

# EUROPEAN PARLIAMENT

2004



2009

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*Committee on Culture and Education*

PROVISIONAL  
**2004/0117(COD)**

14.3.2005

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry  
(COM(2004)0341 – C6-0029/2004 – 2004/0117(COD))

Committee on Culture and Education

Rapporteur: Marielle De Sarnez

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	20



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry (COM(2004)0341 – C6-0029/2004 – 2004/0117(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0341)<sup>1</sup>,
  - having regard to Article 251(2) and Article 157 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0029/2004),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Culture and Education (A6-0000/2005),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

### Amendment 1 Recital 1

(1) Council Recommendation 98/560/EC 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 is the first legal instrument at Community level concerning the content of audiovisual and information services covering all forms of delivery, from broadcasting to the Internet.

(1) Council Recommendation 98/560/EC 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 is the first legal instrument at Community level concerning the content of audiovisual and information services covering all forms of delivery, from broadcasting to the Internet. **Article 22 of Council Directive 89/552/EEC<sup>1</sup> on**

<sup>1</sup> Not yet published in OJ.

*television without frontiers has already specifically addressed the question of the protection of minors and human dignity in television broadcasting activities.*

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<sup>1</sup> *OJ L 298, 17.10.1989, p. 23. As amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).*

Amendment 2  
Recital 2 a (new)

*(2a) The Commission should pay special attention to the implementation of this recommendation when revising or concluding new partnership agreements or new cooperation programmes with third countries, bearing in mind the global character of producers, distributors or suppliers of audiovisual content and Internet access.*

*Justification*

*Because of the global reach of the Internet and the technical impossibility of monitoring all pages or sites produced, the Commission should ensure compliance with this recommendation when revising or establishing new exchange or partnership programmes with third countries.*

Amendment 3  
Recital 4 a (new)

*(4a) This recommendation should apply without prejudice to the legal balance established by Directive 2000/31/EC, particularly as regards intermediaries.*

Amendment 4  
Recital 5

(5) The changing media landscape, resulting from new technologies and media

(5) The changing media landscape, resulting from new technologies and media

innovation, makes it necessary to teach children, **and also** parents, to use the media effectively.

innovation, makes it necessary to teach children, parents, **educators and teachers** to use the media effectively, **since prevention and improved parental control will always be the best form of protection against the dangers posed by the Internet.**

*Justification*

*Young people can only be taught safe and proper use of the Internet if educators, teachers and parents are aware of the dangers and of how to protect against them.*

Amendment 5  
Recital 5 a (new)

***(5a) Generally, self-regulation of the audiovisual sector is proving an effective additional measure, but it is not sufficient to protect minors from messages with harmful content. The development of a European audiovisual area based on freedom of expression and respect for citizens' rights, as laid down in the Treaty establishing a Constitution for Europe, should be based on an ongoing dialogue between national and European law makers, regulatory authorities, industries, associations, consumers and civil society actors.***

*Justification*

*No method of protecting minors is totally effective on its own. It is therefore essential to coordinate all protective measures, including parental control, criminal penalties, and the involvement and accountability of economic operators. Educators cannot rely solely on technology, businesses cannot escape their responsibilities under the pretext that parental control is needed to be exercised and governments have a duty to introduce rules that will protect the weakest members of society.*

Amendment 6  
Recital 7

(7) The Commission encourages cooperation and the sharing of experience and good practices between

(7) The Commission encourages cooperation and the sharing of experience and good practices between

(self)regulatory bodies, which deal with the rating or classification of audiovisual content, with a view to enable all *viewers*, but especially parents and teachers, to assess *the content of programmes*.

(self)regulatory bodies, which deal with the rating or classification of audiovisual content, *by whatever means it is delivered*, with a view to enable all *users*, but especially parents and teachers, to assess *illegal content but also legal content that could be harmful to the physical or mental development of minors*.

