

Horizontal Rating of Audiovisual Content in Europe. An Alternative to Multi-level Classification?

Imagine that the latest Harry Potter blockbuster is being filmed. For anyone who doesn't know Harry Potter: Harry is an unusual little boy who is being trained in wizardry at Hogwarts School, where he has all kinds of adventures. He is immersed in the world of magicians, and meets people involved in black magic, trolls, ghosts, dragons, werewolves and many other loathsome, dangerous creatures. It is not only exciting, but also extremely spine-chilling, as Harry Potter's path is strewn with dead bodies. All of which is sufficient reason to consider who should be allowed to watch this film - in other words, how would it be rated according to rules on the protection of young people?

There is no clear answer to this question; this edition of *IRIS plus* explains why not. Firstly, the rating depends on the audiovisual medium involved: a film is shown first in the cinema before being sold on DVD and finally shown on television. At some point, it might even be turned into a video game. The format has an influence on the rating. The same is true of the country in which the film is shown. Different cultures and traditions of youth protection affect the rating of the film.

You can read about the problems that are created for a society that is becoming increasingly global and for ever-converging media when the same product is given different ratings. However, attempts have been made to counter these problems, such as the examples of horizontal classification described in this *IRIS plus*. You will therefore see how cross-sectoral classification at European level might be established.

This fascinating article rounds off our series on various aspects of "horizontal regulation". Before Christmas, you will be able to order this series, including reports on communications law, copyright law, international trade law, advertising law and the classification of audiovisual content, in *IRIS plus Collection*, available from the Observatory and its distribution partners.

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Susanne Nikoltchev
IRIS Coordinator
Head of the Legal Information Department
European Audiovisual Observatory

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OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSTELLE

76 ALLEE DE LA ROBERTSAU • F-67000 STRASBOURG
TEL. +33 (0)3 88 14 44 00 • FAX +33 (0)3 88 14 44 19
<http://www.obs.coe.int>
e-mail: obs@obs.coe.int



Horizontal Rating of Audiovisual Content in Europe. An Alternative to Multi-level Classification?

Carmen Palzer

Institute of European Media Law (EMR), Saarbrücken / Brussels

1. Summary

The protection of children and adolescents and concern for their proper physical and psychological development are highly valued notions in all European countries. The development of children and young people can be harmed - even considerably damaged - by unsuitable audiovisual content. In order to provide the necessary protection, parents and guardians of minors need to be able to recognise whether audiovisual content is capable of harming those in their care. For this reason, audiovisual content is classified according to various factors related to the protection of minors. Such classification may take the form of a description of a product's content, or of an age restriction or rating. An age rating may be used for various reasons, either as a restriction or as a recommendation. In the former case, the film concerned may only be watched by people above a certain age because it may harm the psychological and physical development of younger children. In the latter case, a film is recommended only for children of a certain age because it is believed that they can only understand its content from that age onwards. The two may differ, as a film may be completely harmless on the one hand but equally incomprehensible for children on the other.¹

Age ratings are used in various legal instruments designed to protect young people. These instruments are meant to ensure that the minors concerned are unable to view harmful content. With regard to cinema films, such an instrument would prescribe, for example, the rule that minors below the relevant age limit should be denied entry to the cinema. As far as videos and DVDs are concerned, age controls are imposed in retail outlets and video libraries. For harmful content distributed via digital equipment, technical devices such as filters can be used to protect young people.

Age ratings are often determined on a sector-specific basis, on the grounds that different media have different effects. A tense scene can be much more frightening for a minor in a large, dark cinema than on a TV screen at home, where it can also be switched off at any moment. On the other hand, it is easier to stop young people watching a film in a cinema than on a video or DVD. If minors enjoy unrestricted access to these media, they can watch the potentially harmful scenes as often as they want, so the damage may be multiplied. Furthermore, DVDs may contain additional material (enhanced DVDs) that can justify a different age rating. In many countries, the legislator has therefore deliberately differentiated between the various media, although in some cases these differences are the chance result of the way individual media and associated regulations have gradually developed.

The age rating of a particular film for a specific medium can also have repercussions for other media; for example, a film's cinema classification may serve as a basis for its video classifi-

cation or for certain time restrictions on TV broadcasts. In such cases, a film's age rating influences its exploitation in the media that form part of the audiovisual product chain - a form of indirect or even explicit cross-media or horizontal classification. Whether it is sensible to transfer age classifications in this way when the audiovisual content is changed, e.g. edited for broadcast on television or supplemented with additional material for videos/DVDs, remains an open question.

