

**COMMENTS SUBMITTED BY  
THE EUROPEAN ALLIANCE OF  
LISTENERS' & VIEWERS' ASSOCIATIONS  
(EURALVA)**

**TO**

**THE DRAFT REPORT OF THE EUROPEAN PARLIAMENT**

**on the proposal for a directive of the European Parliament  
and of the Council amending Council Directive 89/552/EEC  
on the coordination of certain provisions laid down by law,  
regulation or administrative action in Member States  
concerning the pursuit of television broadcasting activities**

**(COM (2005)0646 – C6-0443/2005 – 2005/0260(COD))**

**Committee on Culture and Education**

**Rapporteur: Ruth Hieronymi**

**London, September 7, 2006**

## **General**

*With some minor differences, which are detailed below, EURALVA supports the main proposals of the Draft Report of the Rapporteur of the Committee on Culture and Education of the European Parliament on the proposal to amend the “Television Without Frontiers Directive”. EURALVA would be happy to propose any detailed textual amendments if so required.*

## **Scope**

*EURALVA supports the further clarification of the scope of the directive proposed by the rapporteur, by adding to the set of criteria defining an audiovisual media service that of ‘editorial responsibility’ and a definition of ‘programme’.*

There are also however, a growing number of “mixed services”, such as *YouTube* and *MySpace*, to which the traditional criteria of ‘editorial responsibility’ and ‘programme’ only apply intermittently.

*EURALVA would like the new directive to take legislative account of these mixed services, by*

- (a) requiring Member States to licence all such mixed services;*
- (b) requiring all parts of such mixed services which fall within the scope of the directive to fulfil all requirements for an audiovisual media service within the directive; and*
- (c) to inform users of such mixed audiovisual media services when they are being switched to a service which is regulated by the provisions of the directive.*

## **Relation between the Proposed Directive and the e-Commerce Directive (2000/31/EC)**

*EURALVA would like the Parliament to consider in more detail the relations between the proposed Directive and the e-Commerce Directive. EURALVA is concerned that whereas Recital (11) of the e-Commerce Directive asserts that the provisions of the e-Commerce Directive are without prejudice to the level of protection for public health and consumer protection interests, article 1(6) of the e-Commerce Directive only says that the Directive does not affect measures taken at Community level in the respect of Community law, in order to promote cultural and linguistic diversity and to ensure the defence of pluralism. This provision appears to imply that any new measures in the proposed directive on audiovisual services, which are related to public health or consumer protection, may not extend to any audiovisual media services which are authorised under the e-commerce directive. Moreover, the definition of a “commercial service” in article 2(f) of the e-Commerce directive appears to exclude from the information requirements for a commercial communication, which are specified in article 6 of the directive, would not extend to any “communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner”. This could mean that any audiovisual media service which is also classified as an “information society service” would be relieved of the detailed rules on product placement in the proposed audiovisual media services directive which are discussed below.*

## **Co-regulation and self-regulation**

EURALVA recognises the value of co-regulation instruments established at the national level, and that each national legislature should decide under which conditions co-regulation instruments are used at national level, how the interested parties should be appointed to form the relevant bodies, and what penalties (if any) such co-regulatory bodies should be entitled to impose for any infringements of the co-regulatory procedures.

*EURALVA opposes the proposal to introduce self-regulation at national level for several reasons. First, self-regulation, as defined in article 22 of the Inter-institutional agreement on better lawmaking (2003/C 321/01), only allows economic operators and others to adopt common guidelines at European level. In addition, it requires the European Commission to scrutinise any self-regulation practices in order to verify that they comply with the provision of the EC Treaty. Second, it will make it extremely difficult – if not impossible – for viewers of a television service, or users of an audiovisual media service, which has been licensed in another Member State, to ascertain who has the (self) regulatory responsibility for that particular aspect of the service. And third, once a Member State has devolved to the economic operators the right to self-regulation of an audiovisual media service, it will have lost for ever, the right to retrieve the legislative responsibility of that aspect of the service.*

Thus, while EURALVA recognises that liberal, or arms-length, arrangements for co-regulating audiovisual media services may well be beneficial, *it opposes all proposals to regulate audiovisual media services which combine the country of origin principle with a move to self-regulation at national level.*

## **Quantitative advertising rules**

EURALVA supports the Commission's proposals to increase the flexibility of quantitative advertising rules. EURALVA also recognises that it is in the user's interest to preserve equality of economic opportunities between free-to-air TV and non-linear TV-like services which are not subject to any quantitative advertising regulations.

