



International Chamber of Commerce
The world business organization

Policy statement

ICC Statement on Regulating the Delivery of Audiovisual Content over the Internet

Prepared by the Commission on E-Business, IT and Telecoms

Background

With the growth of streaming audiovisual content delivered in packetized form over the Internet and mobile wireless, some countries and regions such as the European Union are considering the establishment of regulatory regimes for audiovisual content which would apply a number of restrictions more traditionally associated with broadcasting to all audiovisual media services, including the Internet and wireless services.

Existing broadcast rules regulate audiovisual, and especially television, content in various ways, including:

- protection from indecency and/or other social issues;
- obligations and/or restrictions regarding advertising of certain products, i.e. alcohol, tobacco, and ads directed at minors;
- protection of local cultures and the promotion of local producers;
- rights to legal remedies; and
- identification of commercial or sponsored content.

While this policy statement focuses on the extension of regulations to audiovisual services delivered over the Internet, in light of increased competition across platforms and technical advances that provide potentially unlimited capacity, business believes that traditional broadcasting regulation as a whole should be reviewed to determine its relevance vis-à-vis the underlying foundations which may no longer apply in the changing technological environment.

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When considering how existing broadcasting rules may need to be amended to address new and evolving services, business believes certain core principles should be followed:

- Self-regulation and available consumer enabling technologies should be relied on over mandatory regulation. The Internet has changed the nature of the relationship between content creation, distribution and consumption, democratizing content creation and introducing technical tools, such as content rating, filtering and parental controls, which enable consumers to have greater self-control over the content they and their families create and consume. These tools, which are available to broadcasting platforms, complement existing regulatory norms, such as those governing the protection of children, rather than seeking to circumvent or replace them.
- The 'country of origin' principle for applicable jurisdiction of any remaining regulatory mechanisms should prevail to ensure regulatory certainty, where the geographic scope of the Internet is global. In a world of self-regulation there should be mutual recognition of effective approaches within a "country of origin" framework" which benefits consumers through lower prices and greater supply of programming.

Regulation of audio visual content on the Internet

ICC recognizes the importance of launching of new services to deliver audiovisual content over the Internet. The launching of such services plays an important role in the fight against online piracy and provides a win-win for all business sectors and for consumers. Consumers benefit from greater access to more diverse content and an increased ability to cater to niche markets, thus contributing to cultural diversity. Producers, in particular smaller producers, benefit from reduced entry barriers (relative to traditional TV) and the ability to aggregate consumers across a much wider geographic base, using word of mouth recommendations, viral marketing and links between related services. Similarly, consumers find it easier to find diverse content, news and other culturally important information using simple to use search technologies. Application of traditional broadcasting regulation to services that deliver audiovisual content over the Internet and thus differentiating it from other types of products and services delivered over the Internet will hamper and skew innovation in video content, raise barriers to entry, especially for those producers who lack scale, and therefore hamper the development of new and, in particular, local services. This will in turn negatively impact consumer benefits, information access by citizen and consumers and the promotion of cultural diversity.

The combination of the widespread deployment of broadband services and the adoption of Internet protocols and packet technologies by network providers has created a new and promising platform for the growth of innovative services, including video applications. This area is rapidly evolving and changing in response to market forces and self-regulation as well as the development and availability of new technologies. Due to the competitive and open nature of the Internet, it provides a new and very promising avenue for the development of innovative applications including video services. Regulation imposed on the delivery of audiovisual content, however well-intentioned, could have un-intended adverse consequences for both industry and consumers.

The interconnected and open nature of the Internet is its greatest strength. It has encouraged companies to invest and innovate so that consumers use the Internet more and conduct more of their lives online. This is good for all commercial providers and for consumers.

The Internet is a “network of networks” and there are literally hundreds of millions of users and millions of companies involved in all aspects of its operation.

The Internet is a network with intelligence that is distributed not centralized and has no set of “core” switches that “run” it. The potential for new services of all kinds - including video - provided by commercial operators, applications developers and even home-based computer users is huge. Applying traditional broadcasting regulatory policies to the Internet will stifle this creativity, skewing investment in order to avoid regulation. Internet video streaming services are being delivered under frameworks which are governed by existing legal rules and obligations, which apply to the delivery of products and services over the Internet, as well as self-regulation.

