



EDiMA contribution to the debate on the proposal for a Directive on audiovisual media services

1. Introduction and executive summary

EDiMA¹, the European Digital Media Association, is an alliance of digital media and technology companies who distribute audio and audio visual content on line. We welcome the opportunity to contribute to the debate on the proposal for a Directive on audiovisual media services².

As a starting point, EDiMA wishes to recall the specific objectives the European Commission has identified as the basis for its proposal, which are welcomed and supported by EDiMA³:

- Taking full advantage of the internal market for new services;
- Ensuring minimum harmonisation for the protection of minors and human dignity and commercial communications;
- Contributing to cultural diversity;
- Fostering the right to information; and
- Limiting regulation on commercial communications to what is indispensable.

Notwithstanding our support for these objectives, EDiMA questions whether the proposed extension of the scope of the Directive to cover all audiovisual media services, is appropriate and proportionate to meeting these objectives. Instead, EDiMA favours a limited revision of the existing Television without Frontiers Directive, so that only television and television-like services are include in the scope of the Directive.

2. The evolving audiovisual media landscape

The audiovisual media sector is undergoing rapid change and, after several false starts, the promise of “convergence” is becoming a reality. The evolving audiovisual media landscape will bear little resemblance to the environment for which the Television without Frontiers Directive was originally introduced⁴.

For consumers, the new landscape will offer increased choice of audiovisual media services and content, access through multiple platforms (TV, PC, mobile e.t.c.), greater control over how, where and when audiovisual media services are consumed, the ability to be a publisher as well as a consumer of audiovisual media services and involvement with new communities focused on culturally diverse audiovisual content.

For audiovisual media service providers, the new landscape will be defined by lower barriers to entry, new business models, an evolving economic value chain and new set of commercial partnerships, innovative and more targeted forms of monetisation, a changing competitive environment and markets characterised by constant innovation and disruptive technologies.

EDiMA believes that, as far as possible, the regulatory framework for audiovisual media services needs to accommodate the evolving audiovisual media landscape.

3. Creating a pro-investment climate for the audiovisual media sector

The first objective of the European Commission’s i2010 strategy is to deliver a “single European information space, offering affordable and secure high bandwidth communications, rich and diverse

¹ See <http://www.europeandigitalmediaassociation.org/> for further information on EDiMA.

² European Commission proposal a for Directive amending Directive 89/552/EEC, COM (2005) 646 final

³ See pp 22-23, European Commission staff working document – Impact Assessment – Draft Audiovisual Media Service Directive – SEC(2005) 1625/2

⁴ The defining characteristic under which the original Directive was introduced was spectrum scarcity. Limited availability of this scarce resource, justified detailed regulation to meet public interest objectives. Today’s audiovisual media environment, in particular the online environment, is not subject to the same limitations.

content and digital services”⁵. The member companies of EDiMA are committed to providing audiovisual media services in Europe in order to further this objective.

As major investors in the audiovisual media sector, EDiMA’s member companies believe that the regulatory framework should:

- Be developed on the basis of specific public policy objectives and realised in a manner that is proportionate and minimises regulatory burdens on service providers. New regulation should be judged against whether such objectives are already being satisfied in the market either through self-regulation or existing regulation.
- Provide legal certainty, while offering flexibility to deal with evolving markets and services⁶.
- Promote a pro-competitive environment that favours market entry and empowers consumers through the provision of innovative and affordable services, while promoting consumer confidence through targeted consumer protection measures.

4. The current regulatory framework for audiovisual media services

The current regulatory framework for audiovisual media services is based around two pillars: the existing Television without Frontiers Directive⁷ and the Electronic Commerce Directive⁸.

The framework draws a distinction between “television broadcasting”⁹ and “information society services”¹⁰. This distinction is a reflection that, even though there are consistent policy objectives in relation to television broadcasting and information society services, a differentiated regulatory approach, which takes into consideration the specific nature of these services and the manner in which they are consumed, is appropriate to meet these objectives in a proportionate and effective manner.

In addition to these two Directives, audiovisual media services are subject to a range of EU level sector specific and horizontal measures, covering inter alia, the protection of minors and human dignity, commercial communications and consumer protection.

5. Updating the regulatory framework for the evolving audiovisual media landscape

EDiMA recognises that the evolving audiovisual media landscape challenges existing rules and therefore justifies a review of the current regulatory framework.

The proposal for a Directive on audiovisual media services would extend the scope of the existing Television without Frontiers Directive from “television broadcasting” to “audiovisual media services”. The European Commission has indicated that their intention is to extend the scope of the Directive to include “TV-like services”¹¹. EDiMA is concerned that the definition of audiovisual media services proposed and the distinction proposed between linear and non-linear services, will not achieve the European Commission’s stated goals. Rather, the proposed extension of scope, which EDiMA considers goes considerably beyond “TV-like services”, is likely to have the unintended effect of undermining legal certainty. This will impact investment in new audiovisual media services.