Furthermore, audiovisual products (apart from computer games - see below) are, at present, classified at national level, in accordance with the rating system in force in each particular country. This in turn is based on the image of childhood and youth that has developed in individual countries on the basis of prevailing values. The traditions of youth protection are therefore as varied as the cultures themselves; we only have to think of the traditionally liberal attitude of Scandinavian countries to the portrayal of nudity or the way in which bullfights are organised and broadcast as a matter of course on the Iberian peninsula. Apart from these traditional cultural or social values, each society also has its own fundamental attitude to education and childhood. For example, if we assume that protecting young people from the media is primarily the responsibility of parents, who give their children access to the media, then informing parents by providing age recommendations and content descriptions may be sufficient to provide young people with such protection. However, if the ability of parents to fulfil this role is in doubt and if it is considered safer to entrust it to the state, age restrictions become binding, for example, and younger children are prohibited from viewing forbidden content.²

As a result of this diversity of product categories and national borders, the relevant ratings bodies' assessments of how audiovisual content might harm the development of children and young people can differ tremendously. This heterogeneity is clearly illustrated by the data collected as part of a study commissioned by the European Commission on the practice of classifying films distributed in cinemas, television, video and DVD in the EU and EEA Member States.³ This empirical study was based on two groups of 60 films each, one comprising European and non-European films which were marketed in all the surveyed countries⁴ in cinemas and on video, DVD and television ("global sample"), with the other group comprising only European films that were distributed in most of these countries ("European sample"). If we consider the data for the global sample published in an appendix, it is amazing to see the differences in age classifications both in terms of variations between individual countries and between different media. For 78% of the films surveyed, there was more than a 6-year difference between the age ratings set by the national rating bodies, while for 23% of the films the ratings varied from the lowest level (open to everyone) to the highest (restricted to over-18s or over-16s). The differences between the ratings given to the different media genres within the same country are also remarkable: 42% of the

films surveyed had different classifications. In Finland, the film "American Pie", for example, was prohibited for under-11s in cinemas, unrestricted on video and deemed suitable only for those aged 15 or over on DVD. Comparing the different countries, access to this film was unrestricted in some, but rated 11, 12, 14, 15, 17 and even 18 in others.

In order to evaluate these differences properly, we would need of course to look at the notions of youth protection that form the basis of national age classifications (this is not possible in the present report), since the different ways in which audiovisual content is rated reflect Europe's cultural diversity (see above).⁵ However, even without such comprehensive analysis, the numbers themselves provide evidence of the problems caused by differences between youth protection systems. It seems disconcerting when a DVD can only be sold to adults in one country, while across the border the same DVD - which usually contains the identical English-language version - can be acquired by 14-year old children. And in view of the Europe-wide classification of computer games introduced in April 2003,⁶ it is worth asking why the "Star Wars" computer game can be granted the same rating across Europe while the corresponding film can not.

For these reasons and also because of the increasing convergence of transmission techniques,⁷ national and product-related systems for the evaluation of audiovisual content are being increasingly called into question. Interactive games and films that are banned or may only be sold or rented to adults in a particular country can be obtained via the Internet, where there is often no age control. Films distributed via cable or satellite can often be received in countries where, on account of stricter youth protection rules, they must not be shown on television at all, or only at certain times.⁸ Video on Demand, the increasing number of TV channels made possible by digitisation and the growing capacity of home computers are creating new possibilities in this area. Access via mobile telephone to audiovisual content harmful to minors appears totally impossible to control. While parents and guardians can still deny young people Internet access on home computers, more and more teenagers own a mobile phone, which they can use anywhere to receive whatever they want. National restrictions designed to protect minors are being rendered completely obsolete by these developments.

Protecting minors from audiovisual content that harms their development nonetheless remains an important objective, the achievement of which should not be jeopardised by technical progress and advancing globalisation.⁹ There seems little point in trying to prevent children and young people using new technology. New ways of protecting young people from the media are therefore being vigorously sought in all countries. In this context, a frequent topic of discussion is whether horizontal, transnational classification of audiovisual content might offer an effective solution. The following article deals with this whole issue.

2. Horizontal Classification

a) Definition

We should start by considering what we mean by the term "horizontal" in this context since, like many other concepts of this kind, it is not used consistently. Jan Kabel described very

informatively the different meanings of the phrase "going horizontal" in the last *IRIS plus*.¹⁰ A horizontal perspective always depends on the viewpoint of the observer. In this article, the term "horizontal" is used in the sense of cross-sectoral.¹¹ The European Commission also used the term "horizontal regulation" back in 1998 when, in relation to the Convergence Green Paper with reference to networks and transmission services, it defined it as a concept whereby the same rules apply to networks, access issues and transmission services, defining vertical regulation as licensing networks and services on the basis of traditional market segments.¹² In the context of audiovisual media classification, "horizontal classification" therefore means classifying the content of different audiovisual media (e.g. films, videos, DVDs, computer games) on the basis of a common regulatory framework.

b) Examples

Some countries already practise (more or less comprehensive) horizontal classification of audiovisual products.¹³ The systems used in Norway and the Netherlands, for example are briefly described below.

aa) *Kijkwijzer* – Rating System Operated by the Netherlands Institute for the Classification of Audiovisual Media - NICAM

*Kijkwijzer*¹⁴ has been used in the Netherlands since November 2001 for the classification of cinema and TV films, videos and DVDs. Computer games and Internet content are not classified, although these markets are monitored.¹⁵ This rating system was developed by an independent group of experts commissioned by NICAM, the Netherlands Institute for the Classification of Audiovisual Media. NICAM itself was founded with government support in 1999 as an independent body representing all public service and commercial TV broadcasters as well as organisations from the film, computer game and video/DVD industry. The aim was to provide consumers, particularly parents, with standardised information about whether an audiovisual product is suitable for children and young people.

