

# BLAST FROM THE PAST? A COMPARATIVE ANALYSIS OF BROADCAST LICENSING IN THE DIGITAL ERA

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The advent of new broadcasting technologies has eliminated spectrum scarcity as a constraint on broadcasting, and with it one of the justifications for broadcast licensing. Have nations moved away from licensing as a form of regulation of their broadcasting sectors? And concomitantly, is there less opportunity to use licensing as a means of promoting the public interest in broadcasting? The authors address these questions through a comparative study of licensing requirements for terrestrial broadcasting and other forms of television and radio distribution in 18 Western nations.

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## INTRODUCTION

The digitization of broadcasting in Western countries is far advanced. The majority of member states of the European Union (EU) and the European Free Trade Association (EFTA), as well as Australia and New Zealand, have already switched off analog television and completed the transition to digital television; in Canada and the United States analog television transmitters have been shut down in most markets. In contrast to television, analog terrestrial radio (AM and FM) still plays a central role. While the switchover is not imminent, the coverage of digital radio continues to extend and several countries are already starting to plan for the post-analog era.

Digitization has far-reaching implications for broadcasting regulation. With spectrum scarcity no longer presenting a major problem, traditional market-entry regulation by way of licensing of private

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broadcasting is called into question, and it becomes more challenging to commit private broadcasters to public interest goals in exchange for a license. Consequently, the digital switchover shakes broadcasting regulation to its very foundations.

However, few studies deal with the licensing of private broadcasting. Existing research mostly focuses on the situation in particular countries;<sup>1</sup> or, if comparative, was conducted long before the digital switchover came within reach.<sup>2</sup> Up-to-date large-scale comparative research focusing on current licensing regimes is missing so far.

In this article we ask the question of whether licensing of private broadcasting is still used to shape the media system in the digital era or whether licensing is just an irrelevant blast from the past. In order to deal with this question, the article examines the licensing of private broadcasting in 18 Western European and Anglo-Saxon media systems. More specifically, the comparison considers who is responsible for authorizing private broadcasting, whether a license is required or a notification is sufficient, how the process of awarding licenses is designed, which decision criteria are applied in case there is competition for a license, and how compliance with license conditions is evaluated.

Results indicate that most countries, regardless of digitization, still heavily rely on licensing regimes in order to shape their media systems and to promote the public interest. With a few exceptions, not only analog terrestrial radio stations but also digital terrestrial television (e.g. DVB-T and ATCS) and radio stations (e.g. DAB-T and HD Radio) still require a license. Provisions for other means of distribution are less rigid: in half of the analyzed media systems, notifying the regulator is sufficient when operating a cable or satellite channel.

In the next section, this article offers an overview of the role of licensing in broadcasting regulation and of existing research in order to develop a framework for comparison. After discussing the methods employed in this study, the results of the comparison will be presented. The final section discusses the results.

## **THE LICENSING OF PRIVATE BROADCASTERS**

### ***Scarcity of Frequencies and Promotion of the Public Interest***

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<sup>1</sup> See for example Gunn Sara Enli and Vilde Schanke Sundet, "Strategies in Times of Regulatory Change: A Norwegian Case Study on the Battle for a Commercial Radio Licence," *Media, Culture & Society* 29 (2007): 707-725; Thomas Streeter, *Selling the Air: A Critique of the Policy of Commercial Broadcasting in the United States* (Chicago: University of Chicago Press, 1996); Minna Aslama, Heikki Hellman, and Tuomo Sauri, "Does Market-Entry Regulation Matter? Competition in Television Broadcasting and Programme Diversity in Finland, 1993-2002," *International Communication Gazette* 66 (2004): 113-132; Gregory Taylor, "Shut-Off: The Digital Television Transition in the United States and Canada," *Canadian Journal of Communication* 35 (2010): 7-25.

<sup>2</sup> See for example Wolfgang Hoffmann-Riem, *Regulating Media. The Licensing and Supervision of Broadcasting in Six Countries* (New York: Guilford Press, 1996); Peter Humphreys, *Mass Media and Media Policy in Western Europe* (Manchester, UK: Manchester University Press, 1996); Serge Robillard, *Television in Europe: Regulatory Bodies – Status, Functions, and Powers in 35 European Countries* (Luton, UK: University of Luton Press, 1995).

