

Audiovisual Media Services in the EU Next Generation Approach or Old Wine in New Barrels? (*)

Peggy VALCKE, David STEVENS, Eva LIEVENS & Evi WERKERS

ICRI – K.U.Leuven – IBBT (**)

Abstract: In this article, we analyse how the European legislator is currently responding to some of the recent changes in the media and communications environment with the adoption of the Audiovisual Media Services Directive. What is the European approach to address the challenges brought about by the technological changes in the audiovisual sector? How is the EU devising a future model for content regulation? The article also puts forward a number of critical remarks that should be taken into account in the framework of the debate on future content regulation, indicating where the AVMS Directive falls short.

Key words: content regulation, audiovisual media services.

New technologies – be it in the communications, pharmaceutical, agricultural or any other sector – bring about new challenges for policy makers. In the last ten to fifteen years, the media and telecommunications sectors have witnessed the emergence of digital technologies, leading to new communications means (such as the Internet), the convergence of networks and services, the multiplication of the number of devices with which traditional and emerging new media services can be accessed, and moreover, the unprecedented lowering of the threshold to media content production and distribution. The rocketing popularity of "user-generated content" or "personal media" (citizens sharing their own photos, music or videos online)¹ may change the public sphere dramatically and may have a major impact on societies. Not surprisingly, this is putting pressure on the traditional media law model (based on the premise of few but professional senders and many receivers). Once more, law is challenged by technology...

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(**) www.icri.be; www.ibbt.be

¹ Issues concerning user-generated content fall outside the scope of this article. For an analysis of this topic, cf. Monica ARIÑO, 2007.

In this article, we analyse how the European legislator is currently responding to (some of) these changes with the adoption of the Audiovisual Media Services Directive, point out a number of potential gaps in the new framework and put forward some recommendations to fill these gaps.

■ The Audiovisual Media Services Directive

Introduction: the legislative process

On 13 December 2005, the Commission published its long-awaited² proposal for the revision of the Television without Frontiers Directive (which has been re-named the "Audiovisual Media Services Directive", hereinafter: AVMS Directive). Basically, the Commission proposed two major reforms: on the one hand, an extension of the TWF Directive to on-demand audiovisual services, on the other hand, a relaxation of the advertising rules. The latter is a response to the (both advertising and broadcasting) sector's request for more flexibility in the light of new advertising techniques and the declining success of traditional advertising spots. The introduction of a horizontal, comprehensive regulatory framework for all audiovisual media services was considered a necessity by the Commission in order to create a level playing field between traditional broadcasters (subject to the more burdensome regulation laid down in the TWF Directive) and new media players offering the same or similar audiovisual media content but in a non-linear (on-demand) form (enjoying the "light-touch" approach of the E-Commerce Directive). Technology-neutrality and proportionality require future content regulation to be at the same time "platform-independent" (imposing content requirements irrespective of the underlying platform or distribution means) and "graduated" (implying a two-tier system of rules for linear and non-linear services, with minimum rules for all services and a sub-set of heavier rules for the first category only).

² The modernisation of rules for audiovisual services was already launched in 2002 with the Fourth Communication from the Commission (COM(2002)778final) relating to the application of the Television without Frontiers 89/552/EEC directive for the period 2001-2002. In an annex to this communication, the Commission proposed a work programme for the modernisation of rules for audiovisual services and a timetable of future actions.

After a first discussion on the Commission's proposal in May 2006, the Council reached an agreement on a general approach of the proposed Directive on Audiovisual Media Services on 13 November 2006. Officially, this "general approach", based on the Finnish Presidency compromise text, was stated to be broadly in line with the Commission proposal. Despite this wording, from the two-hour debate that was streamed live, it appeared that a number of Member States had severe reservations about the Finnish text. Sweden, Ireland, Latvia, Belgium, Lithuania, Luxembourg and Austria did not agree with the compromise text and Germany, Italy and Austria announced that they would add statements to the Council's minutes. Although agreeing in principle with the compromise text, almost all the other Member States disagreed with one or more of the provisions of the Finnish proposal.

On the same day, the leading Committee in the European Parliament (Culture and Education) adopted the report of Ms. Hieronymi showing overall convergence with the Commission's proposal and the general opinion of the Council, but containing several important amendments relating to the provisions on scope, country of origin, the basic rules applicable to all audiovisual media services (whether linear or non-linear) and advertising and product placement. Exactly one year after the publication of the Commission's proposal, on 13 December 2006, the European Parliament voted in plenary session in favour of the Hieronymi Report, thereby completing the first reading of the Directive³.

