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STANDING COMMITTEE ON TRANSFRONTIER TELEVISION

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**Report by Dr Andreas Grünwald¹ on possible options for the review of the European
Convention on Transfrontier Television**

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Outline

A.	INTRODUCTION	3
B.	BACKGROUND	4
	I. Overview	4
	II. Traditional Justification of Television Regulation	4
	III. Market Situation	5
	IV. Conclusions	9
	V. Summary	9
C.	APPROACH	9
	I. Overview	9
	II. Regulatory Options	10
	III. Conclusions	11
	IV. Summary	11
D.	SCOPE	11
	I. Overview	11
	II. General Criteria Objectives	12
	III. Service Categories	12
	IV. Summary	16
E.	APPLICATION	16
	I. Overview	16
	II. General Interest Objectives	17
	III. Fields of Regulation	17
	IV. Conclusions	22
	V. Summary	22
F.	IMPLEMENTTION	22
	I. Overview	22
	II. Service Category Definitions	23
	III. Architecture	24
	APPENDIX: Roadmap	25

A. INTRODUCTION

With this study, the Council of Europe's Standing Committee on Transfrontier Television seeks consultation on the proposed revision of the European Convention on Transfrontier Television (ECTT) of 1989. Such revision would aim to reflect the technological and economic developments in a broadcasting market of converging media infrastructures and services.

In its current version, the ECTT is only applicable to "(television) programme services" and explicitly excludes "communications services operating on individual demand". This approach might seem to be too narrow and not to meet the realities of the digital age. Behind this background, the study aims to support a potential revision process by focussing on three key questions:

- (1) What are the basic options regarding a revision of the ECTT after reflecting the role of its current version in today's media environment?
- (2) If the scope of the existing ECTT shall indeed be broadened, how could this be done in order to include other services beyond those currently covered by the Convention, in particular video on demand and webcasting services?
- (3) Given such an extension of the scope of a future framework, what are the regulatory options to set up its "architecture"?

The study takes five steps to answer these questions.

First, a background part shall look at the justification of sector-specific television regulation as it is incorporated in the current ECTT. This is to seek general measurements for such regulation and to evaluate their significance in today's media environment stamped by digitalisation and convergence of networks and services. Second, general options shall be evaluated to deal with the changing media environment from a regulatory and legislative perspective. Three different ways to approach this task shall be suggested. Third, a number of suggestions on the scope of a future framework will be made. This is based on the assumption that revising the ECTT by introducing a second service category in addition to conventional broadcast television services would be one of the general options to deal with the changing media environment. Here, a two-tiered approach distinguishing different service categories is taken, with the deliberation focussing on options to separate both service categories from one another. Fourth, a number of potential material provisions of a future framework are given a closer look, questioning (a) whether such regulations are (still) needed at all, and (b) how to apply them to which services within the scope of a future regulatory framework. Finally, the fifth part will consider specific implementation issues as a result of the regulatory suggestions made before. However, these suggestions need to be decided upon in a political decision-making process first, to which this study can only contribute in the form of an individual expert's consultant's opinion. Instead of detailed definition proposals, the implementation chapter will therefore highlight selected implementation issues and will suggest a possible roadmap towards an implementation of the suggestions made in the previous chapters.

B. BACKGROUND

I. Overview

As any other kind of regulation, media regulation affects the economic freedom of the market players. In an economy of free markets, it therefore has to be treated with general restraint, every regulatory measure having to be clearly justified by specific reasons outweighing the economic freedom of the market players. With television regulation in the form of the current ECTT, these reasons lie in the particular impact television has on the free formation of opinion. [ONE SENTENCE DELETED] Conventional television is considered to have this particular impact on the formation of opinion due to specific features that distinguish it from other media. A deliberation of these features shall be the starting point when discussing an extension of the scope of a future framework. Following that, it shall be asked to which extent these features are still valid in today's media market environment, paying special attention to the role of digitalisation and convergence.

II. Traditional Justification of Television Regulation

The justification of the current ECTT regime of television regulation is based on the assumption that television has a **special impact on the formation of opinion**. This is assumed both in comparison to other economic goods, but especially in comparison to other media such as the press, where a sector-specific content regulation is generally not considered to be necessary. This raises the question what exactly it is that puts television in such a special position. To describe its potential impact on the formation of opinion, three features are most commonly referred to:

- Television transmissions have a **spread effect** that constitutes the role of television as a mass media. Public service as well as private free-to-air television are addressed at and received by an undefined number of viewers. This means a multiplication effect for television content that is achieved by no other (traditional) media, reaching literally millions of viewers at a time.
- Secondly, it is its particular **suggestive power** that contributes to the importance of television for the formation of opinion. It again is composed of two factors: The special effect that moving sound images have on the viewers' perception, and the fixed programming schedule that a broadcast television transmission follows. Television signals apparently have a more intense and authentic effect on the viewer than written or oral information sources, which increases the viewers' readiness to take them for granted at first instance. This can be especially observed with children and adolescents, who tend to be even more easily influenced by information learned through television signals because they have seen it "with their own eyes". With the fixed programming schedule, this adds to the suggestive power of broadcast television because it leaves the decision about what to see and when to see it with the broadcaster. The viewers' role is limited to be a passive consumer of the information he is offered, without him being able to interact with the broadcaster. Concluding, the suggestive power of television

could be described as the intrusiveness and persuasiveness of the purposefully designed continuous programming of moving images and sound.²

- Thirdly, broadcast television is considered to have a special impact on the formation of opinions because of its particular **immediacy** in the provision of content. Especially live broadcasts suggest to the viewer that they directly participate in what is happening on the screen.

As explicitly as explained above, these features of conventional broadcast television are used by the German Federal Constitutional Court to justify sector-specific regulation in the audiovisual sector, for example.³ Of course, there will be other parameters to describe the special impact that television services have on the formation of opinion. However, the respective jurisdiction of the German Federal Constitutional Court relies on significant sociological research in this regard. The combined criteria of television's spread effect, its suggestive power and its immediacy shall therefore not be questioned as such in the context of this study. Instead, it shall be undertaken to apply them to today's media environment where broadcast television finds itself among lots of other electronic content media that might have an impact on the formation of opinion, too.

III. Market Situation

When evaluating the impact that today's media services have on the formation of opinion, conventional broadcast television shall again be the starting point. Behind the background of digitalisation and convergence, it shall be asked whether its spread effect, suggestive power and immediacy still exist to generally justify its special regulation. In a second step, the same question shall then be addressed at a number of new media services. Here, it is to evaluate to which extent these services also must be considered to have an impact on the formation of opinion due to *their* spread effect, suggestive power and immediacy.

