

# FINAL REPORT:

## PARENTAL CONTROL OF TELEVISION BROADCASTING

by University of Oxford, PCMLP

Study carried out by the European Commission as required by Article 22b of Directive 97/36/EC of 30 June 1997 amending Directive 89/552/EEC (Television without Frontiers Directive).

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This study is also related to the [Protection of Minors and Human Dignity](#).



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# ANNEX 1: BACKGROUND

## Chapter 1. Economic Modelling Background

### 1. Efficiency issues.

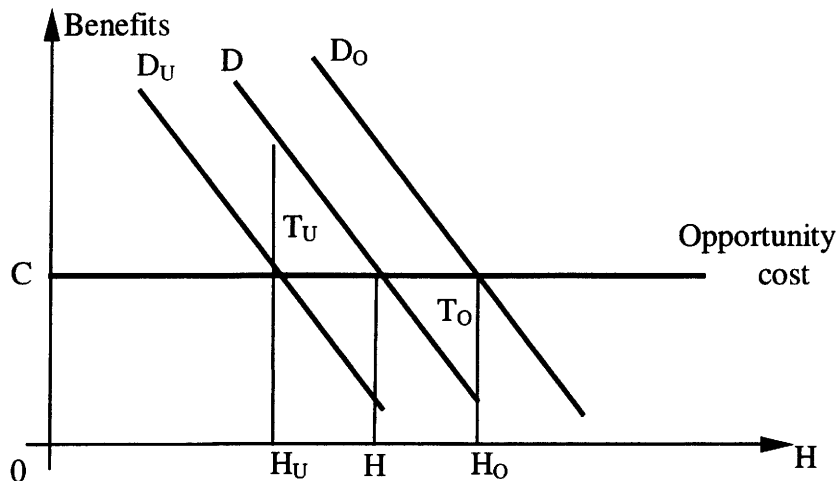
This section examines the kind of economic organisation that will make the best possible use of limited resources (i.e. will achieve the most efficient outcomes) given tastes and technologies. This exercise adopts only Pareto value judgements, i.e. it is assumed that: a) households judge their own benefit and b) social welfare on the whole increases if the welfare of one single household increases. The crucial issues that need addressing are as follows:

- Can regulatory interventions - aimed at (i) increasing the flow of information to consumers and (ii) facilitating parental control over minors - be justified on the grounds of efficiency?
- Does public intervention offer sufficient efficiency advantages over free market supply?

Based on the principles of efficiency, there are some economic criteria that argue in favour of appropriate public intervention. Below we examine how strong and convincing these economic arguments are and what kind of regulation seems preferable as far as economic efficiency is concerned.

Generally speaking, there is a fundamental need to address information issues to ensure that the competitive market functions well and to achieve social efficiency. A competitive market mechanism requires consumers to be well informed about the nature of products; they need to be able to define preferences and to determine their market demands in order to make rational consumption choices. This assumption may fail for many audiovisual products where information is complex and imperfect, and contents are mainly decided by producers, which in turn implies serious consequences for the efficiency of the market. In a scenario where viewers, particularly younger and less experienced viewers, are unable to judge correctly the quality of content and are not aware of benefits to be derived from watching it, the market may be distorted by over- and under-valued aggregate demands (such as  $D_0$  and  $D_U$ ), which do not reflect the real private valuations  $D$  of households.

Figure 1



As Figure 1 shows for a given opportunity cost of time  $C$  this may lead to either too much or too little time ( $H_O$  and  $H_U$  respectively) being spent on the consumption of a given audiovisual product. In the absence of regulation, this market outcome implies relevant losses in consumer welfare captured by the loss triangles  $T_O$  or  $T_U$ , representing the difference between effective benefits and opportunity costs of over- and under-consumption.

According to economic theory, in order for demand to reflect true marginal private valuations (avoiding over- and under-consumption of audiovisual products) the existing supply of information (provided by other institutions, e.g. newspaper, magazines) may be supplemented by public intervention. In audiovisual markets where competition lacks, increasing competition alone does not necessarily enhance social welfare, since the benefits of competition depend on information that is complete, the absence of strategic behaviour, and equal bargaining power for consumers and producers. Thus, public intervention within these imperfect (oligopolistic) markets should aim to furnish consumers with some power, (in the same way as providing information about the content of food items does) and to prevent producers from exploiting their information advantage. Naturally, any further interference with consumer choice and with free competition should be minimised in the interests of consumer taste and preference for variety, as well as the cost of public intervention.

The expression “V-chip” initially stood for “viewer-chip” and was intended to partly address the information issues raised above. It was supposed to go beyond *information labelling*, i.e. providing recognisable informative indicators. V-chip *rating* - i.e. rating embedding information labelling in a technical device - provides viewers with the choice of blocking unwanted audiovisual products by facilitating the search and choice within given preferred contents. In this way they may be beneficial to all consumers, as they represent a less restrictive alternative to *channelling*, which involves the transmission of given audiovisual content only at designated times and/or only by specific carriers.

In this context social concern about harmful effects of the media on the development of individuals, and, in particular, minors, which has led to the introduction of watershed, channelling or censoring systems in many societies, –may be addressed effectively by rating content. For this reason, the V-chip has become known as the “Violence Chip” in the USA. Moreover, the debate in the USA has focused on parental control, freedom of speech and designing a deregulated Internet.

We will now look at the basic nature of the problem for a typical responsible household, with a sincere interest in the welfare of its children, in a very simplified broadcasting setting. Clearly, since children are, under normal circumstances, less well informed it is generally agreed that most consumption decisions should be left to their parents, at least in the early stages of their development. In what follows we will separate the expenditure of time by parents in control activity  $c^h$  from other expenditures (net flow of commodities  $e^h$ ) that increase their children’s welfare  $v^h$ . It seems reasonable to assume the function  $v^h(\beta, c^h, e^h)$  represents children’s welfare, and is characterised by decreasing marginal benefits for all arguments.

Given the current broadcasting regulatory environment  $\beta$  with respect to children,<sup>1</sup> the household may only enhance the quality of its children’s viewing and welfare  $v^h(\beta, c^h,$

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<sup>1</sup>  $\beta$  represents the quality of broadcasting regulation environment, or alternatively the broadcast environment.

$e^h$ ) by increasing its control activity  $c^h$ , and thereby reducing time spent in income producing activities ( $y^h - c^h$ ). This will lead to a decrease in its net consumption expenditure  $Y^h = w^h(y^h - c^h) - e^h$ , based on the wages earned by the household  $w^h$  and the net flow of commodities towards the children  $e^h$ .

Let us assume that the household utility  $U^h$  is given by the sum of its net consumption expenditure  $w^h(y^h - c^h) - e^h$  and the welfare of its children  $v^h(\beta, c^h, e^h)$ .<sup>2</sup>

The household maximises its utility by offsetting the marginal opportunity of consumption (i.e. losses incurred by increasing parental control  $\partial U^h / \partial y^h = w^h$ ) against the marginal benefits generated by parental control activity  $\partial v^h / \partial c^h$  (and by a net flow of commodities  $\partial v^h / \partial e^h$ ) which are assumed to be decreasing.<sup>3</sup>

No household can modify the environment  $\beta^\circ$ , which all children share. However, each household could benefit in an environment with improved broadcasting regulation ( $\beta^1 > \beta^\circ$ ) since the welfare of its children  $v^h(\beta, c^h, e^h)$  increases with the quality of the environment.<sup>4</sup>

The initial equilibrium and the consequence of an increase in  $\beta$  for the representative household are summarised in Figure 2. For reasons of simplicity we disregard the presence of a net flow of commodities towards the child  $e^h$ , and only take into account the total utility derived from allocating a given amount of time to parental control ( $c^h$ ) and income producing activities ( $y^h - c^h$ ). By devoting all this time to work ( $c^h = 0$ ) it will reach point Y, moving along segment OY. In the given environment  $\beta^\circ$ , time spent on parental control activities increases welfare along the  $v^h(\beta^\circ, c^h)$  curve OV. Welfare is

<sup>2</sup> To simplify matters, the household is assumed to have a quasi-linear utility function - i.e. a constant marginal opportunity of consumption equal to one  $\partial U^h / \partial Y^h = 1$ . Hence, disregarding others arguments, we may write:

$$[1] \quad U^h = v^h(\beta, c^h, e^h) + w^h(y^h - c^h) - e^h$$

<sup>3</sup> In practice, maximising household's utility [1] we get the following first order condition:

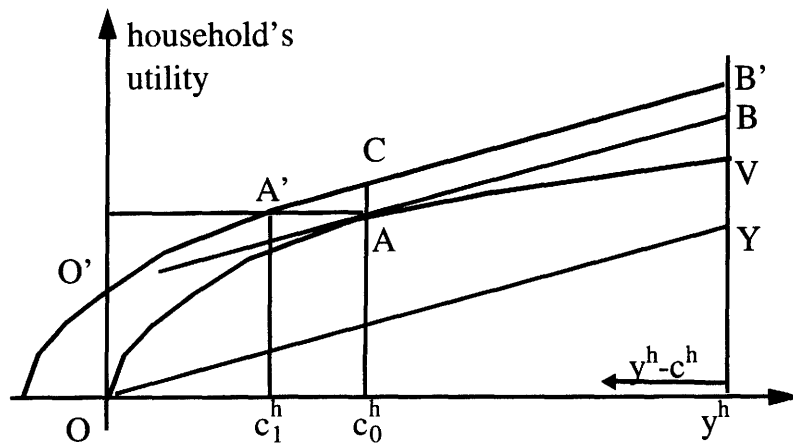
$$[2] \quad \partial U^h / \partial y^h = w^h = \partial v^h / \partial c^h = \partial v^h / \partial e^h$$

<sup>4</sup> Accordingly, household's utility increases ( $dU^h > 0$ ) as environment improves (i.e.  $d\beta > 0$ )

$$[3] \quad dU^h = \partial v^h / \partial \beta \, d\beta > 0 \quad \text{for } d\beta > 0.$$

maximised when starting from  $c_0^h$  (where the marginal opportunity of consumption  $w^h$  equates the marginal benefits of parental control activity  $\partial v^h/\partial c^h$ ) and all time is devoted to income producing activities. This allows households to move along AB [ $v^h(\beta^0, c_0^h) + w^h(y^h - c_0^h)$ ], which lies above AV (given decreasing returns in the control activity  $\partial v^h/\partial c^h < w^h$ ).

Figure 2



An improved environment ( $\beta^1 > \beta^0$ ) - shifting the utility function to the left by the amount of time saved by not requiring parental control activities ( $c_0^h - c_1^h$ ) - allows the household to devote more time to income producing activities. In this case, the household is allowed to move along A'B' [ $v^h(\beta^0, c_1^h) + w^h(y^h - c_1^h)$ ].

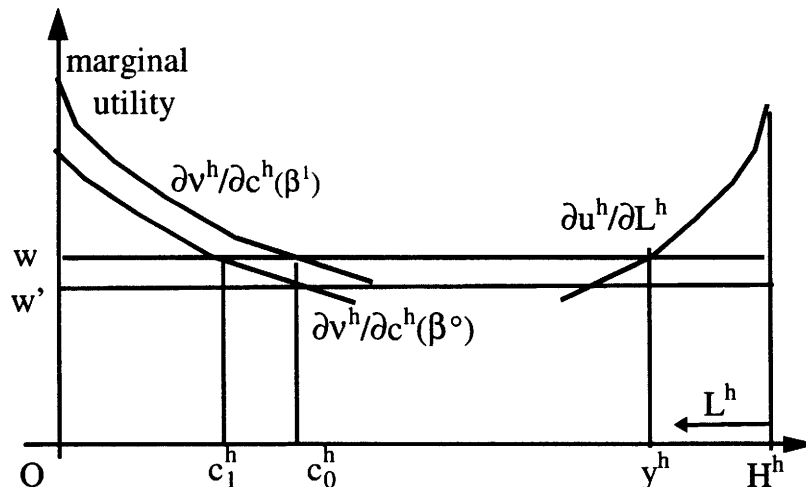
The benefits from less time ( $c_0^h - c_1^h$ ) spent on parental control activities are measured by the opportunity of increasing consumption by  $w^h(c_0^h - c_1^h)$ . This is the *compensating variation* measure of the benefits, i.e. the amount of money that would need to be given to the household in the first environment  $\beta^0$  in order to bring it to the same level it would attain if the improved environment  $\beta^1$  was achieved through regulation. Given the household's quasi-linear utility function, this measure coincides with the *equivalent variation*, i.e. the amount of money that could be taken from the household in the final environment  $\beta^1$  in order to bring it to the same level as in the original environment  $\beta^0$ .



The reduction in time spent in parental control is also evident from Figure 3, which compares  $w^h$ , the marginal utility derived from allocating  $(y^h - c^h)$  hours to income producing activities, with  $\partial v^h / \partial c^h$ , the marginal benefits from allocating  $(c^h)$  hours to parental control activities. In the original environment  $\beta^0$  there is no gain in allocating more than  $c_0^h$  hours to parental control activities, since beyond that point the marginal benefits of parental control activity  $\partial v^h / \partial c^h$  are lower than the opportunity costs of consumption  $w^h$ . In the new, improved environment ( $\beta^1 > \beta^0$ ) the marginal benefits of parental control activity  $\partial v^h / \partial c^h$  are shifted to the left by the amount of time saved by not undertaking parental control activities  $(c_0^h - c_1^h)$ . Moreover, the marginal benefits of time allocated to the two competing activities are equated for the level of consumption equal to  $c_1^h$

Note how the assumption of a fixed amount of hours devoted to the two alternative activities (parental control or work) is equivalent to subtracting from the available time (in any period) the quota dedicated to leisure  $y^h = H^h - L^h$  and that the utility function of leisure  $u^h(L^h)$  gives decreasing benefits, i.e.  $\partial u^h / \partial L^h$  is declining.

Figure 3



It follows, that  $w^h$  economic power, is the wage rate net of tax  $w^h(1-t)$ . Accordingly, as shown in Figure 3, higher taxes (leading to  $w'$ ) increase the time spent on parental control activities and thereby decrease the benefits from work. Hence, the effect of taxes (distorting the behaviour of households by providing incentives for parental

control activities) can be compensated for by an improvement in the regulatory environment.

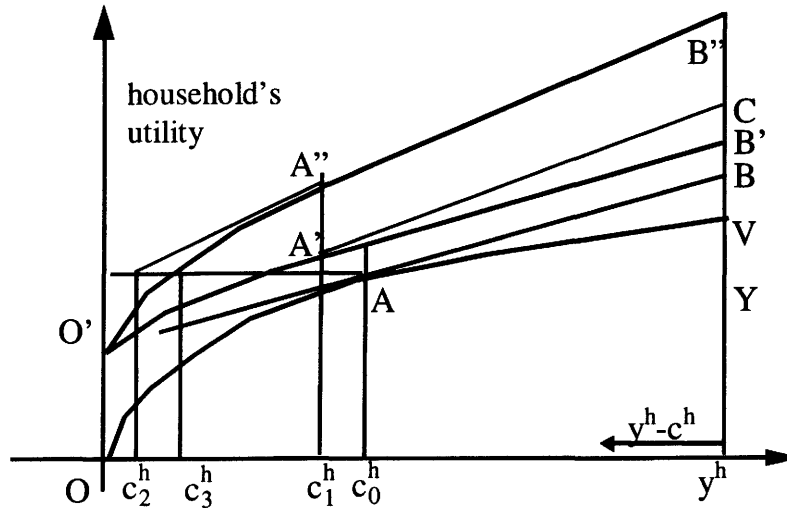
Not only does the improvement of children's broadcasting environment through an appropriate regulatory framework reduce time spent on parental control activities (shifting OAB to the left), but it also modifies its inclination. More specifically, it increases the benefits from work and from parental activities, since the household becomes more productive by specialising in work and other parental activities. Hence, the time  $(c^h - c^h)$  saved in parental control activities and the consequent increase in consumption  $w^h(c^h - c^h)$ , no longer assess the benefits for the household correctly.

In fact, the time spent on parental activities not only reduces earnings directly by decreasing time available for work, it also reduces them indirectly, by slowing down the growth of the parent's career. Accordingly, we may wish to consider the presence of any indirect benefit linked to an increase in wages as a result of increased working activity  $\Delta w^h c^h$ . This will also reduce time spent on parental control activities, since the opportunity cost of consumption has increased. As a consequence, the marginal benefits of parental control activity  $\partial v^h / \partial c^h$  must increase by the same amount. The reallocation of time between different activities is the opposite of that resulting from the reduction in net wage  $w^h$  due to an increase in taxation, which we have previously examined.

The increase in benefits from parental activities is represented by the rotation from O'A' to O''A'' in Figure 4, since the time  $c^h$  allocated to parental control activities provides an additional utility  $\Delta U^h = w^h(c^h - c^h)$  to the household.

Both effects may be reinforced by the substitution of commodities by parental activities, as the opportunity cost of consumption increases, a possibility we did not take into account in Figure 2, as we were disregarding the net flow of commodities towards the child.

Figure 4



By referring to Figure 4 we can calculate the benefit of the regulatory activity for any level of  $\beta$  for the representative household and draw (as shown in Figure 5) the marginal benefits it derives from the regulatory activity  $B_{mg}^h(\beta)$  (i.e. the marginal rate of substitution between improvement of the broadcast regulation environment and income). In a society composed of  $N$  households the social marginal benefit function is simply given by the sum of individual marginal benefits  $B_{mg}(\beta) = N B_{mg}^h(\beta)$ .

Public intervention implies: i) a regulatory social cost  $C_{mg}^s(\beta)$  in terms of reducing private expenditure, ii) an additional private cost ( $p^h = p$ ) to buy the required technical device, which we may assume to be a constant and disregard for the sake of simplicity.

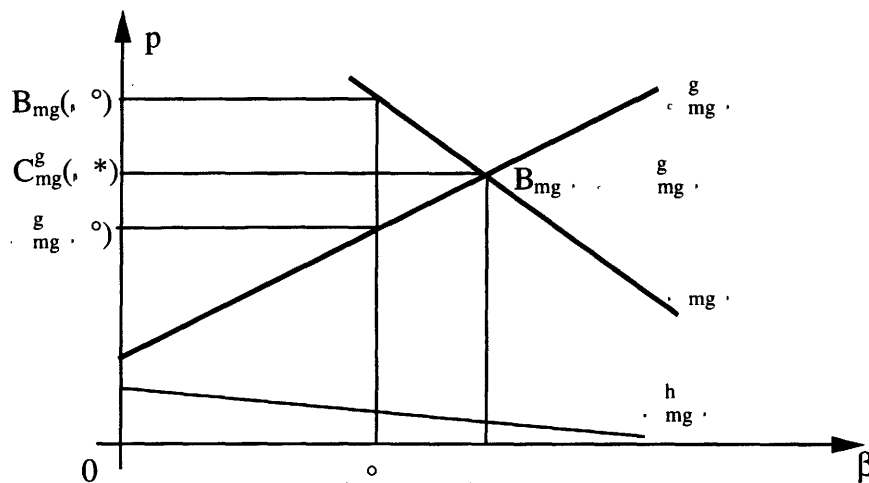
In this simplified setting, the basis of the cost-benefit calculus is provided by comparing the collective benefits of the regulatory activity  $B_{mg}(\beta)$  with its costs in terms of marginal benefits of the private consumption  $C_{mg}^s(\beta)$ , which is foregone.

In theory, the regulatory activity should be pushed forward until the sum of the household's marginal rate of substitution between improvement of the broadcasting

environment and income is greater than the marginal cost of the regulatory activity in terms of private consumption,  $\beta \leq \beta^*$  as shown in Figure 5.<sup>5</sup>

The total net economic benefit of regulation can be seen as the difference between social marginal benefits and marginal cost curve  $C_{mg}^g(\beta)$ . The net benefit is at a maximum when marginal costs and benefits are equal, i.e. when the optimal social level  $\beta^*$  is reached.<sup>6</sup>

Figure 5



From the previous analysis we can conclude that regulation of the broadcasting environment is similar to the provision of a public utility, since it simultaneously affects the productiveness of all households.

Even if the public utility argument is disregarded, an externality may arise because the creation of an improved broadcasting environment for children brings gratification to other members of society due to altruistic (or selfish) reasons. In practice, if the behaviour of someone else's child is affected negatively by the environment, it may be

<sup>5</sup> Specifically, with  $N$  identical household we have:

$$[4] \quad B_{mg}(\beta) = N \frac{\partial v^h}{\partial \beta} \geq \frac{dC_{mg}^g(\beta)}{d\beta}$$

<sup>6</sup> More precisely, the net benefit is given by the difference between the areas of regulation benefit (once the technical device is bought) and costs, as in formula [5] below:

$$[5] \quad NB = N \left( \int_{\beta^0}^{\beta^*} \frac{\partial v^h}{\partial \beta} d\beta - p \right) - \int_{\beta^0}^{\beta^*} \frac{dC_{mg}^g(\beta)}{d\beta} d\beta$$

detrimental to the welfare of other children or members of the entirety in addition to the affected child itself (whose welfare should matter to society and at least to unselfish households). Hence, there is a legitimate social concern in modifying the current environment.

Therefore, the usual market failure argument - in the presence of a public utility and an externality - does apply. Moreover, the presence of an externality implies opting for more drastic solutions.

Regulatory costs  $C_{\text{reg}}(\beta)$  in terms of private consumption increase more than proportionally with the complexity of the regulatory framework. Moreover, as is the case with education, there may be a further argument for additional regulation if, without sufficient information and parental support, parents cannot always be trusted to act in the child's best interest. Hence there is a need to introduce minimum standards.

### Conclusion

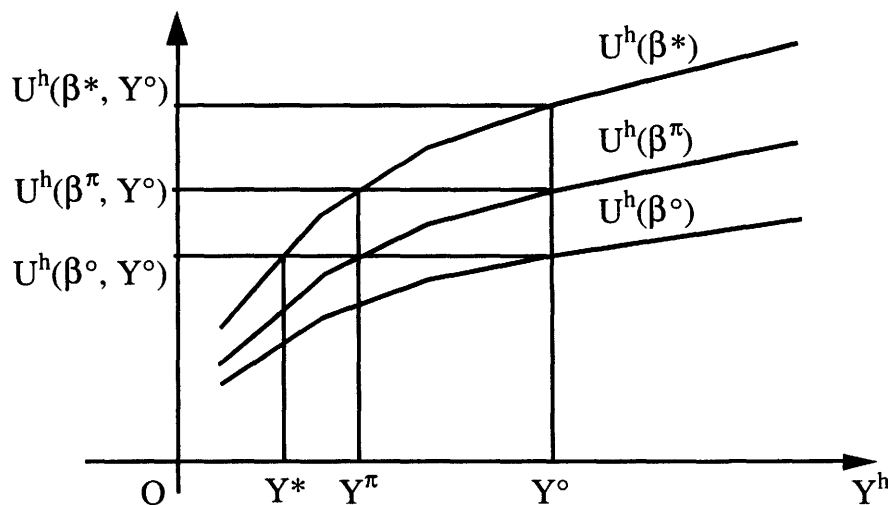
Since the majority of economic benefits occur in the form of time savings, the first approximation emerging from the previous model is that we can achieve a fairly accurate projection by using data on earnings. This way we can consider the monetary value of parental control activity (which is no longer necessary in a regulated environment), in order to reach the previous level of children's welfare, i.e.  $w^h(c^h - c^b)$  which constitutes a cautious estimate of household benefits, as shown in Figure 4.

The fact that elements of risk characterise the world we live in and influence the actions of all households reinforces our previous reasoning. In fact, enhanced regulation yields not only a *direct benefit* by reducing parental control activity (and an *indirect benefit* as the externality case shows) but also additional benefits as a result of solving the problems caused by: (i) uncertainty about the future environment (i.e. the *option value* of regulation) and (ii) the *irreversible* harm which, in the absence of a regulated environment, stems from (ex post) insufficient parental control.

Let us first show in detail the option value of public intervention. In order to develop this argument let us assume that households are risk-averse and that the household's utility depends only on income  $Y^h$  and the regulatory environment  $\beta$ . We can compare the utility of income in a properly regulated environment -  $U^h(\beta^*, Y^h)$  - with that in the original environment -  $U^h(\beta^o, Y^h)$  - and/or a risky environment -  $U^h = \pi U^h(\beta^*, Y^h) + (1-\pi) U^h(\beta^o, Y^h)$  - where  $\pi$  represents the probability of a properly regulated environment, in absence of state intervention.

These utility functions are represented in Figure 6 as functions of consumption expenditure. Clearly the utility curve is higher in the first case and willingness to pay can be represented by the *compensating variation CV* at a given income level  $Y^o$ , i.e. by the difference in income ensuring the same utility level in both cases  $Y^o - Y^*$ . Analogously, the *expected compensating variation ECV* at the same income level  $Y^o$  is  $Y^o - Y^\pi$ .

Figure 6

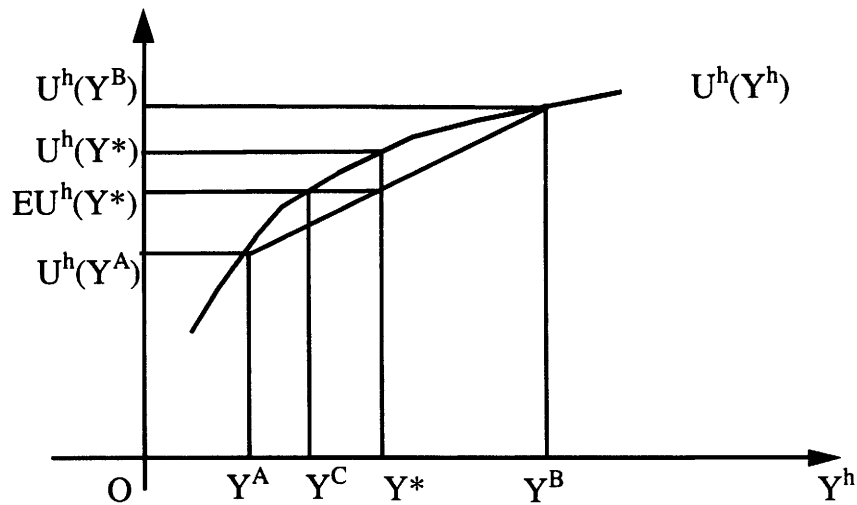


Hence, for the same income level  $Y^o$  the *option value OV* - i.e. the willingness to pay to eliminate the uncertainty related to the supply of a regulated environment - in this case is:  $OV = CV - ECV = Y^\pi - Y^*$ .

This result is illustrated in Figure 6, where the utility curves  $U^h(\beta^*)$ ,  $U^h(\beta^o)$  and  $U^h(\beta^r)$  represent the household's utility of income in a regulated, unregulated and risky environment respectively.

Let us now consider the irreversible harm issue, assuming, for the sake of simplicity, that the damage can be valued in monetary terms  $Y^B - Y^A$ , so that now the household's utility is only a function of income  $U^h(Y^h)$ . The elimination of costs associated with harm should be included among the benefits of the regulated environment. Such a component can be calculated by multiplying the monetary cost of harm ( $Y^B - Y^A$ ) by the probability of the occurrence of harm  $\pi^B$ . Additional benefits for risk-averse households derive from eliminating the risk-bearing costs. Such benefits are measured by the risk premium, which arises from the comparison of the expected level of income  $Y^*$  and its certainty equivalent  $Y^c$  (i.e. the income that in the certainty case would allow the household the same level of utility expected in the uncertain outcome).

Figure 7



The developments of the analysis in a risky setting suggest that:

- our previous approach of estimating benefits from earning data is rather cautious and likely to lead to an underestimation of aggregate individual willingness to pay for improved regulation.
- convincing arguments call for further examination of the desirability of public intervention through some form of compulsory regulation.

## 2. Equity issues

We will now examine three fundamental questions related to equity issues to determine whether public intervention can also be justified on the grounds of equity.

- i) Is the market outcome characterised by under- or over-consumption of particular contents by different socio-economic groups? More specifically, is there an equal ability to make rational choices (i.e. no income discrimination is associated with receiving information) and equal power in enforcing them (i.e. implementing control)?
- ii) Can regulation enhance any aspects of equity?
- iii) Finally, should any redistribution (e.g. from the rich to the poor)<sup>7</sup> occur through regulation and if yes to what extent?

As regards i) no strong equity case has yet been made for some form of public intervention aimed particularly towards poor households, to increase the flow of information, with a view to facilitating their parental control activities. Thus far this has been avoided altogether by assuming an average household only.

As already noted, since information and parental control activities are costly, the problem is likely to be greater for households in lower socio-economic groups. In fact, it is very likely that better-educated households have an information advantage, as it is easier for them to acquire and use information appropriately. Accordingly, the consumption patterns of children in lower socio-economic groups may be characterised by excessive viewing of inadequate media.

Moreover, parents in disadvantaged households may be less able to devote sufficient time to control activities or may provide reduced benefits - i.e. they may be less able to raise their child's utility or protect it from harmful audiovisual content. Lone-parent

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<sup>7</sup> In practice, we can define the poor households as the ones below the poverty level and the rich households as the other ones, or alternatively as the ones that earn an income above a certain level.



families are often among the less advantaged households; with the mother being the responsible parent in many cases. The *feminisation* of poverty is an emerging trend; but, in any event, parental activities, which rely mainly on women's time, generally have a negative impact on women's work and earnings predominantly, which are already discriminated against. Hence, regulation might also be required to improve equity as well as efficiency.

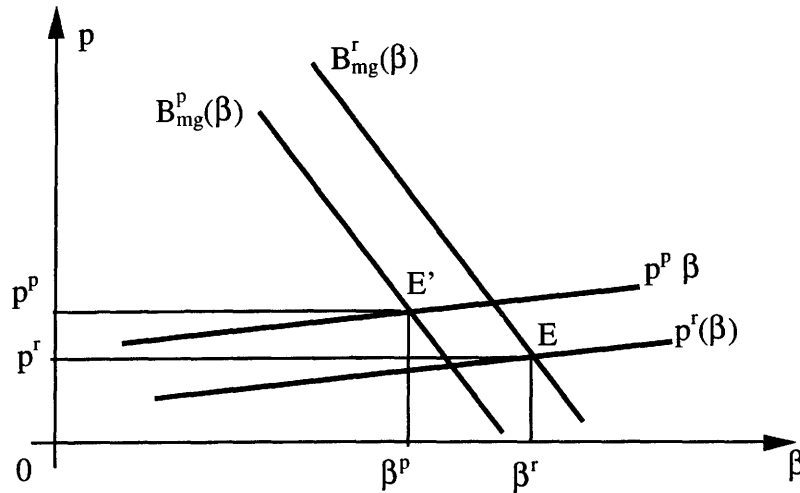
This leads to the second question; i.e. whether regulation aimed at facilitating parental control may have a positive impact on redistribution and thereby in some way improve gender equity in European Union (EU) countries.

Since parents belonging to lower socio-economic groups seem more likely to be misled and/or to undervalue the utility of their own children (and consequently the possible harm from audiovisual products), the presence of regulation financed by a progressive tax system seems likely to have a positive impact on their children's welfare, by improving equity (if user-friendly) and implying no significant (economic or time) burden on less advantaged parents.

In general, regulatory benefits and costs may vary among different socio-economic groups, even in a perverse way, a distinct possible outcome that we would like to avoid. In fact, parents in the higher socio-economic group may receive more benefits if they are better informed or put higher value on the quality of audiovisual content.

Focusing on private benefits and costs, this case may be represented by a higher individual marginal benefits function for rich parents  $B_{mg}^r(\beta) > B_{mg}^p(\beta)$ . At the same time, it may also be the case that poor parents face higher private cost  $p^p(\beta) > p^r(\beta)$  related to the acquisition and appropriate use of the technical device, as shown in Figure 8.

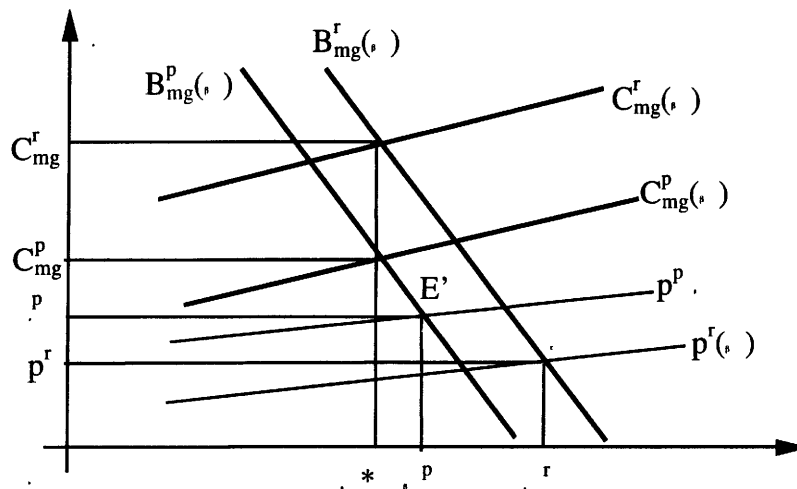
Figure 8



Within this framework, the cost-benefit calculus is different since we disregard social costs and benefits (as well as their allocation). Thus, starting from  $\beta^p$  the regulatory activity should increase to  $\beta^r$  for the rich household since in  $\beta^p$  its marginal rate of substitution between improvement of the broadcast environment and income  $B_{mg}^r(\beta)$  is greater than its marginal cost in terms of foregone private consumption  $p^r(\beta)$ . However, Figure 8 reveals how the regulatory level  $\beta^r$  is too high for the poor household, since its marginal benefits are lower than its marginal costs  $B_{mg}^p(\beta^r) < p^p(\beta^r)$ .

The previous inequalities in the allocation of the net benefits of regulation may not matter in terms of efficiency and hence do not necessarily represent a failure on the part of government. From a broader perspective, the financing of regulatory social costs  $C_{mg}^r(\beta)$  should also be considered and in the presence of progressive taxation the system taken as a whole may turn out to improve equity. In particular, the distribution of the social cost proposed in Figure 9, leading to total marginal regulatory costs  $C_{mg}^r(\beta)$  and  $C_{mg}^p(\beta)$  respectively for the rich and the poor household, achieves the same result as before, i.e. marginal benefits and costs are equal  $B_{mg}^r(\beta^*) = B_{mg}^p(\beta^*) = C_{mg}^r(\beta^*) = C_{mg}^p(\beta^*)$  for the same level of regulation  $\beta^*$ .

Figure 9



In any case, an unequal and perverse distribution of the net regulatory benefits is not necessarily the outcome, and could be avoided by the appropriate technical design.

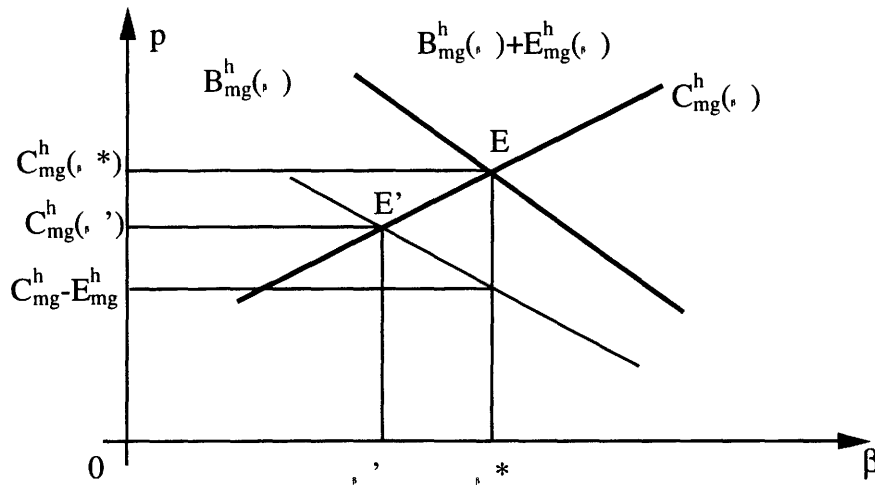
Moreover, as outlined above, once we distinguish the roles of wife and husband in our economic analysis of the household's choices for allocating time, positive redistributive consequences emerge. Under normal circumstances, mothers devote the greater share of their time to parental activities (especially in less advantaged households) and hence in most cases it is the net wage rate of women that matters. More specifically, as suggested in the previous analysis of efficiency issues, parental control activities reduce not only the participation by mothers in the labour-market, but also the market value of female human capital, thus further diminishing their lifetime earning capacity. Consequently, regulation that decreases the time mothers need to devote to parental control activities is likely to redistribute resources from men to women. Along with other measures, it may be of help in abating the "feminisation of poverty", a phenomenon observed recently in EU countries, by improving the welfare of poor single-parent families.

These equity arguments add weight to the justification of public intervention on the grounds of economic efficiency.

Finally, we need to look at whether and to what extent there is a case for redistributing through regulation. The general externality case does not imply an equity argument.

In practice, the positive externality case means only that for a given household the equilibrium of marginal costs  $C_{mg}^h(\beta)$  and benefits  $B_{mg}^h(\beta)$  leads to under-consumption. The reason behind this is that the market does not take into account the benefits other members of society receive from the fact that the child's environment is better regulated. Once their willingness to pay  $E_{mg}^h(\beta)$  is taken into account we should equate marginal costs  $C_{mg}^h(\beta)$  with marginal social benefits  $B_{mg}^h(\beta) + E_{mg}^h(\beta)$ , to reach the efficient level  $\beta^*$  as shown in Figure 10.

Figure 10



We have a redistribution case due to an externality, if the provision of a better environment for poor children is the only or primary factor in bringing satisfaction to richer members of society, for reasons of efficiency/selfishness and/or equity/altruism. Let  $1 > \alpha^P > 0$  represent the subjective evaluation that the rich attach to increased economic growth and the reduction in crime and social unrest brought about by exposing children less to harmful content (and/or directly to their well-being). In practice, with  $N^P$  representing poor households, the utility function of the rich household  $r$  will also depend on the poor child's welfare  $v^P$  and the additional term

given by the sum of the welfare of poor children multiplied by the rich household's subjective evaluation, i.e.  $N^P \alpha^P v^P(\beta, c^P, \dots)$ .<sup>8</sup>

### Conclusion

A regulatory framework that improves the broadcasting environment ( $d\beta > 0$ ) common to poor children will therefore indirectly enhance the rich household's welfare. The effect on the welfare of rich households will be greater than the increase in consumption of poor households, which stems from the equivalent income transfers to the latter. This is because a rise in income does not necessarily increase parental control  $c^P$  nor the welfare of poor children  $v^P$ .<sup>9</sup> On the other hand, improved regulation of the broadcasting environment, by reducing the cost of parental control activities for poor households, will also indirectly increase their welfare  $U^P$  and their disposable income.

At an aggregate level, an additional external benefit  $E_{mg}^r(\beta) = N^r N^P \alpha^P \partial v^P / \partial \beta$  - given by the sum of the marginal value all rich households place on the enhancement of poor children's welfare - should be added to the original cost-benefit calculus. Accordingly, this implies not only a greater level of regulation (as before), but also a redistribution of financial costs from the poor households to the rich ones.<sup>10</sup> In fact, while in the previous case all members of society receive external benefits from an improved regulatory environment and should contribute to finance part of  $E_{mg}^h(\beta)$ , in this case only the rich ones benefit from the external effect and only their willingness to pay is reflected in  $E_{mg}^r(\beta)$ .

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<sup>8</sup> Assuming that the quasi-linear utility function of the rich household  $r$  depends also on the poor child welfare  $v^P$  we may write:

$$[7] \quad U^r = v^r(\beta, c^r, \dots) + N^P \alpha^P v^P(\beta, c^P, \dots) + w^r(y^r - c^r) - e^r \dots$$

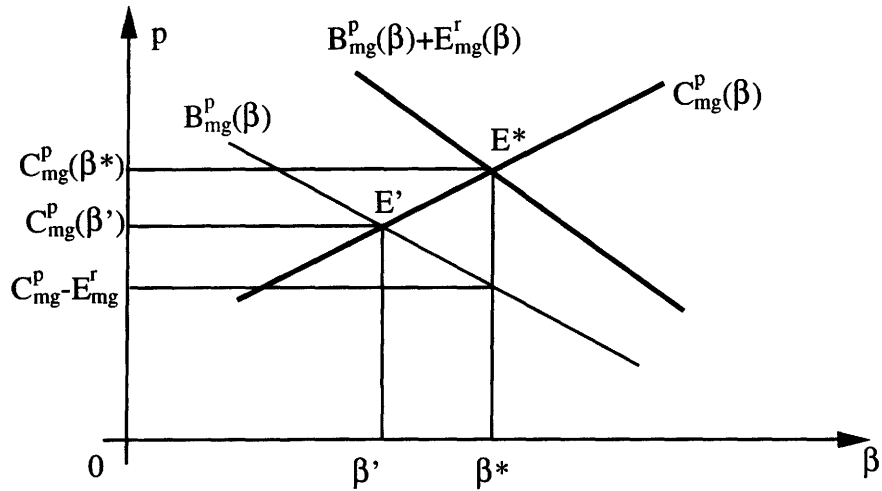
<sup>9</sup> In practice, the rich household's utility increases ( $dU^r > 0$ ) as environment improves (i.e.  $d\beta > 0$ )

$$[8] \quad dU^r = \partial v^r / \partial \beta d\beta + N^P \alpha^P \partial v^P / \partial \beta d\beta > 0 \quad \text{for } d\beta > 0.$$

<sup>10</sup> More precisely, the optimal level of the regulatory activity will be reached when the sum of households' marginal rate of substitution between improvement of the broadcast environment and income  $N \partial v^h / \partial \beta d\beta$  and of marginal external effect for the rich  $N^r N^P \alpha^P \partial v^P / \partial \beta$  equate the marginal cost of the regulatory activity in terms of private consumption, as in formula [9] below:

$$[9] \quad N \partial v^h / \partial \beta d\beta + N^r N^P \alpha^P \partial v^P / \partial \beta > dC^r(\beta) / d\beta$$

Figure 11



This vertical equity argument reinforces the efficiency motives and suggests the possibility of an “in kind” transfer, which is welcomed by the poor. The extent to which the rich household is interested in supporting an improvement of the environment of the poor children - i.e. the redistribution from rich to poor - crucially depends on the value of  $\alpha^p$ . However, voluntary action is probably doomed to failure since each rich household has an incentive to free ride. At the same time, where there is public intervention, rich households do not truthfully reveal the value of  $\alpha^p$ . Hence, the market failure argument applies again and genuine social concern about equity may prove to offer the best justification for public intervention.

## **Chapter 2. International and Regional Legal Background**

### **Introduction**

This section presents an overview of international and supra-national legal instruments relevant to the question of effecting the protection of minors from harmful content at EU level. It describes the relevant legal instruments and their ramifications at both international and European level.

The review examines the two discernible approaches to the protection of minors: *Positive protection* and *negative protection*. *Positive protection* denotes measures promoting content that encourages the positive development of children, cultivating ideas, culture and philosophy as well as fostering a balance in self-perception. *Negative protection* either prohibits certain contents (gratuitous violence, pornography) or sets rules circumscribing the representation of contents that could be harmful to children. Both serve the same public policy goal of protection of minors.

Universal international instruments provide a positive framework for the general approach to protecting minors. Within Europe, the EU and the Council of Europe have addressed this issue. Though they have contributed to the positive approach, they have primarily introduced negative protective instruments. The present review briefly explains and assesses the relevant positions regarding both positive and negative forms of protection.

### **1. Protection versus freedom of expression**

The protection of children within the media environment cannot be addressed without raising the issue of freedom of expression. The primacy of freedom of expression is nonetheless subject to restrictions that under particular circumstances may apply to this fundamental right.

Inspired by the **Declaration of Man and the Rights of the Citizen** of 26 August 1789, the two main international legal instruments, which now assert the pre-eminence

of the freedom of expression are the **Universal Declaration of Human Rights** (Paris, 10 December, 1948), which stipulates that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” (Article 19); and the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (Rome, 4 November, 1950), which was adopted two years later within the framework of the Council of Europe.

Further to the UN Declaration, the UN Covenant on Civil and Political Rights, which was adopted in 1966 and entered into force 10 years later, making many of the provisions of the Universal Declaration of Human Rights effectively binding, also contains a provision protecting freedom of expression, which has similarities with Article 10 of the European Convention. Indeed, Article 19 states that:

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally or in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
  - (a) for respect of the rights or reputations of others;
  - (b) for the protection of national security or of public order (ordre publique), or of public health or morals.”

Like the Universal Declaration, the European Convention recognises freedom of expression explicitly in Article 10: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of



frontiers”<sup>11</sup>. However, contrary to the Universal Declaration, the European Convention introduces exceptions and limits to this right. Firstly, “This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”<sup>12</sup>, and secondly, “The exercise of this freedom, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

All EU Member States are signatories to the European Convention of Human Rights. Furthermore, the Treaty on European Union, signed in Maastricht on February 1992, states in Article F2 that “The Union shall respect fundamental rights, as guaranteed by the European Convention on the protection of human rights and fundamental freedoms”.

Article 10 seems to offer to the signatories substantial discretion, under the watchful control of the European Court of Human Rights (ECHR), to determine which restrictions on fundamental rights are necessary to protect other legitimate social or cultural goals<sup>13</sup>. Freedom of expression fully applies as long as it does not infringe upon national concerns such as public safety and the protection of health or morals. It

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<sup>11</sup> The European Court of Human Rights has confirmed that “it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratised society”. This means...that every “formality”, “condition”, “restriction”, or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued”. *Handyside v. United Kingdom*, 7.12.1976.

<sup>12</sup> Nevertheless this provision does not have to be seen as an unchecked permission to restrict freedom of expression: “the purpose of the third sentence of Article 10(1) of the Convention is to make clear that States are permitted to control by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects. It does not, however, provide that licensing measures shall not otherwise be subject to the requirements of paragraph 2, for that would lead to a result contrary to the object and purpose of Article 10 taken as a whole”. *Groppera Radio AG & others v. Switzerland*, 28.3.1990

<sup>13</sup> For a full overview of the interpretation of Article 10 by the ECHR, see Prof. Dirk Voorhoof: “Critical perspectives on the scope of Article 10 of the European Convention on Human Rights”. Mass Media files No. 10. Council of Europe Press, 1995.

is generally under this concept of protection of morals that national content regulation is debated. Under this provision, legislative measures may be taken, subject to such measures being legitimate, proportionate and necessary in a democratic society. A brief look at decisions of the EHCR in this area permits us to determine how such limitations or restrictions of freedom of expression are understood by this jurisdiction. Article 10 of the European Convention is not the only instrument giving countries room for manoeuvre, and the way in which Member States of the EU and the European Free Trade Association (EFTA) are able to maintain a domestic conception of harmful content in the framework of the EU Directive, Television Without Frontiers, will also be subject to a brief overview. This case law delimits freedom of expression in the interests of sustaining public order or providing for the protection of morals. From these baselines more specific limits and particularities obtain legitimacy. Such is the case of the protection of minors.

With regard to the protection of morals, the European Court of Human Rights has had the opportunity several times to note that countries benefit from a relative margin of appreciation. In the **Handyside** case of 7 December 1976<sup>14</sup>, the Court states that “it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals”, thus “by reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give ... an opinion on the 'necessity' of a 'restriction' or 'penalty' intended to meet ...”<sup>15</sup> requirements related to the protection of morals in their own jurisdiction. The margin of appreciation authorised by the Court applies “both to the legislator (“prescribed by law”) and to the bodies....that are called upon to apply the laws in force.” “Nevertheless, Article 10, paragraph 2, does not give Contracting States an unlimited power of appreciation. ...The domestic margin of

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<sup>14</sup> Richard Handyside, published “the Little Red Schoolbook”, the original edition of which was subject to proceedings by the Public prosecutor, under section 3 of the Obscene Publications Act 1959/1964 leading to the seizure of the said book. The motive was that the book, aimed at an audience of young persons from 12 to 18, contained incitement to anti-authoritarian behaviour, which was likely to “deprave and corrupt” the readers.

<sup>15</sup> Handyside, para 48.

appreciation goes hand with hand with a European supervision. Such supervision concerns both the aim of the measure challenged and its “necessity”<sup>16</sup>.

This attitude was confirmed in another case, **Müller and others**, of 24 May 1988. At an exhibition of contemporary art in Fribourg entitled “Fri-Art 81”, in the space of three nights, Josef Felix Müller produced three large paintings entitled “*Drei Nächte, drei Bilder*” (“Three Nights, Three Pictures”). The public prosecutor, acting on information from a man whose daughter, a minor, had reacted violently to the paintings, requested that the paintings be destroyed for reason of obscenity as prohibited by Article 204 of the Swiss Criminal Code. Accompanied by his clerk and some police officers, the investigating judge went to the exhibition and had the pictures removed and seized. The Swiss Court sentenced Müller and the exhibition organisers to a fine of 300 Swiss francs for publishing obscene material (Article 204 § 1 of the Criminal Code) and ordered that the confiscated paintings should be deposited in the Art and History Museum of the Canton of Fribourg for safekeeping. The case was brought before the ECHR. As with the Handyside case, the Court noted that no uniformity exists within the Contracting States regarding the protection of morals, and therefore that the States, due to their closer knowledge of society they have in charge, are the best placed to assess this matter<sup>17</sup>. Nevertheless, the measure of restriction that may be pronounced has to be “foreseeable” meaning that.. “A norm cannot be regarded as a “law”<sup>18</sup> unless it is formulated with sufficient precision to enable the citizen - if need be, with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”<sup>19</sup>. However this “mandate” may be flexible in areas such as obscenity, so as to “...avoid excessive rigidity and to keep pace with changing circumstances.” meaning that laws referring to such areas may be, to a certain extent, formulated in vague terms.<sup>20</sup> However, whatever the degree of precision of the national law, the measure has to be considered “...necessary, in a democratic society”.<sup>21</sup> The Court has consistently held that in Article 10 § 2 “...the adjective

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<sup>16</sup> Handyside, paragraph 49.

<sup>17</sup> Müller and others, paragraph 35.

<sup>18</sup> In the sense of Article 10 paragraph 2.

<sup>19</sup> Müller and others, paragraph 29.

<sup>20</sup> Müller and others, paragraph 29.

<sup>21</sup> Article 10 paragraph 2.

“necessary” implies the existence of a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but this goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court”. In this particular case the ECHR concluded that Article 10 had not been violated, and it is interesting to note that one of the arguments raised by the applicant, that he had been able to exhibit works in a similar vein in other parts of Switzerland and abroad, did not preclude the existence of a “*genuine social need*” in the region of Fribourg<sup>22</sup>.

More directly related to the matter of this report is the **Wingrove** case of 25 November 1996. The applicant created and produced a video representing St Teresa of Avila having, *inter alia*, sexual intercourse with the Christ<sup>23</sup>. The applicant submitted the video to the British Board of Film Classification so that it might lawfully be sold, hired out or otherwise supplied to the general public or a section thereof. The Board rejected the application for a classification certificate by reason of infringement of the Obscene Publication Acts 1959 and 1964 and criminal law of blasphemy.

The Court recognised here that “blasphemy cannot by its very nature lend itself to precise legal definition”<sup>24</sup>, and recalled that “States enjoy a certain but not unlimited margin of appreciation”, meaning that the Court must assess “...whether the interference [of the State] corresponded to a “pressing social need” and whether it was “proportionate to the legitimate aim pursued”<sup>25</sup>. In this case the interference of the State was considered by the court as fulfilling these requirements, and it therefore concluded that Article 10 had not been violated.

The cases illustrated show how certain States have, in accordance with international provisions, adopted legal provisions specifically aimed at protecting children, endeavouring to shield them from harmful content. This concern has also been

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<sup>22</sup> Müller and others, paragraph 36.

<sup>23</sup> Wingrove, paragraph 9.

<sup>24</sup> Wingrove, paragraph 42.

<sup>25</sup> Wingrove, paragraph 53.

expressed internationally in several instruments, both binding and not binding, which aim to protect children from exposure to harmful media.

## **2. Positive protection**

The idea, at international level, that children may be harmed and influenced by unlimited and unrestricted freedom of expression is not new. This principle was clearly enunciated in two resolutions adopted by the Council of Europe in 1967 and 1969, concerning the press<sup>26</sup> and the cinema<sup>27</sup>, respectively, wherein the Committee of Ministers explicitly recognised that media could indeed effect youth behaviour and resolved to take measures. This concern has now reached beyond the scope of the Council of Europe.

### **1.1 Universal instruments**

**The Convention on the Rights of the Child**, adopted by the United Nations General Assembly on 20 November 1989, is the most comprehensive instrument asserting the global rights of the child. The Convention addresses all key social actors and stresses their responsibilities regarding the development and well being of children. Three of the articles of this Convention are of importance and relevance for the purpose of this study. In Article 3 paragraph 1, the Convention states that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. State parties, “taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for [the child], ...shall take all appropriate legislative and administrative measures.”. Parental control mechanisms implemented by EU member States in such a way as to permit collaboration and shared responsibilities between State authorities, content producers and providers, as well as parents and guardians, and dedicated to protecting children

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<sup>26</sup> Resolution (67) 13 - The press and the protection of youth, adopted by the Ministers' Deputies on 29th June 1967

<sup>27</sup> Resolution (69) 6 - Cinema and the protection of youth, adopted by the Ministers' Deputies on 7 March 1969

from contact with material harmful to their well-being, would therefore be completely in line with the aim pursued by the UN.

Entitling children with the right to freedom of expression (Article 13<sup>28</sup>), within similar limits to those expressed in the European Convention of Human Rights, the Convention on the Rights of the Child stresses explicitly the importance of the mass media in the development of children and requests State parties to act with awareness of the function of mass media in disseminating beneficial information and material to children.<sup>29</sup> This point is very important to underline as it must not be forgotten that any protective mechanisms implemented should take into account the fact that mass media, even if potentially harmful to children, are also, given the high level of children's consumption of visual media shown in Chapter 4, an important part of their connection to culture. Any mechanism to be put in place should therefore, as far as possible, preserve this function by avoiding the creation of blocking regimes that would be too intrusive and would undermine children's rights to access appropriate

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<sup>28</sup> Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others; or
  - b) For the protection of national security or of public order (ordre public), or of public health or morals.

<sup>29</sup> Article 17

States Parties recognise the important function performed by the mass media and shall ensure that the child has 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 and physical and mental health. To this end, States Parties shall:

- a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- c) Encourage the production and dissemination of children's books;
- d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well being, bearing in mind the provisions of articles 13 and 18.

information. All countries with the exception of Somalia and the United States have signed the Convention on the Rights of the Child<sup>30</sup>.

The Parliamentary Assembly of the Council of Europe has continued to address these matters. In 1993, on the occasion of the adoption of a **Resolution on the situation of women and children in the former Yugoslavia**<sup>31</sup>, the Assembly urged its constituent states to recognise the universality and indivisibility of children's rights, and to provide for the essential needs of children both in Europe and in the rest of the world. Three years later, in 1996, the same Assembly adopted a **Recommendation on a European strategy for children**<sup>32</sup>, stressing the importance of assisting states to put into practice nationally the commitments entered into under the United Nations Convention on the Rights of the Child. Further, in this Recommendation the Committee of Ministers strongly urges the constituent states of the Council of Europe "to encourage the media, notably visual, to promote children's rights to a healthy and balanced development, and, in particular in products intended for children, to eliminate violence and to illustrate positive social values". Indeed, if parental control mechanisms appear to be necessary to counter the potential harmful effect of certain media programmes, it must be considered equally important to provide media with positive benefits for children. The first step is to encourage content producers to create visual programmes that are adapted to children and content providers to transmit these programmes at times appropriate to children's viewing habits. Once again sharing responsibility by establishing a clear social contract between content producers and providers and parents or guardians, as represented by a graduated watershed regime and the creation of specific slots dedicated to children, is probably the best way to achieve these two goals: protection and development.

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<sup>30</sup> See, for further information, "Children and Media Violence", Yearbook from the UNESCO Clearinghouse on Children and Violence on the screen, 1998, pages 20 to 35.

<sup>31</sup> Resolution 1011 (1993) on the situation of women and children in the former Yugoslavia

<sup>32</sup> Recommendation 1286 (1996) of the Parliamentary Assembly of the Council of Europe on a European strategy for children

## 1.2 International instruments applicable to specific actors

In 1969, the Committee of Ministers of the Council of Europe in its **Resolution on Cinema and the protection of youth**<sup>33</sup> recommended, inter alia, to the member governments that “the regulations governing the cinema should take biological, psychological and sociological factors into consideration in determining age groups”. The same goes for advertisements<sup>34</sup>, which “should avoid anything likely to harm their interests and should respect their physical, mental and moral personality”.

Following the concern expressed in 1969, the Committee of Ministers of the Council of Europe adopted in 1990 a specific recommendation on **Cinema for children and adolescents**,<sup>35</sup> clearly distinguishing, the needs of children and adolescents from those of adults in the cinema audience. The “developmental needs of children and adolescents” require particular attention, which “the commercial sector only rarely responds to in its present system of production, distribution and exhibition”. Then, “considering that generally there are benefits in providing a satisfactory cinema experience for young people”, the Committee of Ministers recommended that Member States:

- ❑ Encourage the adoption of appropriate arrangements for co-operation between film and television in the co-production of films for young people
- ❑ Promote close co-operation between the film industry and educational establishments
- ❑ Encourage film shows for young people by providing financial support and/or tax benefits to minimise the financial disincentives of this form of exhibition
- ❑ Introduce systematic cinema and media education in schools and other institutions for young people;
- ❑ Encourage research to determine the types of film that would both interest young people and meet their development needs.

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<sup>33</sup> Resolution (69) 6 - Cinema and the protection of youth, adopted by the Ministers' Deputies on 7 March 1969

<sup>34</sup> Recommendation N° R (84) 3 on Principles on television advertising, adopted by the Committee of Ministers on 23 February 1984

<sup>35</sup> , Recommendation N° R (90) 10 on Cinema for children and adolescents,



The **Bratislava Resolution**, adopted in November 1994, continued this trend, drawing support from producers, broadcasters and others interested in production for children and sharing experiences. This resolution takes a positive approach, and is dedicated specifically to children's programmes.

Acknowledging that "the increasing impact of film, television and other media on our children demands more specific care and action with an aim to achieving better quality in the lives of the young people ... Good quality films and television programmes for children can and must carry positive fundamental human values. These will help and support the development of a personal conscience in young people, and add new dimensions to their basic social behaviour and to their knowledge of the world. [They] encourage the process of creative thinking, of deciding and of acting in full liberty in order that children can build their own personalities and their future. [They] reveal and stress the basic values of each people and of each nation..."<sup>36</sup>

Addressing governments, parliaments, national and international agencies and organisations, the Resolution identifies several ways to achieve such goals:

- ❑ stimulating increased production of children's films and television, on a national level, by raising and investing more funds
- ❑ building a support system for wider and better distribution of those children's films whose artistic and educational values are more important than their commercial aspects
- ❑ encouraging the use on a large scale of production for children in schools and in other educational institutions and activities
- ❑ supporting the spread of quality children's screenings in all social areas
- ❑ financing and developing the education and training of specialists – scriptwriters, directors and others – in children's production
- ❑ stimulating and financing scientific research about the reaction of children to the media, and about the way they use media for their specific needs

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<sup>36</sup> Bratislava Resolution, November 1994

- helping national and international professional organisations and associations dealing with the issues surrounding children's film and television to achieve and develop their activities.

