

2 October 2006

## **REVISION OF THE DIRECTIVE ON TV WITHOUT FRONTIERS**

### **UNICE POSITION**

The Commission has submitted a proposal for a revision amending Council Directive 89/552/EEC on the coordination of certain national provisions concerning the pursuit of television broadcasting activities. This review of the TV Without Frontiers Directive (TVWF) is an important opportunity to stimulate high value economic growth, European business competitiveness, and the advancement of European cultural and social values. Businesses in general, and “media service providers” in particular, are and will be significant providers or users of digital audiovisual content and services. Their development will be critical to the i2010 goal of promoting “an open and competitive digital economy” within the broader Lisbon Agenda for European economic growth and employment. But realisation of these benefits will depend upon a more growth-oriented Directive and a fuller implementation of Better Regulation principles than contained within the Commission’s current proposals.

In a fast changing world, a vast range of European businesses need to enhance their international competitiveness to meet the challenge of low cost overseas rivals through modernisation and the creation of new and higher value content-rich, audiovisual services. The growth of a creative, highly skilled labour force and new media sector is being driven by this endeavour and is vital for stimulating further broad-based growth throughout the EU economy.

How these new services will develop on de-centralised, dynamic and global online platforms is still to be determined. Traditional regulatory responses are unlikely to provide the innovative approaches needed to meet the challenges of audiovisual service development. But, if governments create the right environment, businesses at the cutting edge of transformation will (and already do) identify ways to ensure the most economically-efficient solutions and the safest possible environment for vulnerable social groups or values.

The reform of the TVWF is a prime opportunity to demonstrate commitment to the Commission’s better regulation principles.<sup>1</sup> The current proposals should primarily aim at enhancing innovative audiovisual media service capabilities, competitiveness and improved access to information society services, in accordance with the objectives of the i2010 programme and the Lisbon Agenda. A more straightforward regulatory framework that encourages value-added economic growth, creative industries and self-regulation is needed.

UNICE welcomes the attention that the Parliament and the Council have paid to trying to better defining the scope of the proposal in order to avoid inadvertently affecting

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<sup>1</sup> COM(2005) 97 “Better Regulation for Growth and Jobs in the European Union”

services and activities not meant to be covered by the Directive, or to impose inappropriate regulatory burdens on nascent services. While the efforts made by the rapporteur and the Presidency are appreciated, there are still outstanding issues which need to be taken into account.

Within the continuing discussions, UNICE would like to re-iterate the following points:

**1) Europe needs a growth-orientated Directive to achieve the goals of i2010 and to respond to growing international competition**

The proposed Directive should support the goals of i2010 by promoting job creation, economic growth and service development within the EU through a straightforward regulatory framework. If overly complicated regulation is applied to emerging markets, and existing sectors do not feel the benefits of liberalisation, companies may simply direct global marketing budgets or investments for new services development towards those produced and hosted outside the EU, hurting Europe's ability to respond to international competition through innovative business models. Perhaps even more fundamentally, it is important to avoid jeopardising the beneficial effects of the liberalisation of the telecommunications domain by damaging long-term investment plans.

**2) Europe must avoid fettering emerging markets with unnecessary additional regulatory burdens**

The Directive tries to look to the future and anticipate what forthcoming new media services and markets will look like. However, many new linear and 'non-linear'<sup>2</sup> media services and markets are at an early stage of development (and in some cases have even yet to emerge). Convergence is an opportunity for the development of new 'non-linear' on-demand services, but also new and modern forms of scheduled linear services, which should modernise traditional broadcast services in becoming mobile and more interactive. The development of such new services, both new linear and 'non-linear,' should be fostered and accompanied in the EU by a more deregulated environment, until and unless it is clear that self-regulation does not work.

