European Regulators Group for Audiovisual Media Services (ERGA)

REPORT ON THE PROTECTION OF MINORS IN A CONVERGED ENVIRONMENT

27th November 2015

I. INTRODUCTION

1. The purpose of this report

In this report the European Regulators Group for Audiovisual Media Services (ERGA) draws common conclusions on the most relevant elements for an adequate system for the protection of minors in a converged world. ERGA demonstrates how, in the view of European audiovisual regulators, the protection of minors should evolve in the future EU-legislative framework. ERGA applied an integrated approach which concentrated on harmonisation, supervision, technical protection measures, enforcement, self- and co-regulation and media literacy and the ideal mix of, and balance between, all instruments and measures available. This work is aimed at providing components for an effective and flexible regulatory and enforcement regime and identifies the main challenges and obstacles encountered in the protection of minors in the rapidly changing audiovisual media sector. There is no doubt that the converged media-landscape will continue its dynamic course, and continue to change rapidly. In order to adequately protect our children, preferably any audiovisual mass media content including online audiovisual media content that does not qualify as an AVMS, and works distributed via cinema, online retailers and DVD, that is potentially harmful to children, should be taken into account. With that respect other instruments within the EU legislative framework could be relevant to include in an integrated approach. But, while the ERGA reports on material jurisdiction[1] and territorial jurisdiction in a converged environment will specifically address scope issues, this report focuses mainly on content and services covered by articles 12 and 27 of the Directive – *i.e.* on currently in-scope content –. However the findings in this report could be very beneficial in relation to other kinds of content and services.

Cornerstone
The protection of minors is a cornerstone of the AVMS Directive, and is addressed in several other EU (policy) documents, such as Recommendations and Resolutions, Action Plans, and studies and surveys initiated by the EU. The protection of minors is a fundamental public policy goal within EU Member States. Delivering this goal is becoming ever more challenging with the continuing expansion of the media environment, and the range of devices and delivery platforms through which children access content and services. The market, children's behaviour, and broader audience expectations, have all changed since the AVMS Directive was introduced. Audiovisual media are increasingly being used by minors via mobile devices, tablets, video games and on-demand media services on the Internet. Internet and tablets are a part of minor's everyday life from an early age. These new developments offer many opportunities for minors, but on the other hand involve new challenges regarding their protection. Therefore, the current regulatory frameworks and supervisory arrangements for the protection of minors in audiovisual media need re-evaluation. With that respect the protection of minors is considered to be one of the key themes for the European audiovisual media policy in the coming years and is expected to be thoroughly addressed and explored at the occasion of the upcoming revision of the AVMS Directive.

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[1] ERGA Report on material jurisdiction in a converged environment, 27 November 2015.

ERGA

ERGA was established by the European Commission in 2014.[2] Its task is *i.a.* to advise and assist the European Commission in its work to ensure consistent implementation of the AVMS Directive in a converged media age. ERGA assembles and represents independent expertise and professional views, taking into account the fast technical developments and trends in viewers' behaviour. The audiovisual regulators partaking in ERGA, are fully committed to provide relevant feedback to the European Commission during the process leading to a revised Directive, *i.a.* on the protection of minors from harmful audiovisual content which is one of the permanent priorities of audiovisual regulators. Pursuant to this, in the ERGA Work Programme 2014 and the ERGA Work Programme 2015, the protection of minors is one of the three ERGA work streams proposed under the theme "Adapting the EU regulatory instruments to a convergent audiovisual world". Other work streams proposed under this theme focus on material jurisdiction and territorial jurisdiction.

2. Methodology

This report has been prepared by the ERGA subgroup on the protection of minors in a converged environment, comprising representatives from 21 ERGA-members and observing countries, forming a a broad basis for this report.[3]

The subgroup decided to frame the report around five key themes, that according to ERGA need to be addressed in order to achieve an adequate system for the protection of minors in a converged world, in the EU. These **key themes** are:
1. The distinction between the standards that apply to linear and non-linear audiovisual media content
2. The harmonisation of key definitions and concepts
3. Protection measures: new challenges due to numerous techniques and distribution platforms to offer audiovisual media content
4. Effective enforcement, shared responsibilities, self- and co-regulation
5. Media literacy

Chronology

In October 2014, all ERGA-members agreed together in the plenary meeting held in Brussels on the ERGA **discussion paper** on the protection of minors in a converged environment (ERGA (2014)08)[4] in which the aforementioned five key themes were adressed.

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[2] <http://ec.europa.eu/digital-agenda/en/news/commission-decision-establishing-european-regulators-group-audiovisual-media-services>.
[3] France, Germany, Italy, Ireland, Spain, Sweden, UK, Belgium, Bulgaria, Croatia, Czech Rep., Denmark, Finland, Greece, Hungary, Malta, Norway, Romania, Slovakia, Slovenia, Netherlands.
[4] <https://ec.europa.eu/digital-agenda/en/news/second-meeting-european-regulators-group-audiovisual-media-services-erga-focus-regulatory>.

In April 2015, during the plenary meeting held in Paris, the subgroup presented the findings of an inventory, summarizing existing studies, policy documents, discussion papers and surveys in the area of protection of minors (ERGA (2015)07). By means of this **inventory paper** the subgroup was able to identify areas in which more information and evidence was needed to be able to report to the European Commission on an adequate system for the protection of minors in a converged world. The paper was very well received by all ERGA-members and the European Commission.

In July 2015 the subgroup circulated a **questionnaire** amongst all ERGA-members, with the purpose of gathering the information and evidence which is needed to draw conclusions in this report, on each of the aforementioned themes. 25 regulatory authorities (of 24 European countries)[5] provided input to this questionnaire from their valuable experience and knowledge as regulator, independent from government, media sector and industry.

The subgroup also took account of the results of a questionnaire which had been prepared by the ERGA Subgroup on material jurisdiction in a converged world, in February 2015, as the questionnaire also included several questions about the protection of minors.

All of the aforementioned information combined, led to the conclusions which are drawn in this report, on the most relevant elements for an adequate system for the protection of minors in a converged world. The most important conclusions are brought together in the following executive summary.

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[5] Ireland, Spain, Portugal, Belgium, Poland, Slovenia, Norway, Sweden, Hungary, Greece, Lithuania, Germany, Estonia, Austria, Denmark, Malta, Belgium (regulators CSA and VRM), Cyprus, Slovakia, Bulgaria, Czech Rep., UK, Italy, France, Netherlands.

II EXECUTIVE SUMMARY

1. Introduction

In this report ERGA draws common conclusions on the most relevant elements for an adequate system for the protection of minors in a converged world. ERGA demonstrates how, in the view of European audiovisual regulators, the protection of minors should evolve in the future EU-legislative framework. ERGA applied an integrated approach which concentrated on harmonisation, supervision, technical protection measures, enforcement, self- and co-regulation and media literacy and the ideal mix of, and balance between, all instruments and measures available. This work is aimed at providing components for an effective and flexible regulatory and enforcement regime and identifies the main challenges and obstacles encountered in the protection of minors in the rapidly changing audiovisual media sector. There is no doubt that the converged media-landscape will continue its dynamic course, and continue to change rapidly. In order to adequately protect our children, preferably any audiovisual mass media content including online audiovisual media content that does not qualify as an AVMS, and works distributed via cinema, online retailers and DVD, that is potentially harmful to children, should be taken into account. With that respect other instruments within the EU legislative framework could be relevant to include in an integrated approach. But, while the ERGA reports on material jurisdiction and territorial jurisdiction in a converged environment will specifically address scope issues, this report focuses mainly on content and services covered by articles 12 and 27 of the Directive – *i.e.* on currently in-scope content –. However the findings in this report could be very beneficial in relation to other kinds of content and services.

Regarding a revised Directive it is essential that it continues to reflect that **each Member State is able to apply more detailed or stricter rules** in the areas covered by the Directive, hereby taking into account the **cultural differences between Member States**, but that it sets clear minimum standards at the same time.

Based on the five key themes considered by the subgroup, ERGA has drawn some key recommendations. They are:

2. Summary of key recommendations

1. To revise the regulatory distinction made between linear and non-linear content.
2. To further explore to level protections across linear and non-linear content:
   a. A revised Directive could level protections across linear and non-linear for the protection of minors, which would recognize both the different ways of controlling a minors' access to audiovisual content and the harmfulness of content. In this approach, content that 'might seriously impair' will be subject to the strongest content access control mechanisms, while content that is 'likely to impair' requires less strict protection mechanisms.
   b. Consider setting default restrictions for content that 'might seriously impair', across all services. The rapid take-up of recommendation 4 is essential in this respect. If this cannot be ensured in the short term, a transitional period could be considered.

3. To harmonise key definitions and concepts:

    a. A reference to Article 1 of UNCRC to define a minor as below the age of 18.

    b. There would be value in establishing at EU-level (if necessary with ERGA's input) an indicative, non-exhaustive list of common characteristics associated with content that is 'likely to impair' or content that 'might seriously impair'. The key elements ERGA-members found common ground upon could be taken into account.

    c. To indicate (in a non-exhaustive manner) "pornography" and "gratuitous violence" as examples of content that 'might seriously impair' the development of minors.

    d. Explore creating universal content categories[6] that can be matched to national age classifications.[7]

4. In order to encourage the development of modern and consistent protection measures and technical controls to support parents to protect minors, further research, exploration and collaboration with stakeholders is deemed to be necesseary, especially in the areas of:

    a. The development of a common technical interface to work with standards of categorisation and classification.

    b. The evolution and distribution of technical tools that meet the requirements of being efficient, easy and affordable.

    c. The establishment of a universal technical content categorisation to work with such tools (as above).

    d. Safeguarding the rights of minors according to the Articles 13 and 17 of UNCRC.

5. Encourage effective enforcement, shared responsibilities, self- and co-regulation by:

    a. Maintaining the important role of state regulation to ensure that content that 'might seriously impair' is restricted to minors on linear and non-linear AV.

    b. Encouraging effective co-regulation[8] (backed by statute) where appropriate, while letting individual Member States adapt systems appropriate to their circumstances.

    c. Asking for more responsibility from industry in the field of content categorization, age classification and technical protection measures.

    d. Gaining a better understanding of the main players in the traditional TV value chain and the online value chain of content distribution by conducting research (with input from relevant stakeholders) in view of informing the AVMS Directive review.[9]

6. Continue to support media literacy to empower citizens by:

    a. Developing national strategies to encourage various ways to promote and achieve media literacy, and include education and schools among relevant stakeholders within these strategies.

    b. Creating EU-level action plans to promote sharing of best practice, lessons learned and research in this area.

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[6] Content categorization means objectively determining the presence of certain elements in content, such as violence, sex, discrimination, offensive language etc.

[7] Age classification is the general process of categorizing content into classes according to its harmfulness or suitability for age groups, such as 12+, 16+ etc.

[8] Media co-regulation is defined by the EU institutions as the mechanism whereby a Community legislative act entrust the attainment of the objectives defined by the legislative authority to parties which are recognized in the field (such as economic operators, the social partners, non-governmental organizations, or associations). There is not one official definition of co-regulation and in practice many (gradual) differences between possible systems can occur. Characteristic in any case however are the shared responsibilities between the industry and the state, in which the state component is usually represented by an independent supervisory authority that carries out meta-supervision and retains some backstop powers.

[9] For instance we could make use of the outcomes of the studies and contributions to the EC consultation on platforms.

3. Key Recommendations

1. A revision of the regulatory distinction made between linear and non-linear content

With growing technical convergence and changes in consumption patterns it's difficult to justify maintaining a different regulatory treatment for linear and non-linear media services in the field of the protection of minors: for example, the research findings of the inventory paper suggest that the distinction between the rules for the protection of minors that apply to linear and non-linear services may not meet audience expectations of consistent regulations. Furthermore, especially among younger users watching online content, and using devices, other than the main TV set to watch audiovisual content, has become very common. It was confirmed by a vast majority of ERGA-members that in light of a progressively converging media environment, **the current distinction of regulation density in the AVMS Directive between linear and non-linear content seems no longer to be useful or appropriate** with regard to the protection of minors in audiovisual mass media.

2. The levelling of protections across linear and non-linear content

Default restrictions for content which 'might seriously impair'
The majority of ERGA-members would support a system that is such that content which 'might seriously impair' (as it is currently categorised in the Directive) is restricted by default for minors[10] (for instance by the use of pin protection/age verification tools turned on by default). This approach would imply that 'seriously impair' content on linear TV would be allowed, provided an adequate access control mechanism (*e.g.* PIN) is in place.[11] Given the assumed undesirable effects of the content that falls into this category (such as materials that include a detailed representation of extreme and gratuitous violence or extreme and perverse sexual activity)[12] for minors' socialisation, behaviour, psychological health, as well as their mental and moral development, it has to be ensured that minors are excluded from accessing this content, whatever the degree of parents' vigilance. However, special attention should also be given to legal safeguards and provisions in order to guarantee that the freedom of flow and receiving of information will not be hindered, which also means that adults should always be able to switch off the default settings and lift the restrictions.

Some ERGA-members expressed that this approach (which implies that content on linear TV which 'might seriously impair' would be allowed, provided an adequate access control mechanism is in place) might be feasible in the future but right now it might be too soon for that, as the reliability and effectiveness of technical control systems is not yet ensured. They also suggested that this approach would not prevent Member States from the possibility of fully prohibiting the inclusion of programmes in a linear service which 'might seriously impair', but if the provider is established in another Member State, this stricter rule would not be applicable. Therefore these members would favour that, at least in the short term, a revised Directive would continue to reflect a prohibition on the inclusion of programmes which 'might seriously impair' in a linear service.

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[10] While taking into account that different definitions of minor and different highest age limits are still applied by the various Member States.

[11] On the other hand, given the principle of minimum harmonisation, this would not prevent Member States from the possibility to apply more detailed or stricter rules in this field.