Confirming Bratislava's trends, **The Children's Television Charter** was presented by Anna Home, Head of Children's Television Programmes, BBC, at the first World Summit on Television and Children in Melbourne, Australia, in March 1995. The Charter was revised and adopted in Munich in May 1995. Once more, emphasis is placed on positive protection of children via the development of programmes specifically dedicated to them.<sup>37</sup>

Completing the picture, the **Children's charter on electronic media** was adopted on 13 March 1998. Among other things the Charter stressed that children's programmes should be fun, entertaining, educational, interactive, and should help them to develop physically and mentally, that they should be honest and real, that programmes must be created for all ages and should be on at times when children can watch them. Children's television should discourage drugs, cigarettes and alcohol and should not promote violence for the sake of violence or violence to solve conflict.

### 3. Negative protection

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<sup>37</sup> The Charter makes the following resolutions:

1. Children should have programmes of high quality which are made specifically for them, and which do not exploit them. These programmes, in addition to entertaining, should allow children to develop physically, mentally and socially to their fullest potential.
2. Children should hear, see and express themselves, their culture, their language and their life experiences, through television programmes which affirm their sense of self, community and place.
3. Children's programmes should promote an awareness and appreciation of other cultures in parallel with the child's own cultural background.
4. Children's programmes should be wide-ranging in genre and content, but should not include gratuitous scenes of violence and sex.
5. Children's programmes should be aired in regular slots at times when children are available to view, and/or distributed via other widely accessible media or technologies.
6. Sufficient funds must be made available to make these programmes to the highest possible standards.
7. Governments, production, distribution and funding organisations should recognise both the importance and vulnerability of indigenous children's television, and take steps to support and protect it.

As described in the brief introduction above, negative protection measures are understood to be those, which either prohibit certain contents, such as gratuitous violence or pornography, or set rules to circumscribe the representation of contents potentially harmful to children. The instruments presented below represent the most significant negative measures. In this case an action (a regime, a system, etc.) is directly opposed to the content in itself and the difficult question of its articulation within the framework of freedom of expression arises. That is why most of the instruments presented below are careful to recall commitments made in Article 10 of the European Convention on Human Rights.

These negative measures were mainly developed by the two international organisations presiding over Europe, namely the EU and the Council of Europe. The latter, given its culturally oriented duties and mission was the first to tackle the issue, followed in the last decade by the EU, which has implemented a complete legal framework encompassing the entire media sector.

At European level, two main legal instruments are dedicated to the television sector. Both were adopted in 1989, constituting the tutelary framework of broadcasting activities in Europe, and which contain provisions for the protection of minors. These instruments are the European Convention on Transfrontier Television and the “Television without frontiers” Directive. Due to the recent and rapid technological developments in this sector, including the multiplication of means to convey harmful content, these two instruments were recently revised, as well as supplemented by new texts specifically aimed at covering all image delivery sectors.

However it is not the case that these two organisations take only a negative approach. To a certain degree, both groups accompany their negative measures with positive ones such as media awareness and education.

## **2.1 Council of Europe**

The Assembly observed an increasing emphasis on violence in the media, and, in particular, on its portrayal in the visual media (television, video, film, advertising, comics, or still photography). At the same time, the Assembly believed, and explicitly

expressed this belief in a legal instrument for the first time, that prolonged exposure to such media violence could have a direct, cumulative effect on young children, and a growing effect on the accepted values of society. Coterminously, parliaments noted a) the increasing impracticability of national legislative or voluntary restrictions in the light of direct broadcasting by satellite and other technological developments, and b) that the production, distribution and sale of media software has already progressed beyond the control of individual states.

In this context, recalling Article 10 of the European Convention on Human Rights (1950) and stressing the urgency of co-ordinated action involving European States, broadcasting institutions and commercial audiovisual concerns, the Assembly made, inter alia, the following recommendations, within **Recommendation No. 963 (1983) on cultural and educational means of reducing violence**, to the Committee of Ministers:

- ❑ to request the broadcasting organisations to co-operate in the elaboration of codes of conduct or guidelines covering the portrayal of violence, which would apply to as broad an area in Europe as possible, and to provide, where necessary, autonomous supplementary structures to enable the effective elaboration of such common codes;
- ❑ to encourage the elaboration of similar guidelines for other media such as films, written material, video and new forms of visual media that may be developed;
- ❑ to encourage the establishment in each member state of a) independent monitoring of broadcast and other visual media through viewer associations and other bodies, b) closer consultation between the public and the programme makers, and c) public accountability for media content, whether to parliament, to the courts or to public opinion, and to envisage at a subsequent stage closer co-ordination between member states on these aspects;

Finally, the Assembly recommends that the Committee of Ministers invite member governments or, through them, the local or regional authorities responsible for education to “review the content of existing school and university curricula in order to avoid thoughtless glorification of conflict and violence, and to introduce in schools the systematic teaching of non-violent behaviour” and also “to introduce into the school

curriculum critical understanding of the media, and to provide the necessary in-service and preparatory training of teachers.”

In 1987<sup>38</sup>, the Parliamentary Assembly reasserted its concern and recommended that the Committee of Ministers “accelerate and intensify its work on guidelines for reducing violence, brutality and pornography, with reference to national legislation, not only on videograms, but also with reference to broadcasting in general”

This recommendation became concrete in 1989 with the adoption of the European Convention on Transfrontier Television.<sup>39</sup> A protocol amending this convention has just been adopted by the Committee of Ministers but does not contain any revision of the provisions relating to the protection of minors, which are contained in Article 7:

**Article 7 - Responsibilities of the broadcaster**

All items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others. In particular, they shall not:

- a) be indecent and in particular contain pornography;
  - b) give undue prominence to violence or be likely to incite to racial hatred.
2. All items of programme services which are likely to impair the physical, mental or moral development of children and adolescents shall not be scheduled when, because of the time of transmission and reception, they are likely to watch them.
  3. The broadcaster shall ensure that news fairly present facts and events and encourage the free formation of opinions.

This Article is the counterpart of Article 22 of the EC Directive, Television without Frontiers, which, on this particular point, might be considered to be more sophisticated (see below)

Extending the broad-based approach to violence within media, the Committee of Ministers decided to introduce measures specifically dedicated to a single sector, video,

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<sup>38</sup> Recommendation No 1067 (1987) of the Parliamentary Assembly of the Council of Europe on the cultural dimension of broadcasting in Europe

in which the issue appears to be even more sensitive. Then, in 1989, a **Recommendation on distribution of videograms with violent, brutal or pornographic content**<sup>40</sup> was adopted, which targets harmful content in this field, taking a complex and comprehensive approach, which, by including all the actors involved, signals the inception of a long regulatory process, taking place under the auspices of both the Council of Europe and Community institutions.

The Committee of Ministers, “bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 8 and 10” and “recalling its commitment to freedom of expression and the free circulation of information and ideas”, established certain principles. A first order principle stated that Member States should encourage the creation of systems of classification and control of videograms, either by the professional sectors concerned under self-regulatory systems or by the public authorities. The analysis of rating systems applied to this specific sector in EU Member States shows that this aim has not yet been achieved (see Book 1, Chapter 3 and Annex 2).

Video games were also subject to the attention of the Council of Europe<sup>41</sup> who directed specific attention to eliminating products containing materials that might incite racial hatred.

However, given the technological developments in this area and the multiplication of media with potential to convey harmful contents, the Committee of Ministers decided

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<sup>39</sup> European Convention on Transfrontier Television (ETS No. 132), Strasbourg, 5.5.1989.

<sup>40</sup> Recommendation N° R (89) 7 on Distribution of videograms having a violent, brutal or pornographic content

<sup>41</sup> Recommendation No. R (92) 19 on Video games with a racist content, adopted by the Committee of Ministers on 19 October 1992. The Committee of Ministers recommends that the governments of Member States:

- a) review the scope of their legislation in the fields of racial discrimination and hatred, violence and the protection of young people, in order to ensure that it applies without restriction to the production and distribution of video games with a racist content;
- b) treat video games as mass media for the purposes of the application inter alia of Recommendation No. R (89) 7 concerning principles relating to the distribution of videograms having a violent, brutal or pornographic content

to renew its formal global approach. This time it was accompanied, as with the video sector, by a complete set of measures directed at all the identifiable key actors.

With this aim, the **Recommendation on the portrayal of violence in the electronic media**, adopted by the Committee of Ministers on 30 October 1997<sup>42</sup> was introduced. This recommendation deals with the gratuitous portrayal of violence in the various electronic media at national and transfrontier level. “Electronic media” is defined as “radio and television programme services, services such as video-on-demand, Internet, interactive television, etc., and products such as video games, CD-ROM, etc. with the exception of private communications which are not accessible to the public” while “gratuitous portrayal of violence” is defined as “the dissemination of messages, words and images, the violent content or presentation of which is given a prominence which is not justified in the context”.

Believing that the overall increase in the portrayal of violence in the electronic media makes it an important social issue, but recognising that violence is part of the daily reality of society and that the right of the public to be informed also covers the right to be informed about various manifestations of violence<sup>43</sup>, the Committee asserts that violence cannot be considered as a proper means of conflict-resolution of any kind, including inter-personal conflicts. To this end, it notes that “there are many ways in which violence may be portrayed by the media, corresponding to different contexts, ranging from information to entertainment and that, especially in the latter case, violence is sometimes trivialised or even glorified so as to attract large audiences, ... portrayed in a gratuitous manner, in no way justified by the context, reaching unacceptable inhuman and degrading levels”. It concludes that, as an immediate consequence, this may impair the physical, mental or moral development of the public, particularly young people, by creating, for instance, insensitivity to suffering, feelings of insecurity and mistrust. This issue is addressed in Chapter 3, Media and Children.

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<sup>42</sup> Recommendation No. R (97)19- On the portrayal of violence in the electronic media

<sup>43</sup> This is similar to the principle expressed by ECHR in *Handyside v United Kingdom*, among other cases, according to which Article 10 of the European Convention applies also to potentially offensive or shocking images or information (see footnote 11)

According to the Committee, the various interested sectors of society - most particularly, electronic media professionals who are the best placed to address this issue - should assume their responsibilities with regard to the portrayal of violence in the electronic media.

For the first time the Committee of Ministers assert clearly that freedom of expression may be restricted. "Freedom of expression includes the right to impart and receive information and ideas which constitute portrayal of violence. However, certain forms of gratuitous portrayal of violence may lawfully be restricted, taking into account the duties and responsibilities which the exercise of freedom of expression carries with it, provided that such interference with freedom of expression are prescribed by law and are necessary in a democratic society. More specifically, measures taken to counter gratuitous portrayal of violence in the electronic media may legitimately aim at upholding respect for human dignity and at the protection of vulnerable groups such as children and adolescents whose physical, mental or moral development may be impaired by exposure to such portrayal." Limitations to freedom of expression as expressed by the Committee are carefully drawn, and respect terms of Article 10 paragraph 2, namely by stating that such restrictions must be "prescribed by law" and that interference must be considered as "necessary in a democratic society".

These instruments do not merely implicate states. Responsibilities for content are increasingly allocated to non-state actors directly linked to the production and distribution of such content and, in the particular case of minors, to those responsible for supervising children.

The first level of accountability consists of those responsible for content: "It is first and foremost for those responsible for the content to assume the duties and responsibilities which the exercise of their freedom of expression entails, since they have primary responsibility for the content of the messages, words and images they disseminate". In particular, operators of electronic media have certain responsibilities



if they disseminate messages, words and images containing violence, in view of the potentially harmful effects on the public, especially young people.<sup>44</sup>

Nevertheless, the various other sectors of society are not excused and parents and teachers particularly have a special responsibility.<sup>45</sup>

Lastly, the Committee also addresses States. While it recognises that “Member States bear general responsibility for, *inter alia*, the well-being of their population, for protecting human rights and for upholding respect for human dignity”, the Committee stresses that, as concerns the gratuitous portrayal of violence in the electronic media, “Member States only bear subsidiary responsibility, since the primary responsibility lies with those responsible for the content”. However, the Recommendation indicates that Member States should adopt a global approach, which is not limited to those responsible for the content but addresses the professional and social sectors concerned as a whole. The following modalities are proposed:

- promote the establishment of independent regulatory authorities for the various electronic media with appropriate competence and means to regulate the portrayal of violence at national level;

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<sup>44</sup> These responsibilities have been assumed, *inter alia*, by:

- a) ensuring, through appropriate means, that the public is made sufficiently aware in advance of messages, words and images of a violent nature;
- b) the establishment of sectoral codes of conduct which specify the precise responsibility of the professional sector concerned;
- c) the establishment of internal guidelines, including standards for evaluating content, in the various electronic media enterprises;
- d) the establishment, at both sectoral level and within individual media enterprises, of appropriate consultation and control mechanisms for monitoring the implementation of self-regulatory standards;
- e) taking self-regulatory standards into account in contracts with other sectors, such as audio-visual producers, manufacturers of video games, advertising agencies, etc.;
- f) regular contacts and exchange of information with national regulatory authorities, as well as with self-regulatory authorities, in other countries.

<sup>45</sup> They may assume this responsibility, *inter alia*, by:

- a) developing and maintaining a critical attitude towards the gratuitous portrayal of violence;
- b) using the electronic media in a conscious and selective manner, as well as by demanding quality products and services;
- c) stimulating children and adolescents to develop a critical attitude, e.g. through media education within the family and in schools;
- d) examining ways to restrict access by children and adolescents to violence portrayed in the electronic media where this is likely to impair their physical, mental or moral development.

- ❑ enable electronic media consumers, both national and foreign, to lodge a complaint regarding violent content with the regulatory authority or another competent national body;
- ❑ include among the licensing conditions for broadcasters certain obligations concerning the portrayal of violence, accompanied by dissuasive measures of an administrative nature, such as non-renewal of the licence when these obligations are not respected;
- ❑ establish methods to facilitate the division of responsibilities between those responsible for the content and the public (warnings, watershed);
- ❑ raise electronic media professionals' awareness of the problems connected with the gratuitous portrayal of violence and the public's concern about them;
- ❑ promote research on the portrayal of violence in the electronic media, in particular on trends in the various media, and studies of the effects of such portrayal on the public.

Given the international dimension of the gratuitous portrayal of violence in the electronic media, these measures may be strengthened via international co-operation. Such co-operation would facilitate the exchange of information between competent regulatory authorities; in particular as concerns content classification and the handling of any complaints lodged from abroad. Sanctions should also be effective.

However, the Committee believes that negative measures are not sufficient, but should be accompanied by positive measures, including both the promotion of non-violent quality programmes and electronic media education, which “constitutes a particularly appropriate way of helping the public, especially the young, to develop a critical attitude in regard to different forms of portrayal of violence in these media and to make informed choices”.

## 2.2 European Union

Only a few months after the adoption of the Council of Europe's Convention, the EU also adopted a legal instrument covering broadcasting activities in the Member States:

the “**Television Without Frontiers**” Directive<sup>46</sup>. This legal instrument was also subject to a revision in 1997<sup>47</sup>.

The Directive, the pre-eminent ruling on broadcasting activities within the European Member States, devotes a specific chapter to the protection of minors. Article 22 of this Chapter is of primary salience to this study and to the general question of effecting protection of minors. It prohibits the broadcasting of harmful content and provides stipulations for the legal broadcasting of other content deemed likely to be harmful to minors. Furthermore, this provision is the only one providing grounds to restrict the free movement of broadcasting services.

### **Article 22**

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.
2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.
3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

The Directive also contains a specific provision, Article 16<sup>48</sup>, regarding the protection of minors with regard to advertising.

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<sup>46</sup> Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

<sup>47</sup> Directive 97/36/EC of the European Parliament and of the Council of 19 June 1997 amending Council Directive 89/552/EEC.

<sup>48</sup> Article 16 of the directive is the protection of minors with regard to advertising. It states that:

Given the terms of Article 22, and especially its first paragraph, which prohibits pornography or gratuitous violence from broadcasting services, it is interesting to examine two recent cases dealt with by the EFTA Court and the European Court of Justice of the European Communities (ECJ). These illustrate the relative room for manoeuvre that States enjoy in their own conception of protection of minors and sensitive persons, and the extent to which they can impose their own standards relating to the depiction of sex or violence in broadcasts transmitted in their own country<sup>49</sup>. It should be noted that these cases referred to the first version of the Directive, not to its amended text. Nevertheless, as the wording of the first sentence of Article 22 and the provisions set out by Article 16 have not changed, the positions of the two Courts remain of relevance.

In the EFTA case<sup>50</sup>, the Norwegian authorities had decided to prohibit the transmission from Sweden via cable relay of the FilmMax channel. Broadcast in encrypted form by TV 1000, FilmMax, which included hard-core pornography could only be accessed by paying subscribers and was perfectly legal under Swedish law. The City Court of Oslo referred to the EFTA Court the question of whether Article 22 of the Directive '...introduced a common standard for what "might seriously impair the physical, mental or moral development of minors"' or, alternatively, '...left it up to each individual EU and EFTA country' to determine the degree of pornography or violence which would have this effect. And, in the event that Article 22 did indeed establish a common standard, whether "...the Swedish norm which accepts scenes shot in close-ups with masturbation, licking and sucking of sexual organs, intercourse dwelling on ejaculation

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1. Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:

- (a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- (b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- (c) it shall not exploit the special trust minors place in parents, teachers or other persons;
- (d) it shall not unreasonably show minors in dangerous situations.

<sup>49</sup> See, for a complete overview the article of R. Craufurd Smith: "Sex and violence in the internal market: The impact of European Community law on television programme standards". *Contemporary Problems in Law* (1999), Forthcoming.

<sup>50</sup> Case E-8/97, TV 1000 Sverige AB and the Norwegian Government.

in the mouths of women and group sex” could be understood as the expression of this standard.

In its defence TV 1000 raised the principle stated by the Directive, according to which the State in which the transmission originates exercises control over said transmission, and that a second control by the country of reception is excluded.

The European Commission, together with the EFTA Surveillance Authority, Norway, the UK and Sweden, argued strongly against a Community standard in this area, and the Commission, following the opinions expressed by the ECHR (see above), noted that it was “...very difficult to determine objectively what programmes are covered by the first sentence of Article 22”, given that there were legitimate “...differences of interpretation from one country to another, depending on different traditions and value levels”<sup>51</sup>. In agreement with this position, the EFTA Court ruled that the Directive left States free to regulate on the grounds of child protection not only those broadcasters established in their territory, but also those relaying programmes to their jurisdiction from other Member States. Each country may then decide what is or is not harmful to minors and make their own interpretation of the terms of Article 22, including the word “pornography”, “...in accordance with their national legislation and moral standards”<sup>52</sup>.

The ECJ did not comment on this specific issue, but the joint Swedish cases of **Konsumentombudsmannen (KO) v De Agostini (Svenska) Forlag AB and TV-Shop I Sverige AB**, even though they relate to advertising, may give an indication of its position on issue. This litigation concerned a specific Swedish regulation prohibiting television advertisements designed to attract children under twelve years old. On the grounds of that prohibition the Swedish authorities prevented De Agostini from advertising its magazine, *Allt om Dinisaurier!* (Everything about Dinosaurs), on two television channels - TV3, broadcast from the United Kingdom, and TV4, a domestic Swedish station. The ECJ ruled that, in respect of the Directive, Sweden might implement more precise and restrictive rules than those contained in the Directive and

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<sup>51</sup> Report for the hearing in case E-8/97, paras 49 and 50.

<sup>52</sup> Case E-8/97, TV 1000 Sverige AB, paragraph 24.

apply them to broadcasters under its jurisdiction. It must not, however, apply domestic regulation to broadcasters established in another Member State. The judges' reason was that Articles 22 and 16 of the Directive specifically set out rules for the protection of children "...in relation to television programmes in general and television advertising in particular"<sup>53</sup>. As a consequence, Member States were precluded "under any circumstances" from applying to television programmes emanating from other Member States "provisions specifically designed to control the content of television advertising with regard to minors"<sup>54</sup>. Such an attitude would lead to a form of secondary control, additional to that of the State of establishment, and would thus be contrary to principles enacted by the Directive.

The EFTA Court came to the same conclusion in a similar case.<sup>55</sup> Nevertheless, the fact that the ECJ made explicit reference to both Articles 22 and 16 of the Directive, and the link made between restrictions on advertising and programming, may introduce the idea that, unlike the EFTA Court, the ECJ would apply similar principles to both areas.

With the same willingness to address the media in all its complexity, as that shown by the Council of Europe, the EU recently issued a **Recommendation on the Protection of minors and human dignity in the audiovisual and information services**<sup>56</sup>.

The scope of this recommendation covers all audiovisual and information services made available to the public, whatever their means of conveyance (broadcasting, proprietary on-line services or services on the Internet), and is also valid for broadcasting services covered by the "Television without Frontiers" Directive.

The text explicitly refers to parental control measures as a way to combat illegal content. It encourages the development of legal and responsible use of information

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<sup>53</sup> De Agostini/TV-Shop, paragraph 57.

<sup>54</sup> De Agostini/TV-Shop, paragraph 60.

<sup>55</sup> *Forbrukerombudet v Mattel Scandinavia and Lego Norge*

<sup>56</sup> Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (98/560/EC)

and communication services and opts for a self-regulation regime, which has the advantage of enabling enterprises to adapt to technical developments and to market globalisation.

It also recalls the principle of freedom of expression, indicating that “any measure restricting these freedoms must be legitimate, necessary for the aim pursued, and strictly proportionate in the limitations it imposes.” The Recommendation proposes a different approach and different solutions regarding illegal content on one hand and harmful content on the other.

Given “cultural diversity and national and local sensitivities”, the Recommendation stresses that “particular attention must be paid to the application of the principle of subsidiarity”, with “the effectiveness of national measures being strengthened, at European Union level, by co-ordination of national initiatives and of the bodies responsible for their implementation and by the development of co-operation and the sharing of good practices, in areas including justice and home affairs.”

The Member States are encouraged to promote, as a supplement to the existing regulatory framework, the voluntary establishment through participation of relevant parties (broadcasters, consumers, public authorities etc.) of national frameworks for the protection of minors and human dignity in audiovisual services. In addition the establishment of national frameworks for self-regulation and co-operation at Community level are advocated.

In addition to this Recommendation, a **Communication from the Commission to the Council and the Parliament, Multiannual Community action plan on a safer use of the Internet by combating illegal and harmful content on global networks**, was specifically dedicated to the Internet.<sup>57</sup> This action plan was formally adopted by the

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<sup>57</sup> Multiannual Community action plan on a safer use of the Internet by combating illegal and harmful content on global networks. OJEC No. C 48 of 13 February 1998, p. 8.

Council and the Parliament on 21 December 1998<sup>58</sup>. Its aim is to promote Community advancement of Member States' policy regarding information for consumers on the safer use of the Internet.

Specifically, the Action Plan envisages:

- the creation of European Network of hotlines,
- the co-ordination of national initiatives in order to ensure that self-regulation measures will be adapted to the transnational nature of communications networks,
- the development of filtering and rating systems. Projects will be selected to validate rating systems in relation to European content, to encourage integration of rating into the content creation process and to demonstrate benefits of these technical solutions. Other projects will particularly target the validation and demonstration of third party rating systems. International co-operation between operators and other parties concerned in the EU and their partners in other regions of the world is foreseen in order to ensure interoperability.
- the encouragement of awareness action plans aimed specifically at parents, teachers and children. The Action Plan will initiate awareness actions plans aimed at the dissemination of information from access providers to customers, and the development of material for use in the education sector.

It appears with these last two instruments that the EU has taken the same approach as the Council of Europe, responding to the harmful content issue with, *inter alia*, the introduction of preventive measures, i.e. intrusive technical devices, such as blocking and filtering systems. This option is clearly envisaged for on-line services, but is still under discussion for the broadcasting services covered by the Directive<sup>59</sup>, such as free-to-air channels, cable and satellite channels. The drawbacks and advantages of the

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<sup>58</sup> Decision No /98/EC of the European Parliament and of the Council for adopting a Multiannual Community Action Plan on promoting safer use of the Internet by combating illegal and harmful content on global networks

<sup>59</sup> Article 1 (a) 'television broadcasting' means the transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the distribution of programmes between enterprises with a view to their being relayed to the public. It does not include communication services providing information or other forms of communication for use by an individual, such as facsimile, electronic data banks and other similar services.



introduction of comparable measures in the specific context of television services is the matter of this study, constituting a core element of the report's policy assessment and ultimate recommendations.

### **3. Conclusion**

This summary of the international and European legal initiatives relevant to the issue of protecting minors from harmful media content reveals a substantial legal history. It is against this backdrop that the examination of the feasibility and suitability of introducing technical measures at European level has taken place. The cases cited prove that a balance between a positive and a negative approach is somewhat difficult to obtain and both responses to harmful media content need to be co-ordinated to achieve the necessary public goal of the protection of minors. The policy recommendations made in the Report are cognisant of the legal, administrative, technical, industrial, economic, social and cultural issues that will be implicated and are set out in Book 1.

### Chapter 3. Media Theories Background

#### Summary

In order to provide an informed evaluation of parental control methods aimed at protecting children from content perceived to be harmful, it is important to examine the relationship between children and media content. The ways and extent to which media content is perceived to be harmful need to be addressed before the best approach to regulation can be determined.

Real life violent events such as the murder of James Bulger in the UK or playground shootings in the USA heighten public concern about the effects of viewing violence on television, and draw attention to the debate about the role of the media in influencing behaviour. A common argument used by those who make claims for television's effects on the viewer is the resources put into television advertising. Opponents respond that advertising has an effect on sales by raising awareness of a product, but does not necessarily influence a viewer to buy a product - as opposed to a particular brand of that product - just because they have seen it on television. Advertising builds brand awareness. It also supports trends and fashions, which, although an influence on behaviour, is generally dictated by peer pressure and affected by novelty.

Though media violence may have harmful influences on all viewers, children are usually thought to be particularly vulnerable, due to a less well developed ability to distinguish reality from fiction. A survey of the main research into the child/media relationship reveals two main schools of thought. The first contends that media violence has a direct and harmful influence on children, is a factor in the development of aggressiveness in children, that it begins to influence children at an early age and continues into adolescence, leaving lasting effects into adulthood. The second argues that this influence is subject to the context in which violent content is depicted. Underlying both positions is an understanding that environmental factors are an important element in the degree to which children are influenced by violence.

Though there are multiple theories about the ways and the extent to which harmful effects are produced, the effects themselves are generally held to be of three types:

- ❑ Learning aggressive attitudes and behaviours.
- ❑ Desensitisation to violence (the viewer becomes more callous and desensitised to the harmfulness of violent behaviour)
- ❑ Increased fear of being victimised by violence.

If accepted that watching television violence directly produces these harmful effects, it is a simple matter to assess the risk presented by a particular programme by counting the number of violent incidents. For these purposes a simple definition of visual violence is generally used, usually a variation on the following:<sup>60</sup>

“Any overt depiction of a credible threat of physical force or actual use of physical force, with or without a weapon, which is intended to harm or intimidate an animate being or group of animate beings. The violence may be carried out or merely attempted, and may or may not cause injury. Violence also includes any depiction of physically harmful consequences against an animate being (or group of beings) that occur as a result of unseen violent means”<sup>61</sup>

This provides an objective criterion by which a programme may be classified for the purposes of parental control. However, by failing to take into account the context in which violence is portrayed, and viewers’ perceptions of violence, it risks offering a distorted judgement of programming, whereby a children’s cartoon or a Shakespearean drama are rated as depicting the same level of violence as an action or horror film. For these reasons some researchers, particularly in Europe, have focused on audience perceptions of media violence, in order to determine whether the context in which violence is shown has a bearing on its harmfulness. Such studies, both among adults

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<sup>60</sup> For the purposes of this document it is not practical to provide the precise definition applied for each study referred to. Our research indicates that the main studies in this area have defined violence in similar terms to the definition provided here.

<sup>61</sup> *Violence and the Viewer: Report of the Joint Working Party on Violence in Television 1998*, BBC, BSC and ITC. From Gunter, B. and University of Sheffield Department of Journalism, *Violence on Television in Britain: A Content Analysis 1995-6*, London: Independent Television Commission, (1996)

and children, have noted varied and complex judgements about violent content from the audience, young and old, with different factors, such as, for example, the viewer's level of identification with characters and situation or the degree to which they perceive the violence to be justified. That the findings of these studies are similar for both adults and children weakens the contention that children are more vulnerable to television violence because they are unable to make the same complex judgements that adults do.

Another factor in the influence of violent images, which is acknowledged by most studies, is the child's environment. Children from socially deprived areas have been found to be more susceptible to harmful effects. If they have no alternative frame of reference in their own life, violent behaviour can seem acceptable.

It is also worth mentioning that some studies have found that television may also have beneficial effects. "Pro-social" programming, which imparts information and provokes discussion, has been found to change attitudes, particularly when reinforced by discussion.

The findings of research on media violence and children suggest that a single rating system would be inadequate to take into account the complex factors that determine the degree of harmfulness produced by violent images. It offers a case for ratings systems that take into account the context in which violence is portrayed, rather than judging a programme according to frequency of violent incidents. Since a child's perception of violence is likely to vary according to both the contextual framework in which the violence is portrayed and also a multiplicity of external factors – nationality, culture, religion, education and social environment, to name but a few – the parent needs more detailed information than can be provided by a simple, evaluative rating system. A plurality of rating providers would seem to offer the best solution to the problem of providing this information. Parents could select the ratings provider or providers according to the level of contextual information they require or their own cultural preferences.

In addition, an environment in which a family shares viewing experiences and uses television as a tool for stimulating discussion and cultivating critical skills, will give children a level of protection from harmful influences even when their parents are not present. Media literacy programmes can help both parents and children in this respect, as well as assisting parents in making positive programming choices.

This chapter begins with a survey of the main research into the relationship between children and television violence over the last thirty or forty years. It presents a brief summary of some of the most important theories on the effects of viewing television violence on children's behaviour. It also looks at research focusing on the viewer's perceptions of violence on television. Based on the above, it is useful in presenting this review to divide the approaches into two schools of thought – “effects” and “perceptions”. As is the case with any conceptual model, it is imperfect, as the two are not distinct. There is also considerable overlap within many of the studies cited as well as between them. Nevertheless, we believe it is helpful to examine the literature from this perspective in order to apply it to the policy questions at hand. Through its review of the main schools of thought and the recent research, the study attempts to show whether and to what extent there are fundamental issues common to all groups, which can provide a frame of reference for action across Europe, or whether it is necessary to take into account national, cultural and social differences in formulating a regulatory strategy. As a supplement to this overview, in the third part of this chapter the results of some European studies are briefly described.

### 1. “Effects” Theories

Research on the effects of violence in the media is based upon the premise that it has a direct impact on the audience, particularly television violence. While it need not overtly affect behaviour, it may affect attitudes, thus contributing to a more anti-social world-view. Critics argue that this premise relies on uniformity among the audience even where variables such as environmental factors are taken into account. Further criticism has been made of the conditions, under which research has been conducted, with laboratory-based studies attracting particular censure for their remoteness from real-life television viewing.

The majority of research in this area has pointed to three types of harmful effects. These are defined in the National Television Violence Study<sup>62</sup>, conducted over three years in the United States, as follows:

- ❑ Learning aggressive attitudes and behaviours.
- ❑ Desensitisation to violence (the viewer becomes more callous and desensitised to the harmfulness of violent behaviour).
- ❑ Increased fear of being victimised by violence.

For the purposes of this report the theories described are grouped under these three headings.

Most of the research cited has focused on “learning aggressive behaviour”, which indicates that the inspiration for the debate concerning media violence comes from the supposed correlation between real-life manifestations of violence and its depiction on television. Nevertheless, the two other “harmful effects” are important to note, particularly since parents cite “increased fear” as the most important issue with regard to their own children, as will be shown in the examination of viewers’ perspectives on violence in the next section.

Some alternative approaches to “effects” research have also been identified, which, while not representative of the main body of research, provide a useful contribution to our understanding of the “harmful effects” debate. These are also summarised here.

### **1.1 The Main Theories**

The main theories concerning the harmful effects produced on children by television violence are as follows:

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<sup>62</sup> *National Television Violence Study: Executive Summary*, Volume 3. California, Sage Publications, Inc., (1998)

### ***Learning aggressive attitudes and behaviours***

#### *Social learning approach - Albert Bandura<sup>63</sup>*

Much of what children learn, particularly at an early age, is through observing and imitating behaviour in their immediate environment. Bandura suggested that the same could be true of the media. By observing children's behaviour after a controlled experiment in which they watched a child act aggressively towards a plastic doll called a Bobo doll, he and his colleagues found that, when frustrated, the children would directly imitate the aggressive behaviour they had seen demonstrated. This theory has been borne out by many other studies, and has been supplemented by observations that when such behaviour is portrayed as successful or having no negative consequences, such as punishment, the viewer is more likely to imitate it.

#### *Frustration-aggression hypothesis - Leonard Berkowitz<sup>64</sup>*

Leonard Berkowitz placed emphasis on the situation of the viewer. He found that frustration with one's own environment increased susceptibility to influence from media violence. Children who have been frustrated by being punished, insulted or physically deprived learn from media violence that violent and aggressive behaviour is a way to deal with those frustrations. Other studies have found that children from socially deprived environments appear to be particularly influenced by media-aggression.

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<sup>63</sup> Albert Bandura, *Aggression: A Social Learning Analysis*, Englewood Cliffs, NJ, Prentice-Hall, (1973)

<sup>64</sup> Berkowitz, L., Situational Influences on Reactions to Observed Violence, *Journal of Social Issues*, 42, pp.93-106, (1986); Berkowitz, L., The frustration-aggression hypothesis: Examination and reformulation, *Psychological Bulletin*, 106, 59-73 (1989)

*Script theory - Rowell Huesmann; Leonard Eron<sup>65</sup>*

The media can influence viewers' perceptions of the world around them. Violence is perceived to be a normal (and perhaps acceptable) part of society as the frequency of violence on television leads the viewer to over-estimate its frequency in the real world. Children are learning "scripts" for social behaviour that will last them throughout their life. Research taking a long-term approach by following subjects from childhood to adulthood, such as that carried out by Huesmann and Eron, has found that children who watch many hours of television violence when they are young tend to also show a higher level of aggressive behaviour when they become teenagers. Leonard Eron found, by observing his subjects until they were 30 years old, that the ones who had watched a lot of television when they were eight years old were more likely to be arrested and prosecuted for criminal acts as adults.

*Excitation-transfer theory - Dolf Zillmann<sup>66</sup>*

Physiological arousal is a factor in the fascination of media violence for the viewer. Action scenes grab the viewer's attention and create a "kick". People also tend to act more aggressively in a state of arousal, which would explain why arousing television scenes could lead to higher aggression among frustrated or angered viewers as Dolf Zillmann claims. In this context it is not the content but the stylistic features surrounding it, such as sound and visual effects, which are responsible.

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<sup>65</sup> Huesmann, L.R., Psychological Processes Promoting the Relation Between Exposure to Media Violence and Aggressive Behaviour by the Viewer, *Journal of Social Issues*, 42, pp. 125-140 (1986); Huesmann, L.R., An Information Processing Model for the Development of Aggression, *Aggressive Behaviour*, 14, pp. 13-24 (1988); Huesmann, L. R., & Eron, L. (Eds.), *Television and the aggressive child: A cross-national comparison*, Hillsdale, NJ, Lawrence Erlbaum Associates, (1986); Huesmann, L. R., Eron, L.D., Lefkowitz, M.M. & Walder, L.O., Television Violence and Aggression: The Causal Effect Remains, *American Psychologist*, 28, pp. 617-620; Eron, L.D., *Learning of Aggression in Children*, Boston, Little Brown, (1971); Eron, L. D. & Huesmann, L. R., The role of television in the development of pro-social and antisocial behaviour, In D. Olweus, J. Block, & M. Radke-Yarrow (eds.), *The Development of Antisocial and Pro-social Behaviour: Research, Theories, and Issues*, New York: Academic. (1986).

<sup>66</sup> Zillman, D., Excitation Transfer in Communication-mediated Aggressive Behaviour, *Journal of Experimental Social Psychology*, 7, pp. 419-434 (1971)



***Desensitisation***

*Long-term exposition - Donald Linz; Edward Donnerstein; Steven Penrod*<sup>67</sup>

This theory suggests that viewers become desensitised towards violence by frequent and long-term exposure to violent scenes, and empathy towards the victims is reduced. This has been found to be particularly true of men. In addition, as viewers become increasingly accustomed to television violence it loses its ability to arouse, and hence its appeal, with the consequence that the viewer demands more extreme forms of fictional violence.

***Increased fear of victimisation by violence***

*Cultivation theory - George Gerbner*<sup>68</sup>

Gerbner has argued for many years that people's perceptions of society are affected by television. With regards to violence he surmises that those who watch a lot of television perceive society to be more violent than it really is, due to the frequency of violence on television. This perception can lead to increased fear and anxiety about the viewer's environment. If people already fear or have experienced violence, or are not given alternative messages in real life, this is reinforced.

**1.2 Alternative Theories**

Some alternative theories have been posited and tested, which are also useful to consider.

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<sup>67</sup> Linz, D.G. & Donnerstein, E, The Effects of Violent Messages in the Mass Media. In Bradac, J.J., (Ed.), *Message Effects in Communication Science*, Newbury Park, Sage, (1989); Linz, D.G., Donnerstein, E. & Penrod, S., Effects of Long-Term Exposure to Violent and Sexually Degrading Depictions of Women. *Journal of Personality and Social Psychology*, 55, pp.758-768, (1988).

<sup>68</sup> Gerbner, G., Signorielli, N., *Violence and Terror in the Mass Media*, Paris, UNESCO, (1988); Gerbner, G., Gross, L., Morgan, M. & Signorielli, N., Living with television: The dynamics of the cultivation process. In Bryant, J. & Zillmann, D. (Eds.), *Perspectives on media effects*, Hillsdale, NJ, Lawrence Erlbaum Associates, (1986); Gerbner, G, The Annenberg School for Communication, University of Pennsylvania, Department of Communication, University of Delaware, *Violence Profile 1967 Through 1988-89: Enduring Patterns*, Children Youth and Family Consortium Electronic Clearinghouse (1990) (<http://www.cyfc.umn.edu/Documents/C/B/CB1029.html>)

*Catharsis theory - Seymour Feshbach<sup>69</sup>*

Taken from the theory applied to Greek tragedy, this suggests that viewers' own aggressiveness can be dissipated by observation of aggressive behaviour. The violence or aggressiveness exhibited acts as an outlet for the viewers' real life frustrations. Feshbach studied two groups of boys in a residential school. One group was given non-violent programmes to watch, while the other watched violent programmes. It was noted that those who watched the non-violent programmes were more aggressive with their peers than the others. The researchers suggested that stimulation of the second group's aggressive tendencies had led to a learned fear of punishment and contributed to their reduction. Critics of the Feshbach experiment have argued that depriving the first group of their usual programmes led to the increase in aggressive behaviour.

*"Pro-social" theory - Jerome Johnson and James Ettema*

This seeks to prove that television can have positive effects. Many studies have shown that while television can be a useful tool for imparting information, and possibly stimulating discussion, it does not seem to be able to change attitudes on its own. An American study<sup>70</sup> conducted by Johnson and Ettema, which recorded the views of children with regard to a series of "pro-social" programmes, showed that attitudes seem to change, with discussion enhancing this shift. It also found that messages conveyed in the most action-packed scenes were the ones that made the greatest impression on children.

**2. "Perceptions" Research**

Studies which have examined programme content by counting the number of identifiable violent incidents in a given programme or period of time reveal that violence is commonplace on television. Nevertheless, its significance for the viewer is harder to measure. Barrie Gunter states in an article for the Journal of Current Psychology,

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<sup>69</sup> Feshbach, S., The Catharsis Hypothesis, Aggressive Drive, and the Reduction of Aggression, *Aggressive Behaviour*, 10, pp. 91-101 (1984)

<sup>70</sup> Johnson, J. and Ettema, J.S., Positive Images: Breaking Stereotypes with Children's Television, California, Sage, (1982)

“...television viewers, young and old, are selectively perceptive and judgmental in their responses to programmes. The ways viewers perceive and evaluate characters and events on television do not always match descriptive incident counts or the meanings inferred from them by researchers.”<sup>71</sup>

Apart from technical issues, the efficacy of parental control mechanisms is largely dependent upon the willingness of parents to use them. An examination of viewers' perceptions of violence is useful in providing greater insight into the application of such mechanisms. There is a consensus that there is too much violence on television. However, when examining the question of whether children are likely to “learn” aggressiveness from watching violence, it is notable that though there is a high level of concern among parents about the amount of violence on television, this concern is nearly always voiced with reference to “other people’s children”. Parents worry more about their own children being frightened by violence than by them being encouraged to imitate violent behaviour. In a study described in detail below, David Buckingham asked parents what concerns they had about the effects of television. They did not consider themselves to be at risk, but some thought younger children, who might not be able to distinguish between fact and fiction, might be effected by violence on television.

This section summarises the main findings about viewer’s perceptions of violence, with reference to various studies, including studies of factual programmes, which provide valuable insights that can be related to findings from studies of fictional programmes. It then examines briefly two studies, which looked directly at children’s perceptions of television.

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<sup>71</sup> Gunter, B. The Importance of Studying Viewers’ Perceptions of Television Violence, *Current Psychology*, 1998. Volume 7, pp. 26-43

## 2.1 The Main Findings

### *Fictional Violence*

Many studies have focused on the viewer's perception of violence rather than assuming a direct correlation between the quantity of violence (in whatever context) and its effects on the viewer. The reasoning is that viewers' perceptions of the meaning of violence always include an interpretative act, and their reactions to violence are more complex than allowed for by content analysis. For instance, cartoons such as *Tom and Jerry* contain a significant amount of violent acts. A content analysis approach would classify cartoons among the most violent programmes, but the fantastical and animated contexts in which the violence occurs have an effect on the viewer's perception of the violence.

A 1972 BBC study asked viewers to complete a questionnaire about specific programmes shortly after their broadcast, in which their reactions to violence and other aspects of the programmes were examined. It found that the audience's perception of a particular programme as violent did not depend on the number of violent incidents depicted. Neither was there a strong correlation between perceiving a programme as violent and verbally reported emotional arousal. However, if the violence was perceived to be unjustified the programme was more likely to be evaluated negatively.<sup>72</sup>

The National Television Violence Study<sup>73</sup> conducted in the USA also found that violence was more acceptable to the audience if it was perceived as justified. Viewers did not wish to see violence that can only be defended on grounds of inclusion for dramatic impact or shock value. Related to this are viewers' reactions to violent acts towards a person whom they perceived to be innocent. The audience is more disturbed by this than by a violent act against someone they see as guilty, and therefore in some way deserving of punishment. They are also more tolerant of violence perpetrated by a "good" character than a "bad" character.

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<sup>72</sup> British Broadcasting Corporation, *Violence on Television: Programme Content and Viewer Perceptions*, London: BBC, (1972)

<sup>73</sup> National Television Violence Study, *ibid.*

Gunter and Furnham<sup>74</sup> suggest that the form of violence affects the audience's perception of its seriousness, with shootings being perceived as the most violent. However, violence involving close contact will distress the viewer even if guns are not used. The National Violence Television Study also noted that violence shown in "close-up", where the harm and pain caused is evident, is more disturbing to viewers than scenes shot from a distance.

An important element in the viewers' perceptions of television violence was realism, with violent incidents reported in the news or in documentaries commonly rated as more violent than those presented in a fictional context. A further British study, investigating viewers' perception of violence in a number of fictional settings, corroborated these findings. It also emerged that one of the most powerful factors in influencing the viewers' perceptions of television violence was their ability to identify with the protagonists. Thus, violence depicted in a realistic drama or soap opera, set in familiar surroundings, was perceived to be more serious than that depicted in a cartoons or fantastical horror films. Geographical proximity was also a factor, with British viewers finding American cop shows less disturbing than British drama.

### ***Factual Violence***

Insights from studies relating to audience perceptions about factual programmes can contribute to our understanding of the impact of violence for the viewer. Fictional violence is perceived in different terms to factual violence, which viewers generally find both more acceptable and simultaneously more upsetting because it is real. In 1993 the Broadcasting Standards Council published the findings of a national survey of 1296 adults, in their *Annual Review of Violence in Factual Television*.<sup>75</sup> The survey was supplemented by an innovative new research method in which groups of viewers were shown clips from factual programmes and allowed to edit them according to their own views on what would be acceptable material. The results showed that people felt a sense of duty to watch the news, to keep themselves informed. The participants

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<sup>74</sup> Gunter, B. and Furnham, A. Perceptions of television violence: Effects of programmes genre and the physical form of violence, *British Journal of Social Psychology*, 23, (1984)

<sup>75</sup> Morrison, D. E. and MacGregor, B. edit groups in Broadcasting Standards Council *Violence in Factual Television*. 1993. Edited by Andrea Millwood Hargrave

generally agreed that, if a newsworthy event occurred, it should be reported no matter how violent it was, though the editing process demonstrated that visual limits should be placed on violence.

The conclusions reached in this study were similar to those reached by D.E. Morrison in his study of the audience's opinions about the role of television during the Gulf War, published in *Television and the Gulf War*<sup>76</sup>, and by Barrie Gunter and Mallory Wober in their study of public response to footage of the Falklands War, reported in *Violence on Television: What the Viewers Think*.<sup>77</sup>

From the results of these studies it is possible to draw a simple conclusion that there are four main factors which affect the audience's perceptions of different factual genres and which might also be applied to fictional genres.

- ❑ *The Factor of Closeness*: The more distant the viewer feels from the violent situation in terms of geography, time and other relationships, the less disturbing they will find it.
- ❑ *The Factor of Certainty*: Viewers are less likely to be shocked either if they know the outcome of a violent scene or if they fully understand what is happening in it.
- ❑ *The Factor of Status*: Viewers are likely to tolerate a higher degree of violence if the victim is regarded to have lower claim to justice. Therefore the victims perceived innocence is an important factor in how much violence will be accepted and how disturbing that violence is likely to be.
- ❑ *The Factor of Minimalism*: Violent imagery, whether it be real or reconstructed, should not use greater detail than is needed to illustrate the point being made. Furthermore, it should be noted that dramatic techniques such as sound tracks, slow motion and soft focus lenses could add to the distress caused to the viewer since such techniques engage them more in the violence of the action. It was noted in the editing study group that violence does not have to be graphic to be found

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<sup>76</sup> Morrison, D.E., *Television and the Gulf War*, London: Libbey, 1992

<sup>77</sup> Gunter, B. and Wober M., *Violence on Television: What the Viewers Think*, London: John Libbey, 1988

disturbing, and it is often the combination of images and wording that is distressing to viewers.<sup>78</sup>

## 2.2 “Perceptions” Studies

Many studies presuppose that children are more vulnerable to television violence because they are unable to make the same complex judgements that adults do. It is important to address the issue of children’s perceptions of violence to be able to make an informed evaluation of the substantive need for protective measures. The following questions are raised. Do children perceive violence in the same way as adults, or does the quantity of violent content make more of an impression than its context? Are younger viewers less able to distinguish between fiction and reality? Can they make the connection between a violent incident in the middle of a programme and the punishment of its perpetrator at the end? Two studies, which addressed these questions, are described briefly here.

### *Television Violence: A Child’s Eye View*

T.H.A. Van der Voort conducted a study of children’s perception of television violence at three schools in Holland.<sup>79</sup> 314 children in total were shown full-length realistic crime drama (*Starsky and Hutch* and *Charlie’s Angels*), two adventure series (*Dick Turpin* and *The Incredible Hulk*) and fantasy cartoons (*Scooby Doo*, *Tom and Jerry*, *Popeye* and *The Pink Panther*). Immediately after seeing each programme the children responded to a questionnaire measuring ten perception variables:

- readiness to see violence;
- approval of violent actions seen in the programme;
- enjoyment of the violence seen;
- evaluation of the programme;
- emotional responsiveness;
- absorption in the programme;
- detachment while watching;

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<sup>78</sup> From BBC, BSC and ITC, *Violence and the Viewer, Appendix 1: Research Findings on Audience’s Perceptions of Violence on Television*, 1998, pp 11-12

<sup>79</sup> Van der Voort, T.H.A., *Television Violence: A Child’s Eye View*, Amsterdam: Elsevier Science Publishers, (1988)

- ❑ identification with the programme's chief characters;
- ❑ perceived reality of the programme;
- ❑ comprehension and retention of programme content.

Van der Voort investigated whether the children were more absorbed by those programmes that they perceived to be more realistic. The results showed that the two crime dramas, *Starsky and Hutch* and *Charlie's Angels*, were perceived to be realistic, while the other programmes were seen as fantastic. The children watched the realistic programmes with more involvement, more emotion and less detachment. The crime dramas were regarded as containing the most violence of all the programmes shown.

The study found that 9-12 year-olds' perceptions of the amount of violence in programmes differ little from those of adults. By contrast perceptions differed greatly from those of content analysts who judge violent content in terms of numbers of identifiable incidents in a programme or period of time. Thus, although content analyses identify cartoons as being among the most violent types of programme on television, such programmes tend to be seen by children as containing very little violence at all.

### ***Moving Images – Understanding Children's Emotional Responses to Television***

In a study conducted in 1996<sup>80</sup>, David Buckingham found that even young children make complex judgements about violence through making a distinction between reality and fantasy. He claims that the formal stylistic properties of a programme, such as the graphical conventions of a cartoon, are recognised by children and used as a factor in determining how realistic a programme is. He also believes that children apply their own experiences and beliefs about the real world to determine the plausibility of a fictional situation. Through interviews with four different age groups ranging from 6 to 16, he examined perceptions of three programmes in which the boundary between fact and fiction was not obvious. The programmes were the realist drama, *Casualty*; *Crimewatch*, in which dramatised reconstructions of crimes are used to aid the police in

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<sup>80</sup> Buckingham, D. *Moving Images - Understanding Children's Emotional Responses to Television*, Manchester, Manchester University Press, (1996)



finding witnesses to real life crime; and a spoof documentary called *Ghostwatch*, which purported to follow a ghost hunt. Though the children were sometimes repelled by images of blood and gore in *Casualty* and could be upset by certain storylines, such as the death of a character, they recognised the fictional nature of the programme. In some cases the shock they felt added to their enjoyment of the programme. *Crimewatch* was more disturbing because of its reality, though, like the adult viewers they considered it to be an acceptable programme for its social purpose and because it offered valuable lessons in crime prevention. The illusion of reality in *Ghostwatch* was confusing for children, who found it the most frightening programme. Interestingly, the children's fears became stronger after the programme had finished, as they also had with *Crimewatch*. The nature of the programme was to convince the viewer that it was a genuine account of a ghost hunt, and the illusion was given that a ghost had been identified. The children were unable to identify any contextual factors in the programme that suggested its fictional nature. A general belief among them that ghosts could actually exist contributed to their perception that the programme was real.

Buckingham also asked the children to discuss how they felt about the news. He found that reports involving innocent victims, particularly children and animals, were the most frequently discussed, with stories close to home provoking fear and a sense of personal threat. Those that were more distant geographically, such as Romanian orphans or children killed in the former Yugoslavia provoked feelings of sadness and pity, but also made the children feel lucky or relieved that such events were not likely to happen to them. These feelings were often accompanied by a sense of guilt, which some younger children coped with by donating money to charity. The older children were more likely to switch off from the images, considering attempts to help as fruitless.

As with the research conducted with adult viewers, Buckingham found that children had more difficulty coping with violence witnessed in news programmes than that seen in fictional programmes. They developed strategies for coping as follows:

- partial or total avoidance of the violence - by changing channels, switching off the television, closing their eyes or hiding behind the sofa until the scary bits were over.
- changing the context of viewing - by watching with others rather than alone

- ❑ distracting themselves or seeking comfort
- ❑ reinterpreting the text - by inventing alternative endings or challenging the reality of the text.

### 2.3 Conclusions

Overall, Buckingham found that the children were more successful in developing coping strategies to deal with fictional than factual violence. From the responses of children in his Gulf War study<sup>81</sup>, David Morrison suggested that children coped with their worries and upset over the war in the same way as adults, by reminding themselves that the war was a just one. He also found that over time information received through discussion with friends and families, as well as from the television news, reduced their anxieties, as they gained a fuller understanding of how the war was likely to affect them and their families.

Van der Voort concluded that children become more involved in their viewing than adults do. He found that as they got older they watched more television, and moved from children's to adult programmes. While they gained a greater understanding of violence in drama as they aged, they became more inclined to regard violence as justified. The more television they watched, the less frightened they became of violence. Buckingham, however, found that desensitisation to fictional violence had no impact on reactions to factual violence, which remained upsetting.

The studies also suggest that the more knowledge children have about the context of the programme in which violence is portrayed, whether it be the recognition that a programme is fictional or the availability of background information, such as in the Gulf War study, the less likely they are to be frightened or upset by such violence. Chapter 4 in Book 1 deals with this issue in more detail in its discussion of media literacy.

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<sup>81</sup> Morrison, D.E., *ibid.*

### **3. European Studies**

Most research on the issue of children and television violence has taken place in the USA and Northern Europe. In addition to those described above, it may be useful to note the following projects, conducted in some of the Member States.

#### **3.1 Denmark**

Two reports from the mid-1990s constitute important contributions to the debate on children and the media, "Report No. 1311", written in 1996 by the Media Committee under the Prime Minister's Department, and "Media Violence - children and young people" written by the Committee concerning Film, TV and Video Violence, established by the Minister of Culture in 1995.

##### ***Report No.1311***

This study researched children's and young people's use of mass media. It made the following key statements:

- ❑ Children spend less time using media than young people. 7-12 year old children use 3½ hours daily, whereas a teenager uses 4¾ hours daily.
- ❑ Children and young people do not spend as much time using media as adults. The average daily media consumption for 7-18 year olds is 4 hours, whereas it is 6 hours for an adult. Adults spend more time listening to the radio.
- ❑ Children and young people spend much more time on electronic visual media than on newspapers.
- ❑ Children and young people have, in general, a more varied consumption of electronic media than adults, and they get more easily used to new media such as satellite TV, video and computers.
- ❑ Some children and young people have a remarkably high consumption of specific media. For instance 18% of teenagers spend more than 3 hours daily watching TV, and 29% of the teenagers spend more than one hour daily watching video. Comics are the only form of print media read by 56% of 7-9 year olds.
- ❑ Some children and young people have a remarkably low consumption of specific media. 20% of teenagers do not read print media at all, and 40% of children do not listen to the radio.

- ❑ There is a vague trend for children and young people not to use print media much. However, this is a trend reflected in the population in general.
- ❑ Children and young people spend more or less the same amount of time daily using media as they did 10 years ago. However, there is a decrease in relation to radio.
- ❑ Those who have access to satellite TV spend a considerable amount of their viewing time on at that medium. The percentage for adults is 37%, whereas it is 48% for teenagers.

The same report focused on two items in relation to children and media, media violence and commercials.

The conclusions regarding children and media violence are:

- ❑ that there is a broad spectrum of factors, such as for instance the child's social background and family situation, that may influence children and make them afraid, aggressive or restless - and that the media play an important role in relation to this,
- ❑ that some children and young people are more susceptible to influence by media violence than others. These are:
  - a) the youngest children, because they are less able to distinguish between fiction and reality,
  - b) boys from a less privileged social background, who are large-scale consumers of television and video
  - c) children and young people from different social classes, but who all lack loving care, and have experienced bad living conditions and negative school experiences.

### ***“Media Violence - children and young people”***

This study was a comprehensive analysis of the research conducted, nationally and internationally, in the area of children/youth and violence. The Committee concerning Film, TV and Video Violence concluded by formulating a series of recommendations vis-à-vis different constituencies of society. The principal recommendations were:

- ❑ Parents: The committee recommends increased awareness raising directed towards parents, informing them how moving pictures can influence children in both positive and negative ways. Better informed parents should influence their children

positively by speaking to them about what they watch, helping them to find programmes relevant for their age and, finally, talking with their children about any violence they see and about the function of the violence in the programme.

- ❑ School, leisure time institutions and kindergartens: The committee recommends supporting media education in school so that the pupil is enabled to work both productively and analytically with moving images from the beginning of its schooling.
- ❑ Social and Health Policy: The committee recommends developing preventive and targeting casework initiatives that, socially, in health terms, and also economically, can improve the situation for deprived families, and thus for a number of those children and young people that are particularly vulnerable to violent programmes.
- ❑ Media Institutions and the area of Media Policy: The committee recommends that serious attention is given to the quantity and quality of violence shown on television, especially within the family programme schedule, where there are many infant viewers.
- ❑ Computer Games and Virtual Reality: The committee recommends that an advisory rating is displayed on computer games with scary or violent content, corresponding to the ratings used for video films.

### ***Computers***

So far little research has been carried out regarding children's and young people's use of computers. Accordingly, the Media Council for Children and Youth (**MCCY**), the organisation responsible for classifying films and videos, has decided to initiate a research project on the potential harmfulness of computer games, in order to consider the possibility of implementing a rating system for them. The idea is inspired by the recommendations of the Report on Media Violence. The project will be finished by the end of 1999. Another project supported by the MCCY is a survey, which investigates a possible categorisation of all computer games within a 12 month period, together with an analysis of the distribution of the games in Denmark. This project will be finished by February 1999.

***Recent Research***

Recent Danish published research regarding young people provides some interesting figures and conclusions:<sup>82</sup>

- ❑ 15-18 year olds spend around 7 hours daily on media with the gender difference that boys in general use half an hour more daily than girls
- ❑ The visual media are the preferred media; boys using a little more than 4 hours daily, girls 3¾ hours daily
- ❑ Boys spend almost 1½ hours daily in front of the computer whereas girls spend less than the half amount of that time
- ❑ The young generation is called the “multi-media generation” and it is emphasised that, although the average amount of time spent using media daily is about 7 hours, it is a mix of media, with the young people often using several media at the same time.
- ❑ Although the computer plays an important role for the young people it does not replace the other media. It has been an important supplement to the total media menu where the visual media play an important role.
- ❑ As to the content, young people prefer TV fiction, such as films, soaps and sitcoms, and they watch more foreign fiction than the population in general.

One interesting aspect in relation to some of the above-mentioned research is that, apparently, family culture is crucial for children. Also, with regard, for instance, to the content perspective of children's media use, especially the children's familiarity with international media culture and advertising as well as its possible influence on purchases, it would appear that the gender-specific differences that emerge in the children's preferences are firmly anchored in the attitudes and values prevailing within the family - at any rate where young children are concerned. Apparently media play a very important role in most Danish families, although different approaches are taken to it, depending on the norms and traditions of the family, as well as gender and generation differences.

### 3.2 Italy

Though the Northern states have been the leaders in European research on children and the media, a recent study was conducted in Italy by the leading broadcaster, Radiotelevisione Italiana (**RAI**). The results were published in late 1998.

#### *Experimentally measuring the perceptual impact of televised violence: A new method*

This study had two main objectives. It sought to find a new method of measuring the reflexive emotional response to television violence, and to test this method on a particularly vulnerable segment of the television viewing public, teenagers between 12 and 18 years old..

The motive was the perceived inadequacy of traditional research methods, which elicit a conscious and explicit reflective judgement. In such a charged context, the viewer may fear he is defining himself through the position he takes, and, therefore, this judgement may be coloured by external concepts (ethical, ideological, cultural, political etc.) rather than offering an untainted picture of what impacts on the viewer as violent. This might be particularly true for teenagers, who are more susceptible to peer pressure.

