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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL OF MINISTERS

"AUDIOVISUAL POLICY: NEXT STEPS"

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1. INTRODUCTION

1.1. For the past year, the Commission has been carrying out a general review of Audiovisual Policy, consisting of a number of elements, and in particular:

- The holding of a high-level seminar in conjunction with the Luxembourg Presidency on the "Advent of Digital Broadcasting"[1];
- The setting-up of a High Level Group on future Audiovisual Policy that is chaired by a Member of the Commission (Mr. Marcelino OREJA)[2];
- The holding, in conjunction with the UK Presidency of the European Audiovisual Conference, entitled "Challenges and Opportunities of the Digital Age"[3].

1.2 In parallel, the extent and speed of the convergence of the telecommunications, media and information technology sectors, and the implications for regulation, were analysed in the Green Paper adopted by the Commission on 3 December 1997[4]. Subsequently, an extensive consultation exercise was carried out, including hearings held for representatives of the sectors concerned and of Member States. The contributions and results are currently being analysed with a view to follow-up. The European Parliament is expected to give its opinion in October 1998.

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[1] The seminar took place on 17 and 18 November 1997 and the proceedings have been published.

[2] The Group's final report, which will be made available to the European Parliament and the Council, should be approved in July 1998.

[3] The Conference was held in Birmingham on 6-8 April 1998. It was attended by several Members of the European Parliament and the Chairman of the Committee responsible for Media and Culture made one of the closing speeches. In Council, Ministers held a debate on results and follow-up on the basis of a Presidency document on 28 May 1998 and adopted Council Conclusions (see below).

[4] COM(97)623 of 3/12/1997.

1.3 A further important element is the mid-term review of the MEDIA II (Measures for the development of the European Audiovisual Industry) programme. This five-year programme reaches its half-way stage on 30 June 1998. The European Parliament and Council Decisions on which the Programme is based stipulate that the Commission shall present an evaluation report, accompanied, if need be, by appropriate proposals within six months of that date.[5]

1.4 On the 28 May 1998, the Council adopted, after a debate on the results of the Birmingham Audiovisual Conference, and prospects for future Audiovisual Policy, Conclusions urging the Commission and the Austrian Presidency to take forward the Birmingham follow-up and noting in particular the opportunity presented by:

- The planned half-term review of MEDIA II, which should explore ways of encouraging a strong and competitive programme industry, taking account of European cultural diversity and the particular conditions in small language areas. (Council also noted that the professionals had expressed interest in the creation of financial tools for attracting private capital and in the promotion of European audiovisual productions on external markets.)

- The consultation on the Commission's Green Paper on Convergence which would enable the Commission to formulate the announced Action Plan at the end of 1998, taking into account the existing regulatory framework, and the possible needs of developing digital services as they emerge.

1.5 The present Communication to the European Parliament and Council is intended to present, for political debate in Parliament and Council, the Commission's preliminary conclusions on the audiovisual policy review process described above and on its vision on next steps.

The Communication focuses mainly on those aspects related to support mechanisms, and in particular on the future of the MEDIA II programme and on the re-thinking of the Commission's proposal aimed at attracting more private investment into audiovisual production[6]. This is the appropriate focus because:

– the Birmingham Conference has confirmed that the MEDIA II programme is well on the way to achieving the objectives set out in 1995 and has demonstrated that it is an essential component of the Community's audiovisual strategy. It may, however, be necessary for the Commission to propose certain adjustments in the light of the evaluation report and as a result of on-going consultations such as those taking place in the High-

[5] Article 7(4) and 6(4) of Decisions 95/563 and 564/EC.

[6] The Commission's proposal for a European Guarantee Fund COM(95)546 remains on the table but has not achieved the required unanimity in Council.

Level Group, and the political orientations that will emerge in Parliament and Council as a result of this Communication (the main MEDIA II decision is based on Art. 130 EC and thus requires unanimity);

- the results of the Birmingham Conference have confirmed the need for a specific Community financial instrument to encourage investment in audiovisual production (a field not currently covered by MEDIA II), and to take forward other ideas such as the European Film showcase event capable of playing the catalytic role fulfilled by the "Oscars" in the United States;

- the future regulatory issues are being dealt with to a large extent in the Convergence Green Paper process; the present Communication therefore only refers to these aspects in as far as is necessary to present a complete picture.