An informal Council, held on 12 February 2007 in Berlin, prepared the ground for a political agreement on a common position on 24 May 2007 (under the German Presidency). The Commission published an updated proposal - consolidating its initial proposal, the amendments adopted by the European Parliament in first reading and the amended Commission proposal - on 9 March 2007⁴. After the adoption of the common position in October 2007⁵, the Parliament finished its second reading on 29 November 2007,

³ European Parliament legislative resolution of 13 December 2006 on the proposal for a directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (COM(2005)0646 – C6-0443/2005 – 2005/0260(COD)) (available on the website of the European Parliament; direct link available on the Commission's website dedicated to the review process: http://ec.europa.eu/comm/avpolicy/reg/tvwf/modernisation/proposal_2005/index_en.htm).

⁴ http://ec.europa.eu/comm/avpolicy/docs/reg/modernisation/proposal_2005/avmsd_cons_ame nd_0307_en.pdf.

⁵ Common Position (EC) No 18/2007 of 15 October 2007 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European

approving the text without any amendments⁶. Finally, the Directive was adopted on 11 December 2007 and published on 18 December 2007⁷.

Overview of the key reforms

The ingredients for Europe's magic potion to shape its new regulatory framework for audiovisual content are:

A "horizontal approach", meaning that the new framework will apply both to linear and non-linear audiovisual media services (the "content layer")

One of the major changes is the extension of the scope of application from traditional television to all "audiovisual media services" (as is reflected in the Directive's new title). An "audiovisual media service" is defined as:

"a service as defined by Articles 49 and 50 of the Treaty which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC"⁸.

Community, with a view to the adoption of a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ 18 December 2007, C 307E, 1.

⁶ European Parliament legislative resolution of 29 November 2007 on the Council common position for adopting a directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (10076/6/2007 – C6-0352/2007 – 2005/0260(COD)).

⁷ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ 18 December 2007, L 332, 27.

⁸ A number of services fall outside of the scope of the AVMS Directive: personal websites or non-commercial blogs are excluded, as the concept is confined to economic activities; only mass media are covered, so private communications - such as e-mail or chat services - are not included; the delivery of audiovisual content should be the principal purpose of the service, and not just incidental; hence, travel agents or car manufacturers offering a website with video clips of exotic locations or the latest car model do not fall within the scope of the new Directive; online editions of newspapers or magazines, radio services are not targeted; furthermore there has to be some level of editorial responsibility, so YouTube-like providers are excluded if they do not exercise such responsibility.

Two categories of services fall under this broad notion. "Linear" audiovisual media services or "television broadcasting" are defined as:

"an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule".

So, basically, linear television broadcasts are scheduled broadcasting via traditional TV, the internet or mobile phones, "pushing" content to viewers. "Non-linear" audiovisual media services or "on demand audiovisual media services" are defined as:

"an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider".

With this type of services, the viewer "pulls" the content from a network and has full control over what he/she watches at which moment (justifying a lighter tier of requirements) ⁹.

"Technology-neutrality", implying that the means of conveyance used or the underlying technology is irrelevant

The AVMS Directive covers audiovisual services irrespective of whether the content is offered in a linear way or on-demand, which implies that new types of delivery modes (like Internet or mobile platforms) are also included.

Country of origin principle

The country of origin principle entails the obligation for the home country to exercise control over its broadcasters/service providers and (other side of the medal) the prohibition for receiving countries to establish a secondary control over incoming content services. For the service providers themselves, this implies that they only have to comply with the rules of the Member State where they are established, even if their services are received in other Member States as well. This principle is key to the creation of the internal market. Without it, service providers risk to be subject to 27 different national legal systems if they operate on a pan-European basis (like online providers often do), which would undoubtedly amount to a serious barrier to the deployment of new audiovisual services. Therefore, the country of origin

⁹ Recital 42 AVMS Directive.

principle, which already was the cornerstone of the original TWF Directive of 1989, also remains at the heart of the new AVMS Directive and is essential in order to ensure the free flow of information and audiovisual programmes in the internal market ¹⁰.

