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**SECOND EVALUATION REPORT FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT**

**on the application of Council Recommendation of 24 September 1998 concerning the
protection of minors and human dignity**

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1.	Introduction	3
2.	Questionnaire	5
3.	Results	6
3.1.	Internet	6
3.1.1.	Self-regulation and codes of conduct	6
3.1.2.	Illegal and harmful content	7
3.1.3.	Filtering and education	9
3.1.4.	European and international cooperation	10
3.1.5.	UMTS	11
3.1.6.	Control of chat-groups	11
3.1.7.	Right of reply	11
3.2.	Broadcasting	12
3.2.1.	Filtering systems	13
3.3.	Media literacy	14
3.4.	Rating	15
3.4.1.	Developments since 2000 concerning cinema, videocassette and DVD rating systems	15
3.4.2.	Lack of coherence between rating systems	15
3.5.	Video game software	15
3.6.	Measures against discrimination on the grounds of race, sex or nationality in all media	17
3.7.	Consumer associations	17
4.	Conclusion	17
	Annex	19

1. INTRODUCTION

On 24 September 1998, the Council adopted the 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 (98/560/EC)¹ ("the Recommendation"). The Recommendation is the first legal instrument at EU-level concerning the content of audiovisual and information services covering all forms of delivery, from broadcasting to the Internet.

In section III of the Recommendation, paragraph 4 calls on the Commission to present an evaluation report on its application in the Member States, two years after its adoption, to the European Parliament and the Council.

The implementation of the Recommendation was evaluated for the first time in 2000, and the first report was published in 2001: Evaluation Report to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 on protection of minors and human dignity². The report indicated that the implementation of the Recommendation was already quite satisfactory in overall terms. The Council meeting (Culture) adopted its conclusions concerning the evaluation report on 21 June 2001, and Parliament adopted a resolution on the report on 11 April 2002³, in which it called on the Commission to draw up a further report, at an appropriate time, and preferably before 31 December 2002.

This document is the Commission's second report to the European Parliament and to the Council, which is based on the Member States' and accession countries' replies to the questionnaire (attached as annex I).

The development of digital media – namely the Internet, digital broadcasting and video games – still constitutes a major challenge for the European Union's audiovisual policy, particularly as regards the protection of minors.

Adopted in 1989, the "Television Without Frontiers" (TVWF) directive⁴, the main legislative instrument at EU level concerning audiovisual services, was revised in 1997 to take account of technological and market developments. The Directive also deals with the protection of minors from harmful content disseminated via broadcasting, by means of either watersheds or technical devices. Public consultations concerning the TVWF Directive, which took place during 2003⁵ have shown a strong consensus that the principles contained in the Recommendation are still considered to be appropriate.

The TVWF Directive has been complemented in particular by Council Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in

¹ OJ L 270, 7.10.1998, p.48.

² COM(2001) 106 final, 27.2.2001.

³ C5-0191/2001 - 2001/2087(COS).

⁴ Council Directive 89/552/EEC, as amended by Directive 97/36/EC of the European Parliament and of the Council.

⁵ http://www.europa.eu.int/comm/avpolicy/regul/review-twtf2003/consult_en.htm

the Internal Market (the e-Commerce Directive)⁶. This Directive clarifies some legal concepts and harmonises certain aspects in order to enable information society services to fully benefit from the internal market principles. A number of provisions in the e-Commerce Directive are also relevant to the protection of minors.

In order to promote a safer Internet, the European Parliament and the Council adopted on 25 January 1999 a multi-annual Community Action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks⁷ (the "Safer Internet Action Plan"). On 16 June 2003, the European Parliament and the Council adopted a two-year extension to the Safer Internet Action Plan⁸. The extended Safer Internet Action Plan is still aimed at promoting safer use of the Internet by combating illegal and harmful content on global networks, but it also includes measures to encourage exchange of information and co-ordination with the relevant actors at national level, and has special provisions for the accession countries.

Rating or classification of audiovisual content fulfils an essential role in the protection of minors. An independent *Study on the rating practice used for audiovisual works in the European Union*⁹ has been carried out for the Commission, and examines the issue of comparative content rating systems in the various media (television, film, interactive games, Internet) and different forms of transmission.

Ratings may differ not only between EU and EEA Member States, but also within a Member State depending on the distribution medium, such as cinema, television and DVD/video cassettes. As a consequence, the very same film may also be rated in a different way within a given Member State. The situation is further complicated by the fact that a specific film can lead to secondary works and services such as a video games and Internet websites, and by the fact that, in future, it may also be possible to download films via the Internet. The study therefore aims to highlight the rating practices in the various EU and EEA Member States, depending on the distribution channels involved, and to evaluate the impact of differences between national legislation and actual rating practice on the marketing and distribution of films. It also looks at the potential for confusion amongst those responsible for minors arising from differences in rating.

The consultants' main conclusions are that, although there is no strong pressure from either industry or consumers for homogeneity, there are still some structural pressures that are tending towards greater consistency. Principal among these are the twin forces of globalisation and convergence – both driven by societal and technological changes. The consultants believe that the combination of globalisation and convergence trends will, over time, create extremely strong pressures for a more homogenous system of content rating than exists at present. Moreover, these pressures will result in a volume and variety of delivery methods for content that will make it increasingly difficult for the public authorities to rate on an *ex ante* basis. There will be greater pressure to consider *ex post* methods of content rating and forms of coregulation, which will involve efficient and effective channels for consumer complaints.

⁶ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000, OJ L 178, 17.7.2000, p. 1 - 16.

⁷ Decision No 276/1999/EC, OJ L33, 6/2/1999 p. 1.

⁸ Decision No. 1151/2003/EC amending Decision No 276/1999/EC, OJ L 162, 1.7.2003, p. 1.