Whereas a regulated commercial system was in place in North America since the early days of broadcasting,<sup>3</sup> public service broadcasting had a monopoly in most other Western countries up until the 1980s. When private radio and television were allowed due to the liberalization of broadcasting markets,<sup>4</sup> governments decided – as in many other industries<sup>5</sup> – to regulate market entry by introducing a licensing system.<sup>6</sup>

Traditionally, regulation of market entry was justified with the technical necessity of allocating scarce terrestrial frequencies and avoiding interference between channels both domestically and internationally. Consequently, frequencies are understood as public goods and they lay in the hands of national governments.<sup>7</sup> Aside from these technical considerations, licensing has always been used to promote the public interest by committing private broadcasters to societal objectives.<sup>8</sup> McQuail emphasizes that not only public service media but also commercial media should contribute to the public interest.<sup>9</sup> Yet the use of the term is often vague and “the public interest standard has often served primarily as a rhetorical tool, used on behalf of justifying particular policy actions.”<sup>10</sup> In a very general sense, “public interest” refers to “the complex of supposed informational, cultural and social benefits to the wider society which go beyond the immediate, particular and individual interests of those who communicate in public communication.”<sup>11</sup> Buckley et al. thus argue that licenses should be awarded by way of a “beauty contest” as auctions are “unlikely to produce a range and diversity of services that meet the needs of all sections in society.”<sup>12</sup> They specifically mention requirements that promote diversity of content and maintain quality, like obligations to carry news and current affairs, educational or cultural programming, or locally-produced shows.<sup>13</sup> Another way to promote

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<sup>3</sup> Philip M. Napoli, *Foundations of Communications Policy. Principles and Process in the Regulation of Electronic Media* (Cresskill, NJ: Hampton Press, 2001), 66-67; Jeffrey A. Hart, *Technology, Television and Competition. The Politics of Digital TV* (Cambridge, UK: Cambridge University Press, 2004), 20; Christopher H. Sterling, “United States of America, Continuity and Change,” in *Television and Public Policy, Changes and Continuity in an Era of Global Liberalization*, ed. David Ward (New York: Lawrence Erlbaum Associates, 2008), 45-46.

<sup>4</sup> Maria Michalis, “Thirty Years of Private Television in Europe – Trends and Key Moments,” in *Private Television in Western Europe: Content, Markets, Policies*, ed. Karen Donders, Caroline Pauwels, and Jan Loisen (New York: Palgrave Macmillan, 2013), 38-41; Puppis, Manuel, *Einführung in die Medienpolitik (2<sup>nd</sup> revised edition)* (Konstanz: UVK, 2010), 206-213; Humphreys, *Mass Media and Media Policy in Western Europe*, 159-198.

<sup>5</sup> Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, “The Regulation of Entry,” *Quarterly Journal of Economics* 117 (2002): 1-37; Leora Klapper, Luc Laeven, and Raghuram Rajan, “Entry Regulation as a Barrier to Entrepreneurship,” *Journal of Financial Economics* 82 (2006): 591-629; Shirley Svorny, “Licensing, Market Entry Regulation,” in *Encyclopedia of Law and Economics, Volume III: The Regulation of Contracts*, ed. Boudewijn Bouckaert, and Gerrit De Geest (Cheltenham, UK: Edward Elgar, 2000), 296-328.

<sup>6</sup> Künzler, Matthias, *Die Liberalisierung von Radio und Fernsehen. Leitbilder der Rundfunkregulierung im Ländervergleich* (Konstanz: UVK, 2009), 49-50.; Stylianos Papatthanassopoulos and Ralph M. Negrine, *European Media: Structures, Policies and Identity* (Cambridge, UK: Polity, 2011), 31-36.

<sup>7</sup> Humphreys, *Mass Media and Media Policy in Western Europe*, 112; Puppis, Manuel, *Einführung in die Medienpolitik (2<sup>nd</sup> revised edition)* (Konstanz: UVK, 2010), 71-72.; Sterling, 46.

