

## Comments

### on the Commission Consultation on Rules Applicable to Audiovisual Content Services

The German Association of Information Technology, Telecommunication and New Media, BITKOM, represents 1,300 companies, around 700 of which are direct members, generating an approximate total turnover of €120 billion and employing some 700,000 jobholders. Among them are producers of terminal equipment and infrastructure systems as well as suppliers of software, services, new media, and content. More than 500 direct members belong to the medium-sized business sector. BITKOM has committed itself to improving the general regulatory environment in Germany and in the European Union, modernizing the educational system and advancing the information society.

The Commission Communication “i2010 – A European information society for growth and jobs”, adopted on 1 June 2005, announces that the Commission will propose by the end of 2005 a “revision of the Television without frontiers directive to modernise the rules on audiovisual media services.” Four Focus Groups met between September 2004 and February 2005 and produced six issues papers.

BITKOM welcomes the opportunity to comment on the issue papers. BITKOM fullheartedly supports Commissioner Viviane Reding in her commitment to maintain a solid, forward-looking regulatory scheme for cross-border television. BITKOM generally favours a liberal approach to the future regulation of audiovisual services. The Lisbon strategy, in which communications services, in particular new services, form an important cornerstone, suggests a regime that will help foster the development of new and emerging communications services in 2010.

In contrast, the current *TVWF Directive* is characterized by a high degree of regulatory intervention. Today, broadcasting is one of the most heavily regulated industries in the European Union. BITKOM urges the European legislator not to extend this narrow regime indiscriminately to new and emerging services. Newly emerging services are often fragile in nature and their successful development may be seriously endangered by heavy-handed regulation. The need for in-depth-regulation of new services must therefore be assessed carefully on the basis of a case-by-case analysis. BITKOM especially emphasizes the need for liberal rules in the field of advertising – it is the commercial basis of existence for broadcasters and other media.

BITKOM believes that a special emphasis should be put on self-regulatory regimes. Due to the fast pace of both the broadcasting and the online sector, self-regulatory regimes generally tend to work better than the less flexible approach of a too detailed legislation.

Our core question that we would like the Commission to address more often, i.e. before *any* legislative action, is:

**What is the added value of legislative action in the light of existing rules?**

This examination is clearly mandated by the “Better Regulation” programme. We are surprised how rarely the Commission actually addresses this question in the instant revision process.

## ■ Executive Summary

- **Material Competence:**
  - **An overarching directive regulating all audiovisual media is not justified.** Audiovisual services are governed by the Electronic Commerce Directive and the Communications Package, together already forming the “first tier” the Commission envisions. We urge the Commission to address the question of added value of a new, additional framework which has not been done so far.
  - **Suitable criteria for any two two-tiered approach, that is, for the distinction between the regulation of traditional broadcast and new services, should be the degree of user choice and user control.** From a policy point of view, they are more appropriate than a mere distinction between linear and non-linear services. Under the criteria of user choice and control, new services must not be governed by the regime for traditional broadcast. Instead, some services currently governed by the TVWF may have to be shifted to a lower tier.
  
- **Territorial Competence:**
  - **The country of origin principle must be maintained.** It has proven to be a market- and development-friendly rule and has largely contributed to strengthening the European media base. It is at the core of the TVWF Directive and a necessary condition for the creation of an internal market for television broadcasts. Its adoption in the Electronic Commerce Directive has prompted a similar success story as in the market of traditional television.
  - **Modifications of Artt. 2 (3) and 2a TVWF are not justified.** In spite of minor interpretations problems, these rules have proven to work well. Language is not a suitable criterion to determine an intent to evade legislation.
  
- **Cultural Diversity:**
  - **Quota obligations are inappropriate for new services.** Due to practically non-existent entry barriers, pluralism is inherent to the technical characteristics of these new services.
  - **Quota obligations for traditional television are obsolete.** Growing diversity in the area of traditional television requires a re-evaluation.
  
