



Protection of minors in the media environment EU regulatory mechanisms

SUMMARY *Children are increasingly exposed to online content, through a growing range of mobile devices, and at ever younger ages. At the same time, they have specific needs and vulnerabilities which need to be addressed.*

Ways to limit and prohibit the spread of illicit and harmful media content in relation to young people have been debated for many years. Striking a balance between the rights and interests of young viewers on the one hand and the freedom of expression of content providers (and adults in general) on the other, requires a carefully designed regulatory scheme.

In recent years, traditional (State) regulation has come under increased scrutiny. Gradually, less intrusive mechanisms, such as self- and co-regulation, have started replacing State regulation in a move towards user-empowerment.

This type of logic has governed the implementation of binding rules at EU level via the Audiovisual Media Services Directive. For online content and video games, the Commission supports a number of self-regulatory initiatives such as the Coalition to Make the Internet a Better Place for Kids and the Pan European Game Information System.

The European Parliament, however, considers that this type of initiative cannot replace legally binding instruments, and that only a combination of legal, technical and educational measures, including prevention, can adequately address the dangers faced by children online.

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Background

Media are increasingly being used by minors via mobile devices, including (online) video games, and [on-demand media services](#) on the Internet. According to a recent [survey](#), the average age in the EU for first Internet use is nine years old. Children in the survey said they were using the Internet primarily for school work (84%), watching videos (83%), playing games (74%) and communicating via instant messaging (61%).

The protection of minors is generally considered to be a matter of public interest. It is usually linked to the [presumption](#) that children are more influenceable, less critical and therefore more vulnerable than adults since they have little experience and consequently insufficiently developed frames of reference to guide their judgment.

In recent years, the protection of minors in the media environment (TV, Internet, video, mobile devices) has become a recurrent topic, especially since developments in the media sector, such as 'digital convergence' (the interlocking of computer, audiovisual and telephone networks to deliver information to consumers) have [called into question](#) traditional methods of regulating content.

Policy-makers, parents and teachers have become increasingly [concerned](#) about the negative influence TV and online content



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could exert on children and young people. The depiction of violence has been particularly alarming, but other issues include pornographic films and images, online bullying, the grooming of children for sexual purposes, excessive marketing, stereotypical and disrespectful depictions of young people, women and minorities, and hate-mongering messages.

Protection of minors is [viewed](#) as a delicate issue, since it needs to balance the fundamental right of freedom of expression and the public-interest objective of protecting minors, which is linked with ideas of control, filtering and censorship.

There are no binding rules for the protection of minors at EU level except for the content of audiovisual media (via the [Audiovisual Media Services Directive](#)).

TV/online content regulation with respect to minors

Children's rights

Article 13 of the [United Nations Convention on the Rights of the Child](#) states that children have the **right to freedom of expression** "*which includes the 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*". Linked to Art. 13 are Art. 12, ensuring that the child who is capable of forming his or her own views has the right to express those views freely, and Art. 17 on good quality mass media, guaranteeing children access to information and material from a range of national and international sources. Finally, Art. 5 is also relevant in this context since it refers to the **rights and duties of parents** (or other persons legally responsible for the child), to offer appropriate guidance to the child.

At European level, the core provision guaranteeing freedom of expression is Art.10 of the [European Convention on Human Rights](#) (ECHR). This is part of the EU legal framework by virtue of Art. 6(3) of the [Treaty](#)

[on the EU](#). The right to freedom of expression is also included in the [Charter of Fundamental Rights of the EU](#) (Art. 11).

In addition, minors have the **right to privacy**, as affirmed in Art. 16 of the UN Convention and Art. 8 of the ECHR. Additional rules on privacy and the protection of personal data are laid down in the EU [Data Protection Directive](#) and the [Directive on Privacy and Electronic Communications](#). Both of these directives apply to online content and are relevant for adults as well as for children.

However, [practitioners](#) stress that trying to regulate content which is considered harmful to minors could result in unwanted side-effects on the freedom of expression of adults, and therefore governments need to act very cautiously.

Illegal content vs. harmful content

Interactive media such as the Internet may also lead users to engage in risky behaviour in real life. 'Safety risks' are much the same at school or at home, but with the Internet and mobile devices communications have become increasingly anonymous. In light of this, [experts](#) claim that the word 'violence' no longer adequately describes the risks related to online content. Instead, 'harmful media content' is seen as more appropriate.

