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COMMISSION STAFF WORKING PAPER  
**PROTECTION OF MINORS AND HUMAN DIGNITY  
IN AUDIOVISUAL AND INFORMATION SERVICES**

**CONSULTATIONS ON THE GREEN PAPER**

## INTRODUCTION

The "Green paper on the protection of minors and human dignity in audiovisual and information services"<sup>1</sup> examined and opened to wide-ranging consultation a series of issues relating to the campaign to stop the movement of illegal content that is offensive to human dignity and the protection of minors from access to content which is legal but could impair their physical, mental or moral development. The Green Paper considered these questions across the full range of audiovisual and information services, from television to the Internet.

At its meeting of 16 December 1996, the Council of Ministers welcomed the Green Paper and adopted conclusions which provided pointers for the organization of the Commission's work. It asked the Commission to continue working on the Green Paper and to propose further initiatives for the Council meeting (Audiovisual Affairs/Culture) on 30 June 1997, in areas falling within the Community's jurisdiction.

In accordance with these terms of reference, this document presents the analysis and provisional conclusions drawn by the Commission on the basis of its work on the Green Paper.

### 1. THE CONSULTATION PROCESS

Coinciding with the presentation of the Green Paper to the Council meeting on 16 December 1996, consultations began among the European circles concerned - the other Union institutions, the Member States and other interested parties:

#### 1.1 Institutional consultations

- The European Parliament appointed a rapporteur (Mr Whitehead from the Committee on Culture, Youth, Education and the Media). The European Parliament is expected to deliver its opinion on the Green Paper in July 1997.
- The Economic and Social Committee adopted an opinion on 28 May 1997. As a response to these pressing questions, the Economic and Social Committee proposes setting up a European framework consisting of Community legislation together with an independent body for implementation and supervision.
- The Committee of the Regions adopted an opinion at its plenary session on 13 March 1997. In the conclusion to its opinion, the Committee insisted on the need for consistency in the legislative instruments and practices to be implemented in the Union and the Member States. To this end it identified a number of priority measures and recommended that the Commission continue its activities in a number of fields - typology, labelling and education in the media.

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<sup>1</sup> COM(96) 483 final, 16.10.1996.

## **1.2 Consultation of the Member States**

The Member States were consulted directly on 27 February at a meeting organized by the Commission. Most of the Member States also sent the Commission a written contribution in response to the Green Paper.

## **1.3 Consultation of other interested parties**

Various interested parties showed a keen interest in the issues raised by the Green Paper. Besides informal contacts, formal consultations took place in two ways:

- A consultation meeting was held in Brussels on 4 February 1997, attended by a broad range of representatives of consumers and the industries concerned.
- The Commission received sixty-five written contributions from the various sectors concerned - the world of broadcasting, program and software editors, telecommunications, commercial communications, consumer electronics, public institutions, users' groups - and other sections of society.
- Over one hundred organizations took part in the consultations either orally or in writing.

There follows a summary of the comments received during the consultation process. A list of written contributions is set out in the Annex.

## **2. ANALYSIS OF THE RESULTS OF THE CONSULTATIONS ON THE GREEN PAPER**

### **2.1 Points of consensus**

Consultations on the "Green paper on the protection of minors and human dignity in audiovisual and information services" have paved the way for a Europe-wide consensus on the aims and principle of action to be taken.

#### *2.1.1 General principles*

- Respect for the principles of the protection of minors and human dignity is a *sine qua non* for the development of the new services. For operators and users alike, these services can only develop in a harmonious fashion in a clear and stable environment of legal certainty and trust. Respect for these ethical principles is one of the favourable conditions required. It was clear from all the contributions, from whatever source, that the questions of human dignity and the protection of minors must be discussed and resolved, otherwise a potentially promising development will be held back. Answers are needed urgently.
- The fundamental democratic principles of freedom of expression and respect for privacy, enshrined in Articles 8 and 10 of the European Convention on Human

Rights,<sup>2</sup> must be observed, and any measure restricting these freedoms must be legitimate, necessary for the aim pursued, and strictly proportionate in the limitations it imposes.