[12] Note that in a variety of Member States terms such as pornography or extreme and perverse sexual activity can be interpreted in a different manner. Pornography in one state could be regarded as extreme sex in another state.

This view underlines the need to rapidly take-up the encouragement of developing modern and consistent protection measures and technical controls. If a future Directive is to rely even more on control mechanisms other than the current Directive, as is suggested above with respect to the protection from content that 'might seriously impair', further consideration must urgently be given to ensure reliable and effective technical control systems. If this cannot be ensured in the short term, a transitional period could be considered.

Recognizing both the different ways of controlling minors' access to audiovisual content and the harmfulness of content

As mentioned before, the majority of ERGA-members would however advocate abandoning the current distinction of regulation density in the AVMS Directive with regard to the protection of minors and at the same time be in favour of restricting by default content that might seriously impair. This indicates that it is worth exploring the options of **an approach to potentially harmful content, which would recognise the different ways that minors' access may be controlled, regardless of whether the content is distributed in a linear or non-linear matter.** A system that levels protections across linear and non-linear for the protection of minors, could take account of both the harmfulness of content and the adequacy of the content access tools. **In this approach, content that 'might seriously impair' will be subject to the strongest content access control mechanisms, while content that is 'likely to impair' requires less strict protection mechanisms.**

The following model illustrates such an approach, which includes the strongest restrictions for the most harmful content: a future Directive or alternatively guidelines at EU-level could for instance give examples of the different types of access restriction appropriate to the potential of content causing harm to minors.

	'Likely to impair' content	'Might seriously impair' content
Linear AVMS	Not permitted without moderate controls Permitted with moderate controls for instance, by: - applying scheduling/watersheds[13] - giving information guidance (age classifications) - putting in place parental control systems[14]	Not permitted without strong controls Permitted with strong controls for instance, by: - the use of pin protection/age verification tools turned on by default - applying filtering systems
Non-linear AVMS	Not permitted without moderate controls Permitted with moderate controls for instance, by: - giving information guidance (age classifications) - putting in place parental control systems	Not permitted without strong controls Permitted with strong controls for instance, by: - the use of pin protection/age verification tools turned on by default - applying filtering systems

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[13] In some countries such as Germany and the Netherlands scheduling/watersheds are sometimes also applied in the non-linear domain, usually as measures for interim period as long as other protection tools cannot guarantee full safety.

[14] "Parental control systems" here means any content controls that are in the hands of parents – which could include information, for example, to let parents know they shouldn't let children watch - or could be something stronger. Parent controls differ from controls that are set by the content provider (e.g. encrypted content).

An alternative 'graduated approach' to maintaining the current distinction between content that 'might seriously impair' and content that is 'likely to impair' could take account of both the strong or less strong nature of content and the adequacy of the content access tools. With such an approach, the two current AVMSD categories 'likely to impair' and 'might seriously impair' could become less relevant to determining the strength of content (which might range from 'moderately strong content' to 'very strong content'). Identifying the strength of content and recognising a range of access control measures (*e.g.* clear information guidance and content warnings, and tools to control access) could use this information in combination to create the relevant restrictions. Further work to develop guidance on how this could be achieved, provided either by a revised Directive or alternatively guidelines at EU-level, could complement such an approach.

3. Harmonisation of key definitions and concepts

The use of common key definitions and concepts could help to further improve the predictability of the law and would ensure that the most harmful content in every Member State is at least subject to strong control tools. Any further harmonisation should however take into account cultural differences and different views among EU Member States.

Definition of key concepts: 'minor"
The majority of ERGA-members hold the opinion that **a common understanding of the age at which a person can be considered a minor could contribute to a more equal level of protection of minors in all Member States.** This could improve legal predictability and solve certain different realities between the Member States. As far as a common understanding of the age a person can be regarded as a minor is concerned, **a reference in a revised Directive or alternative guidelines at EU-level to article 1 of the UNCRC could be considered.**

Definition of key concepts: 'likely to impair' and 'might seriously impair'
A majority of ERGA-members would consider it useful that a revised Directive would **continue to indicate "pornography" and "gratuitous violence" as examples of content that 'might seriously impair' the development of minors.**[15] It is suggested to clarify that these examples would apply to both linear and non-linear content.

In order to give even more guidance, - as was suggested by some - it could also be considered to **clarify which elements of pornography and gratuitous violence *at least* should be classified as likely to seriously impair** according to the vast majority of ERGA-members. ERGA-members found **common ground** on the following elements: "Materials that include a detailed representation of extreme and gratuitous violence"; "materials that include a detailed representation of extreme, perverse and explicit sexual activity"; and "materials that infringe human dignity and are particularly dedicated to violence or sexual perversions degrading to the human being, such as humiliating and sadistic content".

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[15] We like to emphasize there is not one common definition of pornography in Europe. For the purpose of this report we use the phrase of pornography as a reference to explicit sexual content.

Some ERGA-members would consider it useful that a revised **Directive would reflect the characteristics that are commonly associated with content that is 'likely to impair' the development of minors, in an indicative and non-exclusive way.** Most commonly associated with content that is likely to impair seems "the representation of several forms of violence", "the representation of several forms of erotic, sexual, or pornographic scenes" and "offensive or inappropriate language".[16]

Although inclusion of these characteristics in the Directive might contribute to a more harmonised minimum level of protection in all Member States, it must be noted that some interpretational issues most likely will remain as Member States will continue to have different understanding of what is for instance extreme and perverse.

Alternatively the 'graduated approach' suggested above could lead to a move away from the current AVMSD categories of 'likely to impair' and 'might seriously impair'. But nevertheless aforementioned common key definitions and concepts could also be helpful when developing a new framework that takes into account the severity of the content (*e.g.* moderately strong to very strong), and matches this to the degree of content access control it requires.

Consider creating content categories that match to national age classifications
Providing clear information and guidance to parents and children is another way of protection and will contribute to a better use of audiovisual content, especially in a context where there is a growing amount of audiovisual content offered to all viewers. The vast majority of ERGA-members would consider it feasible to further explore the **development of a set of universal content categories at a European level.**

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[16] While bearing in mind that 'offensive/inappropriate language' terms are highly culturally depended that it will be hard to achieve a full universal consensus on this.

A minimum requirement for such a harmonised system would be common understanding of the main categories which can constitute harmful content, such as violence, sex, and to a certain extent maybe even inappropriate language et cetera. Such categories could apply to any potentially harmful content or alternatively, any level of strong content. The outcomes of the questionnaire demonstrate that many Member States already identify several identical main categories. But on a deeper level, the Member States would also have to accept and use the same indicators or dimensions belonging to the different categories. Such further differentiation of the main categories does not have to be addressed in a revised Directive or alternative guidelines at EU-level but could be implemented in practice by a project at EU-level. Member States could be encouraged to participate in such a harmonised system but a revised Directive should not contain an explicit obligation to do so. As one of the outcomes of the questionnaire it was already suggested that ERGA could engage in a project initiated by the European Commission, to explore further steps needed to reach a harmonised system of content categorisation at EU-level. The system design could be such that **the age classification would however be left to the discretion of the various Member States** taking into account the cultural differences between Member States which could lead to different age ratings between Member States for the same type of media content classified according to **a harmonised content categorisation system**.[17]

4. Encourage the development of modern and consistent protection measures and technical controls to support parents in protecting minors

Level of parental control and involvement
A vast majority of ERGA-members considers **the role of parents in protecting children from content that is 'likely to impair' and content that 'might seriously impair' to be very important.** All ERGA-members confirm that parents would need at their disposal **the widest set of tools to protect their children.** Such a toolbox can include at least the following parental control measures and instruments: age classifications, content descriptors and other information guidance, pin protection, filters, payment gateways and age verification tools.

Currently, the use of technical protection tools is important in order to prevent minors from *i.a.* content that might seriously impair. As was touched upon previously, if a future Directive is to rely even more on such systems, as is suggested above with respect to the protection from content that might seriously impair, **further consideration must be urgently given to ensure reliable and effective technical control systems**, both in the online and offline environment.

In this respect ERGA asks the European Commission to take the following suggestions into account during further considerations.

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[17] This would not necessarily imply similar content descriptors or symbols.

The development of a common technical interface to work with standards of categorisation and classification

The inventory paper indicated that recent tests showed that the current technical protection tools do not always meet the requirements of the rapid changes in the online world. This would suggest that interoperability and machine readability of information about content categories and age classifications (*i.e.* metadata), are important in improving the functioning of technical protection systems. In order to **stimulate the creation of common technical interfaces** which could work with standards of categorization and classification, a vast majority of ERGA-members indicated they would be in favour of encouraging more collaboration between stakeholders. Also the majority of ERGA-members expressed they would welcome the introduction of European standardisation measures in other EU documents. Prior to this, further research and exploration would be needed to understand what technical tools are available and how they can be applied and made interoperable, depending also on the type of platforms, devices or providers. In order to achieve harmonised definitions or approaches that are applied consistently across the EU framework, this would be a necessary step.

The evolution and distribution of technical tools that meet the requirements of being efficient, easy and affordable

Important for encouraging the further application of protection tools is the availability of **technical parental control systems** (*i.e.* tools and settings across different types of services, distribution platforms and devices to enable parents to set appropriate levels of control) which are **efficient, easy to use and affordable.** In order to **encourage the development of modern and consistent systems,** most ERGA-members would advocate a common development fund enabling both the industry to foster the evolution and distribution of technical tools and the state sector to take responsibility for constant research and development efforts needed in this field. This option would require further exploration of available tools, in particular in order to compare and examine which existing tools meet the requirements of being efficient, easy and affordable. Stakeholder consultation could be integrated in such an exercise. Creative incentive models could increase the willingness of stakeholders to become part of such a funding strategy. In addition also further collaboration between stakeholders would be seen as an important condition in order to stimulate innovation.

5. Effective enforcement, shared responsibilities, self- and co-regulation

Role of state regulation

The vast majority of ERGA-members is of the opinion that **state regulation should play an important role,** especially in order to protect minors from **content that 'might seriously impair' the development of minors.** It was suggested however by some that also here co-regulatory arrangements could play a role, given their effectiveness is ensured.

Encouragement of co-regulation

Many ERGA-members are of the opinion that **co-regulation should play an important role, especially in order to protect minors from content that is 'likely to impair'**. As already indicated in the inventory paper, by closely involving both regulatory authorities and stakeholders, co-regulation can offer flexibility, prompt adaptability to change, legal certainty and efficient enforcement, potentially creating stronger support for regulation. Especially in those areas where fundamental rights, such as freedom of expression are involved, it can serve as a good substitute for government control.

Firstly, putting in place a co-regulatory system would **require at least** a non-state regulatory component, including the creation of specific non-state organisations (self-regulatory bodies), rules or processes. Secondly, these organisations, rules or processes should aim at influencing decisions by persons or by organisations. Finally, all this should – at least partly – be done by or within the organisations, or those sections of the members of society, for whom the regulation is intended. The State shall leave discretionary power to a non-state regulatory system and shall use regulatory resources to influence the outcome of the regulatory process (for instance by the **backstop powers of an independent public supervisory authority**), thus guaranteeing the fulfillment of the regulatory goals. **Legal provisions should describe the (ultimate) consequences** - such as falling back to the system of exclusive state-supervision - where the regulatory goals would not be met or where there would be another failure of the self-regulatory arrangements.

Many members would welcome **stronger encouragement of co-regulation at the level of the EU,** while letting individual Member States to adapt systems as appropriate for their circumstances. Thus a revised Directive or alternative guidelines at EU-level should not go too much into further details on the criteria of co-regulation. It could be considered to further enhance the **sharing of best practices** between regulators, for instance on models and criteria in the field of effective co-regulation.

Scope of legal framework & role of different players in the media value chain
The means of achieving the goal of protecting minors from harmful audiovisual content, are partly outside the scope of the current AVMS Directive. With regard to protection tools, in particular, it does not seem to be effective to limit the focus to the scope of the Directive. **Any audiovisual multimedia content that is potentially harmful to minors must be taken into account.** A possible approach could be the integration of **a more general formulation aiming at the willingness of all relevant players** to further promote the evolution of protection systems in order to meet the requirements of a converged environment. The majority of ERGA-members would endorse **further consideration on the roles and responsibilities of different players in the media value chains** (such as intermediate parties, aggregators and online service providers[18] that deliver audiovisual mass media content, regardless of whether it is distributed in linear or non-linear manner). This could help to identify those parties which can make an appropriate contribution to the protection of minors. Part of such an exercise could be to investigate how policymakers can create an environment within which the relevant intermediaries have incentives to provide consumers with appropriate protection tools.

In that respect we should also not lose sight of **other instruments within the EU legislative framework** that could address audiovisual mass media content and which could be relevant to include in an integrated approach. As it is already mentioned in in the ERGA report on material jurisdiction, a progressive merging between the boundaries of three different legislative frameworks relevant to the online distribution of audiovisual content is noted. Audiovisual content (regulated under the AVMS Directive) is delivered over a communications network (regulated under the Telecommunications Framework) and, in the case of content delivered online, the distribution chain involves digital intermediaries (regulated under the e-Commerce Directive).

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[18] This category includes e.g. the providers of social network sites containing AV content.

Questions related to services and intermediaries that originate from outside of the EU should also remain an ongoing concern of EU-policy makers and are addressed by the ERGA subgroup on territorial jurisdiction.

6. Support media literacy to empower citizens

The majority of ERGA-members acknowledge however that media-literacy cannot replace other measures in the protection of minors, **by empowering users, media literacy can raise awareness of risks of harmful content and behaviour, and understanding how to prevent their consequences.** Therefore the promotion of media literacy is among its other comprehensive benefits considered to be an important complementary measure to the aforementioned tools in protecting minors. The vast majority of respondents would consider it very helpful to bring media literacy to children and young people through a **national strategy, with national referents to coordinate actions.** Also, among the various ways to promote and achieve media literacy, **the deeper involvement of education and schools is considered undoubtedly important by most ERGA-members.** Furthermore, **the majority of ERGA-members would favour action plans at EU-level.** These action plans could for instance further promote the sharing of best practice, lessons learned, and research.

