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EVALUATION REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity

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1. INTRODUCTION

On 24 September 1998 the Council adopted the Recommendation 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 (98/560/EC)[1] (the Recommendation).

Section III of the Recommendation invites under paragraph 4 the Commission to present an evaluation report on its application in the Member States, two years after its adoption, to the European Parliament and the Council.

With the present document, the Commission submits this report to the European Parliament and to the Council.

The development of digital media, namely in the form of the Internet, digital broadcasting and videogames constitutes a major challenge for the European Union's audiovisual policy and in particular for the protection of minors.

Originally, there were only few broadcasters in the Member States and broadcasting was terrestrial. Regulation fell exclusively into the competence of the Member State the broadcaster was located in. With the introduction of cable networks and satellites the situation has changed; broadcasters are not limited anymore to a specific Member State. The resulting need for establishing a Community framework has been dealt with by the establishment of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities,[2] amended on 30 June 1997 by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Directive Television without Frontiers)[3]. The Directive deals also with the protection of minors from harmful content, be it via watersheds or technical devices.

Digital television offers greater possibilities than analogue television both in terms of content available and technological capabilities. It therefore constitutes not only a challenge but also gives new opportunities for protecting minors. Following the request of Article 22b of the Directive Television without Frontiers that the Commission investigates the issue of parental control of television broadcasting, a study was carried out by a consultant (Oxford University)[4]. It concluded that digital television offered in comparison to analogue technology the chance to develop far more reliable, sophisticated and secure filtering systems. It further stressed that technical measures could not completely substitute for broadcaster responsibility and a harmonised approach was to be ruled out because of the cultural diversity which characterises the European audiovisual market; however, common descriptive criteria would allow audiovisual content to be described in similar ways, whilst leaving the evaluation of such content to the competent national and regional authorities. The study further came to the conclusion that there was a need for rating systems used in the different media – cinema,

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1 O.J. L 270 of 07.10.1998, p.48
2 O.J. L 298 , 17/10/1989 p. 23
3 O.J. L 202 , 30/07/1997 p. 60
4 http://europa.eu.int/comm/dg10/avpolicy/key_doc/parental_control/index.html

television, video games, Internet – to be brought more into line with each other and made more coherent. This study led to the Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee - Study on Parental Control of Television Broadcasting (COM/99/371 final).

On 5 October 2000, the European Parliament adopted a resolution on the Commission communication "Study on Parental Control of Television Broadcasting", which also covers the Internet and in which the needs for the systematic establishment of self-regulation throughout the whole territory of the European Union and for a debate on protection of minors at both national and regional level were emphasised.

The development of the Internet has further complicated the situation for protecting minors. Whereas in traditional broadcasting - analogue or digital - the individual broadcaster easily is identifiable, it is difficult and sometimes impossible to identify the source of content on the Internet. Access to harmful and illegal content is easy and can even occur without any intention.

In order to promote a safer Internet, the European Parliament and the Council adopted on 25 January 1999 Decision No 276/1999/EC adopting a multiannual Community Action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks[5] (the Safer Internet Action Plan), which provides funding for measures dealing with illegal and harmful content on the global network. Projects cover in particular the creation of a European network of hotlines, support for self-regulation and codes of conduct, rating and filtering mechanisms and awareness campaigns with respect to the potential of the Internet and its drawbacks.

As concerns audiovisual policy in particular, the technological development asks for a new approach. Traditional regulation alone, which worked in the analogue environment, is not necessarily the appropriate approach in the digital age.

In response to this challenge, the Council adopted the Recommendation, which calls for the establishment of national self-regulatory frameworks, supplementing the regulatory frameworks, in order to enhance the protection of minors and human dignity in the broadcasting and Internet sectors.

The Recommendation was a direct result of the public consultation that took place on the basis of the Commission's 1996 Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services[6]. Some clear lines of consensus emerged from the consultation, including the need - in an environment where an almost unlimited amount of content, hosted at any point in the world, can be accessed from almost any point in the world - for a self-regulatory approach supplementing the legal framework and for international cooperation.

In order to promote national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity, the Recommendation enumerates different objectives to be fulfilled by (i) the Member States, (ii) the industries and parties concerned and (iii) the Commission.