⁹ http://www.europa.eu.int/comm/avpolicy/stat/studi_en.htm#rating

The development of the Internet has further complicated the situation for protecting minors. Whereas in traditional broadcasting (analog or digital) the individual broadcaster is easily identifiable, it is difficult and sometimes impossible to identify the source of content on the Internet. Access to harmful and illegal content is easy and can even occur without intent. In addition, the volume of information in the Internet is massive in comparison to broadcasting. The Recommendation on the protection of minors has a **cross-media approach** and emphasises the **cross-border exchange of best practices** and the development of **co-regulatory and self-regulatory mechanisms**. A coregulatory approach may be more flexible, adaptable and effective than straightforward regulation and legislation. With regard to the protection of minors, where many sensibilities have to be taken into account, co-regulation can often better achieve the given aims. Coregulation implies however, from the Commission's point of view, an appropriate level of involvement by the public authorities. It should consist of cooperation between the public authorities, industry and the other interested parties, such as consumers. This is the approach laid out in the Recommendation. In order to promote national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity, the Recommendation enumerates different objectives to be fulfilled by (i) the Member States, (ii) the industries and parties concerned and (iii) the Commission.

2. QUESTIONNAIRE

In preparing this evaluation report, a questionnaire was addressed to the Member States and the accession countries on 30 April 2003 (see annex I). A copy of the questionnaire was also sent to the members of the Contact Committee established under the "Television Without Frontiers" Directive.

The objective of the new report is to establish what progress has been made in comparison with the situation in 2000, on issues concerning self-regulation, codes of conduct, technical and educational measures, the question of whether greater consistency between the activities protecting minors across the different media was felt to be necessary, as well as the question whether a common approach as regards the rating across all audiovisual media could improve the protection of minors. The questionnaire also takes into consideration technical progress such as UMTS and looks at subjects which until now have received only marginal attention, such as the control of chat-groups.

26 replies were received covering all Member States, eight accession countries¹⁰, Turkey, Iceland and Norway (in the case of Belgium, two linguistic communities replied). Italy and Latvia only replied to the questions relating to broadcasting. The replies received are available on the Commission's website¹¹.

¹⁰ Cyprus, Estonia, Hungary, Latvia, Lithuania, Poland, Czech Republic, Slovenia.

¹¹ http://europa.eu.int/comm/avpolicy/regul/new_srv/secondreport_en.htm

3. RESULTS

3.1. Internet

3.1.1. *Self-regulation and codes of conduct*

Section I (1) of the Recommendation provides that the **Member States should encourage** the establishment of national frameworks for self-regulation by operators of on-line services. This will require, at the very least, regular contacts between the operators. Internet Service Provider Associations (ISPAs) have been established/are active in 10 Member States¹², Hungary, Estonia, Slovenia, Turkey, Iceland and Norway. In Lithuania the establishment of an ISPA is planned for late autumn 2003. In Denmark, Greece, Portugal and Finland, the ISPs are represented through other trade organisations.

ISPAs from eight Member States¹³ are members of the European Internet Service Providers Association organisation (EuroISPA)¹⁴. Where established, codes of conduct¹⁵ deal with subjects such as the responsibility of providers for content, questions concerning protection of minors and complaints procedures. EuroISPA is keen for any ISPA from the accession countries to join EuroISPA. EuroISPA has conducted research through contacts in industry, and the conclusion is that most accession countries do not currently have an ISPA. Therefore, EuroISPA decided at its recent Council Meeting to investigate, as a matter of priority, the possibility of setting up "EuroISPA outposts" in those countries where ISPAs do not yet exist. This will also include current Member States where no ISPA exists¹⁶.

In Germany, Spain, France, Ireland, Luxembourg, the Netherlands, Austria, Finland, Sweden, the United Kingdom, Turkey and Norway, direct access to the associations via one or more websites of the ISPAs is possible, where information on their objectives and activities can be found.

Section II (2) of the Recommendation proposes that the **industries and the parties concerned** draw up **codes of conduct** for the protection of minors and human dignity, among other things in order to create an environment favourable to the development of new services. These should address the issues of basic rules (i) on the nature of the information to be made available to users, its timing and the form in which it is communicated, (ii) for the businesses providing the on-line services concerned and for users and suppliers of content, (iii) on the conditions under which, wherever possible, additional tools or services are supplied to users to facilitate parental control, (iv) on the handling of complaints, encouraging operators to provide the management tools and structures needed so that complaints can be sent and received without difficulty and introducing procedures for dealing with complaints and (v) on cooperation procedures between operators and the competent public authorities.

Eight Member States¹⁷, Hungary, Iceland, and Norway state that such codes of conduct have been established, and both Luxembourg and Slovenia have indicated that the ISPA is drawing up a code of conduct. The Netherlands replied that although there is no code of conduct, a

¹² Belgium, Germany, Spain, France, Ireland, Luxembourg, Netherlands Austria, Sweden, United Kingdom.

¹³ Germany, Spain, France, Ireland, Italy, Netherlands, Austria, United Kingdom.

¹⁴ <http://www.euroispa.org>

¹⁵ <http://www.euroispa.org/25.htm>

¹⁶ Information received from Mr. Richard Nash, Secretary General EuroISPA.

¹⁷ Belgium, Germany, Spain, France, Ireland, Austria, Sweden, United Kingdom.

public policy line has been established. Six Member States¹⁸ followed the EuroISPA model. In Sweden, as in 2000, the code of conduct concentrates on good business practice, but does not deal with the protection of minors.

The Recommendation stresses that interested parties such as users, consumers, business and public authorities should participate in the definition, implementation and evaluation of national measures. The United Kingdom proposed that, in accordance with the principle of self-regulation, codes of conduct should be drawn up by industry representatives. Germany, on the other hand, stated that although codes of conduct had been drawn up by industry representatives, contributions to the debate were also made by the public authorities, consumers and scientific experts. In Belgium, France and Finland, public authorities have been involved, and in Ireland public authorities **and** consumers have played a role alongside each other. The Netherlands stated that, on the initiative of the ISPs, public authorities, child pornography and discrimination hotlines and civil liberties organisations are involved in the setting-up of a 'Notice and take down system' based on the e-commerce Directive.