- **Commercial Communication:**
  - **No new definitions are necessary, nor is an inclusion of all audiovisual commercial communication into the scope of the TVWF justified.** The Electronic Commerce Directive already governs all forms of electronic commercial communications. Again, we urge the Commission to discuss any added value of additional definitions and regulations.
  - **Existing qualitative advertising restrictions must be re-evaluated and not be extended to new services.** New services offer numerous effective and for the industry less burdensome ways so protect minors or other groups.
  - **Existing quantitative advertising restrictions are obsolete and cannot reasonably be imposed on new interactive services.** The growing degree of user choice and control has made any kind of quantitative restrictions unnecessary. Their application in an interactive environment does not make sense.

- **Protection of Minors and Human Dignity:**
  - o **Due to the successful work of self-regulatory bodies, no further legislative interference is justified.** Instead, any interference would jeopardize effective self regulation<sup>1</sup>.
- **Right of Reply:**
  - o **Harmonisation is not justified.** Remedies for “assertion of incorrect facts” (Art. 23 TVWF) exist in Member States for all forms of media because they stem directly from the general protection of personal dignity.

## ■ Issue Paper 1: Rules applicable to Audiovisual Content Services

### ISSUE 1: MATERIAL COMPETENCE

#### 1.1. The notion of Audiovisual Content Services

##### *No Comprehensive Framework – A Two-Tiered System Already Exists*

BITKOM opposes the evolution of the *TVWF Directive* to a general “Content Directive”. We urge the Commission to examine the need for general rules for all audiovisual media carefully.

In our view, such a need does not exist because of two reasons:

- A two-tier-regulation as considered by the Perry Report and by the Commission is already in place:
  - o Tier one governs audiovisual services in general and includes the Electronic Commerce Directive and the provisions of the Communications Package.
  - o Tier two governs traditional television and consists of the TVWF.

There is no unregulated area of audiovisual services prompting a new sector-specific regime for “audiovisual content services”. Especially in times of “Better Regulation”, new sector-specific regulation should be avoided unless compelling reasons mandate it. The Commission has not addressed the question of added value in the light of existing regulation.

- Policy reasons also advise against creating a general directive for all audiovisual services. New services can be characterized by
  - o a high degree of consumer choice and control and
  - o a low level of entry barriers.

A high degree of consumer choice gives the user a better control over the consumption of the service, especially over the consumption of advertising. It therefore dramatically reduces the need for tightly-knit regulation in the respective field.

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<sup>1</sup> Hereafter, “self regulation” is understood as voluntary industry cooperation in order to ensure public policy goals; cooperation consists of industry code of conducts, joint implementation of policy actions or cooperation with governmental authorities.

The same is true for a low barrier of entry. The regulation for audiovisual services goes back to the beginning of linear analogue television and was based on the scarcity of airwaves available for broadcasting. Content regulation for audiovisual services was designed to serve the freedom of expression by facilitating the free movement of broadcasting and TV programs. New forms of communication, such as the internet, display the other extreme: Access is virtually unlimited, both to providing and to obtaining information. This fosters the freedom of expression, because it ensures a vivid competition between different voices in which everyone has the chance to be heard.

While the added value of one overarching directive remains unclear, such an approach presents a number of risks for the development of new services: BITKOM is concerned that an overarching directive might tend to "push" categories into higher tiers wherever their classification is in doubt. This is especially true for new services in the future and for online services today. The inclusion of online services into the scope of the TVWF Directive would mean an indiscriminate "wholesale export" of the right of reply and the regime for protection of minors to the online sector. In our view, the current draft of EU Recommendations on protection of minors and human dignity and on rights of reply in the media lack concise definitions and do not realistically meet the demands of an online environment. We would not like to see a draft like this incorporated into the TVWF revision process at any point.

*User Choice and Control are Suitable Criteria in Determining the Scope of Traditional Broadcast Regulation as Opposed to the Regulation of New Services*

Any two-tiered system, may it consist of one general directive or – as we propose – of a set of separate regulations as it is currently in place, needs criteria to distinguish between the different tiers, that is between the regulation of traditional broadcast and the regulation of other, new services.