ICC believes that the self-regulatory approaches which have evolved thus far regarding audiovisual content on the Internet should be developed further to fulfil their potential as the most pragmatic tool for addressing legitimate policy concerns. As demonstrated by existing examples cited later in this paper, self-regulation allows for changes in a dynamic environment, can respond rapidly to market developments and consumer concerns, results in lower costs being passed on to taxpayers and consumers, and is particularly well-suited to a market where there are millions of individual content providers, many of whom will be unidentifiable by national regulators. Self-regulation will keep barriers to entry low, foster innovation and enhance competitiveness. As effective self-regulation is a key part of service providers’ service proposition on the Internet, such self-regulatory restrictions are accepted, welcomed and adopted enthusiastically. Exogenously imposed restrictions typically motivate investment in avoidance strategies. Service providers may be required to subordinate the needs of consumers to comply with regulation, with obvious implications for consumer safety. Also, business believes that any inappropriate legislative regulations will only stifle economic growth, inhibit job creation and hamper the development of digital content and services. The providers are the main advocates for self-regulation as the right solution and the way forward for the Internet and consumers.

Attempts to impose, administer and enforce traditional broadcasting regulation on the delivery of audiovisual content on the Internet is complicated significantly by the democratization of content creation and distribution brought about by the Internet itself. Policymakers have traditionally not been able to enable consumer participation in the process of regulation. Rather, the relationship was between policymakers and broadcasters, who had to acquire certain licenses and regulatory consents.

However, the advent of the Internet has opened this communication medium to anyone and placed considerable self-regulatory powers in the hands of individual consumers. Indeed, this is one of the greatest benefits of the Internet and should be promoted. One cannot say that user-generated content is not regulated at all because there are complementary rules and regulations of general application to all media, including rules and regulations related to the protection of minors and human dignity that address concerns regarding inappropriate content.

The potential extraterritorial impact of Internet content regulation

While any regulation of audiovisual content delivered electronically raises many questions for several industries, ICC is most concerned about the inherent extraterritorial aspects involved in attempts to regulate the Internet. The distributed, decentralized nature of the Internet raises many issues regarding applicable jurisdictions. For example, what rule would apply when a Japanese cell phone user views Japanese video content while using the cell phone in the Paris metro?

While businesses offering products over the Internet can respond to jurisdictional uncertainty by limiting their offerings to certain jurisdictions, for example by not shipping internationally, businesses delivering digital services may have greater difficulty discerning or excluding customers from other jurisdictions who use commercially available access devices such as computers, Personal Digital Assistant (PDAs) and cell phones. The negative result of jurisdictional ambiguity, or of aggressive insistence on compliance with detailed local rules when dealing across borders with local residents, is twofold. First, many services are held back entirely from the global electronic marketplace. Second, other services are offered only in a limited number of jurisdictions, and consumers in other places are denied access to innovative services through the online marketplace.

Jurisdiction and applicable law mechanisms should not plague business with the risks of unexpectedly being subjected to laws and judgments in other countries. Authorities should exercise the greatest restraint in imposing their national laws or finding jurisdiction on the sole basis that content may be accessed over the Internet within its borders.

In determining jurisdiction and applicable law as it applies to the protection of consumers in relation to the delivery of audiovisual content on the Internet, the 'country of origin' principle should apply, as it has done with such success in the traditional TV industry. In particular, there should be mutual respect and recognition of national self-regulatory approaches to content regulation. This is the only way that regulatory certainty can be obtained. The issue of whether content is merely accessible via commercially available user equipment is irrelevant to the determination of jurisdiction for regulatory purposes.

ICC would stress the consumer benefits found in the "country of origin" principle. For instance, the cost of complying with multiple regulatory jurisdictions would increase the cost of broadcasting pan-national services, such as regional news channels, and the loss of economies of scale in compliance would likely mean marginally profitable channels would drop out of many smaller markets, denying consumers a rich choice of services, such that there is a risk of an international "digital divide", with consumers in larger countries enjoying a significantly richer choice of services.

