Self-Regulation of Digital Media Converging on the Internet: Industry Codes of Conduct in Sectoral Analysis

Executive Summary

30 April 2004

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The World Wide Web is now over a decade old, creating a new user-friendly way for people to access the most powerful and decentralized communications technology ever invented. The power of this network creates enormous scope for free expression and innovation, much of it good, some of it potentially harmful.[1] Authorities in Europe and elsewhere in the developed world have responded in part by resisting calls for statutory regulation and encouraging the industry to regulate itself. The European Commission has through Decision 276/1999 established the multi-annual Safer Internet Action Plan, including clear measures to encourage self-regulation by Internet Service Providers (ISPs)[2]. This report focuses on two particular content concerns: (i) content that is illegal, including -dependent on jurisdiction - child pornography, illegal obscenity, defamation, hate speech, unsolicited and malicious commercial communications and copyright infringement,[3] and (ii) content that is considered harmful to minors, including explicit content and gambling for instance.

The process of establishing Internet self-regulation has taken place at a time of intense change in the converging media sectors, and within an emerging single European market for some, though not all digital media products. The Internet – especially the emerging broadband and mobile Internet – can digitally deliver printed text, high-resolution images, radio and television broadcasts, computer games and even feature films in real-time. The regulatory mechanisms for distinct off-line media types are therefore converging onto one online medium: the Internet.

In this context of digital convergence, the past decade has seen regulatory innovation in the form of cross-national and also cross-sectoral cooperation. Entirely new fields of self-regulation have emerged, for example in relation to mobile services, and in some sectors such as broadcasting there has been a marked trend towards incorporating elements of self-regulation in a previously statutory regime. At the same time, an intense public debate has taken place within European countries about the individual and social harm caused by both illegal and harmful content. Concern continues to be heard that current regulatory

[1] As a mass phenomenon, the Internet dates back, approximately, to Netscape Navigator's commercial launch in 1993.

[2] Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999, Official Journal L 033 , 06/02/1999:

"1.2. Encouraging self-regulation and codes of conduct

- For the industry to contribute effectively to restricting the flow of illegal and harmful content, it is also important to encourage enterprises to develop a self-regulatory framework through cooperation between them and the other parties concerned. The self-regulatory mechanism should provide a high level of protection and address questions of traceability.
- In view of the transnational nature of communications networks, the effectiveness of self-regulation measures will be strengthened, at European Union level, by coordination of national initiatives between the bodies responsible for their implementation.
- Under this action line, guidelines at European level will be developed for codes of conduct, to build consensus for their application and support their implementation.
- This action will be carried out through a call for tender to select organisations that can assist self-regulatory bodies in developing and implementing codes of conduct. In connection with the establishment of codes of conduct, a system of visible 'quality-site labels` will be encouraged to assist users in identifying Internet service providers that adhere to codes of conduct. Measures will be taken carefully to monitor progress.

This will be done in close coordination with the promotion of common guidelines for the implementation, at national level, of a self-regulation framework as advocated by the Council recommendation on protection of minors and human dignity."

[3] Unsolicited content and potentially malicious communications is beyond the survey scope of this report, but is an essential ingredient of the wider problem of harmful content control.

arrangements, particularly with regard to copyright and spam protection, child pornography and content harmful to minors are not sufficient to address the scale of the problem. Despite successive police operations, for example, against trading of child pornography on the Internet, the amount of this material stored on servers seems to be increasing rather than decreasing, as the Internet grows to 10 billion pages in 2004[4]. And where self-regulation is successful, for example in tracing and prosecuting file sharing providers and users, protests are heard that ISPs are adopting an inappropriate censorship role.

With the majority of European Union citizens now using the Internet via fixed narrowband and broadband, or mobile, devices, it is necessary to review the state of self-regulation in the converging media sectors. This report outlines the current state of development of self-regulation in European countries, and selected others including the United States, with reference to the largest of the converging media sectors: broadcasting (Chapter 4), press (Chapter 5), computer games (Chapter 7), film ratings for video cassettes (Chapter 8), mobile services (Chapter 9) and with a particular reference to the Internet (ISP) sector (Chapter 6). Various law enforcement (e.g. hotlines and anti-paedophile research), filtering (e.g. ICRA) and media literacy projects have been funded under the Safer Internet Action plan, dealing with end-users. The focus of our analysis (see footnote 2) has been on regulation of the industry by itself: the codes of conduct that are enforced within the various sectors by self-regulatory bodies, either at the level of the industry association, or within individual media companies.

