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Press Complaints Commission

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From the Director

Jim Raeburn Esq
Secretary and Treasurer
Pressbof
48 Palmerston Place
Edinburgh
EH12 5DE

29th July 2005

Director
Tim Toulmin

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Dear Jim,

Television without Frontiers Directive

I am writing to set out some of our thoughts about the possible threat to self-regulation of newspapers' and magazines' websites posed by the proposed revision to the EU Television without Frontiers Directive (TVWF).

You probably know that the revision of the TVWF Directive is the subject of a conference in Liverpool in September at which five issue papers, which are currently the subject of public consultation, will be discussed. I am enclosing copies of these papers. Comments on them are sought before the 5 September, which can be e-mailed to avpolicy@cec.eu.int (the Audiovisual Policy Unit of the Directorate-General for Information Society and Media).

I have had informal discussions with some of the industry's new media people, and also with Angela Mills whose company as you may recall now helps us with European government affairs issues. The key issue to have emerged from these discussions is that it seems highly likely that radio services or moving images which are – or soon will be – broadcast on newspapers' and magazines' websites will fall within the scope of the new Directive.

As it is currently envisaged, the new Directive will extend some of the basic principles of current broadcast regulation to non-linear (i.e. internet and other electronic forms of communication) media which disseminate audio-visual material. It seems that in previous consultations some broadcasters in the EU have been enthusiastic in lobbying for the inclusion of other media, as they thought an extension of the Directive that related solely to them would be anti-competitive.

My understanding is that the specific danger in the draft Directive is in its expectation that there will be regulations to ensure that:

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- There is a (statutory) right of reply to inaccuracies;
- Audio-visual material is not distributed in such a way that might seriously 'impair the physical, mental or moral development of minors';
- Audio-visual information does not contain incitement to hatred on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. "Incitement to hatred" is not defined.

These areas clearly touch on editorial content, particularly the first and third points, but the consultation papers only suggest explicitly that the second of these could be dealt with through self-regulation. Worryingly, the relevant paper states that in relation to the proposed rules on discrimination, "some stakeholders argued that co-regulation or self-regulation would be inappropriate", and there is no further suggestion that self-regulation would be adequate.

The broader danger, of course, is that unless these areas are carved out for self-regulation, the Directive will effectively have been a Trojan horse, with the regulation of at least some part of newspapers' and magazines' websites becoming for the first time the responsibility of other agencies (probably Ofcom). It can only be a matter of time before this precedent is used to argue for the harmonisation of regulation of broadcasters' and publishers' websites as media convergence continues. Ofcom, incidentally, assures us that it has no 'imperial' ambitions in this area, and the government appears to have taken a strong position against having to regulate the editorial content of websites – although it may of course have no choice eventually.

There are also other areas in the Directive which are not so relevant to the PCC but where the industry might have further concerns. These relate to proposed rules for advertising, competition, and branding.

All this poses a number of questions for the industry:

1. The Code of Practice makes clear that it extends to "on-line versions of publications". Is the industry content that this means that the Code will also include audio-visual material? If so, would you agree that there is merit in making this clear as soon as possible, in order to influence the drafting of the Directive and any discussions at the Liverpool conference?
2. If you believe that the Code does not currently cover audio-visual material, do you think that it should be for the PCC to oversee self-regulation in this area, and that the Code should therefore be changed?
3. Would you rather do neither of these things, concentrating lobbying efforts on trying to persuade legislators to exempt publishers' websites from the Directive entirely?

Given that moves to regulate this area are anyway, and that the European Parliament has previously expressed its enthusiasm for such a project, my own view is that we would actually need to do something soon to ensure that self-regulation is at least preserved as an option. One way of doing this would be to announce at some point in the near future that the current standards on accuracy, privacy and so on that are already in the Code extend to any audio-visual material that is currently broadcast – or may be in future – by newspaper and magazine websites. The implications will of course need to be considered carefully.

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But by doing this we would mark the territory as our own, and give ourselves a powerful argument when lobbying for the Directive to allow Member States to let self-regulation meet its standards. It would also send a strong signal to the UK government and other regulators that we are taking the issue seriously. In addition, there are bound to be calls – not least, I would have thought, by broadcasters themselves – for the broadcast rules on privacy to extend to others who transmit audio-visual material on the internet so that, in their view, there is a level playing field. Perhaps we could limit these if we act now.

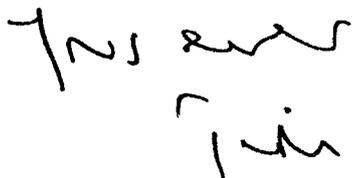
If, on review, there was the need for a change to the Code to deal with the specific issues highlighted by the Directive, then that could be addressed later. For now, it is probably important just to establish the principle that the industry can self-regulate this area, if that is how it wanted to proceed.

Unless I hear from you on behalf of Pressbof to the contrary, I will send a submission on the consultation papers to the Audio-visual Policy Unit before the 5th September, making clear that the Directive should allow self-regulation to continue to be an option for regulating all forms of editorial content of publishers' websites, whether it be written or broadcast material. It would be interesting to know if Pressbof board members have done the same, or intend to.

In the meantime, I would be most grateful if you could let me know Pressbof's views in relation to three questions above.

I look forward to hearing from you.

With kind regards.



Tim Toulmin

