



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.10.1996
COM(96) 483 final

**GREEN PAPER ON THE PROTECTION OF MINORS AND HUMAN DIGNITY IN
AUDIOVISUAL AND INFORMATION SERVICES**

A corrigendum, COM(96) 483 final/2 of November 11, 1996, was issued for pages 1a, 13, 16, 20, 21, 30, 31, 45, 52, and 53. The corrected pages are included in this document.

(presented by the Commission)

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INTRODUCTION

This Green Paper sets out to examine the challenges that society faces in ensuring that two specific issues of overriding public interest i.e. protection of minors and of human dignity, are adequately taken into account in the rapidly evolving world of audiovisual and information services. The transition from a broadcast world to an environment where conventional television will exist alongside on-line services and indeed hybrid products creates a host of opportunities. The full potential of such developments will depend on society as a whole striking the right balance between freedom of speech and public interest considerations, between policies designed to foster the emergence of new services and the need to ensure that the opportunities they create are not abused by the few at the expense of the many. Certain facets of these issues require European, indeed global, solutions. Others remain a matter for individual states or for individuals themselves. The Commission believes that it is legitimate and necessary in this framework to analyze the situation as a whole, in order to examine the added value that each level of government should play, while paying special attention to policy initiatives at European Union level with due respect for the principle of subsidiarity.

The issues studied - the protection of minors and of human dignity - are currently high on the political agenda. They are identified in the first annual report of the Information Society Forum, adopted in June 1996, as being among the priorities for legal protection. They also have consistently been dealt with - by national and Community policies - as issues of overriding public interest. Legal and others measures in this field have naturally been designed as a function of the characteristics of traditional electronic media (broadcast television and radio) which are centralised in nature and instruments of mass communication. The new emerging services have two fundamentally different characteristics - they are decentralised and they are closer to individual than to mass communication. Even though the actual content of such services will sometimes be the same - a film, a news bulletin, a documentary - these different characteristics have to be taken into account when designing policy. This Green Paper therefore describes the evolution of audiovisual and information services, analyzes current legislation and policies at national, European and international level and the implications of the development of new services for these policies as far as is relevant for the two issues under study. The kinds of policy options examined are various and comprehensive, ranging from regulation and self-regulation through awareness and educational measures to the development of parental control systems.

The purpose of this Commission Green Paper is to stimulate debate on a medium- to long-term basis. It is being presented at the same time as the Commission Communication on "Illegal and harmful Content on Internet". The two documents are fully complementary both as regards timing and scope. The Communication puts forward short-term measures required to deal with specific Internet related issues that go beyond the field of protection of minors and human dignity. The Green Paper, besides its longer term and consultative nature, covers the specific subject matter of protection of minors and human dignity in relation to new audiovisual and information services in general. Both respond to requests from the European Parliament and Council for an in-depth examination of European public policy issues related to the development of new services.

In this respect the Commission would like to underline that a number of policy initiatives have already been launched, or are under examination, that deal either specifically, or incidentally with related public interest issues. For example, the Commission

Communication on "Services of General Interest in Europe" contains a section on broadcasting in which it is pointed out that general interest considerations in this field basically concern the content of broadcasts and are linked to moral and democratic values, such as pluralism, information ethics and protection of the individual. Intellectual property is covered in the Green Paper on Copyright and Neighbouring Rights in the Information Society. The Commercial Communications Green Paper covers *inter alia* public interest issues in relation to advertising and sponsorship. A Directive has been adopted on the protection of individuals with regard to the processing of personal data. The "Television without frontiers" Directive, which is in the process of being revised, provides coordinated Community rules in a number of fields, including the protection of minors. The proposed Directive on "Regulatory Transparency in the Internal Market for Information Society Services" will facilitate Community coordination of future regulatory activity and the pursuit of public interest objectives that are worthy of protection.

