



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

**RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

**ON THE PROTECTION OF MINORS AND HUMAN DIGNITY AND THE RIGHT
OF REPLY IN RELATION TO THE COMPETITIVENES OF THE EUROPEAN
AUDIOVISUAL AND INFORMATION SERVICES INDUSTRY**

(presented by the Commission pursuant to Article 250 (2)
of the EC-Treaty)

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AUDIOVISUAL AND INFORMATION SERVICES INDUSTRY**

1. BACKGROUND

Transmission of the Proposal to the Council and the European Parliament COM(2004) 341 final – 2004/0117 (COD) in accordance with article 157(1) of the Treaty	7 May 2004
Opinion of the European Economic and Social Committee	9 February 2005
Opinion of the Committee of Regions	no opinion
Opinion of the European Parliament - first reading	7 September 2005

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal is for a Recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry. The proposal is a follow-up to the Second evaluation report from the Commission to the Council and the European Parliament on the application of Council Recommendation 98/560/EC 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.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT

3.1. Amendments accepted by the Commission

Amendment 1, limiting the scope of the Recommendation to “*European audiovisual and **on-line** information services industry*”.

Amendment 21, stating that nothing in this Recommendation prevents Member States from applying their constitutional provisions and other legislation and legal practices regarding free speech.

Amendment 25, stating that Member States should promoting a responsible attitude on the part of professionals, intermediaries and users of new communication media such as the

Internet by: encouraging vigilance and the reporting of pages considered illegal; drawing up a code of conduct in cooperation with professionals and regulatory authorities at national and European level; and by encouraging the audiovisual and on-line information services industry, without infringing freedom of opinion or of the press, to avoid all discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, in all audiovisual and on-line information services, and to combat all such discrimination.

Amendment 35, recommending that the Member States submit a report to the Commission on measures taken in application of this Recommendation two years after its adoption.

3.2. Amendments accepted in part or principle by the Commission

As regards children's rights, the Commission can accept in principle amendment 2 subject to the deletion of the part: *"incorporated in Part II of the Treaty establishing a Constitution for Europe"* This deletion is necessary since no reference to the Treaty establishing a Constitution can as yet be made.

The Commission can accept in principle amendment 4 subject to the deletion of the part: *"Human dignity is inalienable; it does not admit any exclusion or limitation and it constitutes the foundation and origin of all legal instruments drawn up at national and international level to protect human rights;"*.

The Commission can accept in principle amendment 6 subject to the deletion of the part: *"the adoption of measures preventing the circulation of illegal content"* This deletion is necessary since adopting such measures is covered by the Third Pillar.

The Commission can accept in principle amendment 7 subject to the following rewording: *"The **continuing** development of new information and communication technologies makes it urgent for the European Community to ensure full and adequate protection for **citizens'** interests in this field, on the one hand by guaranteeing the free delivery and free provision of audiovisual and information services and on the other by ensuring that their content is legal, respects the principle of human dignity and does not impair the overall development of minors."*

The Commission can accept amendment 8 subject to the following rewording: *"Council Recommendation 98/560/EC 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 is the first legal instrument at Community level **which addresses issues of protection of minors and of human dignity in relation to audiovisual and information services made available to the public, whatever the means of conveyance.** Article 22 of Council Directive 89/552/EEC on television without frontiers has already specifically addressed the question of the protection of minors and human dignity in television broadcasting activities;"*. This brings it more in line with Recital 5 of the 1998 Recommendation.

The Commission can accept amendment 9 subject to the addition of the following part: *"**Such actions should take into account the balance between both the principle of protection of human dignity and the principle of freedom of expression, in particular with respect to Member States' responsibility for defining the notion of incitement to hatred or discrimination in accordance with their national legislation and moral values.**"*

The Commission can accept amendment 10 subject to the following rewording: *“It is suggested that the Council and the Commission should pay special attention to the implementation of this recommendation when revising, negotiating or concluding new partnership agreements or new cooperation programmes with third countries, bearing in mind the global character of producers, distributors or providers of audiovisual content and Internet access;”*. This rewording is necessary because, in the context of negotiations with third countries, the Commission is working within the framework of negotiating directives adopted by the Council as well as a number of other constraints.

The Commission can accept amendment 11 subject to the deletion of the part: *“since prevention and greater parental control will always be the best form of protection against the dangers of the Internet;”*. The phrase *“always be the best”* is too absolute and therefore unsuitable.

The Commission can accept amendment 12 subject to the following rewording: *“On the whole, self-regulation of the audiovisual sector is proving an effective additional measure, but it is not sufficient to protect minors from messages with harmful content. The development of a European audiovisual area based on freedom of expression and respect for citizens’ rights, should be based on a continuous dialogue between national and European legislators, regulatory authorities, industries, associations, citizens and civil society;”*.

