HOUSE OF LORDS

European Union Committee

3rd Report of Session 2006–07

Television Without Frontiers?

Report with Evidence

Ordered to be printed 23rd January 2007 and published 31st January 2007

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 27

The European Union Committee

The European Union Committee is appointed by the House of Lords "to consider European Union documents and other matters relating to the European Union". The Committee has seven Sub-Committees which are:
Economic and Financial Affairs, and International Trade (Sub-Committee A)
Internal Market (Sub-Committee B)
Foreign Affairs, Defence and Development Policy (Sub-Committee C)
Environment and Agriculture (Sub-Committee D)
Law and Institutions (Sub-Committee E)
Home Affairs (Sub-Committee F)
Social and Consumer Affairs (Sub-Committee G)

Our Membership

The Members of the European Union Committee are:
Lord Blackwell
Lord Bowness
Lord Brown of Eaton-under-Heywood
Baroness Cohen of Pimlico
Lord Freeman
Lord Geddes
Lord Grenfell (Chairman)
Lord Harrison
Lord Kerr of Kinlochard
Lord Maclennan of Rogart
Lord Marlesford
Lord Powell of Bayswater
Lord Roper
Lord Sewel
Baroness Symons of Vernham Dean
Baroness Thomas of Walliswood
Lord Tomlinson
Lord Wright of Richmond

The Members of the Sub-Committee which carried out this inquiry (Sub-Committee B: Internal Market) are:
Lord Dykes
Baroness Eccles of Moulton
Lord Fearn
Lord Freeman (Chairman)
Lord Fyfe of Fairfield
Lord Geddes
Lord Haskel
Lord Lee of Trafford
Lord Mitchell
Lord Powell of Bayswater
Lord Roper
Lord St John of Bletso
Lord Swinfen
Lord Walpole
Lord Woolmer of Leeds

Information about the Committee

The reports and evidence of the Committee are published by and available from The Stationery Office. For information freely available on the web, our homepage is:
http://www.parliament.uk/parliamentary_committees/lords_eu_select_committee.cfm
There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at
http://www.parliament.uk/about_lords/about_lords.cfm

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website.
General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A OPW
The telephone number for general enquiries is 020 7219 5791.
The Committee's email address is euclords@parliament.uk

CONTENTS

Written Evidence

NOTE: References in the text of the report are as follows:
(Q) refers to a question in oral evidence
(p) refers to a page of written evidence

FOREWORD—What this Report is about

When the Commission published its draft Audiovisual Media Services (AMS) Directive in December 2005, it was met with alarm in many quarters, particularly in the United Kingdom.

The Directive sought to amend the existing 'Television Without Frontiers' (TVWF) Directive, by extending the scope of the Directive to those new services perceived to be competing for audiences and revenue with traditional television. This threatened to introduce burdensome and potentially inappropriate regulation to what was a thriving new media sector in the United Kingdom, with very different business models. There were fears that emerging new media companies may either collapse or relocate outside the European Union.

Since the original draft, a number of changes have been made to the text to attempt to tighten the definition of the services covered to "television-like" services. Whilst this is an improvement, we are still concerned that there is not sufficient legal certainty over precisely what these services are, particularly in a rapidly changing market.

As in other recent single market legislation, the previously accepted basis of a Country of Origin approach to operating across 25 (now 27) Member States, which was contained in the original TVWF Directive, and the original draft AMS Directive, has come under attack. We maintain our view that the Country of Origin approach is the best way to go forward and must be defended.

Whilst we understand the concerns of traditional, "free to air" broadcasters at additional pressures to revenues from new competitors, we firmly reject the idea that regulators should act to preserve the market dominance of established players from new entrants. We are however unconvinced of the need for any quantitative restrictions on advertising in a market which is now clearly open to competition.

Television Without Frontiers?

CHAPTER 1: BACKGROUND TO THE PROPOSAL

Introduction

1. This report examines the European Commission's proposal to amend the "Television Without Frontiers" Directive (TVWF). In this chapter we set out the history of the Directive, in the context of the changing landscape of services available which the revisions of the Directive seek to reflect. In the following chapters we will present the evidence we have received in the course of our inquiry on what we have identified as the key issues.

The original Directive

2. The original TVWF Directive was adopted in 1989. Its fundamental objective was straightforward: the creation of a single market in television broadcasting.

3. In the late 1980s, this was a very important objective. At the time there was a relatively limited choice for viewers and state-owned and other terrestrial 'free to air' broadcasters held a dominant position in the market.

4. The TVWF Directive established the principle that Member States should ensure freedom of reception and should not restrict retransmission on their territory of television programmes from other Member States. They would only be permitted to suspend retransmission of television programmes that infringe the provisions of the Directive on the protection of minors.

5. In order to meet the objective of a freedom of movement for service providers in a single market, certain means were deemed necessary to create a common framework across the European Economic Community as was. These means were the creation of common rules governing both the quantity and content of the advertising the TV companies transmitted.

6. The provisions in the TVWF Directive on advertising are as follows:

   - There is a 15 per cent maximum proportion of daily transmission time allowed for advertising and a 20 per cent maximum within a given one-hour period;
   - There are set procedures for interrupting programmes;
   - The advertisements must conform to certain ethical considerations, in particular the protection of minors; and
   - The advertisements must comply with certain criteria concerning advertisements for alcoholic beverages.

7. Advertising of tobacco and prescription medicines is prohibited under the Directive.

8. Sponsorship of television programmes is permitted, provided it complies with certain rules. The sponsorship must not affect the broadcaster's editorial independence. In addition, sponsored television programmes must not

encourage the purchase of the sponsor's products or services. Finally, news and current affairs programmes may not be sponsored.

9. The use of the means chosen to create a single market had the consequence of expanding the impact of the TVWF Directive beyond its core objective. Not only was it concerned with facilitating the freedom of movement of broadcasters across the EU, but at the same time through these common standards sought to preserve certain public interest objectives: cultural diversity; the right of reply; consumer protection; and the protection of minors.

10. There were also provisions in the Directive to promote the distribution and production of European audiovisual programmes, for example by ensuring that they are given a majority position in television channels' programme schedules.

Why revise TVWF?

Technological Developments

11. By 1997, the Commission had taken the view that the impact of new technology meant that there was a need to update, and sometimes create, new rules on content based on matters of public interest, such as the protection of children or harmful content such as incitement to race hatred. The Directive was updated in 1997 in order to respond to technological developments since 1989 by, for example, allowing dedicated shopping channels.

12. Since 1997, the landscape for broadcasting has changed significantly and is continuing to change at a rapid pace, driven by dynamic advances in technology.

13. Technology has fundamentally altered the way people watch audiovisual media. On-demand services mean that users can determine the time of the transmission they want to view. There is also now technology available to record programming and miss out commercial breaks.

14. Convergence has greatly increased the number of available platforms on which to view these transmissions: through personal computers as well as through mobile phones. The Commission were keen to regulate such transmissions no matter what platform is used and thus would have to revise and extend the scope of the TVWF Directive.

Competition

15. There has been an enormous proliferation in TV channels broadcasting in the EU. Ofcom's figures are that the number has grown 500 in 1989 to more than 1,500 today.

16. There is clearly now a considerable level of competition in television broadcasting. The far greater level of choice for viewers which has resulted from this increase in competition has fundamentally altered the balance of the relationship between consumer and producer.

17. As a result of these changes there was a perceived need for a less heavily regulated environment for advertising in television broadcasting as consumers could now exercise real choice about what they watched. At the

outset, we accept the need for liberalisation, and believe that it is still crucial for single market considerations to be taken into account.

The Commission's proposal

18. In 2005, the Commission felt that the Directive be readdressed in the light of developments since 1997 and in December 2005 published a proposal to amend the TVWF Directive once more (15983/05 COM(05) 646SEC (05) 1625).

19. The existing TVWF Directive applies to "the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public …" (89/552/EEC as amended by 97/36/EC, Article 1a).

20. The 2005 proposal seeks to redefine the services covered, rather than purely applying to television: TVWF would become an "Audiovisual Media Services Directive".

21. The proposed Directive would now apply to any commercial "service as defined by Articles 49 and 50 of the Treaty, the principal purpose of which is the provision of moving images with or without sound, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2a of Directive 2002/21/EC of the European Parliament and the Council" (Article 1a of the 2005 proposal).

22. These services are what are referred to in the text of the proposed Directive as "Audiovisual Media Services".

23. Following the above definition, the 2005 proposal would cover all audiovisual media services whose principal purpose was the provision of moving images to the general public, and which provide these images over any electronic network, including the internet, mobile and telecommunications networks and terrestrial, cable or satellite broadcasting networks.

24. These audiovisual media services would be divided into two distinct categories; linear and non-linear. In the 2005 proposal, non-linear services were defined as those in which "the user decides on the moment in time when a specific programme is transmitted on the basis of a choice of content selected by the media service provider". (Article 1e of the 2005 proposal) Linear services by contrast are scheduled and the timing of their availability for viewing is not determined by the viewer.

25. The 2005 proposal sought to cover all audiovisual media services, both linear and non-linear, under a basic tier of rules, set out in Articles 3c to 3h.

26. In addition to the basic tier of rules covering all audiovisual media services, linear services would be subject to requirements on the coverage of major events; quotas of European and independently-produced content; rules on advertising; and rules on the right of reply which are similar to those which the TVWF Directive already applied to exclusively television broadcasting services (Articles 3 and 3a, 4 and 5, 10 to 20, and 23 respectively).

