

## **F. Summary**

### **Digitization and convergence as long-term dominant trends**

Digitization has been the driving force of media development in recent years and will continue to be so in the future. Digitization revolutionizes the production, distribution and consumption of media content and leads to fundamental changes in value-added chains, industry organization and target audiences. In practical terms, the most significant result of digitization is convergence, i.e. the growing integration of technical communications structures, media content, terminal devices and the telecommunications and media industries. The catalyst for this development is the Internet. The boundaries between the classic media fields of print media, radio and television are losing much of their significance. New forms of communication and provision are being developed which transgress the classic “sender/receiver” dichotomy of the analogue world, giving users the ability to design and offer their own programming and thus compete with established media companies. The only way to keep track of burgeoning online services is through search engines, which are then elevated to new “meta media”. In the same way, thanks to computer games, young people are increasingly using new media, which are replacing conventional media – film, television and recordings – among this age group. Young people in particular are deserting newspapers, magazines and television in massive numbers.

### **An intersectoral media policy is needed**

Digitization and convergence demand new media policy responses. Integrated, intersectoral action is needed. The classic distinction between film, broadcasting and print media policy is largely obsolete. In addition, media, culture, education, technology and economic policy issues must be more closely coordinated. As a result, the Federal Government’s media policy looks at these developments from a multimedia, interministerial and interdisciplinary perspective. The different media genres are treated separately only to the extent that they will continue to demonstrate specific features and problems in the future which require separate media policy treatment.

In order to enhance the validity and effectiveness of its media policy action, for the present media report the Federal Government assessed a comprehensive scientific opinion on long-term trends in media development from 1998 to 2007 which it commissioned from the Hans Bredow Institute for Media Research in Hamburg. The Federal Government will rely more heavily on scientific expertise for its media policy in future than it has in the past.

On the one hand, digitization opens enormous possibilities for individual, social and political communication and development, for education and the research community as well as business and industry. On the other hand, it is obvious that the changes wrought by digitization in all areas of life are accompanied by risks both great and small. If the potential of digitization for the individual and society as a whole is to be fully realized, these risks must be kept to a minimum. The Federal Government's media policy is therefore aimed at taking advantage of the opportunities offered by digitization as far as possible.

### **Federation and the *Länder* must close ranks on media policy**

According to the division of responsibilities laid down in the Basic Law, the *Länder* have the major responsibility for legislation and administration in the media field. The Federation has only limited possibilities for action in the media area and can carry out its tasks only in cooperation with the *Länder*. Given the trend to media convergence, however, the reverse is also true, as can be seen in the reform of telemedia law. Until the end of the last decade, media policy at federal and *Länder* level was often subject to conflicts over content and procedural law. But since then, given the challenges associated with digitization, all levels of government have sought to arrive at an understanding on content at an early stage and to largely coordinate their various legislative proposals and administrative procedures.

### **Protecting basic communication rights and ensuring and promoting diversity, quality and responsibility on the part of media providers and consumers as basic principles of the Federal Government's media policy**

The main points of reference for the Federal Government's media policy are the basic rights of communication grounded in Article 5 of the Federal Constitutional Law (freedom of expression, freedom of the press, freedom of reporting by means of broadcasts and film) and the principle of democracy laid down in Article 20 (2) of the Federal Constitutional Law. According to these articles, media freedoms are essential not only for individual citizens, but for the democratic state and society as a whole. Protecting basic communication rights is therefore one of the basic principles of the Federal Government's media policy, as is ensuring the diversity of opinion and media, promoting the quality of media offerings, and strengthening the responsibility of media providers and consumers. In order to survive, democracy requires the greatest possible diversity of media offerings and opinion. This applies to high-quality media offerings as well as to media-savvy and critical citizens. Constitutional law requires the state to create a legal framework for media providers which enable and promote diverse and high-

quality media offerings. The Federal Government uses a variety of instruments and measures to carry out this task.