This summary first introduces the project and its methodology, secondly explains its key cross-sectoral and cross-national findings, and finally makes 18 recommendations for the European Commission, national governments, industry self-regulatory bodies and other stakeholders, notably civil society participants in self-regulatory fora. Six of the recommendations are of general application to media self-regulation, twelve directly applicable to self-regulation by the Internet industry.

PCMLP and the selfregulation.info Project

Oxford University's PCMLP (Programme in Comparative Media Law and Policy) was established in 1996, as the UK's first academic research programme dedicated to comparative analysis of media regulation in transition, whether social, cultural, economic, geo-political or in this case towards digitalization and the Internet. PCMLP had previously produced a report for the European Commission in 1999 on the parental control mechanisms to block children's access to harmful content via the television set. In 2001, the European Commission awarded PCMLP the IAPCODE contract to produce a two-and-a-half year study on digital media self-regulation, under the Safer Internet Action Plan. This is the final report of that award. The award outputs included:

- a library of self-regulatory resources including ISP Codes of Conduct, COCON;
- several cross-national comparison studies by individual sector (see Annex to Report):

the ISP sector;

- accreditation and trustmarks for websites;
- film and video rating;
- the computer games industry's rating schemes;
- broadcasting self-regulation, including broadcast advertising;

[4] It is exceptionally difficult to measure Internet metrics, but some idea of the problem is conveyed by Le Forum des droits sur l'Internet (2004) Children of the Internet 1: Exposure of Minors to Harmful Content, drawing on commercial studies by n2n2.com, Jupiter and Forrester Research, webaverti.com and others. Eurobarometer (2004) recently issued a special report on parental attitudes to their children's use of the Internet, reflected widespread concern over access to unsuitable and potentially harmful content.

- print newspaper self-regulation;
- mobile network regulation to prevent access for minors to harmful content;
- the Technical Assistance Unit to help self-regulatory institutions design better processes and procedures including Codes of Conduct;
- a monthly newsletter and analysis published on the project website selfregulation.info.

The award terminated in February 2004. In-house researchers on the project were from the Netherlands, Norway, Germany, Belgium, UK, Serbia, Argentina, Canada, and the United States. External consultant experts were employed for their expertise in individual areas. The research was disseminated in a series of industry conferences in the European Union, and also the Czech Republic, Poland, and Australia. By drawing on such a wide pool of expertise, PCMLP was able to make its comparative analysis as effective as possible within the time-frame. The advice and expertise shared by industry participants in self-regulation in the sectors surveyed was also invaluable in a unique pooling of self-regulatory and academic resource.

We now briefly explain the methodology employed before summarising the main research findings and the recommendations we draw from those findings.

Codes analysis: Methodology

Much of the research in this project has focused on the analysis of codes of conduct. The study of codes has considerable strengths as a methodology, but we must also be aware of its limitations, and put it in context. Study of codes of conduct is a good way of revealing to which rules code subjects want to publicly commit, and be held accountable. A systematic analysis of codes should be accompanied by contextualising research on the empirical process of drafting, adopting and revising codes and the process of their application, as well as enforcement where codes have a sufficient history of sanctions for breach. That is why we also drew upon background research, expert interviews, historical and archive material and secondary analysis conducted by other researchers. Throughout the project we have held regular meetings and workshops with practitioners who are involved in the practical task of putting together self-regulatory codes of conduct. Our report also benefits from a series of technical assistance projects that we conducted in order to assist groups in several EU countries, and across media industries, in drafting and implementing a code of conduct. The research draws on our findings in these workshops and meetings. In addition we have held a number of workshops and seminar series bringing together theoretical experts on self-regulation. We are very grateful for the contributions of these experts.