3.1.2. Illegal and harmful content

Germany, Sweden and Lithuania stated that they had **additional specific legal requirements** dealing with the operators' obligations with respect to illegal content hosted. Seven Member States¹⁹, Hungary, Poland, Iceland and Norway refer to the provisions implementing the e-commerce Directive. In Sweden, a specific piece of legislation stipulates that anyone operating on the Internet bears a certain responsibility for the content of their material, including the duty to remove or otherwise prevent the further distribution of information which is clearly covered by the provisions of the country's Penal Code.

Lithuania and Poland stated that specific requirements exist for **informing the judicial authorities and/or the police about illegal content**. Luxembourg and Iceland stated that, in practice, there is an obligation to withdraw illegal content once operators become aware of it, as this situation would fall under provisions of criminal law. None of the other replies referred to the existence of such specific requirements. Portugal indicated that the transposition of the e-commerce Directive would lay down rules in this regard. Denmark, Ireland and Sweden indicated that, in practice, there is ongoing co-operation between the police and ISPs, and in Greece and France ISPs have specific obligations to preserve data in order to assist in the investigation and prosecution of perpetrators of crimes, especially crimes against minors.

¹⁸ France, Ireland, Italy, Netherlands, Austria, , United Kingdom

¹⁹ Belgium, Denmark, Spain, Luxembourg, Netherlands, Austria, Portugal.

Notice and take down procedures

The conditions under which a hosting provider is exempted from liability as set out in Article 14(1)(b) of the e-commerce Directive constitute the basis for the development of notice and take down procedures for illegal and harmful content²⁰ by stake-holders. At the time the Directive was adopted, it was decided that notice and take down procedures should not be regulated in the Directive itself. Instead, Article 16 and Recital 40 expressly encourage self-regulation in this field.²¹ This approach has also been followed by the Member States in their national laws transposing the Directive. Of those Member States which have transposed the Directive, only Finland has included a legal provision setting out a notice and take down procedure concerning copyright infringements only²². All the other Member States have followed the approach adopted in the Directive to leave this issue to self-regulation. In accordance with Article 21(2), which requires the Commission to analyse the need for proposals concerning notice and take down procedures, the Commission has actively encouraged stakeholders to develop notice and take down procedures and has systematically collected and analysed information about emerging procedures.

Hotlines receive complaints from the public about illegal content. After screening the complaint, they then pass it on to the appropriate body – police, Internet service-providers or a correspondent hotline. Creating a European network of hotlines to span the EU both geographically and linguistically was one of the key aims of the Safer Internet Action Plan 1999-2004, since hotlines only existed in a limited number of Member States in its early stages.

Thirteen Member States²³, Lithuania, Poland, Iceland and Norway indicated that **hotlines** to handle complaints about harmful or illegal content have been established. In Denmark, Germany, Luxembourg, Austria and Norway, especially in the context of child pornography, it is the police which provides a hotline. In Hungary, a hotline will be set up in the near future.

Hotlines associated with the European Networks of Hotlines INHOPE²⁴ – which is funded by the Commission under the Safer Internet programme – exist in thirteen Member States²⁵ and Iceland. Between December 2001 and May 2002 INHOPE members have processed more than 35.000 reports.

²⁰ Mechanisms provided by interested parties aimed at identifying illegal content hosted on the network and at facilitating its rapid removal.

²¹ The European Parliament, when adopting the Directive in 2000, invited the Commission to encourage the establishment of efficient notice and take-down procedures by interested parties. European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council Directive on certain legal aspects of Information Society services, in particular electronic commerce, in the Internal Market, 4.5.2000, OJ C 041, 7.2.2001, p. 38.

²² Amongst the EEA countries, Iceland has also established a statutory notice and take down procedure.

²³ Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Luxembourg, Netherlands, Austria, Finland, Sweden, United Kingdom.

²⁴ <http://www.inhope.org>

²⁵ Belgium (Child Focus), Denmark (Red Barnet), Germany (FSM, ECO, jugendschutz.net), Greece (Netwatch), Spain (Protegeles), France (AFA-France), Ireland (Hotline), Italy (Save the Children Italy), Netherlands (Meldpunt-), Austria (Stopline), Finland (Save the Children Finland), Sweden (Save the Children Sweden), United Kingdom(IWF).

The efficiency of Hotlines may be enhanced if their existence is well-known to Internet users. **Campaigns** have been launched in eight Member States²⁶ and Poland. Others rely on the presence of various websites.

Overall, the States which replied to the questionnaire still consider the existence of **hotlines** as an **important** issue since they regard them as an effective tool for reducing the amount and accessibility of illegal content. However, no respondents seem to have made provision for assessing the actual efficiency of hotlines. Ireland states, however, that the number of reports received by the hotline indicates that the public is aware of its existence and the opportunity it offers to for users to respond to illegal material on the Internet.

As regards the **geographic origin of illegal content**, most States confirm that the vast majority of the websites concerned are located **outside the European Union**.

3.1.3. Filtering and education

To promote safer use of the Internet, illegal and harmful content must be readily identifiable. Rating and filtering systems can help to empower users to select the content they wish to receive.

In Germany, since the entry into force of the *Jugendmedienschutz-Staatsvertrag* on 1 April 2003, ISPs must ensure that children and minors do not have access to harmful material. The ISP can fulfil this obligation by technical means, which must be assessed and tested by the authorities. This means that the ISPs must participate in the development of filtering software, and that software producers must market it effectively. France decided to establish an online list of “francophone” websites for all ages. In order to be included in the list, the editors of these websites must have confirmed that they adhere to a quality charter. This list should also serve as an information source for filter programs, which can propose to Internet users that they restrict themselves to the websites on the list.

The Netherlands and the United Kingdom referred to the Internet Content Rating Association (ICRA)²⁷, which allows website managers to apply for a rating on a voluntary basis. This allows parents to restrict access to websites with the most suitable rating. ICRA, which received funding under the Safer Internet Action Plan, has produced a content rating system suitable for EU and international needs. Content providers rate the content of their own sites. Parents are free to set acceptance criteria according to their personal and cultural preferences and beliefs.