Kijkwijzer is based on the computer-aided self-classification of products by the supplier. A company employee (the "coder") fills out a questionnaire provided by NICAM and transmits it online to NICAM. The product is then evaluated using a computer program, which works out its rating. Coders are trained by NICAM in order to ensure the information submitted in the questionnaires is as accurate as possible. If in doubt, they can obtain help from an inspection board appointed by NICAM.

The rating produced by the computer comprises an age restriction as well as content descriptions in the form of pictograms. The age categories are: "suitable for all ages", "not recommended for children under 6", "not recommended for children under 12" and "not recommended for children under 16". The pictograms refer to the levels of violence, anxiety, sex, drug/alcohol abuse, language and discrimination contained in the product, with sex, violence and anxiety the most important categories. For each of these categories, each product carries a certain age restriction; the final rating depends on the highest age restriction in any of these categories. The product's overall rating comprises the age classification and up to two pictograms.¹⁶ It appears on all publicity and on the packaging of videos and DVDs, and is visible in the cinema, in advertising spots, on the screen, in programme guides, on teletext and in electronic programme guides.



This computer-aided self-classification system is not monitored either internally or by the state. NICAM (currently) only checks ratings if it receives a complaint. However, the effectiveness of the whole system is evaluated annually by the Dutch media regulator, the *Commissariaad voor de Media* (CvdM). It was also assessed at the end of 2002 by an independent group of experts commissioned by the parliament and government. Both investigations concluded that NICAM had been a success and functioned well, and that the system had met the approval of the industry and consumers alike. A number of improvements were also proposed, including recommendations that NICAM itself should randomly monitor the ratings awarded and that the complaints system should be reviewed.¹⁷

Although state bodies are not involved in this classification system, there are certain links between this privately operated system and state regulations on youth protection. Indeed, the state has incorporated NICAM and the *Kijkwijzer* system into the national regulatory framework. For example, there is a basic rule that film productions that could harm children should not be broadcast on television unless they have been assessed by an independent ratings body.¹⁸ This puts considerable pressure on product suppliers to join NICAM and participate in *Kijkwijzer*. Other regulations also refer to the *Kijkwijzer* system: for example, there are certain time restrictions on the TV broadcast of films rated 12 or 16 under the *Kijkwijzer* system.

bb) Norway's Classification System

In Norway, the *Statens Filmtilsyn*¹⁹ is responsible for the classification of audiovisual media. This independent body is attached but not directly answerable to the Ministry for Cultural Affairs.

All films, videos and DVDs must be registered with the *Statens Filmtilsyn* before they are distributed. However, registration does not include any form of content evaluation. Cinema films that are to be shown in public must, however, be rated. Possible ratings are "all ages", 7, 11, 15 and 18. If accompanied by their parents, children up to three years below the recommended minimum age may watch a film. Videos and DVDs do not require an age rating in Norway. The distributors themselves may recommend age restrictions or, on a voluntary basis, ask the *Statens Filmtilsyn* to rate a product or adopt its recommendation for cinema films - this usually occurs at the time of registration. The registration process always includes verification of whether the cover or accompanying text indicate that the content is pornographic or may involve criminal law in some other way. If so, the video or DVD is checked.

Age restrictions are attached to computer games on a voluntary basis. The *Statens Filmtilsyn* also provides advice and information to parents and children in relation to Internet content and the new media.

c) Conclusion

These two examples show that horizontal regulation of audiovisual content is possible, both on a co-regulatory basis and by an independent state body. It is noticeable that neither Internet content nor interactive games are included in either classification system. This may be due to the global structure of the Internet²⁰ and to the fact that, where interactive games are concerned, content that is harmful to children's development is a relatively new phenomenon. For this reason, state regulations on the classification of game content were, until

very recently, few and far between, with this task often carried out by self-regulation.²¹

3. Pan-European Classification

a) Definition

The term "pan-European classification" is used in this article to mean the transnational classification of audiovisual content.²² Such a system may take many different forms. In principle, it might comprise two elements: Europe-wide content descriptions, possibly in the form of pictograms, and Europe-wide age ratings (*i.e.*, age recommendations and/or restrictions). Whereas horizontal classification of audiovisual content at national level is receiving increasing support, cultural differences between individual countries (see above) mean that people are much less convinced about the value of Europe-wide rating of such content.

Nevertheless, an initial attempt at pan-European classification of an audiovisual product was launched recently and is briefly described below.

b) Example: PEGI, The Pan-European Game Information System

The Pan-European Game Information System (PEGI) was introduced in April 2003 by the Interactive Software Federation of Europe (ISFE), a group of games console manufacturers and developers and suppliers of interactive games.²³ The system was developed under the aegis of ISFE together with national trading organisations and European institutions, with collaboration from academics, national classification bodies, state authorities, consumer organisations and other interested groups.