#### *Justification*

*The Commission should encourage all producers or access providers from all Member States to exchange best practice through European associations or federations such as Euroispa. It should encourage the introduction of a requirement at European level for a description of proposed content to be provided.*

#### Amendment 7

##### Recital 8

(8) As suggested during the public consultation concerning Directive 97/36/EC, it is appropriate for the right of reply to apply to all *electronic* media.

(8) As suggested during the public consultation concerning Directive 97/36/EC, it is appropriate for the right of reply to apply to all media *as defined in Recommendation REC 2004 - 16 of 15 December 2004 of the Committee of Ministers of the Council of Europe*.

#### Amendment 8

##### Recital 10

(10) When tabling its proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services, the Commission noted that the portrayal of the sexes in the media and in advertising raises important questions about the protection of the dignity of men and women, *but concluded that it would not be appropriate to address these questions in that proposal*.

(10) When tabling its proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services, the Commission noted that the portrayal of the sexes in the media and in advertising raises important questions about the protection of the dignity of men and women. *Specific rules should be introduced as a matter of urgency to address these questions*.

### *Justification*

*The question of equal treatment in the access to and supply of goods and services should not be dealt with in the current text but should be addressed by specific rules that need to be introduced as a matter of urgency.*

#### Amendment 9

##### Recital 11

(11) It is appropriate to seek conciliation between the principle of protection of human dignity and free speech through the adoption by the Member States of a cross-media approach explicitly aimed at encouraging the industry to avoid and to combat any type of discrimination ***based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*** in all media.

(11) It is appropriate to seek conciliation between the principle of protection of human dignity and free speech through the adoption by the Member States of a cross-media approach explicitly aimed at encouraging the industry to avoid and to combat any type of discrimination in all media ***and in new advertising techniques.***

#### Amendment 10

##### Recital 12

(12) This Recommendation ***should complement*** Recommendation 98/560/EC ***in order to take account of technological developments,***

(12) This Recommendation ***should incorporate new technological developments and complement*** Recommendation 98/560/EC. ***It should be taken into account when amending Directive 89/552/EEC, as amended by Directive 97/36/EC. Owing to technological progress, its scope should extend to all media, including mobile telephones and on-line video games.***

### *Justification*

*Technological progress is occurring every day and the amendment of the television without frontiers directive will be an opportunity to take into account new technological developments relating to new communications media which have occurred during the intervening period.*

#### Amendment 11

##### Chapter I

I. RECOMMEND that the Member States

I. RECOMMEND that the Member States,

*foster a climate of confidence which will promote the development of the audiovisual and information services industry by:*

*in the interests of promoting the development of the audiovisual and information services industry, take the necessary measures in their domestic law or practice to ensure better protection of minors and human dignity in all audiovisual and information services:*

*Justification*

*Self-explanatory - in the interests of greater clarity.*

Amendment 12  
Chapter I, paragraph 1

*(1) considering the introduction of measures into their domestic law or practice in order to ensure the right of reply across all media, without prejudice to the possibility of adapting the manner in which it is exercised to take into account the particularities of each type of medium;*

*(1) in close cooperation with the industries and all parties concerned, ensuring better information of parents, educators and teachers on new information technologies such as the Internet, and on the availability of means for the protection of minors, by:*

*- continuing education of teachers and instructors, in cooperation with child protection associations, on how to use the Internet in the context of school education and on pedagogical methods for safe (secure) use which children must be taught,*

*- introduction of specific Internet training aimed at children from an early age, including sessions open to parents, so as to explain to children and parents how to use the Internet and how to avoid the pitfalls and dangers,*

*- an educational approach as a permanent part of schools' curricula, so as to maintain awareness of the dangers of the Internet, with particular regard to chat rooms and forums,*

*- organisation of national information campaigns aimed at citizens, involving all communications media, to alert public opinion to the dangers of the Internet and*

*the risk of criminal penalties (lodging complaints, parental control, etc.). Specific campaigns could be aimed at target groups such as schools, parents' associations, users, etc.*

*- distribution of information packs on the dangers of the Internet ('How to surf the Internet safely', 'how to filter unwanted calls') and on the use of hotlines to which reports or complaints concerning harmful or illegal sites can be made,*

