EURONET Position Paper on the EU’s Audiovisual Media Services Directive

Introduction

EURONET welcomes the initiatives taken on a European Community level to ameliorate the protection of minors from harmful contents of audiovisual and information services. Yet the summary overview of the most pressing issues related to children and the media reflects the need for more action on a number of points.

Children’s relationship with media and new technologies is an ambivalent one. Whilst the media contribute to the monitoring of children’s rights and highlight specific violations, this can be double-edged. Often children are presented solely as innocent victims, which can reinforce a view of them as “incapable”, rather than as social actors in their own right. In contrast, sociological accounts emphasise the opportunities provided by the media and new technology for developing children’s creativity and potential.

The relationship between children and the media industry is a very unequal power relationship between partners whose interests do not coincide. Mirroring this tension, the United Nations Convention on the Rights of the Child (UNCRC) recognises the vulnerability of children in certain circumstances but also their capacities and strengths as rights holders. It is in the spirit of Articles 12, 13 and 14 of the UNCRC that children should not only receive information but also participate themselves in the media. But in practice children’s views are routinely ignored, and in spite of the globalisation of the media, children’s access is still very unequal.

EURONET Recommendations

According to the UNCRC, the child shall have access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being (article 17); the child shall have the right to freedom of expression (article 13); and the child has the right to express her or his views in all matters affecting the child (article 12). In addition to the general principles set out in Articles 2, 3 and 12, Article 17 calls on governments to “ensure that the child has access to information and

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2 UNCRC Article 2 – Protection against all forms of discrimination;
Article 3 – The best interest of the child as a primary consideration;
Article 12 – The right to express an opinion and have that opinion taken into account, in any matter or procedure affecting the child and giving due weight to the child’s views.
material from a diversity of national and international sources” and to “encourage the
development of guidelines to protect children from harmful material.”

Using the UNCRC as a foundation, EURONET has the following recommendations:

- **In order to promote children’s safety to the maximum extent possible,** the European Commission, in conjunction with the Member States, must build upon the measures it has already taken and **play a strong role in monitoring national regulation of audiovisual and information services** (including internet).

- **Member States must be permitted to develop and retain stricter national consumer standards affecting children** than those in the revised TVWF directive. A horizontal EU approach is needed to protect children in relation to all forms of marketing, whatever the medium or sector, as children’s rights are affected by a range of cross-cutting issues and media.

- **Self-regulation for the protection of children by the industry should be improved and stimulated by the European Commission,** for example by an enforceable code of ethics. So far **self-regulation has proved to be seriously flawed,** failing to consider the best interests of the child as a primary consideration and having no means to penalise breaches.

- **The EU institutions should engage more actively with NGOs** in the sector of audio-visual and information services, as well as with the meaningful participation of children themselves, in order to elaborate strategies and projects relating to audio-visual and information services.

- **Children’s participation** is not only a child’s right, it is also a means to increase democracy. Moreover, participation proves to be an effective tool to teach children to be intelligent users and consumers and to harness them against advertising and media violence. Children’s participation in media begins with teaching children about media. Schools, parents, child-focused NGOs and media practitioners have a special role to play in this respect. Children’s participation in policy-formation is crucial, in order for them to give their views and input on the issue of media for children.

- **The Council of Ministers should allow supplementary measures to be taken by Europol** so that it **can play a stronger role** in policing the development of audio-visual and information services.

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3 The following Articles of the UNCRC are also relevant:

- Article 13. — The right to freedom of expression and to obtain and impart information;
- Article 14. — The right to freedom of conscience, thought and religion;
- Article 16. — The right to protection from interference with privacy, family, home and correspondence;
- Article 19. — The right to protection from all forms of violence, injury, abuse, neglect or exploitation;
- Article 31. — The right to participate in leisure, cultural and artistic activities;
- Article 34. — The right to protection from sexual exploitation;
- Article 36. — The right to protection from all other harmful forms of exploitation, including pornography.
In order to perfect the security of children, the European Commission, in collaboration with the EU Member States, should elaborate the initiatives that have already been adopted. The Commission should persist in following up national measures on audio-visual and information services.