III FIVE KEY THEMES

Each section of this report focuses on one of the five key themes. Each section starts with a short introduction giving a brief representation of the current rules, followed by a description of the main findings of the inventory paper and the main findings stemming from the answers gathered from the questionnaire that the subgroup circulated to ERGA-members, and ends with conclusions.

As mentioned in this report's introduction, the inventory paper consists of an objective inventory, summarizing existing studies, policy documents, discussion papers and surveys in the area of the protection of minors. During the plenary ERGA meeting on 14 April 2015 all ERGA-members agreed on the paper's findings.

Theme 1

THE DISTINCTION BETWEEN THE STANDARDS THAT APPLY TO LINEAR AND NON-LINEAR AUDIOVISUAL MEDIA CONTENT

1.1 Introduction

In this section, ERGA reconsiders whether the current assumptions underpinning the distinction in standards regulation between linear and non-linear content in the current AVMS Directive are still valid in particular regarding the protection of minors. First of all, it's important to keep in mind that the distinction established in the AVMS Directive between linear and non-linear services is not confined to the subject of the protection of minors. The ERGA subgroup on material jurisdiction reflected on the extent to which modifying the current scope would be appropriate. The focus of the ERGA subgroup on the protection of minors is to examine whether it is desirable and feasible in this context to maintain different regulatory standards in the field of the protection of minors.

Current rules for the protection of minors on linear and non-linear services
In the current AVMS Directive there are differences in the protection of minor's regulations applying to linear and non-linear services. It is not permitted to include programmes "which might **seriously impair** the physical, mental or moral development of minors" in a linear service, but such programmes may be included in non-linear services as long as they are "made available in such a way as to ensure that minors will not normally hear or see" them.

It is also not permitted to broadcast programs "that are **likely to impair** the physical, mental or moral development of minors unless it is ensured, by selecting the time of the broadcast or by any technical measures, that minors in the area of transmission will not normally hear or see such broadcasts", but they may without any restriction be included in non-linear services.

As a consequence different rules and protections apply to content depending on its severity and the method of distribution, ranging from prohibition; requirements of technical controls like PIN codes and age-verification tools; requirements of broadcast scheduling based on watersheds; and EPG positioning.

Section 1 of the inventory paper reveals that the AVMS Directive's **graduated approach to standards** applying to linear and non-linear services is **transposed in the majority of EU Member States**. But France, the French-speaking community of Belgium, Hungary, Bulgaria, Lithuania, Poland, Sweden and the UK have all further banned content that might seriously impair minors from VOD services. Some countries have imposed stricter rules on public service broadcasters' VOD services. In response to the Green Paper however, many Member States expressed their concerns over the distinction between the standards that apply to linear and non-linear audiovisual media content. But it was yet difficult to identify a majority view on this topic.

Also the ERGA report on material jurisdiction[19] mentions that these differences in editorial standards with regard to regulatory treatment between broadcast and VoD services raise questions in several respects. It is suggested that today, non-linear audiovisual media services are widely accessible and consumed across the EU and there are reasons to assume[20] that their consumption will increase in the future. They are distributed as standalone services but are also distributed more and more often along with linear services, on traditional TV platforms like cable as well as through hybrid platforms. The differences between linear and non-linear services are not always obvious to the user. However, the same programme that may qualify as impermissible for linear distribution may be offered on demand on the same platform.

1.2 Inventory paper findings

Convergence and children's media consumption
Judgement of the validity of the distinction between the linear and non-linear *i.a.* relies on an understanding of the way minors find and consume content.

In the inventory paper reference is made to Ofcom research published in October 2014,[21] that shows that in the UK, seven in ten children aged 5-15 have access to a tablet computer at home, one-third watch on-demand TV services[22] and 20% watch television programmes on a tablet computer. While the research suggests that television is still the most popular medium for children and that the TV set is the device that children would miss most, children aged 12-15 now spend more time online than watching television (17.2 vs. 15.7 hours).

One of the key findings of a recent Norwegian study[23] on minors' use of media also reveals significantly increased use of tablets by young people: a quarter of 5-8 year olds have tablets (27%) and 50-60% of 9-12 year olds. And of the various devices that children use to access media from their bedroom, the tablet is the most common. The inventory paper elaborates further on this research, and other research.

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[19] ERGA Report on material jurisdiction in a converged environment, 27 November 2015, p. 44.
[20] European Audiovisual Observatory: "The development of the European market for on-demand audiovisual services", March 2015, p. 23.
[21] <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes-14/Childrens_2014_Report.pdf>
[22] 'On-demand' includes TV programmes or films on-demand through the household's TV service – including pay-per-view services (e.g. Sky Box Office), subscription services (e.g. Netflix) or catch-up services (e.g. BBC iPlayer).
[23] IFCC, Fredrikstad, 22 October 2014 (two surveys: Children and Media 2014; and Parents View on Children's Media Use 2014) and <http://www.medietilsynet.no/Aktuelt/Nyhetsarkiv/Nyheiter-2014/Her-er-Barn-og-medier-undersokelsene-2014/> and <http://www.medietilsynet.no/Aktuelt/Nyhetsarkiv/Nyheiter-2014/Her-er-Barn-og-medier-undersokelsene-2014/>.

These research findings noted above demonstrate that **children consume significant quantities of online and on-demand content, potentially without adult supervision**. There is an increasing availability of internet connected devices and children have access to a wide range of audiovisual media content via a variety of different digital devices, such as mobile phones, tablets and games consoles.

Audience expectations
There are also indications that consumer expectations are evolving with the changing digital environment.

Key findings of the research discussed in the first section of the inventory paper show that parents' and children's attitudes and concerns about content they see, and their perception and expectation of regulation, are not exclusively influenced by whether that content is by means of linear or non-linear distribution. It seems that the way in which content is delivered does have some influence to their attitudes and expectations, but so do other factors like TV-likeness, the type of content watched, the platform or device used and the content provider.

Research commissioned by Ofcom and published in December 2014 for instance, found that the majority of audiences have an expectation of comprehensive and broadly homogenous regulation across broadcast TV and catch-up, and for many, video-on-demand services; and there was universal agreement that protection of minors is the most important area for protection and that protections should apply across all AV platforms (broadcast TV, catch-up, on-demand, and other internet).[24]

The research findings noted above, suggest that the distinction between the rules protecting minors that apply to linear and non-linear services **may not meet audience expectations of consistent regulations**. It suggests that there may be a future need to reflect the full range of protection mechanisms that can apply to on-demand and broadcast service providers.

1.3 Questionnaire findings

The questionnaire on protection of minors that was sent to all ERGA-members was used *i.a.* to collect the information that was still missing on the subject of the distinction between the different standards that apply to protect minors, despite the very clear findings of the inventory paper.
The ERGA questionnaire which has been prepared by the ERGA subgroup on material jurisdiction also touched on this subject.

Difficulties encountered because of difference in standard
Most respondents indicated not to have encountered specific examples of cases in their regulatory practice where the application of standards to protect children was applied differently between linear and non-linear AV services and service providers and this raised questions. However some of these respondents indicated to have difficulties answering this question because they lack sufficient data on providers of on-demand services, they have only very limited statutory powers in respect to non-linear services or very few on-demand service providers operating under the applicable law.

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[24] <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/protecting-audience-online/Protecting_audiences_report.pdf>.

Other ERGA-members indicated that they have encountered difficulties because of differences in standards. It was pointed out that more and/or stricter rules that apply to linear services can be seen as inappropriate and generating discriminatory situations amongst both linear and non-linear players active in the same market. Some experienced difficulties in explaining the differences in regulation to the public or to consumers.

Equivalent level of protection

In response to the question whether the level of protection of minors regarding audiovisual mass media content should still be depending on whether it is distributed in either a linear or a non-linear manner, a vast majority of ERGA-members indicated that in view of a progressively converging media environment, **the current distinction of regulation density in the AVMS Directive between linear and non-linear content seems no longer to be useful with regard to the protection of minors in audiovisual mass media.** This majority of ERGA-members indicated that minors are entitled to an equivalent level of protection from all impairing content, independently from the distribution platform, technique or device used.

It was pointed out that various Member States in practice already apply similar standards to both linear and non-linear services, in order to ensure viewers have access to homogenized information. In France for instance, non-linear services are subject to the same age classification as linear services. Therefore the NRA intervened to ask for a higher rating on two movies available on non-linear services in order to achieve a satisfactory level of protection for similar content in linear and non-linear services.

Various points of view were suggested by ERGA-members to explain **why the distinction between linear and non-linear appeared to become outdated and unhelpful** in dealing with the regulatory challenges deriving from convergence, at least at the level of the protection of minors. It was mentioned that research findings in the inventory noted above, suggest that the distinction between the rules for the protection of minors applying to linear and non-linear services may not meet audience expectations of consistent regulations. More importantly, the rules do not reflect the range of mechanisms to manage minors' access to potentially harmful content, or the fact that the same mechanisms are available both to on-demand and broadcast service providers. Other members suggested that new technology, new devices and new ways of consumption have blurred the distinction between linear and non-linear. **Considering the array of possibilities that currently allows the simultaneous distribution of a given identical content by means of different sources and, conversely, the distribution of different types of content through a unique platform and/or over the same device** (thanks to technological progress fostering a high integration of internet and Web 2.0 features into TV sets and set-top boxes), **application of regulation standards strictly based on the content delivery method adopted may not overcome unbalanced decisions.** It was also mentioned that even though in the foreseeable future linear television will most likely remain the main medium for the consumption of information and entertainment, the reception of non-linear media services is constantly increasing, especially among the younger generations. To maintain the high level of protection of linear audiovisual media services, the same standards should be applied to non-linear audiovisual media services. It was noted that whereas there are effective possibilities of parental control with regard to linear television, they decrease with the growing relevance of convergent audiovisual media content.

Speaking in terms of **alternative options** a small number of ERGA-members proposed to increase the regulations for non-linear content. Other members indicated that future legislation regarding the protection of minors should be based on a system where the level of protection is determined by how the content is accessed rather than the distribution method. It was proposed that there should be level protections across linear and on-demand for the protection of minors, which take into account both the severity of content and the adequacy of the content access tools. In this approach the most explicit content will be subject to the strongest content access control mechanisms while less harmful content is subject to less strict access control mechanisms.

Distinction still appropriate

A minority of ERGA-members indicated that the appointed distinction in the level of protection level between linear and non-linear content may still be **valid, legitimate and relevant to viewers**. Reference was made to the presumption that the level of user control is higher in on-demand than in a linear environment. It was pointed out that in a linear environment children can see potentially impairing content by just being around at the "wrong" moment. Few members suggested maintaining some distinction based on the method of distribution, at least in the short term, given the current power and influence of linear content can still be assumed to be strong. According to these members, the current distinction between linear and non-linear environments might be reviewed in the future in the light of the further evolution of consumption habits. Last of all, some ERGA-members didn't answer the question or indicated not to have a specific opinion on this matter.

1.4 Conclusions

With growing technical convergence and changes in consumption patterns it's difficult to still justify a different regulatory treatment for linear and non-linear media services in the field of protection of minors. The research findings of the inventory paper furthermore suggest that the distinction between the rules for the protection of minors that apply to linear and non-linear services may not meet audience expectations of consistent regulation. It seems that the way in which content is delivered does have some influence to their attitudes and expectations, but so do other factors like TV-likeness, the type of content watched, the platform or device used and the content provider. It appears also that there is an expectation of comprehensive and broadly homogenous regulation agreement that protection of minors is the most important area of protection and that such protections should apply across all AV platforms (broadcast TV, catch-up, on-demand, and other internet). Furthermore, especially among younger users, watching online content, and the use of devices other than the main TV set to watch audiovisual content, has become very common. It was confirmed by a vast majority of ERGA-members that in view of a progressively converging media environment, **the current distinction of regulation density in the AVMS Directive between linear and non-linear content seems no longer to be useful or appropriate with regard to the protection of minors in audiovisual mass media.**

Theme 2

THE HARMONISATION OF KEY DEFINITIONS AND CONCEPTS

2.1 Introduction

Applying the protection of minors' provisions in the AVMS Directive involves making a decision about:

a) whether content is 'likely to impair' or whether it 'might seriously impair' minors' development; and

b) what measures must be taken to ensure that children 'will not normally hear or see' this content (*i.e.* what constitutes an adequate access control mechanism)?

The AVMS Directive does not define content that might seriously impair the physical, mental or moral development of minors or content that is likely to impair the development. It only cites two non-exhaustive examples of content that might seriously impair the minors' development applying to television broadcasts: pornographic content and gratuitous violence. Member States have a **considerable amount of discretion** when it comes to defining these key concepts as these terms are indefinite and general and therefore suitable to comply with each Member State's different morals, standards and sensitivities. Moreover, each Member State is able to apply more detailed or stricter rules in the field.

Section 2 of the inventory paper indicates that different views among Member States on content that is 'likely to impair' or 'might seriously impair' the development of minors, and what constitutes an adequate access control mechanism can lead to asymmetries between Member States. Cultural differences and freedom of expression considerations may for instance have influenced individual Member States' approach to determining which content should be banned on broadcast television – and hence may have led to a more or less restricted scope of application of 'might seriously impair'.

The convergence between traditional forms of media consumption and new connected services and devices adopted by children and young people and the increasing removal of boundaries between traditional broadcasting and on-demand services raise **new challenges** for the protection of minors. In order to make this protection more effective, and given the cross-border element of content nowadays, ERGA has posed the question whether in order to ensure more adequate protection of minors, further harmonisation of definitions based on practical experience and working definitions of Member States in practice is desirable and feasible. This section will further elaborate on the views of Member States on what content is 'likely to impair' or 'might seriously impair' the development of 'minors' and whether further harmonisation would be possible.