In Poland, three organisations are developing filtering and/or rating systems for the Internet. In Lithuania, there has been an open tender to test filters, in addition to which rating systems and recommendations to the public and ISPs concerning filters and rating systems will be published.

Norway stated that figures from a survey suggested that parents generally did not believe in filtering as a tool, and that awareness and dialogue between parents and children was the best way to provide a safe environment.

In conformity with Section (II) paragraph 4 of the Recommendation, **industry** has also made major efforts to contribute to the establishment of a safer Internet through research on rating

²⁶ Denmark, France, Ireland, Luxembourg, Netherlands, Austria, Finland, United Kingdom.
²⁷ <http://www.icra.org>

and filtering systems and the establishment of “walled gardens”. Walled gardens consist of special portals where the operators guarantee the quality of sites, which may be accessed through them.

In Germany, it was decided that age differences should be taken into account in the development of filtering systems, and that walled gardens should be developed. If possible, ISPs should offer these walled gardens free of charge.

In three Member States²⁸, obligations exist for ISPs to inform subscribers about available filtering and rating systems and/or age verification software. In Hungary, the ISP requires providers to give easy access to filter systems or to give information about such services.

In 2003, **campaigns** for safer use of the Internet were launched in 12 Member States²⁹, Poland, Iceland and Norway. In Lithuania, the Ministry of Culture will issue a labelling order by the end of the year and the Ministry of Education will provide informative training and seminars for teachers, social workers and the general public. Again, several Member States stressed the importance of schools as the appropriate context for educational measures, for instance within the broader framework of media education.

Many of the States which replied to the questionnaire acknowledge the challenges of the Internet. However, none of them consider that there is evidence to suggest that public fears concerning harmful and illegal content may have slowed down the development of the Internet.

Section III of the Recommendation calls on the **Commission** to facilitate the networking of the bodies responsible for the definition and implementation of national self-regulation frameworks and the sharing of experience and good practices, and to promote multinational cooperation. The Action Plan for Safe Use of the Internet (1999–2002) aimed to set up a European system of hotlines, develop a European filtering and rating system for Internet content and promote a series of educational and awareness-raising measures. The extended Action Plan (2003–2004) aims to build on the progress already made, and to add value by extending the programme into new online technologies such as mobile and broadband content, online games, chat rooms and instant messages.

3.1.4. European and international cooperation

France and Portugal refer favourably to the Council of Europe Convention on Cybercrime, which would reinforce the provisions at European level relating to child pornography. Germany felt that only in the fight against child pornography was there any genuine international cooperation, and stated that it would welcome more effective collaboration in other fields relating to illegal or harmful content.

Denmark stated that there were positive benefits from the existing cooperation. The United Kingdom is happy with level of European cooperation, but considers that the wider international context is more important. Luxembourg felt there was a need for further benchmarking and best practice. Austria would like to see more cooperation on rating and filtering software. Some countries felt that the level of cooperation was insufficient³⁰, that

²⁸ Germany, France– legislation. Ireland – Code of Conduct and Ethics.

²⁹ Denmark, Germany, Greece, Spain, France, Ireland, Luxembourg, Netherlands, Austria, Finland, Sweden, United Kingdom, .

³⁰ Greece, Poland.

more effective cooperation would be helpful³¹ or that the level of cooperation was difficult to measure³². Poland suggested setting up an international hotline in Europe in order to strengthen joint efforts and initiatives. Hungary is in favour of setting up an international network of hotlines.

3.1.5. UMTS

Germany, France and Finland indicated that transmission via mobiles, in particular through UMTS, is covered by regulation. Sweden considers that its legislation on illegal content is in principle applicable to mobile phone transmissions, but mentioned that this had not been tested in the courts. The Netherlands argued that the self-regulatory provisions had been drafted in a technologically neutral way, but were limited to “hosted information”. Nevertheless, this could in principle apply to UMTS. The importance of technological neutrality of all applicable rules was also underlined by Hungary. The United Kingdom mentioned that a self-regulatory code of conduct is in the process of being drawn up and Norway pointed out that the extension of the Internet Action Plan aimed to let the self-regulation initiatives also cover the UMTS-network. Denmark referred to a code of conduct for Short Message Services (SMS).

3.1.6. Control of chat-groups

Germany and Norway consider that the control of chat-groups is the responsibility of the chat-group operators/providers and not of the government. In the Netherlands, negotiations are going on between the government, chat-group providers and child rights organisations. Greece has set up a special police unit which surfs the Internet. Sweden indicated that in some circumstances, chat-group services were covered by its basic constitutional law (guaranteeing freedom of expression).

Ireland, Sweden, the United Kingdom, Hungary and Lithuania mentioned that chat-rooms are run by moderators provided on the initiative of chat-group operators.

In Denmark, France, Luxembourg, Finland and the United Kingdom, awareness-raising campaigns concerning the dangers relating to chat-groups have been run. In the United Kingdom, Safer Surfing guidelines on the need for parents to monitor their children’s computer use – particularly in chat-rooms – is regularly referred to in the media following a number of high-profile news stories. Denmark mentioned that ignore buttons are often used which makes it possible for an individual user to remove all communication from other specific users. Poland referred to a special form concerning chat-groups on its hotline webpage.

3.1.7. Right of reply

In Denmark, Germany and Poland, the right of reply covers all media, including the Internet. In Austria, the right of reply is thought to cover online media, and the law in this area is in the process of being clarified. In Belgium (at federal level) and France, draft legislation has been drawn up to adapt the right of reply to include online media; this legislation has not yet been adopted. In Hungary, in the framework of the self-regulatory system the code of conduct provides for application of the general rules of the right of reply to the specific conditions of the Internet. Greece, the Netherlands, Portugal, the United Kingdom, Lithuania and Norway

³¹ Estonia, Turkey, Iceland.

³² Lithuania.

mention that there is no specific regulation in their country. The United Kingdom and Norway do not see this as a major problem. In Sweden the press has its own code of conduct, which includes the right of reply (Press Ombudsman). The Press Ombudsman can under some circumstances deal with publications on the Internet. Lithuania mentioned that codices based on self-regulation will be implemented.