27. In the proposed revised Article 11, content such as films, children's programmes and news programmes may be interrupted by advertising only once every 35 minutes. This compares with a limit of once every 45 minutes for films, and once every 20 minutes for news and children's programmes, in

Articles 11.3 and 11.5 of the current TVWF Directive, which is part of an attempt in the Proposal to simplify existing rules.

28. The TVWF Directive embodies a 'Country of Origin' principle which is designed to assist the creation of a Single Market in television broadcasting services.

29. This is the principle that if an enterprise complies with the rules applicable in its country of origin, then it qualifies to provide services without having to be established in another Member State, or to comply with local rules regarding the services provided, notwithstanding that there may be differences between the two regimes. The alternative is a country of destination principle, under which an enterprise is not allowed to provide a service unless the legal and regulatory requirements of the destination or host country are complied with. In the European Union, this would mean identifying and then complying with the requirements of as many as 26 other Member States.

30. The 2005 proposal would have left the Country of Origin principle intact, while extending its scope to cover audio-visual media services (Article 1(a) in the 2005 proposal).

Why is the proposal particularly significant to the United Kingdom?

Online advertising

31. According to the latest figures, the United Kingdom has the fastest growing online advertising market in the world, growing at around 40 per cent per annum, according to recent estimates by media buying agencies.[1] The United Kingdom currently has the highest forecast share of 13.5 per cent of global online advertising, according to figures published by Zenith Optimedia.

32. Starting from a relatively low base, broadband access in the United Kingdom has rocketed. In 2002, only 5.1 per cent of homes had broadband, but by the middle of 2006, this figure was 47.4 per cent. As broadband technology facilitates the greater use of video advertising on the internet, the advertising opportunities seem vast in the new media. Indeed, media advertising does not yet seem to be close to capitalising on this opportunity. According to Zenith Optimedia and GroupM, consumers in the three biggest markets (the UK, the USA and Japan) spend an average of 21.9 per cent of their "media time" online, but on average only 6.8 per cent of advertisers' budgets are allocated to online advertising.

33. To illustrate the increasing importance of online revenue, Google UK is expected to generate over £900 million in 2006, passing Channel 4's advertising revenue this year. By 2008, Google UK is expected to exceed ITV's revenue.[2]

34. Any attempt to alter the way in which online advertising is regulated thus has critical economic importance for the United Kingdom, with the largest and fastest growing market in the EU. Much online content is funded solely by advertising and is free to access by users. Therefore any proposals must clearly be sensitive to the business models of online media service providers.

---

1 "Britain leads the way in online advertising" *International Herald Tribune,* 3 December 2006

2 "Google to beat TV in race for ad revenues" *Financial Times*, 1 November 2006

These business models are fundamentally distinct from those of the established television broadcasters currently covered by the TVWF Directive.

35. As Shaun Woodward, the Tourism and Creative Industries Minister told us, creative industries now account for around eight per cent of the United Kingdom's Gross Domestic Product, thus it is vitally important that we have a decent understanding of which businesses the revised Directive will affect and how it will affect them.

Satellite Broadcasting

36. Most of the Member States in the EU are net receivers of broadcasting. By contrast the United Kingdom is, partly as a result of its "lighter touch" approach to regulation, an "international host country" for national versions of channels. These channels include MTV, the Discovery Channel, National Geographic, Bloomberg, Hallmark, Jetix (Fox) and Turner. According to Ofcom there were 116 British based channels targeting foreign markets in 2004.

37. Ofcom currently licenses 762 satellite and cable channels in the United Kingdom. This amounts to around 57 per cent of the total number of licensed channels across the EU. Of those 762 channels, approximately 200 operate cross-border services.

38. The Country of Origin principle is enshrined in the TVWF Directive. This allows operators to provide services on the basis of the regulations in the Member State in which they are established. Any alteration of this principle would have serious consequences for those channels established in the United Kingdom and broadcasting to other Member States. This principle will be discussed in more detail in Chapter Three.

Where does the Directive stand now?

The Council of Ministers text

39. At the meeting of the Education, Youth and Culture Council on 13 November, a general approach on the Directive was agreed to, along the lines of a revised text which was prepared by the Finnish Presidency.

40. The text of the general approach was supported by all delegations except Sweden, Ireland, Latvia, Belgium, Lithuania, Luxemburg and Austria. The Commission, Austria, Germany and Italy indicated their intention to add statements to the Council minutes.

41. The Council's revised text makes a number of very significant changes to the Commission's original proposal, reflecting the wide ranging and often polarised debates both within and between the Member States. These changes will be discussed in the following chapters.

42. Where reference to a "Council text" is made in our report, we are referring to the Council's 13 November general approach. The following chapters will comment on the merits of the 2005 proposal, the Council text, and, where different, the European Parliament text according to our witnesses, together with our own assessment. Our recommendations will be based on the Council text as it stands.

The European Parliament text

43. On the same day as the Council Meeting, Ruth Hieronymi MEP, Rapporteur of the European Parliament's Culture Committee, presented her report on the Directive, and some important amendments were made. These amendments were adopted in the Parliament's plenary first reading in December 2006.

44. In our view, and the reported views of Mrs Hieronymi, both texts take the Directive in the same direction on almost all of the contested issues.

45. Where the Parliament's text does differ significantly from the Council's text is on its approach to advertising rules, and this will be discussed in Chapter Three.

46. We await with interest the comments on the Parliament's amendments which the Commission will make to the Council in due course. The German Presidency have announced that they will seek agreement on the Directive by the end of their term in June 2007.

47. The following chapters summarise the views of the witnesses received by the Committee in the course of our inquiry both in writing and in person. It became clear to us that the main issues of concern revolved around the following areas:

- The scope of the proposal;
- The status of the Country of Origin principle;
- The proposed quantitative rules on advertising;
- The proposed advertising content rules;
- The proposed rules on product placement;
- The principle of Self-Regulation; and
- The quality of the Commission's Impact Assessment.

48. Our witnesses' views are laid out below, with the Committee's assessments on each in bold type.

49. We make this Report to the House for debate.

CHAPTER 2: THE SCOPE OF THE PROPOSAL

Introduction

50. One of the main drivers for reform of the Television Without Frontiers Directive has been the rapid growth in the number and types of different platforms over which EU citizens may receive audio-visual material. Free-to-air terrestrial broadcasting now competes with satellite, cable, broadband Internet and mobile services.

51. A second fundamental change in the market concerns the manner in which audio-visual material is supplied to citizens. The classic broadcasting paradigm was one where the broadcaster transmitted (or 'pushed') its programmes simultaneously to the general public, who simply chose whether to watch their television. In our current environment, while that paradigm continues to represent the dominant means of receiving such material, we are also witnessing the emergence of a wide range of alternatives, most specifically the provision of material in response to the demand of an individual viewer, often obtained (or 'pulled') from a selection of material made available by the broadcaster.

52. Such fundamental changes in the provision of broadcasting services have meant that the existing regime is no longer 'fit for purpose', since it was drafted in an era when each Member State had relatively few providers generally operating in a similar manner.

53. **We too recognise the changes that have taken place, and are continuing to take place in the sector. We accept, as do all those that gave evidence, that reform of the regime is needed. Witnesses also generally supported the view that now is a good time to be reassessing the existing regulation.**

54. The central issue in the Proposal is, therefore, how far to extend its scope of application: what sort of activities should be brought within the regulatory regime?

The Electronic Commerce Directive and the Audiovisual Media Services Directive

55. Activities left outside the regime will either be subject to the general law or other regulatory regimes, such as that governing the provision of "Information Society Services" under the Electronic Commerce Directive (00/31/EC).

56. One concern expressed by some of the witnesses was that the proposal will add to the regulatory definitions already in existence, resulting in another layer of uncertainty about what and when such rules are applicable to an entity operating in an Internet environment. An Internet service provider, for example, will already be considered a provider of "electronic communications services", under European communications law and a provider of "information society services", under European e-commerce law.

57. As outlined in the box below, the broad conception of "information society services" means that "on-demand services" would simply be a subset. Indeed, a proposed recital in the revised text recognises this overlap,

providing that in the event of conflict, the Audiovisual Media Services Directive would prevail.

BOX 1

How will the Audiovisual Media Services Directive relate to the Electronic Commerce Directive?

The Electronic Commerce Directive (00/31/EC) provides a regulatory scheme for those that provide "information society services". It has been transposed in UK law by the Electronic Commerce (EC Directive) Regulations 2002. Such services are those delivered "at a distance", "by electronic means" and at the "individual request of the recipient".

The Directive contains the following key provisions:

- The application of the Country of Origin principle to service providers
- Transparency obligations, i.e. requirements to provide certain information to consumers
- Rules governing commercial communications, including unsolicited commercial communications
- The validity of contracts formed electronically, as well as conditions on the mechanism for entering into such agreements
- Safeguards from liability for 3rd party content where the provider is engaged in "mere conduit", "caching" or "hosting" activities.

The draft Audiovisual Media Services Directive overlaps with the Electronic Commerce Directive in respect of the operation of the country of origin principle and the transparency obligations. The Electronic Commerce Directive expressly excludes traditional broadcasting, but this will not be possible under the Council's revised proposal (see below), particularly in respect of on-demand services.

58. **The Committee shares the concern of witnesses about the proliferation of multiple and overlapping regulatory schemes. We call upon the Commission to work to make the regulatory boundaries as clear as possible for business and to enhance legal certainty.**

The 2005 Proposal

59. The December 2005 proposal created a two-tier regime, with a set of minimum rules governing all forms of "audiovisual media service" and additional provisions imposed only on those that provide "television broadcasts" or so-called "linear services". The inclusion of "non-linear services" within the scope of the proposal was intended to reflect the new forms of service provision that have arisen with developments such as the Internet and 3G mobile services.

