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Plenary Session: The Implementation of Self- and Co-regulatory schemes

The German system of Co-regulation in the field of the protection of minors in the media
- five years of experience
presentation by Prof. Kurt-Ulrich Mayer,
member of the Commission for the protection of minors in the media (KJM)

Ladies and Gentlemen,

thank you for the invitation to Dublin to present the German system of co-regulation for the protection of minors in the media to EPRA.

Interest in our system which was established over five years ago is still high. It is an accepted standard in all our countries that the young deserve protection as they start into life because they lack the experience which they need to help themselves in difficult situations. This agreement on the need for protection is all the more valid as the media, and in particular the digital media, cross borders so easily nowadays. No country can therefore deal with the protection of minors and human dignity on its own any longer. Instead, I feel that there is a great need to take the European perspective into focus in our work and to initiate further debate. After all, Europe is not just an economic union, but also a union united by certain values. The discussions at this meeting so far have confirmed for me that many of you hold a similar view. I therefore hope that my presentation can provide further food for thought and debate.

The German system for the protection of minors in the media has been discussed here before. I can therefore be very brief about the regulatory and organisational framework, and will instead concentrate on the experience which the KJM has gathered in the five years of its work.

Let me just remind you that in my country the protection of minors is embedded in Article 5 of the German Constitution as a duty of the state; it could therefore not be left to self-

regulation. As a consequence, Germany adopted a model of co-regulation under which the various players work together to achieve the optimum for the protection of minors.

In the online sector, these "player" are:

- the regulators which act through the Commission for the Protection of Minors in the media (KJM),
- the commercial TV broadcasters through their organisation for self-regulation (FSF), and
- internet operators through their equivalent self-regulator (FSM).

The offline sector - video cassettes and so on - is controlled by a different body, the Federal Review Board for Media Harmful to Young People (BPjM). The two relevant laws – the Interstate Treaty on the protection of human dignity and the protection of minors in broadcasting and in telemedia (JMStV) for the KJM and the Protection of Young Persons Act for the BPjM - require the two bodies to cooperate. This co-operation is developing in interesting ways as the borders between offline and online media are becoming increasingly blurred. Generally, the reform of the protection of minors was intended to respond not only to technical progress, but also to changes in society. We believe that it is a good system, and the evaluation after five years of operation has confirmed this.

The two laws came into force in April 2003 and the KJM was set up as the body dealing with national commercial broadcasting and with internet contents. It acts on behalf of all German regulators. Basically, the KJM acts upon complaints, analyses whether the provisions of the law have been breached, and if so, decides on what measures should be taken. It can_

- fine providers,
- issue warnings,
- impose restrictions on air time (particularly in the TV sector) or
- prohibit the distribution of certain contents (mainly in the internet).

The bulk of the work of the KJM is concentrated on Germany as this is the remit specified in the law. In the five years since it was set up, the KJM has dealt with a total of 2750 problematic cases. 580 of these concerned broadcast contents, the rest related to problematic contents in the internet. Alongside this work, the KJM has provided assessments for 1050 applications by the BPjM to list offline media on an index of problematic media. It has filed 550 applications for media contents to be put on the index itself.

These figures say only little about the contents themselves: Mostly, they concern pornography which often involves minors, depictions of violence or hate speech. The

decisions of the KJM are often contested in court; providers argue that the KJM is exceeding its legal scope with its decisions. But more and more now, the courts uphold our findings. This is a positive development; we are, however, aware that our rulings have a limited effect only. This is in particular true for the internet which is such a fast and global media. But it is for this very reason that supervision and control must highlight the limits of what is acceptable again and again.

In the broadcasting sector, one of the more prominent cases the KJM has dealt with for several years is the casting show "Germany in search of the super star". I think that similar shows exist in most European countries, and I think that. I do not need to go into great detail what it is about: Young people apply to participate and show their talents in front of a jury in the hope of being "discovered". The show is shown by RTL in Germany, the most successful national commercial TV channel. It appeals to viewers to a considerable extent because of the main presenter, Dieter Bohlen. He will regularly humiliate candidates for their looks or singing. As he is very popular in Germany, this anti-social behaviour can be mistaken as being normal or acceptable. In the opinion of the KJM, such role models conflict with tolerance and respect as objectives for education. The behaviour of the presenter could therefore confuse younger audiences, especially children below 12 years of age. The KJM also criticises that candidates were further ridiculed with subtitles and animation; this subjected them to the mockery of millions of viewers. And the scenes were not only shown on TV but also distributed as video clips on several internet platforms. The KJM imposed a fine of 100.000 Euros for four shows which it found had broken the provisions of the law.

After first contesting the fine in court, RTL eventually accepted it. The channel also promised to present future shows of the series to FSF, the TV self-regulator, for clearance before they are shown.