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5 O.J. L33, 6/2/1999 p. 1

6 COM (96) 483 final.

2. THE QUESTIONNAIRE

For the preparation of this evaluation report a questionnaire was addressed to the Member states on 2 August 2000 (see annex). It covers questions concerning self-regulation, code of conducts, technical and educational measures and also the question whether a better coherence between the activities protecting minors across the different media was felt to be necessary. In view of the phenomenon of convergenceand the Commission's regulatory approach of technological neutrality with respect tocommunication networks, the question whether a common approach of rating covering all audiovisual media could improve the protection of minors has been included.

Eighteen replies were received covering all the Member States (in one case, the two linguistic communities replied instead of the Member State concerned[7] and in another case the Federal Government and two regions replied[8]). One Member State did neither reply to the questions related to the Internet - as no association of operators had yet been set up – nor to the questions related to videogames as there were "no provisions"[9].

3. RESULTS

3.1. Internet

3.1.1. Self-regulation and codes of conduct

Section I (1) of the Recommendation foresees that the **Member States** foster the establishment of national frameworks for self-regulation by operators of on-line services. This necessitates at least regular contacts between the operators. In most of the Member States[10] **associations of Internet-operators** have already been founded, and in at least one Member State[11], the establishment of such an association is being discussed. Four Member States[12] have more than one representation of operators, whereas the others have a single representation. Internet Service Providers from eleven Member States[13] are members of the European Internet Service Providers Association organisation (EuroISPA)[14]. EuroIspa was founded on 6 August 1997 as the pan-European association of the Internet services providers associations of the countries of the European Union. Its objectives comprise the promotion of the Internet, the encouragement of the development of a free and open telecommunications market, the development of professional standards for the industry and the influence of the development of technical standards and the promotion of self-regulation by and the influence of the regulatory process on behalf of the Internet industry. Where established, codes of conduct[15] deal with subjects such as the responsibility of providers with respect to the content hosted, questions of protection of minors and procedures concerning complaints.

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7 Belgium
8 Austria
9 Portugal
10 Austria, Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Netherlands, Sweden, Finland, United Kingdom
11 Luxembourg
12 Germany, Spain, Italy, Finland
13 Austria, Belgium, Germany, Denmark, France, Ireland, Italy, Netherlands, Finland, United Kingdom
14 http://www.euroispa.org
15 http://www.euroispa.org/coc.html

Eight of the Member States have indicated that there is a direct access to the associations via one or several websites[16] where information on their objectives and activities can be found.

Section II (2) of the Recommendation recommends that the **industries and the parties concerned** draw up **codes of conduct** for the protection of minors and human dignity, inter alia in order to create an environment favourable to the development of new services. These should address the issues of basic rules (i) on the nature of the information to be made available to users, its timing and the form in which it is communicated, (ii) for the business providing on-line services concerned and for users and suppliers of content, (iii) on the conditions under which, wherever possible, additional tools or services are supplied to users to facilitate parental control, (iv) on the management of complaints, encouraging operators to provide the management tools and structures needed so that complaints can be sent and received without difficulties and introducing procedures for dealing with complaints and (v) on cooperation procedures between operators and the competent public authorities.

With one exception, in all Member States where associations of operators exist, such codes of conduct have been established or are being finalised[17]. One Member State[18] replied that its legislation was considered sufficiently up-to date to combat Internet crime, so that a code of conduct was not necessary. However, a variety of operators are working in that Member State on a joint « netiquette » which includes the protection of minors and which may become a code of conduct such as suggested by the competent authorities. Two Member States[19] follow the EuroIspa model.

In one Scandinavian country[20]the code of conduct concentrates on good business practice, but does not deal with the protection of minors.

The Recommendation stresses that relevant parties such as users, consumers, business and public authorities should participate in the definition, implementation and evaluation of national measures. In their replies, three Member States have underlined that public authorities and/or consumers have been involved[21].

3.1.2. Illegal and harmful content

Only three Member States[22] have mentioned **additional specific legal requirements** dealing with the operators' obligations with respect to illegal content hosted. One Member State[23] is reflecting on how to integrate rules concerning the Internet into its telecommunication law and the other Member States seem to consider the application of the civil and penal law as being sufficient to deal with illegal content.

