

UK Co- and Self-regulatory Forum

Co- and Self-regulation in the UK and the draft Audiovisual Media Services Directive



This paper has been produced as a contribution to the debate on the proposed Audiovisual Media Services Directive. Its purpose is to explain how co- and self-regulatory schemes are already working as successful regulatory models in key areas of the UK's audiovisual media industry and to argue that the approach taken in the proposed Directive could undermine these models and the consumer protection that they provide.

About the Forum

The UK Co- and Self-regulatory Forum was established in November 2005 to help evolve and develop self- and co-regulation by improving models and spreading best practice. There is a particular focus on the draft AMS directive because of its references to co- and self-regulation. Members of the forum are:

- Advertising Association
- Advertising Standards Authority (ASA)
- ATVOD (Association of Television On-Demand)
- ISPA (Internet Service Providers' Association)
- Mobile Broadband Group (MBG)
- Internet Watch Foundation (IWF)
- Independent Mobile Classification Body (IMCB)
- ICSTIS – the premium rate regulator
- Video Standard Council (VSC)

The forum also benefits from the input of the BBC, the Confederation of British Industry (CBI) and the Digital Content Forum (DCF), and is chaired by the Broadband Stakeholder Group (BSG). Ofcom, the regulator, and government representatives from the Department of Trade and Industry (DTI) and the Department of Culture, Media and Sport (DCMS) attend as observers. As such the Forum represents the majority of co- and self-regulatory groups in the UK communications industry today.

Co- and self-regulation in the UK

Co- and self-regulatory bodies have been functioning as an effective and integral element of the regulatory ecology in the UK communications industry for well over a decade (and in the case of the advertising industry since the 1960s). These models work because they can directly and promptly respond to the industry to which they relate, and because their members have a market incentive to ensure that the services that they provide are in conformity with social standards and public policy.

This approach is particularly effective in the regulation of new media services for the following reasons:

- The operation of non-linear audiovisual services is considerably different to conventional linear broadcasting, because of the close transactional (instead of free-to-air) relationship that suppliers have with consumers. As a result it is often non-linear service providers who are best equipped to identify the concerns of the public and to provide the means of protecting their interests through appropriate operating systems, technology and self-regulation.
- The non-linear sector also differentiates itself by being global instead of national, again meaning that industry is better placed to regulate content than EU or national laws.
- The non-linear content, applications and services market is evolving rapidly in terms of technology, business models and user-behaviour. Self-regulation is far more flexible than co-regulation or statutory regulation and is therefore the most effective approach for such an industry.

Members of the Forum are already taking advantage of the benefits of co- and self-regulation to effectively address public policy concerns in a number of the areas that are covered in the proposed AMS Directive, including protection of minors and human dignity. The schemes are described below.

Advertising Standards Authority (ASA) – www.asa.org.uk/asa

- The advertising self-regulatory system was established in 1962 by the advertising industry to regulate non-broadcast advertising content. In November 2004, under the Communications Act 2003, Ofcom contracted out the day-to-day responsibility for broadcast (TV and radio) advertising to the advertising self-regulatory system. There are effectively two systems operating behind one shop front: a self-regulatory system for non-broadcast advertising and a co-regulatory system for broadcast advertising.
- The ASA is responsible for administering three advertising Codes which provide robust advertising content rules on taste, decency, harm, offence, motoring, food, alcohol and health and beauty products. The Codes go even further than UK consumer protection laws even though they are amongst the strongest in the world in order to safeguard the interests of consumers
- The ASA is also the established means for enforcing the Control of Misleading Advertisements Regulations (as amended) 1988 with the Office of Fair Trading operating as legal backstop to the system with respect for misleading advertisements. Ofcom is the statutory backstop for broadcast advertising.
- The ASA is independent of both the industry and government, although an open dialogue is maintained with government, who are highly supportive of the work, and EU institutions. The entire system is funded by the advertising industry via a voluntary levy on advertising space. In 2005, the system handled 26,000 complaints.

The Association for Television on-Demand (ATVOD) – www.atvod.co.uk

- The Association for Television On-Demand (ATVOD) was mandated by the UK government as a self-regulatory body in 2002. The Association was set up to regulate the audiovisual on-demand industry as a result of active lobbying by its founding members during the passage of the Communications Act.
- ATVOD members must adhere to the Code of Practice, which has two core principles:
 - The provision of access controls to protect children (members have a “responsibility to assist Subscribers in their efforts to protect Children and Young People from unsuitable material”).
 - The provision of clear information (members have a “responsibility to provide accurate, timely and reasonably prominent guidance in relation to their offerings of (a) content reasonably expected to cause significant offence or upset to some Customers and (b) commercial services”).
- The Association has an independent Chairman and is in the process of recruiting non-executive lay members. It is funded by the industry via an annual subscription.
- To date there have been no complaints made to the Association and the government has continued to be supportive of its work.

Internet Service Providers' Association (ISPA) – www.ispa.org.uk

- ISPA was established in 1995 to represent the interests of companies providing services over the internet: including access providers, portals and e-commerce companies.
- In 1997 ISPA's mandatory code of practice was agreed as self-regulatory measure to raise standards in the UK's internet industry.
- The eCommerce Directive limits liability of ISPs when they are simply acting as mere conduits for information and for caching (storing old copies of sites to speed up access) and mere hosting of content, provided they remove infringing material expeditiously once it comes to their attention.