60. The proposal sought to be "technology neutral", i.e. to not favour one delivery platform over another but to create a "level playing field". Simon Persoff from Orange UK expressed the concern that in the proposal "the principle of technology neutrality has been turned on its head", and "used as a justification for imposing inappropriate and administratively

unworkable regulation" and effectively "turning into a regulatory-initiated barrier to market entry". (Q 66)

61. According to the evidence we received from Phonographic Performance Limited (PPL) and Video Performance Limited (VPL) the similarities between online and offline services mean that, in principle, laws which apply offline should apply online as well. However, PPL and VPL told us that the broadcasting environment is very specific, as is the regulatory environment which has grown around it. They argued that in the offline world, spectrum (the range of frequencies available for over-the-air transmission) is a scarce commodity, whereas in the online world there is no such scarcity. Therefore, the regulatory mechanism which allows detailed scrutiny of broadcasters no longer applies.

62. Out of physical necessity, offline broadcast services, e.g. traditional television, are broadcast from an establishment in one Member State, although those services may be broadcast into some or all other Member States. Online, however, a service can be located anywhere in the world. The PPL and VPL argued that if the supply-side conditions imposed on European-based operators become too onerous, they will simply move their operations overseas. The impact assessment carried out by RAND Europe for Ofcom took the view that the requirements in the Commission's original proposal would have precisely this effect. This assessment differs strongly from the findings of the study carried out by the same consultants for the Commission. We return to this issue in Chapter Seven.

63. The witnesses representing consumer groups strongly supported the extension of scope. The Voice of the Listener and Viewer (VLV) welcomed the Commission's proposal to extend the scope of the TVWF Directive to all Audiovisual Media Services. VLV felt that the proposed distinction between a linear and a non-linear service makes sense from a consumer's perspective.

64. Jim Murray from the European Consumers' Organisation (BEUC), also accepted the premise that the scope should be extended to non-linear services which compete commercially with television, arguing that "since we have always accepted … the need for regulation of commercial communication and advertising, it makes sense, although it is by no means easy, to try to follow commercial communication wherever it goes in terms of regulation." (Q 353)

65. The Newspaper Society told us that online versions of newspapers should be excluded from the scope of the Directive. The Society argued that regional and local newspapers are firmly based in their local communities and that their print and online content is aimed at that local audience and readers. They further argued that few print newspapers are intended to circulate across national frontiers (although online services are obviously globally accessible).

66. The Society noted that newspaper companies which have diversified into local radio, local television and new media have not encountered any of the regulatory problems by which the Commission seeks to justify its proposals. The Society concluded that the Directive would not simplify the regulation of audiovisual content but complicate it. It might well impose stricter content controls over material generated and published by regional media companies and increase newspaper companies' liability.

67. When the Commission issued the proposal, the issue of scope was viewed as the most controversial aspect by the Government. Appearing before the Committee, the Minister described the initial scope as "too ambitious, too burdensome, too costly and too onerous". (Q 157)

68. Ofcom shared the Government's misgivings on this issue. Alex Blowers, the Head of Policy Development, told us that they were concerned "that many internet-type services, weblogs containing video content, online gaming, for instance, would be caught by this proposal and it was almost as if nobody had thought that that might be the implication." He was clear that these services were "nothing like broadcasting" and thus it would be totally inappropriate to seek to include them in this proposal. (Q 120)

69. **We agree that the original scope of the proposal was too broad and too ill-defined to operate without risk of great harm to new media businesses. We welcome the reduction in scope in the revised proposal.**

The Council of Ministers text

70. The November Council text amends the fundamental definition of audiovisual media services in a number of ways.

71. First, the text introduces the requirement for the service to be "under the editorial responsibility of a media service provider". (Article 1a)

72. The revised text also narrows the scope of the Directive, limiting the extension to non-linear services to "on-demand services", and describes the characteristics of these services in Recital 13a:

BOX 2

Recital 13a of the revised draft Directive

It is characteristic of on-demand services that they are "television-like", i.e. that they compete for the same audience as television broadcasts and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive.

73. We were concerned that, as Gregory Paulger from the Commission conceded, "TV and TV-like are words that one can understand but to define them in law is difficult." (Q 321)

74. Despite apparent pressure from some Member States in Council, we are relieved that the latest text continues to exclude electronic versions of newspapers and magazines. It is perhaps ambiguous as regards online content which is not a direct copy of printed content, but the text states that "The definition excludes all services not intended for the distribution of audiovisual content, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose." (amended Recital 13)

75. **We welcome the apparent intention to exclude entirely electronic versions of newspapers and magazines but believe that in a rapidly changing communications world, the above distinction may well prove difficult to make in practice.**

76. **The implementation and enforcement of this Directive, particularly when many of the services covered are 'a moving target', may be**

fraught with difficulties in the absence of sufficient legal certainty over its exact scope as the range of new media services continues to develop and expand.

77. We recognise that the evidence before us has demonstrated clearly that the distinction between television and internet and other new media services is becoming blurred. This 'blurring' takes two forms: firstly consumers are freely exercising their choice across these media; and secondly the advertising market also views these varying markets as to a degree inter-competitive or substitutable.

78. It is an assumption of the proposal that traditional advertising revenue is migrating from television broadcasting to new media services. As the current regulation of advertising is far stricter for traditional broadcasters, there could be said to be something of an "un-level playing field."

79. As we noted in Chapter One, there has been an undeniably rapid growth of advertising revenue on the internet. However this is not necessarily a "zero sum game" between television and the internet, and the Directive risks presenting the market in just such a manner.

80. **It could equally well be argued that, with the much greater degree of choice available to the consumer, the Commission should seek to liberalise the provisions on advertising for established broadcasters, as discussed below, than to seek to extend similar provisions to the new media services.**

81. **In our view, it is neither the role of regulation nor the role of any regulator to protect those with established market positions from threats by new market entrants operating under different business models.**

82. **We are concerned that the identification of some of media services as "television-like", may lead some to conclude that eventually "like-services" should be regulated in a "like-manner", i.e. a perfectly "level playing field."**

83. The Council text seeks to identify and propose the regulation of "television-like" services but proposes to regulate them differently. **As we note above, if they are to be included at all we agree that they must be regulated differently, but the wording and definitions in the latest versions of the text may encourage the idea that they can and should be regulated in the same way as television. We would consider such a move now or in the future to be a grave error.**

84. There may also be a second problem with extending the draft Directive into non-television services, such as the internet and other new media services. It might be taken as an encouragement that it is desirable to extend regulation into these services more widely and eventually to go beyond "television-like" services into other parts of the internet and new media.

85. **Given the practical difficulties in defining, regulating and enforcing a Directive based on "television-like" services, we believe that any further incursion into the internet and other new media services will be fraught with even greater difficulties and, as we have indicated above, is unnecessary in order to secure a single internal market.**

CHAPTER 3: THE COUNTRY OF ORIGIN PRINCIPLE

Introduction: a wider debate

86. The Country of Origin principle has been the accepted basis for legislation to assist the free movement of services as a part of development of the single market in the European Union for some time. We are nevertheless well aware of the mood in some parts of the European Union shifting against the Country of Origin principle.

87. This Committee has recently produced two reports on the Services Directive, which came to the conclusion that the principle was "an essential part of enabling SME service providers to break into the markets of other Member States"[3].

88. The Services Directive was an attempt by the Commission to ensure a genuine, single market in services across the EU. One of the key issues which arose from this attempt was the ability of service providers to provide services into other Member States without being encumbered by up to 26 other sets of regulations.

89. The original Commission proposal for the Services Directive was for services to be provided under the rules and regulations of the Member State in which the service provider was established, i.e. a Country of Origin approach to regulation. In both our reports on the Directive, we expressed strong support for the inclusion of the Country of Origin principle.

90. The principle proved controversial for a number of reasons, especially in the European Parliament. Notwithstanding the Parliament's initial support for the principle, the Directive was heavily amended to shift the basis of regulation from the Country of Origin to the Country of Destination.

91. Mary Honeyball MEP told us that the European Parliament was "still becoming familiar with the fall-out from the Services Directive, where the whole thing has changed quite considerably". (Q 397)

92. The Minister described to us the debate over the principle in the context of this Directive as an "example of people having a rather overzealous view about the capacity of the European Union." (Q 178)

The 2005 proposal

93. The Commission's 2005 proposal had the Country of Origin principle at its centre as the basis for broadcasters supplying services in Article 2a. It was also central to the original TVWF Directive.

94. The Satellite and Cable Broadcasters Group (SCBG) argued that its members' success in providing television and other audio-visual services in more than 100 million homes across Europe, and broadcast in more than 20 European languages has been enabled entirely by the provisions of the TVWF Directive, and in particular by its application of the fundamental Country of Origin principle.

95. According to the SCBG, inward investment, employment and revenues in this sector have grown steadily in the last decade, and will continue to do so

---

3 *Completing the Internal Market in Services*, EU Committee 6th Report, Session 2005–06, HL 23 (para 189)

provided the basic principles of the present Directive are maintained—ensuring that regulation remains based on the country of origin, not on the country of reception. (pp 164–168)

96. They were concerned that, even though the 2005 proposal sought to maintain the Country of Origin principle, a number of Member States were seeking to change the rules of jurisdiction in a way, which would effectively bring regulation into the country of reception. They were also concerned that the Commission's own proposed amendments to Article 2 (new paragraphs 7,8,9 and 10), under which a Member State may take action against a media service provider established in another Member State, may unintentionally provide a new route for complainant countries to evade the Country of Origin principle.