Finally, yet other issues flowing from the development of new audiovisual and information services - such as those related to cultural and linguistic diversity - have already been the subject of several recent policy initiatives (such as the MEDIA II, INFO 2000 and Multilingual Information Systems programmes). The Commission will monitor the achievements of these initiatives in the light of their objectives and will come forward in due course with an up-dated assessment of the situation and of any need for further policy initiatives.

SUMMARY

The fight against the dissemination of *content offensive to human dignity* and the *protection of minors against exposure to content that is harmful to their development* are of fundamental importance in enabling new audiovisual and information services to develop in a climate of trust and confidence. If effective measures to protect the public interest in these fields are not rapidly identified and implemented we run the risk of these new services not reaching their full economic, social and cultural potential.

Chapter I of this Green Paper identifies those aspects of the development of new audiovisual and information services that are relevant for the protection of minors and of human dignity and analyzes the categories of content that may give rise to problems. *It underlines the need not to confuse problems that are different in nature, such as child pornography, which is illegal and subject to penal sanctions, and children accessing pornographic content for adults, which while being harmful for their development may not be illegal for adults.* Solutions have to be designed to take account of the type of content in question.

They also have to be adapted as a consequence of the evolution of the service environment. New television services, such as pay-per-view, provide *greater individual choice*. They are evolving away from the mass media model, where the viewer's choice is between watching a programme or not, towards a model that is closer to publishing i.e. where the viewer selects his or her programme from a wider choice. On-line services take this evolution further towards the *individual communication model*. In geographical terms distribution networks are *less national and increasingly global in nature*, Internet being a world-wide network of networks. Moreover, new types of content are emerging. A traditional television programme that is watched from beginning to end is linear in nature whereas *interactivity* allows one to navigate through alternative scenarios. *Hybrid forms of content* are coming into existence, for example combining games, advertising and information in new ways.

The development of new services requires a *flexible framework*, notably in regulatory terms. A functional analysis of the characteristics of each new type of service is required in order to identify new solutions. Any new risks inherent to the nature of new services have to be carefully evaluated. Concerns about the protection of minors and of human dignity in relation to new emerging audiovisual and information services justify vigilance on the part of public authorities and citizens alike. However, the problem should not be overstated - *the difficulty often resides more in the characteristics of new services as compared to traditional media than in their content.*

Chapter II provides an analysis of existing legal and constitutional arrangements at European and national level. It points out that national arrangements in Europe are all set against the background of the fundamental rights enshrined in the European *Convention of Human Rights* (ECHR) which are incorporated as general principles of Community law by Article F.2 of the Treaty on European Union. In particular, Article 10 ECHR guarantees *the right to freedom of expression*. It also provides that the exercise of this right may be subject to certain limitations for specified reasons, including the protection of health or morals and the prevention of crime. Accordingly, freedom of expression is nowhere absolute in the European Union and is subject to restrictions. The case law of the European Court of Human Rights has developed the *principle of proportionality* the crucial test of conformity of any restrictive measures with the fundamental principles laid

down in the ECHR. Europe therefore has a basis for a common approach - the principle of freedom of expression and the test of proportionality. Beyond this common basis the *actual regimes in the Member States vary greatly and reflect differences in cultural and moral standards.*

In general terms, the new services can create specific *new problems with regard to the enforcement of legal provisions.* An example is the increased difficulty of determining *liability* where there are several different operators involved in the communications chain (network provider, access provider, service provider, content provider). Such difficulties are more acute when the different elements of the chain are in different countries.