Suitable criteria are, in our view, the degree of control and user choice. As we stated above, this best reflects the policy reasons behind different approaches to the regulation of audiovisual services.

Under the criteria of user control and choice, the question cannot be if the material competence of the TVWF Directive should be extended to new services. In contrast, we have to ask whether new services currently falling under the TVWF Directive should be relegated to another, lower tier. The considerable degree of consumer choice and user control associated with certain services might justify such a step of careful deregulation.

*The Distinction Between Linear and Non-Linear Services Must be Amended to Allow a Precise Definition of Traditional Broadcasting Services as Opposed to New Services*

BITKOM is not convinced that the distinction between linear and non-linear services alone will be sufficient to determine the scope of TVWF (or any "first" tier thereof in case of a two-tiered directive which we advise against) as the distinction does not adequately reflect the degree of user choice and control: In an interactive environment such as the internet, a user has a maximum degree of choice and control even if the service is linear, because the server-client transmission works in a direct and individual way.

In order to ensure the protection of public policy interests without hampering new services through the rigid regulatory regime for traditional television broadcasting, BITKOM suggests

sharpening the scope of the TVWF Directive (or any “first” tier thereof in case of a two-tiered directive which we advise against) by creating a precise definition of traditional broadcasting services in Art. 1 TVWF. Such a definition of “broadcasting services” should encompass services which are transmitted on a one to many basis and are intended for reception by the public (that is an indeterminate number of potential viewers to whom the same images are transmitted simultaneously), scheduled by a succession of programmes arranged throughout the day by the broadcaster, and where the viewer controls neither content nor delivery time.

Based on this understanding, the broadcaster is the natural person or legal entity responsible for the composition of the linear audiovisual service, i.e. determining the schedules of the television program. If an operator acts as a sole carrier without any role in the editing/publishing of the content, the obligations of TVWF (or any “first” tier thereof in case of a two-tiered directive which we advise against) remain the sole responsibility of the broadcaster, and – in accordance with the principles of the E-Commerce Directive – do not apply to the carrier. The same holds true for entities only bringing together existing channels, such as bouquet operators or TV channel access portals.

On the contrary, non linear services are activated by the user at his choice, and therefore are not controlled by a provider; they usually include a point-to-point element. The final user has a much greater control over the content, as the user decides individually about what and when to download or stream.

## **1.2. Basic rules**

### **1.2.1. Protection of minors and human dignity**

The protection of minors and human dignity is an important cluster in European audiovisual policy. With this regard, self-regulation has proven to be a successful and flexible instrument which is supported by the

- Action Plan “eEurope 2005: An information society for all” (COM(2002) 263 final; see page 14: “Since the publication of the e-commerce communication in 1997, the Commission has developed a comprehensive policy in this field. Among the achievements have been [...] a number of non-legislative initiatives aimed at promoting self-regulation [...]”) as well as by the
- Communication from the Commission to the Council and the European Parliament – Better Regulation for Growth and Jobs in the European Union (COM(2005) 97 final; see page 14, reg. impact assessment: “Instruments which provide an alternative approach to legislation, such as co-regulation and self-regulation, have to be considered when assessing options.”)

A general harmonisation of standards would endanger and possibly replace successful self regulation regimes and thus dramatically conflict with the outlined standards of “Better Regulation”. Instead, the Commission should continue not to interfere with effective self regulation schemes.

### **1.2.2. Identification of commercial content**

As the Issue Paper correctly notes, Art. 6 of the Electronic Commerce Directive already mandates the clear identification of any kind of advertisement. We strongly support this general rule, as it can easily accommodate traditional and new forms of commercial communication. Accordingly, we see no need for additional sector-specific regulation.