- ISPA's code implements the notice and takedown regime outlined in the eCommerce Directive. For example, ISPs accept notices from the Internet Watch Foundation about child abuse images or racist material which if found to be hosted in the UK are speedily removed.
- In addition the code also covers the implementation of an independent customer complaints procedure approved by OFCOM known as CISAS (www.arbitrators.org/cisas)

Internet Watch Foundation (IWF) – www.iwf.org.uk

- The IWF was formed in 1996 following an agreement between the government, police and the internet service provider (ISP) industry that a partnership approach was needed to tackle the distribution of child abuse images online.
- The IWF operates the only authorised 'hotline' in the UK for the public to report their inadvertent exposure to illegal content on the internet. It provides a 'notice and take down' service to ISPs in the UK so they can remove potentially illegal content from their servers. It also works closely with law enforcement agencies at home and abroad to help them trace offenders.
- As a result, less than 1% of potentially illegal content is apparently hosted in the UK, down from 18% in 1997.
- The IWF works in partnership with UK government departments to contribute to initiatives and programmes developed to combat online abuse. This dialogue goes beyond the UK and Europe, to ensure greater awareness of global issues and responsibilities.
- The IWF is funded by the EU and the UK internet industry including ISPs, Mobile Network Operators and manufacturers, Content Service Providers, telecommunications and software companies and credit card bodies.

Mobile Broadband Group (MBG) – www.mobilebroadbandgroup.com

- In January 2004, the mobile operators in the UK published the world's first code of practice for the self-regulation of new forms of content on mobile. The code is administered by the MBG, whose members are the UK businesses of O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3.
- The code addresses internet access, unsolicited content, illegal content, malicious communications and commercial content. It is designed to protect all customers but with particular emphasis on children.

IMCB (Independent Mobile Classification Body) – www.imcb.org.uk

- Launched in early 2005, IMCB sets a classification framework for visual forms of mobile commercial content that is unsuitable for customers under the age of 18.
- Commercial content providers are required to self-classify and tag as '18' all content unsuitable for customers under the age of 18 in accordance with the framework, which is consistent with standards used in other media.
- Each mobile operator places commercial content classified as '18' behind access controls and only makes it available to those customers that it has satisfied itself, through a process of age verification, are 18 or over. The mobile operators with their providers can enforce compliance through contracts.
- The code is an initiative that has been introduced at the instigation of the MBG members (see above) but IMCB is independent of industry. The system is proving very effective and is held in high regard by all stakeholders.

ICSTIS – www.icstis.org.uk

- ICSTIS was established in 1986 and regulates all premium rate services that are available to UK consumers. The regulations are underpinned by the Controlled Premium Services Condition made by Ofcom and Ofcom approve ICSTIS' Code of Practice under the Communication Act 2003.
- This model addresses a range of consumer protection concerns about both the promotional content and actual content of premium rate services. It especially has regard to vulnerable consumers of such services, especially children.
- The regulatory model is based on industry support and funding but is supported by backstop powers with Ofcom under the Communication Act 2003. This model has an effective sanctions regime in place which is supported by network operators who carry premium rate services. Where networks fail to support ICSTIS they are referred to Ofcom who have sanctions power also for dealing with such non-compliance when it arises.

How would the proposed AMS Directive affect co- and self-regulatory schemes?

The proposed AMS Directive text could have extensive negative implications for those co- and self-regulatory schemes already operating, as well as those that may develop in coming years in response to emerging media. This would also therefore negatively affect the consumer protection that is currently being provided.

Self-regulation

The proposed text has removed references to self-regulation, thereby undermining and potentially rendering less effective existing self-regulatory codes. Without the flexibility and the sense of industry responsibility that self-regulation affords, there is concern that statutory regulation will be unenforceable and may not therefore be able to provide the public with the same levels of protection that they are currently enjoying.

There is also concern that imposing statutory regulation would discourage companies, particularly in emerging markets, from engaging in self-regulation at a time when there is significant interest in creating a flexible and self-regulating market. It is important not to devalue or underestimate the desire of industry members to behave in a responsible way towards their customer base, especially when effective regulation of this fast-moving industry relies heavily on their co-operation.

Co-regulation

The current text would also have a negative effect on co-regulatory schemes. Co-regulation is defined in the proposed text by the Interinstitutional Agreement on Better Lawmaking, a definition that wrongly assumes a 'one size fits all' approach to regulation. For example, although the ASA system is widely recognised as a highly successful and best practice regulator (the Hans Bredow Institute study commissioned by DG InfoSoc commended the UK ASA broadcast advertising regulation system), neither the broadcast nor non-broadcast systems would satisfy the definitions of the Agreement and would require extensive changes to meet its requirements. Given that the system is operating very effectively and is well-linked to partner statutory regulators it is nonsensical to require changes of it.

Summary

- The Forum believes that self-regulatory solutions, supported by a strong focus on media literacy programmes, are a critical element of both European and national regulation in audiovisual media, and are effective mechanisms by which to deliver public policy aims.
- It is therefore the view of the Forum that to take non-linear audiovisual services into the revised TVWF Directive in the form of co-regulatory schemes would be a retrograde step and one that runs the risk of having a significantly chilling effect on an industry that is already delivering effective consumer protection and adopting best practice.
- The IIA definition also necessitates an unsuitable approach to co-regulation, and should therefore not be used in the draft AMS Directive.

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