EU legislators should be urged to support legislation that protects children in relation to all types of marketing practices, notably in-school marketing, direct marketing, as well as new forms of advertising and marketing practices such as via e-commerce. Direct business contacts could be set up in order to start the dialogue at a grassroots level.

The European Commission should undertake supplementary steps in order to make new technologies available to all children and young people.

- **Children and Media Violence**

Apart from the fact that media education and participation is a child’s right, media violence is a phenomenon that should be given more attention. This violation can be perceived in different ways. In the first place there is the physical and visible violence (murders, blood, shooting, fighting) in the media that is increasingly perceived as a threat to the well being of children.

Children may also be exposed to harmful or illegal images depicting violence, pornography, or racism. “Harmful” content is material that adults responsible for children, such as parents or teachers, consider harmful to those children. Interpretations of what constitutes “harmful” material varies between cultures and individuals. The definition of “illegal” content also depends on the country —what is illegal in one country can be protected as free speech in another. Illegal internet content, moreover, may be produced in one country, stored in a second and accessed in a third, complicating law enforcement.

Whereas until relatively recently, very few children had ever seen violent screen imagery (e.g. shooting, knifing, fighting, bombing), today it is relatively commonplace. Based on an overview of research articles published between 1998 and 2004, one recent study found consistent evidence that violent images in television, film, video and computer games have “substantial short-term effects on arousal, thoughts, and emotions”; these effects “increase the likelihood of aggressive or fearful behaviour in younger children, especially in boys”.

Another study found that the leisure time of at least one fifth of German males aged 12 to 17 is dominated by violent films and PC games unsuitable for children, affecting their social life, mental development and school achievement. Crime rates have increased too —and to a much greater extent among boys. The research concludes that boys in particular tend to spend too many evenings watching TV late into the night and without adult supervision, taking the opportunity to see films rated unsuitable for children that cannot legally be shown before the eleven p.m. watershed.

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Results from a recent Eurobarometer survey\(^6\) of parental attitudes in the 25 Member States also indicate that a significant proportion of children face no parental limitations on their use of television, the internet, mobile phones, or game consoles. This is the case for 22% of 7-11 year olds, 27% of 12-15 year olds, and 40% of 15-16 year olds. These findings suggest that more active measures are required within Member States, and that measures such as altering the timing of broadcasts, as indicated in the 1997 TVWF directive, are an insufficient response to the scale of the problem.

- **Children’s Presence in Advertising in the Media**

  There is one area where children are more frequently represented in the context of the media – and that is **advertising and other marketing techniques**. The fact that children are becoming more common in advertising than in the media content generally is a sign of their comparatively high economic-consumption value in society as present and future consumers. Children are used in advertising strategies for products, values and lifestyles, and to sell concepts. Yet children are a vulnerable group. They do not react as adults do. They do not easily identify marketing for what it is, and particularly more covert techniques, such as children's clubs and advertorials. Moreover they cannot defend themselves from unwanted exposure and influence.

- **Advertising**

  While the UNCRC supports access for children to the media, it also reflects concern about the risks to children. For example, children need protection from the **negative effects of certain types of advertising** that can reinforce brand loyalty, convey misleading information or suspect values (e.g. “use this product and you will gain more friends”), and encourage them to put pressure on their parents to purchase certain products.

  Children have a major influence over parental buying decisions and children have therefore become “market makers” for global companies. Young people are increasingly targeted in order to encourage a culture of regular and frequent consumption and to promote habits that will persist in adulthood.

  Advertising is mainly transmitted by TV and is expanding as the number of TV channels in Europe grows. However other forms of advertising are increasingly targeted at children too, through techniques such as kids clubs, sponsorship, free gifts, direct mail, and in-school advertising.