Code analysis can identify those cases in which a code is not in fact sanctionable and therefore likely not to be effective. However, trust, mutual observation and a sense of obligation can be key mechanisms in the process of self-regulation. A methodologically-rigorous approach to analysis of codes is the first important step towards determining the conditions for sustainable self-regulatory mechanisms. Sustainability is a product of a combination of industry structure and participation, costs and benefits of the self-regulatory structure adopted, and the standards of transparency and due process that are maintained. We examined these factors through theoretical investigations, in-depth interviews, and a series of workshops with practitioners of self-regulation. Our analysis of codes offers one of the most reliable objective indicators of some basic patterns in development of self-regulation and has already served as a guide to groups interested in implementing best practice models and furthering self-regulation in their respective sectors and countries..

Our aims in this comparison are two fold. On one level we simply want to map the basic parameters of development of codes of media conduct in European countries. Our findings will be of interest both to policymakers and researchers monitoring the development of industry rule making. On another level we have sought to push the comparison further, asking

what evidence can be brought to bear on questions of quality of self-regulation. Does self-regulation conform to expected levels of accountability, transparency and public involvement? In the Introductory Chapter, these elemental principles of regulatory justice are defined and for this Summary taken as pre-requisites for any form of regulation, whether state-, self- or co-. Does the scheme manage and develop those expectations, for instance by increasing stakeholder media literacy? Are there patterns of development that would impact on the ability of self-regulatory organisations to collaborate and cost-save across countries or across sectors? This will lead us to comparative analysis such as explanations for revealed country differences. Finally, there are broader questions of 'exportability' of self-regulation from states where well-established 'best practice' is observed, to other existing and new Member States.

The various media sectors required different methodologies in certain areas, reflecting different focus points, technologies, and cultural diversity. We make distinctions between principles, codes, guidelines and recommendations. We examined emerging issues, including enforcement, procedures, content issues, evolution, preventing government legislation, avoidance of liability, child/consumer protection.

Research Findings

Why do digital media companies and sectors adopt self-regulatory codes of conduct?

Historical analysis shows that self-regulatory schemes in the media have generally been designed in response to regulatory crises in which legislative control could only be avoided by instituting an effective self-regulatory scheme. Historical legacies matter in regulatory design, and this 'emergency' nature of self-regulatory inauguration is important. Print succeeded in self-regulating, broadcasting was government regulated, and film was classified by censors in part due

to historical accidental timing. In the period from 1918 to the 1970s, direct state regulation by the state was at its zenith, coinciding with broadcast and film content censorship. By the 1980s and especially 1990s, state withdrawal from high-technology sectors resulted in a less intrusive political reaction to the excesses of video games, video cassettes and ultimately Internet content. The transfer of regulatory responsibilities from the traditional media to the online news services of broadcasters and newspapers has been accompanied by increasing deregulation in broadcasting on the one hand and the extension of print media regimes to online services on the other. Already developed self-regulatory mechanisms were translated into the new medium, but with some deregulatory consequences for both new and old media.

Our interviews and questionnaires found that codes are adopted for one or more of the following reasons:

- As an alternative to direct state regulation;
- To prevent government regulation;
- To build public trust, consumer confidence;
- To avoid legal or user-perceived liability (though codes may in some cases increase liability and due diligence commitments);
- To protect children and other consumers;
- To exert moral pressure on those who otherwise behave in an "unprofessional" or "socially irresponsible" way;
- As a mark of professional status;
- To raise the public image of their industry;

- To provide a cheaper/ faster mode of dispute resolution from the courts; and[5]
- To develop a set of common standards for services and products.
- In addition to these findings, however, there may be other hidden motivations that respondents are less likely to report. In particular the adoption of a code of conduct can be a conscious or unconscious attempt to exclude competitors from a market by raising barriers to entry.