### **1.2.3. Qualitative rules regarding commercial communications**

As we stated above, we think that audiovisual commercial communications in an interactive environment require less regulation due to a higher degree of user choice and user control. We therefore do not see a justification to apply bans or restrictions on advertising in the TVWF to all audiovisual services.

### **1.2.4. Right of reply**

Remedies for “assertion of incorrect facts” (Art. 23 TVWF) exist in Member States for all forms of media, because they stem directly from the general protection of personal dignity. We therefore urge the Commission to examine carefully if there is an actual need for harmonisation. We do not see such a need at this point in time.

### **1.2.5. Basic identification / masthead requirements**

Art. 6 of the Electronic Commerce Directive already mandates the clear identification of service providers. We see no need for additional sector-specific regulation.

## **ISSUE 2: TERRITORIAL COMPETENCE**

### *The Country of Origin Principle Must be Maintained*

We strongly agree with the Commission that the country of origin principle, as laid down in Art. 2 TVWF, is at the core of the Television without Frontiers Directive and a necessary condition for the creation of an internal market for television broadcasts. The multiplication of audiovisual services in Europe does indeed owe its success story to the country of origin principle. Since the TVWF Directive was adopted in 1989, the country of origin principle has contributed substantially to the development of “Television Without Frontiers” in Europe. In addition, the country of origin principle was adopted as the guiding principle in other fields, namely in the Electronic Commerce Directive, where it prompted a similar success story.

BITKOM therefore expresses its firm opposition to any proposals to depart from the country of origin principle as the guiding principle of the TVWF Directive, as addressed in the Note (8806/05) of some Member States submitted to the agenda for the Education, Youth and Culture Council meeting on 23 and 24 May 2004, referred to in footnote 9 of Issue Paper I. A departure from the country of origin principle would contradict the goal of the TVWF Directive: to strengthen the free movement of services and audiovisual products. It would put access to all programs in all EU Member States, the unification process of the European Union and the diversity of the European media landscape at a severe risk. Broadcasting is one of the most heavily regulated industries in the European Union. If broadcasting stations had to comply with the regulations of each individual EU Member State in which their signals can be received via satellite, their regulatory burden would be multiplied to an unacceptable level. Immense entry barriers would foreclose market entry for smaller services.

We therefore strongly support the Commission in its decision to maintain the country of origin principle.

## **2.1. PROVISIONS WITH RESPECT TO LINEAR AUDIOVISUAL SERVICES**

### **2.1.1. Determination of jurisdiction and circumvention measures against broadcasters in case of evading legislation**

#### *Language is Not a Suitable Criterion to Determine Intent to Evade Legislation*

The language of a programme as a criterion for determining the country of origin is generally not compatible with a multi-lingual internal market in which cross border television is particularly prevalent. The country of origin principle is specifically designed to facilitate the dissemination of European content across national borders and in different languages. Specifically, we do not see what the language of a programme can actually tell us about the broadcaster's intent to evade legislation. The broadcaster might choose to operate from a Member State that has the same official language as the target Member State or the broadcaster might target small, unofficial language groups within a certain Member State from outside that Member State. It is also not uncommon to provide the user with a choice of two or more languages.

The mere use of a certain language is therefore not a valid argument to prove or disprove an intention to evade legislation. This is why the Court stated that "the abuse or fraudulent conduct must be proven case by case and on the basis of objective evidence". We do not see an alternative to the need for this case-by-case analysis.

#### *Modification of Art 2 (3) TVWF is Not Justified*

BITKOM therefore believes that the current wording of Art. 2 (3) TVWF is a workable solution in spite of some interpretation difficulties. All normative legal terms are open to interpretation, and it has always been the responsibility of the courts to further clarify such terms on a case-by-case basis. The directive cannot possibly provide custom-tailored solutions to all conceivable constellations and should not attempt to do so.

The underlying principle is to find the place where key decisions regarding *content* are made. The everyday application of this principle may make it necessary to consider different factors in different situations and cannot be laid down in generally worded rules.