1. The Role of Digitalisation

Digitalisation is the key technology of the modern media society and the driving force behind its further development. Without digitalisation, three major trends would not be possible:

- the increase in transmission capacities;
- the convergence of transmission networks;
- and the convergence of end user devices.

With these trends, the market associates some high hopes. Since the mid 1990's, nothing less than a complete change of the existing market structure in the media has been predicted as a result of digitalisation and convergence.⁴ And last but not least, many of these expectations helped to create the New Economy frenzy that meanwhile came to a sudden end.

² See Andreas von Bonin, *The "Sondersituation" of Broadcasting in German and American Law*, <http://www.a-von-bonin.de/tcpaper.htm>.

³ See only BVerfGE 90, 60, 87 (1994), just recently referred to by Friedrich Kübler, *Legitimationsfragen der Medienregulierung*, Archiv für Presserecht (AfP) 2002, 277 281 (in German) and by Wolfgang Schulz & Thorsten Held, *Prospects of Guaranteeing Free Public Communication*, The Journal of Information, Law and Technology (JILT), 2002 (2), <http://elj.warwick.ac.uk/jilt/02-2/schulz.html> (in English).

⁴ See only the market trends identified by the EC Convergence Green Paper, COM (97) 623.

Keeping today's actual market situation in perspective despite all that, one will find, though, that many of these expectations have only hardly become real yet. Of course there are some market segments where significant progress towards the "digital age" has happened and new products and services are already offered. For instance, broadband Internet infrastructures such as DSL networks allow digital video on demand and webcasting services in a decent quality. However, according to a September 2002 OECD survey, the pan-European penetration rate of such networks still does not exceed 5 percent of all habitants.⁵ At the same time, though, it is predicted to develop rather quickly.⁶ But if such a broadband digital infrastructure became generally available after all, it would indeed mean a major step towards convergence, because it would make a new infrastructures available for content that was previously limited to terrestrial, cable or satellite television networks, and thereby would provide additional distribution channels to new media services.⁷

On the other hand, the appearance of conventional free-to-air television has still not changed much. Accessing the World Wide Web or handling e-mail over a cable television set might be technologically feasible, but nevertheless is very much of a futuristic scenario to most consumers nevertheless. Mainly, this is due to the fact that especially cable and terrestrial television still awaits full digitalisation in most areas.⁸ The cable companies are struggling with the costs for upgrading their networks, and the rollout of digital terrestrial faces the uncertainty whether the consumers will really be interested in its services. This applies even more to the rollout of the third generation (3G) mobile telephony networks, where some licence holders have loaded themselves with enormous financial burdens as an outcome of the spectrum auctions, while a substantial consumer market for their services cannot really be spotted at the moment.⁹

2. The Role of Television

Television "as we know it" in its conventional form – as a free-to-air broadcast service reaching a large number of people that watch its programmes in a passive, lean-back habit – has not yet been significantly affected by digitalisation or convergence. Mostly being transmitted in analogue format, it still is the number one mass media that is unalteredly characterised by its spread effect, its suggestive power and its immediacy. The special role broadcast television plays with the formation of opinion with the general public could only recently be observed on September 11, 2001, or with the extent of the general ethical debates the "Big Brother" shows stimulated in societies wherever the programme was shown. Of course television may have lost some of its spread effect through the opening of cable and satellite transmission capacities, and this development will certainly continue more rapidly once digital broadcasting is fully spread out. But on the other hand, hundreds of multi-

⁵ Source: <http://www.oecd.org/EN/document/0,,EN-document-13-nodirectorate-no-1-39262-13,00.html>.

⁶ According to a March 2002 Frost & Sullivan study, the European broadband market will grow from 3.8 million households in 2002 to 28.1 million households in 2008 (Source: <http://news.zdnet.de/>).

⁷ The success of *Vodafone live!*, a GSM-based service providing streaming multimedia content can also be seen as an example in this regard. According to a March 26, 2003, press release, Vodafone already counts more than one million users for this service (over 375,000 in Germany, 190,000 in Italy and 220,000 in the UK), press release available at <http://www.vodafone.com/>.

⁸ By contrast, over 99 percent of all European satellite households have turned digital already, according to a Screenigest evaluation in early 2003 (see <http://www.ecin.de/news/2003/03/18/05490/>).

⁹ Regarding the development of 3G networks, there are countless studies on the market providing offering all different kinds of prognoses. This makes it almost impossible to determine the "real" potential of this new technology.

channel, à-la-carte on-demand programmes have clearly not yet succeeded to challenge the role of broadcast television as the mass media of most importance for the formation of opinion, and neither will they do so in the foreseeable future.

This consideration is confirmed by a recent study on the current status and future development of audiovisual services in Europe that *Andersen* conducted on behalf of the European Commission.¹⁰ It finds that in each country examined, the four largest television channels today still capture more than 70 percent of audiences, despite digitalisation and any increase in additional special interest channels and multimedia services. For the future development until 2010, however, *Andersen* does well consider a paradigm shift from channel-based viewing to programme-based multi-channel viewing. Under this scenario, the consumers would make extensive use of new interactive services and devote more time currently spent watching conventional television to a great variety of new services. This would indeed mean that the current role of conventional television would be worth doubting in general. Such a development, however, is forecasted only under the condition of a positive economic climate. Otherwise, *Andersen* rather assumes that consumers will stick with their current viewing habits focused on free-to-air television instead of spending additional money to receive interactive pay-television offerings.

3. The Role of New Services

But even with this relatively unchanged importance of broadcast television for the formation of opinion, new media services have gained some importance in this regard, too. Many of these services show at least some of the features of spread effect, suggestive power and immediacy that jointly describe a television service's special impact on the formation of opinion. Of all the new services either already existing or at least being thinkable for the future, some shall be looked at a little closer in a showcase overview.

a) *Webcasting*

The service closest to conventional television broadcasting within these categories is probably webcasting. As with broadcast television, the viewer watches an ongoing programme that follows a fixed schedule pre-set by the webcaster. The user cannot influence the content elements and the timing of their display, and the provision of information can also be as immediate as with broadcast television, too, including the opportunity of live webcasts. From a provider's perspective, the only way webcasting differs from broadcast television is that it is transmitted over the Internet rather than via terrestrial, cable or satellite networks. However, its provision over the Internet still has an impact on the appearance of webcasting services in two regards: First, the spread effect is not the same as with conventional broadcast television – while the vast majority of all European households are receiving either terrestrial, cable or satellite (analog) television, the pan-European Internet penetration rate is still significantly below this figure.¹¹ And secondly, only when distributed via a broadband Internet connection, webcasting services will provide an amount of suggestive power that could be considered comparable to the one of conventional broadcast television. As long as most Internet users depend on narrowband dial-up connections, though, the reduced sound and picture of webcasting services does not quality them to be as intrusive and persuasive as conventional

¹⁰ Andersen, *Outlook of the Development of Technologies and Markets for the European Audiovisual Sector up to 2010*, June 2002, available at: http://europa.eu.int/comm/avpolicy/stat/stat_en.htm.