2.2 The age of a minor

Inventory paper findings

The inventory paper indicates that variations apply across Member States, to the meaning of 'minors' and 'children'. The concept of a 'minor' is not interpreted in the same way across Europe. The legal terminology describes a minor as a person under a certain age, usually the age of majority, which legally separates childhood from adulthood. This age of majority depends upon jurisdiction and application, although in most Member States the age of majority is fixed at 18 years, as recommended in Article 1 of the Convention on the Rights of the Child (UNCRC). However, 'minors' is also used to identify different age ranges that are below 18.

Questionnaire findings

To examine in more detail if further harmonisation of definitions could make the protection of minors more effective, ERGA-members were requested to answer whether **a common understanding of at what age a person can be considered a minor** would help to contribute to a more equal level of protection of minors in all Member States. The majority of ERGA-members indicate that this indeed would be helpful.

Some ERGA-members indicated that the age of minors very much depends on traditions in a Member State. Too much harmonisation might therefore be difficult to achieve. Some of these ERGA-members would be in favour of a revised Directive which would leave room for further differentiation/age-variations. However, in their view a common understanding on this would be too complex due to cultural differences and differences in political and national traditions, social structure and trends and the level of media literacy. It was also noted that also AV media services and regulators will have different approaches to these definitions based on factors such as the nature of the content, audience expectations of channels and brands, and different societal and cultural norms; yet they share the same goal to protect minors. Such flexibility in approach will continue to be important, yet it might be worth exploring whether a standardised approach to a series of age categories could help ensure that protection tools are applied in the same way. This topic will be further explored in section 3 of this report.

2.3 Content that is likely to impair

Inventory paper findings

The AVMS Directive refers to content that is 'likely to impair' the development of minors or that 'might seriously impair' the development of minors. Section 2 of the inventory paper points out that to that end, most Member States have transposed this graduated approach to national legislation and apply different standards to content that is likely to impair minors and content that might seriously impair minors.

As previously mentioned the Directive does not provide for a definition of content 'likely to impair' the development of minors. Member States are thus free to define it according to their own national sensibility and traditions. As a result different Member States have developed different categories of content that they believe might have the potential to impair minors' development. However, as was also identified in a recent publication of the European Audiovisual Observatory,[25] most countries refer to violence, pornography, erotic or sexual material as content that is 'likely to impair'.

Studies and reports that have been examined in section 2 of the inventory paper further showed that **the effects of violence or pornography is a very difficult topic to research**, with significant obstacles to overcome. Generally, findings can be varied and it is impossible to draw firm conclusions. In every Member State however, there are assumed undesirable consequences for the socialisation of minors, their behaviour, psychological health, and their mental and moral development. However, given the difficulty of obtaining incontrovertible evidence in this area (for instance the exposure of children to strong content for research purposes is considered to be unethical), many countries take a precautionary approach and choose to restrict access to this kind of content.

Questionnaire findings
The responses to the ERGA questionnaire on characteristics that are most commonly associated with content that is 'likely to impair' show a similar picture. A vast majority of respondents indicated to an association of **content that is likely to impair** with the **representation of certain degrees or several forms of violence and/or the representation of several forms of erotic, sexual, or pornographic scenes**. The use of **offensive or inappropriate language** was also referred to by a fair number of respondents.

Most countries also add **other specific elements** to the list of potentially harmful content, such as drug and alcohol abuse, fear, discrimination, dangerous behaviour, smoking, aggression and approaches conflicting with common feelings.

In many countries **assessment criteria** are used to determine the harmfulness of content, for instance the context and function of the audiovisual material, the intensity and assumed impact of the audiovisual material and the duration of the audiovisual material. In many countries such assessment criteria are furthermore used to graduate content that is likely to impair to more detailed age classifications (for instance 6+, 9+, 12+). It was also mentioned by one member that the negative effects of content that is likely to impair might be repairable through opposite cultural models and pedagogical interventions.

One member pointed out that the distinction between content that is 'likely to impair' minors and content that 'might seriously impair' minors is unclear. Another member indicated to have found it difficult to reach objective, evidence-based and legally robust conclusions on the application of those terms – despite extensive investigation of the relevant literature.

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[25] European Audiovisual Observatory: "The Protection of Minors in a Converged Environment", IRIS plus 2015-1.

A group of members pointed out that having some **general characteristics of content that is 'likely to impair' would contribute to a more equal level of protection** and would provide a better background for decisions. However it was also suggested that if some characteristics were to be set in the Directive to specify the meaning of content that is likely to impair, it would be necessary to leave flexibility to the national authorities, for instance in implementing the Directive according to their national context and their current regulations. Amongst those members one member suggested that general characterises of content that is likely to impair, can only be achieved to a certain degree. Due to the cultural differences in the European countries, the characteristics most likely will be interpreted differently from state to state even if some characteristics are reflected in the Directive. Another member questioned the feasibility of reflecting some general characteristics in the Directive.

2.4 Content that might seriously impair

Inventory paper findings
As previously mentioned, the AVMS Directive does not harmonise certain key concepts in relation to the protection of minors in audiovisual media services, leaving this task to the Member States. With regard to linear content that 'might seriously impair', the Directive only gives some examples, by referring to "pornography or gratuitous violence".

The inventory paper and the previously mentioned publication in IrisPlus[26] indicates that, in most countries, there is no formal or detailed definition of content that might seriously impair and, in practice, a case-by-case approach is applied. When there is a definition of content that might seriously impair, national laws generally stick to the examples provided in Article 27(1) AVMS Directive, by referring to "pornography and gratuitous violence". However some countries apply more detailed formal definitions of both content that is 'likely to impair', and content that 'might seriously impair', the development of minors.[27]

The inventory paper furthermore shows that in many countries content that 'might seriously impair' the development of minors generally includes the detailed representation of extreme and gratuitous violence, extreme and perverse pornography and content instigating violence or crime or simulating acts that could constitute a criminal offence for the purpose of sexual arousal.[28] The inventory paper also refers to the indicative table included in an EPRA's comparative background document, which shows that most Member States[29] have characterized content that 'might seriously impair' the development of minors, materials to include "pornographic scenes and unnecessary, or unjustifiable or gratuitous or extreme violence".[30]

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[26] European Audiovisual Observatory: "The Protection of Minors in a Converged Environment", IRIS plus 2015-1, p. 28.
[27] Norway for instance has identified the following formal definitions:
Harmful content: "portrayals in audiovisual programmes that may have an emotionally harrowing or cognitively disturbing effect on the wellbeing of minors" and seriously harmful content: "portrayals in audiovisual programmes that may have a strong emotionally harrowing effect or be particularly cognitively disturbing for the wellbeing of minors, particularly intimate portrayals of sexual activity, gratuitous violence and other deeply disturbing or frightening themes."

[28] Ofcom, Sexually Explicit Material and Video on Demand Services, A report to DCMS by Ofcom, 4 August 2011, p. 23.
[29] Belgium Flemish and French speaking community, Cyprus, Germany, Spain, Greece, Italy, Malta, Norway, Romania, Sweden, Slovakia.
[30] Emmanuelle Machet, The Protection of Minors in a Converged Environment, 21 June 2013, Plenary Session 1, Comparative Background Document, Public revised version – 21 June 2013 with regard to the 37the EPRA Meeting in Krakow 8 – 10 may 2013.

Questionnaire findings

The results of the questionnaire demonstrate that not all adult content is considered pornography nor all violent content is considered content which might seriously impair. Different kinds of content fall under these concepts.

It does seem possible however to give some more detailed common characteristics of pornography and gratuitous violence, that are most commonly associated with audiovisual mass media content **that might seriously impair the development of minors**. The majority of ERGA-members indicated to associate the following materials with content that is likely to seriously impair the development of minors:

- o Materials that include a detailed representation of extreme and gratuitous violence
- o Materials that include a detailed representation of extreme and perverse sexual activity
- o Materials that infringe human dignity and are particularly dedicated to violence or sexual perversions degrading to the human being, like humiliating and sadistic content

These findings mostly support the aforementioned findings of the inventory paper. But, it must be stressed that this is a **non-exclusive list**. It merely shows which elements of pornography and gratuitous violence would *at least* **be classified as content that might seriously impair**, according to the majority of ERGA-members. The identification of these common characteristics does however not prevent that in a variety of Member States terms such as pornography or sexual activity can be interpreted in a different manner. Because people have a different understanding of terms such as extreme and perverse, according to one member inclusion of these characteristics in the Directive would therefore probably not contribute to clarity of these concepts.

Some ERGA-members however indicated that it would be useful for the revised Directive to point out more characteristics of content that might seriously impair, thus allowing Member States to **classify similar types of content in similar ways**. This would ensure, among other aspects that with regard to cross-border content, minors would still be protected, irrespective of the jurisdiction concerned, whilst taking note of the fact that the protection of minors is typically a sensitive area characterised by a diversity of cultural perceptions at national level. Also it might reduce tensions in the operation of the country of origin principle, as the harmonised minimum standards in the AVMS Directive are intended to be common in all Member States and this would contribute to a more harmonised minimum level of protection.

If at EU-level an indicative, non-exhaustive list of common characteristics associated with content that might seriously impair minors is to be established, Member States should continue to be able to apply stricter rules and use additional characteristics. This is especially important since the results of the questionnaire point out that in most Member States also other examples are associated with content that might seriously impair, such as (illegal) content that is in breach of criminal law, information that promotes addictions and narcotic and psychotropic substances, political extremism, gore horror films, propaganda encouraging life and health threatening behaviour, incitement to racial hatred or other discrimination and gross animal abuse.

Furthermore, in many countries assessment criteria are used to determine the harmfulness of content, for instance the context and function of the audiovisual material, the intensity and assumed impact of the audiovisual material and the duration of the audiovisual material.

2.5 Conclusions

As far as a common understanding of at what age a person can be considered a **minor** is concerned, a reference in a revised Directive or alternative guidelines at EU-level to article 1 of the UNCRC could be considered since this would precisely define the concept of a minor and may solve many different realities between the Member States, and thus would help to improve the predictability of the law. Also, this would not prevent Members States having laws determining the age of maturity being reached earlier, because article 1 states: "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

Given the views suggested by the respondents to the questionnaire most commonly associated with content that is **'likely to impair'** are the representation of certain degrees or several forms of violence and the representation of several forms of erotic, sexual, or pornographic scenes. The use of offensive/inappropriate language might also be labelled as an example of content that is likely to impair in some Member States. These characteristics could be seen to be reflected in a revised Directive or alternatively in guidelines at EU-level, but given there's no real consensus on the feasibility of this, only in an indicative and non-exclusive way. In any case, adequate scope for individual and concrete assessment should be maintained as each country has its own criteria (based on its specific rules and ethics) to assess the extent to which content, such as content that includes violence, pornography, and offensive/inappropriate language are considered as harmful content to a certain age group.

It should however be possible to determine a shared set of content categories and its essential characteristics to **objectively determine** whether content contains certain elements, for instance of violence, sex and to a certain extend maybe even offensive language. A shared set of content categories would require common agreement on at least two levels/tiers:
1) The highest level: what are the main content categories, *i.e.* violence, sex, to a certain extent maybe even offensive language can we identify?
2) One level lower: what are the essential characteristics (indicators/dimensions) of these main content categories?
Especially on the second level of indicators (indicators/dimensions) harmonisation could increase over time. What would be needed to develop such a **shared set of content categories** will be further elaborated on in section 3 of this report.

Furthermore it seems appropriate that a revised Directive, or alternatively guidelines at EU-level, would continue to indicate "pornography" and "gratuitous violence" as examples of content that is **'likely to seriously impair'**. Following the conclusion in the first section in this report, we would however suggest to clarify that these examples would **apply to both linear and non-linear content**.

In order to provide more guidance, to contribute to a more equal level of protection of minors in all Member States, it can also be considered to **clarify** in a revised Directive or alternately guidelines at EU-level, those elements of pornography and gratuitous violence which, at the very least should be classified as content that might seriously impair according to the majority of ERGA-members. This could also reduce tensions in the operation of the country of origin principle, as the harmonised minimum standards in the AVMS Directive are intended to be common in all Member States. The **characteristics** that the majority of respondents to the ERGA questionnaire indicated to associate with content that is likely to seriously impair the development of minors could be used for this purpose (that is: **Materials that include a detailed representation of extreme and gratuitous violence; Materials that include a detailed representation of extreme and perverse sexual activity; Materials that infringe human dignity and are particularly dedicated to violence or sexual perversions degrading to the human being, such as humiliating and sadistic content**). It would however be appropriate that a revised Directive, or alternatively guidelines at EU-level, would continue to reflect that each Member State is able to apply **more detailed or stricter rules in this field**. While the establishment at EU-level of an indicative, non-exhaustive list of common characteristics associated with content that 'might seriously impair' may contribute to a more harmonised minimum level of protection in all Member States, it must be noted that some interpretational issues most likely will remain as Member States will continue to have a different understanding of what is for instance extreme and perverse.

Also in this respect allowing Member States to (age) classify content differently (according to their national/cultural concerns of content) on the basis of a **shared set of content categories and its essential characteristics (indicators/dimension),** could be an interesting solution worth exploring and which will be further elaborated in section 3.

Theme 3

PROTECTION MEASURES: NEW CHALLENGES DUE TO NUMEROUS TECHNIQUES AND DISTRIBUTION PLATFORMS TO OFFER AUDIOVISUAL MEDIA CONTENT

3.1 Introduction

More than 15 years ago the discussions and debates about protection measures focused mainly on the pros and cons of the V-chip and internet filters. Back then, the media landscape was still rather simple and clear. TV sets intended for watching television and computers were mainly used to surf the internet and visit websites mainly existing of text and images.

However, as was also already briefly touched upon in section 1 of this report, the current presence and importance of video on the internet and the stage of convergence of media, platforms, devices and techniques poses new challenges for protection measures.