#### *Extension of Art. 2a TVWF is Not Justified and Would Jeopardize the Country of Origin Principle*

Because we are a strong supporter of the country of origin principle, we oppose an extension of the list of overriding public interests as such an extension would substantially weaken the country of origin principle.

### **2.1.2. Review of the subsidiary criteria in order to improve the effective application of the directive for broadcasts coming from outside the European Union**

BITKOM believes that all criteria in Art. 2 (4) TVWF are well workable and that none of them deserves a preference over the other. We therefore propose to modify Art. 2 (4) TVWF and give the broadcaster a choice as to whether it wants to be regulated by the country where the satellite uplink is situated or by the country to which the satellite capacity appertains.

## 2.2 PROVISIONS FOR NON-LINEAR AUDIOVISUAL SERVICES

### 2.2.1. Possible criteria for determination of the jurisdiction

As the Issue Paper correctly notes, the Electronic Commerce Directive has already established the country of origin principle for all services in the information society. This has prompted another “success story” similar to the one we experienced with the country of origin principle in the TVWF. Again, we see no need to address the general regulation of audiovisual services in the TVWF, because sufficient regulation is already in place.

Under no circumstances should we dispose of the country of origin principle in the TVWF Directive or in the Electronic Commerce Directive, for the important reasons outlined above (beginning of Issue Paper 2). The German Information Technology Industry which BITKOM represents strongly favours the continued application of the country of origin principle and the concept of jurisdiction as currently laid down in the TVWF Directive and in the Electronic Commerce Directive.

#### ■ Issue Paper 3: Cultural Diversity and the Promotion of European and Independent Audiovisual Production

##### Quota Obligations Are Inappropriate For New Services

BITKOM firmly opposes any regulation that is understood as “at least a political signal”. BITKOM is surprised and concerned by the fact that the Commission even considers mere political signals as a justification for legislative actions. Such an approach blatantly conflicts with any requirements of “Better Regulation”. Political signals and a suspected level playing field are not valid policy considerations for imposing any kind of general content quotas to audiovisual services.

The only valid policy reason could be the promotion of cultural diversity and European and independent audiovisual production. However, due to their practically non-existent entry barriers, new services, especially online services, have already proven to be the ideal environment to foster cultural diversity. Pluralism is inherent to the technical characteristics of these new services and in no other field would the legal imposition of quotas be more out of place.

##### Quota Obligations For Traditional Television are Obsolete

By no means do we see any legal justification to extend the current obligations in the TVWF. Instead, the growing diversity in the area of traditional television should lead to the question whether content quotas are still justified even in the area of traditional television. In the course of liberalising audiovisual regulation, Art. 4 and 5 TVWF are obsolete even for the traditional television sector.

## ■ Issue Paper 4: Commercial communications

### I – RULES COMMON TO ALL AUDIOVISUAL COMMERCIAL COMMUNICATIONS

#### ISSUE 1: THE CONCEPT OF AUDIOVISUAL COMMERCIAL COMMUNICATIONS

As we have stated before we strongly oppose the extension of the scope of the TVWF to all audiovisual services. The Commission considers adopting new definitions such as “audiovisual commercial communication” as a subcategory of “commercial communications” as defined in the Electronic Commerce Directive and further subcategories. However, we cannot see the added value of creating additional definitions and subcategories.

BITKOM believes that the current definitions are still appropriate and sufficient. Experience has shown that the current general provisions establish workable standards for new advertising techniques like mini spots, telepromotion, split screen, interactive advertising, virtual sponsorship etc. These new techniques do not require specific regulation. If they are not subject to specific regulation, they need not be defined.

Amending the current set of definitions would, in contrast, adversely affect the clarity and effectiveness of advertising regulation in the TVWF. Moreover, the audiovisual landscape continues to be in a state of flux. The Commission should therefore keep in mind that any revision of the current definitions in the TVWF Directive might soon be obsolete as advertising techniques continue to proliferate.