This brings me to the core of the German concept of co-regulation in the media: integrating the providers into the system by requiring them to take their responsibilities seriously. It is a long and stony road - the many disputes and court cases show this - but it aims at impacting the perception - or the policy - of providers as to what should be done for the protection of minors in the media.

The increased responsibility for broadcasts relates to the time when a content is controlled. In 2003, the KJM certified the self-regulator for TV, FSF, which clears contents *before* they are shown on TV; the KJM can only react *after* they have been aired. When a violation of the law is found, the KJM will first check whether the broadcast was presented for clearance to

the FSF before it was shown. If it was cleared the KJM can impose sanctions only if the FSF has exceeded its legal scope with its decision. In our experience, this is only rarely the case.

Most commercial national TV providers are members of the FSF. The concept of co-regulation in Germany is limited to the commercial sector. In public-service broadcasting, the internal committees hold responsibility for the protection of minors. The KJM feels that this is unfortunate as it results in differing standards being applied, and this is difficult to explain to the general public.

In October 2005, the KJM certified the FSM, the self-monitoring body of the multimedia providers. Members of the FSM include internet providers such as AOL or T-Online or search engine operators such as Google or Yahoo, and also major mobile service operators such as T-Mobile, O2 or Vodafone. These names show that the legal concept of "telemedia" is more than just the traditional world-wide web. But there are so many different types of internet provider in Germany that it is unlikely that all of them would join a self-regulatory organisation which the KJM can certify. Providers that are not members of a certified self-regulator are not covered by the regulatory system - in this respect, the system differs clearly from the model of self-regulation in the TV sector: Here, the providers that do not belong to the FSF are subject to the direct control of the KJM.

Over time, cooperation between the KJM, the FSF and the FSM has become very constructive and effective. One reason – and this is one of the key elements of any co-regulatory system – is that the media industry is very interested in a good image in the public. As the RTL example which I mentioned shows, they will act on public pressure, and all the more so, if there is supervisory system in place.

Television and the internet differ, so the approach to regulation must also differ. You could call this different "cultures of regulation". As regards contents distributed in the internet, the KJM faced a completely new field for which it had to develop a regulatory system from scratch. Unlike for TV, there were no provisions regarding the protection of minors in the internet. The 2003 Treaty therefore imposed uniform rules as the legislator held that the same standards or regulation should apply for identical contents, no matter what the transmission platform is. The term the EU uses for this approach is "technology neutrality". What matters is the effect that contents have on young audiences; the way over which the contents get on the screen is really irrelevant.

The KJM will probably certify other self-regulatory organisations in the future. At present, it is concentrating on the issue of the protection of minors for online games. This is a market which grows very quickly. We can state already that there will be large numbers of games which cannot be classified in the traditional way as they change in the course of the game. The KJM therefore feels that for these new types of content, other forms of supervision and control should apply.

For the internet as an international platform, critics have claimed – and continue to claim – that it cannot and must not be regulated. Concerning the regulatory approach which was adopted in Germany, a lot of work has been done and still remains to be done to bring the need for regulation home to content providers. I believe that we have already achieved some success to convince the industry, and we have also established certain standards for the protection of minors such as the provision of closed user groups through which adults can access soft-core pornographic contents. However, we find again and again that the industry will establish voluntary codes of conduct, but at the same time it tries to pass the main responsibility for the protection of minors to parents; this applies not only in the internet, but also in other areas such as the distribution of mobile contents.

Co-regulation will only work if all parties involved take the model seriously; in Germany this includes the industry, the self-regulatory organisations and the regulators. It would be an illusion to believe that all problems regarding the protection of minors in the electronic media can be solved in self-regulatory regimes; the large number of problematic cases in the internet is proof that this does not work. The voluntary take-down of problematic contents from internet servers only works as the KJM would otherwise act as the supervisory body. This would mean that the providers might face sanctions or fines.

Let me conclude by summing up the positive and the negative experiences gained by the KJM over the past five years as follows:

- We feel that the co-regulatory approach is the right way to deal with the protection of minors and human dignity in the media. We have gained a lot of positive experience with our model, and the concept works well in many areas. The industry participates in developing efficient solutions for the protection of minors in the media. One example is the so-called age verification system which ensures that minors cannot access contents which might impair their development.

- In our view, a system based on self-regulation alone will not work as there are many problematic areas where the industry refuses to cooperate. A powerful supervisor is therefore necessary.

Ladies and Gentlemen,

I am aware that this was both a very German model and an example of co-regulation which only dealt with the protection of minors. Co- and self-regulatory systems exist in other areas, too: Two which immediately come to my mind are the press and the advertising sector. I would be really interested to hear of your experiences in these fields in the discussion and thank you for your attention.