It is worth recalling that by virtue of the results of the negotiations in the Uruguay Round leading up to the adoption of the General Agreement on Trade in Services (GATS), the Community and its Member States remain free to develop their policies for the development of the audiovisual sector. The Commission has recently had the opportunity of re-affirming its determination to maintain this "acquis".[7]

2. ECONOMIC TRENDS

2.1. It is not the purpose of this Communication to present an exhaustive analysis of trends in the sector. These have been amply presented and debated during the review process, in particular in the pre-reports prepared for the Birmingham Conference and in the conclusions of the four Working Groups. One of the characteristic features of the audiovisual industry is its capacity for rapid expansion, particularly in response to new technologies. Its very nature makes it an industry that has a particularly strong cultural impact. It is also an industry with considerable economic potential. This potential is plain to see from the spectacular increase in the number of television channels that started even before the advent of digital transmissions. A study on future audiovisual markets carried out for the Commission in 1997 estimated that the industry's overall revenues would grow by about 70% by the year 2005.[8]

2.2. This potential is corroborated by some recent work on employment in the audiovisual industry. A recent Commission document[9] put the number of persons directly employed in the cinema and television sectors in the European Union in 1995 at one million. The same document stressed the qualitative strengths of jobs in the sector, and concluded that its internal and

[7] See Communication on the New Transatlantic Marketplace COM(98)125 section D.10(i).

[8] Norcontel : "Economic implications of New Comunication Technologies on the Audiovisual Markets".

[9] Commission Staff Working Paper Sec(1998)837 of 14/5/1998.

external dynamics, if fully harnessed, could make it an increasingly important source of job creation. The inherent potential of the audiovisual industry has also been confirmed, in the United States, by a study published in April 1998 on the "Economic Impact of the Entertainment industry on California"[10].

These considerations are particularly important in the light of the high priority given to job creation in the European Union at the highest level as confirmed by the Luxembourg Employment summit. They are particularly relevant to the decisions taken by this special European Council, especially as regards the reference to the development of skills and qualifications, which are vital to economic growth and the improvement of the standard of living. They also help to ensure that those that work in the industry are not confined to unstable jobs. In its Communication on Community support policies for Employment[11] drafted for the Cardiff European Council, the Commission stressed the importance of making the most of the new opportunities provided by digitisation, with particular reference to the need for public support for facilitating access to financing and for improving training.

2.3. The American study referred to in the previous section attributed the explosion in demand for audiovisual programming to the dramatic growth in outlets, in particular multiplex theatres, multi-channel television and VCR's. Similar growth has taken place in Europe. For example, in 1997 cinema admissions (748 million) grew 6,6%, reaching their highest level since 1984 thanks, both to the development of multiplexes and to the increasing success of European film in certain key home markets.[12] Recent research shows that the number of admissions will grow by a further 30% over the next five years.[13]

2.4. The above demonstrates the importance of a distribution-led production strategy. The US industry has achieved mastery in both production and distribution. In Europe, by contrast, while production is healthy in quantitative terms, the European audiovisual industry's ability to distribute its products leaves much to be desired. In 1996, 669 films (412 national productions, 242 co-productions) were produced compared to 421 in the US

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[10]. "State of the Industry : the Economic Impact of the Entertainment Industry on Califorina", Motion Picture Association of America (M.P.A.), April 1998. This study showed that employment in the entertainment production sector rose by 38% from 1992 to 1996 – seven times faster that the total Californian economy. The sector accounted for over 450.000 jobs (226.000 directly, the rest indirectly). The study concludes by stating that "the issue now is whether the future economic activity that such growth may generate will occur in California or elsewhere. A continued, supportive public approach to entertainment sector expansion is essential to assure that the industry will continue to generate jobs, payroll, taxes and other critical economic benefits for California". This study has been endorsed by the Governor of California

[11]COM(1998)354 of 3/6/1998.

[12] European Audiovisual Observatory, 1998 Yearbook.