In this section will be touched upon what ERGA-members would consider as adequate access control mechanisms and other protection measures and how their functioning could be improved. In that respect, it will also take into account those criteria which could be decisive to determine the appropriate level of parental involvement or other tools and approaches.

3.2 Wide set of tools

Questionnaire findings

In response to the questionnaire the vast majority of ERGA-members considers the **role of parents** in protecting children from content that is likely to impair and content that might seriously impair to be very important. All ERGA-members confirm parents need the **widest set of tools** to protect their children, such as age classifications; information guidance; parental controls and pin protection/age verification tools. One member mentioned that in order to protect young children from inappropriate content on the internet, the use of white lists of websites can be appropriate (filtering). A statement of another member pretty much sums up the answers of many members: "Tools and measures beyond the traditional application of standards protections are extremely important to empower audiences to protect themselves and their families. A comprehensive protection framework in today's converged media landscape should include the provision of clear information guidance, tools to control access, and education and awareness, to enable audiences to make informed decisions about the content their children access."

The following paragraphs will further elaborate on the following parental control measures and instruments: tools to control access and information guidance. Issues dealing with education and awareness (*i.e.* media literacy) will be explored more into detail under theme 5 of this report.

3.2.1 Tools to control access

Inventory paper findings

Based on the research findings indicated in section 3 of the inventory paper, two categories of protection tools can be distinguished in a converged environment: technical measures from the television world (watershed, labelling/signage) and technical measures predominantly coming from the Internet world (pre-locking PIN, Pay-Walls, age verification systems and parental control software). In addition there are measures such as including the content that might seriously impair minors in a separate section of the catalogue or using a qualified disclaimer containing a general warning about the potential harmfulness of the content.

The inventory paper also indicated that recent tests showed that the current protection tools do not always meet the requirements of the rapid changes in the online world, especially when it comes to filtering of user generated content or allowing for access to the web in a manner that differentiates the age of a user. Here it is particularly difficult to control the age of users. It was also stressed by ERGA-members that interoperability and machine readability of information about content categories and age classifications (*i.e.* metadata), are important to improve the functioning of (technical) protection systems like parental control systems.

The inventory paper also shows that the potential number and variety of technical measures (like watersheds, filtering, pin codes, pay walls etc.) depends highly on the distribution platform, technique and device used. In some cases a consumer can choose at the same time from several protection measures, one provided by the platform operator (*i.e.* cable operator), one built in a device (*i.e.* smart TV) and one offered by the service provider (*i.e.* broadcaster). The perceived lack of effectiveness and the inconsistencies in the regulation of linear and non-liner content can cause mistrust and have negative impact on the take up level of protection tools. It was suggested that this feeling of mistrust can be tackled by providing user-autonomous, platform neutral technical systems which are efficient, easy to use and affordable.

Questionnaire findings on the creation of common technical interfaces
To follow-up on aforementioned findings members were asked in the questionnaire which measures at EU-level are considered to be appropriate to stimulate the **creation of common technical interfaces** which could work with **standards of categorization and classification**.

A vast majority of members replied they would be in favour of stimulating **more collaboration** between stakeholders. Also many members expressed the view that they would welcome the introduction of **European standardization measures** in other EU-documents. A small majority of members would also consider the provision of **(common) public funding** as an appropriate measure in stimulating the creation of common technical interfaces. One member explicitly referred to MIRACLE,[31] an EU-funded scheme whose purpose is to specifically address this question. This pilot project co-funded by the European Commission aims at developing a data scheme for age classification information and providing an infrastructure for interoperable and machine-readable age labels online. Thus a follow-up of the MIRACLE-project could for instance be considered in this respect. Another member suggested exploring other incentives, such as tax relaxation measures, this also to counterbalance potential opposition of the industry to the common funding mechanisms.

Questionnaire findings on affordable, easy accessible and user-friendly parental control systems
The questionnaire findings confirm the picture of a high number and variety of technical measures (like watersheds, filtering, pin codes, pay walls etc.) available, that depend highly on the distribution platform, technique and device used. One member suggested that in the traditional, vertically integrated television environment (in which the provider of content often has a role in distribution as well), technical parental control systems are typically implemented by platform operators, such as cable operators and ISPs. In contrast, in the online environment, parental control systems may be implemented by different types of players, including AVMS providers, the operators of online TV platforms, ISPs (who may offer network level parental controls) and independent software providers (who may offer device-level parental controls). Each of these types of control has different advantages and weaknesses, and any one (or more) may be most appropriate for a given family context and media environment. Therefore it is most likely impossible to aim for 'user-autonomous, platform neutral technical parental control systems' as the concept of 'user-autonomous' can differ per platform. In order to enable parents to play the role to protect their children, we should rather focus on available tools having to be **affordable, easily accessible and user-friendly to consumers**.

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[31] MIRACLE runs from February 2014 to July 2016.

The inventory paper indicated that due to the high number and variety of technical measures available, the protection tools that are currently available are not taken up in the best way possible. In order to encourage further application most ERGA-members expressed they would be advocating **more collaboration between stakeholders** in this field as this could serve as a first step towards technical parental control systems, which are more efficient, easy to use and affordable. It was suggested that very high standards should be imposed on the effectiveness and user-friendliness of all technical means. Media consumers have become very critical and demanding when it comes to digital tools and certainly will not use them if it would be too complicated or time-consuming. The majority of respondents also indicated they would be in favour of a **common development fund** enabling both the industry to foster the evolution and distribution of technical tools and the state sector to take responsibility for constant research and development efforts needed in this field. Given the findings of the inventory paper those measures should primarily focus on the **evolution of protection tools in the online world** (for instance filtering of user generated content or allowing for access in the web in a manner differentiating by age).

Other suggestions given by members are: the introduction into national legislation of clauses forcing the relevant stakeholders to provide such tools, and the harmonisation of standards, for instance at the level of setup-boxes. In addition some countries state it is very important to develop and share best practice models in the EU. Another ERGA-member addresses the importance of legal predictability and stability. One member calls for more involvement of parents in the implementation of protection tools, if possible with experts in the field of children and adolescents development. In a reply of one member it was emphasized that a neutral stakeholder such as a regulatory authority should take a leading or coordination role in order to encourage initiatives from the industry.

3.3.2 Information guidance

Inventory paper findings
The inventory paper indicated that, in addition to providing parents with appropriate technical protection measures, providing parents with sufficient and adequate information is another essential building block among different mediation strategies. **Content categorization and age classification is of particular importance in this respect**.

The research findings in section 3 of the inventory paper point out that although labelling and rating content are widespread, there are different classification systems for audiovisual products at national level. A Report from the Commission on the application of the Council Recommendations of 24th September 1998 and 20th December 2006[32] issued on 13 September 2011 established that there was an extreme fragmentation of age-rating and content classification systems for audiovisual content and there was clearly no consensus on the helpfulness and feasibility of cross-media and/or pan-European classification systems for media content. But, despite this conclusion, the Report considered that, in view of the increasingly borderless nature of online content, it is necessary to explore ways to better align such systems. In line with this conclusion, the Explanatory Report about the use of labels to empower minors, parents and educators in the social media environment (February 2013) has stated that the most recent documents appear to favour a European-wide approach to rating and classification, but when and how this could be realized in practice, and whether this is supported by industry, is still a question mark, according to this Explanatory Report from 2013. The inventory paper however already lists several interesting best practices in this field[33] that could provide inspiration for further harmonisation.

Questionnaire findings on feasibility of harmonisation of age classification
The great importance of information about age limits and other information guidance for parents but also for children was addressed as well in response to the questionnaire. It was indicated that parents should be able to make well-informed decisions and thus they need as much as information about potential harmful character and effects as possible. Any comprehensive protection framework in today's converged media landscape should therefore include the provision of **clear information guidance**. Content categories and age classification are a way of doing this. The question whether, according to regulators, further harmonisation of content qualification and age classification is feasible, practical and effective, was thus further examined.

It can be concluded from the replies to the questionnaire that the majority of ERGA-members feel it is not feasible or at least very hard to harmonise the actual **age classification** of content at European level. Due to different cultural backgrounds and traditions **it would be very hard to develop a harmonised system**. The way content is actually classified is highly dependent on national/cultural concerns over content. One member pointed out if age classification is considered as an isolated response (*i.e.* without reference to other factors such as the availability and strength of tools to restrict access), the key question will be which content poses risks to children, and at what age, and therefore which rating would be appropriate. One member stated how some of the differences in views among Member States on the effects that content might have on minors could therefore be an obstacle to developing an EU-wide age classification regime.

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[32] Report from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 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 online information services industry PROTECTING CHILDREN IN THE DIGITAL WORLD.
<http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0556_/com_com(2011)0556_en.pdf>.
[33] For instance: YouRateIt <http://www.yourateit.eu>, the International Age Rating Coalition (IARC) http://www.globalratings.com and PEGI <http://www.pegi.info/en/index/id/28/>.

However, some countries are **more optimistic** and consider it is possible, feasible and useful to harmonise the actual age classification of content at a European level. It was proposed that also because of the globalization and delocalization of services a country-specific approach including age classification is outdated and no longer effective. One member refers in this respect to the successful implementation of PEGI to support its view it should be possible to achieve a universal classification system, starting with harmonisation of certain definitions. Others think that although it would not be feasible to achieve a harmonised age classification, we should aim for a more harmonised scheme and try to achieve it through common guidelines, recommendations or high profile studies at EU-level. According to some members there should be room for an agreement regarding standardised age levels, for example, a common set of age classifications (e.g. 12, 15 and 18). In that respect it was mentioned that many current age ratings are already similar across Member States and developed using similar principles. According to one member further harmonisation could be achieved by prescribing the form of the visual symbol (for instance that the symbol should indicate a minimum age) and the rules of its apparition.

Questionnaire findings on feasibility of harmonisation of content categorization
The replies to the questionnaire point out that a majority of ERGA-members considers it feasible to develop a set of universal content categories at a European level. In that case the system design could be such that the age classification would be left to the discretion of the various Member States, meanwhile the categorisation of content would be based on a universal content categorisation system. These members think that despite all difficulties it should be possible to **achieve a harmonised system of universal content categorization**.

Some ERGA-members consider it possible to define **at least several common content categories, such as: violence, sex, language, drugs, fear, discrimination and offensive language**. In addition to this, Member States could identify **other categories according to its national/cultural concerns**. One ERGA-member stated that harmonisation could be especially achieved in the area of universally acknowledged and accepted principles that reflect European and humanistic moral values. So in this context, principles and values such as respect of human dignity, prevention of prejudice, avoidance of scenes of violence and pornography can be included.

The **advantage of such a system** is that categorisation information (*i.e.* "contains violence") on a high level is a much more factual approach to audience protection. It seems that description of content in this way will not be affected by cultural or societal differences between Member States in the same way as other forms of content information, such as age classifications.

- Best practices
One member stated it firmly believes in a common system for both content categorisation and age classification. Although developing such a system would be complicated and a long term process, it could bring many benefits to the protection of minors. Hence, it should be possible to find a consensus on certain criteria and categories between Member States, especially if it could be based on a well-known system such as Kijkwijzer. Elements of Kijkwijzer have already been implemented in Turkey, Iceland and Slovenia.

According to another ERGA-member harmonisation in the field of categorisation information can only be **one part of any potential route to greater harmonisation** in this area. Allowing Member States to classify content differently on the basis of a **shared set of content categories** would appear to leave us in the same position regarding cross-border content: with one Member State potentially arguing that a programme should be rated "15", for example, and therefore that it should only be shown after 21.00 – while another considers it acceptable for a "12" rating and allows it to be shown at 19.00.

One member referred to the regulatory practice of KommAustria and the Austrian classification system which is based on the German system, which demonstrates that it should be at least possible within cultural or linguistic connected environments to achieve some harmonisation.

- Difficulties/challenges
There is another smaller group of countries, which is rather pessimistic about the possibilities of a universal content categorisation system in combination with age classification being left to the discretion of Member States. Some members expressed the concern that it will be hard to achieve such a harmonised system because also in the area of content categorisation there are many differences between countries. Some wonder how different judgements between Member States could be tackled. The risk of losing sight of the dimension of context was also put forward, as the degree of harmfulness may differ very much due to context and also how content is presented. Another member estimates that a universal content categorization system might be hard to achieve due to differences in culture and that universal age classification might be even a better option.

Another ERGA-member stated that developing a set of universal content categories at a European level would be desirable and most likely feasible for absolute illegal content. However, with regard to lower risk levels, a system with harmonised content categorization and age classification on national level is deemed to be a good starting point. But this would require homogeneous practice in assessing content which actually seems to be very difficult to reach, especially for content that is likely to impair due to all cultural differences. In terms of amendments of the current AVMS Directive this ERGA-member would be in favour of a more general formulation aiming at the willingness of all Member States to work permanently on the harmonisation of assessment criteria for potential harmful content.

- Careful preparation
As indicated previously, despite the many challenges involved, the majority of ERGA-members considers it feasible to develop a shared set of content categories at a European level, while leaving the age classification to the discretion of the various Member States. Categorisation information on a high level seems a much more factual approach to audience protection and description of content in this way will not be affected by cultural or societal differences between Member States in the same way as other forms of content information, such as age classifications.

Thus, such a system would be based firstly on a common harmonised content categorization comprising of the same main categories of potentially harmful content. Given the findings in this section and in section 2, violence, sex and offensive language could for instance be identified as main content categories, possibly supplemented with categories like discrimination, drugs and fear. It will also be required that the same indicators or characteristics belonging to these categories should be applied by every Member State. Even when a specific Member State does not take these indicators into account for the classification (because according to this Member State for instance the representation of drugs is not considered relevant to the protection of minors) it is important that the content be classified accordingly and **can be read and interpreted by the technical systems of another Member State**. This could be a Member State where these indicators would be considered more relevant and will affect the ultimate classification and rating of the content. Since it is not realistic to expect that common ground can be found for all relevant indicators from the very beginning (for instance, in the current classification systems at place in some Member States, the category violence has over 10 dimensions) a graduated approach where the set of indicators can be developed and grow over time appears the most feasible option. Thus especially on the level of indicators the harmonisation could increase over time - for instance and as suggested in answers to the questionnaire - when ERGA could engage in a project initiated by the European Commission, to explore further steps needed to reach a harmonised system of content categorization at a EU-level. Such a harmonised system requires an in-depth analysis and careful preparation. Member States could be encouraged to participate in such a harmonised system but a revised Directive or alternative guidelines at EU-level should not contain an explicit obligation to do so.