Most of the stakeholders in the public consultation on the TVWF Directive who commented on the **right of reply** in respect of television services, find that the provision as such is appropriate and that no additional regulation is necessary. Some stakeholders considered that a **right of reply applicable to all electronic media** should be developed. As far as online media are concerned, there should, for instance, also be an effective right of reply in cases where an allegation has been published in another country.

3.2. Broadcasting

The TVWF Directive stipulates in its Article 22(3) that programmes which may be harmful to minors must be preceded by an **acoustic warning** or identified by the presence of a **visual symbol** throughout their duration. In 2000, all Member States which replied to the questionnaire had transposed this Article into national law.

Cyprus, Hungary, Latvia, the Czech Republic, Slovenia, Iceland and Norway also indicated that they had transposed this Article into national law, and Turkey stated that it would be doing so. Lithuania and Poland stated that although on-screen icons are not required by law, they are used by broadcasters on a voluntary basis, and Estonia stated that although there is no requirement, acoustic warnings are used effectively.

Eight Member States³³ stated that the acoustic warning and/or visual symbols were deemed to be effective or at least useful. Austria considers that this system is only effective together with other measures such as media literacy programmes, and Norway considers that it has great potential. Slovenia stated that it is too soon to judge the effectiveness of the measures taken.

Belgium (French-speaking community) indicated, among other things, that the evaluation of their *signalétique* highlighted the following: poor visibility of the signs, the need to have the sign on-screen during the entire programme, the need to extend the system to talk shows, reality shows, etc.

Section (I), paragraph 2 of the Recommendation calls on the **Member States** to encourage broadcasters within their jurisdiction to carry out research and to experiment, on a voluntary basis, with new means of protecting minors and informing viewers, as a supplement to the national and Community regulatory frameworks covering broadcasting.

According to the replies received, **self-regulation** still seems to be less strong in broadcasting in comparison with the Internet. In the Netherlands, the self-regulatory NICAM *Kijkwijzer* rating system, which was already planned in 2000 and which covers various media including broadcasting, has been established³⁴.

³³ Denmark, Germany, France, Italy, Netherlands, Finland, Sweden, United Kingdom.

³⁴ The NICAM *Kijkwijzer* system was discussed in depth in the (First) Evaluation Report to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 on protection of minors and human dignity. Broadcasters may only broadcast possible harmful content if they are a member of an organisation which deals with the classification of content and which is recognised by the Government. The NICAM system also includes a code of conduct.

As in 2000, in some Member States there is a distinction between public and commercial broadcasters as regards self-regulation. Codes of conduct have been established in nine Member States³⁵ and Norway. In Germany, public-service broadcasters have guidelines while private broadcasters have a self-regulatory code of conduct. In Italy, private and public broadcasters have arrived at a self-regulatory code of conduct. In Sweden, there is no industry-wide self-regulation initiative, but some channels give their own age recommendations.

In Cyprus, Estonia, Poland and Slovenia, self-regulatory systems have been established. In Estonia and Slovenia, only some provisions deal with protection of minors. In the Czech Republic, the public broadcaster adopted a Code of Conduct dealing with protection of minors, but only in respect of news. The system in France is a coregulatory system, and the provisions concerning the protection of minors deal specifically with the classification of programmes. The United Kingdom argued that self-regulation had a limited role following the introduction of the new Communications Act.

The contributions received relating to the consultation on the TVWF Directive show that co-regulatory models work very well in some Member States, but some stakeholders argued that simple codes of conduct without control by the public authorities are not sufficient.

3.2.1. *Filtering systems*

In its Resolution of 11 April 2002³⁶ on the first evaluation report on the Recommendation, the European Parliament calls on the Commission to promote the creation of user-friendly content filter systems at affordable prices, so as to provide effective support for parental control over the use of the Internet and over audiovisual media.

Filtering systems are only used for digital broadcasting. Electronic locking takes place in nine Member States³⁷, Latvia, Lithuania, Slovenia and Iceland. As in 2000, Germany still distinguishes between public broadcasters to which the same policy applies as for analogue public broadcasters (watershed, warning by signs and acoustic means), and commercial broadcasters where the watershed can be replaced by a specific pin code technique. Only Belgium (French-speaking community), Germany and Sweden consider that the public is aware of these encryption systems and only Germany³⁸ considers that these measures are effective.

Section II, paragraph 4 of the Recommendation also calls on **industry and interested parties** to develop positive measures for the benefit of minors, including initiatives to facilitate their wider access to audiovisual services while avoiding potentially harmful content.

³⁵ Belgium, (French-speaking community), Denmark, Greece, France, Ireland, Italy, Austria, Portugal, Finland.

³⁶ C5-0191/2001 - 2001/2087(COS).

³⁷ Belgium, Germany, Greece, France, Netherlands, Austria, Portugal, Sweden, United Kingdom.

³⁸ In Germany, a specific type of electronic locking is used, known as a *Vorsperre*. The viewer must punch in a four number PIN-CODE to decrypt a broadcast, which has been pre-encrypted ("*vorgesperrt*") by the broadcaster. Without punching in the correct code the screen remains black (but for an explanatory message) and there is no sound. According to a study, the pre-encryption system has been well received by viewers. Apart from the fact that it is viewed favourably as a means to protect minors, 73% of the subscribers do not view the system as a nuisance or inconvenience. The effectiveness of the pre-encryption depends on the extent to which the PIN-CODES are kept secret from the minors. The study shows that only a negligible number of children under 14 knows the PIN-CODES. Among 14 and 15-year-olds, 20% know the PIN-CODE, and 40% of 16 and 17-year-olds.

Industry has been active mainly through the DVB (Digital Video Broadcasting consortium), – which comprises more than 200 organisations including (public and private) broadcasters, manufacturers of consumer and professional equipment, operators of satellite, cable and terrestrial networks, and regulators – and with which the Commission is in permanent contact. In its Resolution of 11 April 2002³⁹ on the first evaluation report on the Recommendation, the European Parliament encouraged the DVB consortium to work on the development of reliable filter and rating systems for digital broadcasting. On 5 June 2003, the Commission sent a letter to the DVB asking for information on the consortium's work in this area. As yet, no reply has been received from the DVB.