<sup>8</sup> Mike Feintuck and Mike Varney, *Media Regulation, Public Interest and the Law* (Edinburgh, UK: Edinburgh University Press, 2006), 74-125; Philip M. Napoli, 63-69.

<sup>9</sup> Denis McQuail, *Media Performance: Mass Communication and the Public Interest* (London: Sage Publications, 1992), 3.

<sup>10</sup> Napoli, 94.

<sup>11</sup> McQuail, 3.

<sup>12</sup> Steve Buckley, Kreszentia Duer, Toby Mendel, and Seán Ó Siochrú, *Broadcasting, Voice, and Accountability. A Public Interest Approach to Policy, Law, and Regulation* (Washington: World Bank Group, 2008), 232.

<sup>13</sup> *Ibid.*, 237-238.

the public interest through licensing is the prevention of ownership concentration, by limiting the number of licenses one person or organization is allowed to hold.<sup>14</sup>

With the introduction of new distribution channels like cable networks and satellites,<sup>15</sup> the problem of scarcity of frequencies lost much of its urgency. While technological development does not determine whether regulation in the public interest suddenly becomes unnecessary, together with political and economic changes the new means of distribution had far-reaching implications for broadcasting regulation. In Europe, satellite technology allowed private commercial stations to circumvent domestic regulation by “operating from the most favorable regulatory base.”<sup>16</sup> Coupled with changing political ideologies as well as a demand for regulatory change by media corporations and the advertising industry, this led to what Dyson and Humphreys called a “competitive deregulation.”<sup>17</sup>

More recently, digitization increased the capacity of distribution channels even more, leading to a multiplication of radio and television stations.<sup>18</sup> With the increasing market penetration of digital stations, the analog switch-off became viable. Today, the majority of European and Anglo-Saxon countries have switched off analog television and completed the transition to digital television. Whereas analog terrestrial radio (in most countries AM and FM) still plays a central role, the coverage of digital radio (DAB and DAB+) continues to expand, and several countries are already starting to plan for the post-analog era. As with the introduction of cable and satellite broadcasting 30 years ago, digitization and convergence are used as arguments by governments to retreat from regulation “where it interferes with market development.”<sup>19</sup> Taylor for instance shows that for Canada, due to the transition to digital television, traditional regulatory principles promoting the public interest were abandoned.<sup>20</sup>

In sum, this short overview of broadcasting regulation emphasizes that policymakers see technological developments as an opportunity and prioritize industrial policy at the expense of the

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<sup>14</sup> Michele Polo, “Regulation for Pluralism in Media Markets,” in *The Economic Regulation of Broadcasting Markets: Evolving Technology and the Challenges for Policy*, ed. Paul Seabright and Jürgen von Hagen (Cambridge, UK: Cambridge University Press, 2007), 171-172.

<sup>15</sup> Kenneth Dyson and Peter Humphreys, “Deregulating Broadcasting: The West European Experience,” *European Journal of Political Research* 17 (1989): 141; Megan Mullen, *Television in the Multichannel Age: A Brief History of Cable Television* (Malden, MA: Blackwell, 2008).

<sup>16</sup> Humphreys, *Mass Media and Media Policy in Western Europe*, 170.

<sup>17</sup> Dyson and Humphreys, 142-143; Humphreys, *Mass Media and Media Policy in Western Europe*, 164-174. For the United States see Edward S. Herman and Robert W. McChesney, *The Global Media: The New Missionaries of Corporate Capitalism* (New York: Continuum, 1997).

<sup>18</sup> Feintuck and Varney, 40; Graham Murdock, “Digital Futures: European Television in the Age of Convergence,” in *Television Across Europe: A Comparative Introduction*, ed. Jan Wieten, Graham Murdock, and Peter Dahlgren (London: Sage Publications, 2000), 46; Paul Seabright and Helen Weeds, “Competition and Market Power in Broadcasting: Where Are the Rents?” in *The Economic Regulation of Broadcasting Markets: Evolving Technology and the Challenges for Policy*, ed. Paul Seabright and Jürgen von Hagen (Cambridge, UK: Cambridge University Press, 2007), 48.