Secondly, violence and the response happens primarily at an emotional and instinctive level, and therefore conscious reflection may not be able fully to comprehend it.

The method adopted was an adaptation of a tool used in cognitive psychology in the 1950s and 1960s, the *semantic differential technique*, an associative technique for measuring the instinctive reaction and emotional impact that the presentation of verbal concepts elicit in subjects. This is done by asking the subject to position the word representing the concept on a series of ordinal scales defined by pair of qualitative polar adjectives, such as light/heavy, large/small, hot/cold, etc. on the basis of the "proximity" or affinity he feels. This simple elicitation technique allows the aims and scope of the investigation to be withheld from the subject, thus avoiding the formation of

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<sup>82</sup> Drotner, K. et al. (eds.): *Tankestreger. Nye medier, andre unge*. Copenhagen. Borgens Forlag (1997)  
Fridberg, Torben et al. (eds.) *Mønstre i mangfoldigheden: De 15-18 åriges mediebrug i Danmark*. Copenhagen. Borgens Forlag (1997)

intellectual judgements. For the purposes of this study, the eliciting material used was violent excerpts, taken from three types of ordinary television programmes.

- “Action” films: the typical films of the Schwarzenegger, Stallone, Rambo-type, where lots of shooting and fighting takes place, within spy, war or crime stories.
- “Drama” films: films portraying stories, facts and episodes close to ordinary, real life.
- “Real” life: these were sequences extracted from news programmes pertaining to real life episodes.

The test was administered to two sample populations: one of 12 year-old and one of 18 year-old adolescents. The portrayal of violence was most realistic and graphic in the “action” films and least in the news programmes. The results were statistically significant, highly stable and unexpectedly robust:

- “Real” life violent episodes, i.e., those within news programmes have by far the highest emotional impact. Films in the “drama” category, which portray stories closer to real life than those depicted in “action” films, have a greater impact than the latter, where events are highly expected and stereotyped.
- The visual representation of violence, i.e. the physical realism of what is shown, has little impact.
- Gender and/or age have no influence on the subjects’ responses, with the exception that younger subjects are less able to differentiate between the two fictional contexts.

Though this has only been a small pilot study, with 120 subjects, the results are interesting because they measure the emotional, immediate response to violence on television, rather than the (ethical/ideological/social) judgement made about it

### 3.3 The Netherlands

Besides Van der Voort’s study, which was described in the previous section, there have been various other research projects in this field carried out in the Netherlands. Indeed, the country has developed a certain tradition in media-violence studies with senior



researchers from the Universities of Amsterdam (Valkenburg)<sup>83</sup>, Leiden (Van der Voort), Twente (Wiegman)<sup>84</sup>, and Utrecht (Groebel). From the many studies they have conducted, these share the conclusion that media violence bears the risk of “negative” behaviour and attitude effects, but nearly always has to be considered in the context of additional variables such as personality dispositions (e.g. boys are more at risk), parent and peer influences, and the level of social control.

Professor Jo Groebel has constructed an effects model, which distinguishes different effects modes from the different moderating factors:

**Figure 1: The Groebel media-violence-effects taxonomy**

DISPOSITIONS	E.g. gender	Aggression-level	Experiences	Group-structure
EFFECTS MODUS	PHYSIOLOGICAL	EMOTIONAL	COGNITIVE	SOCIAL
MOTIVES	arousal-seeking	identification	Orientation	belonging
MEDIUM: content	suspense	heroes	Stressing conflict	aggr.group cultures
MEDIUM: form	pace	attractiveness	Credible	social symbols
CONTEXT Situation	stimulating	frustration	Similarity media/real	similarity groups
CONTEXT: culture	"rhythm"	lack of role-models	Reward aggression	social control
EFFECT: short-term	arousal	imitation, admiration	Belief in ag.solution	fascination
EFFECT: long-term	habituation	social learning	Aggr./anx.world-view	aggr.group culture
OVERALL "RISK"	"thrill-spiral"	aggressive habit	Overall belief system	social climate

### *The UNESCO Global Study on Media Violence*<sup>85</sup>

In a recent global study for UNESCO, Professor Jo Groebel analysed some of the particular cross-cultural aspects of the media-effects discussion and drew some conclusions for media education as well. This was one of the largest ever intercultural

<sup>83</sup> Valkenburg, P. (1997). *Vierkante ogen: opgroeien met TV & PC*. Amsterdam: Balans.

<sup>84</sup> Wiegman, O. en Van schie, E. 'De schadelijke gevolgen van computerspellen; Nederlands onderzoekers pleiten voor keurmerk', in: SEC, *Tijdschrift over samenleving en criminaliteitspreventie*, jaargang 11, nr. 2 april 1997.

Wiegman, O. 'De agressieve Nintendo-generatie', in: SEC, *Tijdschrift over samenleving en criminaliteitspreventie*, jaargang 9, nr. 2 april 1995. Den Haag: Ministerie van Justitie, interne uitgave.

<sup>85</sup> The study was a joint project of UNESCO, The World Organisation of the Scout Movement and University of Utrecht. The findings summarized here were presented by Professor Jo Groebel to UNESCO on 19 February 1998.

studies conducted on the role of media violence for children, with a total of more than 5000 pupils from 23 different countries all over the world participating. It was also unique in several other respects: for the first time, international crisis regions (war zones and high crime areas alike) were part of the research sample. Several of the countries which covered the whole global range of social and technological development had never before participated in an empirical social science study on media. Also the methodology used was unique in so far as all participating 12-year old children answered exactly the same standardised 60-item questionnaire, which was translated into the different languages used. The content of the questions was not culture-bound, as otherwise a direct comparison of the data would have been impossible. The children reported on their media behaviour, their habits, preferences, and social environment.. By January 1998, approximately 350.000 individual data had been collected and processed in the context of the study.

The following countries participated in the core study: Angola, Argentina, Armenia, Brazil, Canada, Costa Rica, Croatia, Egypt, Fiji, Germany, India, Japan, Mauritius, the Netherlands, Peru, Philippines, Qatar, South Africa, Spain, Tadjikistan, Togo, Trinidad & Tobago and Ukraine. These countries represent the broad spectrum of human and technological development and major world cultures, and thus reflect a representative range of countries as covered in the 1997 UNDP Human Development Report.<sup>86</sup> In a subsequent stage additional countries, such as the United States, Russia, Finland and Poland, will be part of an extension of the research programme.

In each country, the data were collected in metropolitan and rural areas, in high- and low-aggression environments, from boys and girls, and from different types of schools. The only groups of children who could not be considered in the study were those who do not attend any school or who live in extremely remote areas. However, even children living in refugee camps participated. The logistics and distribution of the questionnaires among average children were organised by members of the Scout Movement; the scientific supervision and analysis was conducted at the University of Utrecht.

Five major issues were addressed:

- ❑ What role do the media, and in particular TV, play in the lives of children on a global level?
- ❑ Why are children fascinated by media violence?
- ❑ What is the relationship between media violence and aggressive behaviour among children?
- ❑ Are there cultural as well as gender differences in the media impact on aggression?
- ❑ How do violent environments (war/crime) on the one hand and the state of technological development on the other influence the ability to cope with aggressive media content?

The results demonstrate:

- ❑ 93% of the children in this study have access to a TV-set. The range is 99% for the North-Western hemisphere and 83% for Africa, with Asia and Latin-America in between. The screen has practically become a universal medium. For school-children, it is the most powerful source of information and entertainment. Even radio and books do not have the same global distribution.
- ❑ The world's children spend an average of 3 hours daily in front of the screen, with a broad international spectrum of individual viewing behaviour, of course. That means at least 50% more time is spent with this medium than with any other out-of-school activity, including home-work, being with family or friends or reading.
- ❑ Thus, TV has become a major socialisation factor and dominates the life of children in urban and electrified rural areas around the globe.
- ❑ Boys in particular are fascinated by aggressive media heroes. Some of these, such as Arnold Schwarzenegger's "Terminator", have become global icons. 88% of the world's children know him. 51% of the children from high-aggression environments (war; crime) would like to be like him, as compared to 37% in the low-aggression neighbourhoods. Clearly, children need and use media heroes as role models to cope with difficult situations. And these are plentiful for the children of the world

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<sup>86</sup> <http://www.undp.org>

- ❑ A remarkably large number of children live in a problematic emotional state. Nearly half of the children report that they are anxious most of the time or very often; 9% have had to flee their home at least once in their life; 47% report that they would like to live in another country. In the high-aggression areas, 16% of the children report that most people in their neighbourhood die because they are killed by others. Here, 7.5% of the children have already used a weapon against someone themselves.
- ❑ In this situation, media heroes are used for escapism and compensation for the children's actual problems. For boys, these are primarily aggressive role models (30% name an action hero), for girls, pop stars and musicians. There are regional differences for the favourite heroes: Asia has the highest ranking for action heroes (34%), Africa the lowest (18%), with Europe and the Americas in between (25% each).
- ❑ The children's world views are obviously influenced by actual as well as media experiences. Nearly one third of the aggression-environment group believe that most people in the world are evil as compared to a fifth in the low aggression group. A remarkable number of children from both groups report a strong overlap in what they perceive as reality and what they see on the screen (about 44%). Many children are surrounded by an environment where "real" and media experiences both support the view that violence is natural.
- ❑ The impact of media violence can primarily be explained through the fact that aggressive behaviour is rewarded. 47% of those children who prefer aggressive media content would also like to be involved in a risky situation (as compared to 19% with another media preference). This holds again in particular for boys.
- ❑ In addition, nations with a high level of technological development reinforce the risk-seeking tendency. The broad spectrum of different available audiovisual communication means have increased the desire to permanently satisfy physiological stimulus needs which are triggered through aggressive media content.

Groebel's overall conclusions are that:

- ❑ Media violence is universal. It is primarily presented in a rewarding context.
- ❑ Depending on the personality characteristics of the children, and depending on their everyday life experiences, media violence satisfies different needs: It

“compensates” one’s own frustrations and deficits in problem areas. It offers “thrills” for children in less problematic environments. For boys it creates a frame-of-reference for “attractive role models”.

- ❑ There are many cultural differences, and yet, the basic patterns of the media violence implications are similar around the world.
- ❑ Individual movies are not the problem. However, the extent and omnipresence of media violence (with an average of 5 to 10 aggressive acts per TV-programme hour in many countries) contributes to the development of a global aggressive culture.
- ❑ The “normality” and the “reward characteristics” of aggression are more systematically promoted than non-aggressive ways of coping with one’s life. Therefore, the risk of media violence prevails on a global level.

Groebel makes the following recommendations. Given that violence has always been an element of fiction and news reporting, it cannot be excluded from all media coverage. However, its extent, extremeness, and reward characteristics are the problem. Therefore, three major strategies should be considered on an international level:

- ❑ Public debate and “common ground” deliberation between the FIVE Ps: Politicians, Producers, Pedagogy, Parents, and the future Prosumers (active consumers).
- ❑ The development of codes of conduct and self-control among media professionals.
- ❑ The establishment of media education to create competent and critical media users.

He also states that with communication systems like the Internet, the media will be even more omnipresent, universal, and global. The media bear “risks”, as the UNESCO-study has demonstrated. But they also offer many new pro-social possibilities. As a consequence, the new digital environment demands similar attention as culture and education in the traditional world.

The Department of Psychology at the University of Twente has conducted two studies; one on mass media effects, and one which examined the impact of video/computer games.

***The effect of mass media information with respect to aggression and violence<sup>87</sup>***

M.W.M. Kuttschreuter studied the effect of mass media information with respect to aggression and violence. In collaboration with other members of the Department of Psychology and students in Applied Communication Sciences the following studies were conducted:

- ❑ a longitudinal panel study into the effects of violence and pro-social behaviour in drama on the aggressive and pro-social behaviour of children.
- ❑ a field study into the effects of a regional mass media campaign concerning crime and crime prevention (tell-the-truth-campaign) on fear of crime, crime preventive behaviour and the attitude towards the criminal justice system and the police. Special attention was paid to the effect of crime communication at information meetings.
- ❑ a survey into the relationship between playing computer video games and social status and social behaviour among children.
- ❑ a survey into the attitude among the general public towards the advisories used for television programs and films and blocking devices such as the V-chip.

***Games and effects on children's behaviour<sup>88</sup>***

Given the multi-billion pound per year business generated by the video game industry and its enormous impact on children's leisure activities, research was conducted into the influence such games have on children. To find out more about the use of video games by children they first conducted, in 1994, a survey among 346 children from the 7th and 8th grade of 7 elementary schools to examine possible positive and negative effects of playing video games. The results showed that playing video games did not appear to take place at the expense of children's other leisure activities, social integration and school performance. There was no significant relationship between the amount of time children spent on video games and aggressive behaviour. A negative relationship between time spent playing video games and pro-social behaviour was found; however, this relationship did not appear in separate analyses for boys and girls.

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<sup>87</sup> <http://www.wmw.utwente.nl/vakgroepen/default.htm>

<sup>88</sup> Ibid

Further analyses showed that children who spent more time playing video games tended to be more intelligent.

The project also looked at the relationship between preference for aggressive video games and aggressive and pro-social behaviour. Children, in particular boys, who preferred aggressive video games were more aggressive and showed less pro-social behaviour than those with a low preference for these games. A significant negative correlation was found between preference for aggressive video games and a child's intelligence.

In a recent experiment a causal relationship between playing an aggressive video game and aggressive behaviour of children was investigated, using a computer. Children were randomly assigned to one of two games (an aggressive game, Streetfighter 2, and a non-aggressive game, Supertetris), to a frustrating or a non-frustrating situation and to a competitive or non-competitive situation. The dependent variable was the amount of aggressive behaviour a child displayed after playing one of the video games. This amount was measured by using a teacher/learner paradigm: a subject had to test another imaginary child from another school on his or her knowledge of the Dutch language, by asking 14 questions. Whenever the imaginary tested child made a mistake (which it did 7 times), the subject punished it by pushing one of several buttons on the computer, which represented varying levels of severity, ranging from 1 = not severe to 9 = very severe. The imaginary tested child then heard an irritating "white-noise" sound on headphones, which varied in volume according to the level of severity chosen by the subject. The findings showed that children who played the aggressive video game displayed the most aggression; frustration and competition were of minor importance.

### 3.4 Sweden

There are various studies regarding minors and violence in films and on television, though none on pornography. There is no recent study addressing the specific question of the effects on children of gratuitous violence or pornography, but there is extensive research in related areas, as well as attempts to document recent research.

*The International Clearinghouse on Children and Violence on the Screen*<sup>89</sup>

The Nordic Information Centre for Media and Communication Research (Nordicom) has set up an international clearinghouse on children and violence on the screen. The Clearinghouse receives financial support from the Government of Sweden and UNESCO. Its purpose is to contribute to and encourage knowledge on children, young people and media violence, in the context of the UN Convention on the Rights of the Child, with its prime task being to make new knowledge and data known to prospective users throughout the world. It provides information for various groups of users - researchers, policy-makers, media professionals, teachers, voluntary organisations and interested individuals - about:

- ❑ research findings concerning children, young people and media violence,
- ❑ ongoing research on children and media violence,
- ❑ children's access to mass media and their media use,
- ❑ training and courses of study on children and the media,
- ❑ positive alternatives to media violence,
- ❑ measures and activities which aim to limit gratuitous violence on television, in films, and in interactive media.

The Clearinghouse publishes a yearbook, which contains scientific articles, summaries of ongoing research, notices of new titles, statistics, surveys of measures and legislation, and constructive alternatives to media violence. Information of a more topical nature is provided in the Clearinghouse newsletter.

### 3.5 United Kingdom

A myriad of studies exists within the UK, some of which have already been mentioned. Two studies on TV Violence in the UK published at the beginning of 1998 are interesting to note:

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<sup>89</sup> <http://jmg.gu.se/nordicom/unesco.html>



***“Violence on Television in Britain”***

This new analysis of how different viewers regard TV violence was issued by the Independent Television Commission and the Broadcasting Standards Commission, together with a group of broadcasters, comprising the BBC, ITV, Channel 4, Channel 5 and BSkyB. The study, the first of a two-part project, was conducted by Andrew Irving Associates and demonstrates how the nature and content of violent acts affect viewers' perceptions of their acceptability on television. Results from the initial survey show the following:

- that “enthusiasts” for TV violence are male viewers who are positively attracted to programmes where extreme violence will be shown,
- “qualified acceptors” are again mostly male but only accept violence as long as it is in context and relevant to the plot, and
- “rejectors” are predominantly female and do not like violence.

The next phase of the study built on this work and used video editing to uncover individuals' thinking about violence. These results were published in September 1998. They found that men have little interest in what motivates television violence and many enjoy seeing real-life brutality on television. The survey also found that some men felt there was some justification for rape scenes, and while women identified with victims of violence on screen, men did not see themselves as vulnerable.

***“The effects of video violence on young offenders”<sup>90</sup>***

The results of a second report, which was commissioned by the Home Office Research and Statistics Directorate in 1995, were also made public during January 1998. Groups of offenders and non-offenders were shown a violent video film appropriate for their age. Immediate reactions were monitored as well as memories and impressions of the film some while later. They were also psychologically assessed and asked about film preferences. The research shows that young offenders with violent family backgrounds are more likely to show a preference for violent videos and that violent films may reinforce distorted perceptions about appropriate means of resolving conflict and responding to provocation. The findings suggest also that individuals from violent

families are more prone to offending behaviour and having a preference for violent films, but this may be modified by personality and by moral values.

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<sup>90</sup> "The effects of video violence on young offenders", Research Findings No. 65, Home Office, 1998

## **Chapter 4. Media Market Background**

Industrial and economic statistical indicators are vital to justifying any of the array of possible policy permutations surrounding the discussion of parental control technologies. Thus, clear presentation of the salient data is a foundation both for assessing the various possible policies and outlining the appropriate measures required to introduce and sustain such policies. The following section presents tabular and graphic representations of the essential indicators regarding the parental control technologies inquiry. This section will serve the dual purposes of independently shedding light on the relevant issues and substantiating the arguments concerning available policies that are discussed fully in the Report.

The figures are organised under five headings below.

- ❑ Industry
- ❑ Users
- ❑ Demographic indicators
- ❑ Viewing indicators for children
- ❑ Harmful content indicators

### **Summary of economic and industrial indicators**

#### **Household penetration rates of TV, satellite and cable in 1996/7**

The penetration rate for private households with television is comparable throughout the countries of the EU and is nearing 100%. For cable and satellite, however, a very different picture emerges showing stark regional contrasts. To date, only a quarter of European households are connected to cable, due to the low development of cable in Southern Europe. In Greece and Italy, for example, less than 1% of households are connected, whereas in Germany, Ireland and Finland almost half the TV households are cabled. In the Netherlands, Luxembourg and Belgium cable penetration has almost reached saturation level. A similarly varied scenario is given for satellite television. In the Netherlands, Italy and Greece fewer than 5% of private households are linked, the figures for Sweden, the UK and Finland reach between 10% and 20% and in Denmark 42% are connected.

The feasibility of any harmonisation efforts will depend on which broadcasting mode environment can be used by parental control devices. Given the current differing penetration rates of cable and satellite in Europe, such devices may present a feasible option in some countries; in others, however, they may reach only an insignificant part of the population. For example, decoders which operate exclusively in a satellite environment are a sensible solution in Germany, Austria and Denmark where the penetration rate is over 30%, but present an ineffective approach in Greece or Italy, where fewer than 5% of households are linked, and where most television programmes are still viewed via terrestrial reception.

### **Household media equipment**

In 11 of the EU countries VCR ownership exceeds 60%. VCR penetration is lowest in Greece with 33% and highest in Ireland with 78%. Nearly one quarter of private households in the EU possess a video game console. A high penetration rate is evident for the UK with 39% and in Ireland (28%), but ownership is low for Greece (5%) and Portugal. An average of 8% of total private households own a PC with CD-ROM; again the penetration rate is low for Southern European countries (Greece 1.5%, Portugal 1.6%); a higher penetration rate can be found for Denmark (14%) and Sweden (13%).

Although the presence of a parental control device may prevent minors watching a particular programme, it may still allow the recording of the programme for viewing at a later time, in which case the purpose of the device would not be fulfilled. Considering the high penetration rate of VCRs throughout the EU – two-thirds of private households are owners - it seems obvious that any solution aimed at facilitating parental control needs to address the potential obstacles presented by VCRs. Whilst the penetration rate for video game consoles is considerably lower, and even more so for PCs with CD-ROM, ownership is growing. Material inappropriate for minors may also reach them via these media due to the lack of a parental control mechanism.

**Household TV set expenditure**

At the European level a decrease in household expenditure on TV sets for 1994-1996 is detectable. On a national level, sales are on the decline and in some cases stagnant. Only for the UK can a considerable increase be noted (14%). Apart from economic variables, a main factor influencing the frequency of private household spending on hardware equipment is the life expectancy of the equipment. In the UK, for example, a household purchases a new television set every 10-15 years on average. If, as is likely, the introduction of technical devices allowing parental control will require the purchase of a new set equipped with the appropriate technology, recent spending patterns should be taken into account. Also of importance is the fact that many second-hand or "old-fashioned" TV sets are moved to children's bedrooms, while in most cases the new TV set is found in the living-room or other common areas.

**Breakdown of private households by composition**

The proportion of European households with children ranges from 34% in Denmark to 65% in Spain. Households composed of a couple/single parent with at least one child exceed 60% in Portugal and Spain, but reach only 34% in Denmark and 39% in Germany. Childless households account for one fifth of all households in Europe. Therefore, any measures implying a mandatory purchase of new TV sets should recognise that given the fairly high proportion of childless households in Europe, new laws may have financial implications for a significant part of the population not directly concerned with parental control.

**Children and young people by age group**

Among the four fifths of households in Europe with children, 74% of the children are aged 0-14 years. A breakdown into smaller age groups shows an even spread with one third of children aged 0-4, one third belonging to the 5-9 age group and one third 10-14 years old. 26% of children and young people aged 0-19 are in the 15-19 age band. The legal definition and cultural perception of "minors, children and young people" may vary from country to country in the EU.

**Children's viewing indicators**

The survey found that, on an average day, children from all age groups spend between 100 and 126 minutes watching television. The Nordic countries rank highest with over 140 minutes per day, whereas France is at the bottom of the scale with 74 minutes. Time spent watching videos is nearly 40 minutes a day for all age bands. There are stark differences between individual countries, however, with children from the Netherlands watching between 80 and 111 minutes a day depending on the age group, and children from Germany only spending around 20 minutes a day watching videos. For games consoles the average time was 25 minutes and above for all age groups. Time spent with PCs (not for games) is between 18 minutes and just over half an hour on a European level; for computer games this figure is in the area of 40 minutes a day for all age groups. All the children interviewed spend an average of just over a quarter of an hour on the Internet per day.

These figures confirm and perhaps even surpass the assumption that children spend a substantial part of their leisure time not only watching television but also increasingly by using newer information technologies. Exposure to inappropriate content may occur via either of these.

**Children's media ownership**

A recent survey, conducted by the Media Research Group of the London School of Economics, investigates the diffusion and significance of media and information technologies among young people aged 6-17 years. The study, carried out in 10 EU and two other European countries, reveals a range of indicators about children's media ownership and viewing patterns. When interpreting the data on a European level one has to bear in mind that Austria, Greece, Ireland, Luxembourg and Portugal were not included in the survey.

Of the surveyed countries those with highest proportion of children with TV sets in their bedrooms are Denmark and the UK, followed closely by Germany and Sweden. An average of 22% of 6-7 year olds, 33% of 9-10 year olds, 47% of 12-13 year olds and 56% of 15-16 year olds in the selected EU countries have a TV set in their bedroom.

Almost half the children of all age bands live in households with cable and/or satellite television. On a country by country basis the figure is fairly low for Italian and Spanish children with around 20%, and comparatively high for German children with between 75 and 85%. Children with these facilities in their bedrooms constitute between 5% for the youngest age group and 19% for the oldest age group of all children interviewed.

Nearly half of all children taking part in the survey have access to a PC within the household; between 8 and 18% have a PC in their bedroom. The percentages are notably high for the Nordic countries and France. The figures for Internet access within the household range between 13% for 6-7 year olds and 19% for 15-16 year olds. Between 1% and 5% of all children have an Internet link in their own bedroom. With a growing number of children having access to a whole range of media, not only within the households, but more importantly, in their bedroom, parental control becomes more of an issue. Therefore the whole spectrum of content providers needs to be assessed before the introduction of any technical device regime and/or rating systems in order to guarantee their efficacy.

## Industry

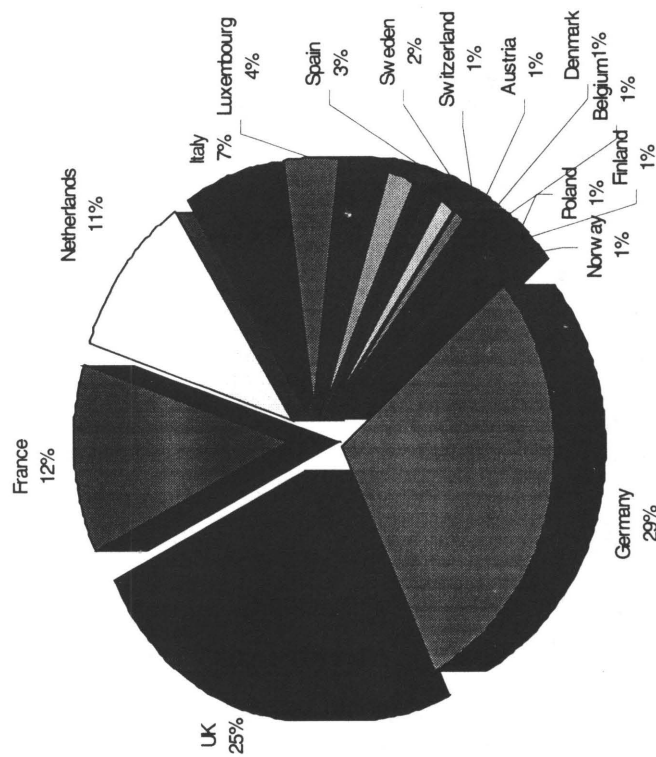
Figure 1: Audiovisual turnover of the 50 leading European companies in millions of ECU

Company	Country	AV turnover in 1996	Total turnover	AV turnover / total turnover
ARD	Germany	5082	5082	100%
PolyGram	Netherlands	4438	4438	100%
Bertelsmann	Germany	3846	11295	34%
Thorn EMI	UK	3117	4242	73%
BBC	UK	2631	2875	92%
CLT	Luxembourg	2315	2361	98%
RAI	Italy	2200	2200	100%
Carlton	UK	2099	2099	100%
Kirch-Gruppe	Germany	2094	2094	100%
Canal+	France	1734	1793	97%
Mediaset	Italy	1602	1602	100%
TF1	France	1492	1492	100%
RTL	Germany	1349	1349	100%
BSkyB	UK	1262	1262	100%
ZDF	Germany	1145	1145	100%
SAT 1	Germany	885	885	100%
France 3	France	839	839	100%
France 2	France	830	830	100%
Rank	UK	762	2567	30%
Pro 7	Germany	762	762	100%
Grenada	UK	739	4701	16%
SSR - SRG	Switzerland	709	954	74%
ORF	Austria	698	698	100%
Channel 4	UK	639	639	100%
RTVE	Spain	599	599	100%
NOS	Netherlands	567	567	100%
United News and Media	UK	463	2362	20%
Antena 3	Spain	461	461	100%
Canal+ Espagne	Spain	442	442	100%
Radio France	France	437	437	100%
Matra Hachette	France	430	8695	5%
Kinnevik	Sweden	427	1181	36%
Endemol	Netherlands	422	422	100%
Time Warner Entertainment Ltd	UK	411	411	100%
Sverige TV	Sweden	405	405	100%
M 6	France	370	370	100%
TVP	Poland	362	362	100%
Yle	Finland	350	350	100%
DR	Denmark	344	344	100%
Yorkshire Tynes Tee	UK	338	338	100%
Premiere	Germany	306	306	100%
UIP	UK	291	291	100%
Nethold	Netherlands	287	287	100%
NRK	Norway	284	284	100%
Tele Cinco	Spain	280	280	100%
Deutsche Welle	Germany	274	274	100%
Pearson PLC	UK	252	2692	9%
RTBF	Belgium	243	243	100%
Egmont	Denmark	234	871	27%
BRTN	Belgium	230	230	100%

Source: Statistical Yearbook '98, European Audiovisual Observatory.

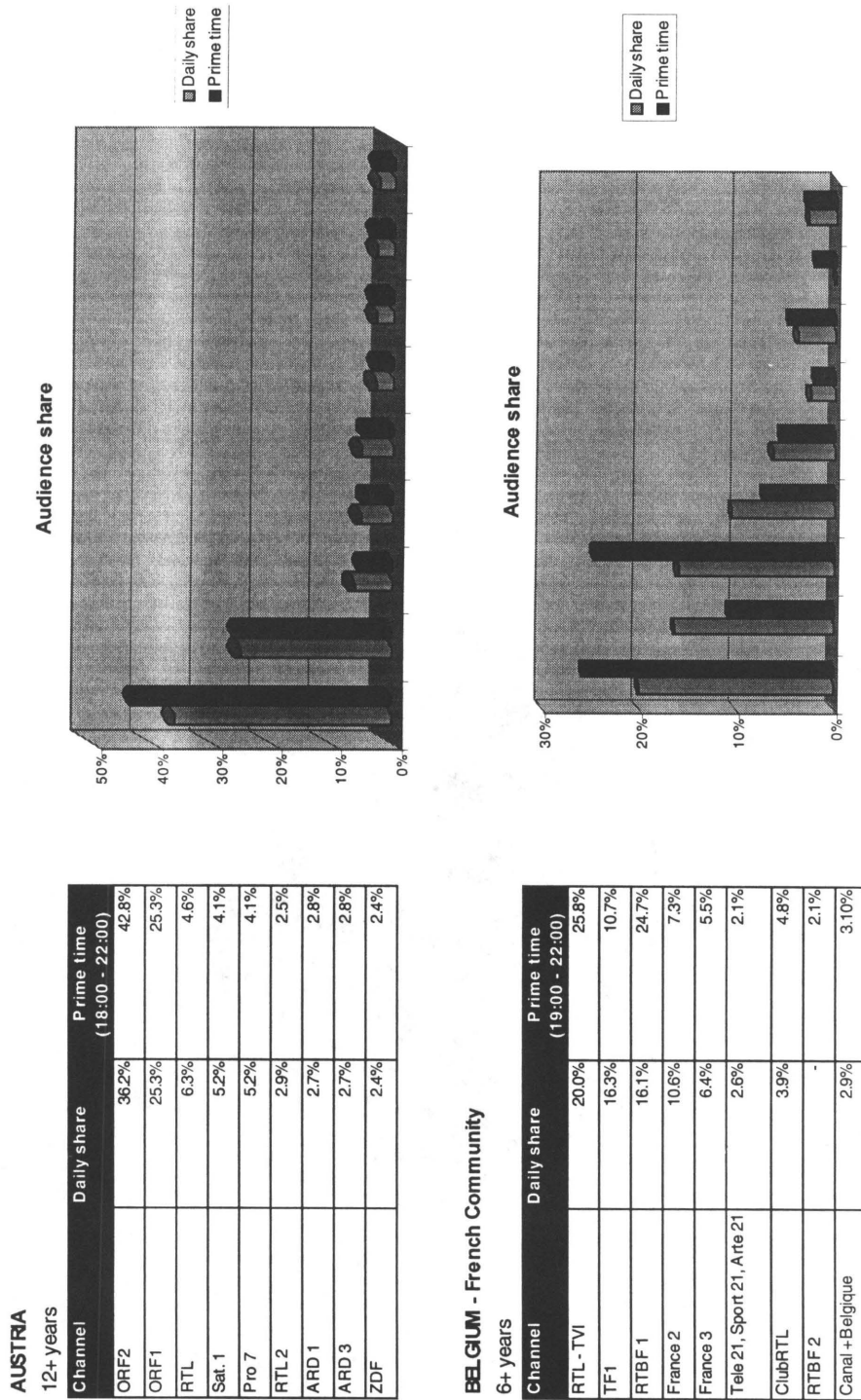


Figure 2: Breakdown of the audiovisual turnover of the 50 leading European companies, 1996



Source: Statistical Yearbook '98, European Audiovisual Observatory

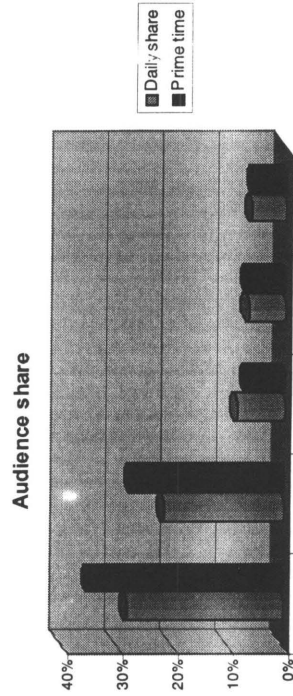
Figure 3: TV audience market share of major channels (daily share 2+ %)



**BELGIUM - Flemish Community**

6+ years

Channel	Daily share	P prime time (19:00 - 22:00)
VTM	28.2%	35.2%
TV1	21.7%	27.5%
VT-4	8.6%	6.8%
Ka2	6.7%	6.8%
TV2	6.2%	5.8%

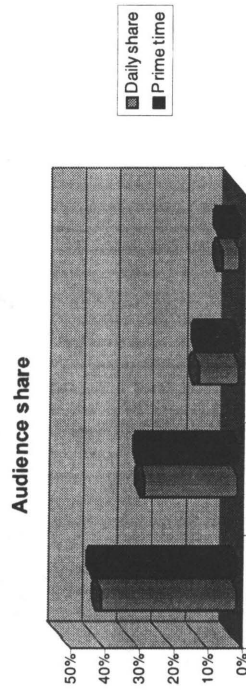


**BELGIUM - German-speaking Community - Data not available**

**DENMARK**

4+ years

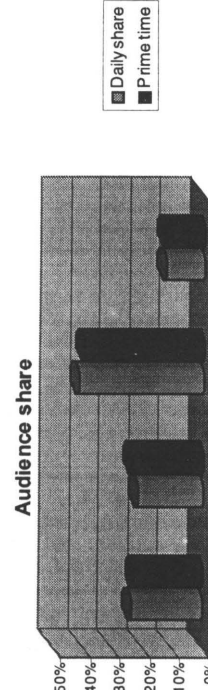
Channel	Daily share	P prime time (18:30 - 22:45)
TV-2	39.2%	40.6%
DR TV	26.8%	27.7%
TV3	11.6%	10.9%
Kanal 2	4.9%	4.8%



**FINLAND**

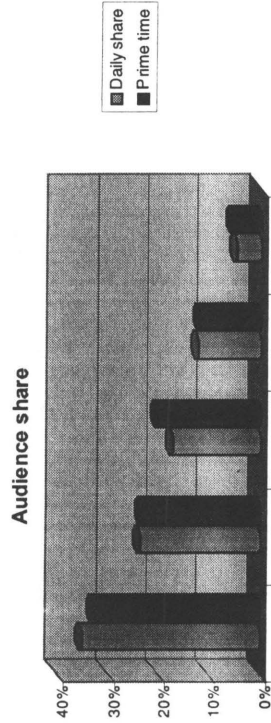
10+ years

Channel	Daily share	P prime time (19:00 - 22:00)
TV 1	24.0%	23.0%
TV2	22.0%	24.0%
M TV3	42.0%	40.0%
Others	13.0%	13.0%



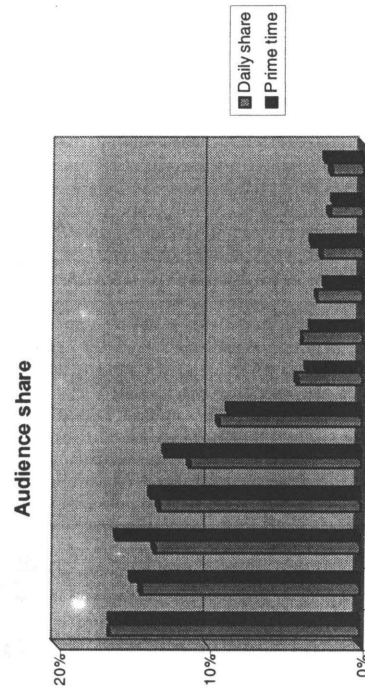
**FRANCE**  
6+ Years

Channel	Daily share	Prime time (19:15 - 22:00)
TF 1	35.1%	33.0%
France 2	23.8%	23.5%
France 3	17.5%	20.4%
M 6	12.3%	12.0%
Canal+	4.7%	5.7%



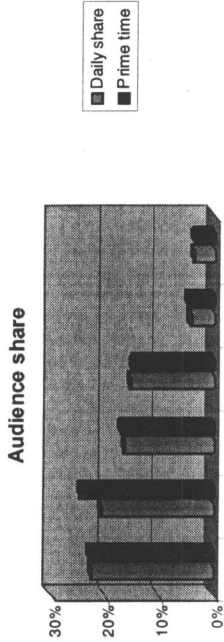
**GERMANY**  
6+ years

Channel	Daily share	Prime time (18:00 - 22:00)
RTL	16.5%	16.4%
ARD 1	14.4%	15.1%
ZDF	13.5%	16.1%
SAT.1	13.3%	13.8%
ARD 3	11.3%	12.9%
PRO 7	9.4%	8.8%
RLT 2	4.2%	3.6%
KK / Kabel 1	3.9%	3.3%
VOX	3.0%	2.5%
N3	2.7%	3.3%
Super RTL	2.2%	1.9%
mdr	2.1%	2.4%



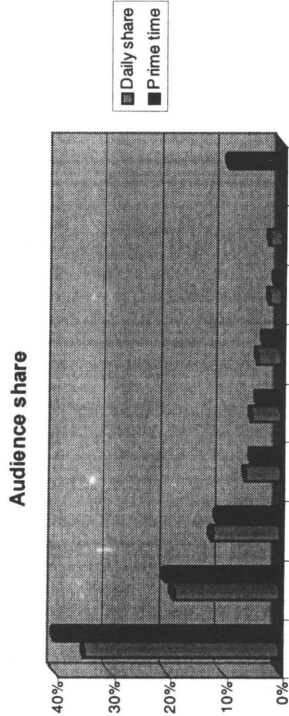
**GREECE**  
6+ years

Channel	Daily share	Prime time (20:00 - 23:00)
Antenna TV	22.5%	22.7%
Megachannel	20.7%	24.6%
Sky TV	16.4%	16.9%
Star Channel	15.4%	14.8%
ET-1	4.1%	4.6%
ET-2	3.6%	3.4%



**IRELAND**  
4+ years

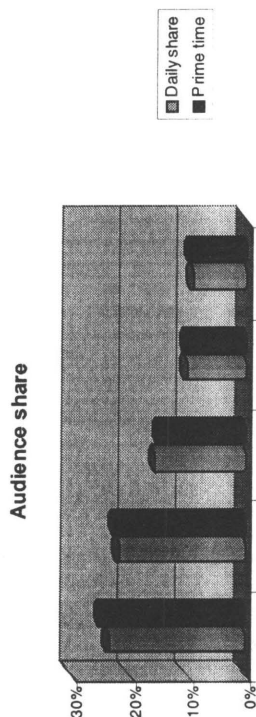
Channel	Daily share	Prime time (18:00 - 21:00)
RTE-1	34.5%	39.8%
Network-2	18.8%	20.1%
BBC-1	12.0%	11.0%
C 4 / S4 C	6.0%	5.0%*
BBC-2	5.0%	4.0%*
Sky One	4.0%	3.0%*
Sky News	2.0%	1.0%*
Children's Channel	2.0%	0.0%
UTV	0.0%	9.3%



\* figures for 1995

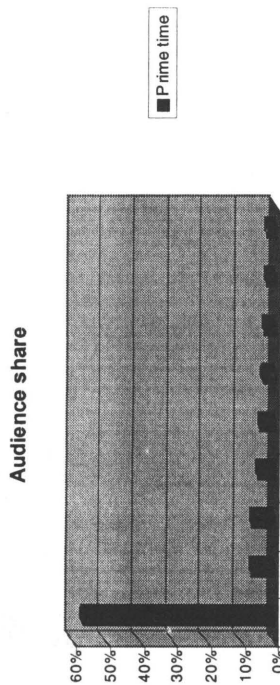
**ITALY**  
4+ years

Channel	Daily share	Prime time (20:30 - 22:30)
RAIUno	23.5%	25.0%
Canale 5	22.0%	22.6%
RAIDue	15.8%	15.0%
Italia 1	10.3%	10.4%
RAITre	9.3%	9.7%
Rete Quattro	9.0%	8.0%



**LUXEMBOURG (ALL RESIDENTS) - 1996/1997**  
12+ years

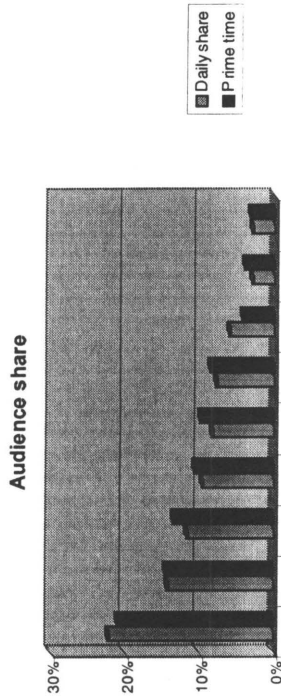
Channel	Prime time* (19:00 - 22:00)
RTL Tele Lëtzebuerg	56.1%
RTL	6.1%
RTP Int.	6.0%
TF1	4.4%
SAT.1	3.9%
PRO 7	3.1%
ZDF	2.7%
ARD	2.3%
RTL-TVI	2.2%



**NETHERLANDS**

6+ years

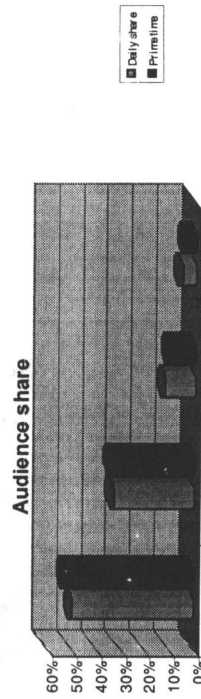
Channel	Daily share	Prime time (18:00 - 24:00)
RTL4	22.1%	21.0%
Ned-2/TV2	14.3%	14.5%
Ned-1	11.7%	13.5%
Ned -3	9.5%	10.7%
Veronica	8.4%	9.9%
SBS 6	7.7%	8.6%
Video	5.9%	4.1%
RTL5	3.0%	3.9%
BRTN 1/2	2.9%	3.1%



**PORTUGAL**

4+ years

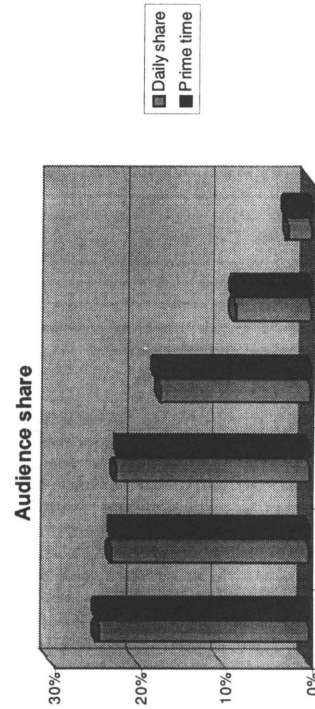
Channel	Daily share	Prime time (20:30 - 22:30)
SIC	49.7%	52.4%
Canal 1	32.7%	33.5%
TVI	12.1%	10.2%
TV-2	5.4%	3.8%



**SPAIN**

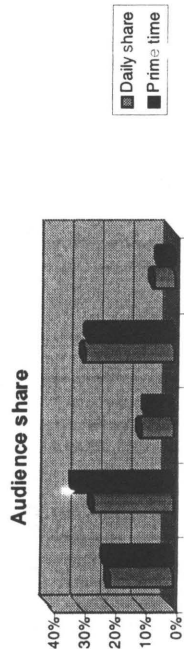
4+ years

Channel	Daily share	Prime time (20:30 - 24:00)
TVE-1	24.4%	24.4%
Antena 3 TV	22.9%	22.8%
Tele 5	22.5%	22.1%
Autonomic TV channels	17.3%	17.7%
TVE-2 / La 2	8.7%	8.7%
Canal Plus España	2.6%	2.7%



**SWEDEN**  
3+ years

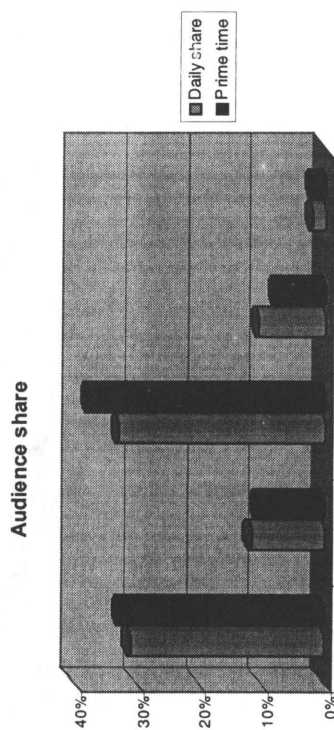
Channel	Daily share	Prime time (19:00 - 22:00)
SVT-1	20.6%	21.3%
SVT-2	25.8%	32.3%
TV 3	10.1%	8.5%
TV-4	28.9%	27.6%
Femman/Kanal 5	6.5%	4.7%



**UK**

4+ years

Channel	Daily share	Prime time (18:00-22:30)
BBC 1	31.2%	32.8%
BBC 2	11.8%	10.8%
ITV	33.3%	38.2%
C4	10.7%	7.9%
Channel 5	2.1%	2.2%



\* data for daily share not available

\*\* data are from 1995

Source: Statistical Yearbook '98, European Audiovisual Observatory.



Figure 4: Main available channels according to audience share (2+%) by broadcaster and broadcasting mode

## AUSTRIA

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
ORF1	ORF	x		x
ORF2	ORF	x		x
<b>Foreign channels</b>				
ARD 1	ARD (DE)	x	x	x
ARD 3	ARD (DE)	x	x	x
Pro 7	PRO 7 Television GmbH (DE)	x	x	x
RTL	RTL Deutschland Fernsehen GmbH (DE)		x	x
RTL2	RTL Deutschland Fernsehen GmbH & Co. KG (DE)	x	x	x
Sat. 1	SAT.1 Satelliten Fernsehen GmbH (DE)		x	x

## BELGIUM - French Community

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Canal+Belgique	Canal+Belgique TVCF	x		x
ClubRTL	TVISA	x	x	x
RTBF 1	RTBF	x		x
RTBF 2	RTBF	x		x
RTL - TVI	TVISA	x	x	x
<b>Channels set up in Belgium targeting other countries</b>				
TV5 Europe	Satellite TV 5 SA (FR)		x	x
<b>Foreign channels</b>				
France 2	France 2 (SAN) (FR)	x		x
France 3	France 3 (SAN) (FR)	x		x

## BELGIUM - FLEMISH COMMUNITY

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Ka 2	Vlaamse Televisie Maatschappij n.v.	x		x
TV 1	BRTN/VRT	x		x
TV 2	BRTN/VRT	x		x
VTM	Vlaamse Televisie Maatschappij n.v.	x		x
<b>Foreign channels</b>				
VT-4 (GB)	VT-4 Ltd	x		x

**BELGIUM - GERMAN-SPEAKING COMMUNITY**

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Wochenmagazin BRF	Belgischer Rundfunk			x

**DENMARK**

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
DR TV	Danmarks Radio	x	x	
Kanal 2	Kanal 2	x		x
TV-2	TV2/DANEMARKs	x		x
<b>Foreign channels</b>				
TV3 Denmark	TV3 Broadcasting Group Ltd (SE)	x		x

**FINLAND**

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
MTV3	MTV OY (2)	x		x
TV 1	OY Yleisradio AB	x		x
TV 2	OY Yleisradio AB	x		x

**FRANCE**

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Canal+	Canal+	x	x	x
France 2	France 2 (SAN)	x		x
France 3	France 3 (SAN)	x		x
M 6	Métropole TV	x	x	x
TF 1	TF 1	x	x	x

## GERMANY

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
ARD 1	ARD	x	x	x
ARD 3	ARD	x	x	x
KK / Kabel 1	DKK Fernsehen GmbH		x	x
N3	Norddeutscher Rundfunk & Radio Bremen	x	x	x
PRO 7	PRO 7 Television GmbH	x	x	x
RTL 2	RTL Deutschland Fernsehen GmbH & Co. KG	x	x	x
RTL	RTL Deutschland Fernsehen GmbH	x	x	x
SAT.1	SAT.1 Satelliten Fernsehen GmbH	x	x	x
Super RTL	RTL Club GmbH		x	x
VOX	VOX Film- und Fernseh GmbH & Co. KG	x	x	x
ZDF	ZDF	x	x	x

## GREECE

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Antenna TV	Antenna TV SA	x	x	
ET-1	ERT	x	x	
ET-2	ERT	x		
Megachannel	Teletypos S.A.	x	x	
Sky TV	SKY TV	x		
Star Channel	Entertainment Television Enterprises	x		

## IRELAND

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
RTE-1	RTE	x		x
Network-2	RTE	x		x
<b>Foreign channels</b>				
BBC 1	BBC (GB)	x		x
BBC 2	BBC (GB)	x		x
C4 (GB)	Channel 4 Television	x		x
Children's Channel	Children's Channel		x	x
S4C	S4C (GB)	x		x
Sky News	BSkyB (GB)		x	x
Sky One	BSkyB (GB)		x	x
ITV - Ulster Tv	Ulster Television plc (GB)	x		x

## ITALY

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Canale 5	R.T.I. S.p.A.	x	x	
Italia 1	R.T.I. S.p.A.	x	x	
RAIUno	RAI Radiotelevisione Italiana S.p.A.	x	x	x
RAIDue	RAI Radiotelevisione Italiana S.p.A.	x	x	x
RAITre	RAI Radiotelevisione Italiana S.p.A.	x	x	
Rete Quattro	R.T.I. S.p.A.	x	x	

## LUXEMBOURG

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
RTL Tele Lëtzebuerg	CLT SA	x		x
<b>Channels set up in Luxembourg targeting other countries</b>				
RTL Television	RTL Plus S.A. & Co. KG		x	x
<b>Foreign channels</b>				
ARD	ARD (DE)	x	x	x
PRO 7	PRO 7 Television GmbH (DE)	x	x	x
RTL - Tvi	TVI SA (BE)	x	x	x
RTP Internacional (PT)	RTP - Radiotelevisao Portuguesa SA		x	x
SAT.1	SAT.1 Satelliten Fernsehen GmbH (DE)	x	x	x
TF1	TF 1 (FR)	x	x	x
ZDF	ZDF (DE)	x	x	x

## NETHERLANDS

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Ned-1	Nederlandse Omroep Stichting - NOS / STER	x		x
TV 2	Nederlandse Omroep Stichting - NOS / STER*	x		x
Ned-3	Nederlandse Omroep Stichting - NOS / STER*	x		x
SBS 6	SBS Net-6 B.V.		x	x
Veronica	Veronica RTV Beheer B.V.		x	x
<b>Foreign channels</b>				
RTL4	HMG S.A. (LU)		x	x
RTL5 Nieuw an Weer	HMG S.A. (LU)		x	x
TV 1	BRTN (BE)	x		x
TV 2	BRTN (BE)	x		x

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Canal 1	RTP - Radiotelevisao Portuguesa SA	x	x	
SIC	Sociedade Independente de Comunicaçao	x		
TV2	RTP - Radiotelevisao Portuguesa SA	x	x	
TVI	Televisao Independente	x	x	

**SPAIN**

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
Antena 3 TV	Antena 3	x	x	x
Canal Plus España	Canal Plus España	x	x	x
Tele 5	Tele 5	x	x	x
TVE-1	RTVE	x	x	x
TVE-2/ La 2	RTVE	x	x	x

**SWEDEN**

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
SVT-1	Sveriges Television - SVT	x	x	x
SVT-2	Sveriges Television - SVT	x	x	x
TV-4	TV 4 AB	x	x	x
<b>Foreign channels</b>				
Femman/Kanal 5	Kanal 5 Ltd (GB)		x	x
TV 3	TV 3 Broadcasting Group (GB)		x	x

**UK**

Channel	Broadcaster	Broadcasting mode		
		Terrestrial	Satellite	Cable
<b>National channels</b>				
BBC-1	BBC	x		x
BBC-2	BBC	x		x
C4	Channel 4 Television	x		x
Channel 5	Channel 5 Television	x	x	x
ITV	ITV Network	x		x

\* Advertising company

Source: Statistical Yearbook '98, European Audiovisual Observatory

Figure 5: Main national broadcasters by channel, status and financing

**AUSTRIA**

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Adver-tising	Pay-TV	Other
ORF	ORF1		x	x	x		
ORF	ORF2		x	x	x		

**BELGIUM - FRENCH COMMUNITY**

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Adver-tising	Pay-TV	Other
Canal+TVCF	Canal+Belgique	x					
RTBF	RTBF1		x	x	x		
RTBF	RTBF2		x	x	x		
TVISA	ClubRTL	x			x		
TVISA	RTL-TV	x			x		

**BELGIUM - FLEMISH COMMUNITY**

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Adver-tising	Pay-TV	Other
BRTN/VRT	TV2		x	x			
BRTN/VRT	TV1		x	x			
Vlaamse Televisie Maatschappij n.v.	Ka2	x					Grants
Vlaamse Televisie Maatschappij n.v.	VTM	x			x		

**BELGIUM - GERMAN-SPEAKING COMMUNITY**

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Adver-tising	Pay-TV	Other
Belgischer Rundfunk	Wochenmagazin BRF		x	x	x		

## DENMARK

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Adver-tising	Pay-TV	Other
Danmarks Radio	DR TV		x	x			
Kanal 2	Kanal 2	x			x	x	
TV2/DANEMARKs	TV-2		x	x	x		

## FINLAND

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Adver-tising	Pay-TV	Other
MTVOY (2)	MTV3	x			x		
Oy Yleisradio AB	TV1		x	x			
Oy Yleisradio AB	TV2		x	x			

## FRANCE

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Adver-tising	Pay-TV	Other
Canal+	Canal+	x			x		
France 2 (SAN)	France 2		x	x	x		
France 3 (SAN)	France 3		x	x	x		
Métropole TV	M 6	x			x		
TF 1	TF 1	x			x		

## GERMANY

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Adver-tising	Pay-TV	Other
ARD	ARD 1		x	x	x		
ARD	ARD 3		x	x	x		
DKK Fernsehen GmbH	KK/ Kabel 1	x			x		
Mitteldeutscher Rundfunk	mdr		x	x	x		
Norddeutscher Rundfunk & Radio Bremen	N3		x	x	x		
PRO 7 Television GmbH	PRO7	x			x		
RTL Deutschland Fernsehen GmbH & Co. KG	RTL	x			x		
RTL Deutschland Fernsehen GmbH & Co. KG	RTL	x			x		
RTL Club GmbH	Super RTL	x			x		
SAT.1 Satelliten Fernsehen GmbH	SAT.1	x			x		
VOX Film- und Fernseh GbmH & Co. KG	VOX	x			x		
ZDF	ZDF		x	x	x		

## GREECE

Broadcaster	Channel	Status		Licence Fees	Financing		
		Private	Public		Adver-tising	Pay-TV	Other
Antenna TV SA	Antenna TV	x			x		
Entertainment Television Enterprises	Star Channel	x			x		
ERT	ET-1		x		x		
ERT	ET-2		x		x		
SKY TV	Sky TV	x			x		
Teletypos S.A.	Megachannel	x			x		

## IRELAND

Broadcaster	Channel	Status		Licence Fees	Financing		
		Private	Public		Adver-tising	Pay-TV	Other
RTE	RTE-1		x	x	x		
RTE	Network-2		x	x	x		

## ITALY

Broadcaster	Channel	Status		Licence Fees	Financing		
		Private	Public		Adver-tising	Pay-TV	Other
RAI Radiotelevisione Italiana S.p.A.	RAIUno		x	x	x		
RAI Radiotelevisione Italiana S.p.A.	RAIDue	x		x	x		
RAI Radiotelevisione Italiana S.p.A.	RAITre		x	x	x		
R.T.I. S.p.A.	Canale 5	x			x		
R.T.I. S.p.A.	Italia 1	x			x		
R.T.I. S.p.A.	Rete Quattro	x		x	x		

## LUXEMBOURG

Broadcaster	Channel	Status		Licence Fees	Financing		
		Private	Public		Adver-tising	Pay-TV	Other
CLT SA	RTL Tele Lëtzebuerg	x			x		
RTL Plus SA. & Co. KG	RTL Television	x			x		



**NETHERLANDS**

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Advertising	Pay-TV	Other
Nederlandse Omroep Stichting - NOS	Ned-1		x	x	x		
Stichting - NOS	Ned-3		x	x	x		
	TV 2		x	x	x		
TELEAC Stichting	Ned-2		x	x	x		
Veronica RTV Beheer B.V.	Veronica	x			x		

**PORTUGAL**

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Advertising	Pay-TV	Other
RTP - Radiotelevisão Portuguesa SA	Canal 1		x		x		Grants
RTP - Radiotelevisão Portuguesa SA	TV-2		x		x		Grants
Sociedade Independente de Comunicação	SIC	x			x		
Televisão Independente	TVI	x			x		

**SPAIN**

Broadcaster	Channel	Status		Financing			
		Private	Public	Licence Fees	Advertising	Pay-TV	Other
Antena 3	Antena 3 TV	x			x		
Canal Plus España	Canal Plus España	x			x		
RTVE	TVE-1		x				Grants
RTVE	TVE-2/La 2		x		x		
Tele 5	Tele 5	x			x		

**SWEDEN**

Broadcaster	Channel	Status			Financing		
		Private	Public	Licence Fees	Advertising	Pay-TV	Other
Sveriges Television-SVT	SVT-1		x	x			
TV 4 AB	TV-4	x			x		
Sveriges Television-SVT	SVT-2		x	x			

**UK**

Broadcaster	Channel	Status			Financing		
		Private	Public	Licence Fees	Advertising	Pay-TV	Other
BBC	BBC-1		x				Grants
BBC	BBC-2		x				Grants
Channel 4 Television	C4		x		x		
Channel 5 Television	Channel 5	x			x		
ITV Network	ITV	x			x		

\* Advertising company

Source: Statistical Yearbook '98, European Audiovisual Observatory.