3.3. Media literacy

The changing media landscape arising from new technologies and media innovation, makes it necessary to teach children (and parents) to use the media effectively. Knowing where to find information and how to interpret it is nowadays an essential skill.

The Work Programme for 2003 - 2004 under of the Safer Internet programme includes in particular a call for proposals to bring about media literacy. One of the actions provided for in the new call for proposals concerns applied research for media education, more specifically applied research on media education into children's use of the Internet, and new technologies so as to identify educational and technological means of protecting them from harm.

In ten Member States⁴⁰ and Slovenia, media literacy is part of the school curriculum. In Poland, pilot programs for schools have been developed, and in Lithuania a series of seminars was held in order to teach children and the general public how to make responsible use of new media. In Hungary, a Media Educational Strategy with concrete programmes is in preparation for next year.

An interesting initiative concerning Media Literacy is **Media Smart**⁴¹. This is a non-profit-making media literacy programme for primary school children, initially focused on advertising, which was launched in November 2002. The Media Smart initiative is strongly supported by the UK Government. The objective is to provide children with the tools to help them understand and interpret advertising in the context of their daily lives. The most important role of Media Smart is to develop and provide schools, on request, with teaching materials for teachers and parents. There is also a media literacy *infoad* on TV on 10 satellite channels in the UK, which encourages children to think about what they see on TV and to question whether or not it is real.

A number of stakeholders who participated in the public consultation concerning the TVWF Directive also suggested including media literacy among the subjects covered by the Recommendation.

³⁹ C5-0191/2001 - 2001/2087(COS).

⁴⁰ Belgium (Flemish Community), Greece, Ireland, Luxembourg, Netherlands, Austria, Portugal, Finland, Sweden, United Kingdom.

⁴¹ <http://www.mediasmart.org.uk/>

3.4. Rating

3.4.1. Developments since 2000 concerning cinema, videocassette and DVD rating systems

In the Netherlands, the cross-platform *Kijkwijzer* classification system came into force in 2001. In Finland, the Audiovisual Programmes Classification Act came into force at the beginning of 2001. In Luxembourg, a working group has been set up to investigate whether the level of protection of minors is sufficient and effective, and to look into the possibilities of a cross-platform content-rating system. In Cyprus and Hungary, proposals for new film rating systems have been introduced into the legislative process but still wait for approval by Parliament.

3.4.2. Lack of coherence between rating systems

A number of Member States⁴², together with Iceland and Norway, consider that the lack of coherence between rating systems poses problems. In Belgium (French and Flemish-speaking communities) and Luxembourg, working groups have been set up to look at this issue.

In five Member States⁴³, the lack of coherence between rating systems does not pose any problems. Germany considers that its *Jugendschutzgesetz* and *Jugendmedienschutz-Staatsvertrag* ensure that there is no lack of coherence. The Netherlands considers that its *Kijkwijzer* classification system ensures coherence. Estonia stated that “in our small and self-contained society, the remarkable abnormalities are regulated by social attention”.

In a number of contributions to the public consultation on the TVWF Directive, it was considered that – taking into account the cultural and social diversity between Member States – the rating of programmes should be carried out at Member State level, but that there could nevertheless be an EU system of common descriptive symbols which would help viewers to assess the content of programmes.

3.5. Video game software

Video games, at the beginning of their history, were mostly geared towards children and teenagers. This is no longer the case. Today, with ever more sophisticated games, those very first users are grown-ups who continue to enjoy the products of this very creative industry. From an economic point of view, its potential should not be underestimated: Computer and video games now generate more revenue than either the cinema box office or video rentals.

On 1 March 2002, the Council adopted a Resolution of on the protection of consumers, in particular young people, through the labelling of certain video games and computer games according to age group⁴⁴. Six Member States⁴⁵ indicated that they had legal provisions concerning the sale of video games. Portugal states that it had, since 2001, applied the same legislation system governing videocassettes and DVDs. Nine Member States⁴⁶ and Iceland and Norway indicated that they have a self-regulatory system in place, which covers questions relating to age-ratings.

⁴² Belgium (French and Flemish-speaking communities), France, Austria, Finland, United Kingdom.

⁴³ Denmark, Greece, Spain, Ireland, Portugal.

⁴⁴ COUNCIL RESOLUTION of 1 March 2002 on the protection of consumers, in particular young people, through the labelling of certain video games and computer games according to age group (2002/C 65/02).

⁴⁵ Germany, France, Ireland, Finland, Sweden, United Kingdom.

⁴⁶ Denmark, Germany, Spain, France, Ireland, Portugal, Finland, Sweden, United Kingdom.

Germany, Denmark, France and Finland consider that their measures concerning video games are **effective** as regards the protection of minors. Norway stated forward that it would consider further regulations if the Pan-European Games Information age-rating system (PEGI), discussed below, does not prove to be fully effective.

On-line games have only been incorporated into regulatory measures in Germany, Sweden, Iceland and Norway. However, the PEGI system covers games in an online environment.

An interesting initiative has been taken by the Interactive Software Federation of Europe (ISFE), a pan-European trade body of games console manufacturers, publishers and developers of interactive games: the Pan European Games Information (PEGI) age-rating system. PEGI is a new, pan-European age-rating system for interactive games. Designed to ensure that minors are not exposed to games that are unsuitable for their particular age-group, the system is supported by the major console manufacturers, as well as by publishers and developers of interactive games throughout Europe.