- The consultations confirmed the distinction made in the Green Paper between illegal content that is offensive to human dignity and content that is legal, but liable to harm minors by impairing their physical and/or mental development. The two problems require a different approach and different solutions.
- A clear consensus emerged on the fact that the European Union has a role to play in these fields, on which work is in progress at national level to varying different degrees.

### *2.1.2 Legal framework and liability*

- There was broad agreement that, strictly speaking, there is no legal vacuum as regards the protection of minors and human dignity, not even in on-line and Internet services. According to the principle of territorial jurisdiction, the law applies on the national territory of the State and hence also applies to on-line services. The principles of the protection of minors and human dignity are clearly enshrined in international law and defined in national law (ordinary and/or criminal law).
- In television, these principles are applied on the basis of a specific and broadly approved regulatory framework, which also extends to Community level. However, with the arrival of digital technology and new audiovisual services, television is having to consider the possibility and relevance of using additional protection systems<sup>3</sup>.

In on-line services, however, the main problems stem from the application of general laws on the protection of minors and human dignity. It would appear that these laws need to be clarified and adapted in many cases if tangible results are to be achieved.

- In this context, a Europe-wide consensus is beginning to emerge on a blueprint for the assignment of responsibility to the different operators involved in the communication chain. Liability is determined by degrees according to the operator's function(s) and the extent to which he has direct contact with the content:
  - Full and complete liability of content providers, with special emphasis on their editorial role.
  - Limited liability of service providers who supply content originating elsewhere: they are liable if it is physically possible for them to identify

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<sup>2</sup> See also Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

<sup>3</sup> Although the "watershed" currently remains the principal tool used by television for protecting minors, other additional, so-called "parental control" systems are now being tested: use of special symbols, V-chip or electronic programme guides, personal code systems or the grouping of programmes by category of target audience.

harmful material which it is technically feasible to control. This type of liability is the hardest to evaluate.

- In the absence of an accepted classification of operators and functions, the question of liability for operators who merely provide access to services or communication networks remains open. However, a majority came out in favour of an absence of liability for these operators, which however, does not mean that they have no role to play, for example in informing consumers.
- Again with a view to clarification, it was generally agreed that we need to look beyond the general notions of content that is harmful to minors and offends human dignity and consider ways of working out a clearer definition of these concepts.
- Finally, on the question of enforcing the law, the debate clearly highlighted the technical difficulties involved in identifying operators and users on networks where this proved necessary. Such problems do not call into question the broad consensus on freedom of expression and the protection of privacy. Users must be able to remain anonymous and use pseudonyms, or even encoding. However, there is a need to define minimum means and appropriate procedures to enable the perpetrators of punishable offences to be identified. For example, in this context, a majority of those consulted felt that service providers should be clearly identified.

### *2.1.3 The protection of minors*

- In the world of television, the question of the protection of minors has focused on the use of parental control systems (electronic programme guides, the V-chip, etc.). The consultations highlighted three aspects in particular:
  - Parental control systems must not lead to a shift in responsibility for the protection of minors from broadcasters to parents. They must supplement rather than replace other existing systems.
  - Such systems should be introduced on a voluntary basis. Those consulted clearly rejected any statutory imposition of the anti-violence chip.
  - There appears to be a need to experiment with and evaluate different parental control systems (effectiveness, reliability, userfriendliness, availability).
- However, in the case of on-line services, the impossibility of monitoring all the content available on world networks means that the introduction of parental control systems (availability of filtering software) is vital for the protection of minors. But although such systems are indispensable, they are not in themselves sufficient. Content and service providers, particularly commercial operators, could help improve the protection of minors by adopting good practices as regards the identification and presentation of offending material (warning pages, systems for checking the age of the user, labelling of content, etc.). For the moment, self-regulation seems the best way to promote good practice, possibly backed up by government measures.
- For parental control devices to be effective, there must be a consistent system for labelling content, so that it can be filtered by software. A rational policy here would be to aim for the development of a critical mass of labelled material. A consensus emerged on the need to promote the use of the PICS protocol because of its worldwide

acceptance. However, the question of how labelling would work in practice, i.e. what kind of information would accompany the content, is still a matter for debate, although the different views expressed seem to converge on the need for two simultaneous types of labelling - description and evaluation:

- the descriptive labelling should contain information on the content from the content-producer, presented as objectively as possible;
  - the evaluation of content could give greater consideration to particular characteristics of national or local cultures and should be an easier tool to use (e.g. classification by age group).
- Information, education and awareness-raising measures for users, minors, parents and teachers are seen as a vital adjunct in order to promote the responsible use of the new services. There appear to be three fundamental aspects involved here:
    - the type of information to be conveyed, the need to adapt it to different target groups and, more generally, some form of permanent assistance for parents and teachers;
    - the timing of information and awareness-raising measures (e.g. when a customer buys a modem or signs a contract requesting a connection to an on-line service);
    - the choice of media - in this context the educational potential of the traditional media was universally acknowledged.
  - Over and above these preventive and educational measures, there was a strong demand for positive measures to be taken to promote the access of children to the new services in public places (schools, libraries, etc.) and to encourage high-quality material aimed at minors.
  - The consultation highlighted the need for an in-depth analysis of the relationship between children and the media in general terms, not just the issue of protecting minors from content harmful to them.

#### 2.1.4 *Protection of human dignity*

- On national territory, governments have the legal powers to punish infringements of the law. However, there are problems in identifying, prosecuting and punishing offenders in relation to on-line services. The instruments available to governments could be made more effective through the pooling of experience and information, the training of police officers and the judiciary, and judicial cooperation.
- The diversity of rules and their interpretation is seen by operators as an obstacle, as the rules applying in the country where content is broadcast or posted are not necessarily the same as in the country where the content is received. Besides the advantages to be gained from agreeing on a clear and positive definition of illegal content, which could form the basis for a set of common European values, a certain amount of approximation of legislation is also desirable.

## 2.2 Points of divergence

- A common need has been identified by the consultations on the Green Paper: the debate going on within the European Community on the new services must give prominence to ethical questions. Apart from the points on which consensus was reached, an analysis of the contributions reveals an extremely wide divergence between Member States in the maturity of the debate itself, the degree to which the parties involved have organized representative structures and the priority objectives or approaches adopted in response to the problem (regulation, self-regulation, etc.).
  - The maturity of the debate and the level of progress made is uneven across Europe, as the geographical origin of the contributions to the Green Paper shows: most of the professionals and users who reacted to the Green Paper are from northern Europe. The sharing of experiences between Member States was often cited as an important requirement and an area where the European Union could provide added value.
  - While some Member States have organizational structures representing industry that are capable of designing and implementing self-regulation instruments, in others, the coordination of the many different players involved is still in its infancy.
  - National responses to the problem have focused on priorities which may differ in scale: some Member States have concentrated their efforts on an isolated aspect (e.g. the campaign against child pornography); in others priority has been given to the protection of minors (e.g. violence in the media); while some countries have taken action across the board to deal with illegal and harmful content in general.
  - Similarly, individual countries have adopted different solutions when it comes to the measures taken on the ground: in some Member States the only initiatives have been in the form of self-regulation mechanisms, which are monitored to varying degrees by the public authorities; while in others legislation has also been adopted.

These differences in the situation in individual Member States contrasts with the consensus that emerged in the consultations. However, this contrast should not mask the opportunities which the consensus presents and the dangers inherent in the development of divergent approaches:

- If full advantage is taken of the consensus, there can be a quicker and more consistent response at European level. The new services will then be able to develop both nationally and across the European Union in a climate of trust.
- However, if there is no coordination, there is a danger that divergences will emerge between developments in different countries, leading to inconsistencies at European Union level. This might affect the development of transnational services and the smooth operation of the frontier-free area and could undermine the effectiveness of national measures.

Among these opportunities and dangers it is clear that, although there is a consensus on the fact that the European Union has a role to play, certain differences emerge when it comes to defining this role. All those involved in the consultation process agree on the need to share information and experiences at European Union level. Some identify areas where cooperation could be stepped up, while others go so far as to advocate a legislative approach by the European Union.