3.4 Questionnaire findings on level of parental involvement and control

In section 2.1 of this report it is indicated that the vast majority of respondents to the ERGA questionnaire believe that in view of a progressively converging media environment, the current distinction of regulation density in the AVMS Directive between linear and non-linear content seems no longer to be useful nor appropriate with regard to the protection of minors in audiovisual mass media. Therefore the subgroup has re-examined which type of content could be permitted on AVMS and under which conditions. It explored alternative criteria (*i.a.* the level of harm) instead of the linear or non-linear nature of the content that could be decisive to determine the appropriate level of parental involvement or other tools and approaches.

Level of parental control and involvement

As indicated previously the vast majority of ERGA-members attaches high importance to the role of parents in protecting children from content that is 'likely to impair' and content that 'might seriously impair'. You can basically identify two groups: according to the countries in the first group it should not matter whether it concerns content that is likely to impair and content that might seriously impair and the role of parents should be **equally important in both situations**. Another group of countries agree that **parents have especially a substantive responsibility as far as content that is likely to impair** is regarded. They consider that in the area of content that might seriously impair additional measures such as legislation and support of other parties in the media value chain (such as editors, distributors and intermediaries) are necessary to ensure adequate protection. Some members suggested that no matter how important the role of parents might be, it can never replace the responsibility that media service providers have to bear. In that regard it is stressed that parents are not always present when children are using media and also not all parents are sufficiently familiarised with new media technologies. So there is a substantial responsibility for media service providers and the industry.

Automatic restrictions of content that might seriously impair

Responses to the question as to whether ERGA-members would support a system that is such that access by minors to content that **might seriously impair is automatically** restricted by default settings (for instance by the use of pin protection/age verification tools) demonstrate a uniform picture. Most ERGA-members indicated that they would support such an approach. One member for instance stated that the higher the degree of risk, the higher is the responsibility that lies with both the regulatory authorities and the content providers. It was suggested that minors should be excluded from accessing content that might seriously impair their development, whatever the degree of vigilance of parents.

Some members mentioned they have already applied such a system in practice, at least to a certain extent. In Italy for instance the law precisely considers this system. Content that might seriously impair is automatically restricted by default through a double instrument (identification of adult user; specific and selective block of banned content); content that is likely to impair are associated with other protection instruments (*e.g.* restricted time band, parental control) combined with the factual "control" of their parents. In Norway the Protection Regulation states for on-demand media services that content that might seriously impair is protected by default by means of a pin code, password or a similar protection instruments which adequately ensure minors cannot access this content.

In that respect some ERGA-members highlighted that systems which provide for automated restrictions should be carefully designed with due account to the systems' effectiveness concerns and the freedom of expression safeguards which means that adults should always be able to switch off the default settings and lift the restrictions. A group of members express some doubts about the feasibility of such system in the short term. According to another member it would take a long time to ensure protection by default settings and it should be left to the discretion of the parents whether they want to deviate from the default settings.

Some ERGA-members expressed this approach (which implies that content that 'might seriously impair' on linear TV would be allowed, provided an adequate access control mechanism is in place) might be feasible in the future but right now it might be too soon for that, as the reliability and effectiveness of technical control systems is not yet ensured. They also stated that this approach would not prevent Member States from the possibility of fully prohibiting the inclusion of programmes which 'might seriously impair' in a linear service, but if the provider is established in another Member State, this stricter rule would not be applicable. Therefore these members would favor that, at least in short term, a revised Directive would continue to reflect it is not permitted to include programmes which 'might seriously impair' in a linear service.

An alternative 'graduated approach'
One member further specified that, the appropriate level of parental involvement – or indeed, other tools and approaches – might depend on the nature of the content provided and the level of harm (or 'impairment') it could cause, but may also vary depending on where content can be found and how it can be accessed. Given the rapid development of the content market, and of online content distribution, measures such as effective information guidance, tools to control access to content and audience awareness and competency will be particularly important to enable personal responsibility and give families the tools to protect children. This is true as much – if not more – for the kinds of services not covered by the Directive. However, in relation to **regulated services**, it was stated that the **stronger the content and the greater the likelihood of harm, the more restrictive the tools to prevent access should be.** It was proposed to introduce level protections across linear and on-demand for the protection of minors, which take account both of the severity of content and the adequacy of the content access tools. In this approach the strongest content would be subject to the strongest content access controls, with less harmful content being subject to less strict access controls. The following model illustrates his approach:

Protection of minors: Proposed model

Way of controlling minors' access		Moderately *Strong* Content: "...might impair..."	Very *Strong* Content: "...might seriously impair..."
No control (e.g. in daytime, free-to-air)	• Broadcast AVMS	✗	✗
	• On-demand AVMS	✗	✗
Moderate control (e.g. after watershed)	• Broadcast AVMS	✓	✗
	• On-demand AVMS	✓	✗
Strong control (e.g. age-verification)	• Broadcast AVMS	✓	✓
	• On-demand AVMS	✓	✓

Another member made a link as well with the available protection tools. It recommends the recognition in the EU legislative framework of some standards of protection and their boundaries (simple, average and maximum protection), where single Member States link a certain level of protection to the different age of the minors.

3.5 Conclusions

Taking into account both the inventory paper and the responses of EGRA-members to the questionnaire it can be concluded that the **role of parents is considered to be key** in terms of protecting children from being encountered with harmful or unsuitable content. All ERGA-members agree that parents need the widest set of tools to protect their children, such as age classifications; information guidance; parental controls and pin protection/age verification tools. Also filtering was mentioned in this respect.

The majority of ERGA-members would support a system that is such that the access by minors to **content that 'might seriously impair' is automatically restricted by default settings** (for instance by the use of pin protection/age verification tools). This approach would imply that content that might seriously impair on linear TV would be allowed, provided an adequate access control mechanism (e.g. PIN) is in place. On the other hand, given the principle of minimum harmonisation, this would not prevent Member States from the possibility of applying more detailed or stricter rules in this field.[34] Systems that provide for automated restrictions should be carefully designed with due account to systems' effectiveness concerns and freedom of expression safeguards. Given the assumed undesirable effects of content that falls into this category (such as materials that include a detailed representation of extreme and gratuitous violence or extreme and perverse sexual activity) for minors' socialisation, behaviour, psychological health, as well as their mental and moral development, it has to be ensured that minors are excluded from accessing this content, whatever the degree of vigilance of parents. However, special attention should also be given to legal safeguards and provisions in order to guarantee that the freedom of flow and receiving of information will not be hindered, which means that adults should always be able to switch off the default settings and lift the restrictions.

Some ERGA-members expressed that this approach (which implies that content that 'might seriously impair' on linear TV would be allowed, provided an adequate access control mechanism is in place) might be feasible in the future but right now it might be too soon for that, as the reliability and effectiveness of technical control systems is not yet ensured. They also proposed that this approach would not prevent Member States from the possibility of including the full prohibition of programmes which 'might seriously impair' in a linear service, but if the provider is established in another Member State, this stricter rule would not be applicable. Therefore these members would favour that, at least in short term, a revised Directive would continue to reflect the inclusion of full prohibition of programmes which 'might seriously impair' in a linear service.

This view underlines the need to rapidly take-up the encouragement of developing modern and consistent protection measures and technical controls. If a future Directive were to rely even more on control mechanisms than the current Directive, as is suggested above with respect to the protection from content that 'might seriously impair', further consideration must urgently be given to ensure reliable and effective technical control systems. If this cannot be ensured in the short term, a transitional period could be considered.

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[34] France for instance has introduced a general prohibition to content that might seriously impair in both linear and non-linear media services.

As indicated in the first section of this paper however a majority of ERGA-members would advocate abandoning the current distinction between linear and on-demand content in the AVMS Directive and at the same time being in favour of restricting access to content that might seriously impair by default. This indicates that **it is worth exploring the options of a system that levels protections across linear and non-linear for the protection of minors, which would take account both of the harmfulness of content and the adequacy of the content access tools.** In this approach, content that 'might seriously impair' will be subject to the strongest content access control mechanisms, while content that is 'likely to impair' requires less strict protection mechanisms.

An alternative 'graduated approach' to maintaining the current distinction between content that might seriously impair and content that is likely to impair, could take account of both the strong or less strong nature of content and the adequacy of the content access tools. **In this approach, the strongest content will be subject to the strongest content access control mechanisms, while less strong content requires less strict access control mechanisms.** With such an approach, the two current AVMSD categories 'likely to impair' and 'might seriously impair' could become less relevant in determining the strength of content (which might range from 'moderately strong content' to 'very strong content'). Identifying the strength of content and recognising a range of access control measures (*e.g.* clear information guidance and content warnings, and tools to control access) could use this information in combination to create the relevant restrictions. Further work in developing guidance on how this could be achieved, provided either by a revised Directive or alternatively guidelines at EU-level, could complement such an approach. This alternative approach could be considered as the inventory paper points out that the effects of violence and pornography are very difficult to research and it is impossible to draw firm conclusions.

Currently the use of technical protection tools is important in order to prevent minors from *i.a.* content that might **seriously impair**. As previously mentioned, if a future Directive relied even more on such systems, as is suggested above with respect to the protection from content that might seriously impair, **further consideration must be given to ensure reliable and effective technical control systems**, both in the online and offline environment.

In this respect ERGA asks the European Commission to take the following suggestions into account during further considerations.

The inventory paper indicated that recent tests showed that the current technical protection tools do not always meet the requirements of the rapid changes in the online world. Interoperability and machine readability of information about content categories and age classifications (*i.e.* metadata), are crucial in improving the functioning of technical protection systems. In order to **stimulate the creation of common technical interfaces** which could work with standards of categorization and classification, a vast majority of ERGA-members indicated they would be in favour of stimulating more collaboration between stakeholders. Also the majority of ERGA-members expressed they would welcome the introduction of European standardisation measures in other EU documents. Prior to this further research and exploration would be needed to understand what technical tools are available and how they can be applied and made interoperable, this also depending on the type of platforms, devices or providers. In order to achieve harmonised definitions or approaches that are applied consistently across the EU framework, this would be a necessary step.

Important for encouraging the further application of protection tools is the availability of **technical parental control systems** (*i.e.* tools and settings across different types of services, distribution platforms and devices to enable parents to set appropriate levels of control) which are **efficient, easy to use and affordable.** In order to **encourage the development of modern and consistent systems,** most ERGA-members would advocate a common development fund enabling both the industry to foster the evolution and distribution of technical tools and the state sector to take responsibility for constant research and development efforts needed in this field. This option would require further exploration of available tools, in particular in order to compare and examine which existing tools meet the requirements of being efficient, easy and affordable. Stakeholder consultation could be integrated into such an exercise. Creative incentive models could increase the willingness of stakeholders to become part of such a funding strategy. In addition further collaboration between stakeholders would also be seen as an important condition in order to stimulate innovation.

Providing clear information and guidance to parents and children is another way of protection and will contribute to a better use of audiovisual content, especially in a context where there is a growing amount of audiovisual content offered to all viewers. A majority of ERGA-members considers it feasible to further explore developing a system of **universal content categorisation** at a European level. Due to different cultural backgrounds and traditions a **harmonised model of age classification** is deemed to be less feasible by the majority of members. The **advantage of such a universal content categorization system** is that categorisation information (*i.e.* "contains violence") on a high level is a much more factual approach to audience protection. Description of content in this way will be less affected by cultural or societal differences between Member States in the same way as other forms of content information, such as age classifications.

Thus, such a system could be based firstly on a common harmonised content categorization comprising of the same main categories of potentially harmful content. Firstly, given the findings in this section and in section 2, violence, sex and to a certain extend maybe even offensive language could for instance be identified as main content categories, possibly supplemented with categories like discrimination, drugs and fear. Such categories could apply to any potentially harmful content or alternatively, any level of strong content. Secondly, it will be required that the same indicators or characteristics belonging to these categories should be applied by every Member State. Even when a specific Member State does not take these indicators into account for classification purposes, it is important that the content is labelled accordingly and can be read and interpreted by the technical systems of another Member State. This could be a Member State where these indicators would be considered more relevant and will affect the ultimate classification and rating of the content. Since it is not realistic to expect that common ground can be found for all relevant indicators from the very beginning, a graduated approach where the set of indicators can be developed and grow over time seems to be the most feasible approach. Thus especially at the level of indicators the harmonisation could increase over time - for instance and as suggested in answers to the questionnaire - when ERGA could engage in a project initiated by the European Commission, to explore further steps needed to reach a harmonised system of content categorization. Such further differentiation of the main categories and identification of indicators does not have to be addressed in a revised Directive but could be implemented in practice by a project at EU-level. Member States could be encouraged to participate in such a harmonised system but a revised Directive or alternative guidelines at EU-level should not contain an explicit obligation to do so.

Theme 4

EFFECTIVE ENFORCEMENT, SHARED RESPONSIBILITIES, SELF- AND CO-REGULATION

4.1 Introduction

In addressing harmful media content, alternative regulatory mechanisms have been brought into play, instead of state regulation. There are no binding rules for the protection of minors at EU level except for the content of audiovisual media via the AVMS Directive. Furthermore, the current Directive encourages the use of self- and co-regulation systems, but does not prescribe the use of such systems nor define them.