[13] "Cinemagoing in Europe", Dodona Reaserch, May 1998.

and 279 in Japan.[14] However, European films have considerable difficulty with regard to actual distribution, especially outside their home countries. Rates of export within the European Union (i.e. the percentage of admissions on non-national markets measured against admissions for the European Union as a whole, including the home market) show weak results for Germany (8,8%), France (16,2%) and Italy (27,9%). British films, on the other hand, brought in two-thirds of their admissions from exports to other EU countries.[15] Paradoxically, British films have much greater difficulty obtaining distribution within the United Kingdom itself, where US distributors dominate (the five US majors shared 78% of total UK box office receipts in 1997).[16] Overall, the EU/US trade deficit is growing at a faster pace, going from an 11% increase in 1995 to an 18% increase in 1996. The negative trade balance in films, television programmes and video reached a total 5.6 billion dollars in 1996 in favour of the US.[17] In 1996, the US film industry earned more on foreign (12.095 million USD) than on domestic (9.083 million USD) markets.[18] **These recent figures demonstrate the potential of a successful, integrated audiovisual production/distribution industry, potential that has not yet been realised in Europe. They bring added credence to the Birmingham Audiovisual Conference's strong request for increased public support for the industry in Europe, and underline the need to move from production-led and fragmented structures to a distribution-led, integrated approach.**

3. THE RESULTS OF THE BIRMINGHAM AUDIOVISUAL CONFERENCE

The four working groups[19] of the Conference each produced essential input for the development of future Audiovisual Policy orientations which are being carefully studied by the Commission's services. Their conclusions are summarised in detail in annex I.

However, for the purposes of this Communication it is worth emphasizing that Working Group II recommended strengthening the MEDIA II programme with, as a prime objective, achieving the structural change necessary to ensure that the

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14 EUROSTAT "The Audiovisual sector in the European Economic Area in the 1990's" Statistics in Focus 98/2 of 10/2/1998.

15 Source: European Audiovisual Observatory, 1997 figures.

16 "A Bigger Picture: the Report of the Film Policy Review Group", Department of Culture, Media and Sports, March 1998.

17 European Audiovisual Observatory, 1998 Yearbook.

18 European Audiovisual Observatory, 1998 Yearbook.

19 WG1 "Employment and job creation in the audiovisual industry"
WG2 "European support for developing the audiovisual industry's competitiveness"
WG3 "The right regulatory framework for a creative media economy"
WG4 "Intellectual property".

European audiovisual industry becomes globally competitive while contributing to the preservation of cultural diversity in Europe. The means recommended were notably to focus on automatic support systems for distribution, emphasize development and boost exports.

Working Group 3 made a number of recommendations, including the need for a gradual approach to regulatory change with the retention of sector specific regulation and a focus on the distinction between infrastructure and content. Other important recommendations related to public service broadcasting (Member States should define the public service mission and provide for financial transparency); to the need to ensure "open gateways" in particular with regard to conditional access systems and to the usefulness of a self-regulatory approach as regards on-line services.

Besides the results of the working groups, two other ideas emerged at the Conference:

- The European Audiovisual Industry needs a showcase event that can help drive its development; this is the role played by the "Oscar" film awards and the "Emmy" television awards in the United States. This idea, endorsed by President Santer in his opening speech at Birmingham, has created a considerable amount of interest. It was discussed at the 28 May Council on the basis of a paper submitted by the Italian delegation. The Commission was invited to progress the idea in close cooperation with the professionals.

- The Conference demonstrated the need to consult the industry and other interested parties (such as viewers' associations) on policy developments on a more regular basis than once every four years through a major conference, albeit on a smaller scale. Such regular consultations could take place through the setting up of a formal consultative mechanism that would meet under the aegis of the Commission, the frequency of the meetings depending on the imperatives of the agenda.

Follow-up work should be organised **in two directions:**

- **developing support mechanisms;**
- **reviewing the regulatory framework.**

4. DEVELOPING SUPPORT MECHANISMS

4.1. Certain clear indications are emerging strongly from the Audiovisual Policy review as regards to future orientations for European support mechanisms to the industry. Analyses show – and this was confirmed in Birmingham – that the industry is increasingly characterised by a disjunction between a small number of well capitalised companies which control the electronic delivery systems, and are moving towards European integration, and on the other hand a European production and distribution business which remains fragmented and under-capitalised. This state of affairs casts doubt on Europe's capacity to respond to the rapid development of new outlets with a diverse and plentiful supply of programming. The need for the protection and promotion of

Europe's unique cultural diversity has been emphasised. There is broad agreement that Community and national policies can best complement each other through greater emphasis, at Community level, on industrial and structural objectives, and at the national level, on cultural objectives. The Community needs to continue to take account of the specific needs of countries with a low audiovisual production capacity and/or restricted geographical and linguistic area. The general view, confirmed by the acclaim given to the programme by the professionals in Birmingham, is that MEDIA II is well on the way to achieving the objectives set in 1995. However, as stressed by the professionals, if the programme is to have a significant long-term effect on the structures of the European audiovisual business, it will need to be significantly strengthened.