### **3. PROVISIONAL CONCLUSIONS**

#### **3.1 Summary of general principles**

After analysing the consultation process on the Green Paper, we must now consider the following principles:

- Before any further action is planned, maximum use must be made of the various existing instruments (legislation or financial assistance) which may help to satisfy some of the requirements that have been identified.
- To achieve maximum effect and avoid duplication, there must be close coordination between the various relevant activities being carried out by the Union in parallel with its work on the Green Paper<sup>4</sup>, in particular the follow-up to the Commission communication on illegal and harmful content on the Internet<sup>5</sup> and cooperation on justice and home affairs.
- The principles of proportionality and subsidiarity must be applied and particular respect paid to the cultural diversity manifested in national and local perceptions of the protection of minors and human dignity.

In the light of these principles, the results of the process of consultation on the Green Paper suggest two areas for development at European Union level: the coordination of national responses, and closer cooperation and the pooling of experience at European and international level.

#### **3.2 Coordination of national responses and Community objectives**

In the light of the broad consensus that emerged in the consultation process and the different views expressed by the European Union institutions, Member States and other interested parties concerning the European Union's role in the protection of minors and human dignity in audiovisual and information services, it is felt that national responses should be coordinated for the following reasons:

- Many national measures on the protection of minors and human dignity could be made much more effective if they could rely on coordination of national initiatives and of the agencies responsible for implementing such measures in each country.

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<sup>4</sup> See also the work of the group of European Commissioners on the protection of privacy and personal data set up by Article 29 of Directive 95/46/EC on the protection of personal data.

<sup>5</sup> COM(96) 487 final, 16.10.1996.



- In view of the importance and difficulty of defining minimum standards at international level, a common policy framework could enable the Union to bring its full weight to bear in international bodies working on the ethical principles of the global information society, as it would then have demonstrated its ability to react quickly. The participation of institutions and operators from non-member countries in the consultations on the Green Paper has shown that Europe is seen very much as a testing-ground for services which, by their very nature, are transnational. The interest aroused by a Europe-wide initiative in the ethical field constitutes a real challenge.
- The development of a coordinated approach for the protection of the fundamental rights involved in this area at European Union level would help create a favourable environment for transnational audiovisual and information services;
- The existence of a coherent framework would make it easier and quicker for the parties concerned to come up with appropriate solutions (good practices, technical devices), which could then be applied across the whole Union.

To pave the way for these significant advances, the results of the consultation process suggest that, in addition to restating general principles and objectives for the protection of minors and human dignity, practical measures to be undertaken at both national and Community level should be agreed, while maintaining enough flexibility to take into account specific national characteristics and rapid developments in audiovisual and information services. A non-binding legal instrument may seem appropriate at this stage.

The main common objectives to be attained by the European Union could be the following:

- To promote, in partnership with the public authorities and the different parties concerned, a framework of self-regulation of on-line services for the protection of minors and human dignity.
- To encourage experimentation with new methods of protecting minors and informing consumers in the world of television.
- To promote the access of minors to the new services in educational institutions and public places.
- To promote high-quality content and services aimed at young people.
- To assess the appropriateness and effectiveness of the measures being used to protect minors and human dignity.

In order to attain these objectives, the Member States must take the initiative in close cooperation with the industries and other parties concerned, particularly in the following areas:

- encouraging the participation of all the parties concerned in implementing the strategic framework, including by promoting the setting-up of representative structures at the national level; above all, all parties concerned should participate in defining the rules of self-regulation, in supervising their application and in the process of overall evaluation of the system implemented;

- clarifying and, wherever necessary, adapting existing national legislation on the protection of minors and human dignity;
- in partnership with the public authorities and the parties concerned, defining and checking the implementation of a framework of self-regulation of on-line services for the protection of minors and human dignity; this framework should supplement the existing regulatory systems<sup>6</sup> and fully respect the powers of legal bodies; the following minimum rules were stressed:
  - special presentation for content that is likely to harm minors (good practices as regards warning pages and age checks);
  - the labelling of content (which may be done by third parties) and the promotion of filtering systems based on the PICS protocol;
  - procedures, principles and practical measures to be applied in relations between operators and users and the police and courts in order to prevent the dissemination of illegal content, and in particular to make it easier to identify and prosecute offenders;
  - a centralized system for handling users' complaints and identifying illegal content<sup>7</sup>;
  - information and awareness-raising measures for users to encourage responsible use of the new services;
  - procedures and penalties to be applied when self-regulations are breached.
- encouraging broadcasting services, particularly new services, to experiment, on a voluntary basis and in a manner that complements the national and Community regulatory frameworks governing broadcasting, with new methods of protecting minors and informing consumers (use of special symbols, technical systems to help parental control, awareness-raising programmes, etc.);
- carrying out a comprehensive evaluation of the effectiveness of the new arrangements, in close cooperation with all parties concerned.

