Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1855 (2009)[1]

The regulation of audio-visual media services

Parliamentary Assembly

1. The Parliamentary Assembly recalls that all media regulation in Europe must respect the right to freedom of expression and information as guaranteed by Article 10 of the European Convention on Human Rights (ETS No. 5). The freedom to receive and impart information and ideas applies regardless of frontiers.

2. This freedom constitutes a necessary requirement for democracy and the cultural and social progress of each individual and society as a whole. Restrictions to this freedom are only admissible as far as they are necessary in a democratic society.

3. Traditional audio-visual and print media are increasingly converging into new forms of electronic media for images, sound and text which are accessible via different fixed or mobile platforms using analogue or digital terrestrial transmissions, satellite or cable. Much of what is now considered broadcasting may in future be delivered over the Internet, where the user controls his or her access to countless sources of content which know no geographic boundaries.

4. Article 10, paragraph 1, of the European Convention on Human Rights permits states to require "the licensing of broadcasting, television or cinema enterprises". The Assembly believes that broadcasting and television in this sense should not include Internet radio or web television, which should not require national authorisations. Internet radio and web television should be treated like Internet-based newspapers or websites with text, images and sound.

5. Technological progress is increasing the number of channels, programmes and services accessible through audio-visual media. This provides viewers and listeners with a wide choice of programmes, comprising linear and on-demand services. However, more audio-visual content does not necessarily mean greater plurality, diversity and quality of content, which remain priorities for audio-visual policies.

6. The viewer, listener or reader of new audio-visual media services is having to bear greater responsibility for the content he or she may select and potentially even contribute to, while content regulation through national regulatory authorities is becoming less feasible. National legislators are, therefore, compelled to review their existing regulation and set up new means for achieving their objectives regarding audio-visual media policy, with the latter objectives also remaining valid in the new media environment.

7. The Assembly supports in this context the Committee of Ministers' Declaration of 20 February 2008 on the allocation and management of the digital dividend and the public interest. When deciding on the allocation of the radio-frequency spectrum, member states should also balance the spectrum needs of various technologies relating to both broadcasting and telecommunications. It will be particularly relevant to look at the availability of the spectrum for countries outside the European Union and, for all countries, how spectrum resources can be allocated to optimise opportunities for public-service broadcasting.

8. Referring to the European Convention on Transfrontier Television (ECTT) (ETS No. 132), the Assembly notes that technological progress of electronic audio-visual media requires the revision of the ECTT and has led to legislative changes at national level, as well as to the new Audiovisual Media Services Directive for the member states of the European Union (AVMS Directive).

---

1. *Assembly debate* on 27 January 2009 (3rd Sitting) (see Doc. 11775, report of the Committee on Culture, Science and Education, rapporteur: Mr McIntosh). *Text adopted by the Assembly* on 27 January 2009 (3rd Sitting).

9. The Assembly notes that the European Union AVMS Directive has the main objective of ensuring freedom of services within the internal market of the European Union in accordance with primary European Community law. This approach differs from the ECTT, which has the aim of ensuring freedom of transmission and retransmission of broadcasting in Europe, regardless of frontiers, in accordance with Article 10 of the European Convention on Human Rights.

10. Having noted the current progress in drafting an amending protocol to the ECTT in order to transform it into a new Council of Europe convention, the Assembly believes that the following considerations should be taken into account:

10.1. the possibilities for guiding the interpretation and supervising the application of this new convention should be reinforced;

10.2. the "public service mission" for audio-visual media services should be defined and explained;

10.3. the role of the Standing Committee should be re-examined with regard to its supervisory function over the compliance of conventional obligations and arbitration;

10.4. the transmission of on-demand audio-visual media services should be treated in a comparable way to television broadcast services and should not be subjected to the more restrictive provisions taken from the AVMS Directive of the European Union;

10.5. guidance should be provided regarding the requirement of programme services of broadcasters being "wholly or mostly" directed towards the territory of a party with the intention of circumventing the national laws of that party;

10.6. procedural safeguards, such as a prior opinion from the Standing Committee or arbitration, should be required before a party can take measures directed against a broadcaster established abroad for having allegedly circumvented the receiving party's national laws, as far as such measures restrict the right to freedom of information through audio-visual media services.

11. The Assembly invites the Parties to the ECTT to take this recommendation into account when revising the ECTT.

12. The Assembly recommends that the Committee of Ministers:

12.1. forward this recommendation to competent ministries;

12.2. allocate sufficient resources to the Standing Committee set up by the ECTT to fulfil the required supervisory function over the compliance of states parties with their contractual obligations;

12.3. invite interested non-member states to accede to the revised convention with a view to extending the scope of this convention to other countries;

12.4. instruct the competent steering committee to analyse future challenges to the enforceability of existing broadcasting regulation in the increasingly converging audio-visual media sector and develop policy guidelines for new means of content control, including through media self- and co-regulation, content search and filtering tools for users, media literacy of users, public support for content of cultural quality, and international co-operation against illegal content, for instance in the framework of and through consideration of a possible protocol to, the Council of Europe Convention on Cybercrime (ETS No. 185);

12.5. instruct its competent steering committee to analyse the feasibility of setting up common standards among the Council of Europe member states for commercial audio-visual content falling outside the revised convention, as well as for audio-visual content produced and shared publicly by users.

13. The Assembly invites the ministers participating in the Council of Europe's Ministerial Conference on the Media and New Communication Services (Reykjavik, May 2009) to express their continued support for:

13.1. regulating their audio-visual media policies nationally as part of their general cultural policies, while ensuring international co-operation and respecting the right to freedom of information through audio-visual media services under Article 10 of the European Convention on Human Rights and Article 19 of the United Nations International Covenant on Civil and Political Rights;

13.2. ensuring, through appropriate regulation and practice, the independence of their national regulators for the audio-visual media sector from undue party political, governmental or commercial influences;

13.3. preserving the principle of public-service broadcasting in the changing media environment and extending it further to audio-visual media services as a whole.

14. The Assembly invites member states of the International Telecommunication Union of the United Nations to:

14.1. advance international co-ordination of the technological standards necessary for the technological convergence of audio-visual media, while ensuring the right to freedom of information regardless of frontiers under Article 19 of the International Covenant on Civil and Political Rights;

14.2. prepare for the World Radiocommunication Conference in 2011 decisions on the allocation of radio-frequency spectrum following the analogue switch-off of broadcasting in many countries.