*- appropriate measures to establish or improve the performance of telephone hotlines, so as to make it easier to lodge complaints about harmful sites and make it possible to report their existence.*

#### *Justification*

*It is essential to educate teachers and parents. Equally, the organisation of information campaigns, the distribution of information packs in all public places frequented by young people and clear information on telephone hotlines, giving them greater powers so that harmful sites can be reported, would help raise public awareness of the dangers posed by the Internet.*

#### Amendment 13 Chapter I, paragraph 2

*(2) promoting, in order to encourage the take-up of technological developments and in addition to and consistent with existing legal and other measures regarding broadcasting services, and in close cooperation with the parties concerned:*

*deleted*

*- action to enable minors to make responsible use of on-line audiovisual and information services, notably by improving the level of awareness among parents, educators and teachers of the potential of the new services and of the means whereby they may be made safe for minors, in particular through media literacy or media education programmes.*

*- action to facilitate, where appropriate*

***and necessary, identification of, and access to, quality content and services for minors, including through the provision of means of access in educational establishments and public places.***

*Justification*

*In the interests of greater clarity.*

Amendment 14  
Chapter I, paragraph 3

***(3) encouraging industry to avoid discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all media, and to combat such discrimination.***

***(3) making professionals, intermediaries and users of new communications media such as the Internet accountable by:***

- ***encouraging vigilance and the reporting of pages considered illegal, without prejudice to Directive 2001/31/EC;***
- ***drawing up a code of conduct in cooperation with professionals and regulatory authorities at national and European level;***
- ***promoting self-regulation as an effective means of protecting minors;***
- ***encouraging the industry to avoid discrimination as defined in the Treaty establishing a constitution for Europe;***
- ***promoting the introduction of measures in domestic law or practice to ensure the right of response in all media in line with the principles proposed in the annex and without prejudice to the possibility of adjusting its exercise to take into account the particularities of each type of medium.***

*Justification*

*More than ever, governments must ensure that operators in the sectors concerned by new communications technologies meet their responsibilities with regard to the protection of minors. In addition, minimum principles need to be established at European level to provide a*

*right of reply in all media, whatever means of delivery is used.*

Amendment 15  
Chapter II, introductory sentence

II. RECOMMEND that the industries and parties concerned:

I. RECOMMEND that the industries and **all** parties concerned:

*Justification*

*In the interests of clarity.*

Amendment 16  
Chapter II, paragraph 1

(1) develop positive measures for the benefit of minors, ***including initiatives to facilitate their wider access to audiovisual and information services, while avoiding potentially harmful content, including a ‘bottom-up’ harmonisation through cooperation between self-regulatory and coregulatory bodies in the Member States, and*** through the exchange of best practices concerning such issues as a system of common, descriptive symbols which would help ***viewers*** to assess the ***content of programmes***;

(1) develop positive measures for the benefit of minors, through the exchange of best practices concerning such issues as a system of common, descriptive symbols which would help ***users*** to assess ***content*** ***by***:

- ***systematic provision of an effective and easy-to-use filter system for users subscribing to an access service,***
- ***systematically offering access services intended specifically for children and equipped with an automatic filter system operated by access providers,***
- ***introducing a requirement for creators and producers to describe proposed sites with an update every six months,***
- ***developing effective filter solutions, taking into account technological progress allowing Internet access via mobile telephones,***
- ***posting warning banners on all search engines drawing attention to possible dangers and to the availability of telephone hotlines,***
- ***requiring Internet site providers, producers or distributors to provide a description of proposed content, making it easier to classify sites using abbreviations common to all Member***

*States,*

- *developing abbreviations common to all Member States to alert users to the possible harmful content of sites visited,*
- *improved self-regulation, in particular through the exchange of best practice at European level.*

*Justification*

*Efficient filter technologies exist for the Internet and mobile phones. They are expensive but can be used by the operators present in the market. All that is needed is the political and economic will to distribute them. Finally, industries must apply themselves to describing proposed content so as to facilitate classification of sites and make it possible to develop abbreviations common to all Member States. They must also be required to include warning banners on search engines operated in Europe.*