"Graduated regulation of 'regulatable' content", distinguishing between two tiers of regulation

- A set of minimum requirements applicable to **all** audiovisual media services, both linear and non-linear, and including:
 - the obligation to render public certain information about the provider's identity, address, contact details (Article 3a AVMS Directive);
 - the prohibition to make services available in such a way that might seriously impair the physical, mental or moral development of minors (Article 3h AVMS Directive for on-demand services and Article 22 AVMS Directive for linear services);
 - the prohibition to provide content that contains any incitement to hatred based on race, sex, religion or nationality (Article 3b AVMS Directive);
 - the obligation to promote production of and access to European works (with lighter requirements for on-demand services in Article 3i and more detailed obligations for linear services in Articles 4-9)
 - basic (qualitative) obligations for audiovisual commercial communications, like being distinguishable from editorial content, respect human dignity, not include any discrimination, not being offensive to religious or political beliefs, not cause moral or physical detriment to minors, not promote cigarettes and tobacco products... (Article 3e AVMS Directive);
 - basic (qualitative) obligations for sponsoring of audiovisual media services, like having no influence on editorial independence, being clearly identified at the beginning, during and/or the end of the programme... (Article 3f AVMS Directive);
 - rules regarding product placement: notwithstanding the general prohibition of product placement, there are a number of circumstances in which this form of advertising can be allowed, under strict conditions (Article 3g AVMS Directive);
 - aiming at being gradually and where feasible accessible to people with a visual or hearing disability (Article 3c AVMS Directive).

¹⁰ Article 2 and 2a AVMS Directive.

- A tier of additional requirements applicable only to **linear** audiovisual media services:
 - the promotion of distribution and production of European works ("cultural quota") and of independent works;
 - more detailed qualitative and quantitative requirements for television advertising, sponsorship and teleshopping: i.e. more detailed compared to the aforementioned obligations applying to any type of commercial communication, but considerably relaxed vis-à-vis the advertising rules in the current TWF Directive (Articles 10-20 AVMS Directive);
 - the prohibition to broadcast programmes which might seriously impair the development of minors, in particular programmes containing pornography or gratuitous violence, and the obligation to show programmes which are likely to impair minors only respecting a watershed or using technical measures to shield minors from these programmes (Article 22 AVMS Directive);
 - right of reply (still limited to a right of correction).

"Co and self-regulation"

In line with the general European policy on better regulation¹¹, there will be a greater reliance on co- and self-regulatory regimes to implement the provisions of the new Directive and to achieve its objectives (Article 3 § 7 AVMS Directive). While the Commission initially only referred to co-regulation as a means for implementation, the final text of the Directive now requires Member States not only to encourage co-regulatory regimes in the fields coordinated by the Directive, but also – in line with the Council's and Parliament's opinion – to encourage self-regulatory regimes. It does, however, point out in recital 36 that:

"while self-regulation might be a complementary method of implementing certain provisions of this Directive, it should not constitute a substitute for the obligations of the national legislator".

Hence, a logical conclusion would be to assume that a minimum of government involvement is required for the implementation of the obligations included in the Directive. Given that the same recital defines co-regulation as "[giving], in its minimal form, a legal link between self-regulation and the

¹¹ See for instance: Interinstitutional Agreement on Better Law-making, OJ 31 December 2003, C 321, p. 1; Commission Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union, COM(2005) 97.

national legislator in accordance with the legal traditions of the Member States", we can wonder if co-regulation is preferred above self-regulation to apply the Directive ¹².

That these five principles should constitute the basis for the new European approach towards content regulation in the 21st century media landscape, can undoubtedly be broadly supported. Whether the new AVMS Directive fills in the details of these principles in a correct and appropriate way in order to provide a consistent and future-proof regulatory framework for audiovisual content services remains to be seen. In the second part of this article, we will pinpoint some issues – gaps – where the Directive could (should) be redrafted in order to be more forward-looking...

■ Building blocks for future content regulation

Old wine in new barrels?

In previous papers and publications (VALCKE & STEVENS, 2007, 2006; VALCKE, 2006), we have raised the question whether the AVMS Directive really adds something to existing obligations for non-linear services. Although the extension of the scope of application seems revolutionary at first sight, a closer look at the basic tier of requirements to which on-demand services are made subject, teaches us that it predominantly lists rules that – in our view – were already applicable in most (if not all) EU countries. It is often disregarded that general civil and criminal laws already contain some 'content' rules which are applicable to any type of media service. Some examples.