As concerns the specific legal requirements one Member State[24] has introduced a system of three levels according to the intensity of the harm of the contents. This has requested an adaptation of the criminal law in order to cover on-line services; harmful but not illegal

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16 Austria, Belgium, Germany, Denmark, France, Ireland, Netherlands, Sweden

17 Austria, Belgium, Germany, Denmark, Spain, France, Italy, Netherlands, Sweden, Finland, United Kingdom

18 Finland

19 Austria, Belgium

20 Sweden

21 Belgium and Ireland: public authorities, Italy: public authorities and consumers

22 Germany, Italy, Sweden

23 Austria

24 Germany

content can be indexed and its distribution then is only authorised if it can be ensured by technical measures that minors cannot have access; where measures against the responsible for the content are not possible, action can be taken against the operator directly. Operators are obliged to protect minors efficiently and they have to employ a person responsible for the protection of minors or to charge an organisation with this task. The philosophy with respect to the degree of responsibility of the operator is the following: full responsibility for his own content, limited responsibility for the content hosted and no responsibility for the access to the Internet. In the two other Member States[25] specific legal requirement deal with the obligation of an operator to cooperate with justice in the case of illegal or harmful content. In one case[26] a specific Act foresees that anyone operating on the Internet bears a certain amount of responsibility for his content including the duty to remove or otherwise prevent the further distribution of information which is clearly covered by the penal codes provisions.

Only in one of the Member States **specific requirements to inform justice and/or the police on illegal content** exist[27]. Whereas the Scandinavian countries count on good practice by the operator, in one Member State[28] this subject is dealt with by the code of conduct. Two Member States[29] have let known that in practice there is an obligation of withdrawing illegal content once the operators have become aware of its existence, as this situation would fall under penal law.

Hotlines to handle complaints about harmful or illegal content have been established in nearly all Member States or are under construction.

In five Member States, especially in the context of child pornography, it is the police who offers a hotline[30]. One Member State envisages the creation of a hotline with respect to child pornography[31]. Hotlines associated to the European Network of Hotlines INHOPE[32] – which is funded by the Commission and is part of the Action plan (see below) - exist already in six Member States[33]. Hotlines from two other Member States[34] are in the process of joining INHOPE and hotlines from two additional Member States[35] have been selected for co-funding as part of the network. In one Member State[36] the large operators have abuse departments and the police is being informed on illegal content reported to; in addition, there is an Ombudsman who provides Internet users with help and support in terms of both technical problems and question of content and a specific Save the Children Hotline.

The efficiency of Hotlines may be increased, if their existence is well known to the Internet users. However, major **campaigns** have taken place only in five Member States[37] and some

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25 Italy, Sweden
26 Sweden
27 Italy
28 Belgium
29 Ireland, Luxembourg
30 Austria, Belgium, Germany, Denmark, Finland
31 Spain
32 http://www.inhope.org
33 Austria (ISPA), Germany (FSM, Newswatch, jugendschutz.net), France (AFA-France), Ireland (Hotline), Netherlands (Meldpunt), (United Kingdom(IWF))
34 Spain, Sweden
35 Denmark, Italy
36 Sweden
37 Denmark, Ireland, Netherlands, Finland, United Kingdom

information has been provided in two additional ones[38]. One Member State envisages to launch an information campaign[39].

Overall, the Member States consider the existence of **hotlines** as an **important** issue but there is divergence with respect to the appreciation of their efficiency. Probably it is still too early to draw a definite conclusion to this respect.

As regards the **geographic origin of illegal content**, nearly all Member States who replied confirm that the vast majority of those websites is located **outside of the European Union**, mainly in the USA as concerns politically extremist and sexual brutal content and Russia and Asia as concerns pornography or paedophilia.

3.1.3. Filtering and education

Specific programs for developing filtering systems, in addition to projects co-funded under the European Union's Action plan, have taken place in three Member States[40] and one Member State replied that such activities were included in the national plan of research & development, without giving additional specifications[41]. One Member State[42] stressed that the existing filtering systems such as "Websense" have been developed essentially for the English speaking market and had to be adapted. Another Member State noted[43] that, because a common labelling standard was missing, filtering systems had their limits. An obligation of the operators to **inform users on filtering and rating systems and software** to determine the age of the user exists only in one Member State[44] and in another this forms part of the operators' code of conduct[45].