Amendment 17

Chapter II, paragraph 2

(2) develop effective measures to avoid discrimination ***based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all media, and to combat such discrimination and promote a diversified and realistic picture of the skills and potential of women and men in society.***

(2) develop effective measures to avoid discrimination ***as defined in Article II-81 of the Treaty establishing a Constitution for Europe and to combat any discrimination of this kind created by false and stereotyped images of human beings, commercial exploitation of the human body, and trivialisation of violence and war.***

*Justification*

*The industries must continue to improve their efforts to prevent the dissemination of false and stereotyped images of human beings, as well as images trivialising violence or warfare. This is vital if they are to act responsibly and inspire trust among their users.*

Amendment 18

Chapter II a (new)

***(II a) INVITE the Commission to:***

- ***organise a European information campaign aimed at citizens, using all communications media, to alert public***

*opinion to the dangers of the Internet and the risk of criminal penalties (lodging of complaints, parental control). Specific campaigns could be aimed at target groups such as schools, parents' associations and users.*

- *introduce a European toll-free number providing information on existing filter methods intended to offset the absence in some Member States of telephone hotlines, making it easier to lodge complaints with the competent authorities and report harmful sites.*
- *introduce a generic top level domain name reserved for permanently monitored sites which undertake to respect minors and their rights, on pain of criminal penalties (.KID for example).*
- *step up efforts to harmonise laws on both the age of sexual majority (cf. framework decision on combating the sexual exploitation of children and child pornography, adopted on 29 July 2003) and the liability of technical intermediaries and creators of illegal pages.*
- *extend the definition of audiovisual content in order to take into account technological progress in the media, when amending Directive 89/552/EEC.*
- *maintain a constructive and ongoing dialogue with content providers' organisations, consumers' organisations and all parties concerned.*
- *encourage and support self-regulation bodies in forming networks and exchanging experience, so as to assess the effectiveness of codes of conduct and approaches based on self-*

***regulation in order to ensure the highest possible standards of protection for minors.***

*Justification*

*The Commission must coordinate information actions at European level and organise wide-ranging information campaigns, as well as introducing a European toll-free number to offset the lack of hotlines in some Member States. At legal level, efforts are needed to harmonise the age of sexual majority, while the question of the liability of intermediaries needs to be looked at. Compliance with codes of conduct should be closely and regularly monitored to determine whether they work.*

Amendment 19  
Chapter II b (new)

***(II b) RECOMMEND that the industries, all parties concerned and the national and European authorities engage in a more active debate on the technical and legal feasibility of developing a uniform content signalling system to encourage better filtering and classification at source, whatever communications media are used (Internet , mobile telephones) in order to improve protection for minors.***

*Justification*

*There is an urgent need to encourage the development of technological solutions (filter systems, classification, etc.) to offer users the possibility of refusing certain types of harmful content. The debate in progress for several months concerning the forthcoming review of the television without frontiers directive involving the industries, national governments and European authorities, must now produce tangible technological solutions.*

Amendment 20  
Chapter II c (new)

***(II c) RECOMMEND that the Member States submit a report to the Commission on measures taken in application of this recommendation two years after its adoption.***

*Justification*

*Each Member State should detail the measures it has taken to implement this recommendation two years after its adoption.*

Amendment 21  
Chapter II d (new)

***(II d) RECOMMEND that, by 31 December 2008, on the basis of the reports submitted by the Member States, the Commission submit to the European Parliament a report on the implementation and effectiveness of the measures laid down in this recommendation, identifying any additional measures which may be necessary, including binding legislation at European level.***

*Justification*

*The Commission should submit to the European Parliament a report on the implementation of this recommendation based on the reports from the Member States, so that Parliament will be in a position to assess the effectiveness of the measures taken.*