Rendering certain information public to your customers is often part of general consumer protection law. Protection of minors and respect for human dignity are rules which belong to the core of public decency rules, the infringement of which is usually penalised (hence, these rules can be found in national criminal laws). "Promoting, where practicable and by appropriate

¹² Of course, following this interpretation the inclusion of "self-regulation" in Article 3 § 7 AVMS Directive seems somewhat contradictory. It is also possible to argue that a correct interpretation of recital 36 depends on the exact scope of the definition of the concepts self- and co-regulation.

means, access to European works" (Article 3i AVMS Directive) is mainly a symbolic provision, the practical meaning of which will probably diverge widely throughout the Member States (in some Member States perhaps amounting to a zero-burden). The qualitative requirements imposed on audiovisual commercial communications are either to be found already in other European Directives¹³ or in codes of conduct.

But, we could see some benefits in systematically bringing all these obligations together in a harmonised regulation for the audiovisual sector. Member States will probably implement those provisions in their broadcasting legislation (even if they already exist elsewhere), bringing them into the ambit of the media regulator's supervision (and hence, lowering the threshold for citizens to complain in case of non-compliance and improving enforcement).

It can be noted that adding something new does not really seem to have been the Commission's ambition from the start, referring to the proportionality principle as a justification (see explanatory memorandum to the Commission's initial proposal, p. 9: "As the harmonisation of minimum rules for non-linear audiovisual services mostly does not introduce new obligations for operators but only harmonises them at European level to implement the country of origin principle, it therefore seems proportionate to the objective").

Will convergence result in functional content regulation?

Although the AVMS Directive pretends to install a comprehensive framework for content regulation at the European level, taking technological neutrality as its leitmotiv, its scope remains limited to electronic audiovisual services. We should ask ourselves whether genuine technological neutrality does not necessarily imply a complete level playing field for online and offline media, for electronic and printed media. Is it still justified that a lifestyle television channel (both offered in a linear way and on-demand) will be

¹³ Like the E-Commerce Directive (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ 17 July 2000, L 178, p. 1) or Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, OJ 20 June 2003, L 152, p. 16.

subject to certain rules which are not applicable to its paper counterpart (even if that life-style magazine is produced by the same company responsible for the TV content)...?

In our view, the distinction should no longer be made along the lines of electronic versus paper media, but rather on the basis of functional criteria, such as: does the content serve an informative, entertaining, educative, or other purpose? While it seems appropriate to regulate (professional) news and information services more closely in terms of objectivity, transparency, impartial news gathering and provision, pluralism, etc., entertainment content could be made subject to less strict rules in that regard (although they might still be subject to rules relating to public decency and hate speech). Or, within entertainment, one could make a distinction between adult content and children's media (compare it with baby food, being subject to stricter requirements than ordinary food).

Engineers are currently developing technological solutions for convergence that will enable the seamless provision of content and information services, detaching these services from the underlying medium. The consumer will subscribe to a certain (for instance) news service and consult that service via the network and/or the device that is most suited for the time of the day or the type of activity performed at that time (consulting the news headlines on his mobile phone when waiting for the bus, watching the news flashes on his PDA in the train, looking at high resolution video streams on his PC at work and enjoying the news service in brilliant colours and surround effect on the LCD screen in the living room during the evening). In the future, newspapers and/or magazines might predominantly be distributed via electronic networks, with consumers downloading their journal every morning and reading it on a flexible screen. New trends and technologies, such as "e-paper", result in blurring boundaries between electronic and print media, undermining the justification for a different legal treatment of these media. Hence, a comprehensive legal framework, covering all types of media services seems the only logical answer to the continuing convergence of electronic and print media, at least in the long run (although we are aware that the political feasibility of this option is low to zero in the short term, due to the wide divergences in the legacy frameworks for electronic and print media).

Such a framework could be based on a comprehensive definition of "media", regardless of the distribution technology (including paper, DVD's, etc.) applied in a particular case, like the one put forward in Recommendation Rec. (2004) 16 of the Committee of Ministers of the

Council of Europe to Member States on the right of reply in the new media environment, where the notion of "medium" refers "to any means of communication for the periodic dissemination to the public of edited information, whether on-line or off-line, such as newspapers, periodicals, radio, television and web-based news services" ¹⁴.