¹¹ For an ongoing analysis of the worldwide Internet penetration rate, see <http://www.glreach.com/globstats/>.

broadcast television services. But nevertheless, these limitations may be overcome on a medium range, depending on the development of the respective infrastructures.

b) Video On Demand

Video on demand services and other audiovisual offerings for closed user groups, by contrast, differ quite substantially from broadcast television when it comes to their impact on the formation of opinion. Both types of services are not really directed at the general public and therefore are lacking the spread effect of a typical mass media. Their reception is limited to those individuals who either pay a special usage fee (video on demand) or who belong to a specific user group defined by the service provider (e.g., business TV). Technically, this even makes these services qualify as point-to-point communication, and distinguishes them from a free-to-air point-to-multipoint mass media. Regarding the spread effect, video on demand services therefore would have a lower impact on the formation of opinion than broadcast television ["and webcasting services" DELETED]. This applies to their suggestive power and to their immediacy, too. It is in the nature of an on demand service that it offers pre-produced, electronically stored content. Live broadcasts are unknown to these services, which decreases their immediacy. And furthermore, despite the use of moving images and sound, these services do not operate on a fixed schedule. The user does not passively consume the programming he is offered at a certain time due to the editorial decisions of the service provider, but chooses himself what to see and when to do so. He will therefore not be as "enchained" by the service as this is generally the case with conventional television. Taking all these shortcomings into account, it can well be said that video on demand is clearly not without any impact on the formation of opinion, but also does not match the role broadcast television plays in this regard, either.

c) Text-based Services

Another category of services besides broadcast television and video on demand is marked by the use of mainly text-based information instead of audiovisual content of moving images and sound. This currently applies to most offerings on the World Wide Web as well as to teletext and other data services. Regarding their immediacy, these services may of course be considered as important for the formation of opinion than any other live stream media. The same generally applies to their spread effect, at least as long as the particular service is not offered to a closed user group only. Significant shortcomings, however, have to be identified when looking at the suggestive power of such services. As text-based offerings, they are lacking the intrusiveness and persuasiveness that is typical for audiovisual content services. Also, they are not based on a fixed programming schedule. Taking both aspects into account, one will have to conclude that their suggestive power rather is on the same level as that of the press than that of broadcast television. Behind this background, it might be appropriate to limit sector-specific content regulation to audiovisual services only, leaving out text-based electronic services altogether. On the other hand, their editorial content, but also their immediacy and their spread effect do have at least some impact on the formation of opinion, at least as the particular service offers more than just unedited data as does a stock market ticker.

IV. Conclusions

Digitalisation and convergence certainly play an important role in today's media environment. Eventually, they may well lead to a complete change of the market structure, even challenging the current role of conventional broadcast television. But from today's perspective, this dramatic change has apparently not happened yet, as much as it cannot be predicted for the near future. Instead, it can rather be observed that technological developments in the media sector have not *replaced* conventional television, but *supplemented* it by a number of new services. In particular, the following trends can be highlighted:

- Conventional broadcast television “as we know it” still exists. Its impact on the formation of opinion has hardly been affected by the emergence of new media services. However, the particular features of spread effect, suggestive power and immediacy do not apply to only terrestrial, cable or satellite broadcast television any more, but could apply to webcasting services, too, provided that such services are received by the general public via broadband networks.
- Some new services, especially in the form of video on demand and text-based electronic offerings, also match some, but not all of the features that are traditionally used to describe television's special impact on the formation of opinion.
- Other new services, though, fail to match these criteria, because they consist of nothing else but the pure transmission of unedited data.

The following considerations of the study will be based on these findings.

V. Summary

Example	Spread Effect	Suggestive Power	Immediacy	Sector-specific regulation justified?
Broadcast TV	Yes	Yes	Yes	Yes
Webcasting	Some	Some	Yes	Some
Video On Demand	Some	Some	Some	Some
Website	Yes	Some	Yes	Some
Data Service	Yes	No	Yes	No

C. APPROACH

I. Overview

Above, it has been undertaken to evaluate conventional broadcast television and selected examples of new media services regarding the parameters of their spread effect, suggestive power and immediacy that are commonly used to describe the potential impact of television services on the formation of opinion and to justify their sector-specific regulation. An outcome of this evaluation has been that in the current market situation, conventional broadcast television still plays a special role as the prime mass media service. With the further development of digital broadband infrastructures such as DSL and 3G networks, however,

other services such as webcasting and video on demand will possibly catch up in this regard. Behind this background of different types of services and their different importance for opinion-forming processes, three suggestions shall be made in the following regarding the general regulatory approach when discussing a revision of the existing ECTT framework.

II. Regulatory Options

1. Adherence to the Existing Framework

Clearly, conventional broadcast television is still in existence. So far, its main features have survived digitalisation and the trend towards convergence of media services and infrastructures. Of course, conventional broadcast television has also been subject to a number of changes in its appearance over the last years. However, there are no real indications that it will altogether disappear from the media environment in the foreseeable future. By contrast, when evaluating the potential impact of new forms of content media on the formation of opinion, these services all fall short of conventional broadcast television by one way or another – at least within the current market environment.

As a consequence, it could be argued to generally leave the existing regulatory framework for the audiovisual media on the Council of Europe level as it is: The ECTT remains in place, broadcast television services in their current meaning are continuously regulated there under, and for all other forms of audiovisual content media, there continue to be no sector-specific regulatory provisions. Regardless of that, material material changes could of course still be made to the existing ECTT framework within its current scope and architecture.

2. Introduction of Services of a Second Order Within a Future ECTT

At the same time, there obviously are a number of new media services that might not be as relevant from the perspective of potential influence on the formation of opinion as conventional broadcast television, but that have at least some relevance in this regard. Furthermore, even though the future development of these services is hard to predict, it seems likely that they will rather become more than less relevant over the next years.