Stakeholder Involvement

In more established and legitimate self-regulatory authorities, code drafting and revising often includes various levels of outside participation and consultation with interest organizations such as consumer associations, trade unions, and non-governmental organizations. Self-regulatory codes vary from some based on exhaustive consulation with all stakeholders to codes that have been written by one lawyer with apparently no consultation to simply "borrowing" codes from others without any effort at tailoring model codes to local circumstances (not even substituting the original scheme's name on it!) Those who are included in code development and adjudication include:

- members of the public that are independent from any special interest or organization (also called "independents" or lay members);
- consumer representatives;
- experts solicited for their opinion in the process; and
- professionals within the regulated area.

How Codes Change

Codes of conduct, in order to be legitimate, credible, transparent and effective need to include clear and workable procedures for review and amendment of the code. Ideally this should include some input from the adjudication body. The most effective and skilled code operators take the following issues into account when revising their codes:

- the convergence of national, regulatory and corporate cultures;
- the changing nature of the relationship between government and industry;
- the evolving technological architecture that underwrites self-regulation;
- the further development of standards, Codes, and rules; and
- the growth and change of cultural norms and of public understanding surrounding self-regulation.
- third party consultation or audit.

Recommendations

We make 18 recommendations on media self-regulation, which specifically can help the effective development of media Codes of Conduct, and twelve on co-regulation of Internet content

Our key finding is that technological progress brings about change and self-regulation can respond more rapidly and efficiently than state regulation. There is no universally acceptable recipe for successful self-regulation, as regimes must be adjusted to the needs of each sector and other circumstances (technological change, changes in policy to respond to changes in technology, a country's legal system, case law of European courts, and so on).

[5] See COM(2002) 196 Final Green Paper On Alternative Dispute Resolution In Civil And Commercial Law 19.04.2002 http://europa.eu.int/eur-lex/en/com/gpr/2002/com2002_0196en01.pdf at 10-12.

To illustrate, broadcasting is an area in which technological progress brought complexity and the increase of self-regulation responds in part to policy changes prompted by those technological changes. The European monopolistic broadcasting model which developed with radio, maintained for television, was first challenged by commercial terrestrial services. Further pluralism brought about first by cable and satellite, and then digital technologies including the Internet, forced changes in the regulatory environment and public authorities increasingly delegated the power to regulate to market actors. The trend is towards continued delegation (with regulatory authority audit of the resources, procedures, transparency, stakeholder participation and market effect of the self-regulatory scheme adopted).

Key Recommendation:

Adequate resourcing is the key to successful self-regulation. Policy on self-regulation must take into account a broader view of the sustainability, effectiveness and impact on free speech of self-regulatory codes and institutions. We recommend applying an auditing procedure for establishing self-regulatory institutions and codes. Given the centrality of speech freedoms in constitutions, we hold that this regulatory audit burden is a minimal price to pay for effective self-regulation in the public interest.

Convergence, the Single Market and Future Trends in Self-regulation

Significant economies of scale are likely to be realised through functional integration of certain key aspects of the content regulation value chain horizontally across sectors and across EU Member States . Computer games rating has illustrated the potential for developing a common pan-European ratings structure. Germany and the Netherlands operate a cross-media rating and labelling scheme . In a situation of increasing cross border trade within the EU, this trend is set to continue. An important use of the Internet is to access news. Journalistic ethics online, often an extension of systems developed for the print media over decades, has the potential for a pan-European structure. Online news services, online versions of newspapers, news aggregators, as well as self-regulatory mechanisms to which they may belong could soon acquire relevance beyond national borders. Readership may start seeking access to self-regulatory bodies and complaint mechanisms located outside national jurisdictions.

Although the *legislative* role of the European institutions is currently limited, (prior to any EU constitutional settlement), several recommendations have been made as cited below. And it is likely that in a single market context, there will be a significant self-interest on the part of industry in self-regulation. More research and development, benchmarking and technical assistance in disseminating best practice between Member States is clearly essential to assist industry bodies in the exploitation of economies of scale and scope in self-regulation across the various converging media sectors in the single market (SS.4.10-5), and to ensure greater effectiveness of self-regulation.

The general trend is towards an expansion of scope of co-regulation, often at the expense of statutory regulation. IRAs such as Ofcom in the UK are exploring the possibility of ‘sunsetting’ particular regulations in the event that co-regulatory alternatives can be found.