Users

Figure 6: Household media equipment in 1996

Country	Total private households in 000s	Television Households with 2 TV sets or more*	Total private households with VCR in 000s	In % of total private households	Total private households with PC and CG Rom in 000s	In % of total private households	Total private households with videogame consoles in 000s	In % of total private households
Austria	3282	50.0%	2035	62.0%	205	6.2%	700	21.3%
Belgium	3759	42.0%	2485	66.1%	206	5.5%	857	22.8%
Denmark	2328	40.6%	1583	68.0%	323	13.9%	339	14.6%
Finland	2150	40.0%	1440	67.0%	198	9.2%	406	18.9%
France	22889	35.3%	15538	67.9%	1783	7.8%	5775	25.2%
Germany	35272	34.0%	24639	69.9%	3720	10.5%	8558	24.3%
Greece	3646	43.5%	1218	33.4%	55	1.5%	176	4.8%
Ireland	868	36.0%	679	78.2%	32	3.7%	240	27.6%
Italy	22285	46.4%	10638	47.3%	1021	4.6%	2672	12.0%
Luxembourg	140	45.0%	84	60.0%	8	5.7%	35	25.0%
Netherlands	6400	32.9%	4198	65.6%	688	10.8%	1339	20.9%
Portugal	3674	57.3%	1365	39.0%	57	1.6%	270	7.6%
Spain	15080	57.5%	7362	48.8%	509	3.4%	2979	19.8%
Sweden	3889	39.8%	3037	78.1%	494	12.7%	830	21.3%
UK	21528	56.0%	16661	77.4%	2572	11.9%	8529	39.6%
EU-15	147060	43.0%	92882	63.1%	11869	8.1%	33705	22.9%
Canada	10018							
Japan	40278	99.0%	29806	74.0%				
US	93347	78.0%	75611	81.0%				

\* in % of TVHH; in % of total private households

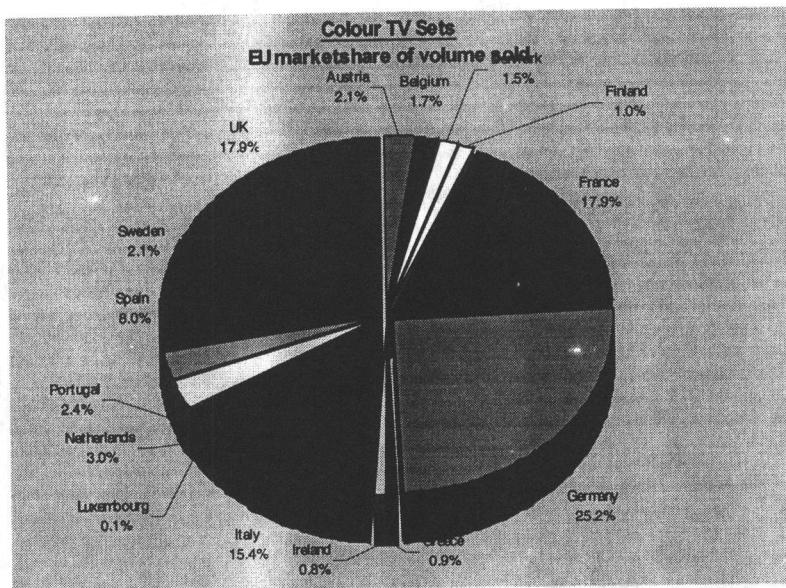
Figure 7: Volume sales and market share of hardware in 1995

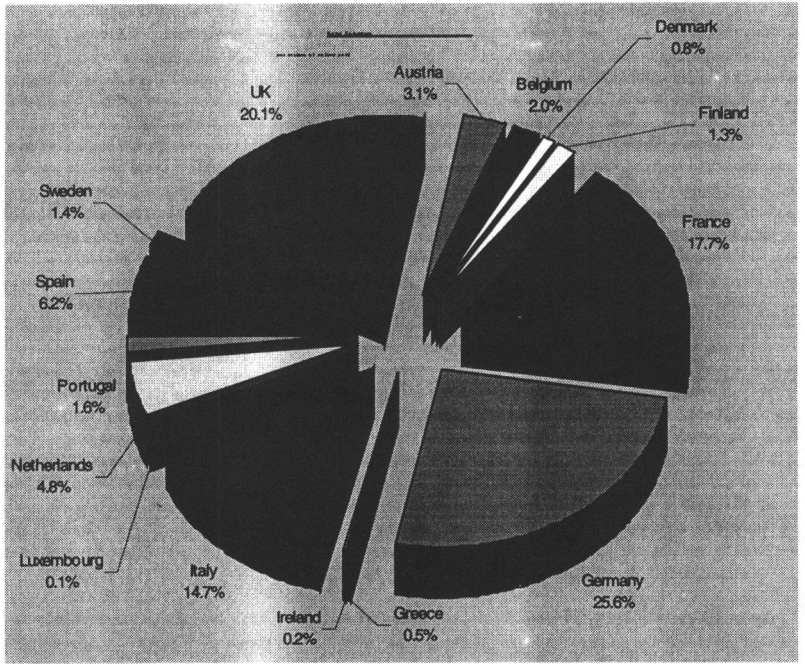
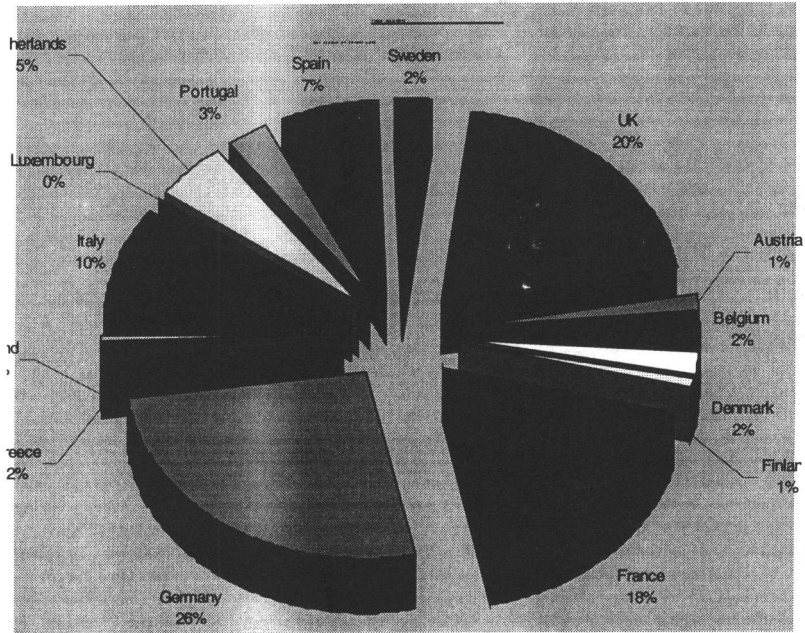
Country	Colour TV Sets		Video Recorders		Home Computers	
Austria	439	2.1%	180	1.5%	160	3.1%
Belgium	363	1.7%	272	2.3%	103	2.0%
Denmark	319	1.5%	242	2.0%	42	0.8%
Finland	200	1.0%	115	1.0%	65	1.3%
France	3747	17.9%	2110	17.6%	920	17.7%
Germany	5297	25.2%	3152	26.3%	1331	25.6%
Greece	186	0.9%	184	1.5%	25	0.5%
Ireland	161	0.8%	74	0.6%	12	0.2%
Italy	3240	15.4%	1196	10.0%	765	14.7%
Luxembourg	16	0.1%	12	0.1%	5	0.1%
Netherlands	625	3.0%	611	5.1%	250	4.8%
Portugal	510	2.4%	314	2.6%	83	1.6%
Spain	1685	8.0%	825	6.9%	321	6.2%
Sweden	445	2.1%	280	2.3%	71	1.4%
UK	3758	17.9%	2439	20.3%	1045	20.1%
EU-15	20991	100.0%	12006	100.0%	5198	100.0%
Canada	1667	n/a *	1373	n/a	178	n/a
Japan	14100	n/a *	**	n/a	**	n/a
US	39941	n/a *	16624	n/a	23300	n/a

\* all television sets

\*\* data not available

Source: Euromonitor: Consumer Europe 1996; Euromonitor: Consumer International 1996/1997.





Demographic indicators

Figure 8: Children and young people by age group

Country	0-4 years in 000s	In % of 0- 14	5-9 years in 000s	In % of 0- 14	10-14 years in 000s	In % of 0- 14	Total 0-14 years in 000s	In % of 0- 19	15-19 years in 000s	In % of 0- 19	Total 0-19 years in 000s
Austria	468.0	..	464.0	..	477.7	..	1409.7	..	458.7	..	..
Belgium	604.2	..	612.2	..	600.6	..	1817.0	..	618.5	..	..
Denmark	343.2	..	303.5	..	273.0	..	919.7	..	316.1	..	..
Finland	324.9	..	316.6	..	330.3	..	971.8	..	327.1	..	..
France	3593.0	..	3833.0	..	3885.2	..	11311.2	..	3836.8	..	1
Germany	4038.2	..	4699.9	..	4500.4	..	13238.5	..	4390.2	..	1
Greece	313.2	..	556.0	..	668.0	..	1737.2	..	761.9	..	..
Ireland	255.0	..	285.5	..	328.3	..	868.8	..	343.1	..	..
Italy	2740.0	..	2782.3	..	2994.8	..	8517.1	..	3514.0	..	1
Luxembourg	27.6	..	25.6	..	23.1	..	76.3	..	22.5	..	..
Netherlands	980.9	..	963.8	..	903.1	..	2847.8	..	923.8	..	..
Portugal	555.7	..	543.7	..	645.2	..	1744.6	..	778.5	..	..
Spain	1933.4	..	2026.5	..	2468.2	..	6428.1	..	3091.0	..	..
Sweden	582.3	..	581.2	..	501.9	..	1665.4	..	506.8	..	..
UK	3802.4	..	3881.4	..	3678.8	..	11362.6	..	3499.2	..	1
Total EU	20762.0	..	21875.2	..	22278.6	..	64915.8	..	23388.2	..	8

Source: Eurostat Demographic Statistics 1997.

Figure 9: Breakdown of private households by composition in 1991:

Private households by type: non-family, single family and multiple family

Country									In % of TPHH
Austria	3013	2.5	980	1958	75	2033	67.1		
Belgium	3953	2.5	1245	2675	32	2708	68.1		
Denmark	2274	2.2	868	1362	44	1406	61.1		
Finland	2037	2.4	761	1243	24	1276	62.1		
France	21542	2.6	6288	15117	137	15254	70.1		
Germany	35256	2.3	13283	21195	768	21973	62.1		
Greece	3205	3.0	:	2532	:	:	:		
Ireland	1029	3.3	278	744	7	751	73.1		
Italy	19909	2.8	4717	14851	341	15192	76.1		
Luxembourg	145	2.6	45	98	2	100	69.1		
Netherlands	6162	2.4	2321	3838	3	3841	62.1		
Portugal	3146	3.1	512	2511	123	2634	83.1		
Spain	11836	3.3	1999	9701	136	9837	83.1		
Sweden	3830	2.1	:	:	:	:	:		
UK	22422	2.5	6620	15596	206	15802	70.1		
EU-15	139749	2.6	:	:	:	:	:		
Canada	10018	2.7	2805	7113	100	7213	72.1		
Japan	40278	3.1	:	28434	:	:	:		
US	93347	2.6	:	:	:	:	:		

\* It is assumed that multiple family households have children.

Sources: Community Programme of Population Censuses, 1990/91 in: Eurostat Yearbook '97. Statistics in focus: population and social conditions: households and families in the European Union 1990/1991 census result, Eurostat.

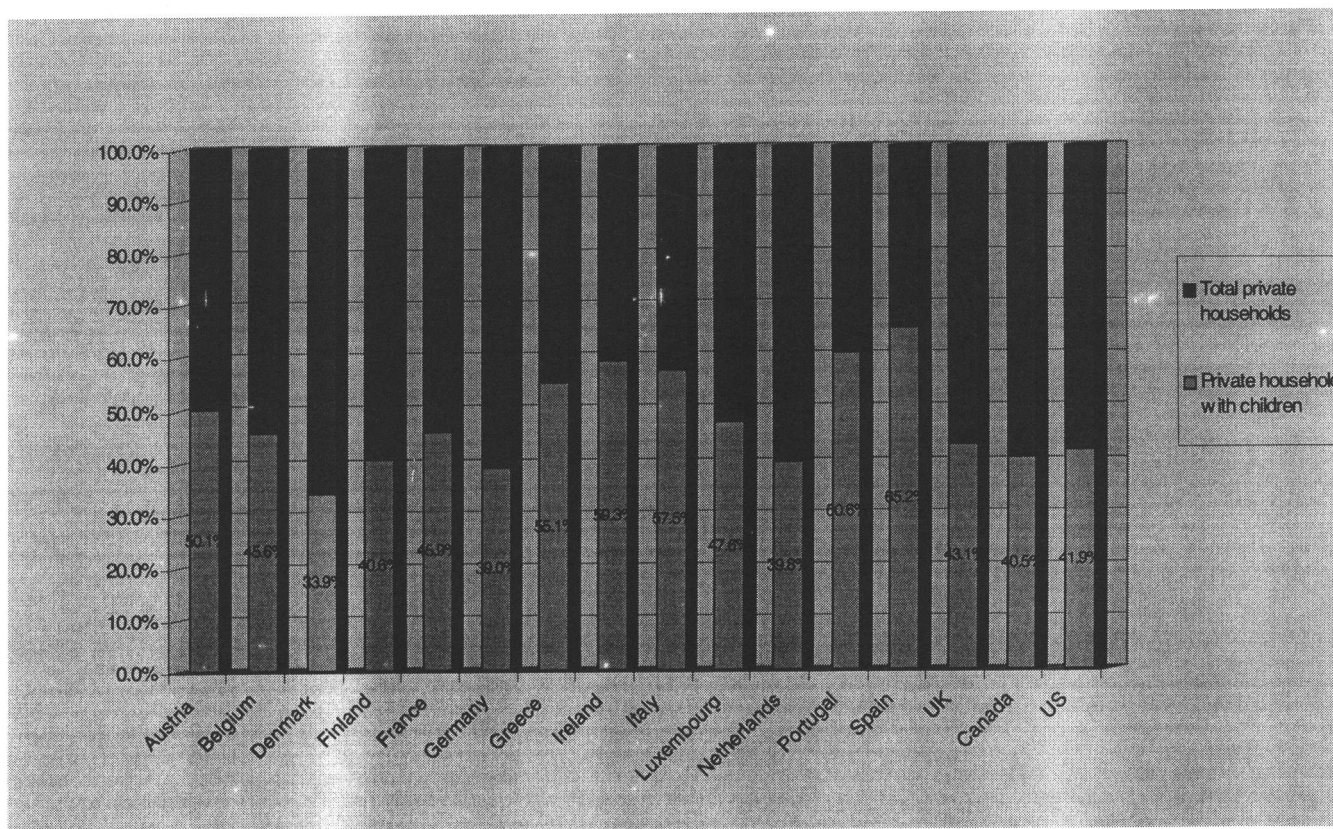
## Private households with children

Country	Single family households				Multiple family households in 000s				Households with children	
	(a)		(b)		(c)		(a)+(b)+(c)			
Austria	710	23.8%	1156	38.4%	279	9.3%	75	2.5%	1510	50.1%
Belgium	904	22.9%	1410	35.7%	362	9.2%	32	0.8%	1804	45.6%
Denmark	606	26.6%	597	26.3%	131	5.8%	44	1.9%	772	33.9%
Finland	490	24.1%	704	34.6%	100	4.9%	24	1.2%	828	40.6%
France	5372	24.9%	8200	38.1%	1544	7.2%	137	0.6%	9881	45.9%
Germany	8201	23.3%	10762	30.5%	2232	6.3%	768	2.2%	12994	39.0%
Greece	761	23.7%	1573	49.1%	193	6.0%	:	:	1788	56.1%*
Ireland	141	13.7%	493	47.9%	110	10.7%	7	0.7%	510	59.3%
Italy	3853	19.4%	9299	46.7%	1799	9.0%	341	1.7%	11439	57.5%
Luxembourg	31	21.4%	56	38.6%	11	7.6%	2	1.4%	69	47.6%
Netherlands	1387	22.6%	2062	33.6%	388	6.3%	3	0.0%	2453	39.8%
Portugal	698	22.2%	1570	49.9%	214	6.8%	123	3.9%	1907	60.6%
Spain	2122	17.9%	6605	55.8%	974	8.2%	136	1.1%	7715	65.2%
Sweden	1177	30.7%	852	22.2%	186	4.9%	:	:	:	:
UK	6142	27.4%	7434	33.2%	2020	9.0%	206	0.9%	9660	43.1%
EU-15	33568	24.0%	53661	38.4%	11215	8.0%	:	:	:	:
Canada	:	:	3004	30.0%	954	9.5%	100	1.0%	4058	40.5%
Japan	6715	16.7%	15333	38.1%	:	:	:	:	:	:
US	27000	28.9%	25300	27.1%	13774	14.8%	:	:	39074	41.9%*

\* Figure refers to children only from single-family and single-parent households; does not include any multiple-family households with children therefore real figure will be slightly above given value.



Percentage of private households with children



# **ANNEX 2: COMPARATIVE ANALYSIS OF RATING SYSTEM**

# 1 Cinema rating systems

From its first appearance, cinema has been widely considered to have an important impact on society in general and viewers in particular. This explains why States have taken care to regulate it strictly, particularly the content. At first, propaganda considerations dictated regulation of content, which was also intended to prevent a challenge to civic education through this medium. However, by the middle of the century the idea had slowly developed that contents provided via the cinema could be harmful to specific groups of society (children, sensitive persons). Some specific rating bodies were then established, generally under the control of the public authorities, and acting as a monopolistic rating provider<sup>1</sup>. This pattern is present in all Member States. Ratings issued are usually **evaluative**, assigning a suitable age category, which is decided using either a **non-deterministic** or **semi-deterministic** methodology.

## 1.1 Austria

Further to Article 15 paragraph 1 of the *Bundes-Verfassungsgesetz* (Austrian Federal Constitution), the legislative branches of the nine federal provinces may enact statutory provisions for the protection of minors. For practical reasons we have focussed here on the legal situation in the province of Vienna, which is typical of all the federal provinces.

Two acts are of interest in the context of protection of minors: the *Wiener Jugendschutzgesetz 1985* (Vienna Minors Protection Act)<sup>2</sup> and the *Wiener Kinogeseztz 1955* (Vienna Cinema Act)<sup>3</sup>. The Vienna Minors Protection Act applies to public film presentations, theatre performances, television and video presentations;

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<sup>1</sup> exception made for Austria, Portugal and Spain

<sup>2</sup> Act for the Protection of Minors (Vienna Minors Protection Act of 1985) [Gesetz zum Schutz der Jugend (Wiener Jugendschutzgesetz 1985)] of April 26, 1985, Vienna Law Gazette 1985/34.

<sup>3</sup> Act concerning the Regulation of Cinemas (Vienna Cinema Act 1955) [Gesetz betreffend die Regelung des Kinowesens (Wiener Kinogeseztz 1955)] of October 21, 1955, Vienna Law Gazette 1955/18, as amended (last July 31, 1998).

children<sup>4</sup> under 6 years-old may only attend when accompanied by a *Begleitperson*<sup>5</sup>. Furthermore, Section 9, paragraph 1 of the Act stipulates that children under 6 may only attend presentations to which the Vienna Cinema Act applies if their admission has been approved by the competent authority.

Children over the age of 6 and young people<sup>6</sup> aged less than 16 years may attend public film presentations, as well as television and video presentations, to which the Vienna Cinema Act applies only if the admission of minors of that age has been approved by the competent authority. Other public film presentations, as well as television and video presentations, may not be attended by children and young people if such presentations may be harmful to minors.

Notwithstanding, children are not allowed to attend public film presentations, theatre performances, television or video presentations after 9pm unless accompanied by a *Begleitperson* or with the approval of their *Erziehungsberechtigte*.<sup>7</sup> For young people the time limit is midnight.

Section 19 of the Vienna Minors Protection Act states that any violation of this Act is an administrative offence; the amount of the fine depends on the offender's age, and there are no fines for children.

Far more provisions on the protection of minors are found in the Vienna Cinema Act. As a general rule, public film presentations may only be attended by people over 16; however, younger people may be admitted by the municipal authority, which has to take advice from the *Filmbeirat der Stadt Wien* (Film Advisory Board of the City of Vienna). This advisory board is composed of members from the

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<sup>4</sup> Being defined as persons of less than 14 years of age, see definition in Section sub-paragraph 1 of the Vienna Minors Protection Act.

<sup>5</sup> Parent or other person/institution who/which has the right to raise the child, person who has been legitimately raising the child for a long period or for ever or person over 18 who is entrusted with the care of the child from time to time.

<sup>6</sup> Being defined as persons aged at least 14 and less than 18. See definition in Section sub-paragraph 2 of the Vienna Minors Protection Act. However, young people who are either married or are members of the Austrian Federal Armed Forces (*Bundesheer*) are not considered to be young people within the meaning of the Vienna Minors Protection Act.

<sup>7</sup> Parent or other person/institution who/which has the right to raise the child or person who has been legitimately raising the child for a longer period or for ever

*Stadtschulrat* (City School Council); the *Bundespolizeidirektion Wien* (Federal Police Directorate of Vienna); one educationalist; one expert from the field of youth welfare work; one expert from the field of national education; one representative of a parents' association and one of a youth organisation; two members from the film industry and a maximum of three other members. The members and their deputies are appointed by *Landeshauptmann*, the head of the provincial government.

While the rating bodies can operate at a provincial level, in practice there is much more centralisation. In the Cinema Acts of some provinces there is even an express provision allowing for the transfer of such authority. Section 11 paragraph 5 of the Vienna Cinema Act, allows film ratings admitting under 16's given by other Austrian advisory boards or commissions, which also include members appointed by the provincial government, to be recognised as binding, if the classification is made according to the same principles that the Film Advisory Board of the City of Vienna applies.

Though there are governmental rating entities in the federal provinces, for the sake of simplicity there is also a central *Jugendfilmkommission* (Youth Film Commission), affiliated with the *Bundesministerium für Unterricht und kulturelle Angelegenheiten* (Federal Ministry for Education and the Arts). The Youth Film Commission was established as early as in 1948 and is composed of experts drawn from the following areas: education; protection of minors; youth organisations; parents' associations; churches; and the film industry. In addition, there is one representative from each federal province. The Commission is chaired by the head of the Ministry's competent service.<sup>8</sup> Film presentations usually take place once a week, and the members of the Commission are obliged to attend the entire presentation.

The regime is **voluntary**: It is up to the film producer/distributor to accept the age limit applied in each province (e.g. 16 years in Vienna). In the event that they want younger viewers to be admitted as well, they may request the *Jugendfilmkommission* to examine the admissibility of younger people

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<sup>8</sup> Section 2 of the Rules of Procedure

The methodology followed by the Commission is **semi-deterministic**. The *Jugendfilmkommission's* Rules of Procedure provide for criteria upon which the opinion is based. However, these criteria are not so detailed as to dictate the commission's expert opinion entirely. The Commission bases its opinion on whether it suspects a film to have a potentially harmful influence on young people; notably on their physical health; their mental and/or moral development; their religious sentiments; and their democratic civic attitude.

Notwithstanding the legal situation at provincial level, the following categories are applied:

**Figure 1: Austrian *Jugendfilmkommission* classification system**

1	2	3	4	5	6	7
no age limit	Over 6 years	Over 10 years	Over 12 years	Over 14 years	Over 16 years	Over 18 years

It is therefore an **evaluative** system.

The Austrian approach proves that despite responsibilities being divided among smaller entities such as federal provinces, ratings may be carried out on a higher level. However, the present structure is unlikely to be able to cope with the volume of existing and future television programming.

Section 8 of the Youth Film Commission's Rules of Procedure provides for film trailers and other short films (e.g. newsreels, advertising films) to be rated on the same principles as main films (defined as films with a duration of more than 30 minutes).

## 1.2 Belgium

The rating system for films is a result of a co-operation agreement<sup>9</sup> between the different linguistic communities and the Bruxelles-Capitale region, which

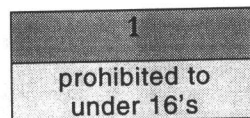
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<sup>9</sup> Co-operation Agreement of 27 December 1990 between the French Community, the Flemish Community and the Inter-Community Commission of the Bruxelles-Capitale region and the German Community, establishing the composition, rules and functions of the CICF

implemented the *Commission intercommunautaire de contrôle des films* (CICF). Members of this Commission are appointed by the responsible Ministers of each Community.

This Commission has been subject to numerous criticisms regarding its rating system. Indeed the institution works on the basis of a law dated 1 September 1920 issuing only one age classification, which prohibits films. It is the only classification in force. The Commission does not take into account the category of film prohibited to under 12's whereas this category exists in media regulation of the Flemish and French community.

**Figure 2: CICF Rating System**



Reform of the Commission and the rating system is expected. However, the institutional issue (obtaining an agreement between the different Communities and the Bruxelles-Capitale region) makes the process slow.

### 1.3 Denmark

The rules applying to cinema are contained in the Film Act of 12 March 1997. The body responsible for classification is the Media Council for Children and Young People (**MCCY**), which was established by the Minister of Culture in April 1997, to replace the State Film Censorship. Chapter 6 of the Film Act of 12 March 1997 establishes the legal setting, outlining the Council's mandate, and its activity is regulated by Departmental Order No. 30 of 16 January 1998. The MCCY is central to the regulation of film and video, and is planning to regulate computer games on CD-ROM as well. It is also part of its mandate to maintain a continuous dialogue with all Danish television broadcasters, in order to advise them on how to guide and inform the public and develop children's media competence. However, private performances and films shown on television do not fall under the jurisdiction of the MCCY.

The MCCY's budget was 1.8 million Danish kroner in 1998. The estimated

income in 1998 from producers and distributors paying for their films to be evaluated is 300.000 Danish kroner.

The MCCY has 7 members. Three of the council members are experts on children; two are experts on the film industry; one represents cultural and/or media views; while the last member represents consumer interests.

The principal task of the MCCY is to evaluate films and videos, analysing their suitability for children. It evaluates films from a general perspective including interaction between the actual story and the special effects, and evaluations are based on the criterion of harmfulness that is stipulated in the Film Act, albeit in very general terms<sup>10</sup>.

During the first year of the MCCY's existence, substantial time has been spent on formulating and establishing a consensus on the criteria for assessing harmfulness in film and videos. Given the ambiguity of the concept, the discussions are expected to continue. The notion of harmfulness changes as does the norms and moral of a society.

Age classifications issued are as follows:

**Figure 3: MCCY Classification system**

1	2	3	4
Permitted for all	For all, but not recommended for children under the age of 7	Permitted for children above the age of 11	Permitted for children above the age of 15

It is important to stress that in the evaluation of films and videos, it is harmfulness rather than suitability that is expressed by the age limits applied. A film may receive a classification for 7-year-olds, due to its lack of harmful content, without

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<sup>10</sup> The criterion of harmfulness is reflected upon in Note no. 38 of the Film Act, where emphasis is put on whether the film contain scenes presumed to have a brutalizing effect on children and youth, by weakening their inhibitions towards use of violence. Sexual descriptions contained in the film are also taken into consideration, with a view to restricting admission to children below 7, 11 and 15 years of age respectively. Further interpretations of harmfulness are thus left to the MCCY to administer.



thereby being particularly suitable for children in terms of interesting them or being easy to understand.

In accordance with the Film Act of 12 March 1997 age classification may be circumvented as it is permitted for children of the age of 7 and above to watch any film in the cinema, as long as they are accompanied by an adult. This decision was received with approval within the industry and likewise among parents. The MCCY's understanding is that this rule resolves a situation that the audience used to find frustrating - the fact that they could not decide for themselves what their children should be allowed to see. It allows parents and children to decide jointly what is suitable for the children to watch, thereby applying the same situation to cinema visits as home viewing, where it is the parent who decides which programmes children may watch on television or video.

In addition to this work on evaluation of films and videos, the MCCY's role includes the provision of information, awareness raising and the formulation of guidelines. It co-operates with other institutions performing similar roles (i.e. The Danish Film Institute, public libraries, children's film clubs), in passing on information to teachers, users and parents about suitable films for children and about the importance of raising awareness among users.

#### **1.4 Finland**

The first Act on Film Classification in Finland was introduced in 1946. Before that date film distribution was self-regulated by the film industry. According to the Act on Film Classification (299/1965), all films (except when they are broadcast on television) must be viewed and classified by the *Valtion elokuvatarkastamo* (Finnish Board of Film Classification) before they can be shown in public. Only this body has the authority to ban and censor films. All audiovisual programmes to be shown in public are subject to film classification (except when they are broadcast on television or at film festivals exempted by application).

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The censors must not authorise for public showing a film or part of a film that is obscene, contains brutal violence, or which is psychologically disturbing (by shocking or otherwise). Films that disrupt public order, threaten public security or national defence, or damage Finland's relations with foreign powers should also be banned. Furthermore, a film must be banned if it obviously violates Finnish law.

The Act on Film Classification is decreed in an exceptional way, by following the constitutional legislative procedure. Preventive film censorship is in conflict with the constitutional right of free speech, and, in addition, many of the criteria articulated in the Act on Film Classification are obsolete.

In 1995, the constitution was revised and a new clause was added to the paragraph on the freedom of speech. According to the new clause, "audiovisual programme restrictions necessary to protect children may be prescribed by law". Since 1995, the film classification system has been under revision, and according to the revised constitution, a Film Classification Act need no longer be decreed following the exceptional constitutional legislative procedure, if it only contains restrictions necessary to protect children - i.e., rating restrictions only.

A committee on film examination finished its report on the revision of the Act of Film Classification for the Ministry of Education on the 3rd April 1998. The new law would aim to unite previous laws and regulations concerning the censorship and classification of audiovisual programmes. At the same time, previous Acts would be rescinded. The committee proposes that films, videos and other audiovisual programmes for adult viewing would be exempted from preliminary examination, but that the showing of such films to people under 18 would not be allowed. Films should include ratings based upon age. All films and programmes should be registered with the *Valtion elokuvatarkastamo* before being shown and distributed. In the proposal, freedom of speech and the equal treatment of different audiovisual media are emphasised. However, programmes violating the penal code should not be distributed or shown. A programme should not be accepted for viewing if it is likely to disturb the psychological development of a child by shocking, or due to its violent or sexual content. Age restrictions set at 7, 11, 15 and general, should be included in television programme information.

According to the proposal there would no longer be a body responsible for censoring and banning films. The criteria of “offensive, disrupting public order, threatening security or national defence; and damaging the nation’s foreign relations” would be abolished. Interactive programme, i.e., video games or computer games that are targeted at audiences of all ages are not currently subject to censorship, but if there were any reason to suspect an interactive programme, under the new proposal it should also be submitted for classification.

The establishment of the proposal for a new Act would mean an improvement in the equal treatment of different media. At the present time, for instance, programmes that may be aired on TV cannot be distributed as videotapes. The proposal has also been praised for its capacity to combine the previous Acts on Film Classification, and the Act Relating to the Inspection of Video and other Audiovisual Programmes. In line with the Constitutional right of free speech (10 §) it limits the restriction of free speech to materials that are suspected of having a potential negative effect on children. However, the proposal has encountered some criticism. For instance, it does not attempt to control the selling or distribution of illegal films. The report is now under revision in the Ministry of Education and will be completed during the winter of 1999.

The current rating system is **mandatory**, since all ratings are necessary by law, and **evaluative**, as it provides a single rating indicator based upon age. As it is based on the opinions of the rating body the system is also **non-deterministic**.

Since 1966, the classification has been executed by the *Valtion elokuvatarkastamo*. The law contains a provision as to the composition of the Board, with screening to be the responsibility of eight censors. The Ministry of Education appoints the chairperson of the board and the other seven censors, who serve for a three-year term, though reappointment is possible. The chairperson and two other censors work on a daily basis, examining programmes for 20 hours per week. Five other censors each work 4 hours weekly.

The Board has to meet the following criteria:

- ❑ equal representation of men and women
- ❑ representation of both the Ministries of Culture and of Finance
- ❑ psychological, psychiatric, and pedagogical expertise
- ❑ expertise in the social sciences and in film art

The basic rating scale is as follows:

**Figure 4: Finnish Board of Film Classification rating system**

1	4	5	6
G - general audience	Restricted for persons under 16 <sup>11</sup>	Restricted for persons under 18	Banned

Three members of the Board, one of whom has to be either the chairperson or vice-chairperson, constitute a quorum. The decisions do not need to be unanimous. Two members of the Board can make a decision provided that they are in agreement and that they don't cut or ban a film. One member can even make a ruling relating to the age limit, if it is agreed to by the distributor or producer. Rating decisions are binding and the penalty for public showing of a film that has not been classified is a fine or the risk of imprisonment for up to six months.

If a film has been authorised for public showing it is not re-checked for home video distribution, except when it has been rated 18, in which case cuts are required in order to acquire a 16 rating. Programmes including hard core pornography or depicting fictional graphic or sadistic violence are rated 18. Films or programmes which contain sexual violence, animal pornography or child pornography are banned. Lower ratings are based upon the quantity and quality of violence, sex, horror effects etc. in films.

The decisions of the Board can be appealed against to the Appeal Board, but the appeal process is open only to distributors or producers. The Appeal Board

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<sup>11</sup> Age categories 6, 8, 10, 12 and 14 are used. There is also a PG-option "3 years younger may attend if accompanied by a parent (or legal guardian)". The following PG categories are possible: PG-8, PG-10, and PG-12.

consists of eleven members, appointed by the government for a term of three years. The Ministries of Education, Justice, and Finance are each represented by one member. The other members represent different branches of society, e.g., the press, the film industry, film critics, education, and psychology. If a distributor or a producer is not satisfied with the decision of the Appeal Board, they can appeal to the Supreme Administrative Court.

### 1.5 France

In France the *Centre National de la Cinematographie* (CNC) was established in 1946<sup>12</sup>. It is a public body under the authority of the Ministry of Culture and is at the same time the “tutelary father” and “nourishing mother” of the cinematographic industry. The Centre is responsible for the classification of cinematographic works<sup>13</sup>. The Minister of Culture issues a certificate after advice from the Commission for the Classification of Cinematographic Works<sup>14</sup>. All French and foreign cinematographic works to be screened in France are subject to this procedure.

The classification commission is composed as follows: A president (chosen from the members of the *Conseil d'Etat*) and a substitute president, both designated by Decree of the Prime Minister, as well as 25 permanent members and 50 substitutes, divided into 4 colleges and designated by ministerial order (Ministry of Culture). All are mandated for 2 years.

**Figure 5: Composition of Commission for the Classification of Cinematographic Works**

First college	Second college <i>professionals</i>	Third college <i>experts</i>	Fourth college <i>youth</i>
5 permanent members and 10	8 permanent members and 16	5 permanent members and 10	3 permanent members and 6

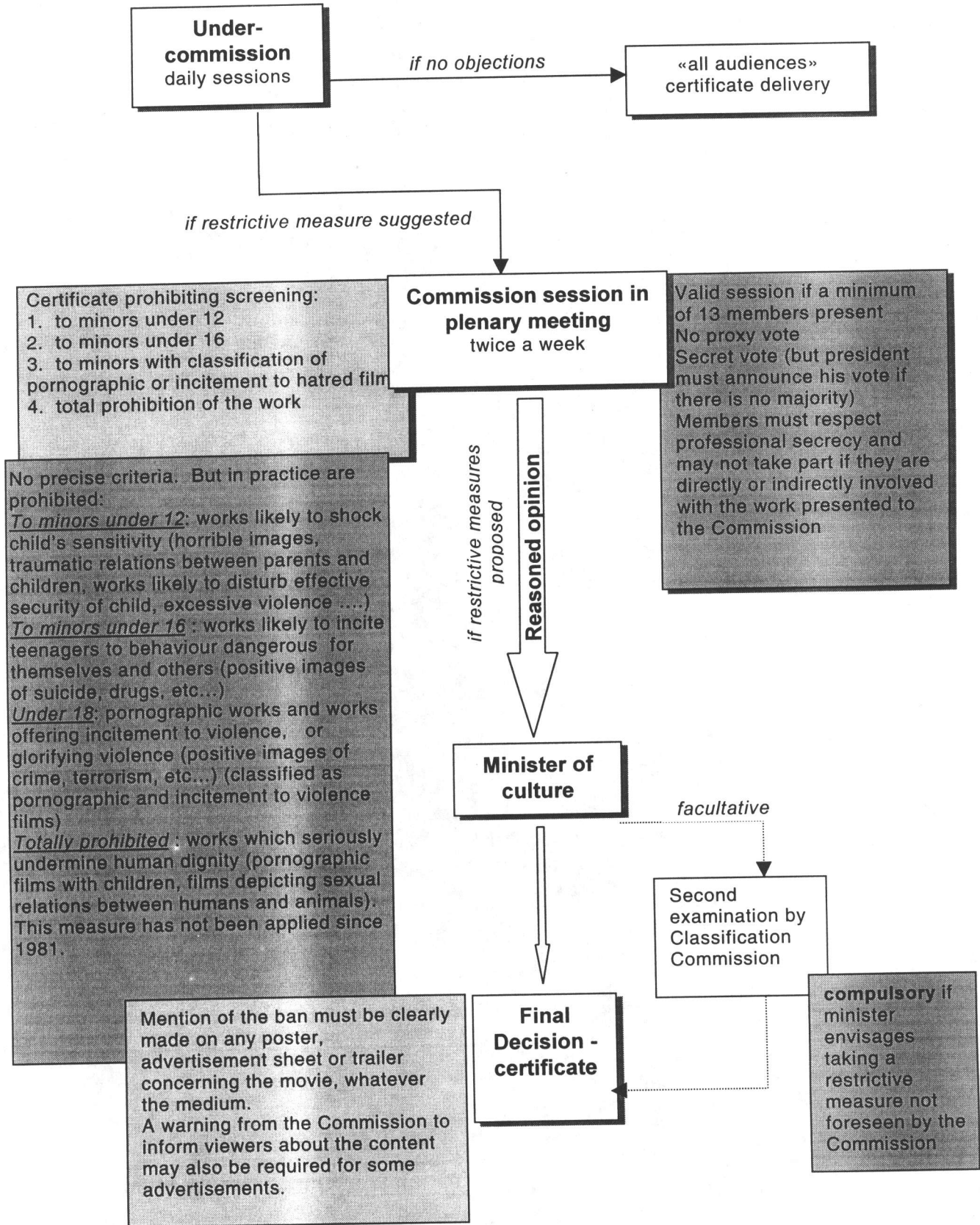
<sup>12</sup> law of 25 October 1946

<sup>13</sup> Article 19 (Ordonnance n° 45-1464 of 3 July 1945, first article – modified by law n° 92-1477 of 31 December 1992) of the Code of the Cinematographic Industry (Decree n° 56-158 of 27 January 1956 – Law n° 58-346 of 3 April 1958): “The representation and export outside European Economic Community of cinematographic works is subject to obtaining a certificate granted by the Minister of Information”. The certificate is now granted by the Minister of Culture

<sup>14</sup> Composition and functions of this commission are fixed by Decree n°90-174 of 23 February 1990 as revised.

<p>substitutes representing Ministries of Justice, Education, Internal Affairs, and Youth and Social Affairs</p>	<p>substitutes appointed from representatives of the cinematographic profession, after consultation with main organisations or associations of this field</p>	<p>substitutes appointed from proposals made by Ministries of Justice, Education, Internal Affairs, and Youth and Social Affairs 1 permanent member and 2 substitutes appointed from nominations by the <i>Conseil supérieur de l'audiovisuel</i>. 2 permanent members and 4 substitutes appointed after consultation with the National Union of Family Associations and the Association of the Mayors of France</p>	<p>substitutes nominated by 18 to 25 year olds and appointed after consultation with the National Council for Popular Education and Youth 1 permanent member and 2 substitutes appointed from 18 to 25 year olds, on the grounds of an application list established by the general director of the CNC</p>
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Figure 6: French cinematographic rating procedure



Promotional support made available by distributors to the theatres is also subject to a certificate issued by the commission. Posters of films prohibited to minors under 12 or 16 may only use images or illustrations approved by the Commission.

Specific legal provisions apply when a film is disseminated without a certificate or in infringement of the certificate issued:

- ❑ administrative seizure by the film police authorities
- ❑ possible judicial proceedings leading to fines, to which may be added a ban (permanent or temporary) from any form of work in the cinematographic industry.

Admission of minors to screenings prohibited to them also constitutes a breach and leads to the imposition of fines<sup>15</sup>.

## 1.6 Germany

Strictly speaking, the only rating/labelling system is the one used by *Freiwillige Selbstkontrolle der Filmwirtschaft (FSK)*<sup>16</sup>, the voluntary self-regulation Board for cinema films. The *Bundesprüfstelle für jugendgefährdende Schriften (BPjS)*<sup>17</sup>, the Federal Examination Department for publications harmful to minors. This is not a rating body as such, but it is in charge of controlling the legality of cinema films and whether they should be put on an “index”, listing publications which are likely to morally endanger children and young people, and which are prohibited for minors.

The FSK uses an **evaluative** rating system. The films are classified on the basis of age categories included in the law<sup>18</sup>:

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<sup>15</sup> Decree n° 92-445 of 15 May 1992 concerning access by minors to cinemas.

<sup>16</sup> The legal basis of the activity of the FSK is included in §6 of the law on protection of minors in public places (**JÖSchG**). The FSK was established after the war as an independent department of the *Spitzenorganisation der Filmwirtschaft e.V.* (SPIO). The first classification of a film took place on 18 July 1949.

<sup>17</sup> The BPjS was created on 14 May 1954 on the basis of §8 of the GjSM. It was originally under the administrative control of the Ministry of Internal Affairs, but is now under the Ministry for Youth, Family, Women and Health.

<sup>18</sup> §6II JÖSchG



Figure 7: FSK Rating System

1	2	3	4	5
no age limit	children older than 6	children older than 12	Young people older than 16	young people older than 18

The system is based on legal provisions, which are completed by the examination criteria of the FSK. However, the system is **semi-deterministic** since the FSK enjoys a certain licence in interpreting the criteria under the principle of proportionality.

The FSK calls itself a **voluntary** body. However, every film intended for public screening needs to be rated by the FSK. In the absence of a rating, the film may only be shown to adults.

The FSK is difficult to define precisely within the system. The Federal States reached a specific agreement regarding the protection of minors in films on 1 April 1985, by which they decided to use the FSK as an expert body for rating cinema films. However, the FSK is a self-controlling body under private law, which acts in the name and at the request of the Supreme Youth Authorities in the Federal States<sup>19</sup>. The FSK describes itself as well-informed, independent and representative of society. Even if, as is always emphasised, the Supreme Youth Authorities in the Federal States remain responsible for their decisions and no official transfer of rights has as yet taken place, the certification for release is effectively carried out by the FSK. For these reasons, the FSK might be classified as a government rather than an industry system. The Federal States are entitled to reach different decisions and to impose them if they do not agree with a decision made by the FSK. However, this has never happened in practice. The ratings of the FSK are also indirectly valid for the broadcasting of films on television, even if the FSK is only officially authorised for video and cinema.

The working committee is composed of 7 people (the permanent representative of the Ministry, an expert on the protection of minors, 2 representatives of the public

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<sup>19</sup> Its specific character is reflected by the wording of the certificate of release: "this film is released by the Supreme Youth Authorities in the Federal States according to §6 JÖSchG of 25.02.1985 to be shown publicly to children and young people from the age of ... years".

authorities, 3 representatives of the film and video industry (however, they may not be currently active in the film and video industry). A simple majority is required for decisions.

There are two ways of dealing with appeals against decisions made by the FSK:

- - The High Committee (*Hauptausschuß*) is responsible for petitioners who are not satisfied with the result of the examination committee. It is also authorised to adjudicate in the event of there being a minority of the working committee that was outvoted. It is composed in the same way as the working committee with an additional representative each from the public authorities and the film industry.
- - The Supreme Youth Authorities in the Federal States and the SPIO are also entitled to appeal against a FSK decision. In this case, a specific appeal committee (*Appellationsausschuß*) is formed and made up of 1 lawyer (president), 2 experts in the field of protection of minors and 4 examiners nominated by the Supreme Youth Authorities in the Federal States.

Legal provisions are the basis for decisions taken by the FSK. Moreover, the FSK has developed examination criteria to guide their interpretation. Following the examination, a rating certificate is granted. It has to be presented at the cinema counter if requested by the authorities responsible for security. The FSK also organises film screenings for young people to discuss the ratings with the age group concerned. An exchange of experiences also exists with similar organisations examining films in the Netherlands and Austria.

Around 400 cinema films are rated every year and about 600 to 700 video films per year. The FSK also supervises the conformity of advertisements (especially those concerning tobacco and alcohol) to the relevant legal provisions. If the examination committee comes to the conclusion that they are targeted towards minors younger than 16, the advertisements are prohibited for this age group.

The criteria used by the BPjS for the evaluation of cinema films are the legal provisions of the *Gesetz über die Verbreitung jugendgefährdender Schriften und*

*Medieninhalte* (GjSM)<sup>20</sup>. Further to these provisions, publications that are likely to morally endanger children and young people have to be inserted in an “index”. This includes representation of violence, glorification of the Nazi ideology, incitement to racial hatred, glorification of war, sexual-deviation and pornography. The list of §1 is not exhaustive, media that glorify or play down the consumption of drugs are also considered as harmful to minors. §1(2) contains exceptions to the “index” system. The principle is that media may not be put on the “index” on the grounds of their political, social, religious and ideological content<sup>21</sup>. However, they may be put on the “index” when the danger for minors is not based on the above mentioned reasons.

The system is based on the legal criteria described above, but the criteria are also interpreted on the basis of case-law, which defines certain legal concepts. Since this interpretation necessarily includes an element of subjectivity the system may be described as **semi-deterministic**.

This is **neither a voluntary nor a mandatory system**. The content producer is not required to have the films examined by the BPjS. The BPjS can only review a film on the basis of a request coming from one of the following institutions: (i) *Jugendämter* (youth welfare departments), (ii) *Landesjugendamt* (youth welfare departments of the Federal States), (iii) *Oberste Landesjugendbehörden* (Supreme Youth Authorities of the Federal States) and (iv) The Ministry for Family, Elderly People, Women and Youth. All together there are around 900 authorities entitled to submit a request for examination. Private citizens can only address themselves to these places. Once the BPjS has received a request, it is obliged to examine the publication in question.

The BPjS is a Federal authority with quasi-judicial functions under the administrative control of the Federal Ministry for Women and Youth. However, further to §10 GjSM, its members do not comply with instructions as regards the examination procedure of the films.

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<sup>20</sup> Law on the dissemination of publications and other media morally harmful to youth

The competence of the BPjS is limited to films which have not previously been rated by the FSK, e.g. films which were either not presented to the FSK or which were refused a rating. The BPjS is also responsible for publications and other media. The decision to put a film on the “index” is published in the Official Journal; otherwise the decision is not valid. The classification in the “index” is not strictly speaking censorship, as these publications remain available to adults. The legal nature of this classification is an administrative act<sup>22</sup>. Consequently, it can be challenged before the administrative courts. Further to §§3-5 GjSM, the classification of a film on the “index” creates limitations regarding its delivery, presentation, circulation or advertising. More precisely, the film’s appearance on the “index” means it is prohibited to show or disseminate the films to children and youth. Parents may not be held responsible under criminal law if they show indexed material to their children because of their constitutional prerogatives as parents. However, if parents infringe their custody rights, the Youth Authority may, according to §1666 of the Civil Code, request appropriate action from the court dealing with matters relating to guardianship. Criminal prosecution is a matter for the police or the state prosecutor.

To assess the work, examiners sit in a committee of 12 people (or 3 in the case of an obvious risk to young people). The committee members are people with specialised knowledge and representatives of different sectors of German society<sup>23</sup>. The examination is not open to the public. This system is State specific and is not designed to provide classification at the European level.

## 1.7 Greece

The rating system is the responsibility of the Cinematography Commission, which consists of officials from the Ministry of Culture. It is **mandatory** in the sense that, the producer is required to have all films rated by an agency. Broad legal

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<sup>21</sup> However, media including content which is contrary to the Constitution may not take advantage of this principle.

<sup>22</sup> further to 35 VwVfG (Verwaltungsverfahrenordnung)

<sup>23</sup> The BPjS is composed of :

□ full time members: the president, vice president, two lawyers and five assistants.

provisions relating to content apply in the absence of specific provisions for cinema regulation. It is a criminal offence to 'sell, distribute, exhibit, fabricate, transport, export, import and generally circulate documents, publications, articles, sketches, pictures, drawings, seals, photographs, motion pictures or any other forms of objects considered to be indecent or obscene'<sup>24</sup>. Indecent or obscene material is defined as that which 'according to general public sense, is offensive to public shame'.<sup>25</sup> The same provision states that 'works of art are not indecent or obscene unless specifically offered for sale, hire or distribution to people under 18 years of age'.

Though the Greek Penal Code<sup>26</sup> restricts the import for commercial use of indecent or obscene works of art, court rulings in 1983 under these regulations held that pornographic films, although unsuitable for most public cinemas, catered to specific tastes. Thus, if shown in specialist adult cinemas where minors (i.e. under-18s) were prohibited, they did not constitute violation of statutes. Such cinemas are now widespread in most Greek cities, with notices at entrance points barring under-18s.

Despite the regulations, in the last decade very few films have been confiscated after screening for violating public decency (particularly pornographic films). There have been a few incidents in which authorities closed down adult cinemas for admitting under-18s.

The procedure for classifying films is **non-deterministic**. Ministry officials classify film and script submissions on a simple pass or fail basis.<sup>27</sup> However, the ratings issued are **descriptive**.

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□ honorary members (50 members representing different groups of German society and 40 members representing the Federal States).

<sup>24</sup> Article 29 of Law 5060/31 of 1931 (this law has been neither amended or repealed) on obscene and indecent material

<sup>25</sup> Article 30 of Law 5060/31

<sup>26</sup> Article 86

<sup>27</sup> It should be noted though that Articles 2 & 36 of Law 1597/86 set up a 'Youth Board' with the aim of classifying films according to the following classification system: (a) suitable for youths under 17 years of age; (b) limited suitability; (c) unsuitable; and (d) extremely unsuitable.

However, that classification system never came into effect and the 'Youth Board' was never appointed due to ministerial non-decision-making.

Since in 1993/94 local authorities took over former police functions in licensing cinemas, it is reasonable to assume that the classification system will be placed in their hands in due course. Given that no significant incident has occurred during the last decade, expectations of the introduction of a more sophisticated classification system are limited.

### 1.8 Ireland

The body responsible for the classification of films in Ireland is the Official Censor of films established by 1923 Act. The rating procedure applied by the Censor is **non-deterministic**, depending on the view of the individual censor. The system requires all films for public viewing to be submitted in advance to the Censor with a view to obtaining a certificate. The Censor can grant such a certificate in full, or with conditions attached, or can refuse to grant one. Where conditions are imposed, they might relate to the class of viewer or place of viewing. A certificate can be refused altogether if the film or part of it is indecent, obscene or blasphemous, or tends to inculcate principles contrary to public morality or is otherwise subversive of public morality.

There is no definition of indecent, obscene or blasphemous in the Act. However, the Censorship of Publications Act 1929 contains the following definition of "indecent": "...shall be construed as including suggestive of or inciting to sexual immorality or unnatural vice or likely in any other similar way to corrupt or deprave.

Where part of a film falls into any of these categories, the Censor is obliged to indicate which part to the applicant, who may then remove the offending part or appeal to the Appeal Board. Once a certificate has been granted no other pressure group may prevent its being screened publicly."

The Appeal Board consists of nine people and operates with a quorum of four. It has power to affirm, reverse or vary the Censor's decision, and since 1965 has been reconstituted to allow it to grant limited certificates itself in the case of films that have already been rejected.

The certificate ensures that a film may be shown, but an age classification system, introduced in 1965 and later amended, also applies:

**Figure 8: Age classification for films in Ireland**

1	2	3	4	5
Gen fit for viewing by persons generally	PG Fit for viewing by persons generally, but in the case of a child under the age of 12 years, only under parental guidance	12 Fit for viewing by persons aged 12 years or more	15 Fit for viewing by persons aged 15 years or more	18 Fit for viewing by persons aged 18 years or more

The rating system applies to all films, and, by amendment Act of 1925, advertisements. Advertisements and trailers for films must also display the appropriate age category.

There is no uniform identity card system in operation in Ireland but children and young people seeking admission to cinemas are often challenged as to their age by cinema staff.

Producers are obliged to submit films for certification and to pay a fee to have the film categorised. The whole system was designed to be self-financing, by imposing fees on applicants for a certificate. The advantage is that the scheme is not a drain on the Exchequer. However, as the fees have increased over time to meet increasing costs and staff wages, the price of obtaining a certificate (approximately £700 for an average length film by 1988) has posed a problem for smaller films. Trying to recoup the outlay, as well as meeting advertising and promotion costs, can be difficult for small or alternative films showing at fringe venues. Various alternatives have been mooted, including linking fees to gross revenue, but since measures of that nature would involve the large American mainstream films essentially subsidising the rest, they have not been uniformly welcomed.

Fees are recoverable in the event of a successful appeal or if a ban is revoked. Where a certificate is refused and an appeal is either not sought or unsuccessful, the situation may be reviewed after a period of seven years<sup>28</sup>.

Due to the financing system there is sufficient capacity to deal with any volume of material, subject to the fees not becoming prohibitive for all but the large American outlets.

There is no indication of any change being contemplated specifically with regard to control of content. The biggest development in this regard has been the inclusion of the Censor's office within the Freedom of Information Act 1997, which will allow more transparency into the whole process. However, the Government has recently established a Film Industry Strategic Review Group, whose terms of reference appear to be broad enough to cover control of content. The terms of reference include:

- ❑ carrying out an objective evaluation of the effectiveness of the existing schemes and to make recommendations in regard to future measures and incentives to develop the industry;
- ❑ analysing and identifying the fundamental issues facing the industry and to make recommendations in regard to future measures in support of the film and television industry; and
- ❑ formulating a strategic plan for the future of the sector in the next decade.

The Group has invited submissions from interested parties (notice published in the national press on 27 October 1998)

As to the sanctions, under the 1923 Act it is an offence, punishable on summary conviction by fines, including daily fines (*per diem*) for continuing offences, to show an uncertified film in public or to permit one to be shown in breach of the terms of a limited certificate.

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<sup>28</sup> Censorship of Films (Amendment) Act 1970.



## 1.9 Italy

The Italian cinema rating system is **evaluative** and **mandatory**. Relevant guidelines concerning the rating system nature and process are set out in Article 21.6 of the Constitution, Articles 528 and 529 of the Criminal Code, Law 161/1962, and Presidential Decree D.P.R. 2029/1963.

Film screenings within the State's territory are subject to the release of a certificate, which has to assess the suitability of the work's content according to a set of fixed guidelines. Article 1.2 of Law 161/1962 sets out that a special censorship committee operating within the Prime Minister's office grants the certificate after prior examination of the film<sup>29</sup>. Before releasing the certificate the committee has to evaluate, among other things, whether the film is suitable for minors given their particular sensitivity. In addition, Article 667.2 of the Criminal Code sets forth that, in order to (i) produce; (ii) introduce into the territory of the State; (iii) export; or (iv) trade films<sup>30</sup> prior notice to the Police Authority is necessary.

Therefore, in Italy (i) no films may be produced or distributed without prior notice to the Police Authority; (ii) no films may be screened without the prior release of a certificate by the censorship committee; (iii) cinema managers are held liable whenever minors attend the screening of a film certified as unsuitable for them; and (iv) cinema managers are held liable whenever, given the age-limit certificate, they do not verify the age of the audience they admit.

The Italian cinema rating process is somewhat **semi-deterministic**. It is based upon an (allegedly) objective methodology (i.e. examination of the submitted work

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<sup>29</sup> Article 668 of Criminal Code ("*Non-authorized performances of films*") establishes that anyone who screens films, which have not been submitted to prior censorship, in a public space, is held liable with a fine of up to ITL 600,000 or imprisonment for up to six months. Finally, Article 15 of Law 161/1962 reads that infringements of Article 5 (concerning films that have been granted a limited-age certificate or a certificate of non-suitability for minors) are punishable by a fine of up to ITL 50 Million. The same penalty is provided for screenings of films not submitted to prior censorship or denied a certificate, or screened in a different version than the one censored (Article 15.3).

<sup>30</sup> The offender is liable with a fine up to ITL 1 Million or imprisonment for up to 1 month whether or not the violation is perpetrated against the Public Authority's order.

in compliance with the contents guidelines provided by the Law<sup>31</sup>). The broad definition of the committee's criteria (such as, for example, the public morality principle) allows its interpretation to vary according to social changes and sensitivity, with the result that the rating process is ultimately based upon the committee's opinion.

When a film's content is assessed obscene or against public morality a certificate is denied and the film may not be released.

Article 9 of Presidential Decree No. 2029 of 11 November 1963 (D.P.R. 2029/1963) adds further criteria for censorship with the purpose of protecting minors' sensitivity and development. It sets out that films, even where they do not offend public morality, are to be denied a certificate of suitability for minors when they: (i) contain vulgar content; (ii) encourage immoral behaviour; (iii) depict erotic or violent scenes against human beings or animals; (iv) refer to hypnotic phenomena or disturbing surgical operations or to the use of drugs; (v) promote hatred and revenge; and (vi) induce to imitation of crimes or suicide<sup>32</sup>. The Administrative Court of Appeal<sup>33</sup> has ruled that, in compliance with Article 9 of D.P.R. 2029/1963, the seriousness of vulgar or violent scenes - which determines denial of a certificate for minors - may be adequately assessed *only* if referred to the specific context in which those scenes are depicted.

The censorship committee is a Special Committee operating in the Department of Entertainment of the Prime Minister's Office, which is authorised to assess films<sup>34</sup>. This committee in turn is composed of 8 sections; the composition and functions of which have been recently re-drafted<sup>35</sup>. Accordingly, each section of the censorship committee must be composed of 8 members, among which 2 must be

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<sup>31</sup> (i) Article 21.6 of the Constitution, which prohibits all publications, performances and other expressions against *public morality*; (ii) Article 528 of Criminal Code, which declares liable those who show *obscene* films; and (iii) Article 6 of Law 161/1962, which provides for the denial of a certificate whenever the film represents, as a whole or in singular scenes, an offence to public morality and, (iv) case law interpreting all such provisions

<sup>32</sup> The committee's assessment of the degree of seriousness of such elements will determine the suitability of the film for minors over the age of 14 or over the age of 18.

<sup>33</sup> Consiglio di Stato sez. IV, judgement of 30 September 1988.

<sup>34</sup> Law 161/1962; Law 203/1995; Legislative Decree 8/1998.

<sup>35</sup> Legislative Decree No. 8 of January 8, 1998 and Law No. 203 of 30 May 1995.

representatives of parents' associations. The remaining members are experts from other domains (such as the law<sup>36</sup>, psychology or pedagogy), 2 representatives of the cinema industry and 2 experts on cinema (such as journalists or authors). Certificates are granted by each section upon approval by the majority of their members<sup>37</sup>.