In order to be able to implement these actions coherently, it has become clear that the following areas will need support from the Community:

- fostering cooperation between the parties concerned by networking the national self-regulation and control bodies;

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<sup>6</sup> For example, all questions connected with the application and interpretation of the relevant Community law (especially the Protection of Personal Data Directive) are clearly excluded from the scope of the services' self-regulation frameworks.

<sup>7</sup> If personal data were dealt with in this context, the Protection of Personal Data Directive would apply.

- providing the appropriate framework to pool experience and step up cooperation in order to strengthen the coherence of national action by researching common methodologies and concepts:
- continuing the work on questions that are crucial for developing new audiovisual and information services but which go beyond the framework of protection of minors and human dignity; for example, there needs to be a general debate - especially in the light of judgments now being handed down in the courts of certain Member States - on the responsibility of the various operators.

### **3.3 Closer cooperation and the pooling of experience at European and international level**

Protection methods and practical solutions will emerge from various experiments conducted at local or national level. The European Union has been asked to provide appropriate frameworks not only for Community purposes but also to step up cooperation and the pooling of experience at European and international level, notably in the context of cooperation in the field of justice and home affairs.

These break down into four areas:

#### *3.3.1 Judicial and police cooperation*

Besides the exchange of information between the relevant authorities in the Member States, practical measures could be envisaged within the framework of the mechanisms laid down in Article K of the Treaty on European Union, such as training for professionals in the characteristics of the new services and cooperation in identifying illegal content and in prosecuting authors.

Furthermore, work should be done to establish a common body of rules on content that offends human dignity by conducting a comparative analysis of Member States' legislation and its enforcement by the courts. If appropriate, this study could be used later as a basis for the approximation of legislation in line with joint actions adopted in the campaign against child pornography.

#### *3.3.2 Development of relations between children and the media*

As well as being protected, children and young people must be given their rightful place within the information society. To achieve this, the following two aims must be achieved:

- to exploit the potential of the media to help educate tomorrow's citizens;
- to help tomorrow's citizens understand the media and use them responsibly.

Something that emerged from the consultation process was that the European Union has a fundamental role to play in relations between children and the media, by developing two complementary areas:

- development and utilization of European research through the following:
  - circulation of information and comparison of results between researchers;

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- support for transnational networks of researchers undertaking joint research projects of European interest;
- use of the results in other interested milieux (educators, media professionals, media regulation bodies, etc.);
- launching of specific studies needed for the continuation of Community policies in this field, especially in terms of assessing practical projects (technical arrangements, education in the media, awareness-raising campaigns, etc.);

information, mobilization and cooperation of the parties concerned with a view to developing the partnership between public authorities, distributors, parents, educators, researchers and child experts by undertaking the following work:

- promoting the circulation of information between the various professional milieux and associations concerned:
- organizing or supporting the organization of European conferences (both sectoral and transsectoral) on topics of common interest;
- setting up and supporting inter-professional networks capable of defining, implementing and evaluating pilot schemes in education in the visual image and mastery of new communication tools, particular attention being given to exploiting all national and local educational and cultural structures;

### *3.3.3 International cooperation*

Those consulted stressed that, besides taking part in the work in progress in various international forums (OECD, Council of Europe, ITU), the European Union should try to stimulate discussion and the pooling of experience between operators and other parties in the European Union and their counterparts in the rest of the world, through informal meetings.

### *3.3.4 Evaluation and monitoring*

In-depth evaluation of the results obtained by implementing the initiatives envisaged, and constant monitoring of a sector in rapid evolution, are essential. The consultation process highlighted a dual need:

- coordinated evaluation of the systems implemented at national level;
- analysis of the future implications of new audiovisual and information services for the protection of minors and human dignity.