Just like *Kijkwijzer*, the PEGI classification system comprises two elements: an age rating and content description. The age categories are 3+, 7+, 12+, 16+ and 18+. Special rules apply in Finland and Portugal: in Finland, games with a PEGI rating of 12+ are marked as 11+ and those classified by PEGI as 16+ carry a 15+ rating; in Portugal, games rated 7+ by PEGI are labelled as 6+. The content descriptions refer to the same categories as those used by NICAM: discrimination, drugs, anxiety, language, sex and violence. However, the symbols are the same in only three cases.²⁴ Where PEGI content descriptions are concerned, an additional procedure applies in the United Kingdom, where specific content-related questions are given precedence over the evaluation questionnaire.²⁵ If the answer to any of these questions is "yes", the game must be submitted to the British Board of Film Classification.²⁶ It may not be sold with the PEGI rating in the United Kingdom and the packaging must display the words "Not for distribution in the UK". It is made clear that answering these questions falsely can lead to the criminal prosecution of either the supplier or individual retailers. In general, suppliers take responsibility for ensuring that games carrying a PEGI rating are not sold in non-participating countries.²⁷

Following an invitation for tenders, NICAM was entrusted by ISFE with the task of administering the system. The classification is initially carried out by the game's supplier, who completes an online classification form and, on the basis of the answers given, obtains a provisional age rating. This rating may only be used once NICAM has given the go-ahead. If the game is rated 16+ or 18+ by the supplier, NICAM checks the evaluation

before giving the green light; games rated 12+ are checked afterwards, while 7+ and 3+ classifications are only investigated on a random basis after the game has been released. In contrast to the *Kijkwijzer* system, NICAM itself therefore checks the ratings. The content descriptions are left to the suppliers' discretion and are not checked.

PEGI was initiated by the games industry and participation is voluntary. This self-regulatory system has not (yet) been integrated into a state regulatory framework (as in the case of NICAM), since national legal systems make no reference to PEGI classifications. There are, however, links in the other direction: PEGI refers to state regulations, while in Norway and Portugal, for example, the age ratings have been slightly adjusted (although the basic PEGI ratings remain valid) and, in the United Kingdom, a special list of questions has been created in order to adapt the system to the domestic legal situation. In this respect, the PEGI system takes into account and builds on existing legal provisions. A Legal Committee, made up of legal experts from the participating countries, informs ISFE of any changes in national legislation that might have an impact on the system.

c) Conclusion

PEGI shows that a standard classification system can be applied across national borders and cultural divides.²⁸ Despite varying cultural standards in individual countries, PEGI gives a single age rating for each game. National images of childhood and youth appear not to stand in the way of a common rating system for interactive games. Either there are no irreconcilable cultural differences in this field,²⁹ or they have been overcome by specific characteristics of the system.

If we look closely at the PEGI system, we see first of all that it is run by private organisations (groups of businesses, etc.). State institutions were involved in developing the system, which is orientated towards and constantly seeking to correspond with state regulations. PEGI is nevertheless operated and monitored on a private basis. This could suggest that pan-European classification of audiovisual content is more achievable on a private basis than if there were extensive state involvement.

It is also worth noting that sexual activity, an area relevant to youth protection, is rarely portrayed in games.³⁰ Rather, where computer games are concerned, the main problem appears to be in the area of violence,³¹ where a common solution has been found. It should be stressed that, in order to achieve agreement, a very strict approach to portrayals of violence was adopted, with the result that PEGI offers a high level of youth protection.³²

It remains open to question whether these aspects are relevant to the success of this attempt to establish a common evaluation system. Certainly, one factor in its favour was the fact that very few countries already had their own classification system in place for video games and that, where binding regulations were in place, the PEGI system was usually able to align itself accordingly.

4. What Might a Pan-European Horizontal Rating System Look Like?

The above examples illustrate that cross-sectoral classification of media content for the purposes of youth protection can

be achieved effectively and that, at least for a single audiovisual medium, agreement on a Europe-wide classification system is possible. Can we deduce from this that a Europe-wide horizontal classification system is achievable? What might such a system look like? What should it consist of and how could it be formally implemented? Clues to the answers to these questions might firstly be found in the recommendations for EU action contained in the aforementioned Olsberg study,³³ and secondly in the discussions held in recent years within the Council of Europe and European Union on youth protection in relation to the media, which also show a number of parallels on basic issues.

a) Olsberg Recommendations for Action

The Olsberg study published in mid-2003 was meant to investigate, *inter alia*, attempts to harmonise classification regulations in the EU and EEA Member States and the potential need for coordination, with particular emphasis on self-regulation. The following recommendations for EU action were set out.³⁴

- Encourage homogeneity in codification across territories through
 - the development of common descriptive criteria,
 - the use of common codification of age categories,
 - pushing ahead with a common approach to the way to handle pornography and extreme violence in terms of standards and systems,
- Encourage standardisation of rating through different media,
- Encourage cost-efficient and time-saving best practices (e.g. online rating),
- Support effective complaint mechanisms and a uniform jurisprudence; move from ex-ante control to ex-post control mechanisms,
- Support a safe and effective self-regulation – esp. Codes of Conduct,
- Encourage the active inclusion of civil society in the composition of rating bodies,
- Education in media skills.