The previous composition and functions of the censorship committee raised various complaints among the public and, in particular, among parents' and viewers' associations<sup>38</sup>. The fact that representatives of cinema interests (such as producers, distributors and cinema managers) were included in the membership, while representatives of children's interests were not, was deemed to be the major reason for the release of an excessive number of certificates that did not comply with contents regulation and were thus injurious to the community's general interests. Moreover, before Law 203/1995 each section could issue a certificate upon its approval by a simple majority of the members *present*. It is worth mentioning, in light of this rule, that many critics argued that only the representatives of cinema interests were in the habit of attending all examinations, whereas members appointed to safeguard general interests, such as judges or Professors at University of Law, were too often absent. Therefore, certificates were granted following a brief evaluation carried out mainly by cinema representatives; and, consequently, very few films were denied a certificate. Notwithstanding Law 203/1995, the censorship committee is to date still operating under its previous composition<sup>39</sup>. New sections have not yet been appointed for a number of bureaucratic reasons. According to the Associazione Genitori (**A.G.E**), one of the most representative Italian parents associations<sup>40</sup>, the bureaucratic slow pace is due to the interests of cinema's powerful lobbies, which prevail over those of the community. The main difference from the past will be the membership of parents' representatives and the new majority required to vote on a certificate. This will likely lead to a different interpretation of content

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<sup>36</sup> A University of Law Professor chairs censorship committees.

<sup>37</sup> Article 4 of Law 161/1962

<sup>38</sup> Membership of parents' representatives was only recently provided for by Law 203/1995, with the purpose of balancing different interests at stake.

<sup>39</sup> Established by Law 161/1962

regulation and a more accurate and strict valuation of submitted works, which will not be able to obtain a certificate as easily as before.

**Figure 9: 3 possible censorship committee outcomes:**

1	2	3	
Suitable for all	unsuitable for all	age limited	
		over the age of 14	over the age of 18.

In the event that the committee does not provide a decision within the prescribed time frame, the certificate is issued automatically under the rule of “silent-consent”<sup>41</sup>, established in order to avoid bureaucratic inactivity which could damage applicants<sup>42</sup>.

When the work is assessed as “unsuitable for all” the applicant<sup>43</sup> may appeal to the second-degree committee, which is formed by two sections of the first-degree committee different from the one that made the first evaluation. The second-degree committee may issue a new evaluation of the film, possibly subject to modifications in some scenes, sequences or lines, balancing public interest with the producer/distributor’s economic concerns<sup>44</sup>. Should the appeal be rejected by the second degree committee, the applicant has the right to take legal proceedings against the committee’s decision before the Administrative Courts (i.e. Administrative Tribunal and Administrative Court of Appeals), the decision of which prevails over the challenged decision (Article 8).

Whenever a film has been granted a certificate of “unsuitable for minors” by the first degree committee, provided that they have re-edited and modified the work, the applicants are allowed to request a second examination in order to achieve a

<sup>40</sup> One or two members of A.G.E. will probably be represented among the members of the new censorship committees.

<sup>41</sup> Article 6 of Law 161/1962

<sup>42</sup> Applicants are producers, distributors and importers.

<sup>43</sup> According to Law 161/1962, applicants can appeal against the decision issued by the first-degree committee only when a certificate has been denied or has been assessed “unsuitable for minors”.

<sup>44</sup> In this case too, in the event that the second degree committee does not provide a decision within the prescribed time frame, a certificate is issued automatically under the rule of “silent-consent”

broader certificate and thus access a broader audience<sup>45</sup>. The Administrative Court of Appeal, in fact, has ruled that the right provided by the Law for works which do not obtain a certificate may be extended to those that are given a restricted (age limited) certificate<sup>46</sup>. Some commentators have argued against this interpretation of the law. In fact, Article 11 of DPR 2029/1963 (integrating Law 161/1962) reads that “works which do not achieve a certificate may be re-submitted for a new examination, provided that they have been re-edited and modified in some scenes, when modifications clearly guarantee that the work represents a different and new edition”. As a result of the Administrative Court of Appeal’s interpretation, interested parties have developed and perfected the practice of creating new versions of their work in order to obtain less restrictive certificates. Therefore, it is now possible to find in the market many different versions of same film: one suitable only for people over 18, one suitable for people over 14 and another suitable for all. The availability of different versions is important in light of the requirement that only works that are suitable for all, or granted an age-limited certificate may be broadcast on television. However, while this practice ensures the work’s exploitation in all media, it makes it more difficult to monitor each version in use<sup>47</sup>.

As to the current capacity of the censorship sections to examine the work submitted, the decision concerning the number of films to be examined during each section meeting is discretionary, and the responsibility of the Officers within the Department of Entertainment of the Prime Minister’s Office.

There are currently various proposals for change, of which the most important are:

- The governmental Bill 3180<sup>48</sup> of March 1998: states that the present censorship regulation is no longer adequate in the current social context, nor does it comply with the principle of freedom of expression. The Bill, therefore, is

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<sup>45</sup> It is possible to take legal proceedings against the second-degree decision before the Administrative courts.

<sup>46</sup> *Consiglio di Stato*, judgement 734/1977.

<sup>47</sup> In Italy any version of the film (even versions which have been denied a certificate) is protected by copyright (Law No. 633, 22 April 1941) given that the law does not limit the author’s protection to works which comply with public morality and public order principles.

meant to avoid freedom of expression being subject to limitations such as those constituted by certificates denying public performances of films. Moreover, it deems that the constitutional “public morality” principle can be appropriately guaranteed and pursued by the provisions concerning suitability of films for minors, and by the existing provisions of Articles 528 (obscene performances) and 668 (unauthorised performances) of the Criminal Code. The Bill, therefore, through modifications of Law 161/1962 provides that: (i) certificates may no longer prevent films from being screened; (ii) certificates may only refer to the suitability of a film for minors.

- A new proposal for change has been recently drafted by the Associazione Nazionale Industrie Cinematografiche Audiovisive e Multimediali (**ANICA**),<sup>49</sup>. It aims at replacing Law 161/1962 and its “limited-age” provisions, which are deemed, according to the President of ANICA, to be the main problem of censorship in Italy. It is inspired by the existing US rating system and is based on an understanding that cinema should be treated differently from television. While the audience makes a discretionary choice when visiting a cinema, it has no control over what programmes are broadcast on television. Its only method of control is to turn on or off the television or switch channels. Given this discretionary choice preventive control of a cinema film’s content is not necessary. The proposal sets out a new voluntary rating system where the producer is also a self-rating content provider. It has been argued that this self-regulatory scheme, to be implemented by cinema associations, would most likely lead to a greater sense of responsibility on the producer’s part. In fact, producers have already promised to make efforts to safeguard the sensitivity of minors by co-operating with all parties dealing with children<sup>50</sup>. As to age limits, the proposal seeks to modify the existing thresholds (14-18 years of age) which are deemed to be too strict and not appropriate in the new social context, in which parental guidance concerning a film’s contents should be preferred and

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<sup>48</sup> To date, the Bill is still under Senate examination.

<sup>49</sup> ANICA, is the Italian association of cinema industries which represents most of the producers and distributors operating in the Italian market.

<sup>50</sup> It is worth noticing that A.G.E representatives object to this proposal on the grounds that it is exclusively aimed at increasing the earnings of the cinema industry and discarding all existing content regulations.

implemented. Accordingly, prohibitions for minors should be articulated in the following way:

- (i) “P.G.”: suitable for children with parental guidance;
- (ii) “P.G. 13” : suitable for children over 13 with parental guidance;
- (iii) “R” prohibited to minors under 17;
- (iv) “NC”: prohibited to minors under 18.

### 1.10 Luxembourg

The *Commission de surveillance* is the public body in charge of film classification<sup>51</sup>. It consists of 2 sections, and is composed of a President, 4 permanent members and 2 substitute members (in practice film critics, representatives of cinema theatres and civil society as well as one lawyer). A vote is valid if only 2 of the members are present.

The ministerial regulation of 28 November 1977, issued by the Ministry of Education and Cultural Affairs, provides guidelines on the procedure to follow for a certificate to be granted<sup>52</sup>. The release of a film authorised to under 17’s is subject to a prior demand that must be made one month before the date of its first release at the latest<sup>53</sup>.

The Government may pronounce the prohibition of the “screening of any movie that engenders a scandal or is likely to jeopardise tranquillity and Public Order”<sup>54</sup>. This classification system is original in that the Commission may “recommend to youth audiences some films with cultural or educational value”<sup>55</sup>.

As to the classification itself, 2 categories exist:

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<sup>51</sup> See Grand-Ducal Order 14 November 1925 modifying the Order of 16 June 1922 mandating the establishment of the law of 13 June 1922 concerning monitoring of cinema establishments and public screenings.

<sup>52</sup> Ministerial Ruling of 28 November 1977 concerning: a) the submission of a request to proceed with a cinema screening accessible to minors under 17; b) the publication and dissemination of the decisions of the *Commission de surveillance*; c) the recommendation of films with cultural and education value to young people.

<sup>53</sup> Article 3 of Ministerial Ruling of 28 November 1977.

<sup>54</sup> It is, however, the responsibility of the judicial authorities to pronounce penal sanctions.

<sup>55</sup> Article 4 of the Ministerial Ruling of 28 November 1977.

**Figure 10: *Commission de Surveillance* Rating System**

1	2
movies prohibited to minors under 14	Movies prohibited to minors under 17

### 1.11 The Netherlands

The *Wet op Filmvertoningen* (**WOF**), the Act on Film Exhibition, provides the legal framework for the Dutch film industry. The Act, which dates from 5 January 1977, was set up principally to abolish classification for adults and to integrate a new rating system for youth.

The rating body is the *Nederlandse Filmkeuring* (**NFK**), the independent Dutch Board of Film Classification. The rating is chosen by a majority of votes of at least 3 members<sup>56</sup> but 5 members are preferable.<sup>57</sup> In selecting the Board (out of at least twenty and up to forty members of the NFK) an attempt is made to include a diversity of ideologies, expertise, age, sex and region.<sup>58</sup> The members of the NFK are appointed by the Minister of Public Health, Welfare and Sports.

Age categories are as follows:

**Figure 11: NFK Rating System**

1	2	3
All	12 and over	16 and over

Films are classified according to the Board's evaluation of their potential to damage persons under 12 or under 16. The Act on Film Exhibition states that children under 12 or 16 will only be admitted to public showings of films that have been rated in their respective categories. However, rating is **voluntary**; film distributors may decide for themselves whether or not to submit a film for rating, but films which are not submitted are automatically rated as "16 and over", and may therefore only be shown in public to persons over 16 years of age. The Act

<sup>56</sup> Article 2 paragraph 5

<sup>57</sup> Article 15 paragraph 3. Buwalda, W. (1997), *Leeftijdsclassificatie en productvoorlichting; de audiovisuele branche in Nederland. Justitiële verkenningen: Film- en videogeweld*. 3, p. 79. Deventer: Gouda Quint BV.



allows for films to be given a rating of “12 and over” and “all ages” on the condition that appropriate cuts are made, but this has not so far happened, since NFK policy states that “cuts will be avoided as much as possible”.

The Act on Film Exhibition also states that films that are shown in cinemas open to everyone must have an age certification. The ratings decisions of the Board are binding instruments. Article 1; paragraph 3 states that the cinema entrance must clearly display the age limit. Cinema managers or film distributors who do not comply with a given decision of the Board, are committing an offence, and may consequently be punished with imprisonment of up to two months or a fine.<sup>59</sup>

If at least 2 members of the Board object to the rating result, a request for reclassification can be made. This request for a second rating can also be made by the person submitting the film. The members involved in the first rating process may not participate the second time round.<sup>60</sup>

In 1997 about half the films released were submitted for rating.<sup>61</sup> Economic reasons are probably an important factor in choosing not to submit a film: film distributors must pay 35 guilders for every 5 minutes for the rating process, and a rating of “16 and over” often attracts more adults (and even minors) to the film than a lower rating would. There are therefore films that, though officially inadmissible to minors, could have been open to them, if they had been submitted for classification. The Board believes that another reason for not submitting a film is that film distributors object to having their films rated and prefer a self-regulatory classification system.

The rating of the NFK is somewhat controversial for the liberal Netherlands; it is widely believed that children or their parents should decide for themselves what

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<sup>58</sup>Notitie (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 11. Rijswijk: Ministry of Public health, Welfare and Sports, directie Jeugdbeleid.

<sup>59</sup> Article 6, WOF.

<sup>60</sup>Buwalda, W. (1997), *Leeftijdsclassificatie en productvoorlichting; de audiovisuele branche in Nederland. Justitiële verkenningen: Film- en videogeweld*. 3, p. 79-80. Deventer: Gouda Quint BV. Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

<sup>61</sup>Nederlandse Filmkeuring, Jaarverslag 1997 (in press). Den Haag.

films they do or do not want to see. The *Raad voor het Jeugdbeleid* (Council for Youth Policy) has suggested substituting classification with the provision of greater information about the product (whether film, television or video).<sup>62</sup> At the moment the appropriateness of the age classification system, which is used by all media sectors, is questioned, particularly the rating “all ages”. The independent Dutch Institute of Psychologists suggested extending the ratings to include a category for “6 (or 7) years of age”; a classification already used by most other European countries. The Dutch Video industry is experimenting with using the “Parental Guidance (PG)” classification<sup>63</sup>, used by several Anglo-Saxon countries, in combination with the “all ages” classification.<sup>64</sup> The Board of Film Classification believe that consumers should be better informed and are also considering introducing this classification, as well as the label “child friendly/family film”, to accompany the “all ages” category.<sup>65</sup>

The age classification is issued following a **semi-deterministic** methodology. For rating the Board uses its guidelines and classification forms with the following criteria: frightening scenes, brutalising violence, drugs, pornography and an open criterion, which may be used by the rating provider in a film specific context. The latter is sometimes used for discriminating between aspects of a film or for the showing of excessive pornography. Guidelines are as follows:

- the individual scenes should be judged in the context of the whole film but trailers, promo's and commercials are judged on their own merits, without reference to the feature film
- the Board shall not enforce its right to make cuts to films and
- the Board aims to make as many films as possible available to young people, insofar as they are not likely to result in mental “damage”.

Furthermore, the Board uses a score form with criteria for damaging material:<sup>66</sup>

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<sup>62</sup>(1996). Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

<sup>63</sup>*Notitie* (1997), *Niet voor alle Leestijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 15. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.

<sup>64</sup>*Raad van Toezicht Videovoorlichting, Jaarverslag 1997*, p. 5. Oudekerk a/d Amstel: Aeroprint/J.K. Smit & Zonen.

<sup>65</sup>*Nederlandse Filmkeuring, Jaarverslag 1997* (in press). Den Haag.

<sup>70</sup><sup>66</sup>*Commissariaat voor de Media* (1997), *De Omroep Gekeurd, bijlage*. Hilversum.

Figure 12: NFK Score Form

Score 1, General	i) Intimidation ii) The risk of excessive identification iii) Insufficient understanding of the theme
Score 2, Fear	i) Tension without means of escape ii) Shocking effects iii) Bad ending/open ending
Score 2, Violence	i) Horrible ii) Malicious iii) Sadistic
Score 3, Film contains elements of:	i) Sadism ii) Fascism iii) Racism iv) Sexism v) Discrimination vi) Other forms of humiliation vii) Violence viii) Political extremism ix) Alcohol or drug abuse

The NFK expects the rating system to expand, due to discussions of media violence becoming common in society. As a result of these discussions, the NFK has for a few years been asked to rate films for television, which is not part of its remit.

### 1.12 Portugal

In Portugal, there are two bodies rating cinema: the *Secretariado do Cinema e do Audiovisual (SCA)*, a non-commercial Catholic body, and the *Comissão de Classificação de Espectáculos (CCE)*, a government body.

The SCA analyses film content, and publishes its analysis and ratings in the *Boletim Cinematográfico*. It has been operating for 40 years. The system is **voluntary**, developed by an independent Catholic entity, and no one has to take its views into consideration. It uses a **non-deterministic** method of rating, based on the moral judgement of the rating body, and the ratings issued are a mixture of **descriptive and evaluative**. On the one hand, a judgement is made about the film. This subjective judgement is expressed in terms of age category; i.e. the SCA decides the age groups for which the film is suitable to be shown. Moreover, the SCA also attempts to describe the film content and provides an abstract of the film plus a

moral and aesthetic comment. Occasionally, it characterises actors and performances. The rating system includes 4 categories<sup>67</sup>:

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<sup>67</sup>Until the mid-1980s, there were six categories. To the current list were added a further two: 'for adults with serious reservations' - considered 'harmful to the large majority of the viewers' - and 'condemnable' - films that, 'by their content, constitute a serious moral attack or defend blameworthy theories that pose severe danger to the audience'. According to those responsible for the SCA, the 'condemnable' rating may still be used in the case of pornography and in other 'really exceptional' cases.

Figure 13: SCA Rating System

1	2	3	4
'For all'	'For adolescents and adults'	'For adults'	'For adults with reservations'
films that are entertaining and easy to understand	films that present a complexity that makes them hard to be understood by children, that may hurt their sensibility or distort their vision of the world	films that, due to their structure or content, may not be totally understood or adequately analysed by adolescents, films that contain problems which are not proper for individuals without full maturity and experience of life	films that present gravely distorted situations, being its level of violence and/or degrading exploitation of matters which may hurt the viewers sensibility

The SCA analysis and ratings are published in the *Boletim Cinematográfico*, and frequently in local newspapers with close links to the Catholic Church. The SCA classifications are also provided to distribution and exhibition houses<sup>68</sup>. Moreover, the national private television channel, set up by Catholic associations, *Televisão Independente* (TVI), broadcasts the ratings given by the SCA<sup>69</sup>. Though the rating system has a reduced impact at national level, as the SCA views are usually conveyed by the regional/local press (mainly controlled by the Catholic Church), it may influence readers in terms of the films they should or should not see.

The CCE is an agency of the *Ministério da Cultura* (Ministry of Culture). It is regulated by the Law-decree 106-B/92 of the 1st of June. This piece of legislation gives the Commission deliberative power in terms of age and quality rating of films. In addition to the classification of films, it may issue opinions about proposed legislation in this field. The Commission has up to 45 members, including representatives of ministries with responsibilities in the film arena; representatives of civilian associations and representatives of film industry interest groups (the latter may only express their views in the Commission plenary meetings). The CCE is organised in sections: i) age rating; ii) quality rating; iii) pornographic and non-pornographic rating. There is also an appeals sub-

<sup>68</sup>Research confirms that occasionally managers of cinemas believe that the SCA classification originates from the government, not from a Catholic association.

<sup>69</sup>This information was provided by the Head of SCA, Eng. Jorge Perestrello.

commission that examines and rules on submitted appeals and may alter or uphold the previously applied rating.

The system is **mandatory** because no film may be exhibited to the general public without being classified. Indeed, it is the responsibility of the *Inspecção-General das Actividades Culturais* (Inspector General of Cultural Activity), the autonomous administrative service with general responsibilities in the area of media regulation, to make sure that all films exhibited are properly rated and to monitor the observance of the ratings. The rating system is legally defined and therefore it has force of law throughout the national territory. In accordance with the 'spirit of freedom' of the post-1974 revolution era, the rating system is primarily of an informative nature. The audience and educators are made aware of what is appropriate for different age groups and are also informed whether a film is 'pornographic' or not. They may also be given information about a film's 'quality'. The adopted classifications are provided in information about the films. Nevertheless, the implementation of the legislative construct depends mostly on the role educators perform<sup>70</sup>.

Every three months, there is a Commission plenary meeting. It is the plenary which approves the rating criteria to be observed; though the Ministry of Culture is able to change them if it does not agree. The rating procedure is **non-deterministic** because the rating is not the result of an 'objective' methodology, but rather the expression of the panel's views and sensibility. When a film is presented to the Commission in order to be classified, the president selects a panel, usually constituted by five *vogais* (elements of the jury). The panel watches the film and, taking into account the written criteria mentioned below, each of its members provides his/her opinion. The panel discussion is meant to reach a consensus. If a consensus is not possible, there is a simple majority vote. However, panel members who voted against the winning classification may appeal

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<sup>70</sup> Until the 1970's, the view was punitive and authoritarian. Thus, for example, Article 15 of the Law-decree 41051 of 1 April 1957 stated: 'Parents, educators or indeed anyone who allows or facilitates the access of minors to films contra to what is written in this Law-decree will pay a fine of 100 to 1000 Portuguese escudos, and if the action is repeated, they may be imprisoned for up to three months.'

to the "Appeal sub-commission"<sup>71</sup>. Appeals are however extremely rare, and generally panels decide by consensus. Appeals from civilian groups and the film industry are even scarcer.

Though the panel considers specific aspects of film content, the ratings issued are **evaluative** since the decision is taken according to the panel's opinion of the appropriate age groups to see the film. The current age rating system dates from 1982 and there are five categories.<sup>72</sup>

Figure 14: CCE Rating System

1	2	3	4	5
'For over 4's'	'For over 6's'	'For over 12's'	'For over 16's'	'For over 18's'
short and easy to understand; for this age group, films should not provoke fear and should not conflict children's fantasies	films that, due to their theme and/or length, are not adequate for lower age groups	films that, due to their length or complexity, may cause excessive fatigue and/or psychological trauma to the previous age groups	films that excessively explore sexuality and physical and/or psychological violence	pornographic movies and/or films which explore pathological forms of physical and psychological violence <sup>73</sup>

The 'pornographic' label is applied to a film which persistently and superficially explores 'sexual situations and acts with the main purpose of arousing the spectator' and has a 'low aesthetic quality'. However, in 'Soft-core' films there is no graphic exhibition of genitalia and sexual acts are simulated. 'Hard-core' movies include graphic presentation of genitalia and sexual acts are not performed or acted, but real.

Finally, films might also receive a 'quality' stamp for being distinguished by their artistic, thematic, pedagogic and technical aspects.

<sup>71</sup> The information concerning the rating/labelling process was provided by the President of the CCE, Eng. António Xavier.

<sup>72</sup> Established by Article 2, No. 1 of the Law-decree 196/82 of 21 September 1982 and later regulated in *Portaria* 245/83 of 3 March 1983.

<sup>73</sup> It is interesting to note that in the Law-decree 41051 of 1 April 1957, films 'for adults' (over 17 year olds) were those which, although respecting the minimal conditions required to get authorisation from the CCE, might be harmful to the spiritual education and the moral and intellectual development of young people. Moreover, films for adults are those with the potential dangerously to excite youth sensibility and imagination, and those that might suggest fundamentally wrong notions about life and historical facts (article 8).

The Commission is supposed to classify all types of videograms (analogue and digital), thus including cinema, videos, video and computer games. Nevertheless, video and computer games are not rated, although there is some concern about this. No rating system is applied to advertising.

The maximum volume of programming this system can accommodate depends on the potential enlargement of the Classification Commission. This is a political decision that may be taken only by the Ministry of Culture. So far, no concerns have been expressed regarding the Commission's organisational and economic capacity to deal with the volume output.

### 1.13 Spain

The rating body responsible for film is the *Instituto de Cinematografía y Artes Audiovisuales (ICAA)*, an autonomous body deriving its authority from the Ministry for Education and Culture. Though the Autonomous Communities, the regional political entities, have the right to assume responsibility for films produced in their own region, only Catalonia has done so<sup>74</sup>. A company with headquarters in Catalonia, which owns the exploitation rights in a film, may choose whether to have the film rated by the Catalan Department for Cultural Affairs or by the ICAA, with the exception of films that may be classified as "X" films, which can only be rated by the ICAA. If a film is rated in Catalonia, the rating provided will be valid throughout Spain. In practice, the Director General of the ICAA rates nearly all films.

Films are rated by the Director General of the ICAA, after obtaining the opinion of the *Comisión de Calificación de Películas Cinematográficas (CCPC)*<sup>75</sup>, which also belongs to the ICAA. The CCPC has been performing its functions since 1983<sup>76</sup>. Its creation completed the transition from the severe censorship that existed until

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<sup>74</sup> See Catalan Decree 495/1983, of 3 November 1983, on the rating of films and audio-visual works.

<sup>75</sup> See Article 16.2 of Decree 81/1997.

<sup>76</sup> See the abrogated Decree 1067/1983, of 27 April 1983.



General Franco's death in 1975 to the current total freedom, with the Commission now playing an advisory role only.

The Director General of the ICCA is proposed by the Minister for Education and Culture and appointed by the Council of Ministers<sup>77</sup>. The CCPC, which assists the Director General, consists of 9-12 members: the Director General of the ICAA himself; the head of the Ministerial Department for Promotion of the Film Industry; and 7-10 members who are appointed for a two-year period by the Minister for Education and Culture from nominations made by the Director General. These members are chosen from people related to the film and audiovisual industry who are fit to carry out this duty<sup>78</sup>.

The system is **mandatory** for content producers, who are required to submit their works to the ICAA before distributing, showing or advertising them<sup>79</sup>, and to indicate clearly the rating provided. The decision adopted by the rating authority is compulsory vis-à-vis the company that has asked for the film to be rated, so this company may not change the rating given by the Director General of the ICAA.

It is also **mandatory** for film distributors and exhibitors to show the film's rating in all advertisements for the film, at the box-office of the cinemas where it is being shown, and before the commencement of the film screening<sup>80</sup>. However, entrance to cinemas on the grounds of age may not be prevented, as the classification is a **mere recommendation** for parents. The only exception to this is "X" classified films, whose exhibition is restricted to cinemas with a special licence, to which the entrance of children under 18 is prohibited<sup>81</sup>. Advertisements for pornographic films or films depicting gratuitous violence ("X" rated films) must not include any graphic representation, and must clearly state that the film may only be seen in cinemas with a special licence. The name of the film may not explicitly show its pornographic or violent nature. Trailers and advertisements for these films can

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<sup>77</sup> See Article 6 of Decree 7/1997, of 10 January 1997, on the structure and functions of the ICAA (Decree 7/1997).

<sup>78</sup> See Article 17 of Decree 81/1997.

<sup>79</sup> See Article 16.1 of Decree 81/1997, and Article 13 of the Ministerial Order 7 July 1997.

<sup>80</sup> See Article 15 of Decree 81/1997, and, for films rated "X", Article 6 of Law 1/1982 and Article 19.1 and paragraphs 3, 4 and 5 of Article 20 of Decree 81/1997.

only be shown in the cinemas rated “X” and in the cinema section of newspapers or other media<sup>82</sup>.

Advertisements for films to be shown in cinemas must also be rated, following the same system used to rate films.

This system is State-specific: the Spanish authorities must rate all films and audiovisual works distributed in Spain, and the rating provided by these authorities is only valid in Spain.

Though officially, according to Decree 81/97, the Director General of the ICAA is responsible for rating films, in practice the films are usually rated by the CCPC, which adopts its decisions by a majority of the votes cast, and the Director General makes this decision his own. The rating given is stated in a formal Resolution from the Director General. If the film distributor does not agree with the rating given to a film, the film is usually viewed for a second time before the Director General of the ICAA adopts a final Resolution. This Resolution is an administrative act, which can be appealed before the jurisdiction for suits under administrative law. The system is **non-deterministic**, depending upon the decision of the Director General, made after obtaining the opinion of the CCPC, which also follows a non-deterministic approach.

To prevent the marketing of a film being impeded in the event of there being too many films for the CCPC to rate at any time or the rating process taking too long, Decree 1/1997 establishes the principle that, if no rating has been provided within a month, it should be understood that the ICAA accepts the rating proposed by the applicant<sup>83</sup>.

The rating system is an **evaluative** system providing a single indicator according to a standard of harmfulness based upon age groups<sup>84</sup>.

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<sup>81</sup> See Article 1 of Law 1/1982.

<sup>82</sup> See Article 6 of Law 1/1982.

<sup>83</sup> See Article 16.2 of Decree 81/1997.

<sup>84</sup> See Arts. 15, 16 and 17 of Decree 81/1997.

Figure 15: ICAA Rating System

1	2	3	4	5	6
Specially recommended for children	For all	Not recommended for children under 7 years	Not recommended for persons under 13 years	Not recommended for persons under 18 years	"X" rated films (pornographic films and films that make a defence of violence) <sup>85</sup>

With regard to "X" rated films, it must be said that in practice only pornographic films are given this rating, while films depicting gratuitous violence are rated as not recommended for children under 18 years.

This rating system provides ratings for all existing films. In 1997, 456 films were rated, as well as 115 short films and 346 advertising spots of films to be shown in cinemas. 201 of the films rated came from the USA, and 76 from Spain. Since its creation in 1983, the CCPC has rated more than 5,000 films.

Given that the organisation of the CCPC could be changed to increase its rating capacity, by increasing the number of members or creating sub-commissions within the Commission, and given that ratings may be given implicitly if the Commission has not opposed the rating proposed by an applicant within one month, it is likely that the existing system would be able to accommodate all films and audiovisual works falling under the jurisdiction of the ICAA in the future; that is to say all those which are shown in cinemas or distributed on video cassettes.

Infringement of the provisions relating to "X" rated films (prohibition of screening these films other than in cinemas with a special licence; prohibition of access to these cinemas by persons under 18 years old), or breach of the provisions related to advertising of "X" rated films are regarded as serious violations, and are punished with a fine of 500,000 to 5,000,000 pesetas (3,000 to 30,000 Euros).<sup>86</sup> Infringement of the remaining rating provisions is regarded as a

<sup>85</sup> See the Seventeenth Article of the Order of 7 July 1997

<sup>86</sup> See Article 9.2.c) and Article 10.1.b) of Law 17/1994.

minor violation, and is punished with a fine of up to 50,000 pesetas (3,000 Euros)<sup>87</sup>.

The Director General of the ICAA imposes the sanction for minor violations, and the Minister for Education and Culture sanctions serious violations<sup>88</sup>, without prejudice to the sanctioning power of the authorities of the Autonomous Communities with responsibility in this field<sup>89</sup>.

#### 1.14 Sweden

The body responsible for rating cinema works is the *Statens biografbyrå* (National Board of Film Classification). The rules regarding classification are set out in the Examination and Control of Films and Videograms Act. The examination is **mandatory**, and all films must be approved and classified by *Statens biografbyrå* prior to showing in a cinema.

Section 1 of the Act states that “the content of films or pre-recorded video recordings (videograms) shall be examined and approved by the National Board of Film Classification prior to showing at a public gathering or entertainment”.

However, Section 2 of the Act envisages some exemptions where films and videograms

- ❑ are broadcast by radio,
- ❑ are broadcast by cable<sup>90</sup>,
- ❑ consist of advertisements for goods or services,
- ❑ are shown at trade fairs, exhibitions or sporting events, unless the showing in itself constitutes a public gathering, or

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<sup>87</sup> See Article 9.3.b) and Article 10.1.a) of Law 17/1994.

<sup>88</sup> See Article 21.3 of Decree 81/1997.

<sup>89</sup> See Article 10.3 of Law 17/1994 and Article 21.3 of Decree 81/1997. According to Article 21.2 of Decree 81/1997, the proceedings to impose a sanction are to be conducted according to the Decree on Administrative Procedure for the Imposition of Sanctions of 4 August 1993. It is initiated by the Director General of the ICAA, who appoints a civil servant to investigate the facts of the case, without prejudice to the capacity of the Autonomous Communities with responsibility for rating films to determine their own administrative procedural rules and to decide who shall initiate and carry out the proceedings in their territories.

- are shown at a museum in conjunction with the museum's normal exhibition activities and are of a documentary nature<sup>91</sup>.

Finally Section 3 states that “the National Board of Film Classification may, for the purposes of a film festival or other artistic or non-profit making event, authorise the showing of films and videograms to persons over the age of 15 although they have not been examined and approved for showing. Such authorisation may be made subject to any conditions that the Board considers necessary.”

*Statens biografbyrå* is an authority under the domain of the Ministry of Culture. Its remit is based on law, ordinance and instructions. It can decide to ban or cut a film, but the film can still be released on the home video market. It must be emphasised that the Board does not take any action on religious or political grounds, nor does it act as an arbiter of taste, banning “bad” and passing “good” films. Its task is to judge whether films, or film sequences, are liable to have a brutalising effect on the audience. In other words, it determines whether they are likely to make young people more indifferent to violence and more inclined to accept violence as a natural or even appropriate way of solving problems. The Board’s judgements are based on expertise and experience.

The age limits that have been fixed take into account the likelihood of children in the various age groups being exposed to “emotional shock”. Only a very limited amount of violence is allowed in films for young children. The censors also pay special attention to scenes that may have a very upsetting or terrifying effect, particularly where they involve characters with which children easily identify. This includes scenes that are difficult for children to understand and are liable to cause confusion and fear. A case in point are foreign films with subtitles that children cannot read or cannot finish reading before they disappear.

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<sup>90</sup> provided that such broadcasts are retransmissions of satellite broadcasts or of broadcast transmissions or constitute autonomous broadcasts within the meaning of the Public Cable Transmissions Act (1991:2027) as amended by SFS 1991:2031 of January 1, 1992

<sup>91</sup> As amended by SFS 1991:148 of July 1, 1991.

The classification system is **evaluative** and **semi-deterministic** in the sense that the criteria laid down by law leave a certain margin of judgement to the censors.

The ratings that may be assigned to a film are:

**Figure 16: *Statens biografbyrå* classification system**

1	2	3	4
allowed for children	from 7 years	from 11 years	from 15 years

In addition, *Statens biografbyrå* may ban a film from public showing as well as demand that a certain sequence or sequences be cut in order to be approved for showing. The criterion for determining the age limits for children is whether the film “causes psychological damage”<sup>92</sup>. The criterion for the limits for adults is whether the film “has a brutalising effect on the audience”<sup>93</sup>.

Persons who have not attained the minimum age fixed by the *Statens biografbyrå* shall not be admitted to public gatherings or entertainments where a film or videogram is being shown, except when they are accompanied by a person over 17 years

### 1.15 United Kingdom

The British Board of Film Classification (**BBFC**) is an **independent, non-governmental** body, which exercises responsibilities over the cinema, which by law belongs exclusively to the local authorities. The Board was set up by the **film industry** in 1912 in order to bring a degree of uniformity to the standards of film censorship imposed by the many very disparate local authorities. The aim was to create a body which, with no greater power than that of persuasion, would seek to make judgements which were acceptable nationally.

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<sup>92</sup> Section 5 of the Act: The content of a film or videogram shall not be approved for showing to children under the age of 7, 11 or 15 years if it is liable to cause children in the relevant age group emotional shock.

<sup>93</sup> Section 4 of the Act states that : (1) The content of a film or videogram, or a part thereof, shall not be approved for showing if the events are depicted in such a manner and in such a context as to have a brutalising effect. (2) The assessment shall take particular account of whether the film or

Statutory powers remain with the local councils, who may overrule any of the Board's decisions on appeal. In practice this rarely happens, and the local licensing conditions give the Board's categories legal status. A film distributor can however ask a local authority to award a local category for any film, whether it be one banned by the Board, passed by the Board in a category unacceptable to the distributor, or not seen by the Board at all.

Every film is viewed by at least two examiners, who write reports justifying the decision they have reached. In cases of doubt or disagreement, the film will be referred to another team, usually with a principal officer present at the screening. The Board views every film destined for public distribution in Britain, and in recent years it has seen around 400 films annually<sup>94</sup>. Specialist staff are employed to view foreign language works. A principal officer, any one of whom may be asked to view a film or video on appeal, must ratify all decisions. The President or Vice-Presidents will be consulted on difficult works, including those which may be refused a certificate altogether, and it is usually the case that such films are seen by most of the examining team before a final decision is taken.

The Board does not rely on a written set of guidelines but operates a system of precedent, so that every decision is taken in the light of previous ones. The BBFC's view is that context, treatment and the intention of the filmmaker are as important as the actual images shown, so that a list of prohibitions is unhelpful. Virtually any theme may be accepted if the treatment is responsible, and the same images may be acceptable in one context but not in another. The same applies to the boundaries between categories, although there are quite rigid rules on the sort of language allowed in the junior categories.

In questions of classification, the BBFC is primarily concerned with the protection of children, and the age-based category system was changed in 1982<sup>95</sup> so as to

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videogram contains explicit or protracted scenes of severe violence to people or animals or depicts sexual violence or coercion or presents children in pornographic situations.

<sup>94</sup> See <http://www.bbfc.co.uk/>

<sup>95</sup> For many years (from 1913) there were only 'U' and 'A' categories, in 1951 the 'X' was added, restricting audiences to those over 16. In 1970 an 'AA' was introduced limiting audiences to 14

reflect changes in society, and to provide clear and concise information to parents and the public generally. Only if a film fails to fall naturally into one of the following categories will cuts be considered:

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and over, and the age for admittance for 'X' films was raised to 18. In 1982, the 'AA' was changed to '15' and the 'X' renamed '18'.



Figure 17: UK Rating System

1	2	3	4	5	6
'U'	'PG'	12 +	15 +	18 +	'R18'
(Universal – Suitable for All)	(Parental Guidance)				
No theme, scene, action or dialogue that might be construed as disturbing, harmful or offensive	Mild violence; occasional brief non-sexual nudity; bed scenes but no serious suggestion of actual sexual activity; limited scatological language, but no sexual expletives; no drug use or condoning of immoral behaviour unless mitigated by context (e.g. comedy); no undue emphasis on weapons (e.g. flick-knives).	Implications of sex (within a relationship or in a humorous context); stronger language, but only a rare sexual expletive; more realistic violence limited in length and intensity, but no drug use.	Themes requiring a more mature understanding Full-frontal nudity in a non-sexual context; impressionistic sex; more extensive use of expletives; mildly graphic violence and horror with some gore. Soft drugs may be seen in use, but not so as to condone or normalise. As with lower age categories, no details of harmful or criminal techniques, e.g. how to break into cars, pick locks, etc.	Themes requiring an adult understanding (e.g. complex sexual relationships, controversial religious subjects); explicit simulated sex (or in some educational contexts real sex); full nudity in a sexual context; non-glamorised use of hard drugs when justified by characterisation or narrative; frequent use of sexual expletives; graphic violence, provided that it does not encourage sadistic pleasure or glamorise dangerous weapons	Consenting, non-violent sex depicted with a degree of explicitness limited only by the law

It is an offence for the cinema manager to allow minors to view films with an age restriction, for which he or she would be liable to lose his or her cinema licence.

The Board does not receive any subsidy or grant either from the film industry or from government. Its income is derived solely from the fees it charges for its services; calculated by measuring the running time of films or video works submitted for certification.

## 2 Video rating systems

### 2.1 Austria

No specific measures for the protection of minors from harmful video content have so far been taken in Austria, though from time to time there is an initiative aimed at filling that gap. For instance, the social democratic Austrian youth organisation, *Kinderfreunde*, has recently launched a campaign, which, according to its title ("*Kein Mord am Bildschirm*" – "No murder on screen"), focused on television broadcasting activities, but also dealt with the video sector, calling for an obligation to label brutal content also on video and computer games.<sup>96</sup>

There is no rating mechanism in place, but general provisions on devices harmful to minors (cf. Section 18 of the Vienna Minors Protection Act: Children and Young people are not allowed to acquire, possess or use devices which could endanger their respect for human dignity) and on pornography apply.

### 2.2 Belgium

The only provisions in force for video rating are the criminal ones. Criminal liability comes from Article 383<sup>bis</sup><sup>97</sup> and 380<sup>quinquies</sup><sup>98</sup>. It provides criminal sanctions against the dissemination of a pornographic film. The "*cour de cassation*" extended the "*bonne moeurs*" case-law application to dissemination of videotapes, even though Parliament has not issued specific provisions. The rating system used for film screenings does not apply to video dissemination.

### 2.3 Denmark

Rules applying to video content are contained in the Film Act of 12 March 1997 and are exactly the same as the ones existing for cinema works (see Section 1).

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<sup>96</sup> More information on the anti-violence campaign can be found at <http://www.kinderfreunde.at/aktionen/kmordabs.html>.

<sup>97</sup> law of 13 April 1995

<sup>98</sup> law of 27 March 1995

## 2.4 Finland

The Act on the Classification of Video and Other Audiovisual Programmes was passed in 1987. Prior to this the video industry had its own self-regulation body, called the *Videoleivityksen valvontalautakunta*. The option exists to revive this body whenever necessary.

The Finnish Board of Film Classification also examines videos and the classifications applied are:

**Figure 18: Finnish Board of Film Classification video rating system**

1	2	3
G (general)	restricted for persons under 16	Banned

There is effectively only one rating. Otherwise, the programme is either passed for all or banned for all. If the programme has been or would be rated 18, it is banned on video.

The decisions may be accompanied by rating recommendations. Thus, "Titanic", for instance, was rated 12 for cinema viewing, whereas on video it is exempted from classification and automatically passed for general audience viewing with the rating recommendation 12. The difference between rating decisions and rating recommendations is that rating decisions acquire the force of law, whereas recommendations do not.

The system is **mandatory**. No audiovisual programme may be offered for sale or for rental to the consumer unless passed by the Finnish Board of Film Classification. Home video classification concerns all linear audiovisual programmes - VHS, laserdisc, DVD, etc. - as long as they are commercially distributed for private use. There are a number of exceptions, most importantly:

- ❑ programmes that have already passed film classification
- ❑ interactive programmes including videogames and CD-ROMs
- ❑ programmes produced by the Finnish Broadcasting Company

Additional content that may be exempted from classification includes education;

science; product information; music; sport; documentaries; programmes for small children; travel; nature; and religion. The classification board may also order those programmes to be screened.

The criteria of restriction applied in video censorship include obvious violations of the law, obscenity, violence, and psychologically disturbing material. There are therefore fewer categories in video censorship than in film censorship. According to Antti Alanen, the manager of the Finnish Board of Film Classification, there is an urgent need to reform this aspect of video censorship. The boom in hard-core pornography sweeping the Western world has also struck Finland, where hard-core pornography gets the highest rating, i.e., restricted for persons under 18. This means that there is effectively a video prohibition on pornography in Finland, which has led to the emergence of a huge black market with all its ramifications. Pornographic home videos are naturally submitted neither for classification nor for registration since they would be banned. Instead, police time is taken up with the seizure of pornographic material, and court time with the subsequent trials.

The Finnish Board of Film Classification will continue in its supervisory role but only for the setting of age restrictions. The need for the liberalisation of video censorship has been widely accepted, not least for practical reasons. Furthermore, television companies are not willing to follow the classifications of the Board of Film Classification.

## 2.5 France

Strictly speaking there is as yet no regulation regarding video classification. As to cinematographic works edited on video tapes the Decree of the 23 February 1990<sup>99</sup> requires producers of video tapes to display the certificate granted by the Commission for Classification of Cinematographic Works on the packaging. Video classification has only been dealt with under Fiscal Law, following the adoption of Article 18-4 of the Finance Act, 29 December 1984, which makes the transfer of rights in works distributed on video, which are pornographic or incite to hatred, subject to VAT (at the highest rate).

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<sup>99</sup> Title II, Article 5, al. 3

Nonetheless, where the video has not been released in the cinema prior to its distribution as a video, it does seem that, under the provisions of the New Criminal Code (article 227-24<sup>100</sup>), the producer may be obliged to issue warnings dedicated to the protection of minors. In addition to this article of the New Criminal Code, a law was adopted recently on the protection of minors<sup>101</sup>. This law applies to any work transmitted in either magnetic format, digital format with optical reader recognition, or semiconductor support, such as videotapes, videodiscs or electronic games. When, due to its pornographic character or its depiction of crime, violence, incitement to ethnic hatred, drugs etc., such a work may endanger youth, the administrative authority (Ministry of Internal Affairs) may prohibit (via ministerial order and after having consulted the Commission) its distribution to minors or its advertisement by any means (other than in premises prohibited to minors). These prohibitions must be mentioned on each unit of the edited and distributed copies. However the decrees need to be finalised (in consultation with the *Conseil d'Etat*) before the area and modalities of the application of this law can be known precisely.

Nevertheless, and despite the absence of clear regulation in this area, the *Syndicat de l'Edition Vidéo* has developed a **self-regulatory** system:

**Figure 19: *Syndicat de L'Edition Vidéo* system**

Code of ethics <sup>102</sup> , article 6	
«Members of the 'Syndicat' undertake to operate with the following rules in mind:	
<input type="checkbox"/>	Edited works, as well as the graphics used either for the cover of the tape or its promotion, shall respect human dignity;
<input type="checkbox"/>	When the editor considers that the edited work contains scenes, which are shocking or likely to upset the viewer, a warning explaining the content must be displayed;

The classification is issued directly by the different video editors. It is not a visual icons system but only displays of information/recommendations (editors do not

<sup>100</sup> When a message of pornographic or violent nature is likely to be seen by a minor a 3 year jail term or a fine of FF500,000 may be imposed.

<sup>101</sup> Law No 98-468 of 17 June 1998 concerning the prevention and repression of sexual infractions as well as the protection of minors.

<sup>102</sup> Code approved by the General Assembly of the *Syndicat de l'Edition Vidéo* on 25 March 1995.

believe they have the legal legitimacy to act as censor). There are no guidelines, and no precise or harmonised criteria.

For non-cinematographic works the *Syndicat* refers to the classification system of the *Conseil supérieur de l'audiovisuel (CSA)*.

## 2.6 Germany

Video films are rated either by the FSK under the same procedures as for cinematographic films, or by the BPjS, whose authority is limited to video films which have not been rated by or were not presented to the FSK, or those rated '18'. The "index" creates limitations regarding the circulation of the videos. They may only be shown in places where children or young people do not have access to them. Similarly, indexed videos may not be sold or rented outside shops, ordered by mail, rented in public libraries, or transmitted through electronic information or communication services. Middlemen must also refer to the above-mentioned selling restrictions.

Video games are subject to *Unterhaltungssoftware Selbstkontrolle (USK)*, the Entertainment Software Self-Regulation Body, which refers to the age categories included in the relevant legal provisions (**evaluative**). It also refers to the decisions made by the BPjS.

The USK has developed objective points for the age classification of computer and video games<sup>103</sup>. For instance, a game is always said to contain gratuitous violence if the player is placed in the role of the killer, if the death of opponents is rewarded, if the idea of the game is exclusively to display aggressive behaviour, and/or if the effects of violence are clearly shown. The USK makes its decisions following the provisions of the BPjS and the FSK, which are mentioned in the USK criteria. These criteria clarify the points of examination. However, the decisions regarding the ratings are **semi-deterministic** in that they are based on the opinions of the examination committee according to these criteria.

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<sup>103</sup> These criteria have been developed on the basis of the provisions of 31 GjSM and are very similar to them.

In principle, the USK exerts a **voluntary** control. However, this voluntary character is limited by the fact that German department stores have adopted a policy of offering only USK rated products to their customers. The aim of the USK is to guarantee the protection of minors by means of voluntary self-regulation on the part of the suppliers, even before the products are released. By awarding its stickers the USK attests that a given software is suitable for distribution and complies with the legal provisions regarding the protection of minors. The USK only acts at the request of producers. The suppliers and manufacturers who are members of *Verband der Unterhaltungssoftware Deutschland e.V.* (VUD)<sup>104</sup>, the Association of Entertainment Software in Germany, recognise the USK as their self-regulation body for software available for purchase and other public use. It is also supported by the Association for the Support of Young People and Social Work.

As to its structure, the USK is composed of a *Beirat* (Advisory Council), which is the policy-making and controlling body of the USK, and expert examiners. The Advisory Council is made up of members of various groups of society, from, for instance, the field of science, politics, culture, and the protection of minors.

The expert examiners must not be active in the computer hardware or software industry. They are independent and their function is honorary. They are only reimbursed for their expenses. They are obliged to attend the advanced training events organised by the USK, which relate to evaluations and examining activities and also advanced training on selected areas of assessment of computer and video games. They are selected on the basis of their professional experience and training.

The USK's other role is to provide information and clarification for the public regarding the opportunities and risks involved for children and young people from

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<sup>104</sup> The VUD is composed of developers, distributors, licensees from the entertainment, information and educational software industry, such as Acclaim Entertainment GmbH, ACTIVISION, ak tronic Software and Services, ART DEPARTMENT GmbH, BLUE BYTE Software GmbH etc. The members do not submit their products themselves but give them to VUD, which submits them to USK to be rated.

the use of entertainment software and interactive media. Parents and families are one of the main target groups for this work. The USK tries to encourage them to have an independent influence on the media socialisation of their children.

In principle the USK examines all submitted software for its content and permissibility. The USK decides:

- whether the software is a comparable image carrier in the meaning of §7 JÖSchG,
- whether its content complies with the provisions of the Criminal Code<sup>105</sup>
- which age classification should be assigned to it and whether a title should be prohibited.

Instruction books and the sales packaging are examined along with the software and the USK awards **age classifications** at the following levels:

**Figure 20: USK Rating System**

1	2	3	4	5
No age restriction	suitable for ages 6 and over	Suitable for ages 12 and over	suitable for ages 16 and over	not suitable for persons under the age of 18

The USK considers that these age group categories should be updated<sup>106</sup>.

The USK's assessment is displayed on the product by means of stickers. There is no legal obligation relating specifically to the USK rating. However, the relevant general legal provisions regarding rating are complied with by the USK, partly because of the fear of bad publicity following the attribution of an inappropriate rating. This prevents voluntary regulatory organisations acting in the interests of the companies financing them.

<sup>105</sup> §86a, 130, 131, 184 (3)

<sup>106</sup> However, they regret that current theories regarding psychological development have not been studied in a sufficiently scientific manner on the basis of the computer game practices of children and young people.



The ratings of the USK are not binding in the legal sense, but only provide information for parents or retailers. As a consequence, shops buying USK rated products are not obliged to follow the USK decision.

Since its creation, the USK has classified 3500 titles<sup>107</sup>. 17 titles were not rated, as they were considered not compatible with the relevant legal provisions. As to its capacity, it is limited because of the size of the organisation. Only 5 people are employed and they receive requests from 195 organisations from 6 countries. They consult 27 experts and there are 7 observers. An average of 15 films is examined per week. The products classified by the USK constitute 90% of the entertainment industry's market. This proportion is only 50% for console programmes. The USK guarantees that an examination will take place no later than 21 days from application for a rating, and the applicant is informed of the results by fax. There also exists a special express procedure, which only takes 5 working days. The costs of the examination are defined in an agreement between the VUD and the <sup>1</sup> *Förderverein für Jugend und Sozialarbeit*, the association for the promotion of social and youth work. The rating system does not apply to advertisements.

The USK is a national system, but the fact that Germany is the second biggest market in the field of entertainment software for PC after the USA motivates foreign firms to participate in this voluntary self-control organisation.

## 2.7 Greece

The group responsible for rating videos is the Cinematography Commission, and the same classification applies to video as that which covers films.

## 2.8 Ireland

The Film Censor's role was extended to cover video by the Video Recordings Act of 1989

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<sup>107</sup> Figure of August 1998

Video classification is mandatory - application must be made for a supply certificate declaring the video work to be fit for viewing. Unlike with film, there is no provision for cutting videos, removing scenes or dialogue. Either the video will receive a certificate as it is or it will be refused one.

Video outlets require a licence and can be prosecuted for operating without a licence or in contravention of it, or for supplying uncertified videos. There is no penalty for supplying videos in breach of the age classification. Unlike the certification system, the age classification is not a binding system; it is intended only for guidance. When this system was adopted, there was disquiet that it would not go far enough towards controlling the availability of adult videos or “video nasties” to children, but the legislators felt that a binding system would be difficult to enforce.

The parliamentary debates include discussion of the problem of striking a reasonable balance between the viewing rights of an adult and the quite clearly damaging effects of inappropriate material on children. Primary control was expressed as resting with the parents, not the State, which discharged its duty in providing guidance through the classification system.

A certificate will be granted unless the video work:

- ❑ is likely to cause viewers to commit crimes;
- ❑ is likely to stir up hatred;
- ❑ may deprave or corrupt viewers, by reason of the inclusion in it of obscene or indecent matter;
- ❑ depicts acts of gross violence or cruelty (including mutilation and torture) towards humans or animals (s.3.1).

In the period 1991-4, nearly 1,400 titles were refused certificates under the Act.

Despite the reference to "gross violence" as a ground for refusing a certificate, there is no definition in the Act of either "violence" or "gross violence". Also, the exemption for video games has caused some debate and disquiet. Since they are not included in the Act, video games are subject to self-regulation or to the

regulatory systems in the countries from which they originate, including age classifications.

The Act sets out a classification system, designed to indicate the suitability of the video for viewing by children. The age-based system, as amended, uses the same categories as for the cinema. A schedule to the relevant Statutory Instrument illustrates how the symbols denoting each class should be designed. The classification operates hand-in-hand with the certification system, in that the certificate includes a statement of the appropriate age. This is intended for the guidance of parents and video wholesale, retail and lending outlets.

All videos must be classified except those which, taken as a whole, are designed to inform, educate or instruct, or are concerned with music, religion or sport, or are video games. In these cases a certificate need not be sought unless the video contains matter that might be grounds for refusal of a certificate.

As in the case of the public viewing of films, it is an offence to supply, offer to supply, or possess with a view to supplying, a video work for which a certificate is not currently in force, unless an exemption under the Act applies. Penalties vary with the particular offence but include fines of up to £1,000 on summary conviction, and periods of imprisonment

## 2.9 Italy

The certificate granted to a film permits it to be shown in the cinema and in any other medium (thus including home video) throughout the State's territory. However, obscene and pornographic films specifically produced for distribution only as home videos are also available on the market. These works also have to be submitted for prior examination by the censorship committees, and are normally granted a certificate of "unsuitable for minors" (**mandatory**). Accordingly, they may be rented or sold only to individuals over 18. Finally, Article 75 of R.D. 773/1931<sup>108</sup> states that "anyone who produces, even periodically, motion pictures

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<sup>108</sup> Royal Decree No. 773 of 18 June 1931 concerning general provisions for public safety.

must give prior written notice” to the Public Authority (i.e. the Police) in order to be granted a licence.

There is no specific content-related regulation in Italy addressing video games, nor any specific rules concerning parental control systems that may be applied in this domain. Nevertheless, regulations on games in general are applicable to video games and their respective differences are not taken into consideration. Thus, rules on games in general apply to leisure and ability video games, both aiming at players’ enjoyment; rules on gambling (or games of chance) apply to gambling video games (or games of chance); rules on games incompatible with the public interest apply also to video games with content incompatible with the public interest; finally, the regulatory framework on billiard-rooms applies anytime video games are provided. According to Article 110 T.U.P.S., the authority (i.e. the mayor of the town) may prohibit (video) games where deemed incompatible with the public interest. In such cases, criminal provisions apply, punishing the licensee of the billiard-room where such games are available (Article 723 of the Criminal Code). General provisions concerning indecency and obscenity set forth in the Criminal Code, such as Article 528 and 725 also apply in this domain where the video game contains such material.

## **2.10 Luxembourg**

Only criminal provisions apply. It is compulsory to have a separate room for videotapes prohibited to minors.

## **2.11 The Netherlands**

Formal provisions for the video industry are provided by the Constitution’s provision for the protection of freedom of speech<sup>109</sup>, the Act on Film Exhibition and the Penal Code.<sup>110</sup>

Protection of freedom of speech applies to videos but the legislator can lay down rules regarding the showing or screening of videos to people under 16 years of age

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<sup>109</sup> Article 7 paragraph 3

<sup>110</sup> Articles 240, 240a and 240b

for the protection of good morals. Article 240a of the Penal Code states that providing and showing a picture or object to a person younger than 16 years of age, the viewing of which may be assumed to be damaging to a minor, is punishable. When videos are shown in public, the Act on Film Exhibition applies. However, as the rental of video films is not considered to constitute a public showing, a rating system like the one for films cannot be introduced for rental videos. The responsible Secretaries of Justice and Culture have stated that the articles 240 and 240a of the Penal Code concerning the penalisation of pornography only apply when a video is shown in public and that penalisation is not possible when videos are rented or sold. If the video has a pornographic picture on its box, articles 240 and 240a may apply, and the video retailer/lender has to take this into account when placing these videos in his store. If the video contains child pornography, its sale and trade, which includes rental, is punishable according to article 240b of the Penal Code. This exception is made in the hope that penalisation of the rental of child pornography will protect minors against exploitation for the purposes of pornographic production.<sup>111</sup>

The introduction of preventative limitations on viewing in order to protect minors was discussed with Parliament by the Secretaries for Justice and Culture at one time.<sup>112</sup> The Cabinet was of the opinion that minors run the risk of being damaged, but in the *Notitie Jeugdbeleid* of 1984, its memorandum on Youth Policy, it stated that Government should not in principle involve itself in private matters. Parents are expected to be responsible for the care of their children; government should, at most, create the best circumstances for them to be so. Consequently, the Cabinet has rejected any suggestion of legislation in this area.<sup>113</sup>

Nevertheless, the Cabinet did propose **voluntary** labelling of videocassettes to provide more information on their contents, including information on potential harm. As a result, the *Gemengde Commissie Videovorlichting* (Committee on

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<sup>111</sup>(1996). Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

<sup>112</sup> Letter of the Secretary of Justice and the Secretary of Culture to Parliament; '*Notitie Jeugd en Video: een kwestie van voorlichting*'; Tweede Kamer 1985-1986, 19519, nrs. 1-2, p.10

<sup>113</sup>(1996). Prepared to the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

Information on Video) was set up, which has advised on a labelling system. Based on this, a “gentleman’s agreement” on self-regulation was reached on 14 October 1991 between the former Ministry of Welfare, Public Health and Culture and the video industry. The latter was represented by the *Nederlandse Vereniging van Producenten en Importeurs van beeld- en geluidsdragers (NVPI)*, the Dutch Federation of Producers and Importers of Image- and Sound Carriers and the *Nederlandse Video Detaillisten Organisatie (NVDO)*, the Dutch Organisation of Video Retailers.

The *Raad van Toezicht Videovoorlichting (RvtV)*, the Supervisory Board of Video Information, which was established by the industry itself, is the entity responsible for this self-regulatory rating system. It meets once every six weeks, and its initial role was to monitor the self-regulatory system. On 6 May 1996, the “gentleman’s agreement” was tightened into the *Convenant en Reglement Videovoorlichting* (Covenant on Video Information), because of the popularity among minors of the video film, *Faces of Death*, which showed fatal accidents and killings. This time the Government party responsible was the State Secretary for Public Health, Welfare and Sports, and the agreement was also signed by the *Nederlandse Vereniging Grammafoonplaten Detailhandelaren (NVGD)*, the Dutch Federation of Record Retailers). As a result:<sup>114</sup>

- ❑ the labelling showing the age classification will be examined by the RvtV
- ❑ the labelling showing the age classification will be attached on the front and back of the video cassette in the same way,
- ❑ computer games as well as videos will be rated by age,
- ❑ video retailers will be more vigilant about the age of persons to whom they rent or sell extremely violent videos,
- ❑ self regulation will expand to shops other than video stores, such as department stores,
- ❑ complaints may be addressed to the RvtV
- ❑ the RvtV may impose fines up to an amount of 5,000 Dutch guilders.

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<sup>114</sup> Groebel en Smit (1996), *Media en Geweld*, rapport in opdracht van het Ministerie van Onderwijs, Cultuur en Wetenschappen, OCenW, p.65. Utrecht: Universiteit Utrecht. Vakgroep Massacommunicatie.

The rating system is **descriptive** and **evaluative**. It is evaluative in the sense that standard age classifications are given – “all ages” “Parental Guidance recommended”, “12 years and over” and “16 years and over”. The criteria used for rating, and described in the Covenant on Video Information, are the same as those used by the Dutch Board of Film Classification, including an open criterion which may be used by the classifier in a film specific context. The criteria are defined in the Covenant as follows:

- ❑ frightening scenes are those which are unexpected and are alien to the general ambience of the audiovisual work, and which could cause excessive terror or anxiety. This does not include those scenes, which are necessary to the story line and are resolved within it;
- ❑ brutalising violence, which has no motive and is used as a negative and destructive tool;
- ❑ the use of drugs shown in an attractive way, or in a way that suggests they are “not as bad as they are made out to be”. This does not apply to audiovisual works meant to warn youth about the damaging consequences of using drugs;
- ❑ pornography, where the object is to stimulate sexual arousal without showing revealing intercourse.
- ❑ open criterion; used to identify racism and discrimination, offensive use of language, continuously frightening ambience and other disturbing elements which are not mentioned in the other four criteria.