4.2. The Commission agrees with the view expressed at the Birmingham Conference that it is important to reinforce the role of automatic schemes, in particular for the distribution (cinema, television, video) of European works. Automatic schemes are closely linked to actual market success, and therefore more efficient in achieving structural improvements than selective schemes.[20] As has been seen above in the section on economic trends, structural improvement is what is needed if Europe is to match its production potential with actual market success through the effective distribution of its products, in particular on markets other than the home market. Automatic schemes are also more cost-effective to administer. Automatic subsidy schemes exist on a national or regional level in 11 European countries. For example, they account for 71% of total funding in France and 47% in Spain[21] (it is noteworthy that the Commission gave clearance, on 3/6/1998, to the French scheme under Art. 92(3)(d) EC).

4.3. The MEDIA II programme (distribution section) also provides for an automatic subsidy scheme. As the aim is to encourage the circulation of European films in Europe, support is granted on the basis of cinema attendance for films outside their national territory. The system incorporates a "positive discrimination" mechanism designed to compensate for the fact that smaller Member States tend to produce fewer films.

The scheme was set up for an experimental period of two years and has proved to be a success.[22] Its extension in time, and any internal re-allocation

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[20] Automatic schemes are schemes whereby financial support (in whatever forms – grants, loans, etc) is automatically given to a producer (or a distributor), either on a film-by-film basis or on the basis of a slate of films (or programmes), on the basis of an objective set of criteria. A simple example is when a particular film achieves a million entries, and the scheme provides for support at, say, 1Ecu per entry, the production/distribution company will receive 1Mecus to invest in the production of its next film. Automatic schemes reward success.

[21] A Comparative Analysis of National Aid Mechanisms", European Audiovisual Observatory/Centre National du Cinéma, May 1998.

[22] In 1997, 123 distributors declared 29.5 million admissions for 245 European films. European distributors thus generated a potential support worth 8.6 Mecu, which can be reinvested in the distribution or production of new films by the end of 1998 (as of 30 May 1998, 4 Mecu has already been invested).

of resources between MEDIA's selective and automatic systems can be decided on the basis of a proposal by the Commission to the Committee set up by Article 5 of Council Decision 95/563/EC. However, the extension of the scheme in scope (currently the automatic scheme applies only to cinema but its extension to other areas of content distribution, in particular video and TV, appears to be desirable) can only be achieved through a proposal for a Council Decision amending Council Decision 95/563/EC. Moreover, any strengthening of the scheme through increased resources would depend on the Budgetary Authority in the yearly budgetary procedure. In the light of the results of the extensive consultation undertaken so far, the Commission considers that such a proposal may well be necessary to ensure that the MEDIA II programme can achieve the structural objectives that have been set for it. In any event, the necessary strengthening of support to automatic distribution through MEDIA II should not be achieved at the expense of support for development[23] and training, both of which are essential for the capacity of the industry, up-stream of the actual production process, to create films and other audiovisual works with an in-built potential for international success.

4.4 The professionals at the Birmingham Conference expressed stong interest in the creation of a financial instrument for attracting private capital into European audiovisual production. This is a reference to the Commission's proposal for a European Guarantee Fund[24] which was enthusiastically welcomed by the industry, the European Parliament and the majority of Member States, but which has failed to achieve the necessary unanimity in Council. However, the Commission considers that even those Member States that were not able to join the majority in favour of its proposal expressed sufficient interest in the principle (of a Community instrument for attracting more private sector investment into the production of European works with an international sales potential) for the idea not to be purely and simply abandoned. While maintaining the proposal for a European Guarantee Fund, new directions should be explored on the occasion of the MEDIA II review. One promising possibility would be the so-called "securitisation" scheme. Essentially this is a way of obtaining funding for production by the pre-sale, to financial institutions, of the future revenues of a slate of films (see annex II).