The intermediate layer: "Content distributors"

The Council and Parliament undertook quite some efforts to fine-tune the definition of "audiovisual media service" in order to leave no single doubt that YouTube-like providers remain out of the scope of the new Directive (if they do not assume editorial responsibility). We can wonder why. Aren't they the media providers of tomorrow (or even of today, looking at their rocketing popularity)?

Also in conceptual terms, there is something missing in the current European framework: on the one hand, we have the providers bearing editorial responsibility for audiovisual content ("content editors") who are subject to the AVMS Directive. On the other hand, there are the network operators providing technical transmission services, including conditional access services, who are regulated by the Electronic Communications Directives of 2002. But what about the third category of actors in the communications value chain: the "content distributors" that deliver the audiovisual media services (usually edited by third parties) to the end-users ¹⁵? A typical example of this category in the traditional sphere is the operator of a digital TV platform or of a PCTV platform, offering packages of channels and services edited by broadcasters, production houses or other media companies (who would usually also qualify as network operators). But we can also think of new actors, such as YouTube, MySpace or DailyMotion, which fulfil the role of a portal, providing a forum for citizens to make personal audiovisual content publicly available and guiding people with a

¹⁴ Cf. Thomas GIBBONS, 2005: "In considering how far the scope of the Directive should extend, a crucial implication of digital convergence is that the mode of delivery should become irrelevant to content regulation. If content is to be regulated, it must be justified without reference to the nature of the service that delivers it. Furthermore, since digital content can be highly differentiated, the logic is that any regulation should also be justified without reference to any service in which it is packaged."

¹⁵ To illustrate the legal relevance of this third category, we can refer to the 2003 Broadcasting Act of the French Community in Belgium, where this type of actor follows a specific regime, including the obligation of a prior notification to the CSA (Conseil Supérieur de l'Audiovisuel, i.e. the media regulator of the French Community; VALCKE, STEVENS & LIEVENS, 2005.

specific profile to content of possible interest (and which do not qualify as network operator). Another example is Zattoo¹⁶, an online content distributor of both international and local linear TV channels¹⁷. Will they merely be "information society service providers", falling under the regime of the E-Commerce Directive? This implies that they will remain subject to the wide discrepancies in liability regimes for this type of actors in the various Member States (sometimes imposing secondary liability, sometimes providing a "safe haven", comparable to the ones in the E-Commerce Directive for mere conduit, caching and hosting providers).

Unfortunately, the AVMS Directive does not seek to remedy this lack of harmonisation at EU level, since it does not deal with (secondary) liability for illegal or harmful content (or exemption thereof) in the case of content distributors, nor does it contain any clarification of their obligations with regard to audiovisual content that is not edited by them but to which they provide access. In our view, this can be perceived as a serious gap in the EU regulatory framework¹⁸.

Moreover, it cannot be denied that this intermediate category of distributors is crucial to manage problems that might arise from the intrinsic links existing between transmission and content, rendering a complete separation of transmission and content regulation infeasible - and undesired (HELBERGER, 2005). How will the new European framework cope with players that are "in between" these frameworks? Think about search engines, EPG's, Internet portals or other navigational tools, opening the gate to content edited by others. The service they are offering is neither an electronic communications service, nor a service "the purpose of which is the delivery of moving images with or without sound to the general public by electronic communications networks". Nevertheless, they determine to a growing extent which information will reach the end-user, which explains the increasing attention of scholars to this type of services (we can, for instance,

¹⁶ www.zattoo.com, operating in Switzerland and several European Member States.

¹⁷ Cf. in this respect the remark on the remaining uncertainties concerning internet broadcasting by DEHOUSSE & van HECKE, 2006.

¹⁸ At the OSCE and CEU workshop on the AVMS Directive that took place in Budapest on 1 December 2006, we suggested the idea that it might have been a wiser option for that type of provider to lobby in favour of being included in the new directive, firstly, in order to be able to benefit from the country of origin principle and secondly, to obtain some kind of liability exemption clause (a safe harbour provision similar to the ones in the E-Commerce Directive), which would clarify their responsibilities in that regard. Of course, we are also aware of the danger involved in opening such a "Pandora's box", undoubtedly explaining why they choose the other option, of staying squarely and neatly outside the scope of the AVMS Directive.

think about the growing concern for the hidden manipulation exercised by certain search engines)¹⁹. If neither the electronic communications directives²⁰ nor the AVMS Directive provide more clarity, the E-Commerce Directive seems to be the most appropriate framework, but for the time being, the Commission seems reluctant to reform that directive in the near future.