The rating system is also descriptive because one of the goals of the RvtV is to provide the best possible video information for the protection of minors and for consumers in general. Therefore, a genre classification of video films is also given, including: Children and Youth; Family; Drama/Classic; Humour; Sports; Music; Educational; Science Fiction; Action adventure; War; Western; Thriller/Crime; Horror; Racy Humour; Erotic and Pornography. In addition, the accompanying cover text has to give an honest impression of the video’s content.

The classification system could be described as a **deterministic** process. The use of a score form results in a classification and a genre definition, and the score form is given to the RvtV at least 6 weeks before the release of the video film so that the Board will be able to take action where necessary.

The rating of video films is **voluntary** for those importers/producers who are not members of one of the organisations ratifying the Covenant on Video Information; members of those organisations have to comply with the rules and regulations for Video Information. The ratings decisions are, however, not binding instruments.

### 2.12 Portugal

In Portugal, video films are rated in precisely the same manner as films exhibited in public cinemas and are covered by the same legislation. The rating of videos is **mandatory** and the *Comissão de Classificação de Espectáculos (CCE)* is the body responsible. Video films on the commercial circuit have to have an 'official' stamp with the following information: title, record number, copy number and the classification attributed by the CCE. Specific rules regarding presentation and distribution of videos were set up in the Law-decree 39/88 of 6th February 1988.

If videos are copies of films that have already been rated for cinemas, they are automatically rated by the CCE, except for those films shown prior to the Law-decree 396/82 of 21st September 1982. If the video film has not been distributed in public cinemas, it is classified by the CCE by the same procedure as for cinema films.

### 2.13 Spain

The responsibility for rating other audiovisual works belongs to the same bodies that have the responsibility for rating films (the Director General of the ICAA and the CCPC; and, in Catalonia, the Department for Cultural Affairs, which in practice hardly rates any audiovisual work at all).

The main problem for the rating authorities is software. According to the ICAA, there is neither the political will nor the means to rate software. The ICAA believes that self-regulation in this field could be the best possible solution, and in fact, a new association of software producers and distributors has been established, the *Asociación de Distribuidores y Editores de Software de Entretenimiento*. Its main goal is to protect the intellectual property rights of its members, but it also



plans to adopt a common framework within the industry for a voluntary rating of software products.

State Decree 2332/1983 regulates the sale, distribution and public exhibition of audiovisual material in general. According to this Decree, all audiovisual material must be rated before being advertised, distributed or sold to the public<sup>115</sup>, unless it is a mere reproduction of a cinema film, in which case it is possible to use the rating given by the CCPC for cinema screening. As with cinema films, content producers are obliged to submit all audiovisual works to ICAA for rating<sup>116</sup>. The rating must appear clearly on the boxes of the audiovisual works, and if the rating is "X", the box must have a notice stating "Only for persons over 18"<sup>117</sup>. Audiovisual works rated "X" may not be sold, rented or given to minors, and they may not be within reach of children in premises where the entrance of children is not prohibited<sup>118</sup>. Advertisements and packaging of these audiovisual works shall not include graphic representations or titles that explicitly show the pornographic or violent nature of the audiovisual work in question<sup>119</sup>.

State Decree 488/1988 regulates public exhibition (e.g. on buses, aeroplanes, hotels, etc.) of audiovisual works distributed in video format<sup>120</sup>. If audiovisual works distributed on video are exhibited in public, they must previously have been rated<sup>121</sup>. Audiovisual works distributed on video format that have been rated "X" or recommended for persons above 18 may not be shown to the public on premises where children under 18 are allowed to enter<sup>122</sup>.

The admission of minors to premises where their entrance is prohibited is punishable by the local council with fines up to 50,000 pesetas (approx. 300

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<sup>115</sup> See Article 1 of Decree 2332/1983, of 1 September 1983, and also Article 16 of Decree 81/1997 and Article 13 of Order of 7 July 1997.

<sup>116</sup> See Article 16.1 of Decree 81/1997, and Article 13 of the Ministerial Order 7 July 1997.

<sup>117</sup> See the Article 16 of Order of 7 July 1997.

<sup>118</sup> See Article 19.2 of Decree 81/1997.

<sup>119</sup> See Article 19.2 of Decree 81/1997.

<sup>120</sup> See Article 1.2 of Decree 448/1988, of 22 April 1988 ("Decree 448/1988").

<sup>121</sup> See Article 2.1 of Decree 448/1988, and also Article 16 of Decree 81/1997 and Article 13 of Order of 7 July 1997.

<sup>122</sup> See Article 2.2 of Decree 448/1988, and also Article 8 of Law 1/1992, of 21 February 1992.

Euros)<sup>123</sup>. A breach of the provisions relating to selling, renting or giving “X”-rated audiovisual works to minors or displaying them within reach of children is sanctioned by the Director General of the ICAA, with a fine up to 500,000 pesetas (approximately 3,000 Euros)<sup>124</sup>.

According to the CCPC, all audiovisual works must be rated, regardless of the distribution format. However, it is not clear what constitutes an audiovisual work. Clearly, all cinematographic works fall into this category, whether they are distributed in cinemas, or on video, CD's, DVD's, CD-i's, etc. All videos are also considered to be audiovisual works. As regards software or interactive works, the ICAA says that they may be considered to be audiovisual works, but that the rating authority is not prepared to perform its tasks in relation to products of this nature. So, while some Autonomous Communities expressly prohibit the distribution of pornographic or violent video games or other audiovisual materials, there is no rating system for products of this nature.

The system is therefore **mandatory** vis-à-vis the owners of exploitation rights of audiovisual works. As regards the public, the ratings merely provide a recommendation, with the exception of audiovisual works rated “X”, which may not be sold, rented or given to children.

The rating procedure is **non-deterministic** and follows the same process as for films. The ratings are expressly applied after the CCPC has seen the audiovisual work concerned, but it is also possible to obtain a rating implicitly. Decree 81/1997 establishes that, if an audiovisual work has been given to the CCPC for classification, and no rating has been provided within a month, it is understood that the ICAA accepts the rating proposed by the company that has requested a rating for the audiovisual work<sup>125</sup>. The ratings issued are the same evaluative age based system as for films. The existing rating system provides ratings for all videos distributed in Spain. In the first semester of 1998, 1379 videographic works were rated in total.

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<sup>123</sup> See Articles 26, 28.1.a) and 29 of Law 1/1992, of 21 February 1992.

<sup>124</sup> See Article 9.3.b), Article 10.1.a and Article 10.3 of Law 17/1994.

With regard to video, the volume of programming that the rating system will accommodate may be increased by the creation of committees with rating capacity within the CCPC or an increase of the number of its members for example. As a government entity, the State has the legal and economic resources to increase the capacity of the existing system: This will depend upon the rating needs of this sector and upon the political will of the Minister for Education and Culture.

#### **2.14 Sweden**

The law applying to videograms is contained in the Penal Code, chapter 16, section 10, and reads as follows:

“It is a criminal offence to depict sexual violence or coercion or explicit or protracted severe violence to people or animals in photographs or in films, videograms, television programmes or other moving pictures, with the intention of distributing such pictures or such depictions, unless this is justified in view of the particular circumstances.”

The distribution of scenes of unlawful violence is a criminal offence under the Law on Freedom of Expression, which means that only the Office of the Chancellor of Justice can act as public prosecutor and that such proceedings are always jury trials. When charges are brought against a distributor or retailer, the National Board of Film Classification must notify the Office of the Chancellor of Justice of its opinion. Charges cannot be brought in the case of films that have previously been approved by the Board. It is also a criminal offence to sell or hire out video films containing realistic depictions of violence to persons under the age of 15.

Over the years, the debate has also led to the following rules:

- Voluntary advance examination of video films intended for sale or hire to the public. This option is used as a precaution, since charges can be brought against films that have not been examined. Advance examination is only compulsory in the case of video films shown at public entertainments.

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<sup>125</sup> See Article 16.2 of the Decree 81/1997.

- ❑ Compulsory registration by the National Board of Film Classification of distributors of video films for private use.
- ❑ A copy of every film (i.e. every film of which at least 10 copies are distributed) must be sent to the National Archive of Recorded Sound and Moving Images.
- ❑ A regional supervisory organisation that reports to the National Board of Film Classification monitors compliance with these rules and ensures that unlawful representations of violence disappear from the market.

The rating system which has come to be applied to videos which are sold or hired to the public in Sweden can in practice be divided into four parts or forms:

- ❑ The age category which a film is assigned when it is examined in advance by the National Board of Film Classification is the same as when it is offered as a hire or purchase video. This is **voluntary** with the exception of films containing realistic depictions of violence for hire or sale to children under 15.
- ❑ The distributor **voluntarily** submits the video film for examination by the National Board of Film Classification in order to avoid any future legal proceedings.
- ❑ The video distributor assigns his own an age category. This is **voluntary** with the exception of films containing depictions of realistic violence that are for hire or sale to children under 15.
- ❑ A video film may be distributed to persons 15 years of age or older if it has not been deemed to violate the above-mentioned law (Penal Code, chapter 16, section 10). Since this is compulsory, some films are banned from distribution.

Age limits for the classification are the same as the ones used for cinema. In addition, sometimes the distributor also uses the over 18 age limit. As long as the age categories are taken from the National Board of Film Classification, the rating is evaluative and semi-deterministic. In some cases, when the distributor himself assigns the categories, there may be non-deterministic limits.

### 2.15 United Kingdom

All video works sold in the UK (unless specifically exempted) have to carry a rating issued by the British Board of Film Classification.

The BBFC uses the same age-based classification system as for film but the video industry has asked for an additional category, to be used for works to be stocked on the children's shelves of video shops: 'Uc' – Universal - Particularly suitable for young children. It is a criminal offence to supply an age-restricted video to someone below the relevant age.

Unlike for films, the BBFC ratings for videotapes are legally binding, but distributors may appeal against decisions to the Video Appeals Committee, an independent body set up as a requirement of the Act.

The Video Standards Council (**VSC**) advises its members on how to comply with the BBFC classifications. It was established in 1989 as a non-profit making body to develop and administer a Code of Practice designed to promote high standards within the video industry. In 1993 its brief was expanded to promote high standards within the computer games industry. VSC membership represents all segments of the video and games industries and on the retail side has over 8000 registered retail outlets across the country. VSC supplies its retail members with a whole variety of in-store display items designed to remind staff and customers about the law relating to video and games. It also provides staff training guidelines, which include a staff training video for use by video and games retailers.

### 3 TV rating systems

#### 3.1 Austria

Broadcasting activities are subject to a federal law, and to its restrictions. At present, there are two possible bases for television broadcasting activities:

- The *Bundesgesetz über die Aufgaben und die Einrichtung des Österreichischen Rundfunks*, commonly referred to as *Rundfunkgesetz* (Broadcasting Act), provides the legal basis for the Austrian public broadcaster, *Österreichischer Rundfunk (ORF)*. It dates from 10 July, 1974, and has recently been amended<sup>126</sup> to conform with the new Television Without Frontiers Directive. The Broadcasting Act covers terrestrial, cable and satellite broadcasting.
- The 1997 *Bundesgesetz mit den Bestimmungen über den Kabel- und Satellitenrundfunk*, commonly referred to as *Kabel- und Satelliten-Rundfunkgesetz* (Cable and Satellite Broadcasting Act), serves as the legal basis for private cable and satellite broadcasting activities; a basis for private terrestrial television broadcasting, however, is still missing. A controversial amendment aimed at integrating this type of broadcasting activity and changing the name of the Act to *Privat-Rundfunkgesetz* (Private Broadcasting Act) could not be passed with the aforementioned amendment to the Broadcasting Act but is still under discussion in Parliament. The warning obligation laid down in Article 22 paragraph 3 of the Television Without Frontiers Directive as amended can be found in Section 16 paragraph 3 of this Bill.

Up to now, no legislative distinction between analogue and digital television broadcasting has been drawn. However, as it is likely that there will only be one licence for private country-wide television broadcasting, some interested parties advocate delaying the introduction of private terrestrial television broadcasting until digital television has superseded analogue television.

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<sup>126</sup> Federal Act to Amend the Broadcasting Act and the 1993 Amendment to the Broadcasting Act (*Bundesgesetz, mit dem das Rundfunkgesetz und die Rundfunkgesetz-Novelle 1993 geändert werden*), Federal Law Gazette 1999 I 1.

The ORF was the first German-language broadcaster (voluntarily) to adopt principles and guidelines regarding violence on TV (*Richtlinien zum Thema Gewalt im Fernsehen*). These guidelines date from April 1993 and have remained in force and unchanged ever since. Apart from other measures to protect minors and human dignity, the ORF has introduced a watershed<sup>127</sup> of 8.15pm, before which all programmes must be appropriate to the whole family. As a rule, films which have been rated "16 and over" by the *Österreichische Jugendfilmkommission* (Austrian Commission for Film and Youth) are not broadcast earlier than about 10pm. If an exception is made at all, then substantial editing takes place. The ORF also takes the recommendations of the *Österreichische Jugendfilmkommission* and other renowned institutions (e. g. German *Freiwillige Selbstkontrolle Fernsehen [FSF]*) into account and cuts films according to what these institutions put on the Index.

Since 1 January 1999, when the latest Amendment to the Broadcasting Act entered into force, the ORF has also applied a rating system consisting of three parts, which is partly inspired by the new Television Without Frontiers Directive. At present, no such activities can be observed on the part of the private Austrian (cable or satellite) television broadcasters.

The Austrian legislator decided to take up nearly *in extenso* the provision issued from the Directive and the ORF opted for the permanent visual symbols. The three signs used by the ORF are **evaluative**, they do not carry information on the contents. Although the ORF's watershed is based upon the recommendations given by the *Österreichische Jugendfilmkommission*, there is no objective methodology regarding application of the visual symbols. The process may therefore be defined as **non-deterministic**.

The three different symbols introduced by the ORF each consist of bold black sign framed by a square.

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<sup>127</sup> There are no legal provisions on "harbours" or "watersheds". The ORF, however, voluntarily introduced time zones in its 1993 Guidelines.

Figure 21: ORF visual symbols

Not for children	X
Only for adults	O
Recommended for children	K+

The third symbol has been introduced at the request of the body representing the (listeners and) viewers, *Hörer- und Sehervvertretung*. Whereas the two restrictive symbols are shown on the screen, the recommendation is only given in the ORF Teletext, in press releases and via the Internet.

This rating system is not applied to advertisements. Standard advertising contracts give the ORF the right to refuse to broadcast an entire advertisement for (among others) reasons of protection of minors, but do not give the right to insert visual symbols.

The system is **mandatory**. The Austrian implementation of the new Television Without Frontiers Directive being in force, the ORF is obliged to rate the contents of its programmes. However, at present, the ORF is the only broadcaster obliged to provide a warning/identification. As, according to its own press releases, the ORF is in the habit of checking all films irrespective of the hour at which they are broadcast, the new regime should not cause a capacity problem.

### 3.2 Belgium

The adoption of visual icons is underway. Otherwise there are no definitive systems in place, as the French and German Communities are currently debating the matter. The Flemish Community appears to be distancing itself from the discussion, probably due to the fact that it fears the adoption of visual icons being circumvented by VT4, which broadcasts its programmes from outside Belgium, but is dedicated to the Flemish audience.

Belgium used to use the white square but does not seem convinced by its efficiency. It appears that "It more often offers the attraction of forbidden fruit, and there are greater numbers of viewers than usual when it is present on the



screen”<sup>128</sup>. Nevertheless, the white square has never been officially rejected and has not completely disappeared from the screen.

This white square is part of a larger system. The broadcaster RTBF has, for example, established double control system, which is still in use. The Director of Programmes invites producers to provide a list of the programmes that may be problematic. In addition, a procedure of graduated warnings is in force:

- **implicit reservations:** the continuity announcer draws attention to any aspects of the programme that are likely to shock a significant part of the audience (violent or erotic images, rude language, particularly negative treatment of certain topics...). These warnings do not imply a value judgement on the part of RTBF;
- **explicit reservations:** the RTBF takes a position. The word “reservations” is clearly expressed (programmes with risky material, but for which broadcasting is justified by their artistic or informative nature);
- the **white square** reinforces the **explicit reservations**. It is displayed throughout the programme.

VRT uses a similar system that depends in principle on channel directors. However, channels under the jurisdiction of the Flemish Community are in favour of acoustic warnings.

Canal Plus Belgique is the only channel to adopt its own visual icons system. However, this system does not appear on the screen but only in its TV guide. It uses a colour code as follows: green (for all), yellow (when there are some reservations about the programme), red (adults only). This system is quite similar to the road code, and it is argued that it is therefore more easily comprehensible to viewers

The newly adopted French visual icons system has led the Belgian political authorities to aim towards a system that will not create too much confusion for viewers. Nonetheless, the Advisory Committee of the CSA argues that the French

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<sup>128</sup> “La violence à la télévision” Study conducted by the French Community of Belgium, p 64.

system is not totally adaptable to Belgium due to different regulations, namely those regarding admission to cinemas<sup>129</sup>. However, “the adoption of some of the icons used by the French broadcasters and widely distributed in Belgium would facilitate message comprehension for the viewer”<sup>130</sup>.

A visual icons system is in the process of being adopted. However, a full range of initiatives has preceded it. To win the support of all the interested parties (public authorities, broadcasters, representative associations, educationalists and parents) is one of the priorities. To this end, broadcasters from the French Community (RTBF, RTL, TVI, Canal Plus Belgique) are represented on the Advisory Committee. The system to be adopted will have the approval of all parties involved in advance.

The French Community Parliament is supposed to adopt a decree that incorporates into domestic law the new “Television without Frontiers” Directive. The Advisory Committee has just announced its position<sup>131</sup>. However, this proposal will be modified due to the new French system.

The duration of the icon on the screen will depend on the category in which the programme is classified. For the programmes rated orange triangle but broadcast prior to 22.00 the icon must be present throughout the programme. This is also the case for all programmes rated in the “red square” category, whatever time of day they are broadcast. The programmes rated “orange triangle” but broadcast after 22.00 need only display the icon at the beginning of the broadcast and after each break. This rating system may be adopted in principle, subject to a new debate to take the French changes into account. With broadcasters having been involved in its development, application of the ratings system should be respected all the more since it is their responsibility to classify the programmes.

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


<sup>129</sup> In Belgium a single category exists (prohibited to under 16’s).

<sup>130</sup> *Les cahiers du CSA n° 2*. Meetings between the CSA of the French Community, and the French CSA have been organised to discuss this.

<sup>131</sup> Opinion n° 4/98 of 10 June 1998 is published in *Les cahiers du CSA n° 2*.

Fictional programmes broadcast by public or private broadcasters, as well as encrypted programmes, may be rated according to these 4 categories:

Figure 22: French Community's suggested Television Rating System

Categories	Public	Duration
<b>No icons</b>	<b>All audiences</b>	
<b>Orange Triangle</b> 	<b>Parental guidance</b>  Fictional programmes, which due to number of scenes or to their overall character are likely to harm sensitivity of minors under 12.	<i>For programmes prior to 22.00</i> For the duration of the broadcast (including credits) for unencrypted channels and for one minute at the beginning of the broadcast for encrypted channels (including credits) During trailers (at minimum when announcing title of film and its broadcasting time. These trailers must not contain images likely to harm sensitivity of youth audience).  <i>For programmes after 22.00</i> For 1 minute at the beginning of broadcast (including credits). For 15 seconds after each break During trailers (as above)
<b>Red square</b> 	<b>Prohibited to minors under 16</b>  Works of an erotic nature or depicting intense violence	<i>For programmes prior to and after 22.00</i> Throughout the broadcast (including credits) During trailers (at minimum when announcing title of film and its broadcasting time. Trailers must not contain images likely to harm sensitivity of youth audience).
<b>Full red square</b> 	<b>Prohibited on channels other than encrypted</b>  Works of pornographic nature and/or containing gratuitous violence	<i>For programmes prior to and after 22.00 and only on encrypted channels</i> Throughout the broadcast (including credits) During trailers (minimum when announcing title of film and its broadcasting time. Trailers must not contain images likely to harm sensitivity of youth audience).

According to the CSA, the visual icons system is the responsibility of the broadcasters. Nevertheless, the regulatory body has made the following recommendations to the Government:

- It is the responsibility of the broadcasters to consider the impact that their programmes may have on the physical, mental and moral growth of minors.
- Visual icons must be accompanied by media and multimedia literacy. It is essential to develop real education skills among viewers and educators to work towards a critical understanding of images.
- Co-ordination between broadcasters in the French Community, the CSA and the Inter-Community Commission for Film Control is desirable.
- Visual icons should cover all kinds of fictional programmes in the broadest sense of the term. But they should not apply to news, which is covered by internal codes of ethics and the conventional provisions of the different channels.

Parallel with the adoption of these icons, broadcasters from the French Community have undertaken to set up an internal commission for the classification of films.

Alternative methods, as expressed in Article 22.3 of the TWF Directive, will be applied in Belgium, the Flemish Community having opted for the acoustic warning, and the French Community for the visual symbol. It is difficult to tell at present whether the Flemish Community will follow the French Community in adopting a visual icons system, but debates preceding the adoption of the Decree of 28 April 1998 show a lack of enthusiasm regarding icons. Nonetheless, it must be acknowledged that the Flemish position will depend to a large extent on the European environment. If legal mechanisms warrant a common rating system for all the Flemish speaking channels (the VT4 case), then nothing should prevent such icons (this is what the French Community is attempting to establish for French speaking channels). The Flemish position is not one of categorical opposition, but a reflection on the effectiveness of the system in the European context.

### 3.3 Denmark

Television in Denmark has a long tradition of public service broadcasting, originating with the beginning of radio broadcasting in the 1920s. Danmarks Radio (**DR**), at the time called *Statsradiofonien*, was created in 1925, around the time of the passing of the first Broadcast Act. One of the fundamental criteria in programme production and selection is that programmes should be generally of an enlightening and cultural nature.

The principle of enlightenment - historically conceived as a high-brow cultural discourse - has been challenged by the deregulation of broadcasting in Denmark. In cultural terms, a broad Danish consensus exists vis-à-vis prohibitive measures, where the general opinion is that prohibitions attract attention, radical actions and feelings, and, in some cases, may lead to criminal behaviour. "Forbidden fruit" is often considered attractive and tempting, so antipathy towards prohibition and detailed regulation is widespread.

Regulations regarding television (and radio) content are contained in the Broadcasting Act of 19 February 1998. A preparatory political agreement anticipates the development of digital terrestrial television and will be renegotiated in the year 2000. The Act gives the two national public service broadcasters, Danmarks Radio and TV2 increased economic liberty. On the other hand, their public service obligations have been extended and are to be accounted for in their annual reporting, as proof of fulfilment of their duties.

With explicit reference to the question of harmful content to children, chapter 2, § 3 in the Act stipulates as follows: “The possessor of a broadcasting licence must ensure that no programmes are transmitted that could damage to any serious degree the physical, mental or moral development of minors, exercising particular control over programmes that include pornography or unjustified violence. This also counts for programmes that can damage the physical, mental or moral development of minors, unless it is ensured – by choice of programming hours or by installing of technical devices - that minors will not watch or listen to the programmes.”

With regard to children, all pornographic films are automatically rated at 16 years and above by the Programme Departments of the broadcasters. However, the Broadcasting Act contains no explicit regulations concerning the question of violence, nor any paragraphs explicitly referring to control of programme content.

An informal watershed of 21.00 is used by *Danmarks Radio*, and there is also a standard provision for all broadcasters that programmes considered harmful to minors may only be shown after midnight. The guidelines used by *Danmarks Radio* are inspired by the *European Broadcasting Union (EBU)*. The normal procedure is acoustic warnings before films or TV series that may be harmful to children. Also, trailers for violent films are no longer shown during children’s programmes – as sometimes happened in the past – but mostly during programmes aimed at an adult audience.

No explicit control mechanisms regulate the programme scheduling policies of the

public service institutions. They themselves decide on suitability and/or possible harmfulness of programmes, on a self-regulatory basis.

However, the Minister of Culture, Elsebeth Gerner Nielsen, has recently instructed the broadcasting companies to operate a clearer line of information and orientation in order to prevent children from being exposed to harmful content on television. As a consequence of the Minister's communiqué, Danmarks Radio has clarified the following to their Departments: in both fiction and news programmes that contain harmful content and that are broadcast in prime time, the speakers or programme hosts must warn the viewer about the harmful content. The initiative from the Minister is not a legal initiative, but a policy guideline. Thus, it falls within what one might call the formulation of an ethical code of conduct. Subsequently, Danmarks Radio has defined how to implement it for itself. Danmarks Radio's code of conduct will be included into their new/revised rules and regulations, which are to be adopted in February 1999.

### 3.4 Finland

The Finnish Broadcasting Company, *Yleisradio* (**YLE**) is the national public service broadcaster that offers the Finnish audience two nation-wide TV channels. YLE's primary sources of financing are the television licence fees and the operating licence fees. It is state-owned and supervised by an administrative council elected by Parliament. It does not require an operating licence since its operations are based on the Act on *Yleisradio Oy*. YLE owns the nation's broadcasting networks, transmitters, and links.

Since 1993, YLE has offered two channels, TV1 and TV2, whose programming carries no advertising. Two other nation-wide television channels, MTV3 (*MTV Media Oy*) and *Nelonen* (Channel Four Finland) are commercial. They pay the operating licence fees, which are typically allocated to YLE. Cable television operators no longer require an operating licence, but must register with the Telecommunications Administration Centre.

Traditionally, no rating systems have been applied on Finnish TV. The Administrative Board of the YLE accepted the following five programme policy

rules in March 1987 (at this time the YLE operated on two channels and sold broadcasting time to a commercial company, MTV, which provided the programming for channel three):

1. YLE and MTV will be cautious in the selection of programmes likely to convey violent behaviour models and calculated violence. Also single serial films should be previewed and banned, if necessary. Continuous discussion should take place over the definition of the limits of programme practices.
2. YLE and MTV should release more programme information to newspapers. Product information concerning TV programmes should also be further developed. TV companies ought to answer questions appertaining to TV violence in their programmes on the basis of present research findings. Parents should be informed of the effects of TV violence. Research funds of the YLE will be directed to studies on TV violence.
3. The YLE and MTV are committed to observing the 9pm watershed and broadcasting programmes unsuitable for children at later hours. Companies have to inform their audiences about the watershed policy effectively.
4. Positive attitudes to life and human dignity should be preferred in programme selections, as well as programmes promoting non-violent behaviour. Programmes conveying a respect for life and non-violent attitudes should be preferred in the selection of programmes for a young audience in particular.
5. The commercial channel, MTV, should also apply the principles of programme policy mentioned above.

Broadcasters have applied the 9pm watershed. In addition, auditory announcements have been used in some cases to warn when a forthcoming programme contains shocking or violent material that could cause distress to some viewers.

On 22 September 1998, the Finnish Parliament approved government proposals for the following: an Act on Television and Radio Operations; an Act on the State Television and Radio Fund; an Act on the Amendment of the Act on *Yleisradio Oy*; and the proposal for certain technical amendments to the Act on Telecommunications Administration and the Copyright Act. This legislation



replaces the Radio Equipment Act of 1927 and the Cable Transmission Act of 1987, and incorporates the European Union's television directive into Finnish legislation. The Act, which emphasises freedom of expression and diversification in programme output, came into force on 1 January 1999.

In line with Article 22.2 of the Television Without Frontiers directive, the section concerning programmes harmful to the development of children (§ 19) obliges a broadcaster to broadcast programmes with sexual or violent content that may be harmful to children's development at a time when children generally do not watch TV. If programmes unsuitable for children are broadcast, an announcement must be made prior to transmission relating to this, or it must be indicated by means of a symbol throughout the transmission of the programme.

Section 25 deals with the protection of children under 18 from television or radio advertisements. According to this section, advertisements should not cause moral or physical harm to children. The Telecommunications Administrative Centre (TV programmes) and the Consumer Ombudsman (advertisements) are to supervise compliance with the act with respect to the protection of minors.

In compliance with the new Act on Television, all national TV companies, i.e., YLE, MTV3, and the *Ruutunelonen* (Channel Four Finland) have agreed on joint national frameworks for the self-regulation of television programmes unsuitable for children. From 1 January 1999 programmes will be divided into two categories, (1) those permitted for children under 16 years, and (2) those unsuitable for children under 16. Each company is responsible for the coding of its own programmes. Ratings will be made by certain boards or by people responsible for programme selection or editing.

As set out in Article 22.2 of the Television without frontiers directive, companies have committed themselves to applying the 9pm watershed in programme distribution. In line with Article 22.3, acoustic announcements indicating that the programmes are unsuitable for children, will be made prior to their showing. In addition, TV companies must provide newspapers and teletext services with regular programme information, with special symbols indicating the programmes

unsuitable for children. Television companies have agreed to pay attention to the content and distribution times of the trailers of programmes that may have possible harmful effects on children. YLE, MTV3, and Channel Four Finland have committed themselves to using similar programme symbols and codes.

By having a standard of harmfulness and by providing a single rating indicator based upon age, the rating system of TV programmes in Finland is **evaluative**. It is a **non-deterministic** rating process, because the ratings are based upon opinions or judgement. The rating system is also **mandatory**, since it is regulated by law.

The ratings are made by the programme producers. Company programme policy personnel and programme purchase personnel will be responsible for the coding. This system can be expected to accommodate only the fictional programming of each company and will not be applied to advertisements<sup>132</sup>.

### 3.5 France

There is no specific law for television broadcasting regarding the protection of minors. Specific regulations are contained in the "Youth" directives of the *Conseil Supérieur de L'Audiovisuel (CSA)* dated 5 May 1989. The law of 30 September 1986 on freedom of communication states simply in Article 15 that the CSA oversees protection of childhood and adolescence in programmes broadcast by audiovisual services.

The first television rating system was implemented in November 1996 by broadcasters on the initiative of the CSA after several months' dialogue between public authorities, industry, family and viewers associations.

#### Figure 23: Implementation of Television Rating System




October 95	Opening of dialogue with broadcasters on the means to reduce violence on TV
July 96	Undertaking by broadcasters near the CSA to implement a three-point

<sup>132</sup> Regulations concerning the protection of children are included in the new law on television (744/1998, section 25): Television and radio advertisements may not cause moral or physical harm to children. It is forbidden e.g., to show children in dangerous situations in TV and radio ads.

	system of protection of minors: <input type="checkbox"/> Programme classification <input type="checkbox"/> Time scheduling for the more violent programmes <input type="checkbox"/> Display of visual icons corresponding to the classification
<b>October 96</b>	Implementation of a common visual icons system between TF1, France 2/3 and M6, with Canal + keeping its own icons.
<b>November 96</b>	Introduction of system

The adopted rules were inserted in channels' licences. Once implemented it is up to the broadcasters to apply the system and the responsibility of the CSA to monitor application. To this end the CSA created an *Observatoire de la signalétique*, in charge of monitoring all rated programmes to assess the appropriateness of the rating applied, as well as the time scheduled for broadcasting. Some differences between the CSA and the broadcasters regarding the appropriate ratings have generated regular meetings between these two parties. When the CSA considers a rating to be particularly unsuitable it examines the programme in plenary session and addresses written opinions to the broadcasters concerned.

**Figure 24: The 1996 Rating System**

<b>Category I</b> All viewers	No restrictions
<b>Category II</b> Works containing scenes likely to harm young viewers <i>Parental Guidance desirable</i> Symbol: 	Broadcasting time is at the discretion of the broadcaster, but this work may not be broadcast during children's programmes. Particular attention to be paid to trailers for these works, when broadcast near children's programmes.
<b>Category III</b> Cinema works prohibited to under 12's, as well as TV works likely to disturb young viewers, notably when programme contains systematic or repeated psychological or physical violence <i>Parental Guidance essential, prohibited to under 12's</i> Symbol: 	To be broadcast after 22.00. Exceptionally, broadcast of such work may be possible before 22.00, if icon is displayed throughout. Such exceptions are not permissible on Tuesdays, Fridays, and days preceding non-working days. In addition these works may not be broadcast near children programmes.
<b>Category IV</b> Cinema works prohibited to under 16's, as well as TV works of erotic nature or containing intense violence, likely to impair physical, mental or moral growth of under 16's <i>Adult audience, prohibited to under 16's</i> Symbol: 	To be broadcast after 22.30. Trailers for these works must not contain scenes likely to harm youth audience sensitivity, and may not be broadcast before 20.30.

<b>Category V</b> Pornographic or extremely violent work, likely to seriously impair physical, mental or moral growth of minors	Complete prohibition
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Each broadcaster created a viewing committee to process and issue the rating.

Figure 25: The Rating Process<sup>133</sup>

<b>France 2</b>	Internal commission composed of channel's staff - session every week. Experts appointed by the broadcaster make notes on the programmes to be broadcast. The internal commission examines the notes to establish classification. The different criteria, on the basis of which the notes are made, were established according to a study conducted by a specialist institution, mandated by the CSA to understand how violent images are perceived and what their impact on children might be (qualitative investigations that were made in schools generally by the teacher). If there are any difficulties the Commission refers to other members of the channel. Regarding the danger of subjective assessment France 2 said it has tried to identify objective criteria based on extremely rigorous principles already in existence (conditions and circumstances of depiction of violence, identification with heroes, "reading keys" of violence).
<b>France 3</b>	Internal commission composed of 6 members (consider that freedom and responsibility of the broadcaster is in any case subject to delegation) The broadcasting time is not a variable that is taken into consideration for the rating; meaning that the same criteria are applied whatever the envisaged time schedule. Commission tries to take into account evolution of mentalities.
<b>TF1</b>	Internal commission composed of one representative per programming unit (approx. 10 members). The members are in charge of rating their own programmes. This is checked by 2 people, one of whom is the programming Director, who give a favourable or unfavourable opinion (in most cases the opinion is favourable). If there is debate, arbitration is made at the level of the General Direction or the President.
<b>M6<sup>134</sup></b>	2 committees - selection committee: external committee composed of mothers and young people (representative of the M6 audience) who watch every programme prior to taking the decision whether to buy it. This committee gives a qualitative assessment as well as an initial classification of the programme in category 1, 2, 3 or 4. The decision to buy the programme is made according to its quality and to the icon that will apply. - screening committee: external committee composed solely of mothers (with children under 12 who watch a lot of TV) who watch the programmes a second time 4 to 5 weeks prior to broadcast (films, whether or not prohibited to under 12's, TV films, documentaries or magazines which could cause problems, as well as series that are broadcast in the first, second or third part of the evening). This committee confirms or modifies the first assessment regarding the icon to be displayed. The committees do not make the decision, but make proposals and provide arguments. The final decision is made by the Programming Director, or, if there is dispute, the Assistant General Director in Charge of Programmes, the General Director or the President.
<b>Canal +</b>	Follow the rating of the Film Classification Board when a film is broadcast. Occasionally Canal + rates a film more strictly. There is no screening commission as such. The person responsible for programming watches the programmes and may receive opinions from the various programming units. If a debate occurs, there is no arbitration as the stricter opinion prevails. For films prohibited to under 12's there is no restrictive regulation applying to Canal+ <sup>135</sup> . But the decision has been taken not to broadcast them during times where parental control may not be exercised.

<sup>133</sup> For further information, see "*Médias et protection de l'enfance*", CSA, décembre 1997.

<sup>134</sup> First free-to-air to adopt a signalling system in 1989.

<sup>135</sup> Canal+ is broadcast in an encrypted form.

<b>ARTE</b>	<p>Arte is part of the Groupement Européen d'Interêt Economique (<b>GEIE</b>), the European Grouping of Economic Interests, that consists of a French company, La Sept and all the German public broadcasters (ZDF + ARD stations). It is not specifically the broadcasters that rate the programmes but the content providers (who are mostly broadcasters themselves in their own country, except La Sept). So each broadcaster providing a programme to Arte must</p> <ol style="list-style-type: none"><li>1) verify if the programme is adapted to a youth audience</li><li>2) indicate to ARTE GEIE the ideal broadcasting time.</li></ol> <p>Nonetheless there is a commission, the <i>Conférence des programmes</i>, which deals with contentious issues and other programmes of ARTE. A member of this commission is responsible for the protection of minors, and is completely independent. They must be consulted if any doubts are raised regarding a programme.</p> <p>The most important difference from other channels comes from the (international) Treaty creating Arte, which states clearly that Arte is not subject to any Government or administrative authority. This is why Arte does not apply the visual icons system.</p>
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A new visual icon regime was adopted in 1998 and implemented by terrestrial broadcasters from September that year. It makes a clear distinction between unencrypted and encrypted channels.

Figure 26: The 1998 Rating System






Categories	Unencrypted programmes	Encrypted channels
<b>Category I</b> All viewers 	no restrictions	no restrictions
<b>Category II</b> Works containing scenes likely to harm young viewers. <i>Parental Guidance desirable</i> 	Broadcasting time is left to the discretion of the broadcaster, but this work may not be broadcast during children's programmes. Particular attention to be paid to trailers for these works when broadcast near children's programmes.	Broadcasting time is left to the discretion of the broadcaster, but particular attention must be paid to the fact that programmes dedicated to a youth audience, as well as programmes and trailers broadcast immediately after the said programmes do not contain scenes likely to harm young viewers.
<b>Category III</b> Cinema works prohibited to under 12's, as well as TV works likely to disturb young viewers, notably when programme contains systematic or repeated psychological or physical violence <i>Parental Guidance essential, prohibited to under 12's</i> 	To be broadcast after 22.00. Exceptionally, broadcast of such work may be possible before 22.00, if icon is displayed throughout. Such exceptions are not permissible on Tuesdays, Fridays, and days preceding non-working days. In addition these works may not be broadcast near children programmes.	Broadcasting time is left to the discretion of the broadcaster, however, particular attention must be paid to the fact that programmes dedicated to youth audiences, as well as programmes and trailers broadcast immediately after the said programmes do not contain scenes likely to harm young viewers
<b>Category IV</b> Cinema works prohibited to under 16's, as well as TV works of erotic nature or depicting intense violence, likely to impair physical, mental or moral growth of under 16's <i>Adult audience, prohibited to under 16's</i> 	To be broadcast after 22.30. Trailers for these works must not contain scenes likely to harm youth audience sensitivity, and may not be broadcast before 20.30.	May not be broadcast on the Wednesday before 20.30, on Saturday or Sunday morning. Trailers for works containing violent scenes or scenes likely to harm sensitivity of youth audience may not be broadcast during the unencrypted part of the programme schedules as well as on Wednesday before 20.30, on Saturday morning or Sunday morning.
<b>Category V</b> Pornographic or extremely violent work, likely to seriously impair physical, mental or moral growth of minors 	Complete prohibition	May not be broadcast during the unencrypted part of the programme schedules. May not be broadcast either between 5.00 and 24.00

Figure 27: Modalities for the display of the visual icon for unencrypted

## channels

Trailers
Visual icon through all the duration of the trailer
Programmes
Category II - Visual icon for a minimum of 60 seconds at the beginning of the programme or during the credits and at least 10 seconds after each break. The warning «parental guidance desirable» must be displayed for at least 10 seconds at the beginning of the programme or during credits.
Category III - Visual icon throughout the programme. The warning «parental guidance essential», or where relevant, mention of the prohibition for under 12's <sup>136</sup> , must appear for at least 10 seconds at the beginning of the programme or during the credits.
Category IV - Visual icon throughout programme. The warning «adult audience», or in where relevant, mention of the prohibition for under 16's must appear for at least 10 seconds at the beginning of the programme or during the credits.

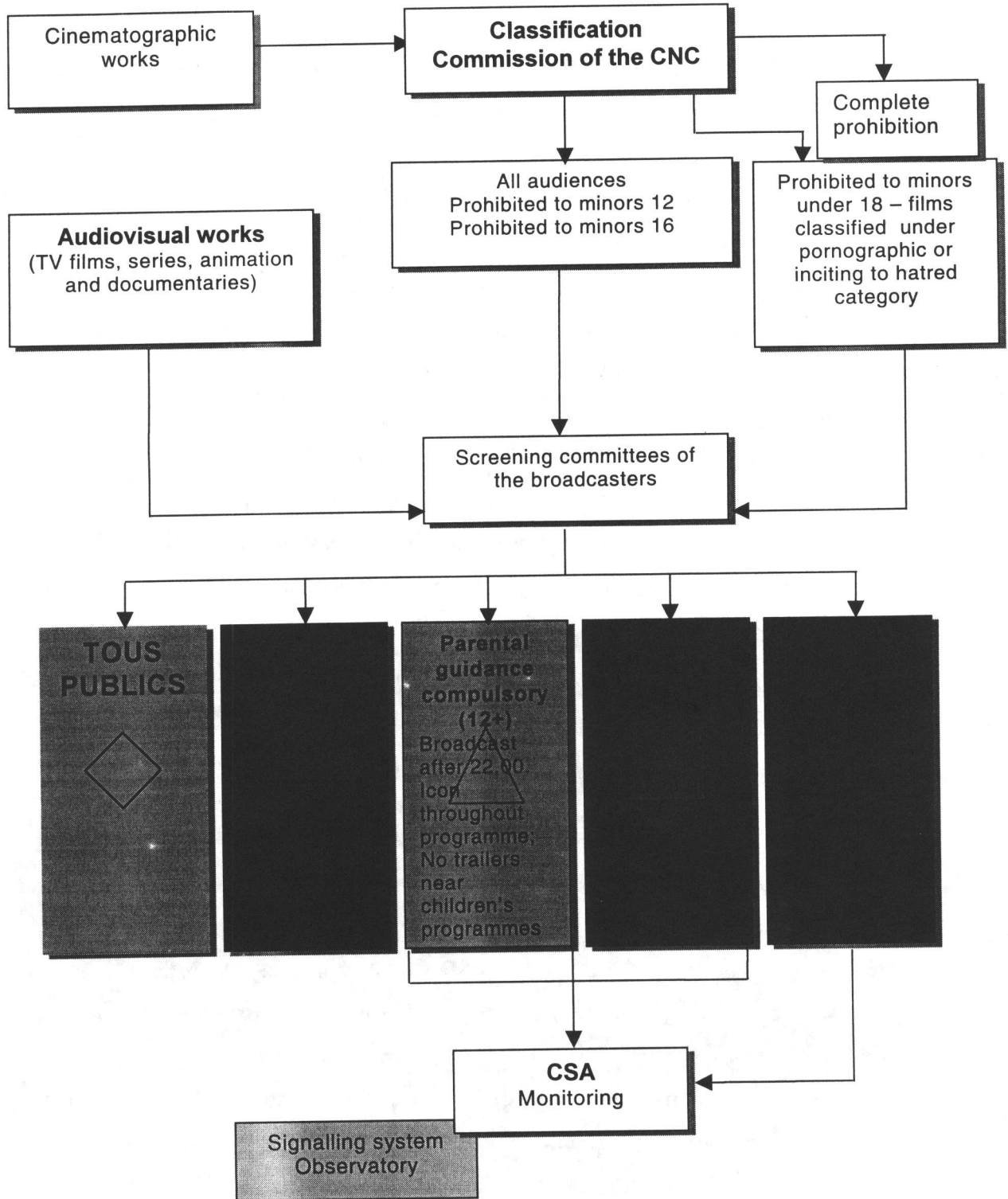
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<sup>136</sup> Decree of 22 February 1990, article 5, alinéa 2 states that in the case of a cinematographic work being broadcast by an audiovisual service, the audience must be informed of the certificate released by the film classification board, both during the broadcast and the trailers as well as in the TV guides.



**Figure 28: Signalling System**

*applicable to all broadcasters – but only used at the moment by terrestrial broadcasters*



### 3.6 Germany

The German system for television rating is composed of a combination of:

- ❑ **cinema ratings** (FSK) based on age limits, observing watershed set by the legislation,
- ❑ **voluntary ratings** by a self-regulatory organisation, *Freiwillige Selbstkontrolle Fernsehen* (FSF) for private broadcasters (using the watershed) and controlled by the regional regulatory authorities; and
- ❑ a system of self-regulation for public service broadcasters also using the watershed.

There is consequently no unified approach. The system is also characterised by the importance of self-regulatory mechanisms. With the exception of the system used for cinema films, there is no ‘individual rating system’ as used in the US or in France. Researchers as well as broadcasters and regulators are not very keen on the idea of introducing visual or acoustic warnings. They fear the effect of the so-called ‘forbidden fruit’ towards minors, i.e. that the minors would be made aware that they should not watch the programme and thus be enticed to watch this particular broadcast.

The FSF makes a judgement about content using legal standards of harmfulness. It recommends an appropriate broadcasting time depending on the age for which the programme is suitable and the likelihood of parents being present to watch with their children. The system is based on the opinions of the rating body (the examining board). However, the opinions of the rating body are based on certain principles for examination of broadcasts (*Prüfgrundsätze der FSF*), which have been developed by another organ of the FSF, the Committee (*Kuratorium*). These principles (especially §19 to §23) give guidance for scheduling broadcasting times. The principles also encompass a series of criteria aimed at helping the assessment of programmes (**semi-deterministic**). For example, children must not be made emotionally insecure, be frightened, or be disturbed because of a drastic depiction of violence or the blurring of reality and fiction. Broadcasts must not lead to social or ethical disorientation of children, e.g. through the identification with violent characters or through the portrayal of strategies based on violence to

resolve conflicts. These principles are mainly formulated for fictional programmes, which constitute the majority of the examined material.

The system is **voluntary**. Private broadcasters who are members of the FSF submit programmes if they have not been rated (by the FSK) or if they have any doubts regarding the validity of the rating.

Following a strong public debate about the increase in sex and violence on the screen, German private television channels decided to set up the FSF in November 1993 following the model of the FSK for cinema. Their aim was to create a structure to render the necessity for stricter legal provisions useless and to stop or reduce the public discussion regarding the level of violence within their programmes. Several private broadcasters manage this organisation, established in April 1994<sup>137</sup>. Its aim is to limit the portrayal of violence and sex on television to protect the moral, spiritual and mental development of children and young persons over and beyond the limits set down by law. This is expressed by Article 19 section 1 of its regulations for examination: “the objective of the examination is to prevent the impairment or endangerment of minors, particularly ethical disorientation by means of television”. Public service broadcasters have refused to participate in the FSF thus far. They claim that the examination of programmes by an external organ would be a threat to their programme autonomy (French broadcasters claim the same). They are critical of the work of the FSF<sup>138</sup>.

Private broadcasters submit all programmes that raise questions regarding the protection of minors to the FSF. Broadcasters submit broadcasts mostly in two cases:

- films that are on the “index” as, in order to broadcast them between 11pm and 6am, broadcasters need to put their justification in writing and to communicate it upon request to the regulatory authority. In this case, they also communicate the FSF findings to the regulatory body.

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<sup>137</sup> such as (among others) Kabel 1, DSF, n-TV, Premiere, Pro Sieben, RTL, RTL 2, Sat1 and VOX.

<sup>138</sup> Inge Mohr, *Jugendschutz im Fernsehen*, Media Perspektiven 1/98.

- request for exception to the watershed. In this case, the regulatory authority will decide on the exception, but the FSF findings are communicated to the competent authority by the broadcasters as the basis of the request for exception.

The decision whether a programme shall be submitted or not is made by the Commissioners for the Protection of Young Persons, representing the private broadcasters. The commissioners have to send an application to the FSF stating the time the broadcaster intends to show the film. The examiners have then to decide whether the request may be accepted. They can also recommend a later time for transmission or suggest cuts to be made or advise the channel not to broadcast the programme at all. Their decision requires unanimity and they have to lay down their reasons in a report. The reports are then sent to the channels and, on request, to the Committee and the *Landesmedienanstalten*. The decision can be appealed against to an Appeal Committee (*Berufungsausschuß*) that is composed of seven particularly experienced examiners. The Appeal Committee decides by simple majority. The Committee or the regulatory bodies can call upon the Appeal Committee if a decision is to be revised. In special cases, the FSF committee can be directly called upon to revise the Appeal Committee's decision. Examinations take place almost every day. An examining board decides on about approximately 3 films per day.

In the case of a broadcaster's request for an exception to the watershed, FSF recommendations are communicated to the competent regulatory authority, which can refuse them. However, the authorities have to take them into account in their decision as stipulated by the Agreement on Broadcasting.

In addition, members of the FSF Committee and the regional regulatory bodies are entitled to submit programmes. The FSF has also to pass on complaints from the public to the Committee. In addition, the FSF also monitors programmes every 3 months to check whether any films or series should have been submitted to them.

The recommendations of the FSF are not binding. Nonetheless, the FSF has two sanctions at its disposal in the case of non-application of their decision. The first

one is the ability to oblige the broadcaster to broadcast their findings. This is considered as a most efficient threat, as private broadcasters fear bad publicity. However, it never happens in practice. The other sanction is exclusion from the FSF. This sanction is not really practicable, especially when it concerns an important broadcaster paying a considerable membership fee to the FSF. As to the enforcement of FSF decisions, there is no specific institutional structure to check whether they are followed or not by broadcasters. However, in practice, the FSF operates an internal control of the application of their decisions by broadcasters.

The FSF is composed of 3 organs:

- *Vorstand* (Executive board) Members of the executive board are representatives of private television channels. They are responsible for the rules and finances of the FSF but do not have any influence on the examinations.
- *Prüfungsausschuß* (Examining boards) assess programmes on a voluntary basis prior to their transmission in order to establish whether they are potentially harmful to minors. More precisely, an examining committee composed of 3 persons examines broadcasts. At the moment, there are about 70 examiners who work in various areas of media education. They do not work full time for the FSF. About half of the examiners also belong to the committees of the FSK and the BPjS.<sup>139</sup>
- *Kuratorium* (Committee) is composed of: media scientists; media critics; people working in the field of protection of minors; the standing representative of the Supreme Federal Youth Authorities at the FSK; the chairperson of the national examination board for publications potentially harmful to minors (BPjS); 11 neutral persons and 4 representatives from the television channels. The regional regulatory authorities have chosen not to be represented within the Committee even if they were able. The tasks of the Committee are wide-ranging. The Committee has developed the FSF examination regulations, which regulate almost all the examination procedures, as well as criteria for

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<sup>139</sup> If either the cinema or video version of a film submitted to the FSF is on the “index”, and if it is to be decided whether the film can be broadcast after 11pm or 12pm or not at all, then a member of the BPjS has to be on the examining board.

assessing programmes. The Committee is also responsible for selecting examiners.

In 3 years (from April 94 to 31 March 1997) an average of 55 cases per month were dealt with. Since its creation in 1993 and till 1997, 1975 programmes have been examined, mainly series, TV-films and fiction. 762 requests were refused. Since members of examining boards do not work full time for the FSF, their availability to examine programmes depends on their respective employers. Consequently, flexibility is a necessary requirement when considering possible appointments for the examining boards. The FSF does not examine advertisements.

### **3.7 Greece**

Greece has no history of ratings or warnings concerning content on television. It therefore has no more detailed or stricter rules than those of EC Law concerning content harmful to minors do.

Following viewers' complaints, some private TV channels (i.e. Sky TV and Star TV) have in recent years introduced an acoustic warning for programmes containing violent or pornographic scenes which are shown during peak times. The acoustic warning is not accompanied by a visual indication of ratings before the programme is broadcast. The acoustic warning is not the norm and has certainly not established a pattern in the Greek broadcasting scene.

In line with Article 22 of the TWF Directive, Law 2328/95 provides for programmes that could harm to a limited extent (and not seriously) the physical, mental or moral development of minors to be allowed to be shown after 21.30 (less harmful) and after 24.00 (more harmful).

### **3.8 Ireland**

At present the two main bodies responsible for the regulation of content on TV are the RTE Authority, established in 1960, and the Independent Radio and Television Commission (IRTC), established in 1988. The IRTC is to be restructured and its role expanded under new legislation currently being drafted.

Although there is a range of statutory obligations, which broadcasters must respect, the ratings system (to the extent that it exists) could be said to be voluntary. Statute and codes of practice govern advertising, all of which is vetted beforehand. Advertising which would be likely to breach either statute law or provisions of the code of practice is not accepted. For example, the refusal of RTE and the IRTC to broadcast, in accordance with legislation, an advertisement for a religious event, was upheld by the Supreme Court earlier this year. Outside of television controls, advertising generally is governed by the Advertising Standards Authority of Ireland (ASAI), which monitors and regulates advertising in all media. Its members are the advertising agencies, and an annual levy is imposed, as are sanctions for breach of standards.

The system most used by the national public service broadcaster (the first national commercial television station only began broadcasting in September 1998) is simply not to select offensive or objectionable material in the first place. The requirements and responsibilities imposed in broadcasting legislation, along with its references to the national culture, demand that this be so.

Films and soaps, for example, are vetted well in advance. Where films or programmes contain violent or explicit sexual scenes or strong language verbal warnings are given beforehand or the strong language is bleeped out. Generally, however, the national public service broadcaster and, thus far, also the commercial sector simply choose suitable programming, conscious of the national psyche and moral and religious feelings.

The ratings system, to the extent that it exists at all, could be said to be descriptive and non-deterministic. It is simply indicated at the beginning of a programme that it contains explicit sexual scenes, sometimes harrowing scenes that some people might find upsetting, or that it contains strong language. It may be stated that it is not suitable for children but no age category is indicated.

### **3.9 Italy**

Until 1990 the law did not provide for any content-related regulation directed at

broadcasters, and the only specific provision was Article 13 of Law 161/1962, establishing the prohibition of broadcasting films which were denied a certificate or which were certified as unsuitable for minors under the age of 18. Law 223/1990 was the first to introduce a set of rules to be implemented by all broadcasters in compliance with the EC Directive 89/552/EEC. The law, in particular, provided a system of watersheds to protect minors from harmful or unsuitable films and programmes.

Section 10 of Article 15 of the Law 223/1990 deals with general programming and reads that broadcasters must not show programmes "which harm the psychological and moral development of children, contain gratuitous violence or pornography, or induce racial, sexual, religious or national intolerance". Commentators argued that this provision is more strict than the one formulated in the EC Directive. Section 11, 12 and 13 of the same Article deals with minors and the broadcasting of motion pictures. Section 11 reads that "it is prohibited to broadcast any motion pictures, which have been denied a certificate or have been certified as unsuitable for minors under the age of 18". Section 13 states that films that have been certified by the censorship committee as unsuitable for minors under the age of 14 can be broadcast only within a strict time period (between 10.30pm and 7.00am).

Law 327/1991 implements in Italy the European Convention on Transfrontier Television. It states that the latter's provisions have to be applied to every programme broadcast or re-broadcast either by a terrestrial, cable or satellite broadcaster. Article 5 sets forth that every transmitting party has to ensure that all programmes are compatible with the Convention's provisions. In particular, Article 7 reads that all programmes must be respectful of human dignity and fundamental rights. Moreover, these programmes cannot:

- be against decency;
- have a pornographic content; and
- excite violence or promote racial hatred.

Furthermore, any programmes likely to prejudice children and adolescents' physical, psychological, and moral development cannot be broadcast when, given the time of performance, children are likely to watch them.



Finally, with Law 451/1997, the Parliament instituted the following authorities:

- A Parliamentary Commission for Minors, whose responsibility is to monitor and control the implementation of existing regulations concerning minors' protection. In particular the Parliamentary Commission is entitled to request any information, data and documents from any person or entity dealing with minors' rights or development. On the basis of the material collected, the Commission refers to the Parliament, at least once a year, the results of its activity, advising on and proposing supplementary provisions and modifications to the regulations in force, if deemed appropriate or necessary.
- The National Centre for Minors, operating within the Prime Minister's Office, whose responsibility is to prepare a plan concerning any measures necessary to protect minors' rights and development.

The Fininvest - Mediaset Group, in compliance with the Federation of Radio Television Commercial Broadcasters (**FRT**) code of conduct, introduced a labelling system (i.e. visual symbols) on its networks to guide parents in the monitoring of programmes suitable for minors. As to their level of acceptance, it is difficult to assess whether they are duly followed by viewers or not - particularly given the limited information available so far about the audience. However, their presence at the beginning of every programme is likely to offer parents additional guidance to programmes' content as well as to awaken their attention.

The Code also states that the members of FRT are committed to broadcasting programmes inspired by positive civil and human values, respecting individual dignity, guaranteeing that these programmes do not contain scenes which might be disturbing to children and avoiding television or cinema trailers and promotional sequences unsuitable for children. Members are also committed to a ban on advertising of any products whose use might be harmful or dangerous for minors, such as drugs or tobacco products, during a protected slot (from 4 p.m. to 7 p.m.) or during any programme for children. Advertisements or trailers shown in the protected slot must, in all cases be free from any scenes which might be disturbing for children and young teenagers. Members are also committed to preventing the showing of any content, which contradicts the values of respect for human dignity,




during the fifteen minutes immediately before and after programmes dedicated to younger viewers.

Observance of the Code is guaranteed by a committee, set up by the signatory broadcasters and associations, and made up of six representatives from each group. The Committee examines any reported infringements of the Code, and promotes and organises outreach programmes aimed at raising critical awareness of the television message on the part of parents, teachers and educationalists.

In addition, in January 1994, Canale Cinque implemented a colour coding system. Since 16 February 1997, Italiana Uno and Retequattro have joined in Canale Cinque's colour coding scheme, using the same classification criteria and the same graphic symbols.

The so-called "traffic light" system is represented by the following three symbols:

**Figure 29: Canale Cinque Visual Icon System**

<b>Not suitable for children</b>		(A child is represented in the circle)
<b>Parental Guidance Advisable</b>		(A child and an adult are represented in the circle)
<b>Suitable for all</b>		(A child is represented in the circle)

As far as broadcasting of films is concerned, the rating granted for cinema viewing applies. Television films and fictional programmes that, given the violent or sexual content, may significantly impair minors are subject to Law 203/1995<sup>140</sup>, which states that producers, distributors and broadcasters who intend to transmit them during the daytime must apply to the censorship committee in order to obtain a certificate to do so. It is worth noting that, to date, this provision has not yet entered into force, because of the delay in appointing the competent sections

that will operate within the censorship committee. These sections will have the same composition and duties as the censorship sections that review films for cinema presentation.

Law 249/1997 entrusts the Authority of Communications with powers (i) to monitor compliance with laws relating to advertising, including the enactment of specific regulations governing subject matter; (ii) to guarantee that provisions concerning minors' protection are observed<sup>141</sup>; (iii) to consider advice and initiatives from the new *Consiglio Nazionale degli Utenti (CNU)*, a committee operating within the Communications Authority. The latter is composed of experts appointed by associations representative of different consumer categories. According to the law, these experts have to be specifically qualified in the legal, sociological, psychological or educational field and should be distinguished in the field of promotion of rights and dignity of individuals and needs of minors. It is worth noting that this *Consiglio* is entitled not only to advise but also to propose initiatives related to broadcasting.