The concept of '**harmful content**' has been defined in a variety of ways, including by the [Council](#) - "... content that is legal, but liable to harm minors by impairing their physical, mental or moral development..." - and by the [Commission](#) - "... content which adults responsible for children (parents or teachers) consider to be harmful to those children". [Practitioners](#) claim that the key difference between harmful and **illegal content** is that the former is subject to individual choice, based on one's cultural traditions and moral beliefs (and thus may vary from country to country and even from community to community), whereas the latter is a matter of State choice and criminalised by national law. [Experts](#) assert that this conceptual difference accounts for the divergence in regulating both categories of content.

With regard to illegal content, the State decides what content should be considered illegal and what consequences should be linked to this classification. When tackling harmful content on the other hand, it has been argued that the State should create an environment that allows individuals to decide for themselves (or for their children) what content they consider appropriate (a concept known as [user-empowerment](#), i.e. that individuals and parents are best situated to make decisions about what content to access).

Internet content that may be labelled 'harmful' includes sexually explicit material, political opinions, religious beliefs, and views on racial matters. But it should be noted that in the [Handyside](#) and [Castells](#) cases the [European Court of Human Rights](#) confirmed that freedom of expression extends not only to content considered as appropriate but also to information that might offend, shock, or disturb.

The choice of regulatory mechanism

In addressing harmful media content, alternative regulatory mechanisms have been brought into play, in response to growing constraints on the use of State regulation, such as the decentralised, global nature of the Internet; differences in cultural traditions, and the length of legislative procedures compared to the speed with which new technologies develop and evolve.

Self-regulation vs. co-regulation

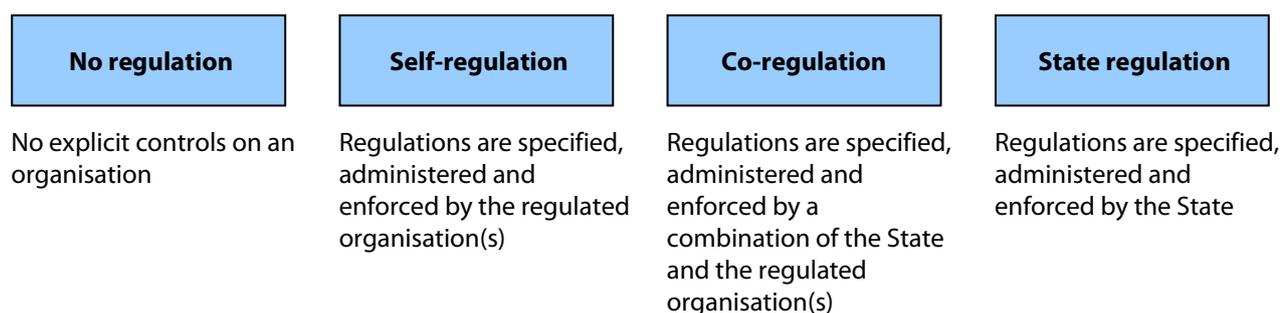
Media regulation is usually represented as a point on a spectrum between no regulation and State regulation (see Fig. 1). However, [experts](#) claim that the practical application

and implementation of the various instruments - mainly self-regulation and co-regulation - continue to cause difficulties, since the associated regulatory mechanisms are not harmonised.

Media **self-regulation** is [defined](#) by the EU institutions as "*the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level*". Means of self-regulation include dispute resolution procedures, codes of conduct, technical measures such as encryption, and pin numbers that regulate children's access. Self-regulation is often [seen](#) as more attractive than State regulation because it is cheaper, more flexible in responding to change, and provides an alternative to State and political interference with media content. On the other hand, self-regulation is often [criticised](#) for similar reasons: because it is overly flexible, i.e. lacks effective enforcement, transparency and strict sanctions, and it is too close to the media industry to offer genuine protection of the public interest.

The EU institutions [define co-regulation](#) as a mechanism by which "*a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, non-governmental organisations, or associations)*". [Experts](#) claim that co-regulation is an ambiguous term which contains elements of both self-regulation and State regulation. Consequently, it is unclear where self-regulation ends and co-regulation starts, to

Figure 1: Types of regulatory mechanism



Source: [Self-regulation and the regulatory state](#), I. Bartle, P. Vaas, Centre for the study of regulated industries, Bath, 2005.

the extent that some [authors](#) consider co-regulation as a form of self-regulation. It has been [argued](#) that the main asset of co-regulation lies in the combination of the advantages of self-regulation (flexibility, prompt adaptability to change, etc.) and State regulation (legal certainty, efficient enforcement). However, the [criticism](#) is made that, if co-regulation involves some sort of joint regulation, it is still unclear who fulfils the role of primary regulator. Furthermore, the exact combination of State and non-State elements [need](#) to be structured carefully to address concerns about freedom of expression, transparency and accountability.