In conformity with Section (II) paragraph 4 of the Recommendation **industry** has also made major efforts to contribute to the establishment of a safer Internet through research on rating and filtering systems and the establishment of "walled gardens".

In the spring of 1999 a group of leading international Internet companies and associations established the Internet Content Rating Association (ICRA) as an independent, non-profit organisation. ICRA's mission is to develop, implement and manage an internationally acceptable voluntary self-rating system which provides Internet users worldwide with the choice to limit access to content they consider harmful, especially to children[46].

Walled gardens consist of special portals where the operators guarantee the quality of sites, which may be accessed through them.

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38 Germany, Sweden

39 Spain

40 Germany, Greece, United Kingdom

41 Spain

42 Austria

43 Germany

44 France

45 Spain

46 Contrary to its predecessor RSACi which provides consumers with information about the level of sex, nudity, violence, offensive language (vulgar or hate-motivated) in websites and which reflects exclusively US-American cultural values, the ICRA enables parents across the Member States to determine individually the criteria which websites have to fulfil in order to pass the filter; for further information see www.icra.org

Campaigns for a safer use of the Internet have taken place in most of the Member States[47]. Several Member States have stressed the importance of schools as the appropriate place for educational measures.

Many Member States acknowledge the dangers of the Internet. However, none of them considers that these may have slowed down the developed of the Internet.

Section III of the Recommendation invites the **Commission** to facilitate the networking of the bodies responsible for the definition and implementation of national self-regulation frameworks and the sharing of experience and good practices and to promote multinational cooperation. The main instrument which the Commission has used is co-funding of projects under the Safer Internet Action Plan. All of these contribute in various ways to achieving the objective of networking. The first action line concerns the creation of a safer environment through the creation of a European network of hotlines (INHOPE) and links between this network and hotlines in third countries and through support for the development of guidelines at European level for codes of conduct. Another action line concerns the objective of encouraging the establishment of European filtering and rating systems and familiarising users with their use, and demonstrating the benefits of filtering and rating[48].

The Action Plan further draws particular attention to the importance of international cooperation between operators and other concerned parties in the European Union and their partners in other regions. Additional actions concern encouraging awareness in order to contribute to the trust and the confidence of parents and teachers in safer use of the Internet by children and the assessment of legal implications, in particular including questions of applicable law and procedure in view of the fact that law operates on a territorial basis - national or in the case of Community lawcovering the European Union - whereas Internet operates on a global level.

On 21 December 2000[49]the Commission adopted a Communication and a proposal for a Framework Decision combating sexual exploitation of children and child pornography, i.e. a proposal providing primarily common definitions, sanctions and incriminations. The proposal also covers the offence child pornography when committed by means of a computer system, for example the distribution of child pornography through the Internet.

3.1.4. European and international cooperation

European cooperation is welcomed by all the Member States who have replied to the questionnaire and the European Action Plan is particularly welcomed. One Member State[50] explicitly regrets the lack of harmonisation of the national laws as concerns cooperation between the Member States. Several Member States however stress that a cooperation on a European level is not sufficient and request global cooperation and the establishment of world-wide minimum standards.

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47 Austria, Belgium, Germany, Greece, Spain, Ireland, Netherlands, Luxembourg, Sweden, Finland, United Kingdom

48 5 projects are under way and the Commission is currently launching a new call for proposals. In particular the measures comprise (i) walled gardens, (ii) the adaptation of existing software to cover new languages, (iii) "family friendly" searching, (iv) third party supply of templates and lists for use in combination with filtering options built into browsers from commercial or non-commercial, values-oriented organisations and (v) benchmarking of filtering software and services (http://europa.eu.int/ISPO/iap)

49 COM/2000/854 final

50 Germany

3.2. Broadcasting

Section (I), paragraph 2 of the Recommendation invites the **Member States** to encourage broadcasters in their jurisdiction to carry out research and to experience, on a voluntary basis, with new means of protecting minors and informing viewers, as a supplement to the national and Community regulatory frameworks covering broadcasts.

