



**Version 1.0 (14 June 2006)**

**Comments on the revision of the Television without Frontiers Directive**

**NEM Regulatory Group**

**Brussels, 24 May 2006.**

The Networked Electronic Media Technology Platform (NEM) is a voluntary grouping of European organizations, universities and companies in networked electronic media, which includes components and systems for broadcasting, handheld, and broadband media delivery. Their objective is to bring together shared knowledge and perspectives of technology futures for the benefit of Europe.

The NEM Regulatory Group has been established to bring the NEM awareness of technology futures to discussions on regulatory matters for new and established audio visual media.

The European Commission has proposed amendments to the 1989 'Television without Frontiers' (TWF) Directive (89/552/EEC) and these are currently being considered by the European Parliament. They propose to apply some of the provisions of a revised Directive to certain Internet-based services.

The NEM Regulatory Group has discussed the proposals for updating of the EU 'Television without Frontiers' Directive, based on the information given in [http://ec.europa.eu/comm/avpolicy/docs/reg/modernisation/proposal\\_2005/com2005-646-final-en.pdf](http://ec.europa.eu/comm/avpolicy/docs/reg/modernisation/proposal_2005/com2005-646-final-en.pdf).

It has the following comments to offer which it hopes will help the process of decision about the modifications. These views can be seen as reflecting those of organizations and companies working in practice in the networked electronic media across Europe.

#### **1. Is regulation of 'non-linear' services necessary / desirable?**

- There is no common consensus view on this in the NEM.
- Part of the membership can see the reason(s) the regulation is being proposed. These include providing minimum universal content safeguards for the public, and facilitating the marketing of non linear services across Europe through the 'country of origin' principle<sup>1</sup>.
- Another part of the membership sees no need for extending the Directive's regulation to non linear services. They believe the existing Electronic Commerce directive is sufficient

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<sup>1</sup> Service providers in one country, respecting only their own national regulation, can provide services across frontiers

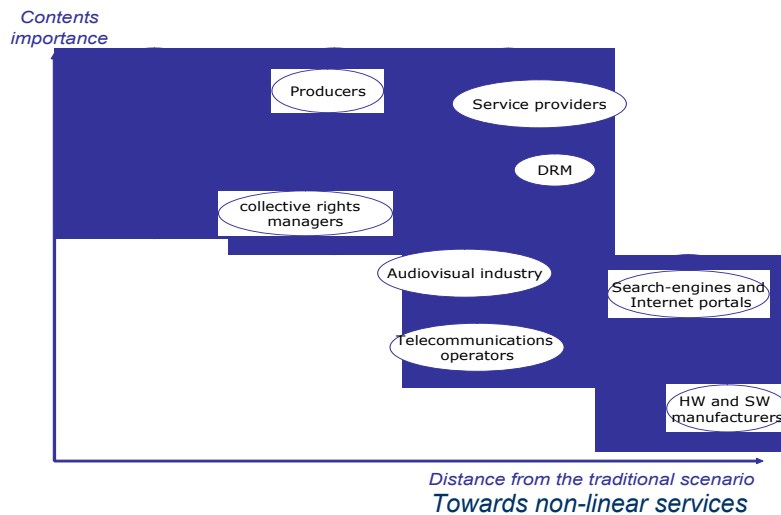
- Views on whether regulation of non linear services was acceptable were, in some cases, affected by the level of regulation proposed. A lighter level of regulation would increase the acceptability of the non linear regulation for some members.

## **2. Is it practical to make a distinction between ‘linear’ and ‘non-linear’ services, as the revision proposes?**

- There is consensus that, today, the distinctions are practical, in the sense that it will be possible to separate services into one or other category.
- There are, nevertheless, some ambiguities in terms in the document – one is ‘transmission’.
- Furthermore, a clearer indication of the objectives of the distinction would be desirable: is it conceived for the purpose of consumer protection, of intellectual property protection, or of trade regulation in a specific sector?

## **3. How long will the distinction be practical?**

- This is a question which involves projections of trends rather than certainties.
- Some members think the distinction could no longer offer sufficient coverage of the media environment in five years’ time, and the principle reason is that a greater proportion of users will obtain the programmes and content they want by using search engines and programme guides.
- The attached diagram, provided by the University of Madrid, illustrates the different media delivery scenarios.



**Scenarios in Content Exploitation**

The diagram shows four possible scenarios of contents exploitation: traditional, smooth landing, convergence, rupture.

This partition refers to the possible move from dominance of the market by the audiovisual industry (traditional model, first bubble) to that of telecommunications industry via the Internet; this shift might go through a smooth landing (where the market is still controlled by the audiovisual industry, second bubble) and/or convergence (where there is shared control, third bubble). The thesis is that the importance of contents decreases as one moves towards the ‘rupture’ scenario (e.g. iTunes, where profit is made by selling hardware, rather than contents).

#### 4. Which issues need clarification?

- Is digital cinema included in the scope of the Directive? It seems that it is not the intention of the Directive to include it, but it will be (even in the cinema hall) in some cases a scheduled service, that can be received with consumer equipment, and thus could be included un-intentionally. It is also likely that the movie making industry will provide movies directly to the home via downloads as well as to cinemas, so distinguishing d-cinema content from other on-demand content may be difficult. If the intention is to exclude the products of the movie industry that are primarily intended for the cinema hall and DVD market this would need to be made explicit.

- NEM technology will make it much easier for individuals and small organizations to offer audiovisual content (not necessarily for profit). Technology such as P2P will mean that audience size will not be limited by the technical resources of the source, and thus



‘impact’ of the content could be significant. Should this kind of content really be devoid of regulation, and if not, how should it be applied?

#### **6. Comment on the inclusion of on-line games**

- Online games are included as non linear services. This could have both advantages (acknowledgement as a an audiovisual service, and minimum content regulation which would benefit the public and industry) and disadvantages (limits on advertising which would constrain the industry).

#### **6. Overall conclusions**

The distinction between linear and non linear services is a practical distinction today, but how long it will useful is less clear. The timescale for agreeing and implementing into national law a Directive which impacts new media may be longer than the development and implementation cycle time for new media systems unless there are regular reviews of the Directive, and it is given the flexibility to cope with potential developments. As an estimate, a Directive of this kind probably needs to be reviewed at no more than five-year intervals.