According to [specialists](#), the current trend in media regulation consists of shifting from traditional State regulation to more decentralised forms of regulation, i.e. co- and self-regulation and an increased concern for user-empowerment. This has been welcomed by [practitioners](#) as "*breaking with the long tradition of paternalism and belittlement of the media user*".

Technological solutions

[Experts](#) argue that technology is often an integral part of an alternative regulatory strategy. The use of filtering tools (to prevent or block access to specified types of content) is an example of the shift away from State control. Filtering technologies are [viewed](#) as a way of transferring control of harmful content from governments, to end users, mainly parents. However, filtering technologies have been [criticised](#) for their possible over- or under-inclusiveness and their ease of circumvention. [Practitioners](#) recommend that governments promote rather than enforce the use of filters to safeguard the freedom of expression. Similarly, users are [expected](#) to apply these on a voluntary basis.

EU framework

Audiovisual and information services

The most comprehensive legal instrument establishing a framework for the protection of minors in media services is the 1998 [Council Recommendation](#) on Protection of minors and human dignity. This was the first legal instrument at EU level dealing with content of audiovisual and information services in all electronic media (other than broadcasting services already covered by the Television without Frontiers Directive). The Recommendation focused on self-regulation, and created guidelines for the development of national self-regulation frameworks to protect minors through codes of conduct, parental control tools, hotlines, awareness actions, and international cooperation.

In 2006, the Recommendation was [updated](#), with the European Parliament (EP) acting as [co-legislator](#) (see box). The new approach advocated was one of cooperation between self-regulatory and co-regulatory bodies in the Member States. The proposed tools featured codes of conduct and technological solutions, such as labelling / classification and filtering software.

In 2011, the Commission published a [report](#) evaluating the implementation of the recommendations. The report concluded that EU countries were not responding adequately, and had varying approaches to tackling and reporting illegal or harmful content. Similarly, it was reported that they were using different age rating systems and technical means to keep websites and games age-appropriate.

Television

Article 22 of the [Television without Frontiers Directive](#) (TWFD) defines harmful content and provides that television broadcasts should "*not include any programmes which might seriously impair the physical, mental or moral*

EP role in the Recommendation

In its first [reading](#) on the 2006 Recommendation, the EP stated that self-regulation, while proving an effective additional measure, was not sufficient to protect minors from harmful content and suggested the implementation of legislative measures at EU level as well as the adoption of a directive to ensure the effective protection of minors. These proposals were not taken up by the Commission in its [revised proposal](#).

development of minors, in particular programmes that involve pornography or gratuitous violence". The original TWFD and its subsequent amended versions of [1997](#) and [2007](#) were incorporated in a single text in [2010](#), known as the [Audiovisual Media Services Directive](#) (AVMSD). It covers both traditional TV broadcasting and new, on-demand services such as films and news. The latter are subject to lighter regulation based on self- and co-regulatory measures. [Experts](#) claim that this 'graduated' approach conveys a new image, that of the responsible, media-literate viewer. The AVMSD Directive introduced a set of rules for commercial messages such as product placement (referring to products in film scenes), and updated the rules on television advertising. As a result, advertising, commercial messages and sponsorship need to be readily recognisable, and not use [subliminal](#) techniques. The existing ban on tobacco and alcohol advertising in traditional TV was extended to on-demand services. The Directive also addressed for the first time the issue of 'fatty foods' in commercials linked to children's programmes.

First Commission report on the application of the AVMSD

The [report](#) (2012) showed that no clear infringements were found on alcohol advertising. In addition, 22 Member States had put in place [stricter rules](#). Analysis of the 100 most frequently broadcast advertisements established that the Directive's provisions on the protection of minors were rarely breached. It appeared, however, that advertising techniques targeting minors were frequently used. Concerning children's programmes specifically, the report also [highlighted](#) that five Member States prohibit advertising, four Member States impose a partial ban or other restrictions on advertising - either during specific time slots or for specific products - and seven Member States prohibit the showing of sponsorship logos.