It could therefore be argued to stay with the existing ECTT concept, but to extend its scope beyond conventional broadcast television services. To reflect the different degrees of impact on the formation of opinion of conventional television broadcasting on the one hand and of new types of services on the other, this could be done by establishing a second service category within the Convention. Different levels of regulation could then be applied to both service categories.

3. Establishment of a Separate Multimedia Convention

Regarding the overall regulatory approach, a third option could be to again generally leave the existing ECTT framework as it is today, but to establish a second convention to especially deal with new media content services. Other than with the aforementioned option 2, the new service category would then not be an integral part of the future ECTT, but a separate regulatory framework would develop alongside the existing concept of audiovisual content regulation. Purely on a working title basis, this new convention shall be referred to as Multimedia Convention hereinafter.

III. Conclusions

It would certainly push the boundaries of this study to make any kind of a final suggestion on the basic regulatory options that were presented above. In particular, the choice between option 1 on the one side and options 2 and 3 on the other is really a political question of taking action in the field of "new media content regulation" at all or of staying with the existing narrow approach of only regulating broadcast television services.

At the same time, when proceeding with option 1 instead of 2 or 3, the existing regulatory framework would basically remain in place anyway, and no particular implementation efforts would be needed.¹² The study therefore at least principally does not further consider option 1 and focuses on a potential implementation of options 2 and 3 hereinafter. The definition of a second service category would be a central issue under both scenarios – be it within a future ECTT (option 2) or within a separate convention (option 3). In any event, it will have to be examined how to draw the line between the different service categories, and which specific regulations to apply to each category. This shall be the focus of the remaining chapters of the study.

IV. Summary

Option 1	Keep up to the existing framework Apply content regulation to conventional TV services only Leave multimedia content unregulated
Option 2	Create programme services of a second order within ECTT (sub-category) Apply existing regulation only in part to newly included services
Option 3	Leave ECTT as it is Adopt Multimedia Convention (low level content regulation for specific media)

D. SCOPE

I. Overview

When defining the scope of a future framework, the different impact specific electronic media have on the formation of opinion should therefore best be reflected by the use of service categories. This would eventually allow establishing a graded system of regulatory provisions. The first category would consist of services that are particularly important for the formation of opinion, such as conventional broadcast television. The second category would than be reserved to services that are also of *some* importance in this regard, but still do not feature all the characteristics that justify traditional television regulation. This raises the question of how to exactly define the service categories. It shall be answered by looking at

¹² With all due respect to the ongoing discussion on this behalf, this also seems to be the approach currently favoured within the European Commission regarding a proposed revision of the Television Without Frontiers Directive. Apparently, the current TWF is expected to have a life-span until around 2007 without any major changes concerning its scope.

some general criteria objectives first, before going into the details of potential definition approaches.

II. General Criteria Objectives

The definition of service categories does not only have to reflect the relevant impact on the formation of opinion of the particular group of services. It must also consider that a revised Convention shall be future-oriented and capable of satisfying the regulatory needs not only on a short-term basis. At the same time, the regulation's market environment is stamped by rapid technological progress and a high amount of uncertainties concerning consumer habits. To be regarded as an "ideal" approach behind this background, the definitions of service categories should thus meet a number of additional requirements:

- The definition of the Convention's scope has to be sufficiently **flexible** in order to keep up with the constant market changes. Innovative, dynamic criteria are to be preferred against fixed approaches that tie in with existing services without taking their potential future development into account.
- Furthermore, the convergence of networks and end user devices requires an approach that is **technology-neutral**. Defining the scope of the Convention by referring to specific transmission networks or consumer electronics would set the wrong signal. Consequently, the approach has to be service-oriented rather than channel-oriented.
- Finally, the definitions used to define the scope of the Convention have to be sufficiently **practicable** for national authorities to implement them. It has to be made sure that the regulatory system as such is clear and easy to understand not only by the Parties to the Convention, but also by the industry players and consumers affected by its regulations.

III. Service Categories

Based on these general considerations, some potential criteria and approaches shall now be suggested to define the scope of a future framework, following the previous suggestion to divide all services within the scope into broadcast television services on the one hand and media services on the other.

1. Broadcast Television

The current ECTT defines television programme services as services that are broadcasted over a terrestrial transmitter, a cable or a satellite network, and that are received by the general public without being available on individual demand. In its current form, this definition leaves aside programme services in the form of webcasting, on demand or interactive television, and focuses on conventional television "as we know it" instead. As demonstrated above, this form of television still has a particular impact on the formation of opinion and at least in a medium term will continue to do so despite the ongoing process of digitalisation. From this perspective, the current definition could therefore be maintained to describe the first category of services within the scope of a future regulatory framework.

However, one modification should be made, because the current definition is limited to broadcast transmissions via terrestrial, satellite, and cable. With digital transmission networks converging, this limitation is too narrow and not technology-neutral. It should therefore be abolished. Once other communications infrastructures such as DSL or 3G networks provide the necessary bandwidth, it will make no difference from a viewer's perspective by way of which network a broadcast television signal is transmitted. Under these circumstances, webcast television will be as much of a one-dimensional, lean-back information and entertainment media as conventional cable television is today, having the same potential influence on the formation of opinion. Consequently, not only conventional broadcast television would be considered to require sector-specific television regulation under a future framework, but also webcasting and other (future) forms of streaming programming provision. Accordingly, the first group of services could be defined as television programme services transmitted to a general audience without operating on individual demand. In short, they shall be referred to as broadcast television services hereinafter.

2. Media Services

Finding an adequate definition approach for the second service category is more complex, though. The differentiation has to have two directions, first towards the category of broadcast television services, and second towards those services that shall not fall within the scope of the Convention at all. Hereinafter, the services of the second category shall be referred to as media services. Three options shall be suggested to identify them.

a) Criteria Approach

In order to cover existing as well as potential future services, a first approach could be to develop abstract criteria that reflect the spread effect, the suggestive power and the immediacy of such services and at the same time distinguish them from broadcast television in the above sense.

(1) Number of Users

As demonstrated earlier, the spread effect of a media is a core element of its potential impact on the formation of opinion. It is closely linked to the size of a service's audience. Viewing rates and other usage figures are therefore sometimes suggested to be used to tell mass media like broadcast television on the one side from other media services, that are aimed at smaller audiences and therefore only gradually influence the opinion of a general public. However, these numbers cannot be abstractly set. And even with a service that reaches only a small group of people, there may exist some need for regulation nevertheless, for instance concerning the transmission of harmful or indecent materials. At least as the sole criteria used, usage numbers would therefore not be suitable to define the category of media services to be regulated under a future framework.