#### ISSUE 2: RULES ON HUMAN DIGNITY AND THE PROTECTION OF MINORS

Our national experience shows that the rules on the protection of minors are satisfactory. If problems are seen with a view to the application of these rules, this is a matter of enforcement, not legislation. Insufficient enforcement of existing rules should not lead to a more restrictive wording of the law, but must be addressed on the administrative level.

Successful self-regulatory schemes are in place and might be adversely affected by any interference (see our statement above, Issue Paper 1, 1.2.1).

We therefore urge the Commission to examine carefully if there is a genuine need for harmonisation.

#### ISSUE 3: RULES RELATING TO PUBLIC HEALTH CONSIDERATIONS (TOBACCO, ALCOHOL, MEDICINES)

##### *Policy Reasons Advise Against Adopting TVWF-Rules to New Services*

As we stated above, we agree with the view that audiovisual commercial communications in an interactive environment require less regulation due to a higher degree of user choice and user control. As far as the protection of minors or other special user groups is concerned, an interactive environment offers numerous ways to achieve effective protection without unduly restricting legitimate industry interests. The use of the Internet Content Rating Association (ICRA) as well as similar programs, for example, provide effective and innovative solutions. We therefore do

not see a justification to extend bans or restrictions on advertising in the TVWF to all audiovisual services.

#### *Existing Bans and Restrictions Must be Re-Evaluated*

Instead, we would like to encourage the Commission to rethink even existing bans on advertising for legal products. Creating a liberal and forward looking advertising regulation requires a re-evaluation of such existing rules.

As far as pharmaceutical products are concerned, we suggest relying on the self-regulatory bodies mentioned by the Commission. Their work has been very effective and we see no justification to regulate an area that is successfully governed by self regulation.

#### **ISSUE 4: IDENTIFICATION OF COMMERCIAL COMMUNICATIONS IN GENERAL, INCLUDING SPONSORED SPOTS**

BITKOM believes that the requirement to make advertising and teleshopping spots recognisable (Art. 10 (1) TVWF) is an essential, yet sufficient cornerstone for the industry to gain consumer trust. It is also part of the Electronic Commerce Directive (Art. 6) and thus already governs the entire realm of audiovisual services. No additional regulation is justified.

Under the proposition that the requirement to make advertising and teleshopping spots recognisable is strictly maintained, we support the Commission in its consideration to abandon the second requirement in Art. 10 (1) TVWF, the requirement of separation, in order to legalize certain forms of product placement. If the requirement to make advertising and teleshopping spots recognisable is maintained, a separation is not necessary to protect the consumer. If we follow the concept of a responsible consumer as it has been developed by the European Court of Justice, it is important, but also sufficient that the consumer identifies content as including a commercial message. This aim can be reached by various means other than separation.

#### **ISSUE 5: IDENTIFICATION OF SPONSORED CONTENT IN PARTICULAR**

We suggest clarifying that the insertion of the name and/or logo of the sponsor may be virtual, e.g. by replacing existing advertising boards on the playing field during sporting events, provided the integrity of the programme, the interests of rights holders, and the comfort and pleasure of the viewer are not prejudiced. Virtual sponsoring has also proven to be an effective, viewer friendly new advertising technique.

It should also be clarified that a mere co-operation between service providers (e.g. a content and a mobile service provider offering a mobile broadcasting service) are not sponsorships. Such co-operations will become more widespread due to the convergence of networks and services. Advertising is only concerned where a third party not involved in performing the service sponsors a programme.

Because of the different nature of interactive services with regard to user choice and control, we think the application of 17 TVWF to all audiovisual services is not justified.

## **ISSUE 6: APPLICATION OF THE RULES**

BITKOM strongly supports the idea of co-regulation, self regulation and codes of conducts. We believe that a special emphasis should be put on self-regulatory regimes. Due to the fast pace of the industry, self-regulatory regimes generally tend to work better than the less flexible approach of a too detailed legislation.