97. The SCBG warned us that if the Country of Origin principle were to be undermined in practice by any of these means, the satellite and cable sector of the UK creative economy would be damaged substantially.

The Council's text

98. Perhaps the most significant of the alterations in the revised text concerns the Country of Origin principle. The revised text introduces new limits to the principle, set out in article 3:

BOX 3

Article 3 of the revised draft Directive

1. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive.

1a. In cases where a Member State:

- has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and
- assesses that a broadcaster under the jurisdiction of another Member State directs all or most of its activity towards its territory

it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State with jurisdiction shall inform the first Member State of the results obtained following this request within two months.

99. The Council's revised text adopts a concept originating from Sweden of "mandatory co-operation" for National Regulatory Authorities to mitigate any clashes between the rules of the Country of Origin and Country of Destination over these services.

100. Mrs Honeyball described the proposal for mandatory co-operation as "probably not very sensible" because of the burden it would put on National Regulatory Authorities such as Ofcom to co-operate with 24, soon 26, other NRAs, all with differing rules. (Q 397)

101. Mr Murray from the European Consumers' Organisation (BEUC) defended the Swedish position, telling us that "nobody would seriously argue that the restrictions which they wish to maintain arose from a purely protectionist instinct, to stop people buying non-Swedish goods" but from genuine public interest grounds. But he accepted that other Member States often present measures motivated by pure economic protectionism as motivated by similar public interest concerns. (Q 376)

102. Article 3 of the Council text allows Member States to block broadcasts on grounds of "general public interest", and when "a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory". Recital 11 clarifies the public interest grounds by referring to European Court of Justice case law and states that they must be "objectively necessary, applied in a non-discriminatory manner, suitable for attaining the objectives which they pursue and do not go beyond what is necessary to attain them."

103. Further restrictions to Member State action against broadcasters from other Member States are set out in Article 2. The Member State in question must show that the broadcaster it wishes to take action against "manifestly, seriously and gravely infringes Article 22 (1) or (2) and/or Articles 3b;" and has infringed at least twice in the previous 12 months. The Member State must then inform both the broadcaster and the Commission in writing of the actions it will take should the broadcaster infringe again, and allow 15 days for a consultation with the Commission and the other Member State to try to reach an amicable settlement. Ultimately the Commission has the role of deciding whether the measure legitimately falls under the Directive.

104. Chris Dawes from the DCMS told us that the revised article threatened to "introduce uncertainty to industry", although it was not necessarily "absolutely fatal to the Country of Origin principle." (Q 178)

105. Matteo Maggiore from the BBC regarded any step backwards from the Country of Origin principle as "tantamount to going back to a world of erecting frontiers to the circulation of services at a time when the potential for trans-border and global communications is becoming greatest". He was concerned that it would undo any benefits from the 1989 Directive. (Q 12)

106. Mr Paulger from the Commission was forthright in telling us that he viewed the Country of Origin principle as being absolutely central to the Directive; that the revised article 3 was "a measure that would weaken the Country of Origin Principle" and that the Commission "do not like it." (QQ 336–343)

107. The Minister highlighted the inherent problem for broadcasters in requiring them to fit the requirements of a Country of Destination when "it is impossible for a programme maker now anyway to imagine where a programme might be destined for in 20 years' time and who might be watching it". (Q 178)

108. **We share the considerable concern of the majority of our witnesses over the apparent dilution of the Country of Origin principle. We understand that the opposition to the principle has gained momentum in many quarters of the European Union, but view this as an obstacle to the consolidation of the internal market.**

109. **We hope that the proposed monitoring system will work effectively to prevent Member States from obstructing audiovisual media service providers for any grounds other than those strict public interest grounds set out.**

CHAPTER 4: QUANTITATIVE RULES ON ADVERTISING

The 2005 proposal

110. While one stated objective of the Proposal was to ease or remove some of the existing rules, significant concerns have been expressed that such liberalisation has not gone far enough, while new restrictions have been proposed that would adversely impact on the sector, where advertising revenues are critical and yet the sources of such revenues are under threat and are rapidly evolving.

111. The general view of respondents from industry was that the current quantitative advertising rules are no longer appropriate in an environment where the consumer has such a wide choice of provider and can express any dissatisfaction with the quantity of advertising being fostered on him by moving to an alternative provider.

112. The Government were against the quantitative rules imposed by the Commission's proposal, particularly the 20 per cent rule and the 35 minute rule for films, children's programmes and news programmes. They argue that such rules can only have negative effect on the transmission of this type of programming by commercial stations. In their view, the need for these restrictions is based on a broadcasting environment of spectrum and service scarcity which is largely a thing of the past.

113. Today, there is an enormous range of television services and the universal availability of a greatly increased number of channels will be secured by the switchover to digital broadcasting. The Government support the fact that the Commission's proposals do contain some important simplifications of the TVWF rules on television advertising. (pp 64–66)

114. Several of our witnesses viewed the quantitative rules as entirely unnecessary as viewers would simply switch to alternative services if they found that there was too much advertising on one channel, as was the case with some recent examples in the United Kingdom with commercial radio.

115. Martin Stott from Channel 5 called for "a levelling down of the detailed rules" with "a form of rules of principle" rather than what he regarded as unnecessary "micro-management." (Q 272)

116. Jonathan Simon from Channel 4 told us that their preference would be for "no rule at all at the European level" on advertising for children, which would allow Member States to set their own rules according to their very different priorities. (Q 297) This approach would, however, seem to negate the Country of Origin principle, discussed below, still further.

117. There were strong concerns from the free to air broadcasters over the impact of the 35 minute rule for children's programming. Mr Stott told us that "the economics of children's programming are fairly fragile already and it is quite difficult to make a profit on a commercial channel by broadcasting children's programmes." Impinging on the existing ability of channels to fund these already marginally profitable services was, according to Mr Stott, "less kids' programming" or "less original kids' programming", and a greater reliance on cheap imports and repeated programmes. Thus, far from protecting children's programming, it was likely to have a negative impact on quality and a negative impact on original European content. (Q 292)

118. Magnus Brooke from ITV suggested that the Commission risked "taking the most commercially vulnerable genres and subjecting them to additional rules" with children's' and news programming and that there was no obvious detriment to the viewer of, say the advertising break in the *News at Ten*. (Q 293)

119. Mr Dawes from the DCMS agreed that the imposition of these new rules "seems to be going in the opposite direction of liberalisation", which was the stated purpose of the proposal. (Q 164)

120. Mr Blowers from Ofcom agreed that it would be "entirely appropriate to remove those kinds of artificial restrictions and certainly to look very hard at an artificial impediment to the creation of children's programming." (Q 143)

The Council's text

121. In the Council's text, Article 11(2) has been altered so that all programmes excluding children's programming and news programmes are now subject to a 30 minute rather than 35 minute rule.

122. Meanwhile children's programming and news programmes should be interrupted for advertising only once for each period of 30 minutes, provided that such programmes exceed 30 minutes to begin with.

The European Parliament's text

123. The Parliament's text imposes stricter quantitative limits on advertising, with the daily limit of the percentage of advertising content reduced from 20 per cent to 15 per cent.

124. The Parliament's text also limits advertising breaks in "films made for television, cinematographic works, concerts, theatre plays and operas" to "once for each period of 45 minutes"—and not, as the Commission had proposed, every 35 minutes. This goes in the opposite direction to the Council's proposal, where the 35 minute rule would be relaxed to a 30 minute rule.

125. **We are unconvinced by the case made for any of the proposed quantitative rules on advertising. We believe that in an increasingly competitive environment, consumers will be able to influence for themselves the volume of advertising which they find acceptable.**

126. **We are concerned about the likely implications of these rules for free to air programming, particularly children's' programming, of the proposed 30 minute rule.**

CHAPTER 5: ADVERTISING CONTENT RULES

The 2005 proposal

127. The Proposal, building on the Television Without Frontiers Directive, contains a range of measures that are designed to regulate the content made available through audiovisual media services. These rules can be sub-divided into four categories: (a) rules governing advertising; (b) rules governing harmful and illegal material; (c) rules concerned to ensure that content are diverse and originate from Europe, i.e., the production quotas; and (d) rules concerning access to certain content, e.g. so-called 'listed events' and news reports.

128. The main concern of those raising questions about scope arise from the fact that some of these content rules would become applicable to a much wider range of undertakings and services than under the existing regime.

129. Of these four categories of content rule, the one that generated the vast majority of responses from those that submitted evidence were the advertising rules.

130. **There was general acceptance that current qualitative advertising rules were satisfactory and did not require reform. We agree with this view.**

131. The rules concerning "European" and "independent" works, through the imposition of quotas, was felt by all respondents to have had little if no impact on the UK broadcasting market. Existing broadcasters stated that they far surpassed the minimum requirements.

132. **As there was little appetite for such quotas to be imposed, we are pleased that the revised text leaves it to Member States to define where action is needed to promote European and independent works, and where such action is practical.**

133. **We also support the 'lighter touch' on quotas for on demand services, where the imposition of quotas would have placed unreasonable burdens on operators.**

134. Only a few respondents expressed an opinion about the rules concerning access. Current UK arrangements concerning the use of short news reports was considered to be perfectly adequate and did not require the creation of a new legal right. The Council's text permits such arrangements to continue in existence.