(2) Type of Content

Another way to take a service's impact on the formation of opinion into account could be to consider the type of content that it displays. It is often argued that news and other programmes covering real life incidents generally have a greater opinion-forming potential than movies or entertainment formats. Behind this background, it might be evaluated to cover only non-fiction media services by a future framework. Thus, even in combination with other aspects, such a criteria might lead to some significant implementation problems. Looking at recent formats

such as infotainment shows, personal help shows or so-called real life soap operas, it is getting more and more difficult to draw the line between fiction and non-fiction content. And furthermore, some traditional regulatory concerns as the protection of minors and of human dignity might even more be an issue with fiction material than with other media content.

(3) Amount of User Control

One of the main reasons why conventional television is also assumed to have a special impact on the formation of opinion is the passiveness of its audience towards the fixed programming schedule. This is used as an argument for the particular suggestive power of broadcast television. Behind this background, the amount of user control allowed by a media service could be used to evaluate the suggestive power of other media services, too, when classifying them within the graded scope of a future framework. Under this concept, a service with no or only little user control would be treated as broadcast television, a service with a medium amount of user control would be considered a (regulated) media service, and a truly interactive service would not fall within the scope at all.

The use of such a criterion would make video on demand a media service, for example. Other than with broadcast television, the user is not bound to a fixed programming schedule as he chooses himself what to watch and at what time. On the other hand, once he has turned into a movie or any other video on demand programming, he becomes again passive and potentially captured by the sounds and moving images. After all, video on demand could be described as a mid range service in terms of user control. With other services, this gets significantly more complicated, however. With interactive television, for instance, it is argued that the intrusiveness and persuasiveness factors are even higher than with the consumption of lean-back conventional television, because the interactivity particularly to the user even more to be a part of what is happening on the screen. Furthermore, the criterion of user control could raise some severe practicability questions when implementing it. Drawing the line between the different degrees of interactivity will be difficult due to the fact that from today's perspective, the future development of interactivity in the media seems especially hard to predict.

(4) Amount of Editorial Content

The definition of the scope of the Convention could also take the amount of editorial content of a service into account. It is another key element of conventional television broadcasting, as the provision of editorial content influences both the suggestive power and the immediacy of a programme. In particular, the criterion of editorial content might help to separate services of *any* importance for opinion-forming processes from pure data services such as a stock market ticker. German media law, for example, makes use of the editorial content criterion to separate (content regulated) media services from (not content regulated) tele services. The German example, though, is also a good example to illustrate the difficulties with this criterion. It remains unclear where exactly to draw the line between "relevant" and "irrelevant" editorial content. While a stock market ticker might be considered a data service, this could easily be looked at differently with the transmission of weather forecast information, for example.

(5) Conclusions

Giving the potential criteria a closer look suggests that the ideal criterion that was described above as abstract, innovative, and practical, and at the same time reflecting the potential

impact of a service on the formation of opinion, does probably not exist. The various aspects influencing an opinion-forming process are too complex to be measured by a single criterion. This might be resolved by combining a number of individual criteria, though. For instance, a service could be considered a media service within the scope of the Convention as long as it has no more than a medium amount of interactivity together with at least a minimum amount of editorial content. This would certainly help to provide more suitable results. But at the same time, the more criteria elements are used, the more intransparent the regulatory approach would get as well.

b) Listing Approach

It might therefore be advisable to look for a regulatory approach beyond abstract criteria to define the scope of a future framework. In this regard, black lists specifically naming the media services to be within (or outside) the scope of the Convention could be considered. A similar approach was chosen in German media law before introducing a criteria-based separation between media services and tele services. European Community law also uses listings of particular services in Appendix V to the Directive 98/48/EC as a way to define the scope of its regulatory framework.

Admittedly, the composition of a list of services hardly matches the “ideal” objectives of being technology-neutral, flexible and abstract. But as demonstrated above, these requirements might be impossible to meet anyway. Instead, it seems to be one of the essential characteristics of today’s media markets that their future development is so dynamic and hard to predict that an abstract ex-ante approach almost automatically risks failure. Accepting this as a fact, black list solutions could eventually prove to be more appropriate than criteria-based solutions after all. Furthermore, black lists do not have to be as inflexible as they appear at first glance. First of all, a list that explicitly names the media services to be within the scope of the Convention could be conditioned by the obligation to be regularly updated. This could keep the list in line with the actual market development. The updating could either be done by the Standing Committee (possibly in the form of a Recommendation), so that a coherent regulatory framework for all Convention parties would be ensured. Alternatively, it could be left to the member states, which would allow them to reflect the exact conditions in their respective markets. In any event, the Convention should set an adequate time frame for the updates, for example requiring a black list revision every two years. To provide a better decision base for the updating process, the Convention could also require the Standing Committee to conduct a market study at regular intervals that would help to evaluate which services actually exist in the markets and might require regulation.

c) Comprehensive Approach

A third option to define the media services to be covered by a future framework could be an approach that does not use any listings of specific services, but also tries to avoid the use of service-related criteria as far as possible. It is based on the assumption that any electronic [“point-to-multipoint” DELETED] communications service is at least *potentially* relevant for the formation of opinion, as long as it transmits any kind of editorial content to an undefined number of users. Eventually, this would be the case with any service other than a pure data service. Taking this as the relevant media service definition, a future framework would need no further criteria looking at the specific nature or at the type of content of a service. Every other electronic point-to-multipoint service than broadcast television would than be

considered a media service within the meaning of the future framework, as long as it would not consist in the sole provision of data.

The major advantage of such an approach would be that on the one hand, it qualifies as flexible and future-oriented and at the same time avoids most of the problems that arise when trying to implement service-based criteria. As a consequence, all kinds of services such as video on demand, business TV and editorial websites would be covered by the Convention in the first place, leaving out only the printed press (for not being an “electronic” service), individual communications such as voice telephony and e-mail (for not being addressed to an “undefined number of users”)¹³, and pure data services such as a stock market ticker, for example. This, of course, may certainly attract the allegation of over-regulation. Against this, the design of the actual material provisions of the Convention would have to act as a counterbalance, trying to limit the actual regulatory obligations to an absolute minimum wherever possible.