The Code of Conduct adopted in 1997 sets forth an **evaluative** and mainly **non-deterministic** rating system. It states that although broadcasting of fictional programmes and films has to comply with all existing laws and regulations, it must also comply with self-rating guidelines established by each broadcaster in order to evaluate whether a film or a programme is deemed suitable for minors' physical and psychological safety. According to the Code, each broadcaster must entrust a supervisory committee to operate within its networks. Each committee will guarantee the broadcaster's implementation of all existing rules and will provide the broadcaster with a set of guidelines necessary to carry out the required evaluation of films and programmes. To date, however, the signatories have not appointed their internal committees. The delay is partly due to concerns about the guidelines' content, which each broadcaster will have to adopt in order to comply with the Code's provisions.

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<sup>140</sup> Law No. 203 of 30 May 1995.

<sup>141</sup> In this case the Authority must consider the provisions set forth by the existing self-regulatory codes and the opinion held by the parliamentary commission entrusted to monitor broadcasting services.

In general, bills on rating systems make reference exclusively to terrestrial operators, broadcasting general programmes. The following proposals exist:

- According to the “Propořal in favour of friendship between children and TV”, a self-regulatory Committee should be instituted, the tasks of which should be the following: (i) to advise the Communications Authority with reference to the implementation of a set of guidelines concerning visual symbols to be enacted by any broadcaster; (ii) to monitor broadcasters’ activity; (iii) to apply appropriate penalties to broadcasters; and (iv) to publicly disclose the applied penalties. As far as monitoring of broadcasters is concerned, the Committee should be entitled to carry out investigation of them when: (i) they do not use visual symbols concerning the suitability of the programmes broadcast; (ii) symbols are utilised irregularly or not sufficiently; (iii) television advertisements do not comply with standards concerning their suitability for minors; (iv) programs not suitable for minors are broadcast during a prohibited time period.
- According to a Bill drafted in 1996 by Senator Salvato, a committee of Guarantors should be instituted, operating within the Office of the Prime Minister. The committee should be competent in the following matters: (i) verify that TV programs do not prejudice moral or physical development of minors, suggesting or inducing them to intolerance and discrimination based on race, sex, religion or nationality; (ii) promote studies and research; (iii) identify time period suitable for minors under the age of 16; (iv) prohibit during that time period broadcasting of unsuitable programs; (v) apply penalties to broadcasters that infringe orders.
- Bill 115/1994<sup>142</sup> concerning programs suitable for minors, stated that prior content censorship should be applied to broadcasters in order to protect minors from images, messages and language inducing or suggesting violent conduct.

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<sup>142</sup> Bill 115 of 21 April 1994.

### 3.10 Luxembourg

The public authorities are in favour of a self-regulatory regime. Regulatory measures may invite broadcasters to adopt a visual icons system without mandating what this obligation may contain.

Provisions of the new “Television without Frontiers” Directive have not yet been incorporated into domestic law. Debate, at this stage, seems to favour a flexible formula, which would aim to take up the provisions of Article 22. The actual trend is to allow broadcasters to organise their own signalling system. The choice between an acoustic warning and visual icons is left to the discretion of the broadcasters. Nevertheless, the *Conseil national des programmes* (CNP), in the case of “*Die heilige Hure*”<sup>143</sup> has expressed its preference for the French system.

In addition, the CNP salutes “the fact that in France trailers for the works must not contain scenes likely to harm the sensitivity of the youth audience”, whereas on RTL these kind of films are “publicised throughout the day by means of advertising slots, which awaken the curiosity of a child and youth audience to whom they are not directed”.

### 3.11 The Netherlands

In 1983 the following was added to Article 7 of the Dutch Constitution:

"Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast."

In 1985 a proposition was made for a Media Act, which was implemented in 1987. The *Commissariaat voor de Media* (CvdM)<sup>144</sup> became the executive institution responsible for monitoring compliance with the Act by the public and commercial broadcasters of television or radio. In 1989 the European directive, “Television without Frontiers” appeared, and in 1991 the Media Act was amended. In a press

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<sup>143</sup> Cf. point V for the Opinion of the CNP.

<sup>144</sup> <http://www.cvdM.nl>

release of 13 February 1998, the Dutch Ministry of Education, Culture and Sports announced that the European directive would be incorporated into Dutch legislation.<sup>145</sup>

The CvdM's other tasks are to stimulate discussion, co-ordination and co-operation between those organisations, which the Media Act has made responsible for the programmes of national broadcasters, and business,<sup>146</sup> to provide the responsible Minister with relevant information,<sup>147</sup> as well as with an annual report<sup>148</sup>.

The CvdM consists of one president and two to four other members, who are appointed and discharged by Royal Decree and by nomination of the responsible Minister. The appointment is for a period of five years and it is not possible to be reappointed. All decisions are made by a majority of votes. The Minister approves the budget and the annual financial balance.

The Media Act provides the formal regulatory framework within which the CvdM regulates the content of Dutch radio and television. The Act does not address the issue of human dignity, and there are only two articles concerning the protection of minors. The first, Article 52a, paragraph 2b, states that the broadcasting of programmes for children younger than 13 years of age may not be sponsored. The second, Article 53, applies to all licensed television broadcasters, and deals with the time of broadcasting of films (or parts of films). The article states that films that have been rated by the NFK<sup>149</sup> for an audience over 12 years of age may not be shown before 8pm and that films which have been classified "16 and over" may not be broadcast before 10pm. Furthermore, the age classification must be announced before broadcasting. A classification given by the NFK is binding.

The CvdM takes the view that, where there are unclassified parts of a film, which has been rated by the NFK, the overall rating should apply. Should a broadcaster

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<sup>145</sup> <http://www.minocw.nl/pers98/9802018.htm>

<sup>146</sup> Article 9a

<sup>147</sup> Article 9b

<sup>148</sup> Article 9c

wish to show these parts at an earlier time than the classification permits, it should have these parts classified by the NFK. The CvdM's opinion is that it will actually become possible for broadcasters to have unclassified parts of films rated or old films re-classified. Though it has been suggested that Article 53 could be interpreted as permitting an unclassified violent part of a film, which has an overall classification, to be broadcast at an earlier time than allowed by the article for the whole picture, this is contrary to the intention of the legislator. Such an interpretation is also not in accordance with the NFK's understanding: that classification of a film applies to the whole film and individual scenes must be seen in the context of the film. In addition, the CvdM takes the view that the provisions of Article 53, with regard to broadcasting times, leave no leeway to make exceptions for other programmes, such as news programmes or even film review programmes showing extracts from films. The question is raised, when monitoring compliance with the article by these kinds of programmes, as to whether the object of protecting minors is more important than freedom of the press.<sup>150</sup> In fact, the article may be viewed as contradicting Article 7, paragraph 2 of the Constitution, which concerns freedom of speech, and which forbids prior inspection of radio and television programmes. There has not been a legal review of this conflict, probably because it has not yet been enforced.

Article 53 applies in the same way for films, film clips or other programme parts (for example, film quizzes, and television advertising), which are not rated by the Board and which the broadcasting organisation thinks are not appropriate for viewers younger than 12 or 16 respectively. The broadcasters themselves may decide whether the rest of their programmes are appropriate or not. Every year the Media Authority examines the broadcasting times of unclassified parts of films and other programmes and reports on them in the Annual Report.<sup>151</sup>

Although the broadcast organisations are not obliged to, they are requested by the CvdM to announce the age classification before broadcasting a film, whether

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<sup>149</sup> Dutch Board of Film Classification (See Cinema section)

<sup>150</sup> *Commissariaat voor de Media* (1996), *Beleidslijn Televisie en Jeugd*, p. 3. Hilversum.

<sup>151</sup> *Commissariaat voor de Media* (1996), *Beleidslijn Televisie en Jeugd*, p. 4. Hilversum.

classified by the NFK or the broadcast organisation itself. The public broadcasters comply with this request.

Article 53 of the Media Act is part of a section that applies to the public broadcasters, but its requirements are extended to commercial broadcasters by Article 71g, paragraph 1. Article 73, paragraph 2 states that if a pay-TV programme shows films or parts of films classified as “12 and over” or “16 and over”, the broadcaster must announce the classification before the showing.<sup>152</sup>

In letters of 21 December 1995, the CvdM called on all Dutch broadcasting stations to comply with article 53 of the Media Act. The letters stated that the CvdM would take “appropriate measures”, should broadcasters not comply with the regulation. Article 135, paragraph 1 of the Media Law states that the CvdM can impose an administrative sanction (a fine of up to 50,000 guilders) if a broadcaster does not comply.<sup>153</sup>

The CvdM have examined how the public and commercial broadcasters comply with their responsibilities for rating films and other programmes, as well as the decision on broadcasting times, and reported its findings. In its conclusions the Authority stated that most Dutch public broadcasters comply correctly with their responsibilities. However, they found that, as far as the Dutch commercial broadcast organisations were concerned, there is not sufficient compliance. Furthermore, the report indicated that two commercial broadcasters and a Dutch Music Channel needed serious interference with their programming policy to comply with their responsibility.<sup>154</sup>

In May 1995, the Under-Secretary for Culture wrote a letter asking a representative of the public broadcasters, the *Nederlandse Omroepstichting (NOS)*, to reflect on measures to prevent harmful effects from violent programmes. The overriding opinion is that parents/guardians are responsible for the protection of their

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<sup>152</sup> *Commissariaat voor de Media* (1996), *Beleidslijn Televisie en Jeugd*, p. 2. Hilversum.

<sup>153</sup> (1996) Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

<sup>154</sup> *Commissariaat voor de Media* (1997), *De Omroep Gekeurd*, p. 13. Hilversum.



children against television violence: however, the Under-Secretary suggested the addition of programme guides containing information on the violent content of programmes. In its response, the NOS stated that public broadcasters are well aware that violent programmes may damage children, but they took the view that the increase of violent programmes is due to the commercialisation of television. The NOS reject the proposal for information about violence in programme guides, due to the subjective nature of such information, but promise to keep the issue constantly in mind.<sup>155</sup> In the meantime according to the CvdM, the public broadcasters are prepared to publicise the film's classification in the programme guides and on teletext services.<sup>156</sup>

The blueprint, "*Niet voor alle Leeftijden*"<sup>157</sup>, prepared by the Ministry of Public Health, Welfare and Sports, states that the State Secretary of Education, Culture and Science is deliberating with the NOS and the Vereniging voor Satelliet, Televisie, radio programma Aanbieders (**VESTRA**), the organisation representing commercial broadcasters, on a self-regulatory system to enable the implementation of the European Directive. It is probable that *Nederlands Instituut Classificatie Audiovisuele Media* (**NICAM**), the Dutch Institute for Classification of Audiovisual Media, will be set up. The Act on Film Exhibition would then be substituted by a system of self-regulation.

As far as advertising is concerned there is no specific legal framework but a self-regulatory system provides some rules. The *Stichting Reclame Code* (**SRC**)<sup>158</sup> is an organisation representing all parties involved: broadcasters, newspaper organisations, advertising agencies, etc. It is the SRC's objective to ensure responsible advertising, and to achieve this it has drawn up an Advertising Code. This Code, together with a number of special codes for particular product types sets out the conditions to which advertising must adhere.<sup>159</sup>

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<sup>155</sup> (1996) Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

<sup>156</sup> *Commissariaat voor de Media* (1996), *Beleidslijn Televisie en Jeugd*, p. 5. Hilversum.

<sup>157</sup> *Notitie* (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 23. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugd beleid*.

<sup>158</sup> Foundation Advertising Code

<sup>159</sup> (1996). Prepared for the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

If an individual is of the opinion that a certain advertisement does not comply with the code, he or she can report a complaint by writing to the SRC. If it finds that the complaint is justified, the SRC will recommend that the advertisement in question not be used again. Because all organisations involved in any way in advertising are represented in the SRC, and most of them adhere to the Code, an advertisement or campaign will effectively be banned as a result of such a recommendation.

The sections in the Code concerning the protection of human dignity and minors are<sup>160</sup>:

Section 2

Advertising must be in accordance with the law, truth, good taste and decency.

Section 3

Advertising may not be contrary to the public interest, public order or good manners

Section 4

Advertising may not be gratuitously offensive, or entail a threat to mental and/or physical public health

Section 13.1

Advertising that is evidently aimed (partly or totally) at minors, should not contain elements in word, sound or image, that may harm minors in any way, or by which advantage is taken of their inexperience or naivety.

Section 13.2

Television-advertising may not cause minors moral or physical damage and must, for their protection, therefore meet the following conditions:

- a) it may not directly stimulate minors to purchase a certain product by taking advantage of their inexperience or naivety;
- b) it may not directly stimulate minors to persuade their parents or others to purchase advertised products;

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<sup>160</sup> Idem.

- c) it may not take advantage of the special trust that minors have in parents, teachers or others;
- d) it may not, without good reason, show minors in dangerous situations.

### 3.12 Portugal

Prior to the 1974 revolution there was no need for a rating system since the sole broadcasting operator, RTP, had its own in-house censors who decided what could and could not be broadcast. The growth of more risky programming after 1974 brought about the introduction of a simple warning symbol, '0', and a verbal warning before the showing of violent, shocking or pornographic programmes. There was also an understanding that 'daring' material could be broadcast late at night with a permanent warning symbol.

RTP had sole responsibility for the use of these warnings and the watershed. Even the official cinema classification did not enforce a warning, but operated as a guideline. However, as RTP remained under the close scrutiny of the government there was no need for detailed external rules or legislation regarding content. Legislation introduced in 1990 and 1998<sup>161</sup> placed restrictions on the broadcasting of violent, shocking or pornographic material, but has not attempted so far to define these concepts and no regulatory body has had the will or resources to enforce the legislation.<sup>162</sup> The entry of private operators into the market increased the violent and shocking content of overall television output as all broadcasting companies fiercely fought for audiences.

Having no means to diminish the levels of violent material in the broadcasting system, the *Alta Autoridade para a Comunicação Social* decided to promote an agreement between the three operators about the representation of violence on

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<sup>161</sup> The first Television Act (Law 58/90), Article 17 deals with forbidden programmes. It states that pornographic and obscene programmes are prohibited. It is also forbidden to broadcast programmes which may encourage violence, crime, or which generally violate the fundamental rights, freedoms and civil rights provided by the Portuguese Constitution. Under the same article, any programme that might shock sensitive individuals and minors must be broadcast after 10pm. All violent/shocking content must be accompanied by verbal warnings and a '0' symbol. The current television law (31-A/98 which revokes law 58/90) has not introduced important changes at this level

<sup>162</sup> *Alta Autoridade para a Comunicação Social, Direcção Geral da Comunicação Social* - later *Instituto da Comunicação Social*

television. The agreement, signed on 9th July 1997, states that in view of their social role, constitutional and legal obligations, television operators have decided to take the following measures concerning the representation of violence:

- ❑ Broadcasters shall identify with a common symbol programmes which are not suitable for sensitive elements of the public to enable the public to make informed choices.
- ❑ Broadcasters shall inform viewers about the common symbol in the press releases they provide to television magazines as well as in advertisements/announcements about the forthcoming programmes requiring such a symbol.
- ❑ Broadcasters shall prepare two promotional slots for violent series or films - one with no violent images to promote the film or series before 10pm and another one with material acceptable for the period after 10pm. Both slots should include the symbol identifying its characteristics.
- ❑ Broadcasters declare they will pay particular attention to promoting, on the air or by other means, programmes for children and young people in order to keep parents and educators adequately informed.
- ❑ Apart from fiction and entertainment, the agreement looks at factual programmes. At this level, broadcasters state that the journalistic representation of violence will follow ethical rules and will not explore pain, morbid feelings or sensationalism.

The presence of a visual symbol '0' throughout the duration of a programme denotes violent/shocking content. Such material should be broadcast after 10pm, and is accompanied by verbal warnings.

### **3.13 Spain**

Though TVE, the national public service broadcaster, applied an age-based rating system from 1963 until the mid-eighties for sexually explicit films, it was considered to be too strict, and a product of old values and the spirit of censorship prevalent during the Franco regime. For this reason some Spanish broadcasters are resistant to the idea of rating, anticipating negative public reaction. However, others, such as *Antena Tres*, and consumer associations, such as Confederación Española de Asociaciones de Amas de Casa, consumidores y Usuarios

(CEACCU), Agrupación de Telespectadores y Radioyentes (ATR) and Asociación Usuarios de Comunicación (AUC), consider that many parents would welcome some kind of guidance as to whether programmes are suitable for their children. They argue that visual warnings are not censorship as they are not compulsory vis-à-vis the parents, but just a useful tool.

Article 17.2 of Law 25/1994 states that programmes that may be harmful to the physical, mental or moral development of minors or and any that include pornographic scenes or gratuitous violence, shall include both visual and acoustic warnings about their contents. Broadcasters may simply provide a warning, but they can also provide ratings, which give parents more information about the kind of programme broadcast. However, in practice only a few broadcasters provide warnings or ratings, and no sanction proceedings have been brought against television broadcasters for the infringement of legal provisions related to warnings. The broadcasters that do provide any warnings or ratings are mainly TVE, Canal Plus, and the digital satellite television platforms, *Via Digital* and *Canal Satélite Digital*. *Antena Tres* is currently studying the implementation of a warning and rating system, that will soon come into operation.

The same Article states that the slots dedicated to trailers of programmes that may be harmful to the physical, mental or moral development of minors or, in any case, all those that include pornographic scenes or gratuitous violence, must include both visual and acoustic warnings about their content. However, in practice neither warnings nor rating systems used by broadcasters have been applied to advertisements.

TVE classifies some of its programmes (mainly films, but sometimes also television series, sitcoms, etc.) according to an **evaluative, non-deterministic** rating system, based upon age groups that are very similar to those used for the rating of films<sup>163</sup>. The ratings appear at the beginning of the programme, and after the advertising breaks.

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<sup>163</sup> There are only some minor changes: for example, instead of using a "-13" age group, TVE uses "-12".

Canal Plus uses an **evaluative, non-deterministic** rating system to rate its films, based upon the same age groups used by the CCPC. The age groups are identified by means of coloured keys: green key - for the public in general; blue key, -13; orange key: -18; violet key - "X" rated films. These keys appear before films are broadcast, as well as on Canal Plus teletext and in the magazine sent by Canal Plus to its subscribers.

*Via Digital* classifies all the programmes provided by this satellite digital TV platform. It uses a **non-deterministic** rating system, based upon two rating criteria: an **evaluative** criterion, based upon age groups: (all members of public, -14, -18) and a **descriptive** criterion (documentaries, sports, series, sex, etc.). The rating information appears at any time by pressing one of the remote control buttons. The rating information is also included in the printed TV guide sent to customers.

*Canal Satélite Digital* uses a **descriptive, non-deterministic** system, which differentiates between different content categories: documentaries, films, series, information, sport, etc. In each of these categories, there are sub-categories. For example, in films there are sub-categories such as drama, comedy, horror, musical, science fiction or "X" rated films. There is a category called "various", which is used for programmes that do not fall easily into a specific group, and also for programmes which have not been specifically classified. The rating information available, as well as some explanation of the programme's content, can be made to appear on the screen at any time by pressing one of the remote control buttons. The ratings are also included in the printed TV guide sent to customers.

According to Article 6 of Catalan Decree 265/1997, Catalan Cable TV operators must use visual warnings (a red triangle for programmes which may harm the sensitivity of minors due to their physical or psychological violence or eroticism; two red triangles for programmes which may harm the sensitivity of minors, due to their pornographic nature or gratuitous violence). The warnings must be shown during the first five minutes of those programmes that include violent or sexually explicit scenes. Cable TV operators will start to provide their services in Catalonia

soon.

It is relatively easy to classify programmes according to the most commonly used rating system (age groups), especially when taking into account the fact that films and videos have already been rated by the CCPC. However, there has been a dramatic increase in the production of television programmes, and it is difficult to foresee how this system may be applied to the volume of future production. The feasibility of applying this system (or more complex and useful ones, such as those used by digital platforms, which also include a description of the content of the labelled programme) will depend on the determination of whoever is responsible for rating the programmes: digital platform operators or the producers of the programmes broadcast by the platform.

### 3.14 Sweden

The legislation for television was developed in a similar way to that for radio; that is, in a contract with the State the public service broadcaster *Sveriges Television* (SVT), was mandated to meet certain standards for the content of programmes. The major principle applied to the relationship between the company and the State then, and to a certain extent today, is called “regulated independence”.

During the period 1986–1996, Swedish legislation was amended to accommodate satellite and commercial private television in addition to public broadcasting services. The amended legislation enabled cable networks to distribute different television channels transmitted by satellite. Commercial broadcasters were allowed to relay terrestrial-based transmissions on condition that they agreed to satisfy certain standards relating to content.

The new Radio and Television Law, which came into force at the beginning of 1997, replaces several previous laws, which regulated terrestrial, cable and satellite broadcasting. The Radio and Television Law contains regulations on, *inter alia*, permits and registration, certain general standards relating to content for different forms of broadcasting, advertisements and sponsoring, as well as examination and supervision. The law also regulates the standards applying to companies broadcasting by permission of the Government.

All terrestrial channels require a permit from the Government to broadcast; currently only two companies (SVT and TV4) have such a permit. SVT broadcasts on two channels and TV4 on one channel. The conditions for receiving a permit stipulate that the company must exercise their broadcasting rights in an impartial and objective manner. Furthermore, the broad principles of freedom of expression and freedom of information shall apply to television. In addition, the company shall take into account the specific influence of television in making decisions on the subjects and type of programmes it broadcasts, as well as in determining the times of broadcast. This refers, *inter alia*, to the need for caution in the production of programmes as regards violence, sex and drugs or subject-matter, which appears to be discriminatory against people of a certain gender or ethnic background. These conditions for a permit are obligatory.

The regulations of the Radio and Television Law also apply to television companies based in, and broadcasting to, Sweden from satellite. In addition, these companies must register their activities with the *Radio och TV-verket*, the Department of Radio and Television.

Television companies and cable network operators make their own decisions as to the programmes they broadcast and the broadcast times. They do so on the basis of the Radio and Television Law, the regulations in the conditions for permits (where applicable), as well as the practice of the *Granskningsnämnden*, the Swedish Broadcasting Commission. In chapter 6, paragraph 2 of the Radio and Television Law it states: "Programmes with protracted and realistic depictions of violence or with pornographic pictures may not be broadcast on television at such a time or in such a manner that entails a significant risk that children will see the programmes, unless this is justified in view of the particular circumstances." In practice, the rules oblige companies to schedule programmes after 9pm, when the content might frighten or agitate children. A warning may also be given directly before the programme is broadcast. In certain cases, companies use the age categorisation which *Statens biografbyrå* applies to films shown in cinemas in Sweden.

When the content of television programmes might be seen as violent or in any



other way objectionable to the public or certain portions of the public, in general an oral warning is given at the same time as programme announcements. This system has been used since the early days of Swedish television.

Television stations are also regulated in retrospect by the *Granskningsnämnd*. If they violate the above-mentioned law, the *Granskningsnämnd* publicises its ruling. It can also, in certain cases, oblige the companies to publicise its decision, as well as apply to the court for a judgement on a particular fine or penalty.

At present, changes to the existing control and regulation system for television broadcasts are not being widely discussed, although some attention is being given to the question of the Swedish prohibition on advertising directed at children under the age of 12. The current discussion regarding digital TV focuses mainly on questions of terrestrial versus satellite broadcasting, access to frequencies, the distribution of permits and technical standards. No special juridical treatment of digital TV has so far been developed.

It is likely, however, that the Swedish public would not approve of a visual symbol being displayed on screen during the entire broadcast of a film. On the other hand, the Swedish public might accept an acoustic warning followed by a notice about, for example, an age limit.

### 3.15 United Kingdom

Statutory control resides with the Independent Television Commission (ITC), and each programme licensee has to comply with its code requirements. Under its powers, derived from the Broadcasting Acts of 1990 and 1996, the ITC:

1. issues licences that allow commercial television companies to broadcast in and from the UK – whether conventional aerials, cable or satellite receive the services; and whether it is delivered by analogue or digital means. These licences vary according to the type of service, but they all set out conditions on matters such as standards of programmes and advertising;
2. regulates these services by monitoring broadcasters' performance against the requirements of the ITC's published licences and codes and guidelines on programme content, advertising and sponsorship and technical performance.

- There is a range of penalties for failure to comply with them;
3. has a duty to ensure that a wide range of television services is available throughout the UK and that, taken as a whole, these are of a high quality and appeal to a range of tastes and interests;
  4. has a duty to ensure fair and effective competition in the provision of these services;
  5. investigates complaints and regularly publishes its findings.

The Board of Governors of the BBC is responsible for ensuring that BBC programme makers observe the Producers' Guidelines. The Governors review the content of the Producers' Guidelines annually and revise them as necessary. In addition, they regularly monitor the BBC's compliance with the Guidelines, with a formal review taking place twice a year.

Furthermore, complaints about violence, sexual conduct or a matter of taste and decency will be considered by the Broadcasting Standards Commission (**BSC**) members (appointed by the Secretary of State for Culture, Media and Sport). In reaching a decision, the Commission's code of practice and research into public attitudes are considered alongside the material and its context. Complaints must be made in writing and need to be made within 2 months of a television broadcast.

The watershed has been in use in the UK by terrestrial broadcasters for nearly 30 years<sup>164</sup>. It is set between 9pm and 5.30am, and within that period there are progressive gradations in programme content. Most cable and licensed satellite services operate with the standard 9pm – 5.30am watershed, with the exception of specially encrypted services with restricted availability to children, which have two watersheds: one at 8pm (equivalent to the 9pm change on other channels) and

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<sup>164</sup> Although British TV has a "watershed" hour of 9pm for material not considered suitable for children, almost all children over 11 watch after that time. 60 per cent of those over 5 watch after 9pm during the week, and 80 per cent do so at weekends. Almost 83 per cent of 13 and 14-year-olds (and 60 per cent of all children) have TVs in their bedrooms. 62 per cent watch TV before school every day. One in four children owns a VCR and uses it to tape late-night "X-rated" programmes (in 1994 only 14 per cent owned VCRs.). Boys aged 7 and 8 are the most likely to engage in illicit taping.

Source: annual survey by ChildWise Monitor, a youth survey group. Reported in *The Ottawa Citizen*, April 13, 1998

another at 10pm, when material of a more adult nature may be shown. Other cable and licensed satellite services are expected to follow similar standards to the terrestrial channels.

The ITC believes Pay Per View services give subscribers greater choice over what is available to view in the home. Given their stricter security systems (PIN Code), the watershed is not so necessary. Provided that a suitable protective system exists, “18” rated films are permitted to be broadcast at 8pm, and “12” and “15” rated films may be shown at any time. Similar arrangements will apply to variations of the Pay Per View system, such as (Near) Video on Demand.

The Joint Working Party on Violence on Television, established in 1996 by the BBC, the ITC and the BSC, following a meeting with the then Secretary of State for National Heritage, examined measures for protecting viewers from harmful content. In its report it concluded, with regard to acoustic warnings, that: “Though mindful of the risk that too frequent advisory information can diminish its impact, it urges the broadcasters to continue to improve the amount and quality of advice they give to viewers. For example, it found that the wording of some warnings was unnecessarily elliptical. Descriptions applied to programmes such as 'hard-hitting', 'candid' and 'uncompromising' are too vague to be of any real use. Broadcasters still have some way to go in increasing the transparency of wording to ensure that viewers clearly recognise warnings about material which may upset or concern them (whether sexual, violent or involving strong language). Viewers need specific information on which they can act. Broadcasters have to find ways of delivering this, while avoiding forms which turn information into an inducement to younger viewers.”<sup>165</sup>

Concerning the use of symbols the Working Party did “...not wish to discourage the adoption of these techniques if broadcasters judge that they are helpful to their viewers, but believes that they have certain drawbacks. Symbols are a very basic

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<sup>165</sup> *Violence and the Viewer: Report of the Joint Working Party on Violence in Television 1998*, BBC, BSC and ITC.

and limited mechanism, which may not be as effective as a specific description of problematic content<sup>166</sup>.

Pre-transmission clearance and rating of commercials is handled by an organisation set up and funded by the broadcasters themselves, the Broadcast Advertising Clearance Centre (**BACC**). With the exception of some categories of local advertisements, representatives of the BACC must view every television commercial before approval for transmission can be given. Approval may be subject to conditions regarding transmission times, e.g. the watershed. The BACC works closely with the ITC and is constantly taking decisions based on the requirements of the ITC Codes. The resulting “case-law” is reflected in its Notes of Guidance<sup>167</sup>, which offer detailed explanation of how the principles set out in the ITC Codes are interpreted, based on practical day-to-day experience. They also contain a statement of the broadcasters’ own principles in areas where these go beyond the basic requirements of the Codes. The final arbiter of acceptability remains however the ITC.

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<sup>166</sup> The debate about parental control, and especially visual sign posting, is dominated within the UK by the so-called “Red Triangle” paradigm. In 1986, Channel 4 showed a series of films known unofficially as the “Red Triangle” series. These were all 18-rated films, which would previously have not been shown on television due to their explicit content. A red triangle in the left-hand corner of the screen “sign posted” the film throughout its duration. The idea was that this would deter those who were easily offended from watching. However, it had the effect of attracting viewers, and the series became something of a cult. The National Viewers and Listeners Association was appalled, and lobbied MPs. As a result a Home Affairs Parliamentary Committee hearing took place on the matter, in which the Committee was said to be appalled by graphic scenes of buggery in one of the films. The “Red Triangle” series was never reprised after that controversy, and it has left a strong reluctance to introduce visual symbols in the UK.

<sup>167</sup> See <http://www.bacc.org.uk>

## 4 Internet rating systems

### 4.1 Austria

In Austria, there is no code of practice specifically dealing with on-line services. However, general rules of civil law, copyright law, criminal law, media law, telecommunications law, trade law and other areas of law are mandatory and apply to all on-line services. There is no Austrian institution which systematically rates content available on-line with a view to protecting minors.<sup>168</sup>

Though filtering software is easily available via the Internet<sup>169</sup>, it does not play an important role in Austria. One reason may be that filtering software which blocks Web pages with offensive words is of limited use when it only recognises English. However, the main reason seems to be that at present, the percentage of Austrian households with Internet access is still not very high<sup>170</sup>, and children who surf the Web without an adult present are not as common as in other countries, either at school or at home. Those parents whose children do surf the Web on their own do not seem to be aware of what children may come across on the Internet – or they simply do not care. There is much discussion about illegal content (mainly child pornography) but very little discussion about harmful content.

As early as in 1997 the *Bundesministerium für Inneres* (Federal Ministry of the Interior)<sup>171</sup> established a central office to which “netizens” could report Web or news group content which they deemed illegal (*Meldestelle Internet*). Nowadays there are two such offices: one fighting children pornography (*Meldestelle Kinderpornographie*) and the other fighting neo-nazi activities (*Meldestelle NS-Wiederbetätigung*). As well as traditional means of communication, these organisations can be notified by e-mail of texts or pictures thought to be illegal.

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<sup>168</sup> In the US there are such sites, e. g. <http://www.cyberangels.org>. Cyberangels is the name of a volunteer Internet watchdog organisation that maintains lists of kid-friendly sites.

<sup>169</sup> See <http://www.cyberpatrol.com> (Cyber Patrol), <http://www.netnanny.com> (Net Nanny), <http://www.surfwatch.com> (SurfWatch) and some others.

<sup>170</sup> For up-to-date figures see Austria Internet Monitor at <http://www.integral.co.at/aim>.

<sup>171</sup> The Ministry's home page is located at <http://www.bmi.gv.at>.

Only recently the Internet Service Providers Austria (**ISPA**)<sup>172</sup> established their own hot line<sup>173</sup> for the same kinds of illegal material. According to a statement on the ISPA Web site, notifications concerning other kinds of illegal content will not even be processed, let alone harmful but legal content.

#### **4.2 Belgium**

The code of ethics for telecommunication services established a rating system based on prefixes, whereby, for example, the prefix 077 is automatically applied to adult services. Moreover, Article 20 specifies that the “content of the services dedicated to minors must be adapted to their age and must respect their rights and interests”. In addition, “services dedicated to minors and the promotion of these services must not contain any information that may harm or exploit their credulity, their lack of experience or discernment”.

Belgacom has also proposed a free blocking system for services with the 077 prefix to the population of Belgium. The labelling system is judged to be too complex for the Internet. Given its international nature, a global solution is preferred.

#### **4.3 Denmark**

So far the discussions in Denmark have mainly been inspired by the approach of other countries. There is a prevalent fear that the censorship practised in other countries may also be the route taken in Denmark, which would run contrary to the Danish way of thinking.

The abuse of time spent on school computers by children who use it for chatting or to find "forbidden" home pages causes problems for teachers. According to a number of interviews with teachers, they are of the opinion that all they can do is appeal to children to use the Internet for "reasonable" purposes only, as the Internet has so much potential for learning that it is of no use to impose particular prohibitions.

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<sup>172</sup> The ISPA's home page is located at <http://www.ispa.at>.

The same is true of libraries. There are no common rules for libraries vis-à-vis controlling children's use of computers, but the librarians appeal to the children's sense of responsibility. Some libraries are conducting experiments to find out how they may use filters or other control devices.

For family use, some computer experts have publicly suggested that - even if there are several computers in the family - it should only be possible to use the Internet on one common family computer. In this way parents will have a degree of control.

#### **4.4 Finland**

No content legislation for on-line services has been completed in Finland, but such services are dependent of the requirements of law and order. Normal sanctions may be applied if criminal activities emerge on the Internet. The Constitution, the Penal Law and the Civil Law can all be used to prosecute crimes on the Internet. For instance, a young man was charged this year in Finland for offering paedophilic materials via the Internet.

The majority of pornography, however, is not free of charge, and is therefore only accessible by registering giving a credit card number, which generally prevents children from accessing those sites.

In the proposal for law prepared by the Committee on Freedom of Speech at the Ministry of Justice (3/1997) a liberal attitude and horizontal treatment of all media is suggested. The proposal has however several problematic points, which have been widely criticised, particularly by information technology professionals. For example, the committee proposes that network publications should have editors of full legal age, and that on-line programmes should be recorded for three months. The proposal leads to interpretation problems as well as problems of unequal treatment of different users of the Internet according to their age.

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<sup>173</sup> Tel. 07110/900121, E-mail [hotline@ispa.at](mailto:hotline@ispa.at). More information can be found at <http://hotline.ispa.at>.

In 1997, the working group TIVEKE, at the Ministry of Transport and Communications published a report concerning public communication on information networks. In this report two new concepts were adopted to clarify the handling of public communication on information networks: public personal network communication, and content distribution (mass communication). However, public personal network communication cannot be totally excluded from the sphere of rules on electronic mass communication. According to the working group, more efficient control would be directed towards communication that is large-scale, professional and regular.

The TIVEKE working group maintains that the self-regulation of information networks (Internet) signifies co-operation between parties involved on information networks to prevent the publication and spreading of harmful and criminal content. The objective is for the Internet as a community to restrict the spreading of harmful and criminal materials within the network. The working group suggests that content regulation should be realised solely by bodies who have the right to carry on such measures. Such bodies are content producers, final service providers, users and authorities. Those who technically transmit data have no right to restrict the transmission of data. Unauthorised restriction may qualify as a disturbance offence in the field of electronic communication.

Measures relating to regulation of content recommended by the TIVEKE working group are as follows:

- ❑ content producers and final service producers shall prepare common rules on what kind of content is not acceptable to produce and publish
- ❑ as regards users and minors, the opportunities of parents and teachers to have influence on the content being received will be increased
- ❑ courts will be given authorisation to impose the exclusion of criminal contents from publicity or to have content distribution interrupted
- ❑ co-operation between the authorities of different countries shall be encouraged to prevent distribution of criminal content
- ❑ the activities of authorities can be supported by establishing hot-line services

The development of an effective control system has so far been discouraging. The



realisation of a coding system covering different Internet contents is very difficult. No national entity is responsible for the rating system for on-line services. The vital questions at present: Who should provide the ratings needed for technical devices? What is unsuitable for children? Who should supervise coders? Under what circumstances would it be possible to shut down a site? The Finnish Internet Association maintains that it is up to content producers to provide the ratings. However, producers' self-regulation is ineffective. On-line service experts maintain that a preliminary screening is not possible.

#### 4.5 France

General laws, such as the Criminal Code, apply to protection of minors on the Internet, particularly Article 227-24, which states in its first line that "To manufacture, transmit or disseminate, by any means and whatever the medium, a message depicting violence or pornography or likely seriously to damage human dignity, or to trade with such message, is punishable by a three year prison sentence and a F500,000 fine, where this message is likely to be viewed or seen by a minor".

However, apart from child pornography<sup>174</sup>, there are no specific provisions regarding regulation of the Internet for the purposes of protecting minors from harmful content.

Nevertheless, the so-called "*Loi fillon*" of 26 July 1996,<sup>175</sup> establishing a legal framework for the telecommunications field, introduced, *inter alia*, the obligation for anyone, whose business is to provide connections to one or more audiovisual communication services, to offer its clients technical means, which permit them to either restrict access to certain services or to select them. This provision was integrated into the Law of September 1986 relating to freedom of communication, and constitutes its new Article 43-1.

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<sup>174</sup> Article 227-23 introduced by the law n° 98-468 of 17 June 1998. Official Journal of 18 June 1998

<sup>175</sup> Law n° 96-659 of 26 July 1996 art. 15. Official Journal of 27 July 1996.  
<http://www.internet.gouv.fr/francais/index.html>

Recently, the *Conseil d'Etat*, the supreme French administrative jurisdiction, published a report dedicated to the Internet and digital networks.<sup>176</sup> It noted that existing texts, the Criminal code or specific laws were sufficient to punish infringements relating to civil rights, data or consumer protection. It noted also that the first case law had transposed traditional rules to the network.

In France, self-regulation by Internet operators has been the subject of several proposals and initiatives, but no concrete solutions in the matter of content deontology have been reached. There was an attempt within the Law of 26 July 1996 to create a *Conseil Supérieur de la Télématique*<sup>177</sup> and to make the deontology framework more precise, but these provisions were invalidated by the Constitutional Council<sup>178</sup>

In March 1997, the so-called "Beaussant report", from the *Groupement des Editeurs de Services en Ligne (GESTE)*<sup>179</sup>, introduced an Internet Charter,<sup>180</sup> the main aim of which is to set up an Internet Council. It contains a section dedicated to illegal content and another relating to harmful content.

According to the Charter, the Internet Council would be the recipient claims relating to illegal content from users and providers and could even act on its own initiative. In the event that the Council judged the content to be illegal, it would inform the author or the person responsible for the site concerned, recommending them to modify or suppress it. If the offender did not comply with the recommendation, the Council might request technical providers to suppress or block access to the contentious content.

As for harmful content, the Charter states that providers should make a commitment to permit users select information according to their own wishes. To this purpose, providers should promote both filtering mechanisms and rating regimes, and apply certain principles, such as respect of human dignity, the

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<sup>176</sup> *Rapport du Conseil d'Etat: "Internet et les réseaux numériques"* - adopted by the General Assembly of the *Conseil d'Etat* on 2 July 1998. <http://www.internet.gouv.fr/francais/index.html>

<sup>177</sup> Council overseeing the telematics

<sup>178</sup> *Conseil Constitutionnel*, Judgement of 23 July 1996.

<sup>179</sup> Association of on-line publishers

<sup>180</sup> See <http://www.planete.net/code-internet/ccode2.html>

rejection of any discrimination against opinions, race, sex, etc., and the rejection of any exploitation of minors, especially of a sexual nature.

However, this project did not receive significant support from operators and users.

A new text called "*Le Manifeste*" was published in July 1997. It is a short document, which defines founding principles for self-regulation and recommends the implementation of a flexible, consultative and pluralistic self-regulatory organisation.

Finally, some professional associations, such as the *Association des Fournisseurs d'Accès et de Services Internet (AFA)*<sup>181</sup> and GESTE, undertook their own initiatives: AFA wrote a code of conduct<sup>182</sup> while GESTE confirmed its proposal to create a supervisory body.

The AFA code of conduct contains a specific provision relating to the protection of minors, which states that subscription is refused to minors unless with express authorisation from a person exercising parental authority. On the other hand, as in the Internet Charter, AFA members must offer means for filtering content to their users. The code of conduct also states that when a user is made aware of illicit or harmful content they should refer it to the access provider concerned. The access provider should request the client to modify the content if it contravenes the contract signed by the client. If the client does not comply, the access provider may suppress the content or terminate the contract.

Since 1996 several reports have been published, which mention, *inter alia*, the need to promote self-regulation among operators and to involve State authorities in the creation of either a self-regulatory body, a hot-line and an Observatory, or, under private law, an Agency regulating the Internet.<sup>183</sup> However, no proposals have yet

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<sup>181</sup> AFA is composed of the following Internet Access/on-line services Providers: AOL Berstelmann France, Cegetel, CompuServe, FranceNet, France Pratique, France Telecom Interactive, Grolier Interactive, Imaginet, Infonie, Internet Way.

<sup>182</sup> <http://www.afa-france.com/html/actualites/index.htm>

<sup>183</sup> "*L'Internet : un vrai défi pour la France*" - Patrice Martin-Lalande. Report to the Prime Minister - avril 1997. <http://www.telecom.gouv.fr/francais.htm>

been concretised, and discussion of how to classify Internet sites has not yet begun.

However, as in the other Member States, filtering software is available for users, but it is largely impractical as it is intended for English language sites.<sup>184</sup> In addition, a report by the *Conseil d'Etat* noted that only few Internet operators apply the new Article 43.1 of the Law of September 1986, which requests them to provide their clients with the technical means to filter content. Finally, no hot-line mechanism has been created and there are no concrete initiatives for information campaigns, warning and informing users about a safe use of the Internet.

#### 4.6 Germany

The only rating/labelling system is the one developed by the USK. Other organisations such as the *Freiwillige Selbstkontrolle Multimedia Dienstleister e.V.* (FSM) or the BPjS do not grant ratings but control the acceptability of the service pursuant to the relevant legal provisions. Services are illegal if they present an obvious moral danger to children or youth. However, these provisions include a range of undetermined legal concepts. As a consequence, the question of whether a service presents an obvious moral danger to children or youth might be interpreted in a different way by the different controlling bodies. The assessment decides merely whether the service is legally acceptable or not. In the latter case, there is no further classification of the service, but the service provider is told not to offer the contents in question any longer.

The agreement between Federal States on media services states that legal acceptability is not determined by the judgement of the controlling body, but based on objective criteria (**deterministic**). It leaves room, however, for interpretation, which necessarily includes subjective components. Case law offers common guidelines, but it is hardly developed in the on-line field.

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"L'entrée dans la société de l'information"-A.Joyandet, P.Hérisson, A.Türk - September 1997). *Rapport d'information du Sénat* - September 1997. <http://www.telecom.gouv.fr/francais.htm>

<sup>184</sup> However, Cyber-patrol is currently preparing a French-speaking version of its filtering software.

Service providers are legally obliged to respect the provisions concerning the protection of minors in their services (**mandatory**). However, they have the choice whether to appoint a commissioner for the protection of minors or to allow a voluntary organisation such as the FSM to take over this task for them.

The FSM is financed by its members, which are several media associations and firms such as *Deutsche Telekom*, the Microsoft network or *Pro Sieben Media AG*. Since mid-November 1997, 200 media companies have declared that they will follow the code of conduct developed by the FSM. Members of the FSM must apply the code of conduct and its rules regarding complaints.

Users address complaints concerning illegal content to the Complaints Committee of the FSM. Complaints can only be addressed electronically by completing an electronic complaint form on the web-site of the association further to §3 II of the FSM rules. This rule thus conforms to point 2d of the “indicative guidelines for the implementation at national level of a self-regulation framework for the protection of minors and human dignity in on-line audiovisual and information services”, included in the **Recommendation of the Council of 28.05.1998**, which requires that complaints should be sent and received without difficulties (telephone, e-mail, fax).

The FSM’s procedures for dealing with complaints are also in accordance with the guidelines. §4 of the FSM rules requires a pre-examination of the complaint. If the complaint is admissible, the decision procedure takes place after hearing the position of the content provider<sup>185</sup>. The author of the complaint is informed of the outcome of the procedure<sup>186</sup>. If the content provider does not conform to the sanction, the service provider is informed<sup>187</sup>. If the Committee concludes that the service is acceptable, this conclusion is not binding for the competent authorities. However, if the FSM concludes that a service is a violation of the legal provisions then they initiate the procedure described below.

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<sup>185</sup> further to §5.

<sup>186</sup> further to §6 VI

According to the guidelines, providing for dissuasive measures proportionate to the nature of the violations should strengthen the credibility of the code of conduct. Further to §6 of the FSM rules, the following measures may be taken, according to the gravity of the violations:

- ❑ comment with a request to remedy the situation
- ❑ expression of disapproval or
- ❑ reprimand (this reprimand must be published by the service within one month)

If the member does not comply with the sanction or, if, despite repeated requests, it does not remedy the situation, it may be excluded from the FSM. Serious instances of child pornography are to be reported to the police<sup>188</sup>.

Considering the ever-increasing number of documents on the Internet as well as its international character, it is impossible to have complete control of this media. The FSM staff is also small (1 lawyer who judges the acceptability of the complaints, 3 ordinary members and 3 alternate members who form the Examining Board). The Executing Board is composed of a President and 5 other people. The success of the FSM depends considerably on the number of its members who support its work and thus wish to fulfil in this manner their legal obligations in the field of the protection of the minors. In addition to this, though the FSM may act against a member on its own initiative, it mostly acts on the basis of complaints. It is therefore also important that users, who can contact the body if they chance upon web pages likely to be harmful to minors, accept it. Since its creation, the FSM has received 185 complaints. In 35 cases, the service providers or the service supplier deleted the text or images in question or locked Internet access to them. Similar results have occurred in other countries after the FSM contacted the service providers<sup>189</sup>. It receives approximately 30 to 40 complaints per month.

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<sup>187</sup> §7 I.

<sup>188</sup> epd medien (Nr. 57) 1998, 21.

<sup>189</sup> See 188

The FSM controls advertising on the Internet but in a rather superficial way. Rather than taking over this role from the *Werberat*, the body responsible for advertising, they co-ordinate with it to supervise advertising.

According to §7 GjSM, information and communication service providers are members of the USK if they submit their contents to it for rating and if they install a link on their website which refers to the USK. However, this is not common practice so far. The USK has supervised network contents and on-line games since 22 August 1997, using the same procedure as for video games. It provides a classification by age groups and a report. It charges a fee for examining websites of:

300 DM for a maximum of 25 pages

500 DM for a maximum of 75 pages

750 DM for a maximum of 100 pages

1000 DM for a number of pages exceeding the limit of 100.

In addition to the voluntary bodies the Ministries for Youth and Family supervise the application of provisions concerning the protection of minors according to §18 I of the *Mediendienste-Staatsvertrag*<sup>190</sup>, which applies to media services. This system is not based on classification of the content, but on a legal evaluation, and these authorities are not obliged to perform a general and minute supervision. They act usually on the basis of complaints or other indices. They are entitled to control content and to prohibit it partly or completely, but do not have the powers to demand content changes. Violations can lead to the imposition of a fine amounting to 500.000 DM.

The *Jugendschutz.net* was created in Wiesbaden in October 1997 as a Joint Office for the protection of minors in on-line media. The central office co-operates closely with the respective competent offices in each Federal State. *Jugendschutz.net* tries to locate content that might be dangerous for the minors on the Internet with the help of a browser, the so-called 'software for the protection of minors' developed

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<sup>190</sup> The Agreement between Federal States on media services, which came into force on 1 August 1997

specially for this purpose. When such pages are located, *Jugendschutz.net* contacts the respective provider, so that the latter can modify or delete the content within a determined period of time. This organisation operates as a representative central office, or national contact office, as suggested by the recommendation of the Council.

At Federal level, since the implementation of the *Informations und Kommunikationsdienstegesetz (IuKDG)*<sup>191</sup>, the BPjS is responsible for the examining and “indexing” of Internet content which is likely to harm minors. The BPjS works in co-operation with the highest authorities of the Federal States, which have created an office for the protection of minors in on-line services on the basis of the Agreement between the Federal States on media services. The BPjS can only act on the basis of a request emanating from the Ministries of Youth of the Federation and of the Federal States and the authorities responsible for young people (*Jugend- and Landesjundendämter*).

The Agreement states that a publication put on the “index” may not be transmitted or made available through electronic information or communication services. This interdiction does not apply if technical measures have been taken to ensure that access within Germany is restricted to users of legal age. It is still unclear as to which technical measures should be taken, given the quasi-absence of case law. The BPjS considers that the so-called “Adult-sex system” according to which the user must give a credit card number to have access to content, is enough for commercial providers of pornographic content. The BPjS has already made use of its new authority.

The BPjS is financed by the Federation, pursuant to §8III of the GjSM. Two BPjS examiners specialise in the on-line field, but the organisation has a limited number of computers with Internet access.

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<sup>191</sup> The Federal Act establishing the general conditions for information and communication services, which came into force on 1 August 1997



§5 GjSM states certain restrictions and prohibitions in the field of advertising. A provider may not advertise the fact that its service has been put on the “index” or is about to be inserted in the list. This provision exists to avoid the inclusion of the service in the “index” being used for the purpose of positive advertising.

#### 4.7 Greece

The body responsible for rating on-line services in Greece is the National Telecommunications Commission (NTC),<sup>192</sup> which is an independent body, administratively and financially self-contained, under the supervision of the Minister of Transport and Communications. It was set up by the Telecommunications Act - Law 2246/94 of October 1994. Among its principal tasks is the supervision of the telecommunications and on-line markets, the assignment of numbers to service providers, and the delivery of opinions to the Minister of Transport and Communications regarding the granting, renewal, modification, suspension, extension and revocation of licenses.

The NTC has not identified any rating system. It took some steps to initiate policy in June 1997 by publishing an Internal Report on ‘Illegal and Harmful Content in the Internet Globally’. It appointed a Steering Committee to take a closer look at this issue and proposed the setting-up of a group that would be responsible for pursuing self-regulation. No further action has been taken since.

#### 4.8 Ireland

Regulation of on-line services in Ireland has now been vested in the office of an independent telecommunications regulator, who recently has produced a number of reports governing various aspects of telecommunications, including the provision of broadcast services. The only legislative development has been the promise of a Bill to deal with defamation on the Internet, which has not yet been published, and the enactment of Child Trafficking and Pornography Act 1998.

The Act contains a definition of child pornography as follows:

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<sup>192</sup> In the case of VOD, it is also the responsibility of the Ministry of the Press and the Mass Media to introduce a rating system.

“Child pornography means -

(a) any visual representation -

(i) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity,

(ii) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or

(iii) whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child

(b) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity,

(c) any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or

(d) any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of *section 3*, irrespective of how or through what medium the representation, description or information has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation, description or information produced by or from computer graphics or by any other electronic or mechanical means but does not include -

(I) any book or periodical publication which has been examined by the Censorship of Publications Board and in respect of which a prohibition order under the Censorship of Publications Acts, 1929 to 1967, is not for the time being in force

(II) any film in respect of which a general certificate or a limited certificate under the Censorship of Films Acts, 1923-1992, is in force, or

(III) any video work in respect of which a supply certificate under the Video Recordings Acts, 1989 and 1992, is in force.”

However, the Act does not deal specifically with the control of access by children to pornography. An amendment to the Bill, which would have dealt specifically with this issue, was defeated by a large majority at committee stage. Similarly,

suggestions that the issue might be dealt with in a Children Bill were also rejected. Concern was expressed about the placing of child pornography on the Internet using websites, associated with cartoon characters, regularly accessed by children, and also about the exemption of video games from the Video Recordings Acts, particularly in light of the violence depicted in some of them. Nonetheless, the general view of the legislature appeared to be that possible legislative control was not an immediate priority. It is expected that the matter will be addressed in the Report of the Working Group on the Illegal and Harmful Use of the Internet, which is due to be published in the near future. It has been suggested that the term “video” be defined in sufficiently wide terms in the Video Recordings Act 1989 to apply to computer disks<sup>193</sup>. It is possible that that Act could, therefore, be used to combat pornography in the same way as the corresponding Act in England has been used<sup>194</sup>.

#### 4.9 Italy

The Ministerial Self-regulating Code is presently in a state of “*impasse*”. As a result all connected or collateral projects, such as the implementation of a content rating system, are on hold for the time being. It is worth mentioning that at a different and non-institutional level, the collaboration between the Information Science Degree Course of the University of Cesena (who prepared the operating environment) and the *Association Città Invisibile* (who defined the rating system) has recently given birth to a pilot Italian rating agency: IT-RA<sup>195</sup>.

The IT-RA rating system is **evaluative** and **voluntary** and uses the PICS system. It grants PICS labels to content providers who autonomously rate their documents, by completing a form on-line. Based on the level at which the content rated by the content providers, IT-RA issues the relevant PICS label (metadata), which is then associated with the Internet content. When access to the document is sought the software browser reads the level of each category and blocks access

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<sup>193</sup> Kelleher and Murray, *Information Technology Law in Ireland*, Dublin 1997

<sup>194</sup> *Meechie v Multi-Media Marketing* (1995).

<sup>195</sup> Information available on <http://www.csr.unibo.it/ra>.

when the level is higher than that chosen by the user. The IT-RA applies to advertising as well.

Figure 30: IT-RA Rating System

Content Category	Level 0	Level 1	Level 2	Level 3	Level 4
<b>Violence</b>	No express or implied violence	Materials denouncing violation of human rights - not harmful to minors	Implicitly violent	Expressly violent	Inducing or inciting to violence
<b>Sex</b>	No references to sex	Scientific material on sex and sexuality - not harmful to minors	Alluding or relating to erotica	Moderately sexual and non explicit	Sexually explicit and pornographic
<b>Language</b>	No vulgarity	Materials on the use and diffusion of dialects - not harmful to minors	From time to time vulgar or dirty	Vulgar and/or blasphemous	Verbally violent
<b>Advertising</b>	No advertising	Advertising but not harmful to minors	Also advertising products for minors	Subliminal advertising contents	Prevailing and express advertising contents
<b>Religion</b>	No references to religion	Material on religion	References to a particular religion	Proselytical religious references	Religious or non religious intolerance
<b>Politics</b>	Not political	Material on politics - not harmful to minors	Generic political references	References to political associations	References to political parties
<b>Racism</b>	No racial references	Racial material – not harmful to minors	Subliminal racial references	Explicit racial references	Inciting to racial hatred
<b>Didactic</b>	Highly didactic and based on accurate scientific materials appropriate for minors	Highly didactic and based on accurate scientific materials appropriate for adults	Medium didactic with good scientific basis	Low didactic with poor scientific basis	Non didactic

#### 4.10 Luxembourg

For on-line services Common Law is mostly applicable, though the Criminal Code may apply. The trend is to favour a self-regulatory system. However, the CNP has intervened with new media such as Internet on line services. In its opinion of June 1998, it justified its intervention by commenting that “neither the Ministry of Communications, nor the post and telecommunications companies, nor any other

State organ feels responsible for nor concerned by content on the Internet and on line services". However, the CNP recognises that "the Internet phenomenon" does not fall within its authority from a legal point of view, as it is neither a radio nor television programme, nor a programme distributed via cable.

Self-regulation and international solutions are considered essential to render a control system really efficient. According to the CNP, the success of filtering systems, such as PICS, will mainly depend on support provided by parents and educators, the local, national and international authorities.

#### **4.11 The Netherlands**

In the Netherlands there are no formal provisions for the control of on-line services other than the Penal Code. Where necessary articles 240a and 240b of the Penal Code may apply, but since the principle of freedom of speech is seen as one of the most important pillars of the Dutch Constitutional State, prior censoring of opinions by the Government is not desirable. Interference on constitutional grounds is possible only in the case of the abuse of freedom of speech. The Constitution thus does not have official rules concerning its applicability to different on-line services.<sup>196</sup>

As yet, no licence is required for Internet providers and the legal liability of illegal content is not clear. The President of the District Court of The Hague ruled in a copyright case that Internet access providers are not in principle responsible for the content or information offered through their infrastructure. Action against service providers would only be possible where the provider is perfectly aware of the illegal activity. As far as penal liability is concerned the Minister of Justice stated that, as well as action to prevent illegal material, self-regulation should play an important role. The Government principally takes the view those citizens, users and educators have responsibility for themselves. The Minister of Justice is considering a limitation of the penal liability of the provider. Through a change to articles 53 and 54 of the Penal Code, she hopes to ensure that the same liability

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<sup>196</sup> (1996). Prepared to the Green paper on Minors, The Protection of Minors and Human Dignity in the Information Society. Unpublished report.

will exist for providers as for publishers and printers. If the Internet provider can point out from whom the illegal content originates, the provider will not be prosecuted.<sup>197</sup>

Self-regulation does already exist regarding illegal information on the Internet. The *Nederlandse Vereniging van Internet Providers (NLIP)*<sup>198</sup> co-ordinates the industry and represents most of the Internet providers in the Netherlands. The NLIP's policy towards illegal content on the Internet is as follows:<sup>199</sup>

1. Dutch Internet providers, represented by the NLIP, will try hard (in co-operation with the police, judiciary and European and international institutions) to eliminate illegal information from the Internet, as far as possible and as soon as possible within the legal framework. Illegal information is information that has been prohibited by Dutch law.
2. Illegal information put on the Internet cannot be totally prevented, either by Government or by Internet providers, who have even less authority. One reason for this is the Constitution's rules forbidding prior censorship and defending freedom of expression. The other is the international character of the Internet. As most of the illegal information is from abroad it is impossible to control.
3. In order to take action, different reporting points have been established by Internet providers and individuals.
4. Action may only be taken against information providers operating within the borders of the Netherlands, as the Dutch Constitution applies. Reports implicating foreign information providers will be forwarded to reporting points existing in the country from which the material originates.

A working group was set up in which the Internet providers, the *Divisie Centrale Recherche Informatie (CRI)*<sup>200</sup> and Internet users were represented. This group created the framework of procedures and criteria, which were used for the

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<sup>197</sup> <http://www.meldpunt.org>

<sup>198</sup> Dutch Federation of Internet Providers

<sup>199</sup> <http://www.nlip.nl>

<sup>200</sup> Central Division of Research Information

foundation of the first Reporting Point for Child Pornography in Europe on 20 June 1996.

The reporting point procedures are:<sup>201</sup>

1. An Internet user reports the dissemination of child pornography on the Internet to the reporting point.<sup>202</sup>
2. The reporting point receives the message and responds (automatically) to the reporter.
3. The reporting point checks the report.
4. If the report meets certain criteria (see below) a warning is sent to the creator of the illegal content. This Internet user will be requested to stop transmitting the content.
5. If the Internet user disputes the warning, a second letter follows, which explains that the reporting point is not the place for discussion nor responsible for providing an explanation.
6. If the Internet user does not reply, or does not stop sending the messages/illegal content within a period of 24 hours, the report will be sent to the local police.

Before sending a warning to the Internet user, a report must meet the following criteria:

- It must concern child pornography, as stated in article 240 of the Penal Code.
- It must concern distribution from Dutch territory.
- It must concern public distribution on the Internet.

On 21 March 1997, a second Reporting Point became operational, intended to deal with and prevent racial discrimination, anti-Semitism and revisionism within the Dutch borders of the Internet. As far as racism is concerned, Article 137d of the Penal Code could apply. A third Reporting Point for consultation on illegal material on the Internet has been set up.