The Commission can accept amendment 14 subject to the following rewording: *“In the public consultation concerning 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 (“Television without Frontiers” Directive), it was suggested that the need to adopt measures in relation to media literacy be included among the subjects covered by Recommendation 98/560/EC;”*. “Media literacy” is the preferred term.

The Commission can accept amendment 15 subject to the addition of the word **“existing”** between the words “between” and “self- and co-regulatory bodies”.

The Commission can accept amendment 16 subject to the following rewording: *“(8) As suggested during the public consultation concerning Directive 97/36/EC, it is appropriate for the right of reply or equivalent remedies to apply to on-line media, and to take into account the specific features of the medium and service concerned.”*

The Commission can accept amendment 18 subject to the following rewording: *“When tabling its proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services, the Commission noted that the portrayal of the sexes in the media and in advertising raises important questions about the protection of the dignity of men and women, but concluded that, in the light of other fundamental rights, including the freedom and pluralism of the media, it would not be appropriate to address these questions in that proposal but that it should take stock of these questions and, if necessary, take appropriate measures.”*

The Commission can accept amendment 19 subject to the deletion of the part: *“Even though regulation is not an option, the media are nevertheless able to ban discrimination under codes of practice promoting voluntary self-regulation, or to enforce such a ban independently of their codes.”* as well as deletion of the word *“therefore”* in the next sentence.

The Commission can accept amendment 20 subject to the deletion of the part “*such as newspapers, magazines and, particularly, video games,*”.

The Commission can accept amendment 22 subject to the following rewording: “*I. RECOMMEND that the Member States, in the interests of promoting the development of the audiovisual and on-line information services industry, take the necessary measures to ensure the protection of minors and human dignity in all audiovisual and on-line information services, by:*”.

The Commission can accept amendment 23 subject to the following rewording:

“(1) considering the introduction of measures into their domestic law or practice regarding the right of reply or equivalent remedies in relation to online media with due regard for their domestic and constitutional legislative provisions and without prejudice to the possibility of adapting the manner in which it is exercised to take into account the particularities of each type of medium;

(2) promoting, in order to encourage the take-up of technological developments, in addition to and consistent with existing legal and other measures regarding broadcasting services, and in close cooperation with the parties concerned:

- action to enable minors to make responsible use of on-line audiovisual and online information services, notably by improving the level of awareness among parents, teachers and teachers of the potential of the new services and of the means whereby they may be made safe for minors, in particular through media literacy or media education programmes.

- action to facilitate, where appropriate and necessary, identification of, and access to, quality content and services for minors, including through the provision of means of access in educational establishments and public places.

Examples of possible actions concerning media literacy are outlined in Annex II

and subject to the following provisions being moved to Annex II, “Examples of possible actions concerning media literacy”:

“Annex II

Examples of possible actions concerning media literacy:

- continuing education of educators and teachers, in liaison with child protection associations, on how to use the Internet in the context of school education and on teaching methods for safe (secure) use which children must be taught,

- introduction of specific Internet training aimed at children from a very early age, including sessions open to parents, so as to explain to children and parents how to use the Internet and how to avoid the pitfalls and dangers,

- an integrated educational approach forming a permanent part of school curricula, and media literacy programmes, so as to maintain awareness of the dangers of the Internet, with particular regard to chat rooms and forums,

- *organisation of national information campaigns aimed at citizens, involving all communications media, to alert public opinion to the dangers of the Internet and the risk of criminal penalties (information about the possibility of bringing complaints or activating parental control). Specific campaigns could be aimed at target groups such as schools, parents' associations, users, etc.,*
- *distribution of information packs on the dangers of the Internet ("How to surf the Internet safely", "how to filter unwanted messages") and on the use of hotlines to which reports or complaints concerning harmful or illegal sites can be made,*
- *adequate measures to establish or improve the performance of telephone hotlines, so as to make it easier to lodge complaints about harmful sites and make it possible to report their existence.*
- *action to allow one of the most serious offences against children's dignity, child pornography on the Internet, to be combated effectively;*
- *publicity campaigns designed to condemn violence against minors and to help victims by offering psychological, moral and practical support."*

The Commission can accept amendment 24 subject to the changes and rewording in amendment 23.

The Commission can accept in principle amendment 26, subject to the deletion of the part "*considering the inclusion in their legal systems of a system of joint or cascading liability for Internet crimes;*" since this is covered by the Third Pillar and goes beyond the scope of the Recommendation; and subject to the following rewording of the fourth paragraph: "*establishing a single telephone line, **redirected to national services**, for the reporting of illegal and/or suspicious activities on the web;*".