  The relatively few international surveys of the nature and extent of television advertising aimed at children\(^7\) have found that in most EU countries, food advertising makes up the largest category of advertised products during programmes for children, with between one (Sweden) and eight (France) advertisements an hour. Up to 95% of the food advertisements on television were

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\(^6\) Eurobarometer, *Illegal and Harmful Content on the Internet*, EB60.2 – CC-EB 2004.1, European Commission.

\(^7\) Consumers International, *A spoonful of sugar. Television food advertising aimed at children: An international comparative survey*, CI, London, 1996. Countries covered were Austria, Belgium, Denmark, Finland, France, Germany, Greece, the Netherlands, Norway, Sweden and the United Kingdom.

products high in fat, sugar or salt; the most common were sweets, pre-sweetened cereals, savoury
snacks or soft drinks.

**Impact of Advertising on Children**

An EU study in 2001 on the impact of advertising on children\(^8\) found a number of differences at
Member State level, ranging from age limits in definitions to specific provisions in certain sectors
(e.g. regarding alcohol). It also noted clear differences between the regulation of television and
other media, with the former much more heavily regulated than the latter (where there are not
always specific rules concerning children). It concluded that the number of complaints is
extremely low, and that the directive provided an “adequate and flexible framework”, with
extensive use of self-regulation.

An EU funded study led by the European Heart Network indicates a wide variation across Europe
of the proportion of advertising aimed at children that promoted unhealthy foods (e.g. high in
sugar, salt and fat). This ranged from 49\% in Italy to nearly 100\% in Denmark and the UK 89.

**Industry Regulation and Parental Control**

In general, the advertising industry believes that a minimum of legislation, together with self-
regulatory codes, are adequate to protect children. Moreover, a ban on TV advertising to children
would not prevent advertising reaching them in other ways. Instead, alongside codes, children
should be taught from a young age to be critical in interpreting advertising. Ultimately, it is seen
as the parents’ responsibility to control the access of their children to commercial
communications.

However, there is continuing concern among consumer, health, and children’s organisations
about the commercial targeting of children and young people, especially in relation to alcohol or
food products. For instance, the European Consumers Organisation (BEUC) argues that “children
do not have adults’ ability to have a critical questioning attitude to advertising. This requires
extra, relatively sophisticated skills, and their acquisition is a gradual long-term process that
varies between individual children. Even where children possess some critical facilities, being
able to distinguish advertising from programming can be extremely difficult because of
marketing techniques, such as linking product merchandising with programme characters, or the
promotion of products within competitions.”\(^{10}\) Indeed, the increasingly hidden forms which
advertising takes, and the burgeoning volume of such communication, makes it impossible, even
for well-informed parents, to protect their children effectively. One recent poll found that 84\% of
parents felt that companies targeted their children too much.\(^{11}\)

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\(^9\) The marketing of unhealthy food to children in Europe, Report of phase 1 of the project “Children, obesity and
\(^{10}\) BEUC Response to the Commission Consultation on the Review of the “Television Without Frontiers” directive,
Overall, industry attempts at self-regulation\textsuperscript{12} are seriously flawed and fail to consider the “best interests of the child” (Article 3, UNCRC) as a primary consideration. Self-regulatory systems (e.g. the ICC International Code of Advertising Practice)\textsuperscript{13} are based on voluntary codes of conduct drawn up by the advertisers, agencies and media, and are applied by self-regulatory bodies or committees set up for this purpose and funded by the advertising industry itself. Despite industry claims that such codes are effective, the European Children’s Network joins many other NGOs in arguing that they are insufficient\textsuperscript{14}. For example, most codes deal with the content rather than the volume of advertising; their wording is vague and general, leaving wide scope for creative interpretation; violations of the code are committed regularly, even by big advertisers\textsuperscript{15}; and most code committees only make recommendations, and breaches do not carry a penalty.

