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Working Group 3 on Protection of Minors: new issues - Objectives & structure

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The protection of minors is a topic which has been debated more often than most other issues at EPRA; unlike subjects such as digitisation, it does not have a "season" after which it can be laid to rest. Although the remit of broadcasting regulators greatly varies from country to country, the protection of minors constitutes, as a rule, a major component of their field of activity.

The protection of minors was at the centre of debates at EPRA meetings in Paris in 1996, Fredrikstad in 1998, Vevey in 1999, Barcelona in 2001, Malta in 2002, Naples and Cyprus in 2003, Stockholm in 2004, Budapest in 2005 and in 2008, through the prism of media literacy, in Riga.

Taking into account also the continued interest and activities of the European Commission (e.g. the Recommendation on the protection of minors and human dignity or the recent Communication on the use of video games ¹) and the Council of Europe (e.g. the Recommendation on the protection of minors from pornographic programmes ²) regarding the protection of minors, one may conclude that this is an issue which requires – and deserves – the continuous attention of all actors: from parents via teachers to society as a whole, and from content producers and providers to regulators and the legislator. The topic is closely linked to the question of media literacy and consumer issues such as, for instance, the currently hotly debated regulation of advertising of high fat high salt foods (HFSS), which the plenary is dealing with in its first session in Tallinn.

The two presentations in the working group deal with the protection of minors from two angles that basically cover a broad scope of the issue:

- Baby channels (presentation by the French CSA, Mme Anissa Zeghlache)
- Pornographic content (presentation by the Italian AGCOM, Maja Cappello)

While both presentations concern the question of minors as viewers, they do raise differing issues which might merit discussion by the working group.

However they have a common point, namely they both raise the issue of the **transnational cooperation between broadcasting regulatory authorities**.

1. Baby Channels

Baby-TV Channels are commercial-free television services specially designed for children under three years old. Baby TV Channel and Baby First Channel, which were granted licences by the British Ofcom, started broadcasting in France respectively in 2005 and 2007. These channels sparked controversy in France especially as they base their communication on the educational character of the programmes. In summer 2008, the French Conseil supérieur de l'audiovisuel (CSA) announced its decision to regulate and increase the awareness of parents regarding the dangers of TV programmes aimed at children less than three years, by means of a "délibération" dated 22 July 2008³.

¹ EP Recommendation of 20 Dec. 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:378:0072:0077:EN:PDF>

Communication from the Commission on the protection of consumers, in particular minors, in respect of the use of video games - 22 April 2008 - COM(2008) 207 final: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0207:FIN:EN:PDF>

² See, for instance, Recommendation (04) 1 on the protection of minors from pornographic programmes adopted by the T-TT at its 37th meeting on 11-12 Oct 2004): [http://www.coe.int/t/dghl/standardsetting/media/T-TT/T-TT\(2006\)012rev_en.asp#TopOfPage](http://www.coe.int/t/dghl/standardsetting/media/T-TT/T-TT(2006)012rev_en.asp#TopOfPage)

³ http://www.csa.fr/infos/textes/textes_detail.php?id=126993

Some questions for debate following the French presentation may include the following:

Some **content aspects**, such as: should there be such content at all? What is the minimum age for children to watch TV? Will baby channels impact on the development of very young minors?

But, most relevant in the EPRA context, also **transnational cooperation aspects**, such as:

- Are other regulators concerned with the issue of Baby Channels?
- If so, what course of action has been taken by them?
- How far may regulatory authorities intervene in the regulation of such channels when there is no European consensus as to the (potentially harmful?) character of such content?
- How to reconcile restrictive measures with the country of origin principle?
- What about the new consultation (cooperation) procedure between receiving country and the country of origin (Article 3 (2) – (5) AVMS)?
- What are the exact requirements of Art 2a AVMS, which allows some exceptions (to be interpreted in a restrictive manner) to the country of origin principle?

2. Pornographic content, with a particular focus on unencrypted pornographic content on satellite channels

While the definition of pornography remains in the competence of Member States, there are provisions in the AVMSD and the ECTT (Art. 22 AVMS, Article 7 ECTT) prohibiting the broadcasting of free-to-air pornographic programmes as they are likely to impair the physical, mental or moral development of minors. Problems with regard to the practical implementation of the provisions have however been reported on various occasions.

In its Recommendation of 2004, *the Standing Committee on Transfrontier Television noted "an increase in the number of (pornographic) programme services or broadcasts" considered as "particularly worrying with respect to free-to-air programme services containing pornographic content, which can be easily accessible by minors and seriously impair their development".* It invited the Parties to the Convention: *"to co-operate between themselves, providing each other with information and any other type of assistance in order to effectively implement the above measures, and to promote the full co-operation between broadcasting regulatory authorities in this area;"*

The European Commission has also repeatedly expressed its concern, most recently on the occasion of the meeting of the Contact Committee at the end of March 2009. The Italian AGCOM is currently assessing the practicalities of setting up a cooperation network to deal with transborder cases.

Here again, the debate in the wake of the Italian presentation may include some of the following questions:

Content issues, such as the impact on minors of pornographic content or the involvement of minors.

Issues of jurisdiction, especially concerning satellite channels (e.g. difficulty to assess jurisdiction and competent authority, the up-link can be easily changed etc.)

But, most of all, **issues of transnational cooperation**:

- How to ensure an effective implementation of the legal provisions on unencrypted pornographic channels across Europe?
- What are the obstacles and challenges of such a cooperation?
- On which basis could it be developed (Art. 23 b AVMS)?