### **Individual intersectoral areas of media policy**

The basic prerequisite for ensuring that everyone can benefit from the potential offered by digitization is a **high-performance technical infrastructure** and **non-discriminatory access for all media providers to all transmission channels**. Expanding technical infrastructure is first and foremost the task of market participants, but the Federal Government has undertaken a series of flanking measures to ensure high-speed Internet access almost everywhere in Germany. It also provides support for digitizing the remaining analogue communications networks, equipping households with digital receivers, expanding public communications networks (landlines, terrestrial networks, mobile networks, satellite networks) into triple-play broadband networks, and digitizing all electronic communications and media offerings. Standards for interfaces between different networks and the resulting possibility of “nomadic” use of terminal devices should also be improved. With regard to the further development of media markets, the Federal Government places special priority on **ensuring open and transparent access to transmission channels**. European rules on access and their national implementation in the Interstate Treaty on broadcasting of the *Länder* prevent larger companies from locking their smaller competitors out of the market. In the process of revising European telecommunications law, the Federal Government expressly supports preserving the tried and tested **national regulations to preserve diversity, for example when assigning frequencies and in the case of the “must-carry” provisions**.

**Federal anti-trust law concerning print media and the law on media concentration in the state broadcasting agreement of the *Länder*** serve to **ensure diversity** as required by constitutional law. The Federal Government and the *Länder* agree that this basic model for regulating market competition and the provisions specifically concerning the diversity of opinion have proven their worth, but that reform is needed especially with regard to the *Länder* law on media concentration, as it focuses only on broadcasting and thus is unable to do justice to the complex developments in the area of convergence. The Federation and the *Länder* are now examining the possibility of updating current provisions using a cross-media orientation which will also have to pay greater attention to the growing international dimension of the media sector.

The Federal Government is making a major effort to **expand and simplify online access to public data and information**, for example with its plan to set up a **German digital library** covering the holdings of roughly 30,000 German archives, libraries, museums, media collections and other cultural and research institutions, with public access and special search capabilities via the Internet. The Federal Government is also working hard to **significantly expand state information offerings within the framework of e-government**. Because the use of online services is increasingly associated with new security risks, the Federal Government has launched a **number of different measures and projects to strengthen security and trust in the Internet**.

The Federal Government pays special attention to **promoting the quality of media offerings** by setting **reasonable framework conditions for private industry and offering supplementary funding**. **Copyright law** plays a central role in ensuring the appropriate funding of quality media productions. During the reporting period, several amendments have been made to copyright law in order to keep pace with the rapid changes brought by digitization. The key amendments concern private copies, flat-rate pricing and the possibilities for using copyright protected content. Protection of digitally accessible content was also improved and the prosecution of copyright violations was simplified. A dialogue with stakeholders is identifying the **need for further reform**, with various options focusing on **strengthening the rights of copyright holders**.

Inappropriate **advertising regulations** are detrimental to high-quality media productions. The Federal Government therefore opposes further advertising bans at European and national level. **Quality journalism** is at the heart of all quality media offerings, and it is inconceivable without independence from economic, political and ideological interests of third parties. Journalism which serves such interests fails to carry out its constitutionally assigned function and abuses the constitutional privileges granted to journalists and media companies. The Federal Government therefore regards the strict **separation between editorial content and direct or surreptitious advertising** legally mandated for all areas of the media as indispensable. It is therefore in favour of **strengthening media self-regulation** and provides various kinds of support for the work of self-regulation agencies. This also applies to the **initial and ongoing training of journalists**, although this is mainly the concern of private industry and the *Länder*.