b) Council of Europe and EU Recommendations

In previous years, both the Council of Europe and the EU had dealt generally with the protection of minors from harmful audiovisual content. They also issued recommendations for their respective Member States, businesses and European institutions.

aa) Council of Europe

Council of Europe Recommendation No R (2001) 8, which deals with self-regulation and user protection against harmful content on new communications and information services, suggests various possible measures that Member States might take.³⁵ In particular, it recommends that they encourage the establishment of self-regulatory organisations and their involvement in legislative processes. Comprehensive guidelines on this subject are set out in the appendix to the Recommendation. The one most relevant to this article is the suggestion that existing self-regulatory standards in the media sector should be applied to new information and communications services, *i.e.*, that current regulations be applied horizontally. Europe-wide and international co-operation between self-regulatory organisations should be encouraged.

Member States were also urged to encourage the development of common content descriptors in order to provide for neutral labelling of content, thus enabling users to make their own judg-



ment about content. The Council of Europe went even further and proposed content categories to which descriptors could refer: violent and pornographic content as well as content promoting the use of tobacco and alcohol, gambling services and content which allows unsupervised and anonymous contact between minors and adults.

In order to help parents and guardians choose effective ways of protecting minors, users should be given comprehensive information about the whole youth protection system, *i.e.*, content descriptors, filtering and conditional access tools, content-related complaints mechanisms and out-of-court mediation and arbitration procedures.

bb) European Union

Three years earlier, on 24 September 1998, the Council of the European Union, also in a Recommendation, proposed measures by which the Member States, businesses and other relevant parties, as well as the Commission, might harmonise youth protection and the protection of human dignity in audiovisual services.³⁶

Member States were encouraged, *inter alia*, in addition to existing legal provisions, to create national frameworks for the protection of minors and human dignity in audiovisual and information services, involving relevant parties in the definition, implementation and evaluation of national measures. They were particularly urged to establish self-regulation mechanisms and to co-operate at Community level in developing comparable assessment methods. They should also encourage measures to enable minors to make responsible use of audiovisual and information services, particularly by improving awareness among parents, educators and teachers of the potential of the new services and of the means by which they might be made safe for minors.

Two years after this Recommendation was adopted, the Commission published an Evaluation Report on the measures adopted pursuant to the Recommendation, focusing particularly on co-operation at Community level. In preparing the report, the Commission had sent a questionnaire to the Member States, asking, *inter alia*, whether they considered the lack of coherence between the various rating and evaluation systems for audiovisual media (cinema, television, video cassettes, video games, Internet) to be problematic. Having analysed the responses, the Commission concluded in its 2001 Evaluation Report³⁷ "that challenges are to be met with respect to the protection of minors and human dignity across all the media, be it Internet, broadcasting, video games or supports like videocassettes and DVDs. Renewed efforts need to be made to ensure a coherent approach, in particular as convergence will continue to increase, with Internet TV, interactive broadcasting or downloading of video games from the Internet".³⁸

In its Evaluation Report, the Commission also discusses a study of measures to support parental control over what programmes children and young people can watch.³⁹ One of the aims of the study was to investigate the usefulness of appropriate evaluation systems. The study noted that "a harmonised approach was to be ruled out because of the cultural diversity which characterises the European audiovisual market; however, common descriptive criteria would allow audiovisual content to be described in similar ways, whilst leaving the evaluation of such content to the competent national and regional authorities. The study further came to the conclusion that there was a need for rating systems used in the different media - cinema,

television, video games, Internet - to be brought more into line with each other and made more coherent".⁴⁰

This Recommendation is closely related to the European Commission's Safer Internet Action Plan, which helps fund projects designed to promote self-regulation and content monitoring systems, develop evaluation and filtering systems and organise campaigns to raise user awareness of the possibilities and dangers of the Internet.⁴¹ The recently published work programme for 2003-2004⁴² was broadened in view of the convergence of transmission methods for audiovisual content and now also covers new online technologies such as mobile telephone and Broadband content, online games, peer-to-peer communication and all forms of real-time communication, including chat rooms and instant messages. There are also plans to support user-friendly classification, which in particular is supposed to include "cross-media content rating".

c) Conclusion

The aforementioned recommendations show parallels both in terms of content and from an organisational point of view – parallels that could serve as elements of a European horizontal rating system. These elements may be combined within a common system in many different ways. For the sake of clarity, some of the possible options are briefly described below.

Content

The need for cross-media evaluation of audiovisual content and for common evaluation criteria and comparable methods for classifying audiovisual content is constantly emphasised. This is a fundamental requirement, since **content descriptions** form the basis of various youth protection instruments. For example, such descriptions are a prerequisite for the programming of filtering devices by their users or for conditional access mechanisms operated by service providers. Age recommendations and restrictions are therefore based on an evaluation of whether content is likely to harm particular age groups. Therefore the first step must be for content to be neutrally described. On that basis, it can then be decided whether such content is liable to harm the development of minors. Content descriptions are also necessary to enable parents and guardians to decide whether the children in their charge should be granted access to a certain product.