4.2 Inventory paper findings

According to the studies examined in section 4 of the inventory paper, for many years, self- and co-regulation have generally been viewed by European policy-makers as an effective means of protecting children against the harmful effects of audiovisual material (including those materials outside the scope of the Directive). In this field self- and co-regulatory arrangements can be a valuable alternative to traditional state-regulation.[35]

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[35] State regulation means that regulations are specified and administered by the state. Also, in case of non-compliance, rules can immediately be enforced by national (regulatory) authorities.

Self-regulation

Media self-regulation is defined by the EU institutions as the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements).[36]

Co-regulation

Media co-regulation is defined by the EU institutions as the mechanism whereby a Community legislative act entrusts the achievement of the objectives defined by the legislative authority to parties which are recognized in the field (such as economic operators, the social partners, non-governmental organizations, or associations). There is not one official definition of co-regulation and in practice many (gradual) differences between possible systems can occur. Characteristic in any case however are the shared responsibilities between the industry and the state, in which the state component is usually represented by an independent supervisory authority that carries out meta-supervision and retains backstop powers.

Thus co-regulation requires at least a non-state regulatory component, including the creation of specific non-state organisation, rules or processes. These organisations, rules or processes should be aimed at influencing decisions by persons or by organisations. Finally, all this should – at least partly – be done by or within the organisations, or those sections of the members of society, for whom the regulation is intended. The State shall thus leave discretionary power to a non-state regulatory system, but shall use regulatory resources to influence the outcome of the regulatory process, thus guaranteeing the fulfilment of the regulatory goals.[37]

Best practices

The situation in some Member States show that the implementation of enforcement regimes based on self- and co-regulation seems to be an effective and flexible way of protecting minors. By closely involving both regulatory authorities and stakeholders, co-regulation can offer flexibility, prompt adaptability to change, legal certainty and efficient enforcement, potentially creating stronger support for regulation.

The inventory paper for instance indicates as a best practice the shared responsibility between the Dutch Media Authority (Commissariaat voor de Media, CvdM) and NICAM (the Netherlands Institute for the Classification of Audiovisual Media). It was suggested that the integrated approach of NICAM's Kijkwijzer system through all regulated audiovisual sectors regarding age classification system and content categorization (with certain specificities for each sector) has been a showcase for the co-regulation of content across the media.[38]

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[36] <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003Q1231(01)&from=EN>.

[37] <http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/coregul/final_rep_en.pdf>, p. 27.

[38] Kijkwijzers' co-regulatory design consists of a three-party construction. The actual classification and rating is conducted by the industry itself. System responsibility is installed with NICAM. On a Meta level, both the functioning and the output of NICAM, is supervised by CvdM. According to the Media Act 2008, public service media, and private media that intend to broadcast linear audio-visual content, are obliged to be affiliated with and obey to the regulations of NICAM. Should they not comply with this, they may only broadcast programmes suitable for all ages and will be subject to direct supervision of the CvdM. Also media service providers that are not legally obliged to join Kijkwijzer increasingly sign up as a member of NICAM and voluntarily comply with the Kijkwijzer-rules. Rules on content that might seriously impair are directly supervised by the CvdM.

A reason to reconsider these alternative regulatory regimes is that traditional top down state-regulations can have serious restrictions on dynamic sectors with a high change rate such as the audiovisual media. Also, especially for legal domains that concur with the domain of fundamental rights, as is the case here, government control should principally be as restrained as possible.

Furthermore, actions initiated by industry can also play an important role when it comes to providers and networks that fall out of the scope of the Directive, but who may well distribute content that is impairing to the development of minors. Some self-regulatory initiatives (e.g. the CEO Coalition[39] and You Rate it[40]) have already been taken by industry, not only involving parties qualifying as media service providers, but also (or especially) other providers and networks like intermediate parties, aggregators and providers of social network sites. However to be truly effective, these initiatives need to be reinforced.

Because of these research findings, ERGA has explored to what extent mechanisms of shared responsibilities and self- and co-regulation could further contribute to an environment whereby all relevant parties have incentives to provide consumers with appropriate tools to protect minors from harmful content. It explored how aforementioned mechanisms should be balanced with an effective enforcement regime and which rules need at least an effective enforcement by national authorities.

4.3 Balancing co-regulation with state regulatory arrangements

4.3.1 Content that might seriously impair

State regulation
Regarding **content that 'might seriously impair'**, a majority of ERGA-members holds the opinion that the EU-legislative framework should facilitate or even require that the protection from content that might seriously impair is enforced exclusively through **state regulatory arrangements**.

It was pointed out by some ERGA-members that especially with regard to content that might seriously impair parents need 'assistance' from the legislation. Despite the important role of parents, there must be a legal framework that supports the protection of minors, especially taking into account those who are not living in functional families. With regard to content that might seriously impair it is also necessary to have a mechanism that will prevent children from accessing this type of content, especially when parents are indifferent and phlegmatic in this respect.

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[39] The CEO Coalition is one of the instruments of the European Strategy to create a Better Internet for Children and is composed of 31 leading companies across the value chain in order to develop, through a self-regulatory process, appropriate measures for inter alia reporting tools for users, age-appropriate privacy settings, wider use of content classification and a wider availability and use of parental control.
[40] In response to an initiative of the CEO Coalition, the British Board of Film Classification (BBFC) and the Netherlands Institute for Classifying Audio-visual Media (NICAM) have developed a tool for rating user generated content across different territories and platforms.

Supplemented by alternative mechanisms

Nevertheless, several members also believe that alternative mechanisms will be needed. Some think that self- and co-regulatory mechanisms could be incorporated here as well, provided they demonstrate effectiveness. One ERGA-member drew attention as to the question whether in a specific country the enforcement of legal consequences associated with the dissemination of content that might seriously impair can be exercised by non-state bodies. If not, then co-regulation will not be an option in this particular country. One member believes that if the requirements of a revised Directive were to be imposed only on a limited set of regulated services (as they are now), it would be most appropriate for a statutory regulator or a co-regulator with a statutory backstop body (which body would intervene if this system would fail) to oversee the application of restrictions for the strongest and potentially most harmful content.

4.3.2 Content that is likely to impair

Encourage effective co-regulation

In response the questionnaire, concerning content that is **'likely to impair'**, the vast majority of ERGA-members would be in favor of an EU-legislative framework that would encourage and facilitate regulations based on an effective **co-regulatory system**.

Many ERGA-members also share the view that the EU-legislative framework should require that these regulations are enforced through state regulation in case Member States are reluctant to opt for co-regulatory systems. This is especially important as a few other members indicated that in their view protection from impairing content cannot be dealt with exclusively by co-regulation, and they see there a role for state regulation as well. Another group of ERGA-members expects many challenges when trying to implement such co-regulatory mechanisms. One member pointed out especially in the online environment there is a need for much more protection and here in particular, co-regulation could be a step forward. One member expressed self- and co-regulation could only be beneficial in the area of exclusively online services.

Thus the EU-legislative framework should encourage co-regulation in the field of protection from content that is 'likely to impair' but cannot force Member States to opt for co-regulation. A revised EU legislative framework should allow Member States to choose and implement a system that is best suited for their national environment and respects the differences between the different constitutional systems. As one member put it: countries that would experience difficulties implementing co-regulatory systems could profit from maximum harmonisation clauses in a harmonised Directive.

4.4 Co-regulation further explored

The majority of respondents clearly indicated a desire to see existing opportunities in their country being used to implement co-regulatory arrangements for content categorization and age classification and to provide for parental control systems. These estimations seem to be fueled by positive experiences of ERGA-members with co-regulatory systems already (partly) in place in their countries and hence support the finding of the inventory paper in this respect.

Best practices

A selection of positive experiences with co-regulatory systems that were suggested by ERGA-members: Norway suggested their system where all broadcasters and providers of on-demand audiovisual media services are obliged to label their programs with set age limit during programmes. Age limits are set based on guidelines drawn up by the Norwegian Media Authority and the authority supervise the classifications made by the industry. Furthermore, the same age limits and guidelines also apply to the age classification of cinema films (carried out by the authority) and DVD/Blu-Ray (carried out by the industry), establishing one singular system for age classification across all major audiovisual media platforms in Norway. Germany referred to its system based on regulated self-regulation, which exists already since 2003. It works well in general and problems only occur sometimes when it comes to the mutual recognition of age classifications among different self-regulatory bodies. Ofcom addressed the formal co-regulatory regimes (backed by statute) in its country in the audiovisual field as is the case with ATVOD which is responsible for on-demand media services, as well as voluntary collaborative relationships with industry stakeholders, to achieve protection for minors on notified on-demand programme services. As a result, regulated on-demand services with "specially restricted material" must operate a 'Content Access Control System' ("CAC System") which includes effective age verification. The British Board of Film Classification (BBFC) operates a certification system for offline audio visual content media under the Video Recordings Act 1984 and has published transparent classification guidelines.[41] This classification system was used as a benchmark for the categories of "prohibited material" and "restricted material" under UK law. The Netherlands briefly touched upon its system of co-regulation that has been introduced already in 1999 and which is based on a shared responsibility between CvdM and NICAM (Netherlands Institute for the Classification of Audiovisual Media). That the co-regulation system is considered to be interesting and useful is demonstrated by the fact that many VOD service providers have now opted on voluntary basis to adapt the classification system to their VOD services, such as Netflix, HBO and the VOD operators association VodNed. France suggested that their system is not based on co-regulation, but on efficiently sharing responsibility with TV services.

First steps towards co-regulation

While some countries have already a long tradition in co-regulation in the field of protection of minors, in other countries preparations for, and the first steps towards a co-regulatory system have been undertaken. Another member mentioned that in its country co-regulation is still in its infancy but there are indicators that in the area of protection of minors, there is good will amongst all stakeholders to ensure protection from harmful content.

One ERGA-member indicated it has the statutory mandate to encourage co- and self-regulation mechanisms. Its current legal system already foresees the adoption of self-regulatory arrangements for content categorization and age classification of audiovisual media content. It is not clear how quickly such a self-regulatory approach could transform into a system based on co-regulation but it was deemed to be possible.

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[41] <http://www.bbfc.co.uk/sites/default/files/attachments/BBFC%20Classification%20Guidelines%202014_5.pdf>.

Criteria for co-regulation

Should we attempt at a system with self- or co-regulatory arrangements, then no one will doubt that we have to make sure the effectiveness, efficiency and legitimacy of regulation and supervision is ensured.

Following some options given in the questionnaire, ERGA-members identified the following minimum requirements of a co-regulatory system, in order to be successful:

- High level of organization and low administrative burden
- Quick decisions on complaints
- Take account of cultural differences built into the system
- Alignment of public and private interests[42]
- Provide for an effective regulatory framework with constitutional guarantees
- Serious checks and balances, dealing with potential non-compliance and over-design[43]
- Guarantee basic principles of good self- or co-regulation[44]
- Evaluation mechanism

One member stated good practice criteria for co-regulation to be: public awareness, transparency, significant industry participation, adequate resources, clarity of processes, ability to enforce codes, audits of performance, system of redress in place, involvement of independent members, regular review of objectives and non-collusive behaviour. Hence these criteria partly overlap with the aforementioned minimum requirements. Flexibility to be built into the system was also mentioned as an important requirement.

Reflection of these criteria in the EU-legislative framework

A few ERGA-members are of the opinion that the requirements of a co-regulatory system should be reflected in a revised Directive or alternative (legislative) instrument. It was suggested that especially in countries where co-regulation is not a tradition more guidance at EU-level could be welcome to encourage new initiatives. In such cases extra efforts are needed to promote the system, encourage cooperation and make the system workable.

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[42] For example: do the industry participants have a collective interest in solving the problem; would the likely industry solution correspond to the best interests of citizens and consumers; would individual companies have an incentive not to participate in any agreed scheme; are individual companies likely to "free-ride" on an industry solution; and can clear and straightforward objectives be established by industry?

[43] This means *i.a.* that all actors involved should be clearly accountable for their respective involvement and that an effective system of sanctions is in place thereby guaranteeing voluntary compliance also under difficult circumstances, for instance by the backstop powers of an independent public supervisory authority in order to guarantee the fulfilment of the regulatory goals.

[44] This means that co-regulatory measures must be aligned to public purposes to guarantee the objectives of public accountability, effectiveness and legitimacy. Therefore, public and private supervisory authorities will constantly need to balance different interests and demands according to good regulation principles such as legality, independence, transparency, effectiveness, and responsibility.

Some members believe a revised Directive should promote co-regulatory arrangements without being too detailed on the criteria for co-regulation and thus leave enough discretionary power and freedom to the EU Member States to adapt the co-regulatory arrangements to their national cultures and traditions. It was mentioned by a few ERGA-members that too many requirements in a revised Directive could obstruct various solutions that might be preferable in different countries since there is certainly not a 'one size fits all solution'. One member suggested that the European Commission could develop guidelines of best practice in order to promote instruments of co- and self-regulation in the Member States.

In any case, it seems only reasonable that the European framework would **at least prescribe** that if Member States would opt for co-regulation, legal provisions describe the (ultimate) consequences - such as falling back to the system of exclusive state-supervision - when the regulatory goals would not be met or when there would be another failure of the self-regulatory arrangements and where co-regulation requires periodic monitoring by a statutory backstop body to ensure effective enforcement. Especially in the field of protection of minors effective enforcement is essential, and the importance of these criteria was stressed by many ERGA-members at various occasions.

In addition it could be considered to further enhance the sharing of best practices between regulators, for instance on models and criteria in the field of effective co-regulation.

4.5 Different players in the media value chain

Currently the audiovisual media service provider has the legal responsibility to comply with the legislative framework, hence to provide for sufficient protection measures. However, if we talk about content categorization, age qualification and providing for technical protection measures, various other actors play an important role in developing and providing for these measures. Involvement of these various actors that have a particular role in this respect is therefore of fundamental importance.

First mapping
In the questionnaire characteristics were suggested in order to make a first mapping of which actors have an essential role in content categorization, age qualification and providing for technical protection measures.

- Content categorization
From the replies to the questionnaire can be deducted that the vast majority of ERGA-members indicated the actor that has an essential role in **content categorization** is the organization or person in the value chain[45] who is responsible for the creation of the content.