*EURALVA therefore suggests that Member States should only be permitted to allow isolated advertising spots when they are convinced that their introduction is necessary to ensure the economic survival of domestic free-to-air television services.*

## **Emergency blocking in the interest of the protection of minors**

EURALVA agrees that the Member States should have the right to rapidly block broadcasts in TV-like services in the event of an extreme violation of rules on the protection of minors, as is already the case with TV. EURALVA therefore supports the proposal to use the tried and tested procedure under Article 3(5) of Directive 2000/31/EC.

## **Sponsoring – Product placement – Product integration – Production aids**

EURALVA, like the European Parliament, is highly critical of the Commission's proposal to legalise product placement, as this advertising instrument breaches the separation in principle between advertising and editorial content, risking an increasing loss of editorial independence and of the integrity of editorial content.

EURALVA therefore welcomes the proposal that a distinction be drawn between sponsoring – in which the separation between content and advertising is maintained – and product placement. In the Commission's proposal, both advertising instruments are dealt with together in a single article.

EURALVA also welcomes a clearer definition and demarcation of the various conceivable ways in which a link could be made between advertising and programme content. Product integration, in which the content is guided by the advertising, should remain prohibited. Thematic placement, in which not products but topics are incorporated into the programme by way of advertising, should also remain prohibited. EURALVA supports the suggestion of the rapporteur that product placement should also remain prohibited in general, and only permitted in specific cases where – as in cinema and TV films – there is competition with US products in Europe.

*In the case of sports programmes, EURALVA considers that product placement should be limited to those programmes which actually relay the coverage of major sporting events, as opposed to documentary programmes and reportage about sport generally.*

EURALVA supports the proposal that product placement, as thus defined, should be subject to more stringent transparency rules than are proposed by the Commission.

*EURALVA considers that these requirements must include detailed, and clearly audible and legible, information at the beginning and end of the programme, and at least one announcement every 20 minutes during the programme to draw the viewers' attention to the product placement. The requirement for every information about product placement to be both audible and legible is essential in order to take account of the individual needs of viewers of television services or users of audiovisual media services who have either impaired sight or impaired hearing.*

*Moreover, while continuing to support the country of origin principle, EURALVA considers that the directive should encourage national regulatory authorities and providers to audiovisual services – possibly through the agency of the contact committee – to establish an EU-wide standard for informing television viewers and users of audiovisual media services of the existence of product placement.*

EURALVA also supports the new proposal by the rapporteur that production aids in the form of goods or services should only be allowed if they are provided free of charge and only in accordance with editorial needs.

*In addition, EURALVA proposes that an independent production company, whose work is scheduled to be included in an audiovisual media service, should be required to provide a written declaration that these conditions have been met, either to the person who has editorial responsibility for the audiovisual media service or to the relevant national regulatory authority.*

## **Right to broadcast short news reports – Right of reply – Dismantling barriers to access**

EURALVA supports the proposal of the rapporteur that:

- the right to broadcast short news reports should not just be allowed as an option but should be guaranteed in all Member States in accordance with national law,
- the right of reply should not be confined to traditional TV but extended to new media services,
- unimpeded access to audiovisual media services should gradually be guaranteed for people with disabilities.

## **Promotion of European content and independent producers**

*EURALVA has no views on these proposals.*

### **National regulatory bodies**

EURALVA endorses the rapporteur's proposal that improved cooperation between national regulatory bodies should facilitate the resolution particularly of bilateral problems between the Member States with a view to guaranteeing the application of the state of transmission principle and of the minimum standards harmonised by this directive, thereby ensuring the success of the revised directive.

*In particular, EURALVA proposes that increased co-operation between national regulatory authorities could also co-ordinate, and possibly standardise the provision for viewers of television broadcasts, and for users of audiovisual media services, the following categories of information:*

- *the identification of the country of origin, and the appropriate regulatory authority;*
- *the identification of any national co-regulatory arrangements;*
- *the presence of any product placement;*
- *the conditions and procedures for exercising a right of reply.*