One decisive factor for high-quality media offerings which the Federal Government believes has often been underestimated is **making media providers and consumers more responsi-**

**ble.** An important component of this effort is **improving the protection of minors against harmful media.** The amendment of the youth media protection system in 2003 constituted the right framework. The **notion of "regulated self-regulation"** has proven effective. The Federal Government will address the concrete recommendations in the current assessment by the Hans Bredow Institute. The Federation and the *Länder* are currently holding constructive discussions on this issue, and their conclusions remain to be seen. Violent computer and video games as well as harmful and illegal Internet content constitute a special challenge. Even before the assessment was completed, the Federal Government responded by **amending the Youth Protection Act** effective as of 1 July 2008. However, more attention should be paid to **strengthening the role of parents and teachers.**

One key to strengthening the responsibility of media consumers is **thorough and lasting improvement of media literacy**, which is also crucial in order to avoid a **digital divide** between an information elite on the one hand and those who reject or are left behind by modernization on the other. The Federal Government has therefore launched a **number of innovative and sustainable projects covering the entire range from print media to computer games**, many of them in cooperation with partners in industry and education. One issue which should be studied carefully is **what risks of addiction are associated with the use of new electronic information, communications and entertainment media** and what action can be taken to counter such risks.

Another important task affecting all media is **restructuring the national regulatory regime for media in line with the trend to convergence.** However, justified calls for an **overall regulatory strategy covering all types of media** can be addressed only step by step. It is obvious that breadth of impact, longevity and power of suggestion, and thus the influence on opinion-formation, must be considered separately for each type of media, and that broadcast-influenced offerings require special regulatory attention. The Federal Government therefore believes that **regulation must continue to distinguish between different types of media** based on their potential risks.

In 2007, the Federation and the *Länder* **updated the legal framework for online services with the Federal Telemedia Act and the 9th revised state broadcasting agreement of the Länder.** The provisions on media and teleservices are now combined under the term "telemedia". Previous legislation (the Teleservices Act, the Federal Teleservices Data Protection Act and the Interstate Treaty on Broadcasting of the *Länder*) was repealed, weeding out sometimes redundant regulation. This is a milestone in the development of a modern media regula-

tory regime in Germany. The Telemedia Act and the Interstate Treaty on Broadcasting are like two sides of the same coin: The Act covers industry requirements, while the Interstate Treaty governs the content of the new media. Together they form a unified legal framework for telemedia. The new provisions are designed to be open to new technological developments regardless of transmission channels, thereby taking rapid technological progress and increasing convergence into account. Although this reform lays the permanent groundwork, further developments in the telemedia area will continue to pose a challenge to lawmakers in the future. Such challenges include the issue of provider liability, intellectual property protection and electronic signatures. And regulatory influence from the European Union will also have to be considered.

**European and international regulatory frameworks for media** will also have to adapt to the new situation. National media regulations come under increasing influence from the European Union via convergence, the increasingly international nature of the media industry and the expansion of the Community agenda. The Federal Government will continue to play an active role in shaping this process, insisting that the **Community bodies respect the Member States' exclusive responsibility for overseeing the cultural and socio-political function of broadcasting and ensuring diversity of opinion**. Together with the *Länder*, the Federal Government was very active from an early stage in amending the **“Television without Frontiers” Directive** as the basic Community instrument, in particular extending its reach to audiovisual media services. This effort was completed successfully during Germany's EU Presidency. Under German law, however, implementing the **new Directive on audiovisual media services** is largely the responsibility of the *Länder* and must be completed by the end of 2009. By contrast, the **compromise on state aid** with the European Commission for **financing public broadcasting** was supposed to be implemented by the end of April 2009. The Commission is currently examining the draft of the 12th revised state broadcasting agreement of the *Länder* to see whether it is compatible with the compromise on state aid.

**Combating copyright violations on the Internet** is a crucial aspect of the **European Commission's Communication on creative content online in the single market**. This Communication welcomes measures to increase awareness and the development of voluntary cooperation procedures between service providers, rights holders and consumers which respect data protection concerns. The Federal Government supports this approach. In its comments on the European Commission's Communication on **revising its 2001 Communication on the Application of State Aid Rules to Public Service Broadcasting**, the Federal Government stressed that no further concessions to the European Union beyond the state aid compromise

would be possible, arguing that media law should not pursue a “market failure” approach and that the European Commission should instead work to fully apply the Amsterdam Protocol.