Instead, in respect of new audiovisual media services¹², EDiMA believes that the objectives that the European Commission has identified can (or are already met) by alternative, more proportionate and effective means:

⁵ European Commission Communication: “i2010 – A European Information Society for growth and employment”.

⁶ The proposed Directive is unlikely to be transposed into law before 2008 at the earliest. Consideration therefore needs to be had to ensure that the regulatory framework is as far as possible “future proof”, in particular as it relates to markets undergoing rapid development and technological change.

⁷ Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities.

⁸ Directive 2000/31/EC on certain legal aspect of information society services, in particular electronic commerce, in the Internal Market.

⁹ Article 1(a) of Directive 89/552/EEC.

¹⁰ Article 2(a) of Directive 2000/31/EC.

¹¹ See European Commission Press release IP/05/1573 of 13 December 2005.

¹² EDiMA favours a revision of the existing definition of “television broadcasting” that would extend the scope of the existing Directive to include only TV like services. New audiovisual media service, be they “linear” or “non-linear”, would therefore fall outside the scope of the proposed Directive, but still remain subject to the Electronic Commerce Directive and other sector specific and horizontal measures.

- *Taking full advantage of the internal market for new services* – the Electronic Commerce Directive already provides an appropriate framework that ensures that new audiovisual media service providers can benefit from the country of origin principle.¹³ Additional regulation is therefore unnecessary. The e-Commerce directive already provides the means to address upcoming regulatory issues through the ability of Member States to enhance the regulatory regime through additional requirements related to sensitive issues such as consumer protection.
- *Ensuring minimum harmonisation for the protection of minors and human dignity and commercial communications* – as new consumption patterns for new audiovisual media services evolve, the protection minors is better addressed by a mixture of legislative and non-legislative solutions. In addition to existing rules¹⁴ EDiMA believes that emphasis should be placed on media literacy, self- and co-regulatory solutions and market based solutions, such as the provision of filtering software.
- *Contributing to cultural diversity* – the most effective means to ensure cultural diversity in new audiovisual media services will be to lower barrier to distribution and production of European content.¹⁵ This will create new and niche markets for content that would otherwise and previously not have been exploited because of higher commercial thresholds. The new media landscape is already contributing to cultural diversity by breaking down barriers and drawing together communities around shared culture and content. Regulatory intervention will only serve to raise barriers to entry and as a result, restrict access to and availability of content. Cultural quotas in what are essentially consumer-driven markets not achieve the intended result of cultural diversity but would simply raise barriers to access to content and stifle the innovation required by content providers to ensure the spread of European content in the first place.
- *Fostering the right to information* – EDiMA supports the proposals to foster the right to information.
- *Limiting regulation on commercial communications to what is indispensable* – in respect of “non-linear” services, the provisions of the proposed Directive are by and large already provided for in the Electronic Commerce Directive. These rules are supplemented by self-regulatory codes that have been developed to deal specifically with new audiovisual media services. This approach is consistent with dynamic changes in advertising and sponsorship markets that better respond to consumer needs and provide advertisers with more effective return on investment.

In summary whilst supporting the objectives of the proposal for a Directive on audiovisual media services, EDiMA believes that these can be achieved, and in some cases are already being achieved, through alternative approaches which will deliver a regulatory framework better able support and nurture a thriving market for audiovisual media services in Europe.

6. Conclusion - EDiMA position on the proposal for a Directive on audiovisual media services

In its impact assessment, the European Commission highlighted that 5 options for reviewing the Television without Frontiers Directive had been considered¹⁶.

EDiMA strongly favours option 3, namely a focused revision of the existing Television without Frontiers Directive, to clarify that all “linear” services similar to television are covered by the scope of the Directive. We also support updating existing rules on advertising and sponsorship.

In the event that the Directive is extended to include new audiovisual media services, beyond television and television like services, EDiMA believes that particular attention needs to be had to clarifying the definitions of audiovisual media services and the distinction that is drawn between linear and non-linear services.

¹³ Service providers have highlighted that the scope for derogations under the Electronic Commerce Directive have not given rise to barriers to the provision of services across markets.

¹⁴ Council Recommendation 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

¹⁵ In this respect, EDiMA has consistently supported legislative and industry initiatives which aim to break down barriers to content distribution caused by the territorial nature of current licensing regimes in EU member states.

¹⁶ See p24, European Commission staff working document – Impact Assessment – Draft Audiovisual Media Service Directive – SEC(2005) 1625/2