Recommendation 1: Clear procedures for auditing self-regulatory schemes should be devised and implemented, according to transparent criteria. We explain the criteria and process in Recommendations 12-15.

Funding and Sustainability of Media Self-regulatory Regimes

Where there is a clear industry interest in self-regulation to improve market penetration, or to head off threats of statutory regulation, there are adequate market incentives for resources to be allocated to self-regulatory activities. However the calculation of enlightened self interest required is vulnerable to changing personnel and market structures such that self-regulatory institutions, where they do not have access to levy funding, will not enjoy the funding necessary to meet standard requirements of transparency, accountability and due process.

Recommendation 2: Where funding is provided to encourage self-regulation, funding should be directed to those self-regulatory institutions that are able to fulfil public interest criteria, including freedom of expression tests, and therefore likely to develop into self-sustaining codes and institutions.

A wide variety of models of self-regulatory tools exist. Some of these are based on adequate standards of transparency, inclusion, due process, resources and so forth, and some clearly are not. As a result there is some concern with the development of codes that insufficient standards apply to both law enforcement/child protection and protection of freedom of expression rights. If these mechanisms are improperly structured we can expect public harm to result in the medium term.

Recommendation 3: The European Commission and Council of Europe should develop and publish clear benchmarks for acceptable levels of transparency, accountability and due process and appeal, particularly with regard to communications regulation that may impact upon freedom of expression.

Recommendation 4: Self-regulatory institutions should follow the guidelines for transparency and access to information that are followed by public and government bodies according to international best practice. At the very least self-regulators should provide summaries of complaints by clause of code of conduct, numbers of adjudications, findings of adjudications on their website. Failure to conform to these baseline standards of transparency should be viewed as a failure of self-regulation.

Self-regulation and Freedom of Expression

Self-regulation has an ambivalent and tense relationship with fundamental rights to freedom of expression. At one level this depends on definitions. In some cases, and particularly in the US, case law tends to favour a view of freedom of expression as a negative right: i.e. it exists where there is an absense of state interference with communication. In other traditions, freedom of expression is equally endangered by private bodies such as corporation. In the former case, self-regulation is likely to be viewed favourably in terms of its impact on freedom of expression as by definition self-regulation is not endangered by non-state entitities. However this does not mean that positive rights to free speech are protected by self-regulatory institutions. On the contrary, because self-regulatory institutions are not public bodies they may be less accountable. Self-regulation could be used instead of government regulation to avoid constitutional free speech issues when regulating more stringently: for example, broadcasting pre-publication control as carried out by the FSF in Germany and similar bodies in other countries.

Self-regulation offers a complaints procedure and alternative dispute resolution: the press councils offer the possibility of achieving redress via a complaints mechanism faster and less onerous than courts. However, there may be less protection for rights than with the protection offered by the law. For example injunctions, fines and sanctions may be unavailable within a self-regulatory regime. Similarly victims may not be able to access financial compensation if complaints are resolved by self-regulation rather than in court.

Stakeholder Participation in Co-regulation

From the Press Council survey, a key lesson is that it is essential to achieve a balance between the self-interest of the industry represented on its board and the participation of lay members. This combination strengthens its legitimacy. This, in turn, may lead to a virtuous circle in which the enlightened self-interest of the industry can help the media to willingly fund the mechanism of code implementation, and abide by the decisions of the council.

Recommendation 5: Industry professionals should constitute a minority on boards of content self-regulatory bodies. Measures should be adopted to ensure that bodies that are 100% funded by their industry are not captured by it. These measures could include: fixed tenure for board members, dismantling separate “funding boards” (who may attempt to hold regulatory

boards to ransom), replacing them with a compulsory levy on industry participants, as currently applies to premium telephony in for instance the UK. This transparent and guaranteed funding then permits industry participants to play a much greater expert role in advising the regulator, with less conflict of interest.

Technical Knowledge and Media Self-Regulation

Despite recent progress, consumer groups often lack the technical and legal knowledge of the application of media self-regulation to the Internet, especially in new capabilities of mobile and broadband.