Within the **Council of Europe**, the only pan-European organization whose work focuses primarily on the democratic and human rights dimension of communication, the Federal Government in particular supports **shared European standards for media offerings and measures to further integrate Central and Eastern European countries which have joined the Council of Europe in recent years**. The Council of Europe’s media policy efforts are largely influenced by the declarations and action plans adopted at the regularly occurring conferences of ministers responsible for media. To maintain European legal consistency, the Federal Government also strongly supports **revising the European Convention on Transfrontier Television**, an agreement parallel to the Television without Frontiers Directive. Further, the Federal Government plans to ratify the **European Convention for the Protection of the Audio-visual Heritage**, which Germany has already signed and which entered into force on 1 January 2008, and its **Protocol on the Protection of Television Productions**.

Within **UNESCO**, the Federal Government strongly supported drafting the **Convention on the Protection and Promotion of the Diversity of Cultural Expressions**. In the programme area Communication/Information, the Federal Government will also continue to play an active role in drafting policy and international standards for global access to new information technologies and measures to strengthen media autonomy and promote infrastructures. In the World Trade Organization, the negotiations over the **General Agreement on Trade in Services (GATS)** must not interfere with the media and cultural policy freedom of the European Union and its Member States. The dual nature of audio-visual services as both economic and cultural services, and their crucial role in democratic opinion-formation – as in the case of broadcasting – mean that economic principles of free trade as specified in the GATS agreement cannot be applied to this sector without some limits. For this reason, the Federal Government welcomes the fact that the European Commission has adhered to its mandate as specified by the Member States and has neither agreed to nor called for market deregulation.

### **Remaining sector-specific areas of media policy action**

The **print media** situation varies depending on the product. Despite competition from digital media, **books** have been able to hold their own in recent years. At the moment it is difficult to forecast what impact the **new digital reading devices**, known as **e-books**, will have on the book market. The Federal Government is studying whether these devices raise new **regulatory issues**. By contrast, **newspapers and magazines** have suffered in some cases serious

losses in terms of circulation and distribution as well as advertising revenue. And the **use of newspapers and magazines is sinking disproportionately among young people**. However, the Federal Government believes that newspapers and magazines will remain part of the media landscape and will continue to serve as opinion leaders, but the situation of periodical print media needs improvement. In line with constitutional law, the Federal Government relies primarily on market forces; **state subsidies or state organization of the press would be a mistake**. It is important to ensure **fair competition**, also with regard to online activities of public broadcasters, and a **stable, market-based distribution system**, which must be preserved along with the highly effective and long-lived **national association of print media wholesalers**. The legally regulated system of **fixed prices for books** must also be retained, although it is repeatedly threatened by European regulations on competition and the questionable business practices of certain publishers and booksellers.

The **broadcasting system must remain viable**. Broadcasting cannot be treated like a commodity marketed solely on the basis of economic criteria. The **special cultural and socio-political function of radio and television** must continue to be the **standard for political action**. The European Union must respect the Member States' exclusive competence in this area. Also given new developments in the course of digitization, the media must continue to accomplish the media policy aims required by constitutional law, especially ensuring diversity and preventing the dominance of a single opinion. **Broadcasting lives and dies by the quality of its programming**.

The Federal Government supports **strong, high-quality and diverse public broadcasting**. This includes **appropriate development opportunities in the digital sphere**, which however should not jeopardize the balance between private and public broadcasters in the dual system. The **programming characteristic of public broadcasters and specific genres** (radio and television plays) are worth preserving. Cultural programming by the main broadcasters must be expanded. The **current model of television and radio fees needs reform**. Basing fees on the possession of a radio or television is being increasingly undermined by technological convergence and requires new solutions. The Federal Government regards the **absence of advertising** on public broadcasters as a way to **emphasize their difference** from commercial broadcasters.