User-generated content and participatory media

Member States should be aware of the rapid growth of "non-professional" media. Citizens themselves are increasingly participating in the dissemination of media content (towards the public at large or within virtual communities), becoming content creators themselves and aggregating their own music or television channels, spreading news and opinions via weblogs, video blogs, etc.²¹. Collaborative interactivity becomes a key feature of new and emerging audiovisual applications ("participatory media"), where users become active participants in two- or multi-way tele-presence sessions instead of just being passive consumers. In a genuine iDTV (interactive digital television) setting, the user is no longer a mere "receiver" of audiovisual contents, but also a "sender" (we can think of the "MyTV" and "MythTV" products that by now have passed their status of "myth"). He/she uploads pictures, images, sounds, text messages, in order to share this content with people belonging to the same "virtual community" (which can be as narrow as his/her own family, but also as broad as all people – from all over the world – having expressed their interest in the same type of music or books, the same hobby, the same tourist place, the same environmental organisation, etc.). In short, people become their own content creators on virtual individual networks, aggregating their own music or television

¹⁹ For instance: van EIJK, 2006; see also the forthcoming IRIS special reporting on the workshop organised by IViR and the European Audiovisual Observatory in Amsterdam on 12 April 2008 on "audiovisual search – regulatory challenges for audiovisual abundance".

²⁰ Although the Cullen study on "The Regulation of Broadcasting Issues under the New Regulatory Framework" of December 2006 (CULLEN, 2006) also pointed to the legal vacuum for distribution activities in the current EU frameworks and formulated some 'possible ways forward'. These suggestions were not taken over in the Commission's proposals for amending the electronic communications regulatory framework, published last year (13 November 2007; available from: http://ec.europa.eu/information_society/policy/ecommm/tomorrow/index_en.htm).

²¹ The legal implications of these and other forms of collaborative interactivity and the phenomenon of 'prosumers' (consumers evolving into content producers) are currently being studied by ICRI in the context of the IBBT-project "Virtual Individual Networks" (2005-2008) and the IWT-project "FLEET" (FLEmish E-publishing Trends; 2006-2009); <http://www.icri.be>.

channels whether or not with the fruits of their own creativity and either for free, or to make a living.

As the EU's powers based on internal market rules are confined to regulating economic activities, it is up to the Member States to take the occasion of implementing the new Directive and reflect on the legal implications of citizen journalism and other forms of collaborative interactivity²². They will – sooner or later – be confronted with questions such as whether limiting content rules to professional media is sustainable in the long run, how to cope with political parties launching their own TV channel, etc. Careful and profound analysis is needed, though, as any intervention should always be tested against the core principle underlying any form of content regulation: freedom of expression (dictating the golden rule "freedom if possible, restrictions if necessary").

■ Conclusion

This article has analysed whether the newly adopted Audiovisual Media Services Directive can really cope with tomorrow's challenges in the audiovisual media sector. Although the scope of application of the Directive has been extended to on-demand services, creating a clear(er) harmonised framework for a fast growing segment of the audiovisual market, it seems that it does not provide an answer that addresses the issues raised by several newly emerging services and activities. Multimedia services (converging text-based and audiovisual media), distribution activities, user-generated content and participatory media are examples of such unresolved areas. The European legislator has apparently chosen to leave these questions open for further discussion. It is the aim of this article to provide some "food for thought" in that discussion. Member States have until 19 December 2009 to implement the directive, which might be the ideal occasion to reflect in greater depth about the future model for content regulation. Will the national policy makers take on the challenge?

²² To cite a recent example from the Belgian context: in its judgment of 7 June 2006, the Belgian constitutional court ("Arbitragehof") ruled that limiting the protection of journalistic sources to professional journalists constitutes an infringement of free speech provisions in the Belgian Constitution and the European Convention on Human Rights (hence, it partially annulled the Belgian Act of 7 April 2005 on the protection of journalistic sources; <http://www.ofcomwatch.co.uk/2005/03/belgium-finally-adopts-law-on>); cf. WERKERS, LIEVENS & VALCKE, 2006; and LIEVENS, WERKERS & VALCKE, 2007.

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