Harmful and Illegal Content

135. There was consensus that there is a continued and urgent need to maintain controls over harmful and illegal content, particularly as relates to the protection of minors. **We believe that these concerns remain valid and paramount.**

136. We would nonetheless draw attention to the work of the Internet Watch Foundation, an essentially self-regulatory industry body, which has seen a reduction in UK hosted child pornography from a global level 18 per cent in

1997, when the IWF became operational to only a 0.4 per cent proportion of global content in 2005 (pp 154–5). [4]

137. We noted the Government's concern that the stated categories of material in the Proposal go beyond that which is currently illegal under UK law.

138. The Minister told us that the United Kingdom was already "very well served" as regards regulation in this area through Ofcom and the Communications Act. (Q 159)

The Council's text

139. The Council's revised text, and that of the Parliament, both return to the list of grounds for offence in the original 1989 Directive, rather than the Commission's 2005 proposal. These grounds are actually fewer than those set out in the Treaty.

140. Some of the concerns over the impact of the new rules on freedom of expression were related to fears over the scope of the Directive, particularly the electronic press. As Mr Paulger from the Commission noted, "Now the demarcation lines are much clearer as regards scope the risk of restrictions on freedom of expression are much less than they would have been as the scope had been understood to be in the beginning." (Q 334)

141. **We are persuaded that the rules on harmful or illegal content will not pose a significant threat to freedom of speech in the United Kingdom, particularly in light of the reduced scope of the Directive.**

4 Professor Ian Walden, who acted as Specialist Adviser to the Committee for this inquiry, is a non-industry board member of the IWF.

CHAPTER 6: PRODUCT PLACEMENT

The 2005 proposal

142. As a part of the general drive of the text to allow broadcasters to seek advertising revenue from beyond the perceived dwindling traditional source of spot advertising the proposal initially sought to liberalise the rules on product placement.

143. Jim Murray from the European Consumers' Organisation (BEUC) warned us that "commercial communication is more and more a part of our daily culture" and that the proposed rules "would add greatly to the exposure to commercial communication." (Q 361)

144. By contrast, Jeremy Beale from the Confederation of British Industry (CBI) welcomed the move to relax the rules on advertising as a recognition of something which "is happening globally anyway." (Q 51)

145. There was a degree of uncertainty about the significance of product placement to advertising revenue. Mr Blowers from Ofcom told us that "product placement market opportunity is somewhere in the £25 million to £100 million range, whereas in 2005 the value of the spot advertising market was something like £3.5 billion" and that Ofcom do not see product placement as "an inevitable and necessary substitute for spot advertising revenues." (Q 145)

146. Mr Beale also highlighted the rather contradictory element that the provision on editorial control would introduce to the proposal, in that the draft Directive assumed that an editorial versus commercial divide would always be apparent. Given the text's explicit focus on commercial rather than non-commercial audiovisual media services, this raised fundamental questions. (Q 51)

147. The Government were concerned that the Commission's proposals for identifying programmes with product placement would interfere with acquired programming in an unjustified and impracticable way, not least by focusing on a payment not only to a broadcaster or "media service provider" but to anyone in the value chain. (p 69)

148. Matteo Maggiore, from the BBC, highlighted the potential difficulties for a broadcaster to "ascertain whether an acquired programme, which had not been commissioned, contained any product placement" as it would require an impossibly in-depth understanding of the editorial process behind the programme production. (Q 16)

149. There has been some divergence within the European Union over the current status of product placement. Magnus Brooke from ITV told us that currently "product placement is not technically allowed" in the United Kingdom and that "the UK takes the view that the current Directive does not allow product placement, per se, for example the paid inclusion of particular products or particular brands in programmes." However he continued to tell us that this "is not a view which is universally shared, I have to say, and the Austrians, for example, take the view that product placement within programmes is allowed under the current Directive." (Q 289)

The Council's text

150. The post November Council text reverses the initial attempt of the proposal to liberalise the rules on product placement by imposing a blanket ban and allowing for Member States to derogate from the ban in certain respects.

151. Article 3(f) of the revised text states that "Product placement shall be prohibited". It does allow for Member States to derogate from the ban "in cinematographic works, films and series made for television, sports broadcasts and light entertainment programmes" and "in cases where there is no payment but only provision of certain goods or services for free with a view to their inclusion in a programme". This derogation cannot apply to children's' programming.

152. Even if Member States were to derogate from the ban, programmes including product placement would not be allowed to impact on "the responsibility and editorial independence" of the broadcaster; nor would they be allowed to "directly encourage the purchase or rental of goods or services" or give "undue prominence to the product in question". A further provision is that viewers must be clearly notified of any product placement when they watch such programmes.

153. There is a blanket ban on any product placement for tobacco products, or for companies whose principal activity is making or selling tobacco products.

154. Under the revised text, sites such as YouTube may not be covered because the content they make available is likely to be categorised as "user-generated" rather than "on demand" services. Nevertheless there is empirical evidence of large commercial enterprises using such sites to advertise to users, as was the case with the "unpimp your ride" campaign on YouTube for Volkswagen, which erodes this regulatory distinction.

The European Parliament's revised text

155. Under the Parliament's amended text, product placement would be explicitly banned in "news and current affairs programmes, programmes for children, documentaries [and] advisory programmes". As with the Council text, Member States would be able to derogate from the ban, and thus still allow product placement only "in cinematographic works, films and series made for television and sports broadcasts", or in instances when there is "production aid where there is no payment but only provision of certain goods or services for free with a view to their inclusion in a programme."

156. **We fully understand that were product placement to be permitted, there would be concerns about the danger of it interfering with editorial content.**

157. **At the moment, product placement is only a very small part of advertising revenue. The figures appear to show that television advertising is currently stable, thus product placement cannot be considered necessary to the viability of television companies. If this were to change in future, we believe that the issue of product placement must be revisited.**

CHAPTER 7: SELF-REGULATION

The 2005 proposal

158. In the Government's submission they stated that so far as TV broadcasting was concerned, the Government takes the view that the existing regulatory arrangements, involving Ofcom, were working well—and allowed regulation to take place with as light a touch as possible. They would also support as light a touch as possible for non-linear services—in as far as these were included in the finalised proposal at all. The Government stated that there was a lack of clarity in the Commission's original proposal about the regulatory regimes that will be acceptable in Member States.

159. The Minister told us that he was "totally in favour of regulation so long as it is self-regulation and it should only be state regulation when self-regulation cannot work, by and large because I think the experts are better at regulating themselves than those of us who are not experts and we are more likely to keep up to speed with their industry." (Q 157)

160. As mentioned above (paragraph 136), the Internet Watch Foundation has been a very successful example of how industry is willing and able to regulate itself in the United Kingdom.

161. A further example is provided by the Advertising Standards Agency (ASA), which has regulated non-broadcast advertising in the UK since the 1960s and was given responsibility for broadcast advertising by Ofcom in 2004 in recognition of its success. Under the current framework, the ASA provides a "one stop shop" to advertising content with a self-regulatory approach for non-broadcast and a co-regulatory approach (with Ofcom) for broadcast advertising.

162. The ASA argued in their submission to us that "the proposed text of the AMS Directive could severely inhibit the continued operation and development of effective advertising self- and co-regulation in the UK and across the EU-25." (pp 140–142)

163. According to the BBC, self-regulatory schemes should be the preferred option in addressing public policy concerns in the context of on demand services. In their view, the context in which users access services on-demand should enable a lower requirement for regulatory protection than in the case of linear broadcasting. They argued that binding regulation of on-demand services would be at best premature, almost certainly ineffective and possibly undesirable.

164. Mr Murray from BEUC challenged the notion that self regulation was always the best option telling us that "There is a conflict there which has never really been satisfactorily resolved. It is usually resolved by slightly ignoring it or being slightly inconsistent. We can see self-regulation as being possible within a very clear legal and institutional context but not in the kind of context in which it has appeared in recent directives in that Member States are to encourage self-regulation. This is a nonsense." (Q 381)

The Council's text

165. The Council's text introduces the principles of self-regulation and co-regulation, which were absent from the 2005 proposal, in Member States where such regulation is compatible with national laws.

166. Mr Paulger from the Commission told us that they were "very much in favour of co- and self-regulation as a regulatory technique … This was our position at the outset". He explained that there was no mention of self-regulation in the body of the initial draft Directive only because of legal concerns that it might not be compatible with the section on current self-regulation in the existing inter-institutional agreement on better law-making. (Q 350)

167. He cautioned us however that "self-regulation is more developed in some Member States than in others as a regulatory technique," and thus cannot be simply prescribed to all. (Q 350)

168. **We strongly welcome the inclusion of co- and self-regulation in the body of the revised text, and hope that it will allow such regimes to continue to flourish in the United Kingdom and other Member States where they already operate.**

169. **We are persuaded that self-regulation is the best means of operation in principle, especially for rapidly developing technological markets such as broadcasting.**

CHAPTER 8: IMPACT ASSESSMENT

170. Several of our witnesses reported concerns over the quality of the Commission's Impact Assessment which was carried out on the 2005 proposal. Of these witnesses, perhaps the sternest criticism came from the Government. The Minister confessed to be "terrified" by the lack of any attempt to quantify the effects of the proposal with numbers. (Q 157) Wes Himes from the European Digital Media Association (EDiMA) supported this view complaining that the data in the Impact Assessment had "not been generated statistically", "quantifiably" or "even been generated qualitatively." (Q 20)

171. Jean-Luc de Cockborne, Head of the Commission's Audiovisual Policy Department, felt that such criticism of the lack of quantification of impact contained in the Commission's Impact Assessment was unfair as it was "impossible" "to quantify the actual evolution of the market", and that in any case, the market was so fast moving that in a year's time it would be out of date. (Q 347)