European Parliament views

In its [report](#) on the [AVMSD](#) (2012) the EP committee on Culture and Education acknowledged the self-regulatory initiatives of the Commission designed to limit minors' exposure to food advertising and marketing (such as the [Platform for Action on Diet, Physical Activity and Health](#)) but stressed that they could not replace legally binding instruments. In addition, the EP requested a reflection on the extension of the basic requirements of the AVMSD to online content and services which are currently out of the scope of the Directive.

In a recent [report](#) on the protection of children in the digital world (2012), the EP asserted again that only a combination of legal, technical and educational measures, including prevention, can adequately address the dangers that children face online.

Internet

The [Safer Internet Programme](#) (SIP) was established in [1999](#). Since then, it has been extended and widened in scope twice - in [2005](#) and in [2009](#) - to take account of "currently unknown future developments in the online environment". Inspired by self-

regulatory principles, the SIP 2009-2013 is centred on the creation of a safer online environment, and the fight against illegal and harmful content. The SIP's actions (such as [Safer Internet Day](#) and the [Safer Internet Centres](#)) are included in private regulatory interventions, as they do not have a binding character but support the development and implementation of codes of self-regulatory solutions, such as codes of conduct for example.

In addition, the Commission [supports](#) a number of self-regulatory initiatives such as the [Coalition to Make the Internet a Better Place for Kids](#), and the [Safer Social Networking Principles for the EU](#). However, the results of an

independent [evaluation](#) of the latter showed that there was room for improvement, thus questioning the effectiveness of such regulatory initiatives.

In 2012, the Commission proposed a [Strategy for a better internet for children](#) focusing on increased awareness (at school), wider use of technological solutions, and the fight against child sexual abuse, and still giving preference to self-regulation. The Strategy was [endorsed](#) by the Council.

Video games

In 2002, the Council agreed a [resolution](#) on the protection of consumers, in particular young people, through the labelling of certain video and computer games according

to the appropriate user age group. This resolution acknowledged self-regulation as an adequate means to achieve this goal.

In 2003, a (nearly) pan-European classification mechanism (currently 30 countries are participating) was implemented by the [Interactive Software Federation of Europe](#) (ISFE). ISFE's [Pan European Game Information System](#) (PEGI) replaced a number of existing national rating systems with a single system used throughout all EU countries except Germany (its laws situate video and computer games within the overall media co-regulatory framework). There is no consensus on the regulatory nature of this privately run initiative, which builds on existing national legislation. It has been [argued](#), however, that part of the success in achieving a pan-European agreement for electronic games is due to the fact that few Member States had their own regulatory frameworks in this sector at the time of its creation.

Examples of national approaches

European governments are increasingly shifting responsibility for the development and management of media content regulation to the media industry and independent regulatory bodies.

Germany

The *Jugendschutzgesetz* (Law for the Protection of Minors) and the *Jugendmedienschutz-Staatsvertrag* (State Contract for the Protection of Minors in Media) - a framework for the protection of minors covering broadcasting, the Internet, and other forms of digital media (including 3G mobile phones) - was implemented in 2003. It is supervised by the "Commission for the protection of minors in the media" ([Kommission für Jugendmedienschutz](#)). [Experts](#) describe the system as "regulated self-regulation" since the State defines and enforces legal norms, as well as granting licences to self-supervising bodies.

France

The French co-regulatory system, called *La*

signalétique jeunesse, applies to all broadcast services. Broadcasters themselves are responsible for rating programmes by way of a viewing committee that suggests ratings based on a non-exhaustive list of rating criteria developed by the Conseil supérieur de l'audiovisuel (CSA). The CSA is in charge of revising the *signalétique*, monitoring the system, applying sanctions, and reviewing complaints.

Online content is monitored via a joint initiative of the French government and [l'Association des Fournisseurs d'Accès et de Services Internet](#) (the Association of Internet Access and Service Providers). However, the government does not participate in the enforcement of the code of conduct.

The Netherlands

The [Nederlands Instituut voor de Classificatie van Audiovisuele Media](#) (NICAM) (Dutch Institute for Classification of Audiovisual Media) uses a single classification system for television, videos, films, games, and mobile content: [Kijkwijzer](#). Under the system, [described](#) as co-regulation, content providers classify their own content by responding to a list of questions, to which NICAM assigns an age recommendation. Sanctions are imposed by an independent Complaints Committee, and these range from warnings to fines.

Further reading

[Protecting children in the digital world](#) / Library navigator by Samuele Marsura, Roy Hirsh, Anne Vernet, [EP Library](#), October, 2012.

[Protection of Minors and Audiovisual Content On-Demand](#), IRIS *plus*, 2012-6. Available at the [EP Library](#).

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