This Chapter then goes on to examine the problems related to the *protection of minors* against harmful, but not necessarily illegal, content such as adult erotica. In some Member States, the principle of protection of minors is incorporated into general provisions, whatever the media involved, which forbid the supply to minors of material likely to harm their development (but which may be legally accessed by adults). Other Member States have provisions that are media specific. In all cases, the implementation of measures to protect minors requires the identification of ways of ensuring that minors do not access harmful material while allowing adults access. *Recent technological developments can provide new solutions through greater, parental control, both in the television (v-chip) and on-line (PICS) environments.* In both cases, content rating is a key part of the system. The new technical possibilities are more limited in the television than in the on-line environment, but both have the *advantage of offering "bottom-up" rather than "top down" solutions* that obviate the need for prior censorship and *increase the potential effectiveness of self-regulation.*

Chapter III analyzes the situation at the level of *the European Union* both with regard to Community law and to cooperation in the field of justice and home affairs. The *freedom to provide services* is one of the four basic freedoms guaranteed by the Treaty. Restrictions are possible for overriding reasons of public interest, such as the protection of minors and of human dignity, but are subject notably to the *proportionality test.*

In the fight against illegal content, *cooperation between the Member States in the field of justice and home affairs is identified as having a fundamental role to play given the international character of the new services.* Through such cooperation the Member States will be able to more effectively counter illegal use and content. Moreover, internal coherence will put them in a better position to work towards world-wide solutions.

Various options for *improving cooperation between national administrations and with the Commission* in both the Community and justice and home affairs frameworks are explored (systematic exchange of information, joint analysis of national legislative provisions, establishment of a common framework for self-regulation, recommendations for cooperation in the field of justice and home affairs, common orientations for international cooperation). The potential for *encouraging cooperation between the relevant industry sectors* is also evaluated (codes of conduct, common standards for rating systems, promotion of PICS). Possible user awareness and media education measures are also put forward for debate.

Building on the Commission's first policy options presented in the Communication on Illegal and Harmful Content on the Internet, *Chapters II and III* both identify *a series of*

questions for further debate on issues the Commission considers as key for defining future policy actions. They are, in order:

Question 1:

Taking account of what is technically feasible and economically reasonable, what should be the liability of different operators in the content communication chain, from the content creator to the final user? What types of liability - penal, civil, editorial - should come into play and under what conditions should liability be limited?

Question 2:

How should the test of proportionality of any restrictive measures be applied? Inter alia, should any arbitration or conciliation mechanisms at European Union level be envisaged? If so, what sort of mechanisms?

Question 3:

How do we determine the right balance between protection of privacy (including allowing users to maintain anonymity on the networks) and the need to enforce liability for illegal behaviour?

Question 4:

Should one give priority to a regulatory or a self-regulatory approach (possibly backed up by legislation in the latter case) as regards parental control systems? What measures would be required, inter alia at European Union level?

Question 5:

In what cases should systematic supply of parental control systems be envisaged (according to service type or other criteria)? Should any obligatory regime be envisaged? If so, in what form and to which operators should it apply? What are the essential functions that such systems should provide?

Question 6:

How can decentralisation of content rating be implemented, catering for the need to respect individual, local and national sensitivities, where audiovisual and information services are transnational?

Question 7:

What elements of standardisation would allow content ratings to be developed in a coherent way in Europe, in particular in the case of digital services (standardisation of types of information to be supplied, of encoding and decoding of such information, etc.)?

Question 8:

In what ways should administrative cooperation be implemented in the European Union? How and in what institutional framework should it be formalised?

Question 9:

What should the priorities be at European level and at international level? In particular, should one give priority to developing solutions at European Union level and then promoting them at international level or should this be done in parallel? What are the most appropriate international fora for international cooperation (G7, OECD, ITU, WTO, UN or bilateral relations)? How should this international cooperation be formalised?

This chapter will identify the main problems arising from material in audiovisual and information services which are of relevance to the protection of minors and human dignity.

1. The protection of minors and human dignity

Whatever the weight given to freedom of expression, the protection of minors and human dignity has always been a fundamental concern of media regulation. The appearance of new media in no way alters the need for that protection.