172. Mr de Cockborne criticised what he called "the Ofcom approach" to this proposal by saying that it only sought to distinguish between the cost of regulation and the cost of no regulation. He told us that in reality, the two alternatives to consider where the "cost of complying with one harmonised set of rules at European level" and the cost of complying "with 25 or 27 different rules" varying with each Member State. (Q 347)

173. Alex Blowers from Ofcom suggested that a further significant impact which had not been considered in the Commission's study was "the indirect effect on the business behaviour of introducing these rules at a time when this industry is taking off." (Q 129)

174. Chris Bone from the DCMS told us that he detected in the Impact Assessment a "bias towards bringing existing broadcasting interests into these discussion but not including enough of the telecoms industry, the software providers, the software houses, the games developers and all the other people who potentially could be affected by this" and noted that those consulted by the Commission were "nearly all broadcasters." (Q 157)

175. Perhaps as a result of this, Simon Persoff from Orange UK felt that the Impact Assessment lacked "an assessment of both new and existing business models" and was specifically lacking in any discussions of the new and emerging media business models and how they might be affected. (Q 111)

176. Mr de Cockborne from the Commission responded to this by stating that the Commission had conducted an open consultation and had published "about 1,500 pages of comments" from stakeholders, available on the Commission's website. (Q 347)

177. **We accept the Commission's argument that there are practical difficulties in quantifying how many companies will be affected by this Directive, partly because the proposal is designed to regulate according to the type of service, rather than the type of provider.**

178. **Notwithstanding the above, more rigorous impact assessments were possible in our view. We believe that it was possible to obtain cost estimates in respect of specific provisions within the proposal. As an example, the quantitative rules governing the timing of advertising**

slots, the so-called '35- (now 30-) minute rule', has direct measurable consequences in terms of a reduction in the amount of revenue that can be expected to be obtained by broadcasters.

179. The Commission clearly feel, with some justification, that their Impact Assessment took full account of the whole spectrum of media interest, and that the basis for consultation was widespread. Nevertheless the feelings expressed to us, particularly by new media service providers, was that the Impact Assessment failed to give appropriate weight to the impact of regulation on a rapidly evolving and expanding media services sector with fundamentally different business models from traditional television broadcasters. **We recommend to the Commission that they discuss this difference of opinion with the new media service providers as soon as is practicable.**

180. It is also undeniably true that any figures in the Impact Assessment would only be of temporary value in such a fast changing market. However both of these reasons should caution regulators against ambitious action in these markets as there is clearly a limit to their ability to comprehend fully the markets they are faced with today, let alone anticipate what the markets will be like when the proposal comes into force.

181. Wherever empirical measurement or estimation were not feasible in the current market environment, we believe that the Commission should have adopted a highly precautionary approach, only proposing incremental changes to the current regime where clearly justifiable in terms of protecting matters of general public interest.

182. In our earlier report *Ensuring Effective Regulation in the EU*, this Committee concluded "that the European Parliament and Council should produce an impact assessment on any occasion when in the course of debate they depart substantially from a Commission proposal." [5]

183. **It is a matter of some concern to us that no impact assessment will be carried out on the revised proposals. Currently neither the Council nor the European Parliament have either the obligation or the resources to carry out an impact assessment, nor does the Commission after its initial proposal. With the scope and regulatory burden for non-linear services very significantly altered from the original proposal, we call for a further impact assessment to be made.**

5 EU Committee 9th Report, Session 2005–06, HL 33 (para 169)

CHAPTER 9: THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

The scope of the proposal

184. **We recognise that changes have taken place in the sector, and are continuing to take place, and we accept, as do all those that gave evidence, that reform of the regime is needed. The witnesses also generally supported the view that now is a good time to be reassessing the existing regulation. (Para 53)**

185. **We share the concern of witnesses about the proliferation of multiple and overlapping regulatory schemes. We call upon the Commission to work to make the regulatory boundaries as clear as possible for business and to enhance legal certainty. (Para 58)**

186. **We agree that the original scope of the proposal was too broad and too ill-defined to operate without risk of great harm to new media businesses. We welcome the reduction in scope in the revised proposal. (Para 69)**

187. **We welcome the apparent intention to exclude entirely electronic versions of newspapers and magazines but believe that in a rapidly changing communications world, the above distinction may well prove difficult to make in practice. (Para 75)**

188. **The implementation and enforcement of this Directive, particularly when many of the services covered are 'a moving target', may be fraught with difficulties in the absence of sufficient legal certainty over its exact scope as the range of new media services continues to develop and expand. (Para 76)**

189. **It would seem more sensible to seek to liberalise the provisions on advertising for established broadcasters, as discussed below, than to seek to extend similar provisions to the new media services. (Para 80)**

190. **In our view, it is neither the role of regulation nor the role of any regulator to protect those with established market positions from threats by new market entrants operating under different business models. (Para 81)**

191. **We are concerned that the identification of some of media services as "television-like", may lead some to conclude that eventually "like-services" should be regulated in a "like-manner", i.e. a perfectly "level playing field". (Para 82)**

192. **If these services are to be included at all we agree that they must be regulated differently, but the wording and definitions in the latest versions of the text may encourage the idea that they can and should be regulated in the same way as television. We would consider such a move now or in the future to be a grave error. (Para 83)**

193. **Given the practical difficulties in defining, regulating and enforcing a Directive based on "television-like" services, we believe that any further incursion into the internet and other new media services will be fraught with even greater difficulties and is unnecessary in order to secure a single internal market. (Para 85)**

The Country of Origin principle

194. **We share the considerable concern of the majority of our witnesses over the apparent dilution of the Country of Origin principle. We understand that the opposition to the principle has gained momentum in many quarters of the European Union, but view this as an obstacle to the consolidation of the internal market. (Para 108)**

195. **We hope that the proposed monitoring system will work effectively to prevent Member States from obstructing audiovisual media service providers for any grounds other than those strict public interest grounds set out. (Para 109)**

Quantitative rules on advertising

196. **We are unconvinced by the case made for any of the proposed quantitative rules on advertising. We believe that in an increasingly competitive environment, consumers will be able to influence for themselves the volume of advertising which they find acceptable. (Para 125)**

197. **We are concerned about the likely implications of these rules for free to air programming, particularly children's programming, of the proposed 30 minute rule. (Para 126)**

Advertising content rules

198. **There was general acceptance that current qualitative advertising rules were satisfactory and did not require reform. We agree with this view. (Para 130)**

199. **As there was little appetite for quotas to be imposed, we are pleased that the revised text leaves it to Member States to define where action is needed to promote European and independent works, and where such action is practical. (Para 132)**

200. **We also support the 'lighter touch' on quotas for on demand services, where the imposition of quotas would have placed unreasonable burdens on operators. (Para 133)**

201. **We believe that concerns over harmful and illegal content, particularly as relate to children, remain valid and paramount. (Para 135)**

202. **We are persuaded that the rules on harmful and illegal content will not pose a significant threat to freedom of speech in the United Kingdom, particularly in light of the reduced scope of the Directive. (Para 141)**

Product placement

203. **We fully understand that were product placement to be permitted, there would be concerns about the danger of it interfering with editorial content. (Para 156)**

204. **At the moment, product placement is only a very small part of advertising revenue. The figures appear to show that television advertising is currently stable, thus product placement cannot be considered necessary to the viability of television companies. If this**

were to change in future, we believe that the issue of product placement must be revisited. (Para 157)

Self-regulation

205. **We strongly welcome the inclusion of co- and self-regulation in the body of the revised text, and hope that it will allow such regimes to continue to flourish in the United Kingdom and other Member States where they already operate. (Para 168)**

206. **We are persuaded that self-regulation is the best means of operation in principle, especially for rapidly developing technological markets such as broadcasting. (Para 169)**

Impact Assessment

207. **We accept the Commission's argument that there are practical difficulties in quantifying how many companies will be affected by this Directive, partly because the proposal is designed to regulate according to the type of service, rather than the type of provider. (Para 177)**

208. **We do however believe that it is possible to obtain cost estimates in respect of specific provisions within the proposal. As an example, the quantitative rules governing the timing of advertising slots, the so-called '35- (now 30-) minute rule', has direct measurable consequences in terms of a reduction in the amount of revenue that can be expected to be obtained by broadcasters. (Para 178)**

209. **Many of our witnesses, particularly those representing new media service providers, felt that the Commission's impact assessment failed to give appropriate weight to the impact of regulation on a rapidly evolving and expanding media services sector with fundamentally different business models from traditional television broadcasters. We recommend to the Commission that they discuss this difference of opinion with the new media service providers as soon as is practicable. (Para 179)**

210. **It is a matter of some concern to us that no impact assessment will be carried out on the revised proposals. Currently neither the Council nor the European Parliament have either the obligation or the resources to carry out an impact assessment, nor does the Commission after its initial proposal. With the scope and regulatory burden for non-linear services very significantly altered from the original proposal, we call for a further impact assessment to be made.**

APPENDIX 1: SUB-COMMITTEE B (INTERNAL MARKET)

The Members of the Sub-Committee which conducted this inquiry were:

Lord Dykes
Baroness Eccles of Moulton
Lord Fearn
Lord Freeman (Chairman)
Lord Fyfe of Fairfield
Lord Geddes
Lord Haskel
Lord Lee of Trafford
Lord Mitchell
Lord Powell of Bayswater
Lord Roper
Lord St John of Bletso
Lord Swinfen
Lord Walpole
Lord Woolmer of Leeds

Declarations of Interests:

A full list of Members' interests can be found in the Register of Lords Interests:

http://www.publications.parliament.uk/pa/ld/ldreg.htm

Members declared no interests relevant to this inquiry.

