



**EPC** | European  
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Speech by Francisco Pinto Balsemão  
Chairman, European Publishers Council,  
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“Playing by the Rules – Navigating Europe’s New Regulatory  
Landscape”

1. Today is a crucial day for everyone connected with the Media in Europe – not just Press barons and TV Moguls but all of us in this hall, you the viewers, us the listeners, kids with mobile phones, bloggers in their bedrooms and shoppers on line for Sunday’s roast. Why?

Because tomorrow morning you will read in your papers or on your web page that two great institutions today made immensely important decisions on the path towards regulating TV and the Internet.

The European Parliament’s Culture Committee votes on their Report and Amendments to the European Directive to regulate Audiovisual Media Services and the Council of Culture Ministers of individual nations will take a position on the self same draft legislation.

Their deliberations – running in parallel, sometimes with different results, are trying to shape the future of Communications at a time when we are in the midst of one of the great Revolutions in man’s technological and social history.

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2. Yesterday's innovation is today's cliché, I know, but we must remember where we are on the elastic timeline of the New Media. Lets go back ten years, as perhaps the time email became a universal, the year cell phones were still a novelty, digital 'point and shoot' cameras were just a concept, wi-fi was a nice idea, a question about search engines would have drawn a blank look. Sure, we all know all that. That's nine whole years ago.
3. But what about in ten years time? What will you - not the media geek - be doing then?

As you leave this conference in 2016 you may be driven in a car that pays a charge per mile for the journey, it may be spaced from the one in front by infra red, you may well read the notes for tomorrow's meeting on a flexible A4 video page that slots beside your mini laptop.

A cell phone text tells you that your flight to Frankfurt is running late so you sit back and watch the car's video screen for news from the website of a company that recently bought out a great British newspaper and a global TV station.

You are irritated by the interruption of a sat nav traffic announcement but you need to contact your high street bank, so you voice-speed-dial not a call centre, but a real live human being - with a direct line, who actually knows your name and account. (That bank, by the way, has scooped the pool by reintroducing the concept of individual human service for which many have proved happy to pay .....!)

As you arrive at the airport the normally impassive voice of the sat nav, a calm neutral woman, says tensely: "By the way, I did my best to get you here but you actually started from the wrong place....."  
[pause]

4. Enough of dreams in Tomorrow's World but that is the future we in the Media are already doing our business plans for, and our friends in Brussels are trying to legislate in anticipation. It is not a simple future and we don't know what shape it will be.

5. Much of it revolves round what we now call Television. British Media folk have been brought up on the dictum of that revered newspaper Editor of the (Manchester) Guardian - C. P Scott:  
“Television? The word is half Greek, half Latin. No good can come of it.”

He died in 1932 when TV was still in the research lab, a mere green shoot. His judgement? As the Chairman of a major Media Group in Portugal and also Chairman of the European Publishers' Council, “ I couldn't possibly comment!”

6. The two decisions taken today in Brussels spring from the Commission's revision of the 1989 Directive “Television without Frontiers” which established a vital principle: that the country of origin of the broadcaster was the place where media should be regulated, so that programmes could freely beam across borders without interference from foreign governments and that the freedom of speech was paramount. Why? Because men and women fight wars to defend the right to voice their opinions.

This principle of free circulation of ideas is now under threat. I cannot urge the politicians strongly enough not to destabilise the very basis of free circulation of Europe's media - through destroying the country of origin principle. Allowing one member state to decide whether another country's programmes, or the advertising which supports their production, meet their own version of 'general public interest', or their own interpretation of what is offensive to religious or political beliefs, or racially or sexually discriminating, can only stifle freedom of expression.

Politicians it seems wants to regulate virtually *everything* at a time when the very media themselves are in headlong transition. Where regular television is concerned the new version of the Directive does free up – rather shyly, some things like the amount of advertising allowed on broadcast TV and it recognises rather tentatively the reality of product placement. Good, we must acknowledge realities or the Law becomes an Ass –

The new directive also introduces a distinction between “linear” and “non linear” material. *Linear* means scheduled programming which is “pushed” towards viewers like traditional TV broadcasting but such transmission can of course now also be via the Internet and

mobile phones. *Non linear* is used for on-demand videos, or information which the viewer “pulls” down from a network.

7. Where the regulators have gone beyond their ability to enforce any law they might pass is precisely for the non linear media available on the internet and on mobile devices.