In 1998, 54 million admissions were declared by distributors, representing an increase of 86% in the audience of non-national European films. The potential support generated for the benefit of European distributors is estimated at 9.5 Mecu, which will be available for reinvestment until the end of 1999.

[23] In the Audiovisual Industry, "development" means the stage in the life cycle of an audiovisual work prior to actual production. It includes in particular the essential activity of script writing (including script doctoring and rewriting of drafts) as well as the preparation of business plans, raising finance for production and strategies for promotion and marketing. All these contribute to determining the potential (or otherwise) of the production for international distribution.

[24] See footnote 6.

The Commission will pursue its analysis of the feasibility of such schemes, as well as of the feasibility of having recourse to existing mechanisms, such as the European Investment Fund and the SME Guarantee Facility. [25]

4.5 A further strategic re-orientation that has emerged from consultations is the need for a greater effort to promote European films and audiovisual programmes on non-European markets. The MEDIA II programme has already supported the collective presence of European producers on some major non-European markets (Toronto, Hong Kong, Los Angeles) and at some European events aimed at export markets (e.g. the MIDIA in Madrid). Beyond such traditional promotional support, consultations have shown the need for more structurally oriented measures such as:

- a system of export guarantees to cover the risks linked to the promotion of European works on external markets;
- an insurance/loan scheme for the establishment of sales and distribution offices in certain key markets (e.g. North and South America);
- the creation of a database on the main external markets for the use of European exporters[26].

The Commission will pursue these ideas in the framework of the review of MEDIA II.

4.6 Reference has been made in section 3 above on the need for a showcase event to help drive the European Audiovisual industry's development. The Commission will progress this idea in the coming months with a view to reporting back to Council. It is possible to state already that such an event should be industry led, organised and funded. The Community however could play an important enabling role. Any concrete proposals would find their natural place in the MEDIA II programme review, as would proposals to put existing promotional activities (such as support to film festivals) on a firm legal footing.

4.7 In summary, a clear case has been made for strengthening the Community's support schemes for the development of its Audiovisual Industry. Various ways of doing this are already emerging from the extensive consultations being carried out. The purpose of describing these in outline in the present Communication is to enable a political debate in Council and Parliament up-stream of any concrete proposals the Commission may deem necessary to put forward. The essential feature, in institutional terms, of the Commission's approach is to englobe both measures strengthening existing schemes and new

[25] See COM(98)222 of 7/4/1998 "Fostering Entrepreneurship in Europe: Priorities for the Future" section 2.4 "Improving access to finance".

[26] It is clear that these measures would have to be compatible with the Community's international obligations (WTO/GATS)

measures in the review of the MEDIA II programme which will be presented towards the end of 1998. The Commission will also ensure that maximum benefit is drawn from complementarity between MEDIA II and the other relevant Community programmes such as the Fifth Research and Development Framework Programme (in particular the information society Technolgogies Programme) and INFO 2000.

5. THE REGULATORY FRAMEWORK

5.1. Although the regulatory framework needs to be regularly reviewed and, if need be, adapted, the Commission's view is that, in general, the current regulatory needs of the audiovisual industry are already catered for at Community level by a number of Directives (and, in one case, a Recommendation) that have either been recently adopted or are in the legislative process and which need full implementation. These are:

- The new "television without frontiers" Directive, which came into force on 30 July 1997 and which must be implemented into national legislation by 30 December 1998,[27] and on which the first evaluation report is due in 2001;

- The Directive on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission for which the implementation date was 1st January 1995 and on which the first evaluation report is due not later than 1.1.2000;[28]

- The European Parliament and Council Directive amending for the third time Directive 83/189/EEC laying down a procedure for the provision of technical standards and regulations, which extends to "Information Society Services" the regulatory transparency mechanism set up in 1983, and which was adopted on 29 June 1998[29];

- The proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access, on which the Council adopted a Common Position on 29 June 1998;[30]

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[27] Directive 97/36/EC of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordinational of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities; OJ EC L202/60 of 30.7.1997.

[28] Council Directive 93/83/EEC; OJ EC L248/15 of 6.10.1993.

[29] COM(96)392.

[30] COM(97)356.