APPENDIX 2: LIST OF WITNESSES

The following witnesses gave evidence. Those marked * gave oral evidence.

Advertising Association
Advertising Standards Authority
* BBC
* CBI
* Channel 4 Television Corporation
* Channel 5 Broadcasting Ltd
Professor Richard Collins
* Department for Culture, Media and Sport
* European Digital Media Association (EDiMA)
* European Commission
* European Consumers' Association (BEUC)
Professor Michael Holoubek
* Mrs Mary Honeyball MEP
* ITV Network Ltd
Institute of Professional Sport
Internet Watch Foundation
Miniclip.com
* Mobile Broadband Group
The Newspaper Society
* Ofcom
* Orange UK
PPL and VPL
RNIB and RNID
Satellite and Cable Broadcasters' Group
* T-Mobile
Voice of the Listener & Viewer

APPENDIX 4: CORRESPONDENCE WITH THE MINISTER

Letter from the Lord Grenfell, Chairman of the Select Committee on the European Union to James Purnell MP, Minister for Creative Industries and Tourism, DCMS

15983/05 COM(05) 646SEC (05) 1625: Explanatory Memorandum on European Community Legislation—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

Annex to 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.

Impact Assessment, Draft Audiovisual Media Services Directive

Sub-Committee B considered this document and your Explanatory Memorandum at its meeting on 6 February 2006 and agreed to maintain the scrutiny reserve, pending receipt and examination of the Regulatory Impact Assessment which you mentioned will be forwarded to us under a Supplementary Explanatory Memorandum.

We noted, and shared, the serious misgivings of UK industry in relation to this document. We are minded to revisit this matter more fully in the forthcoming weeks.

In paragraph 39 of your Explanatory Memorandum you mentioned the UK-based stakeholder group. It would be helpful to have a brief summary of areas of concern that this group has considered.

In paragraph 48 and 49 of your Explanatory Memorandum you explained that the UK Government had serious reservations about aspects of these Proposals. Are you able to expand further on these reservations?

9 February 2006

Letter from James Purnell MP to the Lord Grenfell

Thank you for your letter of 9 February about the European Commission's proposal to amend Council Directive 89/552/EEC, otherwise known as the 'Television Without Frontiers' (TVWF) Directive.

You asked about the UK-based stakeholders group. The group met three times last year and has met once so far this year, with another meeting imminent. Represented on it is a wide range of interests including broadcasters, satellite and cable operators, Internet Service Providers, new media providers, content producers, co and self-regulatory organisations, trade unions and civil society groups.

The major concern for stakeholders has been the scope of the Directive. An overwhelming majority are not in favour of the scope being extended to on-line services. Many have expressed concerns that the Commission's proposals could

lead to increased regulatory burdens and legal uncertainty. They also believe that the Commission's definitions do not make it clear which services the revised Directive will cover, or where exactly the proposed dividing line between 'linear' and 'non-linear' services would be drawn.

The Government shares these views. Aside from the important issue of lack of clarity in the proposed definitions, our key concern is that the concepts of 'audio-visual media' and 'non-linear' services in the Commission's text appear to bring in a very wide range of new media services which have little in common with broadcasting. This is a fast growing and converging area, and we should take great care before imposing controls which might discourage particular business models or encourage providers to move outside the EU.

Harmonisation of minimum standards of the kind proposed across all the services which fall into the scope of the current draft Directive would pose a threat both to their growth and to national traditions of free speech. We consider that the case for such harmonisation in this way at this time has not been made.

In particular, the impact assessment prepared by the Commission offers no convincing case for harmonisation across all the services falling within the scope of the Directive. It is based upon a theoretical projection of what might happen if Member States were to take advantage of derogations available under the e-commerce Directive to impose burdensome national controls that would distort the working of the internal market, or if there were to be serious distortions (in terms of legal certainty or market advantage) as between the types of regulation that applies to different platforms.

It concludes that there would be an overall—albeit essentially unquantified—loss of business. But there are very few figures in the assessment to back this assertion up.

We see no sign that Member States are in fact imposing burdensome, damaging controls in these areas, although the assessment claims that no less than 23 already have controls of some sort. Our own extensive discussion with UK and pan-European businesses and trade associations has not revealed any evidence of concern that lack of harmonisation is stifling business opportunities.

Rather, discussion has revealed severe concerns that these proposals could increase business uncertainty and regulatory risk. Without more evidence of potential harm to business, it seems to us that proceeding with these measures in their current form would run counter to the Commission's own stated aim—endorsed by Member States—of better regulation.

If evidence of undue interference in the single market for such information society services did come forward, we believe that the question would be best resolved in the forthcoming review of the Electronic Commerce Services Directive.

Our overall concern, therefore, is that the imposition of controls of the sort suggested on non-linear services could itself cause just the kind of damage to growth and development in these sectors which the Commission quite rightly seeks to avoid. They would themselves lead to market distortions and to a net outflow of jobs and development in the new media industries from the EU area.

28 February 2006

Letter from the Lord Grenfell to James Purnell MP

TELEVISION WITHOUT FRONTIERS DIRECTIVE

EM 15983/05 COM(05) 646SEC (05) 1625

Thank you for your letter of 28 February 2006, replying to my letter of 9 February 2006, which Sub-Committee B considered at its meeting on 20 March 2006.

We were most grateful for the fullness and candour of your response. We share your concerns over the potential damage that inappropriate harmonisation might cause to new media industry sectors both in the UK, and across the wider EU. We agree strongly that in such a fast moving area, further bureaucracy has the potential to impede growth.

We have decided to maintain the scrutiny reserve. We would be grateful if you could keep us informed of any progress on this Directive.

21 March 2006

Letter from the Lord Grenfell to Shaun Woodward MP, Minister for Creative Industries and Tourism, DCMS

12348/06 12348/06 +ADD 1 COM(2006) 459 final SEC(2006) 1073: Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC "Television Without Frontiers", as amended by Directive 97/36/EC, for the period 2003–2004

Sub-Committee B considered this document, and your Explanatory Memorandum at its meeting on 23 October. As you will be aware, this area is of great interest to the Committee, which is currently conducting an inquiry in the Commission's proposal for a Directive amending Council Directive 89/552/EEC (Television Without Frontiers).

We note and accept your arguments with regards to the Commission's criticism of the UK's performance in the context of the targets set by Articles 4 and 5, and also note that this assessment covers the review period 2003–2004, and may now be outdated. We agree that some of the criteria are clearly impractical when applied to small, specialised channels. What pressure can the Government apply to improve the existing criteria? Can you confirm that UK public service broadcasters meet the targets set by Articles 4 and 5?

We are content to clear the document from scrutiny.

26 October 2006

Letter from the Lord Grenfell to Shaun Woodward MP

12348/06 12348/06 +ADD 1 COM(2006) 459 final SEC(2006) 1073: Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC "Television Without Frontiers", as amended by Directive 97/36/EC, for the period 2003–2004

As you will be aware, Sub-Committee B is conducting an inquiry into the Commission's proposed revision of the Television Without Frontiers (TVWF) Directive. We have completed taking evidence and will produce our final report in December. For the moment, we thought it might be helpful to let you know of certain concerns we have over the proposal, in the light of the evidence we have

received, ahead of the Council Meeting on 14 November, where we understand agreement to a General Approach is sought by the Presidency.

The purpose of the original 1989 Directive was to create and maintain a single market in television broadcasting. We recognise that the context at that time was of large television companies which enjoyed near-monopoly status in many Member States, limited consumer choice and no internet. The central elements of the original directive were, and should continue to be, two-fold: to ensure that television services could be delivered in the EU as a single internal market and on the basis of the Country of Origin principle. To this end there were certain regulations relating to consumer protection. We feel now that there is a further need to employ the minimum necessary regulation while providing allowance for the protection of minors from harmful content, and for the control of material seeking to incite hatred on the relevant grounds.

In updating the Directive, we assume that current thinking on EU legislation would be to adopt a framework which employs the lightest possible regulatory touch necessary to achieve the objectives of the legislation. The revised Presidency text of 20 October endorses the principles of self and co-regulation in these sectors, and we warmly welcome this move. We believe that, where consistent with Member State law, self-regulation is the best possible option especially in an area where technology and markets are changing continuously.

We are concerned that by adopting a terminology relating the directive to Audiovisual Media Services, there may be a danger that legislators are drawn into a desire to regulate the internet and other new media services. On the evidence we have received during our inquiry, this would in our view be a grave mistake. These services already provide a strong single internal market across the EU and indeed often globally. There appears to be little or no purpose in seeking to regulate these services in order to achieve a single market which already exists across media. No evidence has been provided that suggests otherwise.

As far as public interest protection is concerned, we note that the eCommerce Directive already covers the point-to-point, on-demand services which it regards as 'information societies'. The Directive requires internet services providers to remove illegal content when it is reported to them, and through derogations to the Country of Origin Principle, it permits Member State governments to block content originating from other Member States on grounds of public policy including health, security and consumer protection.

We recognise, as the evidence before us demonstrated, that the distinction between television and the internet or other new media services is becoming blurred in two ways. Consumers are freely exercising choice across these media and the advertising market also views these varying markets as to a degree inter-competitive. We do not believe that it is the role of regulators to seek to protect businesses or providers that are challenged by the emergence of new developing technologies.