They have proposed for video material on the internet, regulation similar to that for broadcast TV. Now that might be fine if the net were confined to Europe but every one of us is constantly aware that websites seem to stretch almost into the galaxy. No media policeman can patrol that far. Put starkly : if the directive went into law as originally proposed it would place controls on website material emanating from within the European Union but if that same material came from another continent it could be viewed and used openly and freely. Does that make sense? It would be an encouragement to website owners to go off shore.

What was the Commission’s motivation to stretch out beyond its reach? What did the Commission have in mind I wonder by introducing prior editorial control via their new slate of regulations for all audiovisual media content – on TV and for on demand content on the internet? –

This may have been acceptable in the old days of spectrum scarcity but not when we are talking about on-demand internet-delivered content. Here lies the path to restrictions on freedom of expression. This is an era of exaggerated Political Correctness. This is a time when those who run the National States and the European Union seem to feel that they should tell people what to eat...what to drink... and, even, what people should be allowed to say. They seem to believe that they have the right to intercede in decisions and behaviour that should properly be the domain of the individual.

8. Important too is the nature of the material on our websites. The Commission quite properly recognised they had no mandate to regulate the printed press, and included an exemption for online versions of newspapers and magazines in the Directive. But as you browse the pages of media groups like mine online, it becomes rapidly clear that this is no mere clone of the paper

version; but a new type of news source with stills and graphics and video clips – whatever it takes to express the story.

The problem – and it's a tricky one – is that when you look at some websites it is difficult to define what is and is not an online newspaper, what is and is not a TV channel. As your TV plays more video recordings, as your pc plays live TV, which is which?

So when we hear regulators talking about rules to control what we might upload to the web we become very uncomfortable because we view the web as a medium of free expression more akin to publishing than broadcasting. In Lisbon or London the programme and newspaper editors obey the general laws of the land – libel, defamation, incitement, you name it. And of course, in the case of the press the editor is liable for his behaviour to his national version of the Press Complaints Commission which can haul him up to the scrutiny of his peers. No editor wants to break the law or be publicly embarrassed for overstepping the mark. But what he will fight to reject, is the imposition of new laws that control what he can and cannot say.

9. I hope that – and remember this when you read the reports of the Audiovisual Media Services Directive's progress tomorrow after the interim decisions of Parliament and Council - I hope that the *final* outcome will be to update the legislation only for what you and I know as broadcast TV – and to exempt the internet.
10. The Commission, let me hasten to add is promoting many important principles with admirable vigour – protecting children from harmful content, and human dignity from racial hatred. Safeguarding consumers' interests. These are good aims and we salute them but of course the threat of a legal sanction is not always the most effective way to promote virtue. You may succeed by good example or persuading a person to share in the process. What we in business call *Self Regulation*.

In Advertising and in the editorial content of the Press, Self Regulation is of key importance and works better than legal measures which are difficult to define and expensive to implement. Legislators must allow businesses to self regulate wherever possible without painting them into a corner.

11. A major concern of every publisher of newspapers and magazines and of every private TV, Radio and/or Internet boss is their income from advertising – including from their online businesses. It is the vital line in our accounts. We flourish or fail...by attracting advertising.

There are dark clouds on the horizon. Young people drink too much and drunken behaviour is worrying and offensive. It is a serious social problem. Treat the causes but don't kill the messenger. It is *not* the ads that get them drunk. Is it?

Tens of thousands of kids are too fat and their parents obese with terrible consequences for their future health. Lack of exercise and bad diets made them fat. The UK's regulator, Ofcom, found that a ban on so-called junk food advertising before the 9 p.m. watershed would cost ITV, Channel 4 and Five about £100m a year in lost advertising and was disproportionate because they know that ads don't make people fat. Do they?

Children pester parents for toys, for fashion, for parity with their peers. It is their parents that have brought them up, have taught them their values. Ads don't rear children. Do they?

12. We live in a culture where everyone wants to blame the other for what they have failed to do, for why they are obese or have a damaged liver from too much alcohol. We need to look in the mirror more often. Don't blame the ads because if you do, you will suddenly find that your favourite magazine no longer exists, that there is no second series of that brilliant comedy series on TV, the newspaper you have read since a teenager is gone for ever.

We are also talking about the loss of quality: in fiction, news, in special reports from our foreign correspondents who sometimes risk their lives to bring you despatches from the front line of wars or natural disaster zones.