Launched in April 2003, PEGI replaces a significant number of existing national age rating systems with a single system that is identical throughout most of Europe⁴⁷. The age-rating system comprises two separate but complementary elements. The first is a rating, similar to some existing rating systems. The PEGI age bands are 3+, 7+, 12+, 16+ and 18+. The second element of the new system is a number of game descriptors. These are icons, displayed on the back of the game box that describe the type of content to be found in the game. Depending on the type of game, there may be up to six such descriptors. The intensity of the content is appropriate to the age-rating of the game. The PEGI descriptors are very similar to those used in the Dutch *Kijkwijzer* system of classification for audio-visual media. The combination of age-rating and game descriptors allows parents and those purchasing games for children to ensure that the game they purchase is appropriate to the age of the intended player. In addition to games purchased through conventional retail channels, the PEGI ratings will also apply to games sold through the Internet, played or downloaded within an online gaming environment, or provided on magazine cover discs.

The Netherlands Institute for the Classification of Audio-visual Media (NICAM), which is responsible for the *Kijkwijzer* system, has been contracted to administer the PEGI scheme. In the UK, the Video Standards Council (VSC) will act as the agent for NICAM.

The PEGI system was developed and based on existing systems in Europe. In the drafting of the PEGI assessment form and the shaping of the system organisation, society representatives such as consumers, parents and religious groups have been actively involved. PEGI has been designed to meet varying cultural standards and attitudes across the participating countries. In all instances, the voluntary PEGI system is subordinate to the pre-existing, wider framework established, run and enforced by governments to ensure the protection of minors. As a consequence, the PEGI system is subordinate to all existing and future laws and regulations in this area.

⁴⁷ According to the ISFE, PEGI applies to products distributed in the following sixteen countries: Belgium, Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Austria, Portugal, Finland, Sweden, United Kingdom, Norway, Switzerland.

3.6. Measures against discrimination on the grounds of race, sex or nationality in all media

In June 2003, the Commission planned to table legislation to combat discrimination outside the workplace. In the initial drafting phase, provisions were considered concerning advertising or images of women in the media, especially, with regard portrayals of women that do not “respect human dignity”. However, given the legal and practical difficulties associated with a ban on sexual stereotyping, the draft legislation will be limited to access to goods and services.

As the Recommendation takes a cross-media approach and already covers “human dignity”, the Commission proposes to examine whether the Recommendation should more explicitly mention the exclusion of discrimination on the grounds of race, sex or nationality in all media.

3.7. Consumer associations

Consumer associations have been involved in the legislative process with regard to the *neues Jugendschutzrecht*⁴⁸, in the evaluation of the legislation⁴⁹, in the updating of the classification system (*signalétique*)⁵⁰, discussions and round tables⁵¹. In one Member State⁵² consumer associations are members of the advisory board of the regulatory authority (for broadcasting). Furthermore, consumer associations have been and are involved in the PEGI system.

4. CONCLUSION

The Recommendation calls on the Member States, industry and interested parties, as well as the Commission, to take steps to enhance the protection of minors and human dignity in the broadcasting and internet sectors. Illegal, harmful and undesirable content and conduct on the Internet continues to be a concern for law-makers, industry and parents. There will be new challenges both in quantitative (more “illegal” content) and qualitative terms (new platforms, new products) Taking into account the ever-increasing processing power and storage capacity of computers, and the fact that broadband technologies allow distribution of content such as video on 3G mobile telephones, the need for a safe environment is greater than ever.

The Recommendation is still being applied in different ways by the **Member States** (as well as the accession countries and the other States which replied to the questionnaire). However, the number of hotlines and codes of conduct has increased significantly, and the fact that two of the accession countries which replied to the questionnaire have established hotlines is also a positive sign. The launch of campaigns in most Member States to encourage safer use of the Internet is a very positive development. However, based on the replies to the questionnaire, the measures concerning the protection of minors in the accession countries do not seem to be as far-reaching as in the Member States.

Even though self- or coregulation is still less developed in the broadcasting sector, the relevant systems seem to be working quite well. However, the involvement of consumer associations and other interested parties in the establishment of codes of conduct and other self-regulatory initiatives still leaves a lot to be desired.

⁴⁸ Germany

⁴⁹ Austria

⁵⁰ France and Cyprus

⁵¹ Estonia

⁵² Belgium (French-speaking community)

In most Member States and accession countries the measures or initiatives concerning UMTS and the control of chat-groups are still quite abstract or left to self-regulation.

As far as industry is concerned, ICRA is still working on the development of reliable filter and rating systems for the Internet. The European Parliament further encouraged the DVB consortium to work on the development of reliable filter and rating systems for digital broadcasting. As yet, no further information concerning this issue has been received from the DVB. One of the conclusions of the independent *Study on the rating practice used for audiovisual works in the European Union*, was that there is **no urgent pressure from either industry or the consumer for homogeneity of rating systems**. In the light of this supposed absence of pressure **for homogeneity in age-rating**, the PEGI age-rating system, which replaces most national age rating systems in respect of video games, is indeed an interesting initiative.

The Safer Internet programme provides funding for measures as a coherent response by the European Union to illegal and harmful content on the Internet. The coverage of the Safer Internet Action Plan will extend to new online technologies, including mobile and broadband content, online games, peer-to-peer file transfer, and all forms of real-time communications such as chat-rooms and instant messages, primarily with the aim of improving the protection of children and minors. Action will be taken to ensure that a broader coverage of areas of illegal and harmful content and conduct giving rise to concern, including racism and violence.

As far as online media are concerned, the right of reply could be enshrined in the Recommendation as a first step towards an effective right of reply applicable to all media, for instance in cases where the allegation has been published in another country. The Commission will also be actively involved in the work of the Council of Europe concerning the right of reply in the online-environment.

The responsibility to protect minors from harmful effects of the media is a commonly shared one. Regulators, the audiovisual industry **and parents** all have to play their part to achieve the goal. Media-literate children and parents supported by efficient self-regulatory and rating systems are best equipped to prosper in the world of the future. Hence, the idea of including media literacy among the subjects covered by the Recommendation seems very appropriate.

Rating or classification of audiovisual content serves an essential role in the protection of minors. Because of the cultural and social diversity among Member States, rating of programmes is carried out at national level. Nevertheless, there could be a “bottom-up” harmonisation through collaboration 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.