The arrangements made to protect minors and human dignity may vary from country to country and from time to time. But it is important to distinguish two types of problem relating to material:

- Firstly, *access to certain types of material may be banned for everyone, regardless of the age of the potential audience or the medium used*. Here it is possible, irrespective of differences in national legislation, to identify a *general category of material that violates human dignity*, primarily consisting of child pornography, extreme gratuitous violence and incitement to racial or other hatred, discrimination, and violence.
- Secondly, *access to certain material that might affect the physical and mental development of minors is allowed only for adults*. These measures should not be confused with other objectives of general interest, such as consumer protection, which might also help to protect minors (notably in terms of advertising, where exploitation of their credulity is to be prevented).¹ The aim is therefore limited to preventing minors from encountering, by accident or otherwise, material that might affect their physical and/or mental development.

The issues are sometimes confused for one reason or another, but it is essential to maintain the distinction between these different questions: they are *different objectives* which raise *different problems* and call for *different solutions*. Clearly, the measures required to enforce a total ban are different from those needed to restrict access by minors or to prevent chance access by adults.

¹ For example, in the context of Community law relating to broadcasting (Directive 89/552/EEC), the two objectives are clearly distinguished:

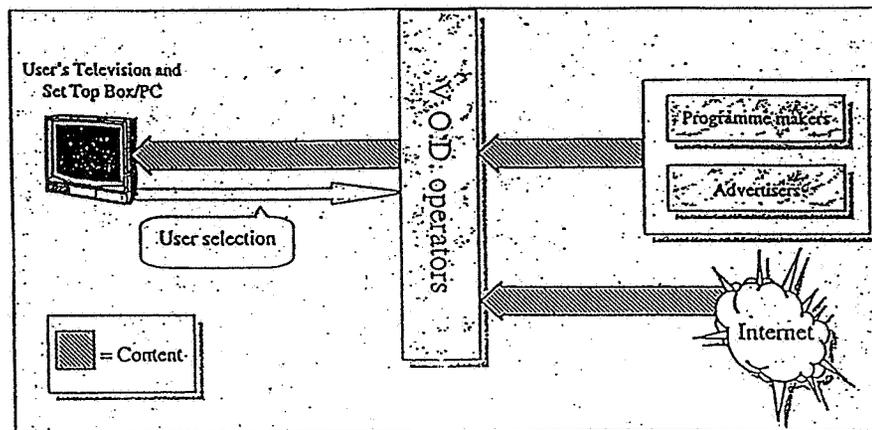
- rules for the protection of minors apply to all programmes, including advertising, an advertisement, like any other type of programme, may not contain material that is likely to seriously impair the development of minors (Article 22);
- rules for the protection of consumers applicable to advertisements specifically outlaw all exploitation of minors' credulity (Article 16).

2. The changing context

The emergence of new audiovisual and information services radically changes the context of protection for minors and human dignity (see Annex II).

2.1 Television: from mass media to editorial model

Digital broadcasting is likely to give a spectacular boost to the number and range of services: each digital cluster comprises or will comprise several dozen services, such as pay-per-view (PPV) and near video on demand (NVOD). Video on demand (VOD) and a whole range of new transactional services (from films on demand via interactive games to home banking) will gradually be introduced, although it is still too early to say exactly how this will happen or what form it will take (infrastructure, means of communication, type of content, etc.).