Nevertheless, the evidence appears to be that there is still a recognisable television market, in what one might term a traditional sense, being broadcast and available to the population as a whole for simultaneous viewing, often free at the point of use. The evidence to us in general strongly supported liberalising the quantitative rules on advertising on television services in recognition of the vastly increased consumer choice and the availability of new technology to enable consumers to decide how much advertising they want to see as well as time-shift technology. We held concerns over the 35 minute rule in the Commission's original draft

Directive, and recognise that the move to a 30 minute rule is a tentative step in the right direction. The evidence to us on product placement was mixed, and we recognise the difficult issues involved here, especially as regards the potential impact on editorial control in programme production.

The evidence to us, taken as a whole, very strongly suggested that it remains useful to have a Directive that deals solely with what is conventionally termed television, but that it should not seek to go beyond that. In one sense, we recognise that the Presidency draft of 20 October represents a significant improvement on the scope of the original Commission draft, which in our view was excessively and dangerously wide. The Presidency draft nevertheless does seek to extend regulation into the internet and other new media services and seeks to limit this incursion by defining certain "non-linear services" as on demand services which are described as having the characteristics of "television-like" services (Recital 13a). The implications of this are set out in Article 1(aa). We have received little evidence that convinced us that this incursion into the internet and other new media services is necessary to achieve a single internal market in the EU, nor desirable on any other grounds bearing in mind the existence of the e-commerce directive.

We note that the Presidency draft seeks to moderate the implications of this incursion beyond television services by limiting the scope and intensity of the regulations proposed for those "non-linear services". Insofar as this is a considerable improvement on the Commission's draft, we welcome this. Nevertheless, we received no evidence to suggest that the current Directive needs to be extended in scope into the internet and other new media services in order to achieve the limited objectives of the revised Presidency draft. Existing laws appear to protect important public interest matters such as the protection of minors, which we strongly endorse.

In our view, having reflected carefully on the evidence before us, extending the Directive into the internet and other new media services has two substantial dangers. By identifying some of these services as "television-like", it may lead some to conclude that eventually "like-services" should be regulated in a "like-manner", i.e. a perfectly "level playing field". The Presidency draft seeks to identify and propose the regulation of "television-like" services but proceeds to regulate them differently. As we note above, if they are to be included at all we agree that they must be regulated differently, but the wording and definitions in the Presidency text may encourage the idea that they can and should be regulated in the same way as television. We would consider such a move now or in the future to be a grave error.

There is a second problem with extending the draft Directive into non-television services, such as the internet and other new media services. It might be taken as an encouragement that it is desirable to extend regulation into these services more widely and eventually to go beyond "television-like" services into other parts of the internet and new media. Given the practical difficulties in defining, regulating and enforcing a Directive based on "television-like" services any further incursion into the internet and other new media services will be fraught with even greater difficulties and, as we have indicated above, is unnecessary in order to secure a single internal market.

In summary, the Presidency draft to be considered next week is an undoubted improvement on the Commission draft. But based on the evidence before us in our inquiry, we believe that it has been a mistake to seek to extend the scope of the existing Directive into the internet and other new media services. We agree that,

with the present state of technology, and in the communications market place, there is still an identifiable and important television market and that certain aspects of television do need to be liberalised in the face of greatly increased consumer choice and new technology. Going beyond television into the internet and other new media services is in our view unnecessary to achieve the fundamental objectives of the legislation in this area. Moreover commencing the process of incursion into these areas opens the door to significant problems in the future and in any case may prove difficult to enforce, other than in a way which interferes unnecessarily with the business model of a new media service provider and creates for them an un-level playing field.

8 November 2006

Letter from Shaun Woodward MP to the Lord Grenfell

12348/06 12348/06 +ADD 1 COM(2006) 459 final SEC(2006) 1073: Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC "Television Without Frontiers", as amended by Directive 97/36/EC, for the period 2003–2004

Thank you for your letter of 26 October confirming that you are content to clear this document from scrutiny.

I can confirm that the UK public service broadcasters have exceeded the requirements of Articles 4 and 5. You may be interested in the attached summary report (not attached) which was prepared by OFCOM on the position of the public service broadcasting analogue and digital terrestrial channels. This summary showed that for these channels in 2004, the overall proportion of European works was 85 per cent and of independent European works it was 45 per cent.

You asked what pressure the Government can apply to improve the existing criteria for the types of channels which are expected to meet the TVWF European production quotas. The Government's approach has been to keep a watching brief on this issue and to make sure the position does not worsen.

So far as the current negotiations on the revision of the Directive are concerned, there have to date been no moves to increase the current quotas for 'linear' (i.e. television broadcasting) services or to remove the existing flexibilities. We are pleased about that, but our primary objectives in this negotiation have been concerned with its scope, the country of origin principle and the limits which are set on television advertising.

Member States' approach to the quotas varies. While Germany, for example, would like to see the quotas for non-linear services removed, France would like to see them increased and would even like to include industry levies.

22 November 2006

Letter from the Lord Grenfell to Shaun Woodward MP

12348/06 12348/06 +ADD 1 COM(2006) 459 final SEC(2006) 1073: Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC "Television Without Frontiers", as amended by Directive 97/36/EC, for the period 2003–2004

Thank you for your letter of 22 November 2006 which Sub-Committee B considered at its meeting on 4 December.

We were grateful to you for confirming that the public sector broadcasters in the UK exceed the requirements of Articles 4 and 5, and for the summary report from Ofcom which you sent us.

We are however seriously concerned that the Government has limited its actions on what are unsuitable criteria contained in these Articles to "a watching brief", as there is a clear danger that future reports will mislead readers as to the state of broadcasting in the UK. We trust that you will consider raising this issue with the Commission.

As you are aware, we are finalising our report into the revision of the Television Without Frontiers Directive and expect to publish shortly.

6 December 2006

APPENDIX 5: GLOSSARY OF TERMS

3G mobile services—Third generation mobile services are those using a part of the spectrum that enables larges volumes of data to be transmitted by a mobile handset over a short period of time, enabling video calling and the receipt of television programmes.

Broadband—A standard of end-user access to the Internet that enables large volumes of data, such as a film, to be downloaded over a short period of time.

Free-to-air terrestrial broadcasting—Traditional television is broadcast 'free-to-air' enabling anyone with the relevant equipment, e.g. aerial, to receive it. Such broadcasting is generally distinguished from subscription-based services and services delivered over physical networks into the home.

Information society services—These are services provided in the form of economic or professional activities at the direct request of the user of the services, without the parties being simultaneously present at the same location. Such services involve the processing, storage or transmission of information by electronic means intended for the digital processing and storage of data. Information society services must be entirely transmitted, conveyed and received by electronic means of communication.

Internet Protocol Television (IPTV)—This is a system where a digital television service is delivered using the Internet Protocol over a network infrastructure, which may include delivery by a broadband connection.

Linear services—These are scheduled services, comparable to traditional television broadcasts. The user cannot determine the timing of their availability for viewing.

Listed events—A sporting event considered by Ofcom to be of national interest, e.g. the FA Cup Final, and therefore subject to restrictions concerning the manner in which it is broadcast.

Non-linear services—These are non-scheduled services selected by a media service provider where the user decides the timing of their transmission.

Product placement—This is a form of advertising where a commercial product is used in fictional or non-fictional media, and the presence of the product is a result of a commercial transaction.

User-generated content—Content made available over the Internet that has been generated by an end-user, generally on an amateur basis, rather than professionally produced.

Video on demand (VOD)—These are services which allow users to select and view video content over a network as part of an interactive television system. VOD systems either "stream" content, allowing viewing while the video is being downloaded simultaneously, or "download" content, when the program is delivered in its entirety to a set-top box prior to viewing. These are by definition "non-linear".

Weblogs—A collection of messages posted on a website in respect of a particular topic, generally displayed in a chronological order. The term is derived from 'Web log'.

APPENDIX 6: RECENT REPORTS FROM THE SELECT COMMITTEE

Session 2005–06

The Further Enlargement of the EU: threat or opportunity? (53rd Report, HL Paper 273)

Annual Report 2006 (46th Report, HL Paper 261)

The Brussels European Union Council and the Priorities of the Finnish Presidency (44th Report, HL Paper 229)

EU Legislation—Public Awareness of the Scrutiny Role of the House of Lords (32nd Report, HL Paper 179)

Ensuring Effective Regulation in the EU: Follow-up Report (31st Report, HL Paper 157)

Annual Report 2005 (25th Report, HL Paper 123)

The Work of the European Ombudsman (22nd Report, HL Paper 117)

Scrutiny of Subsidiarity: Follow up Report (15th Report, HL Paper 66)

Evidence from the Minister for Europe—the European Council and the UK Presidency (10th Report, HL Paper 34)

Ensuring Effective Regulation in the EU (9th Report, HL Paper 33)

Evidence by Commissioner Franco Frattini, Commissioner for Justice, Freedom and Security on Justice and Home Affairs Matters (1st Report, HL Paper 5)

Reports prepared by Sub-Committee B (Internal Market)

Session 2005–2006

Inquiry into the European Commission's Green Paper, "A European Strategy for Sustainable, Competitive and Secure Energy" (41st Report, HL Paper 224)

The Services Directive Revisited (38th Report, HL Paper 215)

Seventh Framework Programme for Research (33rd Report, HL Paper 182)

Including the Aviation Sector in the European Union Emissions Trading Scheme (21st Report, HL Paper 107)

Completing the Internal Market in Services (6th Report, HL Paper 23)

Session 2004–2005

Liberalising Rail Freight Movement in the EU (4th Report, HL Paper 52)

Session 2003–2004

Packaging and Packaging Waste: An Update Report (33rd Report, HL Paper 198)

Services of General Interest (29th Report, HL Paper 178)

Gas: Liberalised Markets and Security of Supply (17th Report, HL Paper 105)

Directors' and Auditors' Liability (15th Report, HL Paper 89)