- The Directive on the use of standards for the transmission of television signals[31] which will shortly be the subject of a first implementation report, with special attention being paid to digital developments. Possible changes to the scope of the Directive are already the subject of consultations in the Convergence Green Paper process;

- The proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society.[32]

5.2 This series of Directives and proposals for Directives, based on well proven Internal Market principles, was added to by the adoption by the Council on 28 May 1998 of a 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".[33] This Recommendation marks an important development in that it is the first Community Act that concerns the content of on-line information services, notably those available on the Internet, and is based on a self-regulatory approach[34]

5.3 It is clear from the above that the audiovisual sector already benefits from a comprehensive legal framework at Community level which is based on the fundamental Internal Market principle of the freedom to provide services across frontiers and which caters for the needs of an activity which consists of communication to the public. Reflection on the future proposals that may be needed to ensure that the regulatory framework remains conducive to market development while taking full account of general public interest objectives is being conducted notably in the framework of the Green Paper on Convergence, without prejudice to the implementation of existing Community legislation and initiatives currently under way.[35] This reflection includes the issue of the transition from an analogue to an all-digital broadcasting (television and radio) environment in Europe. **The Commission intends to issue a report presenting a synthesis of the responses in the consultation on the Green Paper in the near future and a further Communication, containing a full analysis and any concrete proposals for follow-up, towards the end of 1998 after receiving the European Parliament's Opinion.**

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[31] European Parliament and Council Directive 95/47/EC; OJ EC L281/51 of 23/11/1995.

[32] COM(97)628 of 10/12/1997.

[33] COM(97)570; the text adopted by the Council has not yet been published.

[34] Complementary to the Recommendation is the Commission's proposal for a Council Decision adopting a multi-annual Community action plan on promoting the safe use of Internet COM(97)582 final

[35] See the Green Paper, Introduction.

5.4 In conclusion, and as confirmed by the Birmingham Audiovisual Conference, the development of the audiovisual sector does not require any major regulatory initiative in the short-term. The future regulatory framework is currently the subject of broad consultation on the Convergence Green Paper. It is too early to draw conclusions from this process, notably on if and how it might require adaptation of the measures outlined in section 5.1. In the meantime, the emphasis will be on :

- ensuring correct implementation of existing Community legislation and coherent application of Treaty provisions in order to provide for the stable and predictable regulatory environment the audiovisual industry's development needs, and,

- in the enlargement negotiations, on ensuring satisfactory alignment of the candidate countries' legislation in this field with the Community "acquis".

This process can be assisted through increased cooperation at European level between national regulatory authorities, as recommended by the Birmingham Audiovisual Conference.

6. CONCLUSIONS AND FOLLOW-UP

6.1. The overall conclusion that the Commission draws at this stage is that the Audiovisual Policy review process, and in particular the results of the Birmingham Audiovisual Conference, have demonstrated the need for increased public support *inter alia* at Community level, for strengthening the competitiveness of the European audiovisual industry. At this stage, the emphasis should be on support mechanisms which, at Community level, should be dealt with in the framework of the review of the MEDIA II programme. Emphasis should be put on strengthening and extending the scope of MEDIA's automatic support systems for distribution of non-national European works; on attracting more private capital into the production of European audiovisual works that have a strong potential for international distribution; on the promotion of European audiovisual productions on external markets and on encouraging the industry to develop a showcase award ceremony. The Commission will present any proposals it deems necessary together with the evaluation report at the end of 1998. This could entail a proposal for certain adjustments to the existing MEDIA II programme, which could include its extension beyond its current expiry date of 31 December 2000.

6.2. The regulatory emphasis will be on implementation of existing, or shortly to be adopted, Community legislation and coherent application of Treaty provisions. Special attention needs to be paid to ensuring that the right conditions exist for the take-off of digital television in a competitive environment. Future regulatory needs will be considered notably in the Convergence Green Paper process. Two issues are, in this respect, of crucial importance: the availability of programme rights and the openness and transparency of gateways (conditional access systems, EPG's and API's). The Commission will present a Report with a summary of the results of the consultation process to be followed by a full analysis and any concrete proposals after receiving the European Parliament's Opinion on the Green Paper, expected in October 1998.

6.3. In the above processes, the Commission will continue to seek the opinion of the Audiovisual industry, *inter alia* through the consultative mechanism it intends to set-up to maintain to the impetus created by the Birmingham Audiovisual Conference. This consultation process will be greatly facilitated by increasingly better structured organisations representative of the Audiovisual sector at the European level.