## **II – QUANTITATIVE RULES ON TELEVISION ADVERTISING**

### **ISSUES 1 and 2: HOURLY AND DAILY ADVERTISING LIMITS / HOURLY AND DAILY LIMITS APPLIED TO TEleshopping**

#### *Existing Rules Are Obsolete*

Today, viewer pleasure and comfort have become quality parameters in the extremely competitive environment of traditional broadcasting. It is of paramount importance for broadcasters not to annoy viewers with excessive advertising. We trust in the market forces and therefore favour deregulation and simplification of the rules. Abolishing existing limits would be an important step towards a liberal approach to advertising regulation.

#### *Quantitative Restrictions Cannot be Imposed on Interactive Services*

As the Commission correctly notes, any kind of quantitative restrictions does not make sense in an interactive environment. Again, this shows that extending the scope of the TVWF rules to all audiovisual services is not justified. Instead, interactive services that today fall within the scope of the TVWF (e.g. the insertion of a still button as opposed to an animated spot) should not be subject to Art. 11 and 18 TVWF.

## **ISSUE 3: INSERTION OF ADVERTISING**

The current wordings of Art. 11 (2) and Art. 10 (2) TVWF hinder the development of viewer friendly mini spots during short, accidental breaks, e.g. in sports programs, as well as split screens. The former fill in natural, i.e. accidental short breaks, mainly in sports programmes like boxing, wrestling, soccer, or football (corner, free kick, player replacement etc.). The latter are viewer friendly because they endow the viewer with the choice to follow the programme or the advertising or both at the same time. Neither of these new techniques interrupts the flow of the programme. Accordingly, both of them offer the viewer a piece of market information without “wasting” her extra time.

Both techniques, however, especially lend themselves to isolated advertising as opposed to airing several consecutive spots. Accordingly, Article 10 (2) TVWF is a strong obstacle in establishing these new, viewer friendly techniques.

BITKOM believes that the intended result – making sure that viewers do not confuse commercial and editorial content – can be achieved by a strict application of the requirement to make advertising recognisable. If advertising is clearly distinguishable from editorial content, there is no compelling need to prohibit isolated spots. We therefore suggest re-evaluating the validity of Article 10 (2) TVWF in an evolving, viewer friendly advertising environment. Abolishing the ban on isolated spots would solve the problems associated with the vague term “exception”. Finally,

it would help in situations where the broadcaster does not have sufficient advertising orders to permit a group of spots.

The interpretative communication states that the term “intervals” in Article 11 (2) does not refer to these short, accidental breaks, but only to scheduled intermissions in a sports program. In our view, Article 11 (2) should be amended as to permit advertising during short, accidental breaks in sports programmes or similarly structured events.

Also, the current wording of Article 10 (1) requires a separation “by optical and/or acoustic means”; a temporal separation is not mentioned. If the requirement of separation is not abandoned altogether, it could be clarified explicitly that compliance with Article 10 (1) TVWF does not require a *temporal* separation.

#### ■ **Issue Paper 5: Media Pluralism – What should be the European Union’s Role?**

We agree with the Commission’s conclusion “that many different measures are in place at different levels in order to safeguard pluralism”. There is no need for special legislation governing media concentration. Rather, an abuse of media power could be prevented by a systematic application of general antitrust laws that should apply to media power in the same way as to all other economic power.

#### ■ **Issue Paper 6: Protection of Minors and Human Dignity; Right of Reply**

We agree with the view that the current versions of Artt. 22, 22a and 23 TVWF suffice.

As to new services, we propose not to interfere with the successful work of national self-regulatory bodies with regard to the protection of minors and human dignity. To avoid redundancies, we refer to our statement above (Issue Paper 1, issue 1.2.1).

With regard to the right of reply, we urge the Commission to examine carefully if there is an actual need for harmonisation, as remedies for “assertion of incorrect facts” (Art. 23 TVWF) exist in Member States in all forms of media (see above, Issue Paper 1, issue 1.2.4).

Berlin, Germany, 10 August 2005