Recommendation 6: If co-regulation is to operate successfully, it is essential that IRAs or ministries, in cooperation with the Commission, ensure that a continual programme of technical and regulatory education be provided to consumer groups for their effective participation and trust in co-regulatory fora.

Internet Co-Regulation

The following twelve recommendations are directed to those public and private institutions engaged in Internet regulation. The response to the extensive surveys conducted by IAPCODE has been exceptionally meagre, demonstrating a lack of resources devoted to self-regulation within ISPs. In part, this may be because self-regulation in the sector is of such recent vintage compared to the other sectors studied. Following the cross-sectoral analysis in Chapter 9, and cross-national analysis in Chapter 10, therefore, we recommend a significant role in inculcating a regulatory culture by the IRAs (independent national regulatory authorities) in each country. The several countries conforming to best practice may find the co-regulatory audit concept, in particular, a relatively low hurdle to cross. Nevertheless, we believe that co-regulation will encourage publicity for those best practice schemes, and therefore better public awareness of their work. For the other under-resourced market actors and their schemes, co-regulatory audit will act as a much-needed reality check on the resource required for effective self-regulation in sectors where freedom of speech concerns are so critical. We begin with four recommendations on strengthening the relationship between industry self-regulatory Codes and user-based solutions: holistic thinking and media literacy, filtering, hotlines and trustmark accreditation.

Holistic Thinking About All Unsolicited Content Types

Inappropriate and harmful content is becoming a massive problem – unsolicited adult content is part of a larger content category including unsolicited commercial communication (spam) and unsolicited code (including malicious code – viruses and spyware). It threatens trust in the medium as a whole, including e-commerce and even e-mail. Legislation is dealing with some of these issues, such as spam.

Recommendation 7: Self-regulation arrangements should take account of these new initiatives and any changes to their role that may result. There is insufficient ‘joined up’ thinking at national and regional level about the interrelationship between different layers of the Internet: content, physical and software protocols. We cannot regulate adult content alone without consideration for other content type regulation, such as spam blocking, and their effect on other layers.

Filtering and Hotlines

Where filtering rules and self-regulatory hotlines have been instituted, there has been a heroic assumption that users will install technical solutions and be aware of hotlines, and that the 10 billion web pages will be self-classified or policed effectively. This is becoming increasingly unlikely.

Recommendation 8: Technical enthusiasts or global user communities without real self-interest cannot achieve the coordination necessary. Future studies of filters and hotlines

should continue to focus not only on the technical capabilities of filtering technology or police cooperation, but on the skills of users, parents, children and others and awareness of these technologies.

End-user software, for instance filters and search engines, raise significant problems for freedom of expression. For instance, popular search engines may have rules for search that prioritise content inappropriately for specific cultures: by language, content type or software format.

Recommendation 9: It is essential that studies of filters be instituted that examine the freedom of speech implications of commercial ranking of sites, pages, content types, languages. ISP or portal judgements of speech freedoms must be subjected to national law.

Trustmarks and Accreditation

Accreditation for website content can work in the case of national e-commerce trustmarks because buyers and sellers have one common concern – security and reliability in the transaction. Content website accreditation has no such over-riding concern that can create network effects in accreditation. Also, trustmark schemes that offer accredited sites a visible marker have failed in most cases because of low levels of consumer awareness of trustmarks and the high costs of advertising trustmarks.

Recommendation 10: Support for trustmarks in the future should depend on demonstration of adequate consumer awareness of the kitemark or the possibility of a public sector awareness campaign.

Notice and Take Down: 'Put Back' in the E-Commerce Directive The opacity of self-regulatory regimes is also a cause for concern in the Notice and Take Down regime for ISPs. Where an ISP substitutes its own judgement of harmful or potentially illegal content, with or without trained legal advice, it does so 'in the shadow of the law'. This privatisation of enforcement of freedom of expression is a continued cause for concern. Where there is even a suspicion that Notice and Takedown Procedures are not being adhered to, legitimacy of self-regulation and the ISP industry suffers. Presently ISPs appear to be substituting their view of illegal, harmful (and copyright infringing) content without effective legal procedures for content producers to respond and appeal. This is a direct infringement of freedom of expression on the Internet, which is unchecked by current legislation.