According to the replies received from the Member States, **self-regulation** seems to be less strong in broadcasting in comparison to the Internet. One Member State[51] has established a system which covers various media including broadcasting (see frame below).

In some Member States there is a distinction between public and commercial broadcasters as concerns self-regulation. In five Member States public broadcasters have internal codes of conduct[52] and in one case commercial broadcasters have established a self-regulation organisation[53]. In one Member State[54] an independent Television Commission and Radio Authority is exclusively in charge of private broadcasters. In other Member States broadcasters are subject to more general rules[55] or self-regulation relates only[56] or mainly[57] to questions of protecting minors. Finally, in some Member States private broadcasters apply their individual code of conduct[58].

The Directive Television without Frontiers foresees in Article 22(3) that programs, which may be harmful to minors, are preceded by an **acoustic warning** or identified by the presence of a **visual symbol** throughout their duration. All Member States who replied to the questionnaire have transposed this Article into national law.

Filtering systems are only used for digital broadcasting. One Member State[59] distinguishes between digital public broadcasters to which the same policy applies as for analogue public broadcasters (watershed, warning by signs and acoustic means) and digital commercial broadcasters where the watershed can be replaced by a specific pin code technique. The latter technique is also used for private broadcast or pay-per-view in two Member States[60]. Electronic locking takes place in four Member States[61].

In accordance with Article 22b of the Directive Television without Frontiers the **Commission** asked the Oxford University for a study on parental control of television broadcasting[62] which came to the conclusion that in the current analogue system, the US and Canadian approach of - which is based on the so-called V-chip technology - is not technically feasible in Europe. Rather than focus on the V-chip, regulatory approaches should be directed at the opportunities and challenges of the digital environment as digital technology allows for the operation of technical devices which offer a much higher level of protection.

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51 Netherlands
52 Austria, Belgium (Wallonia), Germany, France, Ireland
53 Germany
54 United Kingdom
55 Greece, Italy
56 Italy, Finland
57 Spain
58 Belgium (Flanders), France
59 Germany
60 France; pay-per-view: United Kingdom
61 Denmark, Greece, Spain, France, Sweden
62 See web site reference in above footnote in section “introduction”

The main conclusions of the above-mentioned study were reported in a Commission communication on "Study on Parental Control of Television Broadcasting"[63].The **European Parliament** adopted a resolution on this communication[64] in which it noted the conclusions on European television systems included in the Oxford University study and expressed the hope that the work of Digital Video Broadcasting (see below) will have a favourable impact in the near future for both undertakings and families. It also emphasised the need to ensure the availability to all families of television filtering devices at an affordable price and the necessity that all television operators in the EU to agree on a code of self-regulation in respect of the protection of minors.

Section II, paragraph 4 of the Recommendation invites also **industries and parties concerned** to develop positive measures for the benefit of minors, including initiatives to facilitate their wider access to audiovisual services while avoiding potentially harmful contents.

Following receipt of the Study on Parental Control of Television Broadcasting in early 1999, the Commission consulted the DVB (Digital Video Broadcasting Consortium) on the operational requirement of technical devices to facilitate the control exercised by parents or guardians over the programmes that minors watch. The DVB comprises more than 200 organisations including broadcasters, (both public and commercial), manufacturers (of consumer and professional equipment), operators (of satellite, cable and terrestrial networks) and regulators, including the European Commission.

The DVB considers[65] that the Internet is evolving into a video-broadcasting medium at rapid speed with the advances of video streaming via ADSL and Cable Modem technologies. Further a number of operators are bringing set top boxes onto the market that provide viewers with access on their main TV sets to both traditional broadcasting sources and the Internet at a click of the remote control. The DVB considers therefore that to try to introduce a new technical system to assist parental control that applies to only digital broadcasting would unnecessarily distort the market according to the technology of delivery. It would impose a competitive disadvantage for the traditional broadcasters and broadcasting distributors. The DVB believes that any new system to assist parental control must be applied proportionately across all medium for delivery to the home. It considers that such a system may be feasible although the technical and institutional challenges should not be neglected. The DVB's approach would be to target the long-term solution without be concerned in the first instance with the problems of transition. In particular an enforced convergence between broadcasting and the Internet on a solution suitable for neither would be a retrograde step. In order to ensure the support of industry nothing should be imposed upon the market retrospectively in a way that would require changes to an existing installed base of equipment.