ICC recognizes that there is a subset of consumer transactions in heavily regulated industries where, due to compelling public policy reasons, regulations have been developed to provide that specific redress and information be made available to the consumer in his or her country of residence. As a commitment to consumer protection and empowerment is shared by business and governments, application of the "country-of-origin" principle should not be read to undermine such regulations. Nevertheless, ICC encourages governments to reassess such regulations so as to identify their utility in a global marketplace.

The ability of self-regulation to provide protections and increase consumer choice

Where choice, self-regulation and ‘country of origin’ principle are espoused as the preferable or only workable solution, it is with the conviction that mechanisms proposed must be trustworthy, user-friendly and able to provide effective redress to the consumer. Examples cited below offer models of self-regulation that could be replicated and applied more broadly to meet these goals. Interactive technology, and in particular the Internet, provides a unique opportunity for creating new services and new solutions. However, this area is not conducive to the effective application of traditional consumer protection concepts.

Coordinated and flexible market-based solutions may provide all players with a general set of practices that allow participation in the networked economy while providing reasonable assurances that such participation is not at the expense of appropriate disclosure to and fair treatment of the consumer.

The online medium is particularly conducive to increased consumer empowerment. We believe that increased competition will result in a global “race to the top” as companies develop their online brands in order to ensure consumer confidence. The inherent empowering qualities of the Internet are enhancing the very significant incentive that business has to provide and implement technologies and practices that offer consumers choice through informed decision-making – informed consumers are good customers. Further, it is at the edge of the Internet – at the choice of the customer empowered by technology and software – where any form of content selection or limitation will not only be most substantively tailored but also most technically effective.

A rule of thumb in the Internet industry is that it costs five times as much to recruit a new customer as to maintain an existing one. The freedom of choice inherent in competitive market situations has always worked to the advantage of consumers. A natural result of competition is increased commercial communications, which ensure that consumers have the information they need to make freedom of choice a reality. Any action that restricts legitimate commercial communication therefore reduces choice and by definition restricts free trade and ultimately increases selling prices.

Consumer policies for the online medium have been and continue to be developed and implemented by both business and governments. Self-regulatory solutions provide the flexibility to respond to the dynamic nature of the online environment. Any policies must accommodate and promote this highly dynamic environment, which is a significant engine of economic growth and social development.

Commercial communications are best regulated by effective self-regulation within a legal framework that protects consumers and individuals. Indeed, a prime responsibility of self-regulation is to maintain consumers’ confidence in audiovisual services, ensuring standards are met and complaints are handled effectively.

Experience has shown that self-regulation is more effective than legislation in regulating the detail of commercial communications. Self-regulation governs in spirit as well as the letter and it therefore encompasses a more comprehensive range of options on possibly controversial issues of taste and interpretation.

Moreover, self-regulation is easily updated and can be adapted far more quickly than by recourse to legal decisions. It gives access to redress which is free of charge for the consumer. It also gives special protection to vulnerable groups such as children and can address detailed issues like social and environmental aspects of sustainable development.

Models of self-regulation that exemplify these principles

There are a number of different models set out in the annexe to this statement. These include the Netherlands Institute for the Classification of Audiovisual Media, the Internet Watch Foundation, Childnet and GetNetWise – all have taken different approaches to apply innovative solutions to the issues of online content.

These are just some of the examples of how business initiatives and partnerships are constantly emerging and evolving to address the concerns of consumers and market developments in this rapidly changing environment. For more information on these and other examples, please refer to the attached annexe at the end of this document.

ICC members recognize that, for self-regulation to be effective, consumers and marketers must be aware of it and there must be adequate enforcement mechanisms and sanctions such as those operated by other bodies.