Recommendation 11: We recommend that 'put back' be seriously considered as a policy option when the E-commerce Directive is reviewed.

Co-regulation: Resource Audit Role of IRAs

There is a lack of credibility in Internet co-regulatory fora generally. This is in part due to lack of technical and regulatory expertise, but also due to a lack of wider industry partnership. It is particularly difficult for regulatory staff in smaller and medium sized media businesses to make the internal business case to release resource, especially legal resource, be involved in development of self-regulatory solutions. ISPs often do not have the resources necessary to meet high standards of transparency, accountability and due process in self-regulation. Decisions to take part in self-regulatory schemes are often taken without sufficient knowledge of the longer term cost implications.

Recommendation 12: **Industry** must take active part in co-regulatory initiatives. Whereas large multinationals (such as Microsoft, AOL, and ISP subsidiaries of national telcos) and voluntary actors (typically from research or educational backgrounds) are active participants, proactive measures need to be taken to fully engage with user groups, smaller for-profit content and access providers.

Recommendation 13: **IRAs** should convene a **co-regulatory forum** on a quarterly basis located at their offices, with minutes and participants published on the IRA website. This will introduce much-needed transparency into the co-regulatory process, to ensure all commercial

operators take content co-regulation seriously. Effective co-regulatory schemes will find this no extra burden, indeed a stimulus for new members and educational function for the consumer.

Recommendation 14: **Accrediting** co-regulatory codes of conduct and behaviour can only be carried out under the auspices of IRAs, who have the regulatory resource, stakeholder participation and competition law exclusion to effectively institute a voluntary kite-marking scheme. IRAs may choose to sub-contract the scheme's functioning to a third party.

Recommendation 15: **IRA audit** of self-regulatory activity, incorporating assessment of market structure and interests in self-regulation and an assessment of impact on fundamental rights, must take place within a dynamic and pragmatic framework which encourages rather than discourages self-regulatory activity where it is appropriate. We also recommend a 'national resource audit of ISP and content sectors' – to answer essential questions of effective and sustainable ISP self-regulation:

Who is engaged in the Notice and Take Down regime?

What is the dedicated legal resource in each ISP?

Are the crucial code writing and adjudication functions sufficiently independent from industry?

Who performs the freedom of expression function in each ISP?

Does the self-regulatory industry scheme, as well as individual ISPs, have sufficient resource 'ringfenced' away from industry participant control, to operate efficiently, transparently and fairly?

Benchmarking and Research for a Forward-Looking Agenda

Accession states to the EU have substantial need of technical assistance in formulating co-regulatory schemes. Such assistance is needed in legislative and technical areas as much as in co-regulation itself. In particular, stakeholder/consumer groups require assistance in playing an effective role in co-regulatory discussions.

Recommendation 16: The Commission is urged to establish expert groups in these areas.It is therefore suggested that a Technical Advisory Board be established for co-regulatory schemes, best practice and policy research. The TAB can take composition from national experts (in the manner of the moribund DGInfoSoc Legal Advisory Board). It requires an active secretariat and a willingness to consult at short notice where issues of content regulation arise. Its members must be appropriately qualified.

The TAB would need to advise the European Commission on achieving a progressive, forward-looking agenda, actively engaging industry and stakeholder interests (including technical stakeholders) through partnerships with for instance the spam forum now established by the OECD.

Recommendation 17: Co-regulatory practice needs to take account of rapidly developing technologies and content types in [a] broadband; and [b] mobile Internet networks.

The TAB would be required to engage with other advanced Internet stakeholders from East Asia, North America, and from sectors including software, content and hardware developers. Without these inputs, its work would be limited in scale and scope to a regional and narrow view of the Internet

Recommendation 18: The TAB would be required to pursue an active engagement with stakeholders from across the many media and communication sectors, and from multinational stakeholders active in European markets, as well as representatives from European media industries and other national and regional stakeholders.