Differentiation may still be exercised in accordance with cultural standards in individual countries: a Europe-wide system for neutral content description could be created, with content subsequently evaluated in relation to youth protection in individual states. Under such a scenario, evaluation criteria would be harmonised, but the ratings themselves would not be standardised. Whether the evaluation should be carried out by a state body or any central authority, or left to parents/guardians, who in any case ultimately decide on whether minors have access to an audiovisual product, is open to question.

It would certainly be helpful to users if they could immediately recognise the content of an audiovisual product by means of an icon. The fact that very few European states currently use content icons could make it easier to implement a common European system of **pictograms**.⁴³ Since most countries would not have to give up any rules of their own in favour of common regulations, there would be no need to dissolve any

existing bodies or allocate them new responsibilities, etc. Any consequences connected to the pictograms could remain subject to domestic regulation.

If a common set of pictograms is to be used for all media, it is necessary to decide which content categories should be covered, *i.e.*, what kind of content is most likely to harm minors. The Council of Europe proposes five categories: violence, pornography, alcohol and tobacco, gambling and anonymous contact between adults and minors. Three of these categories broadly correspond with the pictograms used by *Kijkwijzer* and PEGI: violence, sex and drugs. PEGI and *Kijkwijzer*, however, use other symbols for content producing anxiety, discriminatory content and content containing language that might have a negative influence on the development of minors (bad/coarse language).

If pictograms are to be used in different European countries, it should also be determined which icons are recognised by people in all those countries as symbols for each type of content. Only then can they serve their purpose of informing users of the content of an audiovisual product.⁴⁴ In this context, the pictograms used by PEGI could serve as a starting point for discussion, since they are already the result of a European consensus.

The adoption of a common Europe-wide pictogram system would also answer the frequent calls for an increase in user responsibility: parents and guardians would be able to use the information available to them to decide whether a film which, according to the icon, contains nudity or violence, for example, should be accessible to the minors in their care. In this way, minors' individual intellectual and emotional development could be taken into account. This type of control can only work if users are familiar with the audiovisual product concerned; above all, they must therefore be informed about the meaning of the pictograms.

In view of the diversity of youth protection systems in place in individual countries, it appears doubtful whether a Europe-wide **age classification system** is achievable in the near future. Age ratings differ not only in terms of the age categories themselves, but also with regard to the function of the rating (recommendation or restriction) and the related consequences. If a comprehensive Europe-wide common age classification system is to be established, not only will countries have to agree on common age categories, but a European consensus regarding the concept of youth protection linked to those categories will need to be reached.

As a slight variant to harmonisation, national systems might be able to build on a series of common Europe-wide age categories. Since the definition of age categories is not a case of laying down objective, definite rules - as demonstrated by the frequent alteration of age categories in individual countries - an agreement to amend national age categories could be achievable. One possible argument against such an agreement is that its application would be limited, since the meaning of (identical) age categories would still be interpreted differently from one country to the next. For example, the rating "12" in one country might mean that the film could harm the development of children under 12, while in a neighbouring country it meant the film was suitable for children aged 12 or above. These differences could be eliminated if users were given full information about the exact meaning of the respective age rating. One advantage of limiting harmonisation to age categories is that national youth protection systems could be preserved.

Such a system could be applied to all audiovisual media and include existing European systems for individual media, such as PEGI. As explained above, the classification of content distributed via the Internet would be a matter for individual states to deal with. In view of the global nature of the Internet, international agreement on minimum standards at least would be desirable.

A cross-sectoral, Europe-wide rating system for audiovisual content would therefore primarily involve the harmonisation of evaluation principles, which would enable individual countries to assess audiovisual products in accordance with their national youth protection standards and thus to bring into play their own cultural and sociological values.

Technically: Implementation

Several different regulatory models may be used to implement such a system: self-regulation, co-regulation or inclusion in a regulatory instrument at European level.

The relevant regulations could be included within the European Union framework, e.g. by extending the "Television without Frontiers" Directive to incorporate a Content Directive, or at Council of Europe level as part of the Convention on Trans-frontier Television. In addition, separate regulatory instruments might, of course, be adopted.⁴⁵ These could set out and harmonise classification principles, e.g. common criteria by which audiovisual content may be described in a comparable format. The evaluation itself, based on these principles, could be entrusted to national ratings authorities. Given the current status of integration, a unified procedure for the evaluation stage itself would seem to have little support.

In view of the widespread aversion to any kind of European regulatory involvement in matters forming part of a country's cultural identity, particularly the reservations expressed concerning the creation of a centrally structured European ratings body, an alternative solution might meet more general approval, whereby classification principles were laid down as part of a privately organised, self-regulatory system similar to the PEGI model. Communicating and co-operating with each other at European conferences and forums, businesses, consumer groups, user associations, national rating authorities (whether private or public) and all other interested parties could draw up a common classification framework. Depending on the level of consensus, this could include classification principles, such as content description criteria, pictograms or age categories, as well as discussion of how implementation of the system should be organised. Existing European self-regulatory initiatives should be included. Such a classification system, based on self-regulation, could be seen as an offer to the states: national youth protection regulations could be linked to classification mechanisms adopted at European level. In this way, European labels could be incorporated in national regulatory systems and thus become part of a national co-regulatory framework.