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[45] A value chain *i.a.* demonstrates the multiple routes that services can follow between creation and consumption.

A fair number of members are of the opinion that the organization or person involved in the content creation process may have an essential role, but cannot be held responsible for the content categorization. They do not believe it is reasonable to expect that the party responsible for the content creation can always take care of the content categorization, also because it cannot control the means of content delivery. One member referred to the many borderline cases in practice where it will be hard to draw the line. This will be especially the case for user generated content where a natural person plays the roles of being content creator and publisher at the same time. It was also addressed that the content creator can be often an entity or person who is not subject to media regulations, so in such cases content categorization by a content producer may not be efficient. The fact that a lot of content is created outside of the EU territory would also hinder such approach. Alternatively, these members suggest that the party in the value chain who is responsible for presenting/offering content should be held responsible for both content categorization and age classification. The high importance of collaboration between stakeholders in achieving a more common technical interface and enhanced usability was also addressed in this respect.

- Age classification
It can be deduced from the replies to the questionnaire that the vast majority of countries indicated the actor that has an essential role in **age classification** is the actor who is responsible for presenting/offering content to the viewer.

- Technical protection measures
From the replies to the questionnaire can be deducted that the vast majority of countries indicated the actor that has an essential role in **technical protection measures** (like parental control systems and pin protection/age verification tools) is the actor in the value chain who can effectively supply for those measures (*i.e.* is textually and technically in the position to realize technical solutions) and has decisive influence on their functioning (*i.e.* is capable to implement the respective technique correctly into the value chain).

Further analyses
The ERGA report on material jurisdiction defines a **traditional TV value chain** and an **online value chain of distribution**.[46]

Traditional TV value chain

Producers → Packagers (Channels) → Platforms → Navigation Tools → Consumer Device (TV Set)

Online audiovisual content distribution chain

Content Producers → Content Publishers → Content hosts and platforms → Internet Service Providers → Search and Navigation → Consumer Device

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[46] ERGA Report on material jurisdiction in a converged environment, 27 November 2015, p. 22, 23.

The first mapping of actors that (at least) have an essential role in content categorization, age qualification and providing for technical protection measures, shows basically **all actors in these two value chains play an important role in developing and providing for these measures**. In most cases more than one actor in the value chain will have an integral role to play in providing any one of these protection measures. It was also indicated it is important to take into account that editorial responsibility can assume multiple degrees of decisions and that often decisions on the selection of content and the organization of content are subject to split control. If legal responsibilities are shared with other actors in the value chain, this is something to take into account also.

Taking further account of the complexity of the **two value chains** and the variety of actors involved, especially where online and over the top media content is involved, research in this field should be intensified. Such further analyses should include stakeholder input and give **further consideration** on the roles and responsibilities of different players in the media value chain (such as: intermediate parties, aggregators and online service providers[47]). Part of such exercise could be to investigate how policymakers can create an environment within which the relevant intermediaries have incentives to provide consumers with appropriate technical tools weighing the need for protection against the benefits of the limited liability framework set out under the e-Commerce Directive. In this respect also the findings of the report of the ERGA subgroup on material jurisdiction in a converged environment have to be taken into account.

4.6 Conclusions

The aforementioned observations and considerations lead to the conclusion that many ERGA-members are in favour of introducing of **co-regulatory mechanisms** in order to protect children from content that is **'likely to impair'**. As already indicated in the inventory paper, by closely involving both regulatory authorities and stakeholders, co-regulation can offer flexibility, prompt adaptability to change, legal certainty and efficient enforcement, potentially creating stronger support for regulation. Especially in domains where fundamental rights, such as freedom of expression are involved, it can serve as a good substitute for government control. The majority of respondents clearly indicated to see opportunities in their country to implement co-regulatory arrangements for content categorization and age classification and to provide for parental control systems. Many ERGA-members also share the view that the EU-legislative framework should require that regulations on content that is likely to impair the development of minors are enforced through state regulation in case Member States are reluctant to opt for co-regulatory systems.

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[47] This category includes *e.g.* the providers of social network sites containing AV content.

Putting in place a co-regulatory system would require at least non-state regulatory components, including the creation of specific non-state organisations (self-regulatory bodies), rules or processes. In addition, these organisations, rules or processes should aim on influencing decisions by persons or by organisations. Finally, all this should – at least partly – be done by or within the organisations, or those sections of the members of society, for whom the regulation is intended. The State shall leave discretionary power to a non-state regulatory system and shall use regulatory resources to influence the outcome of the regulatory process (for instance by the backstop powers of an independent public supervisory authority), thus guaranteeing the fulfillment of the regulatory goals. Legal provisions should describe **the (ultimate) consequences** - such as falling back on a system of exclusive state-supervision - when the regulatory goals are not met or when there is another failure in self-regulatory arrangements.

In response to the questionnaire ERGA-members already identified further criteria that could be taken into consideration for co-regulation to be successful in this domain. Many members would welcome stronger encouragement of co-regulation at EU-level, although according to some a revised Directive or alternative guidelines at EU-level should not enter too much into further details on the criteria of co-regulation and should acknowledge that Member States must have enough margins of appreciation.

In that respect it could be considered to further enhance the sharing of best practices between regulators, for instance on models and criteria in the field of co-regulation.

In the field of content that '**might seriously impair**' a vast majority of ERGA-members sees and expects an important role of **state regulation**. It was suggested however by some that also here co-regulatory arrangements could play a role, given their effectiveness is ensured.

ERGA-members feel it is not appropriate to address exclusively the media service providers since various **other parties** are needed to provide consumers with appropriate tools to protect minors from harmful content. To contribute to an environment whereby all relevant parties have incentives to provide consumers with appropriate tools to protect minors from harmful content, **ERGA encourages the industry to take initiatives in the field of content categorisation, age classification and technical protection measures**. Not involving these parties in an overall approach can ultimately have an erosive effect on media regulation and other sectorial legislation as the legitimacy and support will slowly but surely decline. Taking further account of the complexity of the **two value chains** that were identified in the ERGA report on material jurisdiction and the variety of actors involved, especially where online and over the top media content is involved, ERGA suggests research in this field has to be intensified. Such further analyses should include stakeholder input and give **further consideration** on the roles and responsibilities of different players in the media value chain (such as: intermediate parties, aggregators and online service providers). Part of such exercise could be to investigate how policymakers can create an environment within which the relevant intermediaries have incentives to provide consumers with appropriate technical tools.

Responses to the questionnaire indicated co- or self-regulation could also work well as voluntary collaborative relationships with industry stakeholders, to achieve protection for minors on other AV-content (that falls outside the scope of the Directive).

Theme 5

MEDIA LITERACY

5.1 Introduction

Finally, as touched upon earlier in this report, the empowerment of users can be considered as a key element to the protection of minors. The current Directive mentions the promotion of media literacy as an important instrument in achieving empowerment. Scaling up awareness and empowerment is one of the main goals of the European Strategy to create a Better Internet for Children. Also in response to various questions in the questionnaire, the importance of improving media literacy, raising awareness and empowerment of the users are typically subjects that are brought up by many countries.

This section of the report explores whether we need further actions, for instance at EU level and/or more specific and explicit references in a future Directive, to speed up developments and/or achieve more harmonisation within the EU.

5.2 Inventory paper findings

Section 5 of the inventory paper shows us that media literacy is already well setup in Europe. Media literacy and media literacy education[48] have become an increasing concern in Europe for about 10 years, as much for policy makers as for civil societies. **In all EU countries there are initiatives** to increase the awareness of audiences and to empower media consumers. Although due to different national traditions and differences in financial sources there appear to be **significant differences in the pace and scope of activities in various Member States**. Development of actions in the different European Member States to promote and achieve media literacy, differ greatly from one country to another. In most countries, as encouraged in European recommendations, media literacy is a multi-stakeholders concern, but here as well the types of actors involved differs. Generally, actions – in a broad sense – are carried out by public authorities (governments, public agencies, regulatory authorities, etc.) and public-funded actors, research institutes, private actors (especially the media and Internet industry), the educational system (early childhood education, school system and non-formal education), libraries as well as NGOs and civil society organisations. Many publications stress that such a diversity of players involved reflects the various interests in media literacy and helps to develop it by different means and through various sides, what increases the chances to reach more users. It most however be noted that the inventory paper also points out in some countries the absence of involvement of public authorities leads to a lack of coordination between the different policies and actions.

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[48] "Media literacy" is understood as an objective and "media literacy education" as the means to reach media literacy in the society.

5.3 Questionnaire findings

Given the uneven levels of involvement and actions development in the different European Member States and the lack of harmonisation, even at a state level, ERGA-member were asked to express an opinion on different approaches that could enhance the effectiveness of the systems of media literacy that have already been set up in EU Member States. The ERGA questionnaire presented differed approaches. Three of them received particular support by the vast majority of respondents; the coordination of actions, involvement of educational institutions and action plans at EU-level.

1. Coordination of actions
Regarding the coordination of actions, the vast majority of respondents indicated it would be very helpful to get media literacy to children and young people through a **national strategy, with national referents to coordinate actions**. It was suggested that many organizations promote media literacy but due to a lack of a national strategy the initiatives become less effective. It was suggested that more joint efforts and more centralization of different initiatives could help to avoid fragmentation or duplication of activities.

A proposal was furthermore made to continue to develop national networks of stakeholders, bringing together government, industry and non-profit sector, to work towards particular goals. Such networks can be very effective at sharing best practice and collaborating, each partner contributing their particular expertise and quickly identifying gaps in provision or skills. Plugging such gaps can be challenging. However, it was pointed out that the continued involvement of key commercial service providers in this space can be beneficial here. One possibility is for them to develop online information remedies to make clearer to users the boundaries and limitations of the content and services they are engaging with. For example, to provide clearer privacy policies, terms and conditions, clarity over the boundaries between different types of content, *e.g.* advertising and editorial, etc.

2. Involvement of educational institutions
With respect to the type of actions that could be beneficial, a majority of respondents indicated the undoubted importance of the **involvement of education and schools**. Given the fact that the teaching of media literacy is a challenge for the whole of society, the coordination and networking with educational institutional is considered useful.

It seems impossible however to draw firm conclusions on the further substance members give in this respect. It was suggested by a member that regulatory/public authorities should provide the teaching of media literacy. It was also suggested that regulatory authorities can act as mediators between content providers and recipients to stimulate public discussion. Others suggested that it would be helpful if media literacy would be introduced in school curriculum, for instance through a legal obligation. Some members suggested to improve modern methods of teaching media literacy and improve digital addressing. Another member suggested setting up an online educational initiative and thus creating a larger audience for the scholar educational system and gaining more public attention. One Member suggested that it would be important to increase awareness among members of industry and to involve all parties of the media value chain in media literacy education activities.

3. Action plans at EU-level

A vast majority of respondents indicated to favour **action plans at EU-level** to further enhance the coordination between the different institutions in different Member States. It was pointed out that this could also be beneficial to the development of the subject and increase more widespread awareness. EU-wide support for national coordinators to collaborate and share expertise and good practices would be needed to make the efforts more effective. Others however indicated the aims of coordinated actions plans at EU-level are clearly attractive, but there is a need to balance such ideas with the risk of media literacy becoming the responsibility of one particular body or group (or indeed piece of legislation).

Other suggestions

Other suggestions made to enhance the effectiveness of systems of media literacy include:

- More involvement of the media authority

- Training of professionals

- Some members were in favour clarifying criteria on media literacy. Others suggested that there is also a risk that continuing to try to define media literacy "once and for all" could divert resources from more constructive tasks; it is an amorphous concept and there is a benefit in retaining a wide understanding of what it represents, which allows as many stakeholders as possible to participate and take responsibility for it.

- Research conducted into media use. It was suggested that this can offer key insights into how and when children in particular can best be equipped with the adequate resources to navigate the media environment throughout their lives.

- Public funding could promote the development of media literacy activities.

One member suggested that the promotion of media literacy is an area that is so multi-faceted that it is hard to say definitively that one strategy or another is going to make the key difference.

Focus on the use of protection tools

In response to questions in the questionnaire on protection tools many countries have seized the opportunity to stress the importance of making both parents and children media literate and **to enable them to use available protection tools** in an adequate way. The importance of separate media and digital literacy programmes to be rolled out for parents and children and a high provision of adequate learning and use of support tools, cannot be underestimated according to many. Special attention should be paid also to safeguarding the rights of minors according to the Articles 13 and 17 of UNCRC.

5.4 Conclusions

The majority of ERGA-members acknowledges that - however media literacy cannot fully replace other measures of protection of minors - by empowering users, media literacy can raise awareness of risks of harmful content and behaviour, and understanding how to prevent their consequences. Therefore the promotion of media literacy is among its other comprehensive benefits considered to be an **important complementary measure** to the aforementioned tools to protect minors.

The vast majority of respondents indicated to be in favour of **further enhancing the effectiveness** of the systems of media literacy that have already been set up in EU Member States. Many of the proposed strategies were supported by the majority of respondents.

The vast majority of respondents would consider it very helpful to bring media literacy to children and young people through a **national strategy**, with national referents to coordinate actions. In most Member States many organizations promote media literacy but due to a lack of a national strategy the initiatives can become less effective. It was suggested that more joint efforts and more centralization of different initiatives could help avoid fragmentation or duplication of activities.

Also, among the various ways to promote and achieve media literacy, the deeper **involvement of education and schools** is considered undoubtedly important by most ERGA-members. Furthermore, the majority of ERGA-members would favour **action plans at EU-level**. These action plans could for instance further promote the sharing of best practice, lessons learned, and research. Both parents and children should be aware of all available protection **tools** and be able to use them in the most adequate ways. Also here the promotion and encouragement of media and digital literacy can contribute to further empowerment of the user, for instance by means of a website listing information about sensible media usage and teaching programmes, and providing for links to recognized protection tools.