IV. Summary

Approach	Description	Pro	Contra
Option 1	Service-oriented criteria, referring to editorial content, user control, etc.	Strong reference to opinion-forming potential of a service	Difficult to implement, “ideal” criteria does not exist
Option 2	Black lists of media services within scope, to be updated on a regular basis by CoE or member states	Precise definitions Transparent	Not “flexible” unless regularly updated Likely to face ongoing coordination problems
Option 3	Broad scope, but only minimum standards for most services	Minimal definition problems Flexible towards future services	Many “regulated services”

E. APPLICATION

I. Overview

Establishing a two-tiered scope of the Convention that separates broadcast television from media services by through approach does not answer the question of what kind of regulation to apply to each of those categories. Before doing so, a brief look at the general interest objectives underlying the current ECTT shall help to specify the aims to be achieved with such regulation. This will be followed by a detailed look at some regulatory fields that could be covered by a future framework. With each of these fields, it will first have to be asked whether sector-specific regulation in this particular area is (still) needed at all. Afterwards, some suggestions regarding possible regulatory provisions shall be made, taking into account where it might be appropriate to distinguish between broadcast television and media services when applying them.

¹³ In this context, however, video on demand services will also be difficult to be included. See below at F. II. 2. for further details.

II. General Interest Objectives

As demonstrated above, sector-specific media regulation is justified by the potential impact the particular media have on the formation of opinion. This, however, still leaves the aims of such regulation to be classified. The major aim is of course to safeguard the free formation of opinion. But in addition to that, media content regulation traditionally follows several other general interest objectives. In the preamble to the current ECTT, they are described as follows:

- the dignity and equal worth of every human being;
- freedom of expression and information;
- the free flow of information and ideas;
- the independence of broadcasters;
- and the ideals and principles that are the common heritage of the ECTT parties.

Basically, these objectives express general values that are important to any liberal democratic society. As such, they are as valid today as they were when the current ECTT was adopted in 1989. By contrast, because today's media environment has become more and more competitive as a result of digitalisation and globalisation, the potential threats for objectives such as the human dignity of the individual have rather increased than decreased. Therefore, the general interest objectives shall neither be questioned nor re-defined in this context. Instead, the following deliberation shall focus on analysing the regulatory instruments to achieve them. The starting point of this shall be some of the current ECTT's provisions on television programme services.

III. Fields of Regulation

1. Responsibility

The current Convention holds a number of provisions regarding the responsibilities of broadcasters. They shall respect the dignity of the human being and the fundamental rights of others (Art. 7 Par. 1), and they shall ensure that news are presented fairly and in a way that encourages the free formation of opinion (Art. 7 Par. 3). Together, these rules could be described as some basic journalistic standards the Parties want the providers of television programming to follow. They are supplemented by an indecency clause and a ban of violent materials, which shall be looked at separately as provisions for the protection of minors (see below at 4).

The responsibility provisions are of a rather general nature. From this perspective such provisions could not be considered as particular hurdles to a dynamic market development. Their application to both broadcast television services and media services would certainly not have an undue impact on the free provision of these services. On the other hand, it might emphasise the particular impact that broadcast television services have on the formation of opinions if such standards were applied to them only, leaving media services unregulated in this regard. The latter, of course, would only relate to sector-specific regulation anyway: Even when media services are excluded from the scope of a future framework's responsibility provisions, this would still not mean that they were open for any kind of content that is a

serious harm to the principles of human dignity, either. National criminal law prohibiting hate speech and libel, for instance, would act as at least a safety net here.

2. Transparency

According to Art. 6 Par. 2 of the ECTT, information about a broadcaster such as its name, seat and status shall be made available upon request to the general public. This is to express the principle of transparency and aims to satisfy the interest of the public in knowing about who is behind a certain information service and who's opinion it is that is transmitted via this service. Generally, this is a creditable interest of any media user, no matter if the service is a conventional broadcast television service or any other kind of editorial service. Consequently, the transparency obligation should not be limited to broadcast television services, but should also apply to other media services within the scope of the Convention.

What could be considered, though, is to change its direction. Currently, the information in question does not have to be published automatically by either the broadcaster or the relevant national authority in charge of its supervision (in most cases: the licensor). It only has to be made available upon individual request. For a licensed service, this may be suitable, because with the licensor, there exists an authority for the individual to turn to. But this is not the case with a non-licensed media service such as a website or a webcasting service. For those services, it could well be considered to make the provision of some basic masthead information mandatory within the service itself instead of giving the user the right to ask for it.

3. Right of Reply

The existing ECTT gives every natural or legal person a right of reply relating to programmes transmitted by a broadcaster (Art. 8). Everyone shall have the opportunity to correct inaccurate facts or information whenever their publication through the (television) media constitutes an attack on his or her legitimate rights. The right of reply clause shall therefore help to safeguard the individual's dignity, honour and reputation. These objectives are not only among the cornerstones of a human society, but they are also increasingly in danger of being harmed in a media environment that grows more and more ruthless against the individual when competing for market shares and viewers' eyeballs. Under these circumstances, the right of reply clause should generally be maintained.

When asking whether to apply the right of reply clause to both broadcast television and media services, the aim to avoid over-regulation has again to be balanced against a possible justification of such an extension. In favour of applying the clause to broadcast television services only, it can be argued that those are *particularly* relevant to the formation of opinions, so that only here such a special provision would be required. On the other hand, a provision of false information in the media does not only affect the process of formation of opinion as a whole, but even more significantly the relevant rights of the individual that is reported on. From his or her perspective, it only makes a slight difference if a large or only a small part of the general public was falsely informed, because in any event, the individual's personal sphere would be harmed likewise. Given this consideration, it therefore might be indicated to make media services as well as broadcast television services subject to the right of reply clause.

4. Protection of Minors

The issue of the protection of minors raises numerous questions when considering potential regulatory provisions of a future framework.

Firstly, it has to be decided whether to incorporate any regulations in this field at all. Alternatively, one could again rely on criminal law provisions that sanction the distribution and possession of extreme forms of pornography and violent material, and that of course apply to the electronic media sector, too. The individuals' right to principally receive any kind of information as long as it is not illegal in a criminal sense would certainly support this approach. But like the human dignity principle that justifies a right of reply rule, there are also profound values at hand to argue in favour of some future framework regulations on media content that is potentially harmful for minors. In particular, these are the rights of children and adolescents to be protected in their physical and emotional well-being. Behind this background, sector-specific provisions on the protection of minors can generally be advocated.

Secondly, though, it has to be considered whether to apply such provisions to broadcast television services only, or to extend them to media services, too. Such deliberations should be made from the perspective of the aim of such regulations, which is to prevent children from consuming *any* kind of indecent media content. In so far, it does not make a difference whether the content is part of a broadcast television show, a piece of video on demand programming, or an item on a website. Of sole importance is that the material is delivered in a way that minors can receive it. Consequently, establishing rules for the protection of minors that only apply to one category of services while leaving the content of other services untouched would not fully fulfil the underlying aim of such provisions.