Conclusion

The Internet's defining feature is its interconnected, decentralized and open nature. With these qualities it is inappropriate to extend traditional broadcasting regulation to content on the Internet, which is being considered by some countries and regions such as the European Union. Inefficient traditional broadcast regulation on issues such as indecency, the advertising of certain products and other fields is not suited to the new technological environment. It will raise barriers to entry and deter innovation and the development of new services and inhibit cultural diversity, the Internet's most compelling advantages. Instead, a rigorous self-regulatory regime would provide the flexibility to respond to such a fast-moving media, making it more effective than legal measures and providing more options to define issues such as taste and interpretation. Any traditional legal regimes should operate strictly on the country of origin principle. In a world where traditional national borders, especially in the information sectors, are less defined this is the only way to establish a clear distinction of authority.

Given the borderless flow of audiovisual content and the reality that national legal frameworks cannot cover all content, self-regulation provides an effective solution for ensuring coverage of those gaps. Existing legislation of broadcasting was created for media such as television and radio that is profoundly different from developing modes of content distribution on the Internet. This legislation is ill-suited for these new roles. Indeed, as noted in the introduction, traditional broadcasting regulation itself warrants a review to assess its relevance to its historical underlying foundations given technological advances. Consumers and producers alike would be better served by, and should prefer, a self-regulatory approach.

Annexe: Examples of innovative solutions to the issues of online content

Netherlands Institute for the Classification of Audiovisual Media

(<http://www.kijkwijzer.nl>)

The Netherlands Institute for the Classification of Audiovisual Media (NICAM) demonstrates how self-regulation can be effective and of practical benefit and value to consumers. In 2001 NICAM established Kijkwijzer, a rating system, to provide information about possible harmful effects of movies, home videos and television programmes on young people. Recent surveys among parents with children show that approximately 90% value Kijkwijzer and some 70% actually use the pictograms when it comes to choosing television programmes, films and videos for their children. The European Commission is recommending the NICAM model for wider application in Europe.

Internet Watch Foundation (<http://www.iwf.org.uk>)

In the UK, the Internet Watch Foundation (IWF) operates an internet 'hotline' for the public and IT professionals to report their exposure to potentially illegal content online. The aim is to minimise the availability of potentially illegal internet content, specifically:

- child abuse images hosted anywhere in the world
- criminally obscene content hosted in the UK
- incitement to racial hatred content hosted in the UK

This hotline reporting system helps Internet Service Providers combat abuse of their services through a 'notice and take-down' service by alerting them to any potentially illegal content on their systems and simultaneously inviting the police to investigate the publisher. The result has been significant with only 0.4% of potentially illegal content apparently hosted in the UK, down from 18% in 1997. The positive effects of this are spreading. In 2006, there were 25 hotlines operating around the world with IWF mechanisms serving as a model for initiatives in other countries.

IWF worked with all the UK mobile operators on safety and responsibility issues over the future development of third generation mobile services to develop a 'Code of Practice', recommendations and guidelines for dealing with mobile content services, which was finalised in January 2004. The same notice and take down procedures are applied for mobile services as for child abuse and illegal images downloaded via PCs.

The UK Government strongly endorsed this approach in its formal response (November 2005) to EU Commission proposals for revision to TV without Frontiers Directive on the Issues Paper relating to protection of minors and human dignity, where it stated the following:

We would in particular point to the crucial role which self-regulation can play, as already happens in the United Kingdom in respect of child pornography. The Internet Watch Foundation, funded by the industry and to which all major providers subscribe, identifies sites which contain offending material and communicates with UK service providers, who remove them, or with international agencies to take action. The success of this programme shows in our view how effective self-regulation, backed up by a Member State's own national criminal law, can be in such circumstances.

Safer Internet Action Plan

(http://ec.europa.eu/information_society/activities/sip/index_en.htm)

An evaluation of the European “Safer Internet Action Plan” conducted by independent experts in the first half of 2006, concluded that it “has been very effective in tackling illegal and harmful internet content, whilst respecting people’s freedom of expression”. The design and concept of this programme, which also uses hotlines to report illegal content, is being used as a model in many other countries, in the Asia-Pacific region and in Northern and Latin America.