The DVB has also confirmed its will to play its part, and work with the Commission, representatives of the Member States and other actors in the market, to investigate a "fair description" content rating system and study how it could be made to work in the market place. In particular, the DVB is willing to (i) examine Internet rating systems and advise how they might work in a future broadcasting environment, (ii) work on technical specifications that will ensure rating data is transferred across the broadcasting transmission network and

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63 COM (1999) 371 final

64 A5-0258/2000

65 Letter of Mr Theo Peck, Chairman DVB to the Commission of 13th December 2000

(iii) play a role with others in helping to implement a broadly based consensus for an industry led solution.

3.3. Further initiatives

Legal provisions concerning the classification of videogames exist only in a minority of Member States[66]. One Member State has opted for an approach covering film, videocassettes, videogames and subscription services[67] foreseeing the indication of age limits, and another one prohibits the sale of illegal videogames and limits the distribution of videogames, which may be harmful to minors[68]. Another Member State is considering to introduce age rating[69] and one has established the legal frameworks for prohibiting illegal videogames[70]. **Self-regulation** with respect to **rating** videogames exists only in a minority of the Member states[71].

Only three Member States[72] consider that their measures concerning videogames are **effective** as concerns the protection of minors. For three Member States[73] it is too early to take any position.

Particular initiatives have been taken by two Member States[74], leaving the traditional approach of dealing individually with each distribution channel of information such as broadcast, Internet, videocassettes/DVD and videogames. These initiatives seem also to confirm that self-regulation may contribute in an efficient way to the protection of minors as regards audiovisual media, if all the parties concerned are narrowly involved:

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66 Germany, France, Ireland, Sweden, Finland, United Kingdom
67 Finland
68 Germany
69 Sweden
70 France
71 Germany, Denmark, France, Netherlands, Sweden, United Kingdom
72 Austria, Netherlands, United Kingdom
73 Belgium, Ireland, Sweden
74 Netherlands, United Kingdom

In response to the Recommendation, in the Netherlands the Dutch Institute for Classification of Audiovisual Media (NICAM - Nederlands Instituut voor de Classificatie van Audiovisuele Media) was founded on 1 December 1999. Three government departments were involved in the establishment of NICAM: the Ministry of Health, Welfare & Sport, the Ministry of Justice and the Ministry of Education, Culture & Science.

NICAM brings together Dutch public service and commercial broadcasting organisations, film and video producers, video stores, retailers and computer games distributors. In addition, a large number of academics and other organisations and persons have links with NICAM through their membership of the advisory committee or the independent complaint and appeals boards.

NICAM was set up to provide an effective and **uniform system of classification for all audio-visual media**. NICAM draws up classification guidelines, deals with complaints and is the Netherlands' principal knowledge centre when it comes to protecting young people from the detrimental effects of audio-visual media. Consumers, journalists, politicians and those involved in the classification of audio-visual media can come to NICAM with inquiries about age ranges and other forms of classification. Also, NICAM aims to provide consumers with information such that it will enable them, on the basis of **descriptive information** about a computer game, film or TV programme, to arrive at a rational decision as to whether or not they can regard the product concerned as suitable for young people. This form of information provision is new, supplementing and complementing existing and future age classifications such as that currently used by the Netherlands Board of Film Classification.

In the United Kingdom a Communications White Paper has been published, which sets out a new framework for communications regulation[75]. According to the paper, codes underpinned by statute will be developed for the most pervasive broadcast services. Work with industry will ensure effective co- and self-regulatory approaches to protection for other services, such as the Internet. Systems will be promoted to help people make informed choices about what they and their children see and hear and also efforts to develop media literacy. It foresees continuing and effective mechanisms for tackling illegal material on the Internet, such as those being pursued under the auspices of the Internet Watch Foundation. The Paper also mentions the promotion of rating and filtering systems that help Internet users control the content they and their children will see. Finally, it considers the place of the pre-classification system for videos, DVDs and computer games within the regulatory structure.