Remember also Society needs that self same advertising to change social attitudes, to persuade people that they should think more carefully about their diet and exercise. Advertising is the life blood of the Media. Regulators should use it to promote their cause; not damage it by firing at an easy target.

13. And advertising points to another vital need at a time of turbulent change: there is an urgent imperative for the Commission to take a strategic view of Change in all the Media, and the effects in the whole market. I'm happy to say that the Information and Media Directorate has recently been consulting widely with a questionnaire on "Content online in the Single market" They are asking "How should EU policy be designed so as to stimulate the creation and legal distribution of creative online content and services in Europe"?

A question that might have been asked more widely rather earlier.....before re-designing the TV without Frontiers Directive.....

The success or failure of the Content Online project will be measured by how widely the results are read and discussed throughout the Commission and how carefully the potential benefit or harm of different initiatives emanating from different Directorates are then judged and amended for a coherent greater good.

Pause.....

14. None of us here would walk into a shop tomorrow, pick up a chocolate bar and walk out without paying. Would we? Not even if we had the excuse up our sleeve "I was just going to show that woman outside what was on offer so she could come in and buy one." Not a convincing tale to a security guard, I fear. But this is happening every day to content throughout the net.

Because the net itself appears to be "free" there is a breeze blowing that carries the message that the content too should be available for free and that it is anyone's to lift and use. Copyright is a mountain to be climbed by legal experts with good gear in calm weather, but there are simple principles at stake.

If you write a book, make a film, sing a song, you need to be paid for that creative act, which cost you time and money. Both the creators and those like the media who put their work into the public domain need to be paid so that more creative work can be commissioned and come to fruition.

The net has demonstrated a million ways to *reach* creative content, but not how to increase the *quality* of the writing, the direction and

the photography. Are TV programmes better since 1997? Probably not – there are just more points of access. Is there *more* knowledge available? Probably not – it's just easier to find things out quickly. With the avalanche of information produced by anyone and everyone, 'good' quality media are needed more than ever to act as a filter and to bring through their brands elements of service, quality control and credibility.

15. Ten years ago there was an amazing set of prototype machines being tinkered with on the work bench – search engines. Can you imagine a world without the ability to Search? But there is a stark problem for copyright. Some Search companies copy books which are still in copyright. Some take copyright material and use it as a chocolate bar. We need to find a way to enjoy these wonderful search innovations without their infringing our basic copyrights as the amazing robots skim the internet for information. Can Search Engines and Content Owners live in harmony?

We the European Publishers' Council together with colleagues in the associations representing newspapers, books, news agencies and magazines think we may have come up with an answer – without the need for legislative intervention, which we announced last month. We are experimenting with a licensing system called ACAP - the Automated Content Access Protocol.

Business is funding a pilot project, together with some of the Search Engines and other technical experts to develop a means whereby every content site can tag its material so the those giant fast-as-light engines can recognise the status of the content. They will instantly know whether they have permission to access and use it. Engines are just obedient robots that don't, alas, share the brilliance of their designers in being able to distinguish between what's yours and what's mine.

Now they will. So here is a prime example of how we are trying to solve a problem – fingers crossed! – without recourse to legislation or expensive action through the Courts.

16. And so – back to the Future! Back to navigating the unknown ocean of the future, brilliant with opportunity but the waves are

steep, the winds uncertain, the spray sometimes hides a rock if not an iceberg

Everyone –in business, consumerism or regulation – must recognise two things. **One** the uncertainty of a future that's travelling towards us at an accelerating speed and **Two** that the Media are **different**. To regulate industries that manufacture furniture or run bus services may be relatively easy by comparison. The Media are different *in kind*.

The Media make us think. The media educate us. They provoke us, they make us laugh and sometimes they may even make us cry.

They reflect our dreams and aspirations. They provide the platforms not just for downloads but the platforms where hope and democracy are born and debated. It is the role of the Media to stimulate, to challenge, to create new ideas, new futures but to do so, of course, with responsibility.

It is the duty of the regulator to approach any needs or problems they observe with consummate care, to take hold of the tiller with a light and sensitive touch. You cannot steer by political belief or political correctness. You must steer towards a horizon where the view will become clearer once the rain has gone.

In a changing world we need the freedom to explore new opportunities - business or social. The freedom to say what we feel and why - unpalatable though that may sometimes be. We must not only preserve but must try to enhance those mechanisms that allow us all to navigate towards a successful future.

For as your own Rudyard Kipling said :

***“What stands if freedom fall?”***