European mobile operators’ self-regulation codes

On 7 February 2007, leading European mobile operators signed in Brussels an agreement on how to protect minors using mobile phones. This agreement, brokered by the European Commission, responds to the findings of the Commission’s public consultation on child safety and mobile phones which had been published earlier that day. In the agreement, mobile operators have undertaken to develop self-regulatory codes by February 2008. Such codes would support:

- access control for adult content
- awareness-raising campaigns for parents and children
- the classification of commercial content according to national standards of decency and appropriateness
- the fight against illegal content on mobiles

Childnet (<http://www.childnet-int.org>)

Childnet, a leading organisation in child internet safety, has teamed up with business on a number of projects. One partnership with a European telecommunications company provides consumers with a useful checklist of important questions parents should ask when buying a mobile for their children. This Childnet partnership is helping protect children from harmful content, by running workshops and keeping them informed on all new safety developments regarding children’s use of the Internet and mobile phones.

GetNetWise (<http://www.getnetwise.org>)

GetNetWise is an industry-founded campaign and web site designed to give Internet users an easy, online resource for additional information on Internet security. The web site provides tools in four areas:

- keeping children safe online
- stopping spam
- protecting computers from hackers and viruses
- keeping personal information private

Internet Content Rating Association (<http://www.icra.org>)

Today’s children receive voice, data, video, games, cartoons, chat, and music on a wide range of networked devices. Business is working with the Internet Content Rating Association (ICRA) to deliver an education campaign to raise the level of awareness about content threats in our converged world. ICRA member companies are working cooperatively to answer parents’ questions and point them to the tools they can employ to help protect their children from harmful content.



I-Safe Inc. (<http://www.isafe.org>)

Several companies have partnered to develop technology solutions and contribute information to help I-Safe Inc., a non-profit organization in the US, train parents, educators, law enforcement and children to use the Internet more safely.

Social networking initiatives

A large US telecommunications company, which operates social networking sites, is collaborating with other popular social networking sites and a research firm to survey students, parents, and school administrators about social networking sites: how students use them, what parents know about them, and how school districts are dealing with them. Over 1,000 children and parents will be surveyed on-line. School administrators will be polled over the phone, with over 400 participating. The survey results will be presented at a National School Boards Association technology meeting in mid-2007.

Child safety coalition

A coalition of business and the National Center for Missing and Exploited Children, in the US was formed to:

- research child exploitation threats by evaluating the specific and emerging technologies used by child predators to exploit children and conceal predatory activity;
- develop and implement technology solutions by identifying existing and new technologies that can detect and disrupt the distribution of known images of child exploitation;
- improve knowledge sharing by establishing a centralized clearinghouse that network operators may use on a voluntary basis to combat child pornography; and
- improve law enforcement tools by researching and developing tools for law enforcement to assist in the location and identification of predators and distributors of child pornography.

PEGI Online Safety Code (<http://www.pegi.info/en>)

The well-recognized and successful Pan-European Game Information (PEGI) age rating system, established in 2003 to help European parents make informed decisions on buying interactive games, is now being extended to the online gaming industry. The PEGI Online Safety Code (POSC) will help ensure a higher level of protection of minors in this context as all signatories to this set of rules commit to taking steps to ban inappropriate material from their site and to ensure adequate behaviour among users. As a consequence, they will be authorized to display the PEGI Online label, following registration of the games concerned in the PEGI system.

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ICC Commission on E-Business, IT and Telecoms (EBITT)

Business leaders and experts drawn from the ICC membership establish the key business positions, policies and practices on e-business, information technologies and telecommunications through the EBITT Commission. With members who are users and providers of information technology and electronic services from both developed and developing countries, ICC provides the ideal platform to develop global voluntary rules and best practices for these areas. Dedicated to the expansion of cross-border trade, ICC champions liberalization of telecoms and development of infrastructures that support global online trade. ICC has also led and coordinated the input of business around the world to the World Summit on the Information Society, Geneva 2003, Tunis 2005, and continues this effort in the activities established in the Tunis Agenda

<http://www.iccwbo.org/policy/ebitt/>

About ICC

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy, and helps business corporations meet the challenges and opportunities of globalization. Business leaders and experts drawn from ICC's global membership establish the business stance on broad issues of trade and investment policy as well as on vital technical subjects. ICC was founded in 1919 and today it groups thousands of member companies and associations in 130 countries.

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