[75] www.communicationswhitepaper.gov.uk

4. CONCLUSION

The Recommendation invites the Member States, industries and parties concerned and the Commission to take steps to enhance the protection of minors and human dignity in the broadcasting and Internet sectors. The need for the establishment of a safe environment has recently been stressed by the European Parliament when it adopted the above-mentioned resolution on Parental Control. Overall, after two years, the results of the application of the Recommendation are encouraging, although interested parties and in particular consumers should have been more involved in the establishment of codes of conduct

The **Member States** have applied the Recommendation in a heterogeneous way; nevertheless it should be stressed that most of the Member States have launched campaigns for a safer use of the Internet and that some have introduced new legislation or supported measures such as hotlines to the police to deal with child pornography. The heterogeneity of the measures is not surprising, taking into account both cultural heterogeneity and the variation in development of Internet. Also, two years may be a relatively short period for fully applying the Recommendation.

Across the different audiovisual media, a decreasing intensity of activities can be recognised, whereas most efforts are devoted to the protection of minors and human dignity with respect to the Internet and the least with respect to videogames. This is not surprising as the Recommendation deals essentially with Internet. When it comes to the comparison of the actions undertaken by the individual Member States, a strong variety exists, reaching from nearly no activity at all, particular concerning the Internet, to considerable efforts establishing a common policy across the different audiovisual media.

Industry, in particular through ICRA, is working on the development ofreliable filter and rating systems for Internet which can be individually adapted to the cultural values of citizens in the different Member States. As far as digital broadcasting is concerned, work by the industry is less developed. The DVB has expressed to the Commission its willingness to lead efforts in this area provided the European legislator gives a clear sign to the industry[76].

The **Commission** has contributed to a better protection of minors in audiovisual media through the implementation of the Safer Internet Action Plan. As requested by the Member States, and as foreseen by the Action plan, the Commission will continue to strengthen European and international cooperation.

While the Recommendation is not directly linked to the Directive "Television without Frontiersthe results of this evaluation Report may well influence how a possible new Directive could deal with the protection of minors and human dignity in respect of all electronic content.

In accordance with the provisions of the Directive the Commission will launch a full-scale review which will be subject to an open and wide ranging consultation of all parties.

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[76] The last paragraph of the above-mentioned letter of 13 December from the DVB Chairman to the Commission reads: "The views of the Member States and the European Parliament in this area are clearly essential before any further work is put in hand behind any particular approach. If a consensus emerges."

The results of the Report show that the challenges are to be met with respect to the protection of minors and human dignity across all the media, be it Internet, broadcasting, videogames or supports like videocassettes and DVDs. Renewed efforts need to be made to ensure a coherent approach, in particular as convergence will continue to increase, with Internet TV, interactive broadcasting or downloading of videogames from the Internet. The involvement of users including consumers should also be encouraged. Approaches like the establishment of the Dutch NICAM-Instituteand the British Communications White Paper demonstrate that much can be achieved under coregulation or self-regulation and may constitute an orientation for further implementation of the Recommendation.

Annex

Questionnaire

Regarding 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 (98/560/EC)

Introduction

Section III (4) of the above Recommendation invites the Commission to present an evaluation report, two years after its adoption, to the European Parliament and the Council. The purpose of this questionnaire is to assist the Commission in gathering the information and viewpoints necessary in order to report in depth on the effectiveness of the Recommendation.

Background

The protection of minors in the audiovisual sector was traditionally achieved through the classification of cinema films and through the "watershed" (broadcasting television programmes likely to be harmful to minors only at times when minors are unlikely to view them). This approach is generally based on regulation. Digital technology, in particular through the Internet, allows new means of delivering and viewing audiovisual content which in turn call for new methods of protecting minors from harmful content and for eradicating illegal content which is offensive to human dignity. In response to this challenge, the Council adopted a Recommendation on 24 September 1998. In essence, this Recommendation calls for the establishment of national self-regulatory frameworks, supplementing the regulatory framework, in order to enhance the protection of minors and human dignity in the broadcasting and Internet sectors.