The introduction of commercial broadcasting has given Germany one of the most diverse broadcasting landscapes in the world. The Federal Government is doing everything in its power to improve conditions for commercial broadcasters in view of fundamental changes in the **conditions of competition**. When **revising the "Television without Frontiers" Direc-**

**tive**, the EU was unable to agree on removing all restrictions on the amount of time devoted to advertising. **Defining the mandate of public broadcasting more precisely** in the course of implementing the compromise reached with the European Commission on state aid is aimed at **levelling the playing field** for commercial broadcasters.

A central **problem with the development of digitization** in Germany is that the **added value provided by digitization has so far not provided enough incentive for consumers** to adopt the new technology. The Federal Government is of the view that one key to the success of commercial digital broadcasting lies in the **attractiveness** of the programme offerings. More attention should be paid in future considerations to the technical capacity for **targeting** and personalizing media offerings. The ability to receive programmes free of charge must not be encroached upon. Lastly, high **standards of data protection** must be maintained. The Federal Government expects commercial broadcasters – like other traditional media – to provide consumers with a basis for **public trust** in the new media offerings.

Germany's voice is heard around the world with the help of Deutsche Welle, Germany's **international broadcast service**. The amended Deutsche Welle Act, which entered into force on 1 January 2005, adapted the broadcaster's programming mandate to the changed global political and technical circumstances. Deutsche Welle will continue to receive federal funding in line with its mandate.

Preserving the **diversity of recorded music** is an important concern of the Federal Government, which pursues this aim not only through its cooperation with the *Länder* and the broadcasters, but also through measures to combat illegal copying of recordings and data files and to promote German rock, pop and jazz music.

In view of the enormous growth in the importance of search engines for online communication, the Internet and search engines which have taken on the role of "gatekeepers", with increasing economic and publishing influence, need to be considered with regard to their impact on diversity. Here the focus is on the **transparency of search results and the structure of the search engine market**.

In order to **promote high-quality interactive entertainment media of cultural and educational value**, a **German prize for best computer game**, on the model of the German Film Award, will be awarded starting in 2009. This award is intended to encourage the development of high-quality educational products and help them find a wider audience. In addition, a **foundation to promote high-quality interactive entertainment media of cultural and**

**educational value** is planned. Sponsored by the computer games industry, this foundation is intended to work with policy-makers and the research community to create the practical conditions needed to take advantage of the opportunities offered by this medium and the underlying technologies, while minimizing the risks resulting from improper use, especially by children and young people.

The Federal Government regards **German cinema** as an important cultural and economic good. Active film policy is essential to preserve and strengthen German cinema not only as a cultural asset but also as an economic good. The Federal Government's **film policy pursues a comprehensive approach covering all areas of cinema in a national and international perspective**. Film subsidies will continue to be indispensable in the future because German cinema is unable to hold its own on the international market. The challenges facing the German film industry include in particular the urgent need to **strengthen its position in international competition**. To do so, it uses the following instruments:

First, the **artistic framework conditions need to be optimized**, which is the aim of measures to professionalize script development in the **amended Film Promotion Act (FFG)**. Second, **support for producers needs to be increased and the technical and personnel infrastructure expanded**, which the **German Film Promotion Fund (DFFF)** has successfully initiated. Third, the focus is on distribution and advertising of German films, which film policy is supporting by **increasing subsidies to promote the distribution of films under the new Film Promotion Act**. The **Film Promotion Act also covers new distribution channels**, thereby taking into account the technological changes resulting from digitization. This applies to the mandatory fees levied for distributing films and videos and to the possibility to receive funding support. The new Act also provides **for funding to help cinemas replace their analogue projection equipment with digital technology**.