Amendment 22  
Annex, title

***INDICATIVE GUIDELINES FOR THE IMPLEMENTATION, AT NATIONAL LEVEL, OF MEASURES IN THE DOMESTIC LAW OR PRACTICE SO AS TO ENSURE THE RIGHT OF REPLY ACROSS ALL MEDIA***

***MINIMUM PRINCIPLES FOR THE IMPLEMENTATION, AT NATIONAL LEVEL, OF MEASURES IN THE DOMESTIC LAW OR PRACTICE SO AS TO ENSURE THE RIGHT OF REPLY ACROSS ALL MEDIA***

*Justification*

*In the light of the Council of Europe recommendation of 15 December 2004, minimum principles need to be laid down to ensure that everyone has a right of reply when any type of media presents inaccurate facts about him or her and which affect his or her personal rights.*

Amendment 23  
Annex

*Objective: introducing measures in the domestic law or practice of the Member States in order to ensure the right of reply across all media, without prejudice to the possibility to adjust its exercise to the particularities of each type of medium.*

*- Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular, but not limited to, reputation and good name, have been affected by an assertion of facts in a publication or transmission should have a right of reply or equivalent remedies. Member States should ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply should be within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the publication or transmission to which the request refers.*

*- A right of reply or equivalent remedies should exist in relation to all media under the jurisdiction of a Member State.*

*- Member States should adopt the measures needed to establish the right of reply or the equivalent remedies and should determine the procedure to be followed for the exercise thereof. In particular, they should ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.*

*- An application for exercise of the right of reply or the equivalent remedies should be rejected if the claimant does not have a legitimate interest in the publication of such a reply, or if the reply would involve a punishable act or transgress standards of public decency.*

*Objective: Adapting the right of reply to the current state of technological development in the media in Europe;*

*- The right of reply should protect any legal or natural person from any information presenting inaccurate facts concerning that person and affecting his or her rights, and consequently the dissemination of opinions and ideas must remain outside the scope of this recommendation ;*

*- the right of reply is a particularly appropriate remedy in the on-line environment due to the possibility of instant correction of contested information and the technical ease with which replies from concerned persons can be attached to it ;*

*- it is necessary to ensure that the author of or person responsible for the information broadcast continues to be subject to the right of reply, in accordance with national laws;*

*- the right of reply can be assured not only through legislation, but also through co-regulatory or self-regulatory measures ;*

*- the right of reply is without prejudice to other remedies available to persons whose right to dignity, honour, reputation or privacy have been violated in the media.*

*The Member States should examine and, if necessary, introduce in their domestic law or practice, a right of reply or any other equivalent remedy, which allows a rapid correction of incorrect information in on-line or off-line media along the lines of the following minimum principles, without prejudice to the possibility of adjusting the exercise to the particularities of each type of medium of this right (or any other equivalent remedy).*

#### *Definition*

*- Provision should be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies could be subject to judicial review.*

*For the purposes of this recommendation :*

*The term ‘medium’ refers to any means of communication for the periodic dissemination to the public of edited information, whether on-line or off-line, such as newspapers, periodicals, radio, television and web-based news services.*

**Scope of the right of reply**

*Any natural or legal person, irrespective of nationality or residence, should be given a right of reply or an equivalent remedy offering a possibility to react to any information in the media presenting inaccurate facts about him or her and which affect his or her personal rights. The reply should be given, as far as possible, the same prominence as was given to the contested information in order for it to reach the same public and with the same impact.*

*Member States should ensure that the effective exercise of the right of reply or equivalent remedy is not hampered by the application of unreasonable conditions. The reply must be forwarded within a reasonable time after justification of the request and at a time and in a manner appropriate to the publication or broadcast to which the request refers. Provision should be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies could be subject to judicial review.*

*Justification*

*See justification to Amendment 22.*

## EXPLANATORY STATEMENT

The aim of this recommendation is to ensure an effective level of protection of minors and human dignity and to enable the right of reply to be exercised in all audiovisual and information services. It is only by creating a genuine climate of trust for its users that the audiovisual and information services industry will be able to develop.