**3) Self-regulation should be allowed to show it can fulfil policy goals for new media services**

All commercial audiovisual services already operate under relevant national and Community law. Furthermore, European audiovisual media service markets will be provided for by hundreds of thousands of content providers. In such a context, the

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<sup>2</sup> There is an on-going debate on the classification of services. Up to now "television broadcasting" has been typically given as an example of linear services, in which the provider decides upon the moment in time when a specific programme is transmitted for simultaneous viewing by the general public. Non-linear audiovisual media services usually refer to services provided by a media service provider, which has the following characteristics: 1) its principal purpose is the provision of programmes which are in a format suitable for television broadcasting, for example feature-length films, sports events, documentary, etc.; 2) the specific programme is viewed at the individual request of the user on the basis of a catalogue of programmes selected by the media service provider.

public policy goals behind the current Commission proposal can be achieved through alternative regulatory approaches such as industry self-regulation, that better suits the fast-moving nature of technology and allows for greater flexibility in adapting to change. In line with Better Regulation principles, only when such self-regulatory approaches have clearly been shown to fail should government imposed approaches be mandated.

**4) The Country of Origin principle should be re-affirmed in the new Directive as it provides vital legal certainty for providers of transnational services**

The country of origin principle is key to ensuring providers do not face 25 different legal frameworks when delivering an audiovisual service across borders. The success of the original TVWF was founded on this principle. It is vital for the continued growth of European audiovisual services that free provision continues to be ensured within the EU and that providers are guaranteed this basic level of legal certainty. Many new media businesses have also been established and developed on the legal certainty and country of origin principle provided by the eCommerce Directive. It will be important to keep this Directive as the main instrument for providing such certainty in order to support continued investment in this sector in Europe.

**5) There is no rationale for the extension of broadcast regulations to new media services**

The proposed Directive does not put forward a clear rationale for the extension of broadcast-type regulation to new media services. It mixes economic policy and social policy goals without clarifying which exactly requires the extension of scope in broadcasting regulation to be effective. Before regulation is imposed, market failure must be identified and quantified, and objective assessment made as to whether regulation is the most appropriate and proportionate solution. Economic and social policy goals are often met by other Directives, and additional measures should only focus on areas where there are genuine lacunae.

**6) Greater economic and technological differentiation of linear and non-linear services is needed to provide legal clarity for how regulation might be effective**

In arguing the need for regulation, the Commission relies heavily upon the concepts of distinct 'linear' and 'non-linear' services in its proposal for a revision of the Directive<sup>3</sup>. Better distinction is needed of and between these service types. The Directive tends to assume that all new linear and non-linear services are alike, will have the same characteristics and will compete in the same marketplace. Extensive analysis is required of the operational and commercial characteristics of service content in terms of the technological boundaries between different delivery platforms, and the degree to which market forces - including the role of consumer choice - can drive service development and deliver public policy goals over time.

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<sup>3</sup> Proposal for a DIRECTIVE AMENDING COUNCIL DIRECTIVE 89/552/EEC on the coordination of certain national provisions concerning the pursuit of television broadcasting activities

**7) Product placement in broadcasting is a global reality and is correctly recognised as necessary if European content production is to survive and grow...**

Authorisation of product placement will allow European content production to become more competitive in the context of global competition from other continents in the production area. Product placement will also enable EU producers to benefit from additional revenue streams.

**8) ...but quantitative advertising restrictions remain excessive if media service providers are to invest further in programme content**

Quantitative constraints have today become unnecessary and excessive regulatory burdens for modern media services and go against better regulation principles. As consumer trends change and techniques enable advertisements to be skipped, advertising has to evolve, as does regulation. Quantitative restrictions should be lifted to allow European media service providers to better compete in the EU and to sustain revenue streams to finance and invest in European audiovisual content.

**9) Compliance costs will hurt smaller European businesses the most**

The growth of a creative, high-skilled labour force and industry is vital to stimulating further economic growth throughout the Single Market. Their lack of resources will mean that small and medium-sized new media companies will be hurt most by the uncertain regulatory and compliance requirements imposed by the proposed Directive, creating a barrier to market entry.

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