The Commission can accept in part, amendment 29 subject to the following rewording:

*"(1) develop positive measures for the benefit of minors, including initiatives to facilitate **their wider** access to audiovisual and online information services, **while avoiding potentially harmful content**. This could include a harmonisation through cooperation between regulatory, self-regulatory and co-regulatory bodies of the Member States, and through the exchange of best practices concerning such issues as a system of common descriptive symbols indicating the age category and/or which aspects of the content have led to a certain age recommendation, which would help users to assess the content of audiovisual and online information services. This could for instance take place through the possible actions as outlined in Annex III."*

“ANNEX III

Examples of possible actions by the industries and the parties concerned for the benefit of minors:

- *the systematic provision of an effective and easy-to-use filtering system for users at the time of subscription to an access provider and developing effective filtering solutions, taking into account technological progress allowing Internet access via mobile telephones;*

- offering access services specifically intended specifically for children and equipped with an automatic filtering system operated by access providers and by mobile telephone operators;

- introducing incentives to provide a regularly updated description of the available sites, making it easier to classify sites using abbreviations common to all Member States in order to alert users to the possible harmful content of sites visited;

- posting warning banners on all search engines drawing attention to possible dangers and to the availability of telephone hotlines.

The Commission can accept in principle amendment 30 subject to the following rewording: “1a) examine the possibility of creating filters which would prevent **material containing child pornography or offending against human dignity** from passing through the Internet;”.

The Commission can accept in principle amendment 31 subject to the deletion of the part “using protocols such as PICS (Platform for Internet Content Selection)” since mentioning specific protocols which may at one point become obsolete, does not seem appropriate.

The Commission can accept in principle amendment 33 subject to the following rewording:

“IIa. **NOTE that the Commission:**

(1) **intends to promote**, in connection with the 2005-2008 multiannual Community programme on promoting safer use of the Internet and new online technologies, **information actions aimed at citizens European-wide, using all communications media, to inform the public about the risks of the Internet, how to use it responsibly and safely, how to make complaints and how to activate parental control**. Specific campaigns could be aimed at target groups such as schools, parents' associations and users,

(2) **intends to explore the possibility of introducing a European freephone number, or of extending an existing service, to assist Internet users by directing them to available complaints mechanisms and information resources and providing information for parents about the effectiveness of filtering software,**

(3) **intends to explore the possibility of supporting the establishment of a generic second level domain name reserved for monitored sites committed to respecting minors and their rights (.KID.eu for example),**

(4) **continues to maintain a constructive and ongoing dialogue with content providers' organisations, consumer organisations and all parties concerned,**

(5) **intends to facilitate and support the formation of networks by self-regulatory bodies and the exchanging of experience among them, so as to assess the effectiveness of codes of conduct and approaches based on self-regulation in order to ensure the highest possible standards of protection for minors.”**

The Commission can accept in principle amendment 36 subject to the deletion of the inappropriate part “including binding legislation at European level”.

The Commission can accept in principle amendment 37 subject to the following rewording: “*MINIMUM PRINCIPLES FOR THE IMPLEMENTATION, AT NATIONAL LEVEL, OF measures in the domestic law or practice so as to ensure the right of reply or equivalent remedies in relation to online media*”.

The Commission can accept parts of Amendment 38, in combination with some rewording and also moving some parts. The (complete) text which would be acceptable to the Commission would read as follows:

“*ANNEX 1*

Objective: introducing measures in the domestic law or practice of the Member States in order to ensure the right of reply or equivalent remedies in relation to online media, with due regard for their domestic and constitutional legislative provisions and without prejudice to the possibility to adjust its exercise to the particularities of each type of medium.

The term "medium" refers to any means of communication for dissemination to the public of edited information online such as newspapers, periodicals, radio, television and web-based news services.

– ***Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular, but not limited to, reputation and good name, have been affected by an assertion of facts in a publication or transmission should have a right of reply or equivalent remedies. Member States should ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions.***

– ***A right of reply or equivalent remedies should exist in relation to online media under the jurisdiction of a Member State.***

– ***Member States should adopt the measures needed to establish the right of reply or equivalent remedies and should determine the procedure to be followed for the exercise thereof. In particular, they should ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.***

- ***the right of reply can be ensured not only through legislation, but also through co-regulatory or self-regulatory measures;***

- ***the right of reply is a particularly appropriate remedy in the on-line environment because it allows for the instant correction of contested information and it is technically easy to attach the replies from the persons affected. However, the reply should be within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the publication or transmission to which the request refers.***

– ***Provision should be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies could be subject to review by the courts or similar independent bodies.***

– An application for exercise of the right of reply or the equivalent remedies may be rejected if the claimant does not have a legitimate interest in the publication of such a reply, or if the reply would involve a punishable act, would render the content provider liable to civil law proceedings or would transgress standards of public decency.

- the right of reply is without prejudice to other remedies available to persons whose right to dignity, honour, reputation or privacy have been breached by the media.

- Member States shall ensure that the effective exercise of the right of reply (or equivalent remedies) and the right of freedom of expression is not unjustifiably constrained.”

3.3. Conclusion

Pursuant to Article 250(2), of the EC Treaty, the Commission amends its proposals as set out above.