<sup>19</sup> Jan van Cuilenburg and Denis McQuail, “Media Policy Paradigm Shifts: Towards a New Communications Policy Paradigm,” *European Journal of Communication* 18 (2003): 198. See also David A. Levy, *Europe’s Digital Revolution. Broadcasting Regulation, the EU and the Nation State* (London: Routledge, 1999), 143.

<sup>20</sup> Taylor. See also David Skinner, “Television in Canada: Continuity or Change?” in *Television and Public Policy, Changes and Continuity in an Era of Global Liberalization*, ed. David Ward (New York: Lawrence Erlbaum Associates, 2008), 7-10.

traditional goals of media policy.<sup>21</sup> Hence, scholars argue that we are witnessing a paradigm shift in media policy from social and political goals to economic goals.<sup>22</sup>

Yet despite these massive changes of the media landscape and calls for deregulation, terrestrial broadcasting still plays an important role even in today's multi-channel environment. Certainly, terrestrial radio and television stations are usually retransmitted via cable and satellite and, at least with respect to television, a majority of households in many countries does not actually receive these stations over the air. Still these licensees benefit from terrestrial distribution. Moreover, a considerable percentage of households continues to rely on terrestrial television distribution (e.g. 14.7 % in the US and 42.1 % in the UK).<sup>23</sup> In radio, terrestrial distribution still dominates. Thus, it seems worthwhile to look into whether licensing of private broadcasting is still used to shape the media system in the digital era and how market entry of terrestrial and non-terrestrial broadcasting is regulated today.

### ***Literature Review***

While other fields of broadcasting regulation – especially public service broadcasting – receive much scholarly attention, this is not the case with respect to licensing of private broadcasters. The few studies on this topic are either limited in scope by focusing on a few empirical cases or, if comparative in nature, largely outdated.

Concerning studies focused on single countries, Aslama, Hellman, and Sauri analyzed how intensified competition and regulatory decisions after the liberalization of the Finnish broadcasting market in 1993 affected the diversity of programming. They argue that licensing is the strongest instrument to regulate the industry's structure and should be used to stimulate “moderate competition.”<sup>24</sup> Enli and Sundet discuss the renewal of two commercial Norwegian radio stations' licenses. While their main focus lies on the (discursive) battle between incumbents, the authors also offer detailed information about the licensing process.<sup>25</sup> In their working paper on German broadcasting regulation, Schulz et al. shortly describe market entry regulation of private broadcasting and the authorities involved.<sup>26</sup> Focusing on the United States, Alexander and Brown analyze how the Federal Communications Commission (FCC) promotes goals like competition, diversity, or localism by licensing and other regulatory measures.<sup>27</sup> Taking a critical perspective, Streeter discusses the historical development of the FCC's licensing regime and the property status of licenses. He

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<sup>21</sup> Thomas Gibbons and Peter Humphreys, *Audiovisual Regulation under Pressure. Comparative cases from North America and Europe* (London: Routledge, 2012), 4-5; David Ward, “Introduction,” in *Television and Public Policy, Changes and Continuity in an Era of Global Liberalization*, ed. David Ward (New York: Lawrence Erlbaum Associates, 2008), x.

<sup>22</sup> van Cuilenburg and McQuail; Hoffmann-Riem, 340-352.

<sup>23</sup> IP Network and RTL Group, *Television 2013. International Key Facts* (Paris: IP Network, 2013).

<sup>24</sup> Aslama, Hellman, and Sauri, 116, 129.

<sup>25</sup> Enli and Sundet, 709-712.

<sup>26</sup> Wolfgang Schulz, Thorsten Held, and Stephan Dreyer, “Regulation of Broadcasting and Internet Services in Germany. A Brief Overview,” working paper no. 13, Hans Bredow Institute, Mar. 2008, accessed Oct. 2, 2014, [http://www.hans-bredow-institut.de/webfm\\_send/124](http://www.hans-bredow-institut.de/webfm_send/124).

