

4 December 2006

THE SECRETARY GENERAL

Dear Member of the European Parliament,

Re: TV Without Frontiers Directive - recommendations for the Plenary vote on 13 December 2006

On 13 November, the Culture Committee adopted the Hieronymi Report on the Revision of the Television without Frontiers Directive.

This Report will be voted on by the European Parliament during the December Strasbourg Plenary in First Reading. Ahead of the Plenary vote, UNICE would like to express its views on three aspects of this very important dossier.

1. Scope

Whilst UNICE still does not see any market failure which justifies the extension of the Directive to new media services, it welcomes the Parliament's efforts in better defining the scope of the proposal in order to avoid inadvertently affecting services and activities not meant to be covered by the Directive, or to impose inappropriate regulatory burdens on nascent services. The efforts made by the Rapporteur and the Culture Committee are a positive step, but we feel the language can still be improved with regards to the definition of what is a "TV-like" service in the on-demand/ non-linear field.

Further fine-tuning of the language is required in order to ensure that only those non-linear services are covered, which address the same market as linear Television.

UNICE urges Parliament to include criteria in the definitions (Articles 1e and 1c) and accompanying Recitals (13 and 14) of “*audiovisual media services*” or “*on-demand services*”, which are already used in the Council General Agreement of 15 November.

Notably, they are the notions that these services “**are mass media**”; which are “**intended for reception by and which could have a clear impact on, a significant proportion of the general public**”; and that they need to “**compete for the same audience as television broadcasts**”.

2. Clear distinction of Programme and Advertisement

Introduction of a definition of programmes is generally helpful. However, when read in conjunction with the provisions on product placement and sponsorship, a strict interpretation would prohibit many forms of advertising.

There is a particular threat to the viability of new advertising formats in the on-demand environment where much commercial communication may consist of self-standing content items which users actively choose to view. Such content items (e.g., audiovisual versions of the print brochures used to market cars or insurance products) may be substantially longer than 30-second spot ads on broadcast TV.

Accordingly UNICE suggests modification of the Culture Committee’s new definition of “programmes” in Art. 1(kb new) as follows:

*‘programme’ means a set of moving images within or without sound constituting an individual item with a schedule or a catalogue established by a media service provider and **which is not wholly covered by the definition at Article 1(f)***

3. The Country of Origin Principle should not be weakened

The country of origin principle is key to ensuring providers do not face 25 different legal frameworks when delivering an audiovisual service across borders. The success of the original TVWF was founded on this principle. It is vital this principle remains in place.

UNICE therefore is highly concerned about the Culture Committee’s Compromise Amendments to Articles 2 and 3 of the Directive introducing far-reaching derogations to the Country of Origin principle. The new Recital 23a is of particular concern. It lists

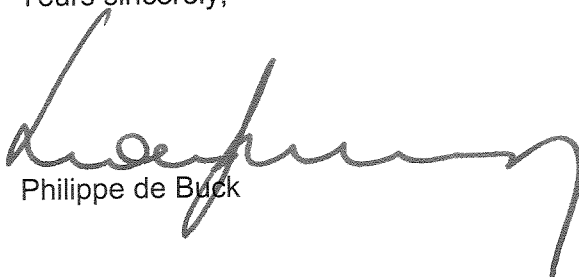
criteria for the circumvention of national rules, including the origin of advertising and/or subscription revenues, the main language of the programmes and target audience for commercials and programmes.

UNICE seriously questions the compatibility of these new proposed provisions with EU law and urges the European Parliament to keep to the initial Commission text.

The Commission text already allows for a derogation in Art 2.7, which enables Member States to prevent abuse or fraudulent conduct by media service providers established in another Member State and which direct all or most of their activities to the territory of the first Member State.

I thank you for taking these points into consideration in your further work regarding these issues.

Yours sincerely,



Philippe de Buck