directive on Copyright and Related Rights in the Information Society to be of paramount importance.**

#### **4.4. The Protection of Minors**

Digital technology may in some cases render traditional approaches to the protection of minors ineffective. For example, digital receivers with integrated hard disk drives will render time of broadcast (the "watershed") a less effective method for protecting minors, particularly when increasing numbers of children have televisions and computers in their own rooms. The Internet, of course, enables access to all content hosted on the World Wide Web, as well as to news and "chat" groups, at any time.

It therefore seems likely that filtering and blocking technologies will of necessity play a larger role in protecting minors from harmful audiovisual content in the future<sup>30</sup>. This in no way implies a reduction in broadcaster responsibility nor, indeed, a reduction in the responsibilities of any other parties involved. There is also a need for greater transparency and coherence in the way age ratings are attached to audiovisual content: presently, explicit and transparent criteria for age ratings are notable more by their absence. Finally, there is the role of awareness and education in this respect: adults need to be informed both of the effects of harmful content on children and of the means at their disposal to protect them. Children, in turn, can be better educated in their use of the media: this involves the ability to find that content which is beneficial to them as well as how to better deal with harmful content.

In some respects regulation is not always an effective means of achieving these objectives. Given their greater flexibility and adaptability, codes of conduct and similar self-regulatory measures can be more effective. However, experience indicates that self-regulation is more effective when it occurs within an overall legal framework.

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<sup>28</sup> This was apparent, for example, in the hearing organised by the Commission at Munich in March 1999 on the Green Paper on Counterfeit and Piracy in the Internal Market.

<sup>29</sup> COM (97) 628 final.

<sup>30</sup> For further information and discussion on this, see the "Study on Parental Control in Television Broadcasting", [http://europa.eu.int/comm/dg10/avpolicy/key\\_doc/parental\\_control/index.html](http://europa.eu.int/comm/dg10/avpolicy/key_doc/parental_control/index.html)  
See also the Community Action Plan for Safe Use of the Internet. <http://www2.echo.lu/iap/>

In this context, the Council Recommendation on the Protection of Minors and Human Dignity<sup>31</sup> illustrates the complementarity of regulation and of self-regulation and provides a basis for testing this approach in practice. The Recommendation, which covers broadcasting as well as audiovisual and information services, notably those available on the Internet (on-line services), calls on the Member States, industry and the other parties concerned to establish national self-regulation frameworks to supplement the existing regulatory frameworks.

As stipulated in the Recommendation itself, **the Commission will present an evaluative report on its effect to the European Parliament and the Council in the final quarter of 2000.**

#### **4.5. Advertising and sponsorship**

The Television without Frontiers Directive contains a number of provisions with regard to advertising which serve to protect consumers as well as the integrity of audiovisual works and editorial independence. For example, the total amount of advertising per hour is limited and certain types of programme must not be interrupted by advertising. Advertising must also be clearly separated from other programming and surreptitious advertising is forbidden.<sup>32</sup>

Technological developments raise new questions here: for example, with regard to so-called "virtual advertising". This allows, for example, advertising banners at sporting events to be digitally "replaced" by other banners without the viewer being aware of this. Questions also arise over how to deal with advertising which is broadcast simultaneously with a television programme and which occupies only a part of the screen.

In fact, digital technology will create a whole new range of advertising and marketing possibilities, many of which cannot be foreseen today. Audiovisual services on the Internet in particular present a multitude of possibilities and thereby a whole series of questions on how to ensure that adequate levels of consumer protection apply. Both with regard to digital television and with regard to audiovisual services on the Internet, the point is not to restrict the development of new advertising techniques but to ensure that basic principles such as the prohibition of surreptitious advertising and the need for a clear separation between advertising and other material continue to apply. The Commission will therefore **carry out a study into new advertising techniques in view of a possible future evaluation of the provisions contained in the Television without Frontiers Directive, in particular with regard to interactivity and product placement**, in order to analyse how to ensure a clear distinction between advertising and other content.

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<sup>31</sup> Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity. (Official Journal L 270 of 07.10.1998, p.48).