Such a system would offer a high degree of flexibility both with regard to the further development of the system as the states' individual ideas converge, and in terms of its implementation by individual countries. The latter could apply the European rating system in accordance with how closely it complies with current national youth protection standards. It is therefore conceivable that states would initially retain their own systems and observe what happened elsewhere before incorporating the



European rating system at a later date. Admittedly, this would mean that two classification systems - the national system and the European self-regulatory system - would be operating at the same time, which could lead to irritation and confusion among users. Here also, users would have a clearer understanding if they were given the appropriate information.

As far as the detailed structure of the classification system is concerned, it might be a case of looking at the findings of the NICAM and PEGI systems. For example, the online rating system used by product suppliers could be adopted, with at least occasional checks by the administrative authority. In

view of the diversity of content available, a stronger ex-post control mechanism for users could be created by establishing effective and, in particular, user-friendly complaints procedures.

Of course, in addition to the ideas outlined above, the diversity of relevant factors means that there are many other possible ways of setting up a European cross-sectoral rating system. Ultimately, whether such a system ever becomes reality and the extent to which harmonisation is achieved will depend on how closely the states can agree on the fundamental questions of youth media protection.

- 1) See the examples given by Jørgen Stensland, a film classifier in Norway, in an interview published in *tv diskurs* 20, pp. 5 ff: "*Matitsyn*", a film in which the main character runs through a forest for 90 minutes, thinking about his mother, was open to everyone, but recommended for adults. "The Lord of the Rings", on the other hand, was rated "11", which meant that it could be watched in cinemas by children as young as eight if accompanied by their parents; however, it was recommended for people aged 13 and over.
- 2) For a detailed look at the various images of childhood and youth in Europe, see Bittner, Christian, "Similarities and Differences: Which Principles Guide Film Classifiers in Europe", lecture as part of the European Conference of Film Classification 2003 in Berlin, available at <http://www.fsf.de/berlin2003/berlin2003.htm>; see also Gangloff, Tillmann P., "*Ich sehe was, was Du nicht siehst: Medien in Europa: Perspektiven des Jugendschutzes*", Berlin 2001, pp. 104 ff.
- 3) "Empirical Study on the Practice of the Rating of Films Distributed in Cinemas Television DVD and Videocassettes in the EU and EEA Member States", available at http://europa.eu.int/comm/avpolicy/stat/studi_en.htm, (hereinafter: "Olsberg study").
- 4) The 15 EU Member States plus Iceland and Norway (no data was available for Liechtenstein).
- 5) See also the FSF press release of 8.9.03 concerning the European Conference of Film Classification 2003 in Berlin, available at <http://www.fsf.de/Service/Pressemitteilungen/pressemitteilungen.htm>; see also footnote 2.
- 6) By PEGI, details in section 3. b).
- 7) This refers to the growing number of technical transmission methods for audiovisual content. Traditionally, a film could be seen either at the cinema or on a TV screen via videocassette or DVD. Now, however, it is possible to download films from the Internet, even via mobile telephone. For a discussion of convergence in general, see Palzer, Carmen/Hilger, Caroline, "Media Supervision on the Threshold of the 21st century - Structure and Powers of Regulatory Authorities in the Era of Convergence", *IRIS plus* 8-2001 pp. 4 ff., available at http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus8_2001.pdf
- 8) See also Jørgen Stensland, *op.cit.*, in connection with the ban on pornography in Norway: "When pornography is shown on pay-TV at 1 am or 2 am, the screen is black in Norway. However, anyone who switches over to the Danish or Swedish "language version" can watch the programme."
- 9) On 25 June 2003, the Norwegian Mass Media Authority prohibited the retransmission of Swedish pornographic channels in Norway, since they could be watched uncensored in Norway if the Swedish subtitles were switched on. This step was deemed admissible by the EFTA Surveillance Authority in accordance with Arts. 2a (2) and 22 (1) of the EC "Television without Frontiers" Directive; see EFTA press release, available at <http://www.eftasurv.int/information/presseleases/2003pr/dbaFile4425.html>
- 9) In some countries, the state even has a constitutional obligation to ensure that the development of children and young people is protected.
- 10) "Swings on the Horizontal - The Search for Consistency in European Advertising Law", *IRIS plus* 2003-8, p. 2, available at http://www.obs.coe.int/oea_publ/iris/iris_plus/index.html
- 11) See also Müßig, Jan/Scheuer, Alexander, "European Copyright Law and the Audiovisual Media: Are We Moving Towards Cross-Sectoral Regulation?" *IRIS plus* 2003-4, p. 4, available at http://www.obs.coe.int/oea_publ/iris/iris_plus/index.html
- 12) Commission working document, Summary of the results of the public consultation on the Green Paper on the convergence of the telecommunications, media and information technology sectors; areas for further reflection, SEC (98) 1284, pp. 38, 41.