\textbf{Background information:}

\textbf{European Union Legislation and Declarations}

\begin{itemize}
  \item \textit{The European Convention on Trans-frontier Television of the Council of Europe}\textsuperscript{16}
    
    Especially article 7: responsibility of the broadcaster
  
  \item \textit{The European Union 1997 “Television without frontiers” Directive}\textsuperscript{20}
    
    The Directive establishes the legal frame of reference for the free movement of television broadcasting services in the Union’s 15 member states. To this end it provides for the Community co-ordination of national legislation in several areas, not least protection of minors, expressed in article 22 of the Directive.
  
  \item \textit{The European Union “Audiovisual Media Services” Directive}\textsuperscript{24}
    
    The Directive builds on the 1997 Television Without Frontiers Directive to include new media. The text of the new directive is currently under discussion.
  
  \item \textit{The European Broadcasting Union’s guidelines for programmes when dealing with the portrayal of violence.}
  
  \item \textit{The European Union Recommendation on the protection of minors and human dignity in audio-visual and information services.}
\end{itemize}

\textsuperscript{12} “Self-regulation” covers situations where social groups, such as producers or providers draw-up their own regulations in order to achieve their objectives and take responsibility for monitoring compliance.

\textsuperscript{13} Murray, J., “Interactive Advertising to Children”, speech to conference on \textit{Marketing to Children on the Net, iTV and Mobile}, London, 15 October 2002.

\textsuperscript{14} Jassem, A., \textit{An introduction to co-regulation and self-regulation in the EU}, European Public Health Association, Brussels, 2005.

\textsuperscript{15} “Don’t ask a bird to clip its own wings. Analysis of self regulation of alcohol marketing in the Netherlands”, STAP (National Foundation for Alcohol Prevention), Utrecht, 2003.
The European Union Action plan on promoting safer use of the Internet.

International/General Guidelines

- The UN Convention on the Rights of the Child: Article 17 (access to appropriate information)
- The Children’s Television Charter.
- Child rights and the media: Guidelines for journalists

EU Actions in the field of Children and Media

The introduction of new information and audiovisual services, has posed new risks for children. This is particularly the case with regard to sexual exploitation by child abusers. Child rights groups and consumer organisations, such as the European Consumers' Organisation (BEUC), urge the EU to take measures to protect children from such practices, as well as from aggressive marketing techniques in the media.

The reaction of the EU consists in encouraging the IT and audiovisual industry to develop self-regulatory frameworks. The industry however has not shown a great commitment to develop filtering and rating systems. A number of initiatives have been taken by the EU in order to improve the protection of children's and young people's rights in the media:

- Green Paper on the Protection of Minors and Human Dignity\textsuperscript{16}, European Commission 1996. This Paper opened a wide-ranging debate on the problems associated with the protection of minors and human dignity in audiovisual and information services, such as television and the Internet.

- Proposal for a Council Recommendation, 1997, presented in a Communication\textsuperscript{17}, which has resulted in the adoption of a Council Recommendation on the Protection of Minors and Human Dignity in Audiovisual and Information Services\textsuperscript{18} in 1998. This is the first legal instrument concerning the content of on-line audio-visual and information services made available on the Internet. The Recommendation, which is a legal act under Article 189 of the Treaty, aims to provide guidelines for national legislation and covers all electronic media:
  - Television broadcasters are asked to try out new digital methods of parental control (such as personal codes, filtering software);
  - On-line Internet service providers are asked to develop codes of good conduct so as to better apply and clarify current legislation.

The Recommendation offers guidelines for the development of national self-regulation regarding the protection of minors and human dignity.

\textsuperscript{16} COM (96) 483 final.
\textsuperscript{17} COM (97) 570 final.
\textsuperscript{18} Council Recommendation adopted on 24 September 1998.
Action Plan on Promoting Safe Use of the Internet,\textsuperscript{19} 1999, which refers to the 1999 Communication on Illegal and Harmful Content on the Internet.\textsuperscript{20}

In 1997 the Commission adopted the Television without Frontiers Directive\textsuperscript{21}, which focused, amongst others, on the prohibition of television programmes susceptible to seriously harm the child's development.