Thirdly, the density of a protection of minors clause has to be deliberated. This relates both to the kind of content that should be affected by such a regulation, and to the measures taken to implement it. Currently, the ECTT constitutes an overall ban on pornography and scheduling restrictions for other material that is "likely to impair the physical, mental or moral development of children and adolescents". The term "pornography" and the determination of other harmful material in this terminology require significant interpretation efforts when enforcing them. But with this vagueness, they are also more suitable to reflect the various attitudes in the different member states towards indecency than more precise definitions on the Convention level could be.

Regarding the current ban on (hardcore) pornography, though, it has to be questioned whether such a comprehensive measure is really necessary. It has to be kept in mind that it is not only a severe interference with the programming providers' freedom, but also with the freedom of information of an *adult* viewer, after all. And as long as it is assured that minors are effectively protected from consuming that kind of material, there is hardly any reason to justify a total ban nevertheless. With conventional free-to-air television, of course, this effectiveness could indeed only be achieved by banning pornography from television services altogether. But advanced encryption technologies may have changed that in the meantime. A future framework could take this into account if it generally maintains the ban on pornography on the one hand, but on the other supplements it with an escape clause embracing encryption technologies. A pornographic broadcast television or media service could thereafter be permissible if its provider takes the necessary technical steps to allow an effective exclusion of minors from receiving the service.

The regulatory approach towards other harmful content in Art. 7 Par. 2 of the current ECTT also needs to be re-considered. Scheduling limitations become inappropriate as soon as the scope of the Convention is broadened beyond real-time broadcast services. With a video on demand service or a website, there is no scheduling that could be set up in a way minors would typically not receive these services. If to any services, scheduling restrictions could therefore only be applied to broadcast television services. For media services, another approach would be needed. One way here could be to cut the regulation back to a minimum on the Convention level, simply demanding the Parties to ensure by *any* means that minors are not likely to receive harmful content. This could then allow the Parties to establish regulation, but also co-regulation or self-regulation in this regard.

5. Advertising & Tele-Shopping

The current ECTT provisions on advertising and tele-shopping form by far the majority of its material regulations. They include general standards on the form and presentation of advertising, restrictions on its duration and its placement within television programmes, and provisions that ban the advertising and tele-shopping of specific products. Altogether, the existing regulatory regime in this field is highly complex and hardly to see through. Not only the industry, but all sorts of voices, including a recent *Carat Crystal / Bird & Bird* study in relation to the similar provisions in the "Television Without Frontiers" Directive therefore call for some significant deregulation in this area.¹⁴ When re-considering the regulatory needs with advertising and tele-shopping, it first needs to be asked again if such regulation is needed at all in today's media environment, and second, which tool might be appropriate to achieve an eventual regulatory aim.

The underlying intent of advertising regulation is to protect the individual from being misled when exercising his or her freedom of information through the electronic media. With the increasing competition due to the multiplication of services and transmission capacities in the digital age, the dependence of the media industry on advertising revenues potentially increases. Furthermore, new communications technologies allow new forms of advertising. Both these aspects make it even more necessary to generally continue to protect the consumer from being harmed in his or her individual rights through advertising or tele-shopping. At the same time, any regulation here has still to be justified before the freedom of commercial speech.

Scheduling restrictions on advertising can only be applied to a service that operates on a scheduling basis. This is clearly not the case with on demand channels or services like websites. Therefore, it might be considered to maintain the scheduling restrictions of the current ECTT, but to apply them to broadcast television services only.

The real "danger" of advertising, however, is not that people consume too much of it, but that they do not perceive it as such. It will have a greater impact on a viewer's free formation of opinion if he or she watches one piece of subliminal advertising than if he or she watches ten clearly cognisable commercials in a row. Accordingly, it is more the quality than the quantity of commercial speech that could justify its regulation. This is what advertising regulation should focus on primarily. Behind this background, all scheduling restrictions might be abolished, replacing them with a regime of general standards on the quality of advertising in both broadcast television and media services.

¹⁴ Carat Crystal / Bird & Bird, *Study on the Development of New Advertising Techniques*, Final Report, available at http://www.europa.eu.int/comm/avpolicy/stat/studi_en.htm.

The obligation that advertising and editorial content of a service must be clearly distinguishable from each other is probably the most important general principle to be included in such a regime. A second cornerstone could be a list of products that should not be marketed through advertising in broadcast television or other media services at all. Tobacco products, alcoholic beverages and prescription drugs might be included in such a list, depending on sanitary, social and political considerations. And as a third element, the general principles could include a number of content-related provisions on advertising, such as the obligation to advertise in a fair and honest way, to respect the special receptiveness of children for commercial speech, and to avoid misleading marketing campaigns. The latter, however, could probably also be achieved through national and EC consumer protection legislation.

An advertising regime that limits itself to such basic standard obligations could not only rather easily be applied to a whole range of services beyond conventional television. Furthermore, special regulations for tele-shopping services – together with the problems in defining those offerings – would become redundant as soon as scheduling restrictions on advertising are abolished.

6. Origin of Programming

Under Art. 10 of the ECTT, every party shall ensure that a broadcaster within its jurisdiction reserves a majority proportion of its fiction programming for European works, “where practicable and by appropriate means”. This led to quota regulations on the origin of programming, as they are also contained in the EC Television Without Frontiers Directive.

In its current shape, this requirement is clearly designed for broadcast television. Even here, its justification can be doubted. It incorporates quite a significant restriction of a broadcaster’s economic freedom for mainly political reasons rather than for such relating to the freedom of opinion or the viewers’ individual rights. This should be taken into account when asking whether to apply a similar requirement to media services, too. In favour of such an extension might be argued that with new services becoming a part of the existing media environment in Europe, the prevention of cultural issues becomes an issue here, too. But after all, this could hardly outweigh the media service providers’ fundamental interest in compiling the content of their services themselves without being bound to any quotas. Therefore, if the origin of programming provision is upheld for cultural and political reasons, it would probably be advisable to limit its scope to broadcast television services.

7. Major Events

The introduction of provisions on the access of the public to events of major importance is relatively new to the concept of media regulation. They reflect the increased role that pay television channels and other media services for closed user-groups play in today’s media environment. Major events clauses aim to balance the industry’s interest in marketing high profile sports and other society events through exclusive subscription based media channels with the individual’s special interest in receiving information on particularly these events. Regarding the ongoing trend towards diversification and competition in the media that forces the market players to constantly look for new sources of income, this is an aim that as such should well be maintained at least from the viewers’ perspective.