<sup>27</sup> Peter J. Alexander and Keith Brown, “Policymaking and Policy Trade-Offs: Broadcast Media Regulation in the United States,” in *The Economic Regulation of Broadcasting Markets: Evolving Technology and the Challenges for Policy*, ed. Paul Seabright and Jürgen von Hagen (Cambridge, UK: Cambridge University Press, 2007), 255-279.

emphasizes that licensing created a corporate-centered commercial broadcasting landscape whereas possible alternatives like amateur radio operators or non-profit broadcasters were “brushed aside or marginalized.”<sup>28</sup> In his monograph on broadcasting policy in Canada, Armstrong also addresses questions of licensing when describing the characteristics and current reforms of the Canadian broadcasting system.<sup>29</sup>

Most comparative studies dealing with private broadcasting focus on the liberalization of broadcasting or on private broadcasting regulation in general, but do not discuss licensing in detail.<sup>30</sup> A notable exception is Robillard’s monograph on regulatory bodies in 35 European countries.<sup>31</sup> Robillard sees the granting of licenses as “the main function of regulatory bodies”<sup>32</sup> and he provides an overview of regulatory authorities and their powers to intervene in case of infringement. While also addressing other regulatory issues, Barendt,<sup>33</sup> and Lange and Woldt,<sup>34</sup> offer comparisons of licensing processes in several Western countries. The latter conclude that programs transmitted via cable or satellite are subjected to fewer requirements than terrestrial broadcasting. The most rigorous comparative analysis and therefore the most suitable base for further research was conducted by Hoffmann-Riem, who investigated the licensing process in Australia, Canada, France, Germany, the United Kingdom, and the United States. He finds that program licenses in all six countries are granted by regulatory agencies, while frequencies are sometimes also awarded by governments. In case of competition for licenses, countries normally conduct a “beauty contest” to find the most suitable applicant. Aside from obligations, licenses are sometimes linked to privileges like subsidies or must-carry-obligations in cable networks. The countries use different sanctioning mechanisms in case of a breach of license conditions, but only some have implemented a systematic evaluation process.<sup>35</sup>

### ***Licensing in the Digital Era***

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<sup>28</sup> Streeter, 251.

<sup>29</sup> Robert Armstrong, *Broadcasting Policy in Canada* (Toronto: University of Toronto Press, 2010).

<sup>30</sup> See for example Richard Collins, *Broadcasting and Audio-Visual Policy in the European Single Market* (London: Libbey, 1994); Karen Donders, Caroline Pauwels, and Jan Loisen, eds., *Private Television in Western Europe: Content, Market, Policies* (Basingstoke, New York: Palgrave Macmillan, 2013); Christian Potschka, *Towards a Market in Broadcasting: Communications Policy in the UK and Germany* (Basingstoke, UK: Palgrave Macmillan, 2012); Lesley Hitchens, *Broadcasting Pluralism and Diversity: A Comparative Study of Policy and Regulation* (Portland, OR: Hart Publishing, 2006); Dorothy Zolf, “The Regulation of Broadcasting in Canada and the United States: Straws in the Wind,” *Canadian Journal of Communication* 13 (1988): 30-44; Leslie Regan Shade, “Media Reform in the United States and Canada: Activism and Advocacy for Media Policies in the Public Interest,” in *The Handbook of Global Media and Communication Policy*, ed. Robin Mansell and Marc Raboy (Malden, MA: Wiley-Blackwell, 2011), 147-165; David Ward, ed., *Television and Public Policy. Change and Continuity in an Era of Global Liberalization* (New York: Lawrence Erlbaum Associates, 2008); Künzler, Matthias, *Die Liberalisierung von Radio und Fernsehen. Leitbilder der Rundfunkregulierung im Ländervergleich* (Konstanz: UVK, 2009); Humphreys, *Mass Media and Media Policy in Western Europe*; Papathanassopoulos and Negrine.

<sup>31</sup> Robillard.

<sup>32</sup> *Ibid.*, 275.

<sup>33</sup> Eric Barendt, *Broadcasting Law. A Comparative Study* (Oxford: Clarendon Press, 1993), 75-95.

<sup>34</sup> Bernd-Peter Lange and Runar Woldt, “The Results and Main Conclusion of the International Comparison,” in *Television Requires Responsibility*, ed. Bertelsmann Foundation and European Institute for the Media (Gütersloh, Germany: Bertelsmann Foundation, 1995), 463-502.