The latest statistics show that time spent on the Internet by young people is now greater than that spent watching television. At the same time, it has been established that there are around 260 million pages with pornographic content circulating on the Internet. According to a recent study conducted in Ireland, Sweden, Iceland, Norway and Denmark, countries where Internet use is highly developed, one young person in three taking part in discussion forums or chat rooms is subject to sexual advances.

It is time to ensure that actors and users, both big and small, take responsibility for what is happening on the Internet and to protect children and the most vulnerable from harmful and illegal content. This is all the more necessary now that new technologies are omnipresent and frequently freely available in schools, cybercafés and homes and in the near future via third generation mobile phones.

From the point of view of the progress called for in the Commission's second report on implementation of the 1998 recommendation drawn up in 2003, it would appear that self-regulation is insufficient and that the liability of access providers needs to be established. It is to be regretted, furthermore, that the European Federation they have formed is not representative of all Member States. Since the 1998 recommendation, several measures have been taken at national and European level, but the pace of technological development in the area of communications media is such that it would appear useful to propose new and more innovative measures which are better targeted and meet the concerns of the users of these new technologies.

### I. Current European legislation

#### 1. Protection of minors

The question of the protection of minors and human dignity in this particular sector was first dealt with in the 1989 Television without Frontiers Directive on the free movement of audiovisual services (Article 22).

Subsequently, in 1996, the Commission published a *Green Paper on the protection of minors and human dignity in audiovisual and information services* (COM (96) 483 final). It takes into account all modes of audiovisual broadcast and communication, from radio and television broadcasting to the Internet.

Finally, in 1998, after consulting Parliament, the Council adopted a *Recommendation on the protection of minors and human dignity in audiovisual and information services*. At Parliament's request, the Commission submitted two evaluation reports on the implementation of this recommendation in 2001 and 2003 respectively.

Following its first evaluation report, which was the subject of an excellent report by my colleague Mr JP BEAZLEY, the Commission published a second report in 2003 and has now submitted a second recommendation of the Council and of the European Parliament.

## **2. Protection of human dignity and the right to reply**

The *Television without frontiers* Directive devoted an article to the protection of human dignity and the right to reply in the audiovisual sector, supplementing national provisions on human dignity and national laws in the field, all of which include the right of reply in respect of the written press.

## **II. Issues**

### **1. Promotion of the information society**

One of the objectives set in Lisbon was that information and communications technologies (ICT) should make it possible to build an information society for all. This essential task was confirmed by the Council in spring 2004 and in the recent report by Wim Kok.

Internet connection has increased rapidly. Today more than 90% of schools are on-line. Following the eEurope action plan introduced by the Commission in 2000, 9 out of every 10 schools in the EU are now connected to the Internet and pupils in 8 schools out of 10 have access to the Internet, with a figure of between 5 to 20 pupils per connected computer, depending on the country concerned, with the Scandinavian countries leading the way.

### **2. Respect for freedom of expression**

The possibilities now offered to users by the Internet raise legitimate concerns regarding the protection of minors, respect for human dignity and the exercise of a right of reply.

Special attention therefore needs to be paid to this global network. Legislators have a duty to ensure that this tool in the service of freedom of expression does not become a tool that is harmful or even dangerous, in particular to minors. That is why the question is being tackled at all levels. For example, UNESCO held a conference on freedom of expression on 3 and 4 February 2005 in preparation for a world summit on the information society to be held in Tunis from 16 to 18 November 2005.

### **3. Definition of harmful content**

Three situations in particular can pose a threat to a minor: where he is an actor, and his image is used in films or pornographic pictures; where he is a spectator, using the Internet and confronted with harmful images, and where he is a potential victim of predators via discussion forums or chat rooms. Problems caused by legal sites not reserved for adults, as in the case of discussion forums, as well as violent sites, on-line video games, etc.

A distinction needs to be drawn between 'illegal' and 'harmful' content. Illegal content must be dealt with at source by police and judicial authorities, whose activities are governed by

national laws and judicial cooperation agreements. Harmful content is either authorised content with restricted distribution (e.g. reserved for adults) or content which may offend certain users, but whose publication is not restricted because of the principle of freedom of expression. Under no circumstances does the legality of such content detract from the fact that it is harmful to minors and to their physical, mental or moral development.