<sup>32</sup> Other Community legal instruments also apply to advertising in the audiovisual sector, for example, Directive 84/450/EEC concerning misleading advertising, as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 so as to include comparative advertising (O.J. L 290 , 23/10/1997 p. 0018 – 0023)

#### **4.6 State Aid to cinema and television programme production: the legal framework for the cinema sector**

In its decision of 9.6.1998 on the French scheme of support to film production, the Commission set out certain specific criteria on which basis it intended to assess State aid to cinema and TV programme production under the culture derogation of Article 87 (3) (d) EC. In the same decision it gave a commitment to review the relevant aid schemes in all Member States under the above-mentioned criteria. After completion of this review, the Commission will assess in 2000 the need for the establishment of more precise guidelines for the treatment of State aid to cinema and TV programme production.

In addition, the Commission will also present during 2000 a **Communication on legal aspects relating to the cinema sector**, covering, inter alia, matters such as the definition of a European work.

### **5. PRINCIPLES FOR THE DEVELOPMENT OF COMMUNITY SUPPORT INSTRUMENTS**

The advent of the digital age presents new opportunities for producers and distributors. It also represents challenges, in particular with relation to the fragmentation of markets and the effect this can have on the financing of production.

In this context, existing support mechanisms at both national and Community level have a crucial role to play in preserving the diversity of European creation and improving the competitiveness of the industry. Globalisation means that European producers and distributors have no choice but to take into account the international dimension of the audiovisual market. Amongst other things, European support mechanisms must therefore enable them to better exploit the market both at European and global levels.

With this in mind, three principles should guide the action of the Union:

#### **5.1. Complementarity between national mechanisms and Community mechanisms**

Although they both contribute to the strengthening of the European audiovisual industry, national and Community support mechanisms often have separate aims. At the national level, the accent is on encouraging creation and production, while at the European level support mechanisms aim to enable the industry to better exploit the possibilities offered by the Internal Market. This said, the national systems are increasingly incorporating the economic realities of the sector in particular within the framework of automatic support mechanisms<sup>33</sup>.

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Automatic schemes are schemes whereby financial support (in whatever form – grants, loans, etc) is automatically given to a producer (or a distributor), either on a film-by-film basis or on the basis of a slate of films (or programmes), on the basis of an objective set of criteria. A simple example is when a particular film achieves a million entries, and the scheme provides for support at, say, 1Ecu per entry, the production/distribution company will receive 1Mecus to invest in the production of its next film. Automatic schemes reward success.

There is a need for further reflection at the European level, involving all interested parties, on how to strengthen the complementarity of the various support mechanisms, in order to develop a coherent approach.

## **5.2. Community added-value**

Community support for the sector has concentrated on distribution (including promotion), on the development of projects and of production companies as well as on vocational training. These priorities were largely confirmed by the evaluation of the MEDIA II Programme. By intervening upstream and downstream of production, they also ensure an effective complementarity with respect to national initiatives and a high added-value.

Added-value at Community level will also be sought through ensuring better synergy between the various instruments aimed at promoting content for the Information Society (audiovisual, informational and educational multimedia, content reflecting cultural and linguistic diversity etc.) as well as those directly intended to support small and medium-sized enterprises in this sector.

## **5.3. Adaptability and flexibility of support instruments**

The emergence of new types of content and of new ways of exploiting audiovisual works, together with the rapid development of the sector, requires any support programme to incorporate sufficient flexibility to take these into account. Facilities should exist to launch pilot projects, for example, and the lessons drawn from these should form the basis for the adaptation of Community support mechanisms.

# **6. ACTION IN THE FIELD OF SUPPORT MECHANISMS**

On the basis of these principles, the Commission intends to develop its actions in the following fields:

## **6.1. Cultural and Linguistic Diversity**

As outlined earlier in this Communication, cultural and linguistic diversity is a key goal of Community policy in the audiovisual sector. As the sector develops, there will be a particular need to evaluate the means by which this aim is achieved.

The digital environment would seem to call for a wider approach, at both national and Community level, encompassing not only the evolutions in the broadcasting sector (in particular, the evolution towards a model where viewers not only have a much wider choice of channels but also more control over viewing schedules) but also new forms of audiovisual content.

At this stage, when the direction of future developments is still unclear, it would be premature to opt for any particular approach. **Further analysis and information is required here.** In this respect, the timely and effective implementation of the Council decision on establishing a Community statistical information infrastructure

relating to the industry and markets of the audiovisual and related sectors is of vital importance<sup>34</sup>.