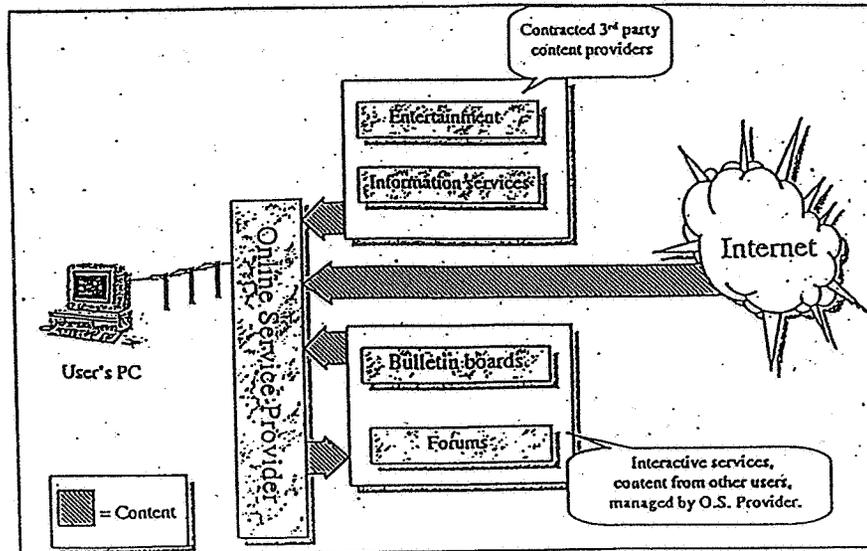


This trend marks the transition in the world of television from a "mass media" approach to one which increasingly resembles the editorial model:

- shortage of frequencies is no longer an obstacle to the proliferation of services;
- services diversify and their impact is related to the total number of services available;
- the viewer has a wide range of choice among clearly identifiable services and types of programme.

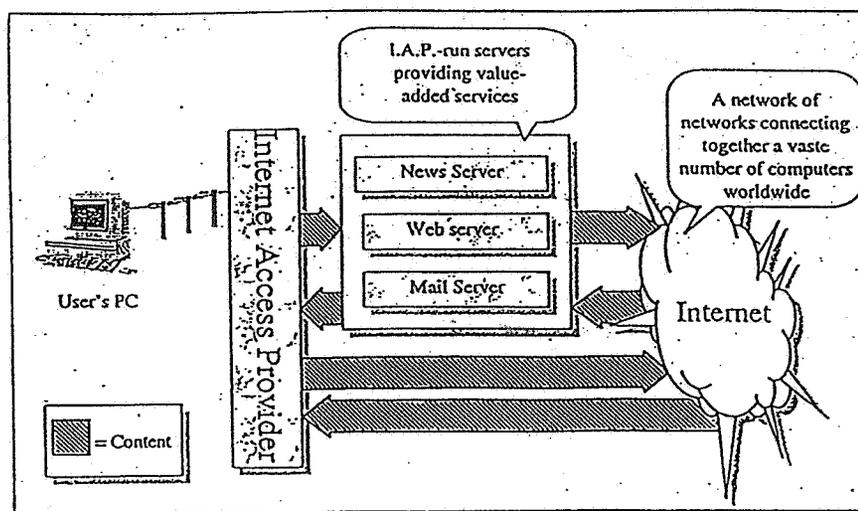
2.2 On-line services: from the editorial model to a new model of communication

The development of "proprietary" on-line services, such as CompuServe or America on Line (AOL), and above all the exponential growth of the Internet are seen as the forerunners of a mass market for on-line services.



On-line services are electronic communications systems which offer paid-up subscribers a range of services (electronic mail, information services, games and discussion groups or chat lines) accessible via the telephone network using a modem and a computer. In addition to the long-standing Bulletin Board Services (BBS), proprietary commercial services are expanding rapidly in the United States and making their appearance on certain European markets. The closed architecture of these networks ensures a level of security for transactions which has enabled commercial services to take off.

The basic logic of on-line services clearly follows the editorial model: material is edited and made accessible to the public on individual demand. But *a new model of interactive communication* is emerging via certain resources of on-line services and the Internet in particular:² *each user becomes a potential supplier of material. This unique model defies any simple analogy with existing media and traditional forms of telecommunication. It has to be considered on its own terms.*



² See Communication on Harmful and Illegal Content on the Internet.

2.3 From national services to worldwide networks

The appearance of special-interest services and pay channels has increased the cross-border circulation of television broadcasts, even if these services mainly target a single language area. The growth of digital television, by freeing the services from the traditional constraint of shortage of frequencies, will make it possible to develop highly specialized services, some of which will not be economically viable on a national market alone. These services will have to exploit niche markets on a transnational level in order to attract a large enough audience.