SUMMARY OF THE CONCLUSIONS OF THE WORKING GROUPS OF THE BIRMINGHAM "EUROPEAN AUDIOVISUAL CONFERENCE"

Working Group 1 : "Employment and job creation in the audiovisual industry"

The advent of digital broadcasting is a great opportunity. Digital broadcasting platforms can constitute strong 'poles of attraction' in Europe. These create direct employment themselves. They also generate many specialised, auxiliary activities. Small businesses grow up around these 'poles' and themselves become creators of jobs. The key activities of these 'poles' are the packaging and distribution of content and the recycling of investment back into production. In the digital age, Europe needs strong digital distribution platforms to establish themselves as major features of the audiovisual landscape. There is currently a 'window of opportunity' for the establishment of viable platforms in Europe. The work on employment also confirmed that training needs to be given priority treatment in our policy initiatives at European level. Digitisation brings a greater need for flexibility in the workforce – there is a growing need for continuous training. Training initiatives should be adapted and strengthened. The Community can contribute to this process through specific added-value initiatives within its Audiovisual Policy :

- strengthening and adapting the decentralised training initiatives supported through the MEDIA II programme;
- envisage the possibility of establishing a European 'centre of excellence'.

Working Group 2 : "European support for developing the audiovisual industry's competitiveness"

A consensus emerged that maintaining European public intervention in support of the audiovisual sector was now more essential than ever. More specifically, seven findings were identified:

1. Reinforce the MEDIA programme

The group recognised that MEDIA II had in large part achieved the objectives set in 1995 and was demonstrating its usefulness as an essential component of the EU's audiovisual strategy. In order to have a long-term effect on the structures of the European audiovisual business the financial resources of MEDIA should be significantly increased and the programme be established on an on-going basis.

MEDIA's overall performance could be improved further by:

- giving the programme its own tailored financial management systems;
- reinforcing staff levels;
- ensuring that actual budgets reached the set target on an annual basis.

The working group confirmed that the main planks of MEDIA (training, development and distribution) are sound in principle and work well.

2. Structural change for global competitiveness

The idea is to direct public intervention towards schemes which would supplement the structural effects of the MEDIA programme on Europe's audiovisual sector, in particular by enabling the development of commercial concerns capable of developing, financing and marketing of large volumes of European content.

3. Preserve cultural diversity

EU-wide development support was considered as essential in helping to connect projects from smaller countries to the rest of Europe by providing an early incentive for collaboration between producers from different Member States.

4. Focus on automatic systems

The professionals appeared to be extremely satisfied with the performance to date of the MEDIA II pilot automatic support scheme for theatrical distribution. Two key recommendations emerged:

- the current theatrical scheme should be maintained and more financial resources should be allocated to it in order to increase its impact on the distribution business in Europe;
- the automatic mechanism should be extended to other areas of content distribution, such as video and television programmes.

5. Emphasise development

A clear consensus was that financial support to the activities of development should be treated with an equal degree of priority at national and European levels. Furthermore, there was significant support for the concept of building bridges between the development and training arms of MEDIA, in particular in the areas of script editing and script writing skills.

6. Boost exports

The group achieved a clear consensus that it is now time to incentivise the export of EU audiovisual products to key foreign markets (North and South Americas, Asia and Central and Eastern Europe).

Initiatives might take several forms including:

- a coherent export credit guarantee scheme;
- gathering and dissemination to exporters of data and facts on markets outside the EU;
- underwriting of commercial risks associated with the establishment of distribution/sales offices in key non-EU territories;
- joint marketing initiatives such as dedicated markets/events outside the EU.

7. <u>Incentivise production by new broadcasters</u>

While the revenues of new broadcasters had doubled during the period 1990-96, the level of their investments in new European productions had not shown a commensurate increase. There was therefore a general feeling that one aspect of future European policy could be to incentivise greater investment by these new service providers in European audiovisual works. Proponents of incentives were of the view that, in due course, most broadcasting services would naturally prioritise European content over imports because of the popularity of local content with local audiences.