The Commission intends to follow up on the public consultation process concerning the TVWF directive and this evaluation report by proposing an update of the Recommendation during the first half of 2004. This could cover issues relating to media literacy, the right of reply, and measures against discrimination or incitement to hatred on the grounds of race, sex or nationality in all online media.

Annex

Questionnaire

Concerning the Recommendation of the Council of 24 September 1998 on the development of the competitiveness of the European audio-visual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (98/560/EC)

Internet

- 1) Has an association of Internet Service Providers (ISPs) been established in your country? Please give details of the ISP association(s).
- 2) Has a code of conduct been drawn up by the ISPs in your country? If possible, please provide a copy or the web address where it can be accessed.
- 3) To what extent were public authorities and consumers involved in the drawing up of the ISP code of conduct? Is consultation of public authorities and consumers required when the code is revised or amended?
- 4) Are there any legal requirements in your country which apply **specifically** to ISPs and how they should deal with illegal or harmful content accessed over the Internet? If so, what are they?
- 5) Are there any specific requirements for ISPs to inform the police or judicial authorities about illegal content offensive to human dignity, which is available over the Internet?
- 6) Has a “hotline” for reporting harmful or illegal content been established in your country? If so, please give details (including web and e-mail address) of the hotline(s), including their method of financing.
- 7) Of the problematic Internet content which has been reported, approximately what proportion of this is hosted outside your country or outside the EU?
- 8) What measures and initiatives have been taken, either by public authorities or by operators, to raise public awareness of hotlines? Are these measures and initiatives judged to have been effective?
- 9) Where hotlines have been established, please give, in so far as possible, an estimation of their effectiveness in reducing the extent and accessibility of harmful and illegal content. This could include public opinion as to their effectiveness/efficiency as well as the views of operators.
- 10) Apart from any involvement in the work currently funded by the Community Action Plan on promoting safer use of the Internet, have any efforts been made, either by industry or public authorities, to develop a filtering and rating system for the Internet in your country? If so, what progress has been made and what are the difficulties encountered?
- 11) Do any obligations exist, either in law or in relevant codes of conduct, for ISPs to inform subscribers about available filtering and rating systems and age verification software?

- 12) What measures have been taken at national, local or regional level to spread awareness of safer Internet issues? Have these been part of a larger plan for “media education”? Have they been supported by public funds or by private funding (e.g. from industry or from voluntary associations) or by a mixture of public and private funding?
- 13) Is there any indication that the development of the Internet in your country has been slowed down by public fears concerning harmful and illegal content which may be accessed over the Internet?
- 14) Is the current level of international co-operation in this matter, particularly within Europe, seen as sufficient? If not, what measures could be taken to improve it?
- 15) Have you already covered or do you intend to cover by the above mentioned self-regulation measures or by regulation similar services such as transmission via mobiles, in particular as concerns UMTS?
- 16) Please describe any initiatives, which have been taken to control online chat-groups, in particular measures taken in order to avoid any abuse, which could be harmful to minors?
- 17) Please describe measures, which have been taken in order to improve media-literacy (e.g. teaching children how to make a responsible use of new media)?
- 18) Is there any specific regulation or self-regulation concerning the specific question of the right of reply with respect to online-media? Have there been concrete problems during the last two years concerning these issues, in particular problems involving cross-border aspects?

Broadcasting

- 19) Have broadcasters in your country established a system of self-regulation relating to the protection of minors? Please give details of this, particularly with regard to membership.
- 20) Does this system of self-regulation include a code of conduct regarding the protection of minors and harmful content? (Please note, this question does not concern advertising specifically aimed at minors. It concerns audiovisual content which could be harmful to minors, regardless of whether this is contained in advertising or in general programming.)
- 21) Are on-screen warning icons required, either by law or by codes of conduct, for potentially harmful television programmes? Are acoustic warnings before such programmes required, either by law or by codes of conduct? Where such measures are used, are they considered to be effective?
- 22) Do any broadcasters established in your country use technical filtering devices to ensure that minors may not view harmful programmes? If so, what measures and initiatives have been taken to ensure that parents and guardians are aware of these devices and how to operate them. Are these devices held to be an effective means of protecting minors in your country?
- 23) Please describe measures which have been taken in order to improve media-literacy (e.g. teaching children how to make a responsible use of television)?

Video Game Software

- 24) Are there any specific legal provisions in your country concerning the sale of video games? (This question concerns the physical sale of video game software, not the provision of software over the Internet for downloading onto computers.)
- 25) Is there any self-regulatory system in place which covers questions relating to age-rating for video games? (e.g. such as the system of self-rating which has been announced by the Interactive Software Federation of Europe (ISFE)) If so, please give details.
- 26) Are current measures to protect minors from harmful video games considered to be effective?
- 27) As online games and computer games, especially on LANs (Local Area Networks), are very similar, have you also included them into measures of self-regulation and/or regulation?

Other Content Delivery Systems

- 28) With regard to cinema, videocassette and DVD rating systems, have there been any major developments since the year 2000?

General

- 29) In what way have you associated consumer associations, voluntary associations and non-governmental organisations to the implementation of the Recommendation?
- 30) Is the lack of coherence between the various rating and classification systems for audiovisual media (cinema, television, videocassettes, video games, Internet) seen as problematic in your country, e.g. in terms of creating confusion among customers? Are any measures or initiatives being considered to introduce greater coherence in the way audiovisual media are evaluated and classified? Has there been any cooperation to this extent with other Member States or organizations from abroad?
- 31) Have the efforts in your country with respect to the protection of minors been accompanied by scientific boards and specific studies with respect to violence or other harmful content and their impact on minors? Are there any voluntary agreements by broadcasters and by content providers on the Internet?
- 32) If you are aware of any study or scientific report which has been prepared on this issue during the last two years, please transmit a copy or give the references.
- 33) The Commission is aware that Member States' authorities may not be in a position to answer all the questions posed here. Nevertheless, the Commission would request that they be answered insofar as possible. Any additional information and any relevant views which might help the Commission in evaluating the effectiveness of the self-regulatory approach laid out in the Recommendation on the Protection of Minors should also be given.