- 13) See also the summary in the Olsberg study, p. 9, Fig. 1c.
- 14) <http://www.kijkwijzer.nl/>
- 15) For example, a survey of the use of computer games by children was commissioned; summary available at <http://www.kijkwijzer.nl/engels/ekijkwijzer.html>
- 16) For reasons of clarity, a maximum of two pictograms with the highest value are shown.
- 17) For further details, see <http://www.kijkwijzer.nl/engels/ekijkwijzer.html>
- 18) Section 52d of the Media Act.
- 19) From 1 January 2005, the *Statens Filmtilsyn* will be incorporated in the newly founded *Medietilsynet*, in which the three current media authorities in Norway will be grouped under the same umbrella.
- 20) *Kijkwijzer* expressly states that "due to its borderless nature and the growing number of providers", audiovisual content that is distributed via the Internet is not classified.
- 21) Binding regulations exist only in Finland, Germany (since April 2003), Portugal and the United Kingdom, see also the survey in the Olsberg study, pp. 29 ff.
- 22) Such regulations can sometimes also be described as "horizontal" because they apply across national borders.
- 23) See press release of 24 April 2003, available at <http://www.pegi.info/pegi.jsp?content=news>
- 24) Those that correspond are a clenched fist for violent films, a spider for films that might cause anxiety and a syringe to depict drugs.
- 25) For example: Does the game contain realistic moving pictures that depict human sexual activity?
show the mutilation or torture of humans or animals?
show other acts of gratuitous violence towards humans or animals?
- 26) The British Board of Film Classification is responsible for classifying cinema films, DVDs, videos and digital media in the UK.
- 27) In Germany, for example.
- 28) PEGI is currently (September 2003) operating in: Belgium, Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Austria, Portugal, Spain, Sweden, Switzerland, United Kingdom.
- 29) See Olsberg study, p. 114: "this content platform does not carry the cultural connotations that may make it difficult to introduce changes to the system applied to conventional content."; similar thoughts were expressed by Robin Duval, Director of the BBFC, at the 2002 European Conference of Film Classification: "There is no problem here with cultural regionality,...no cultural or regulatory complexities", published in *tv-diskurs* 23/, pp. 42, 43, available on the Internet in German and English at <http://www.fsf.de/berlin2003/berlin2003.htm>
- 30) See PEGI database, <http://www.pegi.info/pegi.jsp?content=find>. Only one game (of a total of 372), called "Beach Life", carries a pictogram indicating nudity or sexual content; the game itself is rated 12 or 11 (September 2003).
- 31) 324 of the 372 games with pictograms have the violence pictogram.
- 32) Robin Duval, *op.cit.*, p. 43, see also PEGI's own evaluation, <http://www.pegi.info/pegi.jsp?content=faq>
- 33) See footnote 3, above.
- 34) Olsberg study, pp. 116 *et seq.*
- 35) Recommendation No. R (2001) 8 on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services, <http://cm.coe.int/ta/rec/2001/2001r8.htm>; the appendix contains principles and mechanisms concerning self-regulation: Appendix to Recommendation No. R (2002) 8 - Principles and mechanisms concerning self-regulation and user protection against illegal or harmful content in new communications and information services.
- 36) Council Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparative and effective level of protection of minors and human dignity, with Annex: "Indicative guidelines for the implementation, at national level, of a self-regulation framework for the protection of minors and human dignity on on-line audiovisual and information services" OJ L 270 of 7 October 1998, pp. 48 - 55.
- 37) Evaluation Report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity, 27 February 2001, COM (2001) 106 final (hereinafter: Evaluation Report).
- 38) Evaluation Report, *op.cit.*, p. 17.
- 39) PCMLP, "Parental Control of Television Broadcasting", July 1999, available at http://europa.eu.int/comm/avpolicy/legis/key_doc/parental_control/index_en.htm
- 40) Quoted from the Evaluation Report, *op.cit.*, pp. 3f.
- 41) This Action Plan was recently extended until 2004, http://europa.eu.int/information_society/programmes/iap/docs/pdf/programmes/extension/extension_decision_en.pdf
- 42) http://europa.eu.int/information_society/programmes/iap/docs/pdf/programmes/workprgm/workprogramme_2003_04_de.pdf
- 43) The Netherlands use content pictograms, for example.
- 44) For example, at the end of 2001 France changed the pictograms it had introduced in 1996 because it had been demonstrated by extensive surveys carried out in 2000 and 2001 that only a minority of parents knew the precise meaning of the pictograms, which were misleading. The pictogram recommending that children under 12 be accompanied by an adult, for example, was accurately interpreted by 19% of viewers in 2000 and 26% in 2001. 48% did not realise that the symbol was meant as a warning and many thought that a programme with that icon would be particularly suitable for children. These pictograms are still used in Belgium.
- 45) For discussion of the principles and limitations of possible regulations at EU level, see: Alexander Scheuer, National Youth Protection and the European Union's *Appetite* for Regulations - An Overview, presented at the European Conference of Film Classification 2003, available at <http://www.fsf.de/berlin2003/berlin2003.htm>