As required by Article 22b of the Television without Frontiers Directive, the Commission has issued a Communication on Parental Control of Television Broadcasting in 1999\textsuperscript{22}. This Communication further links in with the recent Council Recommendation on the Protection of Minors and Human Dignity in Audiovisual and Information services.

The Commission introduced the DAPHNE Programme, 1997, which is aimed at combating violence against children, adolescents and women. In autumn 1999 the Council has adopted a Common Position on the DAPHNE Programme so as to create the legal base that is still lacking. Among many projects, the Programme provides for a project aimed at protecting children from harmful contents on the Internet or any other instrument of new technologies.

The Commission's DG Education and Culture has introduced the Netd@ys Europe initiative. This is a programme aimed at promoting the effective use of on-line technology in education and training.

**TVWF**

At EU level, general principles applicable to advertising are set out in a directive on misleading advertising (1984); however it does not contain any specific rules concerning children. A 1995 directive aims to protect individuals where their personal data are automatically transmitted or stored. Although some conditions have to be met, again the directive does not contain any specific provisions regarding children, and there are concerns that children are often asked to divulge personal and family information through internet websites.

Specific rules in relation to broadcast advertising are set out in the 1989 Television Without Frontiers ("TVWF") directive, which applies to broadcasting services exclusively. The directive is intended to facilitate the free movement of TV broadcasting within the EU whilst providing protection for children from programmes that might seriously harm their development. It contains specific rules preventing children’s programmes of less than 30 minutes duration being interrupted by advertising (Article 11.5). It also prevents advertising for alcohol being aimed at children, or depicting them consuming alcohol (Article 15a). And Article 16 sets out general principles concerning advertising aimed at children. Advertising must not “cause moral or physical detriment to minors”, and must not: exhort minors to buy a product or a service by exploiting their inexperience or credulity; encourage children to persuade their parents or others to purchase the goods and services being advertised; exploit the special trust children place in

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\textsuperscript{20} Communication adopted on 11 May 1999.


\textsuperscript{22} COM (99) 0371 final of 19 July 1999.
parents, teachers or others; or unreasonably show minors in dangerous situations. An amendment to the directive in 1997 extended the scope of these Articles to include teleshopping.

The TVWF directive is implemented in all Member States, however wide variations in interpretation of the law are found between national courts. Some Member States (e.g. Flemish Community of Belgium, Denmark, and Italy) have more restrictive rules than those in the directive. The most notable examples are Greece (where TV advertising of toys is prohibited before 22:00) and Sweden (where there is a general ban on advertising directed at children under 12). This possibility was recognised in a European Court of Justice case of 9 July 1997, where it was found there were no objections as prohibition was only applied to TV channels based in Sweden, and not to those based abroad.

As part of the European Commission’s five year strategy to boost the digital economy (“i2010: European Information Society 2010”) the TVWF directive is currently being revised in order to take account of technological developments and changes in the structure of the audiovisual market. Re-named as the “Audiovisual content without frontiers directive”, the existing law would be extended to cover “non-linear” as well as “linear” audiovisual content, with a basic tier of rules covering “audiovisual commercial communications” of all kinds (e.g. conventional advertising slogans, promotional sponsorship slogans, teleshopping, split screens, interactive advertising, product placement, etc.).

In relation to child protection product placement would not be allowed, and advertising breaks would be limited to once every 30 minutes in children’s programmes. During the first reading, the European Parliament asked Member States and the Commission to encourage audiovisual service providers to develop a code of conduct regarding children’s programming containing or being interrupted by advertising, sponsorship or any marketing of unhealthy and inappropriate foods and drinks such as those high in fat, sugar and salt and of alcoholic beverages. Parliament opted for self-regulation for the industry in this area.

For further information contact:

**Mieke Schuurman**
Secretary-General
The European Children’s Network
Avenue des Arts 1
B-1210 Brussels
Tel: +31 187 481396
Fax: +31 187 4873 90
E-mail: mieke.schuurman@tiscali.nl
www.europeanchildrensnetwork.eu