The Recommendation was a direct result of the public consultation that took place on the basis of the Commission's Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services. Some clear lines of consensus emerged from the consultation, including the need - in an environment where an almost unlimited amount of content, hosted at any point in the world, can be accessed from almost any point in the world - for a self-regulatory approach supplementing the legal framework. The text of the Recommendation is given in the Annex.

Questions

Internet

Has an association of Internet Service Providers (ISPs) been established in your country? Please give details of the ISP association(s).

Has a code of conduct been drawn up by the ISPs in your country? If possible, please provide a copy or the web address where it can be accessed.

To what extent were public authorities and consumers involved in the drawing up of the ISP code of conduct? Is consultation of public authorities and consumers required when the code is revised or amended?

Are there any legal requirements in your country which apply **specifically** to ISPs and how they should deal with illegal or harmful content accessed over the Internet? If so, what are they?

Are there any specific requirements for ISPs to inform the police or judicial authorities about illegal content offensive to human dignity which is available over the Internet?

Has a "hotline" for reporting harmful or illegal Internet content been established in your country? If so please give details (including web and e-mail address) of the hotline(s), including their method of financing.

Of the problematic Internet content which has been reported, approximately what proportion of this is hosted outside your country or outside the EU?

What measures and initiatives have been taken, either by public authorities or by operators, to raise public awareness of hotlines? Are these measures and initiatives judged to have been effective?

Where hotlines have been established, please give, in so far as possible, an estimation of their effectiveness in reducing the extent and accessibility of harmful and illegal content. This could include public opinion as to their effectiveness/efficiency as well as the views of operators.

Apart from any involvement in the work currently funded by the Community Action Plan on promoting safer use of the Internet, have any efforts been made, either by industry or public authorities, to develop a filtering and rating system for the Internet in your country? If so, what progress has been made and what are the difficulties encountered?

Do any obligations exist, either in law or in relevant codes of conduct, for ISPs to inform subscribers about available filtering and rating systems and age verification software?

What measures have been taken at national, local or regional level to spread awareness of safer Internet issues? Have these been part of a larger plan for "media education"? Have they been supported by public funds or by private funding (e.g. from industry or from voluntary associations) or by a mixture of public and private funding?

Is there any evidence that the development of the Internet in your country been slowed by public fears concerning harmful and illegal content which may be accessed over the Internet?

Is the current level of international co-operation in this matter, particularly within Europe, seen as sufficient? If not, what measures could be taken to improve it?

Broadcasting

Have broadcasters in your country established a system of self-regulation? Please give details of this, particularly with regard to membership?

Does this system of self-regulation include a code of conduct regarding the protection of minors and harmful content? (Please note, this question does not concern advertising specifically aimed at minors. It concerns audiovisual content which could be harmful to minors, regardless of whether this is contained in advertising or in general programming.)

Are on-screen warning icons required, either by law or by codes of conduct, for potentially harmful television programmes? Are acoustic warnings before such programmes required, either by law or by codes of conduct? Where such measures are used, are they considered to be effective?

Do any broadcasters established in your country use technical filtering devices to ensure that minors may not view harmful programmes? If so, what measures and initiatives have been taken to ensure that parents and guardians are aware of these devices and how to operate them. Are these devices held to be an effective means of protecting minors in your country?

Video Game Software

Are there any specific legal provisions in your country concerning the sale of video games? (This questions concerns the physical sale of video game software, not the provision of software over the Internet for downloading onto computers.)

Is there any self-regulatory system in place which covers questions relating to age-rating for video games? If so, please give details.

Are current measures to protect minors from harmful video games considered to be effective?

Other Content Delivery Systems

With regard to cinema, video cassette and DVD rating systems, have there been any major developments in your country since 1998?

General

Is the lack of coherence between the various rating and classification systems for audiovisual media (cinema, television, videocassettes, video games, Internet) seen as problematic in your country, e.g. in terms of creating confusion among consumers? Are any measures or initiatives being considered to introduce greater coherence in the way audiovisual media are evaluated and classified?

The Commission is aware that Member States' authorities may not be in a position to answer all the questions posed here. Nevertheless, the Commission would request that they be answered in so far as possible. Any additional information and any relevant views which might help the Commission in evaluating the effectiveness of the self-regulatory approach laid out in the Recommendation on the Protection of minors should also be given.