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<sup>201</sup> <http://www.meldpunt.org>

<sup>202</sup> [meldpunt@meldpunt.org](mailto:meldpunt@meldpunt.org)



The Minister announced that reports of the Reporting Point for Child Pornography received by the CRI would be investigated sooner. The national bureau of the Public Prosecutor will play a co-ordinating role. After a first examination by the CRI, reports may be handed over to the national bureau of the Public Prosecutor for the purposes of opening an investigation. When, in the course of the investigation, the location of the suspect in the Netherlands becomes known, the judicial hearing can be handed over to the appropriate district court of the Public Prosecutor.

Finally, the Minister takes the view that expertise from outside the police and judiciary is also important. Therefore, well co-ordinated co-operation is needed between the Internet Service Providers, the Internet Reporting Points and other organisations concerned with child protection on the one hand, and the responsible Ministries, police and the Public Prosecutor on the other.

#### 4.12 Portugal

No national group or entity is responsible for the rating system for this medium, and no systems of content control (e.g. ratings, bans, watersheds, etc.) are in use. Some Internet users might be using blocking systems such as the Platform for Internet Content Selection (PICS)<sup>203</sup>, but no studies have been done to ascertain their number. Among dozens of informal enquiries made to Internet users in Portuguese academia, no one was aware of PICS or indeed any other system to control content on the Internet.

#### 4.13 Spain

There are no provisions in Spain related to a rating system for audiovisual contents distributed via Internet. The draft of the *Convenio de autorregulación para el buen uso de Internet en España* proposed by the Ministry for Education and the Asociación de Usuarios de Internet (AUI) merely states that if there are many complaints about the content of the website of one of the subscribers to the code of conduct, the

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<sup>203</sup> A set of technical standards whose goal is to establish a common label, readable by any software, and that can be used to convey any kind of rating. PICS is being developed by the World Wide Web Consortium, an independent American consortium, and has already been accepted by most players in the on-line service markets.

person in charge of that website will indicate in the homepage that the website in question contains material that might harm the sensibility of its users.

The AUI, in its website, says that it favours the use of PICS. As for labelling, AUI simply indicates that content providers may voluntarily rate their websites according to the criteria (age groups, kind of content, etc.) established by some companies, such as Netshepherd, RSACi or SafeSurf. None of these systems is specifically aimed at the Spanish public, and none of them has gained support among on-line services or content providers.

#### **4.14 Sweden**

There is no legislation, which limits or hinders the use of on-line services by children and adolescents. The service providers are not obliged to obey any legal limitations than those in the general law. When the first type of automatic data processing was discussed in the 1960s, no need for legislation was suggested other than the protection of rights relating to authorship.

The new Act on Electronic Billboards makes Internet providers responsible for the prevention of further dissemination of criminal material on their servers.

The law does not apply to providers of networks or other connections for the transmission of messages or other devices needed to use the connections, transmission of messages within an agency or between agencies or within an enterprise or a legal group of enterprises, services protected by the Freedom of Press Act or the Freedom of Expression Act or messages intended only for a certain receiver or a fixed group of receivers (electronic mail).

Providers are also obliged to remove or otherwise prevent continued dissemination of certain categories of messages from their services. This is the case if an incoming message obviously falls under the provisions of the Criminal Code that deals with instigation to crime, agitation against groups of people, child pornography or unlawful depiction of violence.

It is established that the service supplier, in order to be able to fulfil his obligation

to prevent dissemination, should have reasonable supervision over his service, taking into consideration its scale and purpose. As a general rule, providers of electronic notice-boards are not obliged to screen all incoming messages, but if a provider is informed that he is assisting dissemination of criminal material, he must act to prevent further dissemination.

If the provider, either intentionally or through gross negligence, does not prevent further dissemination of a message belonging to these categories, he shall be sentenced to a fine or to imprisonment for not more than six months or, if the crime is serious, not more than two years. This does not apply if the provider can be sentenced according to the Criminal Code or the Copyright Law.

In Sweden censorship before publication is not allowed and the proposed law will not introduce such a practice. Actions concerning criminal material in electronic notice-boards will only be prosecuted after publication, as is the case with books, films and other traditional media.

The State Computer Inspection Authority, *Datainspektionen*, is responsible for monitoring violations of personal integrity, and for implementing the computer law by authorities, companies, organisations and private persons. The law took effect in 1973; however, it is the police who are responsible for criminal investigation in cases of computer hacking of a home-page or child pornography on the Internet or another open network.

#### **4.15 United Kingdom**

The Internet Service Providers Association (**ISPA**) was formed in 1995 and established a Code of Practice after a meeting with the Home Office in January 1996. The former Science and Technology Minister stated at this meeting that the UK Government's "position is that we would want to encourage the industry to develop a system of self-regulation which might address these areas of concern, rather than considering statutory options. UK Internet Service Providers must devise a Code of Practice to control access to illegal and unsuitable material or face increasing political pressure for curbing legislation." Moreover, on 14 August 1996, the Department of Trade and Industry (**DTI**) issued a press release, in

which it was suggested that ISPA should “co-operate in developing services” that are able to make use of features such as **PICS**, which makes it possible to rate every web page according to its content.<sup>204</sup>

Some organisations, such as universities, already had “acceptable use” policies in place, and Demon Internet, a major UK Service Provider, had (as a reaction to a newspaper article) developed its own self-censorship policy using the new PICS standard. Finally, following a seminar organised by the Internet Developers Association, the Internet Watch Foundation (**IWF**) was created<sup>205</sup>. This is an independent organisation set up to implement the proposals jointly agreed by the government, the police and the two major UK service provider trade associations, ISPA and LINX. It aims to enhance the enormous potential of the Internet “to inform, educate, entertain and conduct business” by hindering the use of the Internet to transmit illegal material, particularly child pornography, and encouraging the classification of legal material on the Internet, in order to enable users to use it according to their own requirements. Since April 1997 the IWF has been funded by the UK industry on a subscription basis, and is controlled by a Management Board drawn from the subscribers and a Policy Board drawn from a wide range of stakeholders in the Internet, including industry, child and education, consumer, libertarian and other media organisations.

The IWF’s initial role was to operate a hotline service for users to report illegal material on the Internet. However, their experience of combating illegal material has exposed two aspects of user needs, which a hotline service alone cannot satisfy:

- (a) It is not possible to quickly remove all illegal material, particularly that which originates from outside the organisation’s home country;
- (b) There is a lot of material that must be classified as legal, which is offensive to many users and considered unsuitable or harmful for their children.

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<sup>204</sup> See DTI Press Release P/96/636, 14 August 1996

<sup>205</sup>The original R3 *Safety-Net* proposals can be seen in full at <http://www.ispa.org.uk/safetynet.shtml>

In order to begin to tackle these problems, the IWF set up an Advisory Board early in 1997, with a brief to develop a rating system for the use of UK Internet user, but which takes the Internet's global nature into account<sup>206</sup>. The system is intended to use the PICS system, which will enable users to set parameters for the material they wish to be accessible by their terminal. All other material will be filtered out. This system will permit parents to allow their children unsupervised access to the Internet, having already set limitations on accessible material.

The Advisory Board published its Rating Report<sup>207</sup> in March 1998, with the following recommendations:

“IWF recommends that a world-wide rating system is developed which is based on a global approach for the description of content in objective terms, free from any particular cultural values and voluntarily applied to content by its providers. For Internet users there should be an easy-to-use filtering system built into their browser software which allows them to choose if and how to apply filtering, and their own criteria for the blocking of unwanted material. To assist users in their choice, we also recommend that 'off-the-shelf' profiles be introduced so that a familiar classification of content, such as the equivalent of a film certificate rating, can be chosen. IWF recognises that such a system will need to be attractive to content providers as well as equipment suppliers, service providers and browser producers in order to get it developed and implemented.

From a UK perspective, the categories of material which are described in the content label (and hence can be filtered) should include nudity, sex, violence and language, as in the present Recreational Software Advisory Council (**RSACi**) system, but with some amendments to the detailed definitions. We suggest that there should be additional categories covering exposure of personal details; making financial commitments; various forms of intolerance; potentially dangerous subjects (including, e.g., promotion of

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<sup>206</sup> See <http://www.iwf.org.uk/rating/rating.html#advisory>

<sup>207</sup> See [http://www.iwf.org.uk/rating/rating\\_r.html](http://www.iwf.org.uk/rating/rating_r.html)

tobacco, alcohol or drug misuse) and other adult themes. We also pose the possibility of users being able to choose to over-ride their selected limits for factual news and documentary, science or art.”

In parallel with the work of the Advisory Board, and with its support, IWF has been involved in establishing a European consortium of organisations, Internet Content Rating for Europe (**INCORE**), to promote aspects of self-regulation and rating in support of European Commission policies and plans. Following the positive support to rating and filtering from the Global Information Networks Conference in Bonn in July 1997, IWF helped found an International Working Group on Content Rating (**IWGCR**).

### **5 Horizontal Treatment of Media**

Of all the Member States, only the Dutch have examined seriously the potential for horizontal treatment of the four media – film, video, television and on-line services. An interdepartmental working group was set up by the Ministries of Home Affairs and Justice, the Secretaries of Public Health, Welfare and Sports and of Education, Culture and Science to discuss the protection of minors from harmful content in audiovisual media. Its policy was formulated in a blueprint document entitled "*Niet voor alle leeftijden; Audiovisuele Media en de Bescherming van Jeugdigen*" ("Not for all ages; Audiovisual Media and the protection of minors", 1997).

As far as horizontal treatment is concerned, the working group proposed that, for better protection, the existing system of age rating should apply to the audiovisual industry as a whole. In addition, the system needed improving, with the development of rating values, rating criteria and age limits, augmentation of expertise and information about (the application of) classification methods, product information etc. The working group recommended that an independent private institution should be responsible for these activities on behalf of the whole industry. Such an institution could: operate as a national support centre, consult producers and providers of audiovisual media products, report and evaluate every year compliance with the agreements made for each industry and recommend

improvements. The recommendations of the working group mean that a central self-regulatory-system encompassing each industry in the audiovisual media sector may be introduced.<sup>208</sup>

The industries must be encouraged to take responsibility for setting up an institution. However, because of the importance of improving the age classification system, the working group suggests subsidising a separate, possibly independent institution for this purpose.

In early 1997 the RvtV, took the initiative by implementing a discussion with:

- the public broadcasters, represented at first by a delegation of the Audiovisual Platform (AVP),
- VESTRA<sup>209</sup> representing the commercial broadcasters,
- NVPI Interactive and NVPI Film<sup>210</sup>,
- the *Nederlandse Federatie Cinematografie* (NFC).<sup>211</sup>

The discussion was about the propositions of the RvtV and the blueprint document '*Niet voor alle leeftijden*'.<sup>212</sup> One of its propositions was that the independent support institution to be founded should exist of three departments: one Supervisory Board, an executive bureau and an examining committee for classification.

When approached, the *Nederlandse Omroepstichting* (NOS)<sup>213</sup> and the NVPI said that this institution should be a foundation called the *Nederlands Instituut voor Classificatie van Audiovisuele Media* (NICAM).<sup>214</sup> It could become operational in a short time. According to the blueprint, it is evident that the institution should have expertise in the area of values, criteria, classification methods and information. In its

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<sup>208</sup> Notitie (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 16. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.

<sup>209</sup> Association for Satellite, Television and Radio Programme Providers

<sup>210</sup> *Nederlandse Vereniging van Producenten en Importeurs van beeld- en geluidsdragers* (Dutch Federation of Producers and Importers of Image- and Sound Carriers)

<sup>211</sup> Dutch Federation for Cinematography

<sup>212</sup> *Raad van Toezicht Videovoortlichting, Jaarverslag 1997*, p. 3. Oudekerk a/d Amstel: Aeroprint/J.K. Smit & Zonen.

<sup>213</sup> Dutch Broadcasting Foundation

<sup>214</sup> Dutch Institution for Classification of Audiovisual Media

Annual Report of 1997 the NVPI proposed setting up a database, which would contain all classification data to enable keeping track of updated decisions. The first rating given would be the normative one, but it would not necessarily preclude discussions about alternative classifications.

As regards the film, video and multi-media industries the self-regulatory-system proposed by the interdepartmental working group will leave no place for the *Nederlandse Filmkeuring (NFK)*<sup>215</sup> and the *Wet op Filmvertoningen (WOF)*.<sup>216</sup> Instead of classification being made according to the grounds established by the Act, the film industry itself will be responsible for rating and ratifying agreements on classification. The Government will discuss with the organisations represented in the RvtV a broadening of the agreements in the *Convenant en Reglement Videovorlichting*<sup>217</sup>, to date covering only video film, multi-media and computer games, to include an agreement on film. This seems logical because the NFC is already represented in the RvtV and because the importers/distributors of cinema films and video films are in most cases the same.<sup>218</sup>

As far as the television industry is concerned, the Secretary of Education, Culture and Science is deliberating with the NOS and the VESTRA about a self-regulatory system for the protection of minors from harmful content on television. In the end this is likely to lead to the implementation of the agreements and the European Directive. The criteria of the international broadcasting unions, the EBU and the ACT, are taken very seriously.<sup>219</sup>

According to the RvtV's Annual Report of 1997, NVPI Interactive (which represents about 13 multi-media publishers) proposed extending the current age rating, as stated in the Regulations on Video Information, to other media.

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<sup>215</sup> Dutch Board of Film Classification

<sup>216</sup> Act on Film Exhibition

<sup>217</sup> Covenant on Video Information

<sup>218</sup> Notitie (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 16-17. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.

<sup>219</sup> Notitie (1997), *Niet voor alle Leeftijden: Audiovisuele Media en de Bescherming van Jeugdigen*, p. 17. Rijswijk: Ministry of Public health, Welfare and Sports, *directie Jeugdbeleid*.



The blueprint document does not say much about the on-line services industry. It mentions that the NVPI and the **NLIP**<sup>220</sup> will discuss a system of self-regulation, including a code of conduct in co-operation with the other parties. When asked, the NLIP stated that, as yet, no serious discussions between the Internet Providers and the NLIP had taken place.

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<sup>220</sup> Dutch Federation of Internet Providers

# ANNEX 3: METHODOLOGY

# 1. TEMPLATE

## PARENTAL CONTROL OF BROADCASTING, FILM, AUDIOVISUAL AND ON-LINE SERVICES IN THE EUROPEAN UNION

### I. BACKGROUND OVERVIEW FOR THE STUDY

The European Commission Directorate-General X (Information, Communication, Culture and Audiovisual Media) has commissioned the Programme in Comparative Media Law and Policy (PCMLP) of the University of Oxford to conduct a study on the parental control of television broadcasting in the European Union. This study is mandated by Article 22b of the Television Without Frontiers Directive (97/36/EC) of the European Parliament and Council of 30 June 1997. This study will provide a horizontal examination of the television broadcasting, film, video, and on-line services in the European Union in consonance with the Council Recommendation on the Protection of Minors and Human Dignity in the Audiovisual and Information Services (adopted 28 May 1998).

#### Objectives and Main Aims of the Study

The main objective of the study is to present an assessment of the advantages and disadvantages of introducing different measures at EU level in order to enhance the control parents or guardians may exercise over the programmes that minors view.

Starting with the devices, rating systems and family viewing policies currently in use in the Member States of the European Union the study will focus on three possible regulatory steps to be taken by the EU:

- requiring new television sets and/or computers to be equipped with technical devices for parental control (such as the v-chip)
- setting up appropriate rating systems<sup>1</sup> for film, video, television, and on-line services

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<sup>1</sup> The terms “rating system” and “labelling system” are interchangeable for the purposes of this template.

- encouraging family television viewing and on-line services policies as well as other educational and awareness measures

The study will also examine the prospects for establishing voluntary national frameworks for self-regulation and assessment methodologies co-ordinated at European level and as a complement to the ultimate regulatory framework.

**Devices, Ratings, Impact and Harmonisation:**

Main elements to the study are:

- An analysis of the different technical devices to assist in parental control of television broadcasting services and on-line services<sup>2</sup>. This will include descriptions of different devices, their cost, availability, and infrastructure needed to introduce each device.
- A corresponding analysis of potential ratings or labelling systems to work in conjunction with or in the place of technical devices. This analysis of television and on-line services will be joined with a comparative analysis of rating systems used in film and video.
- An assessment of the efficacy of each of the actual and/or foreseeable protective measure regimes of technical devices and rating systems. This assessment shall consider questions of cost, availability, compatibility, introduction, and European harmonisation.
- An assessment of the economic impact of each of the different protective measures.
- A comparison of the regulatory contexts for film, video, television and on-line services concerning the protection of minors from harmful content. This comparison will comport with the European Commission-mandated “horizontal treatment” of the protection issue, contributing to the establishment of shared definitions and applications for classification systems for programmes and content in each of the four media sectors concerned.

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<sup>2</sup> “On-line services” encompasses computer networks.

The study will take into account the experience gained in this field in Europe and elsewhere (particularly Canada, United States and Japan), as well as the views of broadcasters, producers, educationalists, media specialists and associations.

### **Country Reports**

In order to assess the advantages and disadvantages of introducing new control measures throughout the EU, the PCMLP is conducting a comparative study of the regulatory frameworks, technological capabilities, cultural contexts and relevant policy concerns within each of the 15 Member States of the EU. The following is a brief outline of the information and issues that shall be contained in each country report:

#### **(1) Existing context and framework for control of film, video, television and on-line services.**

Each report will provide a description of the existing regulatory structures for film, video, television (terrestrial, cable, satellite and digital) and on-line services. The report will examine the implementation of Article 22 of the Television Without Frontiers directive in the respective Member State.

The report will also discuss the cultural context and expectations as well as legal provisions concerning ratings and warnings and will provide the country's history regarding the protection of minors from harmful content (e.g. ratings or warnings concerning content). The report will also address pre-existing broadcasting norms in the Member State concerning the presentation of warnings or ratings.

#### **(2) Rating systems**

For each of the four media, the report will provide a specific identification of the type of ratings provider (producer self-rating, industry, non-governmental third party or government). The report will characterise, inter alia, the constitution, structure, area of competence, efficiency and capacity of the given ratings providers and rating systems.

#### **(3) Technical devices**

The report will discuss the technical considerations of implementation for each type of technical device for television and on-line services. The report will discuss the effectiveness, (in both quantitative<sup>3</sup> and qualitative<sup>4</sup> terms) of both available and potentially available technical devices.

***(4) Educational and awareness-raising policies***

The report will examine existing and proposed educational policies and policies to encourage family viewing. They will discuss how these policies may both function (a) as an alternative to more intrusive policies and technologies and (b) as a complement to the deployment of technological devices. This discussion will contribute to the development of a typology and methodology of family viewing policies in a horizontal way across film, video, television and on-line services.

***(5) Costs analysis and Economic Impact***

The report will assess the associated costs for implementation of each possible technical device. They will also assess the economic impact relating to the deployment of such technical devices. This assessment will contemplate these impacts in terms of the deployment of regulatory regimes as well as in terms of regulatory obligations upon manufacturers to install particular devices.

*The following Template shall be informed by the preceding Background Overview. All aspects of the template shall be understood in light of this overview and any uncertainty or ambiguity shall be clarified by reference to this overview. Any remaining questions shall be clarified via direct inquiries made to the Programme in Comparative Media Law & Policy (PCMLP).*

*All researchers participating in any Country Report shall make themselves readily available to the PCMLP for clarification and discussion of the related research for a period of three months after the submission of the given Country Report.*

<sup>3</sup> E.g. technical reliability, frequency of breakdowns.

<sup>4</sup> E.g. rate of utilisation and satisfaction of parents and children, ease and comfort of utilisation.

## II. TEMPLATE

### I. FILM INDUSTRY

#### **1. Legal system**

1.1.1 Setting aside questions specifically concerning rating systems for the section immediately below, provide a background overview of the legal framework regarding the film industry. Discuss relevant legal, historical and cultural considerations concerning content regulation. Identify formal provisions that control the film industry (e.g. legislation, regulations, administrative provisions, case law), describe the scope of coverage of the regulatory scheme (i.e. does it apply to all cinema available in the country; is it mandatory or optional?), and identify current proposals for change to the existing regulatory structures and system for the film industry. Discuss the social, economic or policy issues that appear to be driving the reform effort(s).

#### **2. Rating system**

*Identify the group or entity responsible for the rating system for this medium. Describe and evaluate this ratings provider. Apply Annex I and only the relevant Annex from among the following sub-sections of Annex I: Annex A: Producer Self-rating, Annex B: Industry, Annex C: Third Party or Annex D Government.*

### II. VIDEO INDUSTRY

#### **1. Legal system**

2.1.1 Given the diverse nature of the video industry<sup>5</sup> identify any distinctions in legal or regulatory treatment within the industry as a whole. In the case of such a distinction, apply separately the following analysis to each distinct element.

2.1.2 Discuss relevant legal, historical and cultural considerations concerning content regulation. Identify the formal provisions that control the video industry (e.g. legislation, regulations, administrative provisions, case law); identify the scope of coverage of the regulatory scheme (i.e. does it apply to all video industry

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<sup>5</sup> Video industry refers to videocassettes as well as off-line newer services such as laser-video disks, DVD, and games software or leisure software, etc.



products; is it mandatory or optional?); identify what systems are used (e.g. ratings, bans, etc.) and describe how they operate; identify any current proposals for change to the existing regulatory structures and system for the video industry. Discuss the social, economic or policy issues driving the reform effort(s).

## **2. Rating system**

*Identify the group or entity responsible for the rating system for this medium. Describe and evaluate this ratings provider. Apply Annex I and only the relevant Annex from among the following sub-sections of Annex I.: Annex A: Producer Self-rating, Annex B: Industry, Annex C: Third Party or Annex D Government.*

### III. TELEVISION

#### **1. Legal system**

3.1.1 Provide a background overview of the regulation of this medium. Discuss relevant legal, historical and cultural considerations. Provide this discussion under the following three categories. Account for differences between digital and analogue, narrowcasting and broadcasting, public and private broadcasters.

- i) terrestrial
- ii) cable and
- iii) satellite

For each of these three categories, provide the following discussions:

3.1.2 Identify the formal provisions that control television broadcasting (e.g. legislation, regulations, administrative provisions, and case law). Identify the scope of coverage of the regulatory scheme (i.e. does it apply to all television broadcasting; is it mandatory or optional?).

3.1.3 Setting aside questions specifically concerning rating systems for the section immediately below, identify what systems are used (e.g. ratings, bans, watersheds, filtering, channelling and locking etc.) and describe how they operate.

3.1.4 Identify any current proposals for change to the existing regulatory structures and system for television broadcasting. Discuss the social, economic or

policy issues driving the reform effort(s). Please devote adequate attention to the regulation of digital television, identifying current and foreseeable developments as well as distinctions between the legal treatment of digital as opposed to analogue television.

## **2. Rating system**

### **Cultural expectations regarding ratings, acoustic warnings and symbols**

3.2.1 Identify whether the Member State has a history of ratings or warnings concerning content. Refer to this history in anticipating the cultural expectations that will likely follow from the deployment of Article 22.3.

3.2.2 Discuss any pre-existing broadcasting norms in the Member State concerning the presentation of warnings or ratings.

3.2.3 Anticipate and explain the level of acceptance in the Member State to the "presence of a visual symbol throughout [the] duration" of a programme as stated in Article 22.3.

3.2.4 Anticipate whether an "acoustic warning" as the alternative in Article 22.3 to an omnipresent visual symbol will prompt a desire to also provide a visual indication of ratings before and after the presentation of content.

### **Ratings provider**

*Identify the group or entity responsible for the rating system for this medium. Describe and evaluate this ratings provider. Apply Annex I and only the relevant Annex from among the following sub-sections of Annex I: Annex A: Producer Self-rating, Annex B: Industry, Annex C: Third Party or Annex D Government.*

## **3. Technical devices**

3.3.1 Identify all technical devices to assist in parental control of television broadcasting currently used in the Member State.

3.3.2 Provide technical specifications for each of these devices. Explain how they are fitted to televisions or computers. Identify any other modalities (e.g.

ratings, software, etc.) necessary in order to properly use a given technical device.

3.3.3 For each of these devices and their required complements (e.g. ratings, software, etc.) identify the cost in the Member State for installation and deployment of the technical device. In this treatment, appreciate the differences between mandatory and voluntary deployment.

3.3.4 Assess the effectiveness in quantitative<sup>6</sup> and qualitative<sup>7</sup> terms of the given technical device as experienced in the Member State. Discuss what technological devices would be best suited for this country.

#### **4. Introduction Scenarios for technical devices**

3.4.1 Discuss the possible scenarios for introduction of the technical device in conjunction with existing or proposed

- i) labelling systems,
- ii) regulatory structures and
- iii) frameworks for self-regulation.

Present this discussion with an appreciation of the Member State's context within the European Union. Provide this discussion by addressing the European Commission's newly adopted horizontal approach across media to the protection of children from harmful content.

3.4.2 Account for the anticipated costs attached to each of the possible scenarios contemplated in the above question (3.4.1).

3.4.3 Discuss the possible development of new technical devices and their anticipated consequences.

#### **5. Alternatives to technologies**

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<sup>6</sup> E.g. technical reliability, frequency of breakdowns.

<sup>7</sup> E.g. rate of utilisation and satisfaction of parents and children, ease and comfort of utilisation.

3.5.1 Discuss the range of potentially available educational and awareness-raising measures to assist parental control in media use. Identify which strategies, if any, have gained substantial support popularly or among policy makers.

3.5.2 To the extent possible, determine the significance of the aid such alternatives provide parents in exercising control over what programmes their children view.

3.5.3 Assess the likelihood of adequately providing parents the use of these measures. Discuss the anticipated impediments to providing parents this access.

#### IV. ON-LINE SERVICES

##### **1. Legal system**

4.1.1. Setting aside questions specifically concerning rating systems for the section immediately below, provide a background overview of the regulation of this medium. Discuss relevant legal, historical and cultural considerations. Identify the formal provisions that control on-line services (e.g. legislation, regulations, administrative provisions, and case law).

4.1.2 What is the scope of coverage of the regulatory scheme (i.e. does it apply to all on-line services; is it mandatory or optional?).

4.1.3 Identify what systems are used (e.g. (ratings, bans, watersheds, filtering, channelling and locking etc.) and describe how they operate.

4.1.4 Identify any current proposals for change to the existing regulatory structures and system for on-line services. Discuss the social, economic or policy issues driving the reform effort(s).

##### **2. Rating system**

*Identify the group or entity responsible for the rating system for this medium. Describe and evaluate this ratings provider. Apply Annex I and only the relevant Annex from among the*

*following sub-sections of Annex I.: Annex A: Producer Self-rating, Annex B: Industry, Annex C: Third Party or Annex D Government.*

### **3. Technical devices**

4.3.1. Identify all technical devices to assist in parental control of on-line services environments currently used in the Member State.

4.3.2. Provide technical specifications for each of these devices. Explain how they are fitted to televisions or computers.

4.3.3. Identify any other modalities (e.g. ratings, software, etc.) necessary in order to properly use a given technical device.

4.3.4. For each of these devices and their required complements (e.g. ratings, software, etc.) identify the cost in the Member State for installation and deployment of the technical device. In this treatment, appreciate the differences between mandatory and voluntary deployment.

4.3.5. Assess the effectiveness in both quantitative<sup>8</sup> and qualitative<sup>9</sup> terms of the given technical device as experienced in the Member State. Effectiveness shall be measured with reference to the objectives pursued by manufacturers and promoters of the technical measures. Divergent positions concerning these objectives shall also be presented in this discussion. Where available, base this assessment upon existing studies or research.

### **4. Introduction Scenarios for technical devices**

4.4.1 Discuss the possible scenarios for introduction of the technical device in conjunction with existing or proposed

- i) labelling systems,

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<sup>8</sup> E.g. technical reliability, frequency of breakdowns.

<sup>9</sup> E.g. rate of utilisation and satisfaction of parents and children, ease and comfort of utilisation.

- ii) regulatory structures and
- iii) frameworks for self-regulation.

Present this discussion with an appreciation of the Member State's context within the European Union. Provide this discussion by addressing the European Commission's newly adopted horizontal approach across media to the protection of children from harmful content.

Account for the anticipated costs attached to each of the possible scenarios contemplated in the above question (4.4.1).

Discuss the possible development of new technical devices and their ramifications.

## **5. Alternatives to technologies**

4.5.1 Discuss the range of potentially available educational and awareness-raising measures to assist parental control in use of on-line services. Identify which strategies, if any, have gained substantial support among policy makers or popularly.

4.5.2 To the extent possible, determine the significance of the aid these alternatives provide parents in exercising control over what content their children view.

4.5.3 Assess the likelihood of adequately providing parents access to these measures. Discuss the anticipated impediments to providing parents this access.

## V. PROSPECTS FOR HORIZONTAL TREATMENT OF THE PROTECTION OF MINORS ACROSS MEDIA

5.1 Identify and discuss the system of technical devices, ratings and regulation that is most likely to be able to cover all four of the designated media. If you do not view any system as having this capacity, explain the fundamental limitations of these systems in this regard.

## VI. ARTICLE 22

*While addressing the questions in this section, please refer to Annex II (Article 22 of The*

*Television Without Frontiers Directive (97/36/EC).*

6.1 State the Member State's standards pursuant to Article 22.1. Identify how these have been articulated (case law, legislation, administrative measures, etc.). Identify whether prior decency standards in the Member State bear on the formulation of this standard.

6.2 State the Member State's standards pursuant to Article 22.2. Identify how these have been articulated (case law, legislation, administrative measures, etc.) Identify whether prior decency standards in the Member State bear on the formulation of this standard.

6.3 Identify whether the Member State uses "watersheds" or "harbours" – designated time periods, for example from midnight to 6:00 am, when harmful content (pursuant to Article 22.2) may be aired. State the times of any such periods throughout the Member State.

6.4 If the Member State has not established standards clearly pursuant to either Article 22.1 or 22.2, then provide the Member State's pre-existing standards regarding decency on television and for film and video. Identify how these have been articulated (case law, legislation, administrative measures, etc.).

6.5 Identify whether the Member State has "more detailed or stricter rules" (Article 3.1, 97/36/EC) concerning content harmful to minors.

6.6 Identify whether comparable standards exist within the Member State for illegal and harmful content on on-line services. If so, identify whether rules exist within the Member State to prevent illegal and harmful content on on-line services.

## VII. PARENTAL OBLIGATIONS, CHILDREN'S RIGHTS, RULES AND NORMS

7.1 Provide an essential overview of relevant elements of family law in the Member State, identifying children's rights and parental obligations as transcribed into law. Discuss the cultural norms regarding parental obligations and children's

rights in the Member State. Compare these legal rules with the cultural norms.

7.2 Characterise the range of cultural norms within the Member State concerning the exposure of children to gratuitous violence and pornography in the media. In this characterisation, discuss the common or popular constructions of the terms “gratuitous violence” and “pornography” or their equivalents as well as “physical, mental and moral development of minors”. Include in this discussion whether these terms have been transcribed into law or articulated at another governmental or administrative level.

#### VIII. REVIEW OF EXISTING STUDIES

The Country Reports should synthesise any existing research concerning harmful content, the use of technologies to assist parental control, and encouraging family viewing policies. Provide citations and bibliographic information for each study or research effort mentioned. Provide as attachments the pertinent elements of all studies examined in the Country Report that would not be readily accessible from an on-line source.

8.1 Identify any relevant studies in the Member State concerning the

- i) availability of parental control technologies or rating systems,
- ii) rate of use, ease of use, or parent satisfaction of parental control technologies, and
- iii) cost associated with deployment of the technologies.

8.2 Identify and discuss any relevant studies in the Member State concerning the affects on children of gratuitous violence or pornography.

8.3 Identify any studies in the Member State concerning the use and efficacy of educational or awareness-raising measures to be used in replacement of or in conjunction with parental control technologies.

#### IX. GENERAL OVERVIEW

The following section requires the researcher to provide her observations and assessments. This section seeks a more global or comprehensive evaluation of the



issue of parental control of harmful content and thus requires the researcher to broadly apply her expertise and familiarity with the related questions.

9.1 Provide your perception of what developments concerning parental control are foreseeable in the Member State.

9.2 Provide your assessments of the following elements of the parental control issue:

- i) prospects for enhancing parental control via measures taken at European level, and
- ii) deployment of a horizontal approach to the question of harmful content.

9.3 Provide your analysis of the following spheres of discourse concerning parental control of harmful content. In your analyses, identify the leaders of these discussions:

- i) policy circles (e.g. government, regulators, administrative agencies),
- ii) civil sphere (e.g. popular discourse, interest groups),
- iii) media (e.g. press, television), and
- iv) industry (e.g. producers of film, of television, broadcasters, on-line service providers)

## ANNEX I: RATING SYSTEMS

*Prior to applying the applicable sub-section of this Annex, (Annex A, Annex B, Annex C, or Annex D) provide the following three distinctions for the given rating system.*

### 1. Descriptive or evaluative.

Determine and explain whether the rating system is *descriptive* or *evaluative*.

A descriptive system<sup>10</sup> is one that provides a description of the content of the labelled media and can provide a set of indicators about different content categories.

An evaluative system<sup>11</sup> is one that makes a judgement about content using a standard of harmfulness and typically provides a single rating indicator, usually based upon age.

Keeping in mind that no system is purely descriptive, please provide a detailed explanation of the basis for your determination.

### 2. Deterministic or non-deterministic

Determine and explain whether the rating system applies a *deterministic* or a *non-deterministic* rating process.

A deterministic rating process is based upon some objective methodology in which the final rating is the result of following the methodology.

A non-deterministic rating process is based upon the opinions of a rating body.

Keeping in mind that no system is purely deterministic, please provide a detailed explanation of the basis for your determination.

### 3. Voluntary or mandatory

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<sup>10</sup> The Recreational Software Advisory Council (RSAC) provides an example of a descriptive system. Content producers answer a detailed questionnaire about their content with respect to violence, nudity, sex and language.

<sup>11</sup> The Motion Picture Association of America (MPAA) provides an example of an evaluative system. The ratings ascribed by the MPAA do not describe the content of the film, but what age group may see the film

Determine and explain whether the rating system is *voluntary* or *mandatory*.

A system is voluntary if the content producer is free to choose to rate or have product rated.

A system is mandatory if the content producer is required to rate or to have product rated by some other agency.

**Annex A: Producer self-rating**

A.1 Identify the producers and describe their capacity<sup>12</sup> to provide ratings for the content they produce.

A.2 Characterise the structure, rationale and efficiency of any of this industry's existing rating system(s).

A.3 Discuss the feasibility of this system providing ratings for the volume of existing and future production in this medium.

A.4 Identify the volume of programming this system can be anticipated to accommodate for this medium.

A.5 Identify and discuss whether this rating system is applied to advertisements. If a separate rating system exists for advertisements, apply Annex I and the applicable sub-section.

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<sup>12</sup> Capacity, for the purpose of this template, refers to the (a) legal capacity and (b) organisational and economic capacity to manage the ratings responsibility for the volume of output.

## Annex B: Industry

B.1 Identify the industry board(s) for this medium.

B.2 For each industry board,

- a) characterise the board's express purpose and its competence<sup>13</sup>
- b) state the age and size.
- c) characterise its capacity<sup>14</sup> to provide ratings.
- d) characterise the structure, substance, and define the content of this rating system.
- e) assess the feasibility of this system providing ratings for the volume of existing and future programming and content.
- f) identify the maximum volume of programming and content this system can be anticipated to accommodate. Explain.

B.3 Identify whether there is an international industry board with a presence in the Member State.

B.4 If so,

- a) characterise this presence and corresponding function of the board.
- b) identify whom exactly the industry board represents.
- c) identify the express purpose and function of the industry board.
- d) state the board's age, size and date of first presence in the Member State.
- e) characterise the industry board's capacity<sup>15</sup> to provide ratings.
- f) characterise the structure, substance, and define the content of this rating system.
- g) assess the feasibility of this system providing ratings for the volume of existing and future programming and content.

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<sup>13</sup> Identify the addressees of decisions, the legal nature of the ratings provider's decisions vis-à-vis the addressees, and characterise the compulsory level of this decision. Determine whether ratings decisions are binding or not binding instruments. In the case of binding instruments, identify the available enforcement methods to ensure proper application and/or to punish addressees that fail to comply with a given decision.

<sup>14</sup> See footnote 12

<sup>15</sup> See footnote 12

h) identify the maximum volume of programming and content this system can be anticipated to accommodate. Explain.

B.5 Identify and discuss whether this rating system is applied to advertisements. If a separate rating system exists for advertisements, apply Annex I and the applicable sub-section.

**Annex C: Third party (Commercial or Non-commercial)**

C.1 Identify whether any third party rating entity exists in the Member State for this medium.

C.2 Describe their function and competencies<sup>16</sup>.

C.3 State how long the rating entity has performed this function.

C.4 Identify and explain the rating systems under consideration in the Member State. Determine if these systems are State-specific or designed to provide classification at European level.

C.5 Characterise the current capacity<sup>17</sup> for this rating system. Assess the feasibility of this system of providing ratings for the volume of existing and future content.

C.6 Provide the reasonable expectations for expansion of this system in order to accommodate greater volume.

C.7 Assess the maximum volume of programming that this system can be anticipated to accommodate.

C.8 Identify and discuss whether this rating system is applied to advertisements. If a separate rating system exists for advertisements, apply Annex I and the applicable sub-section.

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<sup>16</sup> See footnote 13.

<sup>17</sup> See footnote 12.

**Annex D: Government**

D.1 Identify whether any governmental rating entities for this medium exist in the Member State.

D.2 Describe their function and competencies<sup>18</sup>.

D.3 State how long the rating entity has performed this function.

D.4 Identify and explain the rating systems under consideration in the Member State. Determine if these systems are State-specific or designed to provide classification at the European level.

D.5 Characterise the current capacity<sup>19</sup> for this rating system. Assess the feasibility of this system of providing ratings for the volume of existing and future television programming.

D.6 If presently there are no such entities in the Member State, assess the likelihood for formation of such entities.

D.7 Assess the maximum volume of programming this system can be anticipated to accommodate.

D.8 Identify and discuss whether this rating system is applied to advertisements. If a separate rating system exists for advertisements, apply Annex I and the applicable sub-section.

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<sup>18</sup> See footnote 197.

<sup>19</sup> See footnote 196.



**ANNEX II**

*Taken from Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 Amending Council Directive 89/552/EEC on the Co-ordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States concerning the Pursuit of Television Broadcasting Activities*

**CHAPTER V****Protection of minors and public order****Article 22**

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.
2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.
3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

**Article 22a**

Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.

**Article 22b**

1. The Commission shall attach particular importance to application of this Chapter in the report provided for in Article 26.

2. The Commission shall within one year from the date of publication of this directive, in liaison with the competent Member State authorities, carry out an investigation of the possible advantages and drawbacks of further measures with a view to facilitating the control exercised by parents or guardians over the programmes that minors may watch. This study shall consider, inter alia, the desirability of:
- the requirement for new television sets to be equipped with a technical device enabling parents or guardians to filter out certain programmes;
  - the setting up of appropriate rating systems,
  - encouraging family viewing policies and other educational and awareness measures,
  - taking into account experience gained in this field in Europe and elsewhere as well as the views of interested parties such as broadcasters, producers, educationalists, media specialists and relevant associations.

## **2. COUNTRY REPORTS**

### **LIST OF EXPERTS**

***Austria - Dr Albrecht Haller***

Dr Haller works as an associate in the Vienna office of the international law firm, 'Bruckhaus Westrick Heller Loeber'. He also lectures in copyright law at the University of Vienna. Dr Haller received a Master of Law and Doctor of Law Degree from the University of Vienna and a Master of Arts Degree from the University of Music and Dramatic Arts in Vienna. He has produced numerous publications on copyright and media law, including notes on relevant developments in Austria for IRIS.

***Belgium & Luxembourg - Mr Serge Robillard***

Serge Robillard is a legal expert based in Brussels. He joined the Research Department of the European Institute for the Media in November 1991. In 1997, he published a study on «Television and Culture: Policies and Regulation in Europe» with Emmanuelle Machet. A study on Convergence, including analysis of the protection of minors within the Information Society, will be soon published. He has made several evaluations of programming aspects for broadcasters and media authorities. He has also made several presentations on legal/regulatory issues and was involved in the European Platform of Regulatory Authorities (EPRA). He has published a study on regulatory bodies (London 1995) and contributed to several research projects. From 1990 to 1991 he worked as a legal expert at the Ministry of the French Speaking Community of Belgium where he was in charge of media expertise. He was also an Associate to the Belgium delegation within the Council of the European Union.

***Denmark - Dr Brigitte Tufte & Dr Thomas Tufte (mother-son-team)***

Brigitte Tufte is Associate Professor, Dr.ped. at the Royal Danish School of Educational Studies. She has conducted research since the early 1980s, taught and published extensively within the field of children & media, media education and youth culture. She is currently Section President of the International Association of Mass Communication Research's Section on Media Education and project leader on a 5-year research project on girls' and boys' everyday life and media culture.

Thomas Tufte is Assistant Research Professor, PhD at the Department of Film

and Media Studies, University of Copenhagen. He gained his PhD in a media ethnographical analysis of TV fiction in Brazil. He provided the Danish country report for the European research project, "Proximity Television and the Information Society in Europe", and is currently finalising a 3-year research project on globalisation and new technology. He is also an associate member of the ORBICOM communication network and co-editor of the Danish Journal of Communication (Medienkultur).

***Finland - Dr Anu Mustonen***

Dr Mustonen is currently Head of PR and Information at the University of Jyväskylä, Finland. With a degree in journalism and a PhD in Psychology, she has been engaged as a reporter for the national papers, 'Karjalan Maa' and 'Outokummun Seutu' since 1987, and is a researcher for the Finnish Broadcasting Company and a researcher/lecturer in the Department of Psychology at the University of Jyväskylä. She has produced numerous publications investigating the relationship between the issues of violence in the media, children and psychology and has since 1995 been the reviewer for the Journal of Broadcasting & Electronic Media.

***France - Mr Frederic Pinard***

Mr Pinard is a lawyer specialising in Media, Public and European Law. In 1995 he obtained a post-graduate diploma in Economic and Communication law, focusing on Media law and Economics, encompassing traditional media and new media and, more generally the information society. In a professional capacity he has worked as a consultant, legal adviser, editor of a newsletter and researcher/writer. He has worked for the Council of Europe, the Eurimages Fund and the European Audiovisual Observatory.

***Germany - Dr Runar Woldt & Emanuelle Machet***

Dr Runar Woldt started his professional career as a researcher and lecturer at the University of Stuttgart-Hohenheim, Department of Journalism. He was then an editor of 'Media Perspektiven', a German media journal published by the public broadcasting organisation ARD (1986-91). Since December 1991, he has been Head of Research at the European Institute for the Media (EIM), based in

Düsseldorf. Runar Woldt's main research interests include the socio-economic developments of the media in Europe, European media policies, and the impact of regulation and market structures on media performance. He has produced numerous publications on a variety of related subjects.

Emmanuelle Machet is a researcher at the European Institute for the Media (EIM) based in Düsseldorf. She has a degree in media law from the University of Poitiers and has carried out post-graduate work in European studies at the University of Aachen. She is the secretary of the European Platform of Regulatory Authorities (EPRA) and has recently published together with Serge Robillard 'Television and Culture: Policies and Regulations in Europe'.

***Greece - Dr Petros Iosifides***

Dr Ioifides is currently lecturer in Mass Communications at the University of North London, with responsibilities including the design and teaching of MA courses, "Principles in Mass Communications" and "Communications and New Technologies". His research duties include production of papers and proposals in the areas of media market structure, technological convergence and audiovisual content regulation, with a particular interest in the protection of minors. He has participated in the EC project examining the EU multimedia market in the past.

***Ireland - Dr Marie McGonagle***

Marie McGonagle is a lecturer in law at the National University of Ireland, Galway, where she specialises in Media and Entertainment Law, and also teaches Family Law. She has lectured and published widely on Media Law issues, has been involved in the training of journalists in both the print and audiovisual media, has acted as consultant to media and journalists' organisations on legal issues and matters of law reform. In 1996 she was appointed to the Irish Government's Commission on the Future of the Newspaper Industry. She has also participated in a number of seminars and projects for Article 19, the Council of Europe, and other national and international organisations.

***Italy - Ms Cristina Cabella***

Cristina Cabella received a degree from the University of Milan School of Law in

1988 and a LL.M from the University of London, Queen Mary and Westfield College in 1990. Thereafter she was Associate Researcher in Intellectual Property at the University of London, Queen Mary and Westfield College from 1990 to 1991. She has practised in the Intellectual Property department of two major London City firms: Lovell White Durrant (1990/1991) and Freshfields (1998). Her practice areas are intellectual property and information technology, Internet and digital media. She advises among others a number of US software firms including Seagate, Aim-Tech, Security Dynamics Technologies, NETg, Engineering Animation, on Shrink-wrap Click-wrap software license agreements, software translation agreements, software escrow agreements.

***Netherlands - Dr Jo Groebel***

Dr Groebel is chairman of the Communications Psychology Department at the University of Utrecht. He is also the founder and director of the Post-Graduate School of Media Management and Development – University of Utrecht and Visiting Professor at the University of California Los Angeles (UCLA). He is a member of the German UNESCO-Commission, the Media Commission of the German BundesPräsident and the “Mediaraad”, advisory committee to the Dutch Government.

***Portugal - Dr Helena Sousa & Dr Manuel Pinto***

Dr Sousa is currently Deputy Head of the Department of Communications Science at the University of Minho, where she lectures on “International Information and Media Sociology”. She has previously worked as a journalist for the national newspaper, “Jornal de Notícias”, on national and international political issues.

Manuel Pinto is Vice-President of the Institute of Child Studies. He wrote his thesis about “Television in Children's Everyday Life”. As former head of the Education and Culture Section of “Jornal de Notícias”, he has extensive experience as a journalist in educational issues.

***Spain - Dr Alberto Perez Gomez***

Dr Perez Gomez is a Lecturer in European and Constitutional Law at the University of Alcala (Madrid). His main field of research is Communications Law

and he has published several articles in this area. He is the Spanish correspondent for IRIS, the European Audiovisual Observatory's monthly magazine, the Institute für Europäisches Medienrecht de Amsterdam (EMR) and the Institute for Information Law of Amsterdam. He has participated in several research projects related to the media, and is also a practising lawyer. He previously researched the legal protection of minors in Spain when preparing a joint publication about Information Law in Spain.

***Sweden - Dr Jonas Wall***

Jonas Wall is a lecturer at the University College of Gävle. In 1979 he initiated one of the first Swedish university courses in the field of mass communication. He has conducted extensive research on the role of the mass media in the development of adolescents and wrote one of the first Swedish books in this field. In 1992 the Swedish government appointed him as a film censor, and since 1996 he has taught courses in mass communication theory and methodology at the University College of Gävle, Sweden. He has published several books on theme of children and the mass media.

***UK - Mr Stefaan Verhulst***

Stefaan G. Verhulst is the Programme Director of the Programme in Comparative Media Law and Policy at the Centre for Socio-Legal Studies, Wolfson College, Oxford University. He was previously senior researcher for IMPS at the School of Law, University of Glasgow. In addition, Mr. Verhulst serves as an Expert Consultant for the Council of Europe, a Legal Correspondent for the European Audiovisual Observatory and is the co-editor of the International Journal of Communications Law and Policy and the Post Soviet Media Law and Policy Newsletter.



### 3. QUESTIONNAIRE

## QUESTIONNAIRE

**BROADCASTERS**

Have you implemented a parental control system(s)?

1. YES

Is it your own system? (If so please answer Section **1A** of the Questionnaire)

Is it a system determined by a third party? (If so please answer Section **1B** of the Questionnaire)

2. NO (If so please answer Section **1C** of the Questionnaire)

**All respondents should answer Sections 2, 3 and 4 of the Questionnaire**

Please fill in the section below so that we can send you the final report of the

<b>Title:</b> .....
<b>Name:</b> .....
<b>Company:</b> .....
<b>Address:</b> .....
.....
<b>Telephone:</b> .....
<b>Fax:</b> .....
<b>e-mail:</b> .....

study.

Which industry/group of interested parties do you represent? Please tick

- a) Digital/analogue broadcasting entity
- b) Film/video distributor
- c) Internet service provider
- d) Trade association
- e) Other (please specify) .....

*Please return this form with your questionnaire. Thank you.*

## Section 1A

## BROADCASTERS WHO HAVE IMPLEMENTED OWN PARENTAL CONTROL SYSTEM

**1. Current system****1.1. Implementation**

1.1.1 When did you implement the parental control system(s) currently in use?

1.1.2 Is it a voluntary or mandatory system? If the system is mandatory, please describe the nature of the legal instrument mandating it, its issuing body, and discuss its specific requirements.

1.1.3 Which parties were involved in the conception and implementation of the actual system(s) (viewers' and family associations, producers, authors, other broadcasters, government authorities, etc.)?

1.1.4 Which cultural, legal, and technical considerations have been taken into account?

**1.2. Description – Functioning - Evaluation**

1.2.1 To which content (e.g. programs, films, news, advertisements, chat room, multimedia content...etc.) do you apply your rating/labelling system?

1.2.2 How is your system represented (e.g. acoustic warning, visual symbol, etc.)?

1.2.3 What is the qualitative nature of the system? Identify whether the system is (a) evaluative or descriptive,<sup>20</sup> and (b) deterministic or non-deterministic.<sup>21</sup> State the criteria used.

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<sup>20</sup> A descriptive system is one which provides a description of the content of the labelled media and can provide a set of indicators about different content categories. (The 'Recreational Software Advisory Council' – RSAC- USA) provides an example of a descriptive system. Content producers answer a detailed questionnaire about their content with respect to violence, nudity, sex and language.) An evaluative system is one which makes a judgement about content using a standard of harmfulness and typically provides a single rating indicator, usually based upon age. (The 'Motion Picture Association of America' – MPAA-USA) provides an example of an evaluative system. The ratings

1.2.4 Is a specific body responsible for the classification? Is it an internal or external body? What is the composition of this body? Is this body bound by any legal instruments? If so, identify the kind of instruments as well as the corresponding competence of this body.

1.2.5 Do you exercise control upon the classification decisions issued by the body?

1.2.6 Apart from these systems, what other measures have you provided in order to facilitate parental control?

1.2.7 How do you evaluate the effectiveness of the parental control systems (when, how, by whom, etc.)? How do you adapt the systems to the change of practises?

### 1.3. Appreciation

1.3.1 What specific technical difficulties have you met in implementing your rating/labelling system?

1.3.2 What is the cost imposed by this system? Who bears this cost? What is the impact of the rating/labelling system on your budget?

1.3.3 Has this rating/labelling system had an appreciable impact on the value of your existing catalogue of works?

1.3.4 Has this rating/labelling system had an impact on the audience and thereby on your programming strategy? Discuss any studies you have conducted on this issue.

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ascribed by the MPAA do not describe the content of the film, but what age group may see the film. The 'Entertainment Software Rating Board' (ESRB-USA) provides a combination of content descriptors and age classification.)

<sup>21</sup> A deterministic rating process is based upon some objective methodology in which the final rating is the result of following the methodology. A non-deterministic rating process is based upon the opinions of a rating body. Keeping in mind that no system is purely deterministic, please provide a detailed explanation of the basis for your determination.

1.3.5 Has this rating/labelling system had an impact on sponsors, advertisers and thereby on your programming strategy? Discuss any studies you have conducted on this issue. What is your marketing strategy concerning the ratings? Where are the rating/labelling systems published (specialised magazines, general newspaper, hotlines, etc.)?

1.3.6 Has this rating/labelling system had an impact on your image vis-à-vis viewers either as individuals or as parents? Discuss any studies you have conducted on this issue.

1.3.7 Has this rating/labelling system created any tension with producers and authors of the work labelled? How has this tension been resolved?

## Section 1B

BROADCASTERS APPLYING PARENTAL CONTROL SYSTEMS DECIDED BY  
A THIRD PARTY**1. Current system****1.1 Implementation**

1.1.1 When was the parental control system(s) currently in use implemented?

1.1.2 Which body issued the current system? (Broadcaster, Regulatory Body...)

1.1.3 Is it a voluntary or mandatory system? If the system is mandatory, please describe the nature of the legal instrument mandating it, and discuss its specific requirements.

1.1.4 Which parties were involved in the conception and implementation of the actual system(s)? (viewers' and family associations, producers, authors, other broadcasters, government authorities, etc.)

1.1.5 Which cultural, legal, and technical considerations have been taken into account?

**1.2 Description – Functioning - Evaluation**

1.2.1 To which content (e.g. programs, films, news, advertisements, chat rooms, multimedia content, etc.) do you apply the rating/labelling system?

1.2.2 How is the system represented (e.g. acoustic warning, visual symbol, etc.)?

1.2.3 What is the qualitative nature of the system? Identify whether the system is (a) evaluative or descriptive,<sup>22</sup> and (b) deterministic or non-deterministic.<sup>23</sup> State the criteria used.

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<sup>22</sup> A descriptive system is one which provides a description of the content of the labelled media and can provide a set of indicators about different content categories. (The 'Recreational Software Advisory Council' - RSAC) provides an example of a descriptive system. Content producers answer a detailed questionnaire about their content with respect to violence, nudity, sex and language.)

An evaluative system is one which makes a judgement about content using a standard of harmfulness and typically provides a single rating indicator, usually based upon age. (The 'Motion Picture

1.2.4 Are you responsible for the classification of the programs you broadcast?

If not, which entity decides the classification? How? If yes, how do you proceed? Is a specific body responsible for the classification? Is it an internal or external body? What is the composition of this body? Is this body bound by any legal instruments? If so, identify the kind of instruments as well as the corresponding competence of this body?

1.2.5 Do you exercise control upon the classification decisions issued by the body?

1.2.6 Apart from these systems, what other measures have you provided in order to facilitate parental control?

1.2.7 How do you make the evaluation of the parental control systems (when, how, by who)? How do you adapt the systems to the change of practises?

### 1.3 Appreciation

1.3.1 What specific technical difficulties have you met in complying with the rating/labelling system?

1.3.2 What is the cost imposed by this system? Who bears this cost? What is the impact of the rating/labelling system on your budget?

1.3.3 Has this rating/labelling system had an appreciable impact on the value of your existing catalogue of works?

1.3.4 Has this rating/labelling system had an impact on the audience and thereby on your programming strategy? Discuss any studies you have conducted on this issue.

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Association of America' - MPAA provides an example of an evaluative system. The ratings ascribed by the MPAA do not describe the content of the film, but what age group may see the film. The 'Entertainment Software Rating Board' - ESRB-USA - provides a combination of content descriptors and age classification.)

<sup>23</sup> A deterministic rating process is based upon some objective methodology in which the final rating is the result of following the methodology. A non-deterministic rating process is based upon the opinions

1.3.5 Has this rating/labelling system had an impact on sponsors, advertisers and thereby on your programming strategy? Discuss any studies you have conducted on this issue. What is your marketing strategy concerning the ratings? Where are the rating/labelling systems published (specialised magazines, general newspaper, hotlines, etc.)

1.3.6 Has this rating/labelling system had an impact on your image vis-à-vis viewers either as individuals or as parents? Discuss any studies you have conducted on this issue.

1.3.7 Has this rating/labelling system created any tension with producers and authors of the work labelled? How has this tension been resolved?

1.3.8 What is your assessment of the role of the Regulatory Body/Industry Board?

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of a rating body. Keeping in mind that no system is purely deterministic, please provide a detailed explanation of the basis for your determination.



Section 1C

BROADCASTERS WHO HAVE NOT IMPLEMENTED A PARENTAL CONTROL  
SYSTEM

**1. Current system**

Please give your reasons for not having implemented a parental control system to date.

Sections 2, 3 & 4

ALL BROADCASTERS

## **2. New technologies**

2.1 What is your evaluation of the recent technical devices (V-chip, EPG, PICS, blocking, filtering systems)? Are there any technical, financial or cultural obstacles to the implementation of such devices or further parental control measures generally? What would be the foreseeable consequences for your company in both financial and technical terms?

2.2 Would you voluntarily implement a technical device regime for your programming? What do you believe is the proper role of the regulatory body in this context?

2.3 If you are a film or video distributor, or a broadcaster, have you developed any systems specifically in response to the development of digital technologies for the television environment? If you are an on-line content provider, have you developed any systems specifically in response to recent technological developments in the on-line environment? If so, please discuss.

2.4 If you have not developed any systems specifically for these technological developments, what are your views concerning facilitating parental control in the context of these new technologies? Do you anticipate these new modes permitting you to improve information either for parents or for the protection of minors? Through what types of measures and/or devices may this be achieved?

## **3. Horizontal and European approach**

3.1 If a horizontal<sup>24</sup> approach is not already in place, do you consider a horizontal approach as appropriate, feasible, or efficient?

3.2 In your view is there a need for European co-operation or harmonisation on this issue? What kind of commonalties at EU level is needed (age classification, etc.)?

#### **4. Conclusions**

4.1 Is there any discussion concerning the improvement of the actual system, the implementation of a new system or further measures such as the V-chip? In what environments? Who are the parties involved? Is the actual stage of these discussions preliminary, intermediate or advanced?

4.2 Do you think that your industry is culturally, structurally, technically, or economically prepared to make this new step? Do you think that your industry is capable of collaborating on a high level with the whole industry to implement necessary accompanying measures for these new devices such as a common rating/labelling system? Do you think that your actual rating/labelling system would be adaptable to these new requirements?

Please feel free to add any information that seems relevant for our understanding  
and the aim of the study

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<sup>24</sup> This idea of horizontal treatment concerning parental control is derived from the Council Recommendation on the Protection of Minors and Human Dignity in the Audiovisual and Information Services (adopted 28 May 1998). Here, the term horizontal encompasses any rating or labelling system capable of covering content in the four media sectors designated in this Recommendation (e.g. film, video, TV, and on-line services), as well as a device employing such a system in television and personal computer environments.

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55.	Mr Martin Treu	UNIVIDEO -Unione Produttori Distributori Importatori Italiani di Opere e Supporti Audiovisivi e Multimediali	ITALY
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58.	Mr Gianni Massaro	UNPF - Unione Nazionale Produttori Film	ITALY
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65.	Mr. J. van Zigl	columbia TriStar	NETHERLANDS
66.	Mr Paul Solleveld	NVPI	NETHERLANDS
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69.	Eng. Carlos Moreira da Silva	Televisão Independente	PORTUGAL
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108.	Mr Jonny Bradley	Automatic Television	UK
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31.	M. Francois-Noel Robinet	Ass. Des fournisseurs d'accès à des services en ligne et à Internet	FRANCE
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65.	Mr Sergio Tavassi	Coordinamento Genitori Democratici	ITALY
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68.	Mr Fernand Weides	Association pour la Multimedia	LUXEMBOURG
69.	Mr Ed Kohl	Office due Film Scolaire	LUXEMBOURG
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100.	Mr Nigel Williams	Childnet International	UK
101.	Ms Rosalind Benn	Christian Action Research & Education	UK
102.	Ms Annie Mullins	NCH Action For Children	UK
103.	Mr John Beyer	National Viewers and Listeners Association	UK
104.	Mr Jocelyn Hay	Voice of the Listener & Viewer	UK
105.	Ms Diana Whitworth	National Consumer Council	UK
106.	Mr David Kerr	Internet Watch Association	UK
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16.	PRODUCERS	Mr Gérard Gabella	SPA (Software Publishers Association)	USA
17.	PRODUCERS	Mr Jean-Paul Commin	IVF	BELGIUM
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