Given the state of the technology, it is hard to picture VOD systems on an international basis. In the longer term, however, the development of VOD systems might come to follow on-line services.

On-line services already have an international dimension via the major proprietary networks such as AOL and CompuServe. Each time this type of service becomes established in a new country, the entire network expands and all subscribers are able to communicate with one another and access the same material.

The Internet is already a global network, potentially accessible in almost every country in the world. Moreover, the specific structure of the Internet makes it virtually impossible to isolate a particular geographical area.

This shift from national services to worldwide networks presents a major challenge to the protection of minors and human dignity. It calls for careful consideration of the means to be deployed and the appropriate level of action to ensure that European principles relating to the protection of minors and human dignity are taken into account.

2.4 The emergence of new types of material

The *linear model* intrinsic to televised material (each programme is viewed from beginning to end) is giving way to a *more complex architecture* within which navigation between items is freer and the user can interact with the material (e.g. the new interactive media such as CD-ROM, CD-I and DVD).

Clearly identified material (documentary, news, advertising, films, etc.) are merging into *new hybrid forms of material* that are difficult to label: the same item may combine advertising, news and a game element without it being possible to isolate the different components.

And in the digital world, *material can increasingly be manipulated*: it can be distributed and modified easily on a wide variety of media and services. Computer-generated images can offer a virtual world and insert subliminal material, which is a source of new ambiguities in relations with reality.

These trends raise a series of questions. How to check the accuracy of the information (false messages substituted for the original, false firms offering false services or goods)? How to defend the various rights that go with the name, the image and the reputation of a person or firm? What will be the long-term societal impact of hybrid material combining the real and the virtual worlds? These questions reflect new long-term risks that are more

difficult to assess, especially in relation to the physical and mental development of minors. They will have to be identified and analyzed carefully.

2.5 The incubation period: new risks and opportunities

This new environment has by no means stabilized yet. Now, however, the common language of digital technology makes it possible to envisage *various forms of convergence* at the level of terminals (television, computer or others), infrastructures (hertzian, telecommunications, cable or satellite networks) or the services themselves.

Throughout this long incubation period, these new services will only be able to develop in a *flexible environment* - particularly as regards regulatory measures - which can easily adapt to the rapid changes in the industry. The various convergence scenarios and the numerous opportunities created by interactivity make it more difficult automatically to apply traditional distinctions between types of service (television/computer, private communications/public communications, point-to-point/point to multi-point) and to assimilate the new services to the existing media. *We now have to examine carefully the different functions offered by each new service in order to identify its relevant features.*

Against this background of rapid change, we must assess the new risks which are emerging for the protection of minors and human dignity. We must also weigh up the many possibilities for monitoring the material offered by the audiovisual and information new services.

3. The extent of the problem by type of services

The nature and scope of the problems involved in the protection of minors and human dignity vary according to the type of service.

In some countries erotic programmes are broadcast late at night on the *hertzian television channels*, and pornographic material is shown on *pay channels*. *Encrypted channels* devoted exclusively to pornography are still a relatively minor phenomenon in Europe. On the other hand, the question of violence on television, which is much more difficult to regulate, is the subject of debate in many countries. It is also likely that PPV, NVOD and VOD services will offer some erotic and/or pornographic material and will be less affected by the debate about violence, particularly if users are correctly informed about the exact nature of the programmes on offer.

On-line services offer a series of commercial sites aimed at adults containing material such as erotic or pornographic photographs available at a price. These "published" sites are clearly identifiable. Despite the closed nature of the proprietary networks it is also possible to find all the other types of material in interactive applications (discussion groups) or via electronic mail.

As can be seen from the Communication on Harmful and Illegal Content on the Internet, the Internet undoubtedly carries all of the controversial types of material (ranging from child pornography to incitement to racial hatred, via all kinds of violent or other abusive material). The controversial sites are often identifiable and the fact that deliberate steps