But nevertheless, it has to be regarded that major events clauses have a significant impact on the economic freedom of the market players. They should therefore only be applied to

services where this is clearly indispensable. Looking at the two service categories suggested above, this seems to be only the case with broadcast television services. The main objective of major events clauses is to prevent a sealing-off of the general public from these events. Consequently, if their coverage on free-to-air television is secured, the regulatory aim of the respective provisions is fulfilled. Free-to-air television, however, would fall within the category of broadcast television services. Behind this background, it would have to be considered as an unjustified over-regulation to extend the scope of the major events clause to media services as well.

IV. Conclusions

It can be concluded that the potential regulatory provisions of a future framework can be divided into two parts.

Firstly, there are some basic standards that should be applied to any kind of service within the scope of the Convention. They aim to protect some fundamental individual rights while at the same time having only a minor impact on the economic freedom of a service provider. For example, the prevention of human dignity argues in favour of a right of reply clause that is applicable to a broadcast television service as well as a media service such as a website or a video on demand channel.

In addition to these basic standards, there are other areas where only the particular impact of broadcast television on the formation of opinion may justify sector-specific legislation. Consequently, media services should not be within the scope of these rules. Mainly, this applies to provisions that are typically aimed at “real” mass media channels, as for instance the major events clause or the provisions on the origin of programming material.

V. Summary

Material Provisions	Broadcast TV Services	Media Services
Responsibility	(+)	(-) (?)
Transparency	(+)	
Right of Reply	(+)	
Protection of Minors	(+) on a low level	
Advertising & Sponsoring	(+) on a low level	
Origin of Programming	(+)	(-)
Major Events	(+)	(-)

F. IMPLEMENTATION

I. Overview

As demonstrated above, a number of different decisions regarding various options for a future framework of media service regulation need to be made before turning towards the task of implementing such a new framework. The aim of this study, though, was more to highlight these different options and to deliver arguments in favour and against them, rather than to

suggest a detailed implementation of a specific potential framework. In the following, only a limited selection of implementation issues shall therefore be addressed.

From the implementation perspective, two questions are especially important behind the background of the different regulatory approaches that were discussed earlier:

- Which shall be the exact definitions to be used for defining the different service categories within the scope of the new framework?
- Which could be the architecture for setting up the material regulatory provisions of the new framework?

Both questions will be discussed hereinafter. In addition, a roadmap towards a new regulatory framework shall be suggested which marks the various policy decisions to be made during a revision process. With this, the implementation chapter may also serve as a summary of the previous findings.

II. Service Category Definitions

1. Broadcast Television Services

As a result of the evaluations in the background chapter, it was suggested to leave the existing ECTT framework generally unchanged without broadening its scope (option 1), or to introduce a second service category within a comprehensive future ECTT or within a separate Multimedia Convention (options 2 and 3).¹⁵ In either event, conventional television “as we know it” would remain to be referred to as an individual service category. Principally, its current definition as it is provided by the exiting ECTT could principally be maintained. However, with respect to new networks such as DSL and 3G infrastructures becoming available for broadcast media transmissions, it should no longer refer to terrestrial, cable and satellite networks. Instead, a future definition of this service category could read: **television programme services that are transmitted to a general audience without operating on individual demand.**

2. New Media Services

Three different options to broaden the scope of the existing ECTT in order to apply a future regulatory framework to new services such as webcasting and video on demand, for example, have been discussed above.¹⁶ The first option focuses on certain definition criteria such as the amount of user control and of editorial content and on respective combinations of such criteria. The second option relies on listings of specific services to be covered by a future framework. In both events, the concrete definitions when implementing these options would have to be chosen accordingly.

A more abstract definition, however, would be required when following the third option regarding the scope of a future framework. It was suggested to be as broad as possible, excluding only pure data services and direct point-to-point communication such as voice

¹⁵ See above at C.

¹⁶ See above at D.

telephony and e-mail. At the same time, the term “point-to-point communication” should also not be used in an abstract definition of these services, because as a result, a future framework would still not be applicable to file-sharing services and especially not to video on demand – which might well be regarded worth regulating at least on a minimum level. Instead, a possible definition of this service category could read: **electronic communication service that consists in the distribution of any kind of media content other than pure unedited data to an undefined number of users.**

III. Architecture

1. Horizontal or Vertical Approach

When it comes to the architectural design of a future framework, the key question is whether to follow a horizontal or a vertical approach when applying the various material provisions to the different service categories. Regarding these material provisions, a system of basic provisions for both types of services on the one hand and of special provisions for broadcast television services on the other was suggested.¹⁷ When choosing between a horizontal and a vertical approach in this regard, though, it very much depends on the overall policy approach that is taken towards a proposed revision process.¹⁸ If a second service category would be integrated *within* a future version of the ECTT, there are good arguments in favour of a horizontal approach with the material provisions. Then, the system of basic provisions for both service categories on the one hand and of special provisions for television broadcast services on the other would be clearer than when having two different full sets of material provisions within one overall framework. The latter, however, could hardly be avoided when following the idea of leaving the ECTT basically as it is today while introducing a separate piece of legislation in the form of a Multimedia Convention.

2. Co-Regulation and Self-Regulation

Another core element of consideration when setting up the architecture of a future regulatory framework – be it based on two service categories as suggested above or applicable only to one service category as the existing ECTT – is the question to which extent an approach of mandatory regulation could be cut down in favour of co-regulatory and/or self-regulatory mechanisms. This cannot be answered generally while looking at an overall future framework, but must instead be considered with respect to each individual field of regulation in a material sense. It has been discussed above to introduce such alternative regulatory approaches for instance in the field of protection of minors,¹⁹ but also in the field of responsibility and journalistic standards could certainly be within the scope of such an approach.²⁰ Other sources have taken a more service-oriented approach in this regard and suggested self-regulatory measures to be applied to specific types of media services such as Internet services.²¹

¹⁷ See above at E.

¹⁸ See the different options above at C.

¹⁹ See above at E. III. 4.

²⁰ In this regard, see for example Council of Europe Recommendation No. R (97) 19 "on the portrayal of violence in the electronic media" which underlines that media professionals themselves have the prime responsibility for the content of the messages, words and images they disseminate, <http://cm.coe.int/ta/rec/1997/97r19.html>.

²¹ See for example the discussions in the Council of Europe about harmful and illegal cyber content in the context of the Cybercrime Convention.

Appendix: Roadmap