The Commission's goal, however, is clear: Europe's cultural and linguistic diversity must be assured, and as such must be a component of the development of the Information Society.

## 6.2. The new Media plus programme

The current "Media II " programme runs until the end of 2000. The Commission proposes to move forward by revising and reinforcing this instrument to take account of the challenges and opportunities created by digital technologies. The Commission's **proposal for a new "Media Plus" programme** is set out in its Communication of ..... The Media programme is of crucial importance for the future of the European audiovisual industry. In all areas of action (training, development, distribution, promotion) the new "Media Plus" programme will take account of the new digital environment . In respect of the principle of flexibility, it will open up possibilities for pilot projects which can be developed and evaluated within the course of the programme.

## 6.3. The "eEurope" initiative

To meet the challenges of the Information Society - access to investment capital, training, research, to name but a few - President Prodi, has launched "**eEurope**", a major initiative for the Information Society in Europe. It is clear that the word "Society" is at least as important as the word "Information". For this reason, **the eEurope initiative will also address the challenge of ensuring that Europeans have access to audiovisual content** - in all its forms - which meets their needs and which reflects Europe's cultural and linguistic diversity.

## 6.4. Research and Development

In the *Fifth Framework Programme for Research and Development*, a number of action lines are of interest to the audiovisual sector. For example, the "Multimedia Content and Tools" action<sup>35</sup> deals with interactive electronic publishing and digital cultural content, education and training, technologies linked to spoken and written language and questions of access to content. **Further research of this kind will be essential** for the future well-being of the sector.

## 6.5. Co-ordination of relevant Community instruments

The Commission will ensure that, in existing Community programmes and in those under development, action lines of potential benefit to operators in the audiovisual sector will avoid duplication and maximise complementarity. Particular emphasis will be placed on the **distribution of timely and relevant information to interested parties and on the adaptation of the action lines concerned to the realities of the sector.**

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<sup>34</sup> Council Decision 1999/297/EC of 26 April 1999 establishing a Community statistical information infrastructure relating to the industry and markets of the audiovisual and related sectors, O.J. L 117, 05.05.1999, p. 0039-0041

<sup>35</sup> <http://europa.eu.int/comm/dg12/rtdinf21/en/key/09.html>

## **6.6. Sharing experience between Member States**

The Commission will facilitate the exchange of information and experience between those responsible for national support mechanisms, with a view to promoting best practice and optimising complementarity with Community mechanisms. In the first instance, this will require the **establishment of an informal group of representatives from Member States** to exchange information on the operation and evaluation of national mechanisms. This group could, at a later date, go on to discuss questions of common interest, in particular as regards the linkage between national and Community support mechanisms and systems.

## **7. THE EXTERNAL DIMENSION OF COMMUNITY AUDIOVISUAL POLICY**

The development of the external dimension of the Community's audiovisual policy has two central elements: the enlargement of the European Union and the new round of multilateral trade negotiations in the framework of the World Trade Organisation. In addition, the question of co-operation between the Community and third countries or regional organisations in the audiovisual sector needs to be addressed.

### **• Enlargement of the European Union**

The enlargement of the Union offers many opportunities for the European audiovisual industry and, more generally, for cultural and linguistic diversity in Europe. In the current pre-accession phase, the central question is that of the implementation of the 'acquis communautaire' by the applicant countries, in particular the Television without Frontiers Directive and those Directives relating to intellectual property. At issue is the creation of a audiovisual "space" common to 500 million citizens, wherein the freedom to provide television services is ensured.

In addition, current progress as regards adoption of the 'acquis communautaire' pleads in favour of opening the future MEDIA Plus programme to full participation by all the applicant countries. Safeguarding and developing the local audiovisual industries and stimulating audiovisual and cultural exchange between the European Union and the applicant countries involves both cultural and industrial priorities. The Commission will examine the extent to which the individual situation of each applicant country in the audiovisual domain may justify the implementation of specific measures within the framework of pre-accession instruments.

Parallel to these two fundamental aspects of the pre-accession strategy, it is important to establish close coordination with the applicant countries in international fora and to strengthen the dialogue with all interested parties in these countries. The Commission will consider what initiatives can be taken to stimulate experience sharing between administrations, regulatory authorities and industries of the Member States on the one hand and the applicant countries on the other.