#### **4. Technological progress**

Finally, technological progress is beginning to make it possible for the Internet to be accessed via mobile phones. Parental control over the use of mobile phones by young people is much more difficult, if not impossible. This means that the industry itself must take a little more responsibility and it is strongly encouraged to offer effective technological solutions to all users.

### **III. Aim of the new proposal for a recommendation**

#### **1. Minors**

The recommendation invites the Member States, the industry and the parties concerned, together with the Commission, to take measures to improve the protection of minors and human dignity in the broadcasting and Internet services sectors.

#### **2. Human dignity**

The aim of the recommendation is to ensure a level of protection of minors and human dignity that is effective and equal for all Member States and also to combat all kinds of discrimination through the existence of national frameworks. It will also enable users to have full confidence in new technologies, making it possible to develop the competitiveness of the European audiovisual and information services industry.

#### **3. Right of reply**

Previously dealt with only in the context of the television without frontiers directive, the right of reply needs to be adapted to developments in communications media. Ensuring that it is recognised in all medias is also a means of guaranteeing freedom of expression and this requires a particular legal framework.

### **IV. Rapporteur's proposals**

#### **1. Protection of minors**

To ensure the protection of minors in the utilisation of new information technologies, there are three areas in which responsibilities must be faced, namely by politicians, by the industry itself and, lastly and most importantly, by parents.

- Politicians have a responsibility because it is up to governments and ministers for education to include in their education syllabuses specific Internet education programmes aimed at

children from an early age, teachers and also parents. For example, two or three training sessions in schools could be open to parents. Public information campaigns are also needed to alert public opinion to the dangers posed by the Internet and the risk of criminal penalties. Specific information programmes could be aimed at targeted groups such as schools and parents' associations.

Hotlines enabling complaints to be lodged should become widespread in all Member States and their powers could be extended to include the authority to report harmful sites which, even if it relies on subjective judgements, would make it possible to identify such sites so that legal proceedings against the authors could be brought in the future.

In addition, the Commission should encourage the establishment of a European toll-free number through which information could be obtained on existing filter methods and also making it possible to offset the absence of telephone hotlines in some Member States.

Lastly, the creation of a top level domain name (.KID) (like .com or .org sites) with content reserved for children, would provide a secure Internet area regularly monitored by an independent authority.

- The industry has a responsibility because the existence of charters, codes of conduct, and quality initiatives is not enough. It is high time that hosts provided easy-to-use parental software and offered subscriptions to access services intended specifically for children with automatic filtering at source by the provider (filtering of violent, racist or pornographic images). It is high time that creators or producers were compelled to provide a description of their site, with regular updates every six months. This would make it easier to classify sites proposed by access providers and would make it possible to restore a degree of confidence in use of the Internet, especially by children.

- The education sector has a responsibility, which must be assumed by parents, teachers and educators. Children of younger and younger ages are having to cope on their own with the information and images carried by the Internet. Including an educational approach as part of schools' curricula would help develop improved use of the Internet, e-mail and chat rooms. Needless to say, this would require training for teachers and educators. Information packs on the danger of the Internet could also be regularly distributed to children and parents at the beginning of each school year.

## **2. Protection of dignity and the right to reply**

The proposal for a recommendation seeks to make a right of reply available in all media. A right of reply already operates satisfactorily for the written press and audiovisual services in all Member States. The aim is therefore to establish minimum principles at European level for exercising the right of reply for all new electronic communications media (Internet, mobile phones). In this way, the right of reply will be adapted to technological progress in the field of electronic communications media.

At a time when technology is constantly changing and in a totally open communications area, in order to protect users' fundamental freedoms, particularly those of minors, measures and rules need to be regularly updated, balanced and assessed. This is a prerequisite for Union

citizens to be able to use new technologies in confidence and for the regulated and ongoing development of these technologies.