<u>Working Group 3</u> : "The right regulatory framework for a creative media economy"

This group set out a series of Recommendations which can be summarised as follows:

- with reference to the options for the future regulatory framework set out in the Commission's Green Paper on convergence, the Regulatory approach should, for the foreseeable future, combine Option 1 (building on the existing framework) with Option 2 (the creation of new regulatory categories). Sector specific regulation should be retained and expanded and the regulatory focus should distinguish between infrastructure and content;
- the recycling of revenue into the creation and production of content must be a priority policy objective. Fair and reasonable regulatory obligations for investment in EU content are one way of achieving this. Appropriate measures should also be taken to facilitate the availability of rights;
- all Member States should define their public service broadcasting mission and should provide for financial transparency as regards commercial services provided by public service broadcasters;
- where self-regulation or technology does not provide for openness and transparency of gateways, in particular conditional access systems, navigator systems and APIs (Application Programme Interfaces), regulatory intervention should be considered;

with regard to on-line services, self-regulation is probably the best approach, though this should be underpinned by regulatory measures to ensure it is effective. Self-protection by users should also be encouraged and could involve labelling of content and the use of filtering devices;

the European Commission should encourage Member States to adopt a calendar for analogue switch-off (i.e. the transition to an all-digital broadcasting environment) as soon as possible and should promote co-ordination at the EU level with regard to frequency selling. Member States should ensure that existing analogue services are able to migrate to the new digital frequencies[1];

- regulators in the EU should build on existing structures for co-operation, with a view to promoting the exchange of information, the elaboration of 'best practice' rules and achieving consistency between Member States.

Working Group 4 : "Intellectual Property"

Copyright and neighbouring rights represent the economic substance of the audiovisual industry and creators. These Intellectual Property Rights are 'the currency of the information age'. Far from being blocking factors, they pave the way for the competitiveness of the whole sector. Indeed Intellectual Property protection plays a vital role for growth, job creation and cultural diversity of the European Union. It has to benefit from the Community Internal Market, also with respect to the new services of the Information Society. In concrete terms, the Group recognised the importance of the Commission's proposal for a Directive on copyright and related rights in the Information society, as well as of the ongoing work in the World Intellectual Property Organisation (WIPO). In this latter context there was agreement on the need to pay special attention to strengthening audiovisual performers' rights and to the international protection of broadcasts. The discussions on the nature of authorship and the management of rights gave rise to the recommendation that the development of licensing schemes and rights management systems for both collective and individual licensing be promoted and facilitated. Questions of territoriality of applicable law and of liability in the digital environment were also considered. It was emphasised that the general law normally applies. The trend towards self-regulatory contractual arrangements should be encouraged.

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[1] This issue is the subject of continuing consideration in the context of the Convergence Green Paper. It will also be addressed in the Commission's forthcoming communication on Spectrum Policy.

THE PROPOSED "SECURITISATION SCHEME"

The idea was first put forward in the High Level Group then debated in Birmingham. The scheme proposes that a group, say five, European production and/or distribution companies (or consortia composed of several smaller companies) should each present slates of, say, 10 films with international marketing potential over a three year period; the Community would then contribute 4% of a 500Mecus fund as the basis for leveraging a further 475Mecus from banks, covered by insurance companies to fund these slates, cross-collateralised by company, not as a whole; the fund would then be distributed to the five companies or consortia providing them with 100Mecus each to develop, finance and distribute films; they would have to guarantee to spend from their own resources 60% of their films' negative costs (i.e. actual production costs) on prints and advertising. It would be possible to insure against the loss of part of this 60%, the insurance premium to be paid by the company or the consortia from its allocation for the fund. The funding, besides being relatively inexpensive, would be off-balance sheet for the companies concerned, which constitutes a major advantage in accounting terms (e.g. through avoiding unnecessary anxiety on the part of shareholders).

The scheme could result in an extra 800 Mecus being injected into European production and distribution for a Community contribution of 20 Mecus. This type of scheme has already been shown to work for large companies capable of offering the necessary slate of films. Universal has recently raised $1,1billion, Fox $1 billion and Polygram $690 million in this way. The key question regarding its feasibility in Europe is whether consortia, possibly made up of companies from several Member States, could be constituted that would be capable of offering between them the required production and distribution potential. If so, the Commission considers that the structural impact of such a scheme would be considerable and that it would therefore provide considerable value for money, especially if the Community itself were second or third in the ranking of beneficiaries from the profits made by each slate of films, which would enable it to re-constitute its initial investment with a view to insuring against loss or re-investing. As the amount of the Community contribution would be relatively small, a separate proposal could be dispensed with, and the necessary provisions included in an overall proposal for the review of the MEDIA II programme.