### **• The multilateral trade negotiations**

The results of the Uruguay Round negotiations for the audiovisual sector can be summarised as follows:

- Audiovisual services are covered by the GATS;

- The Community and its Member States made no commitments as regards audiovisual services in the GATS. The great majority of the trading partners in the WTO adopted the same position.
- The Community and its Member States introduced five exemptions to the application of the Most Favoured Nation (MFN) clause. (There are now 8 exemptions covering national and Community measures for the 15 Member States).

The European Community and its Member States therefore maintained their freedom of action with regard to both existing and future measures at national and Community level. This freedom of action appears all the more necessary since it is not possible today to foresee the questions and challenges which will doubtless arise out of the rapid development of the Internet.

It should be stressed that this approach, which aims to preserve and promote cultural diversity, has not by any means resulted in closure of the European market to non-European services or content. On the contrary, the European market remains one of the most open markets in the world and audiovisual industries from third countries are profiting substantially from its growth. The Commission prepared for future trade negotiations in the WTO, especially GATS 2000, through a detailed consultation of the sectors concerned. Organisations and companies from the audiovisual sector were invited to express their interests and positions by way of a questionnaire covering commercial aspects of audiovisual services. The contributions received to date show a clear wish for the room for manoeuvre negotiated in the Uruguay round to be maintained, both for existing measures and for future developments.

The Commission will continue this dialogue with industry and widen it, if necessary, to include other fields likely to affect the audiovisual sector such as, for example, investment or subsidies.

- **The development of co-operation in the audiovisual sector**

There remains considerable scope in the audiovisual sector for improving co-operation between the Community and third countries and regional and international organisations.

Close attention will be given to co-operation between the European Union and the Council of Europe, to ensure the harmonious development and the smooth operation of the European audiovisual area outside the borders of the European Union. The Commission will examine whether it would be opportune for the Community and its Member States become signatories to certain instruments of the Council of Europe (such as the Conventions on cinema co-production and on trans-frontier television).

In addition, bilateral or regional co-operation with those third countries which share the view of the European Union on the specificity of the audiovisual sector and which have similar policies as regards the promotion of cultural and linguistic diversity, can prove beneficial in several respects. It can lead to fruitful exchanges regarding ways to safeguard and develop cultural diversity in the context of globalisation. The Commission will examine ways to augment this co-operation, including through the relevant Community programmes.



- **International Dialogue**

Given the trend towards globalisation, there is an increasing need for the Community to develop its dialogue both with industry and with consumers at the international level. Fora such as the Global Business Dialogue on Electronic Commerce (GBDe) and various other industry and consumer dialogues between the EC and third countries can provide an appropriate framework for such a dialogue.

## **CONCLUSIONS**

The Commission reaffirms the fundamental principles which are at the heart of the Community's audiovisual policy. The Community should develop this policy on the basis of existing regulatory instruments and support mechanisms. Technological and market developments must be closely monitored to ensure that the relevant instruments are adapted as necessary. In this respect, and over the next five years, particular areas for attention will be the Television without Frontiers Directive, ensuring access to audiovisual content which reflects Europe's cultural and linguistic diversity, the protection of minors and consumer protection in advertising. Community support mechanisms for the audiovisual sector must be reinforced and adapted to ongoing developments and needs.

## **TIMETABLE FOR ACTION**

<b>Action</b>	<b>Completion Date</b>
Evaluative Report on the Effect of the Recommendation on the Protection of Minors in Audiovisual and Information Services	September 2000
Report on the Application of the Television Without Frontiers Directive	December 2000
Possible New Guidelines on State Aid To Cinema and TV production	2000
Communication on Legal Aspects Relating to the Cinema Sector	2000
Interim Report on the Community Statistical Information Infrastructure	October 2002
Independent Study on the Impact of Articles 4 and 5 of the Television Without Frontiers Directive (Content Requirements)	June 2002

Study into new Advertising Techniques in Television	June 2002
Review of the Television Without Frontiers Directive	December 2002
Final Report on the Community Statistical Information Infrastructure	April 2005
MEDIA PLUS Programme	January 2001 – December 2005