<sup>35</sup> Hoffmann-Riem.

Despite advances in the digitization of broadcasting distribution, the question of whether licensing of private broadcasting is still used to shape the media system in the digital era has not been dealt with so far. While radio spectrum allocation will remain a task of government, it can be expected that digitization is used as an argument by policymakers and industry representatives to move away from sector-specific broadcasting regulation to general economic regulation.<sup>36</sup> As discussed above, in light of technological developments, policymakers often prioritize industrial policy at the expense of traditional goals of media policy. For non-terrestrial stations that are free of any technological justification for regulation, consumer choice and information abundance are powerful narratives that help in portraying market entry regulation in the public interest as obsolete. Hence, licensing regimes could be replaced by a notification system that only requires radio and television stations to notify the regulator of their operation. Such “light-touch” regulation would make committing private broadcasters to public interest goals much more challenging. Furthermore, regulatory attention could move from single stations to owners of infrastructure (e.g. cable companies or multiplex operators)<sup>37</sup> as well as to new technological bottlenecks.<sup>38</sup> It thus seems reasonable to expect that the traditional licensing of private broadcasting is called into question and that Western countries have already started to replace licensing regimes with notification systems, or that they generally abstain from regulation.

**Proposition 1: Due to digitization and related changes in the broadcasting market, the traditional licensing of radio and television stations is gradually replaced by light-touch regulation.**

Aside from this general tendency to reform the licensing of private broadcasting, we expect differences between countries in relation to their licensing systems. In general, it is possible to distinguish two different regulatory approaches to media diversity – a competition or market approach with a strong preference for economic regulation to correct market failures, and an interventionist or public regulation approach that emphasizes socio-political goals.<sup>39</sup> Previous research suggests that liberal media systems rely on a market approach, whereas particularly small democratic-corporatist media systems opt for a more interventionist approach.<sup>40</sup> Accordingly, it can be expected that in small democratic-corporatist media systems licenses are awarded based on a

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<sup>36</sup> van Cuilenburg and McQuail; Levy; Gibbons and Humphreys.

<sup>37</sup> Emmanuelle Machet, “Regulatory and Licensing Models for DTT, Summary of the Answers to the Questionnaire, 32nd EPRA Meeting, Belgrade, 6-8 October 2010 (revised version),” regulatory document EPRA/2010/13, Oct. 2013, accessed Oct. 3, 2014, [http://epa3-production.s3.amazonaws.com/attachments/files/817/original/DTT\\_summary\\_answers\\_final\\_revised.pdf?1323685476](http://epa3-production.s3.amazonaws.com/attachments/files/817/original/DTT_summary_answers_final_revised.pdf?1323685476)

<sup>38</sup> Schweizer, Corinne. “Regulating new Bottlenecks of Digital Television Distribution. An Analysis of the Policy Making Process in Switzerland”. In *Communication and Media Policy in the Era of Digitization and the Internet. Theories and Processes* ed. Maria Löblich and Senta Pfaff-Rüdiger (Baden-Baden: Nomos, 2013).

<sup>39</sup> Andrea Grisold, “Press Concentration and Media Policy in Small Countries: Austria and Ireland Compared,” *European Journal of Communication* 11 (1996): 505; Kari Karppinen, “Media Diversity and the Politics of Criteria,” *Nordicom Review* 27, no. 2 (2006): 58.

<sup>40</sup> Daniel C. Hallin and Paolo Mancini, *Comparing Media Systems: Three Models of Media and Politics* (Cambridge, UK: Cambridge University Press, 2004); Puppis, Manuel and Leen d’Haenens, „Comparing Media Policy and Regulation”. In *Handbook of Comparative Communication Research* edited by Frank Esser and Thomas Hanitzsch (London, New York: Routledge, 2012).

beauty contest, that compliance with license conditions is regularly evaluated and that licensees are guaranteed distribution of their stations. In contrast, in liberal media systems regulators tend to sell licenses to the highest bidder and to leave it up to stations to reach agreements with distributors themselves.

**Proposition 2: While small democratic-corporatist media systems tend to an interventionist approach to licensing, liberal media systems rely on a market approach.**

## METHODS

In this study, the licensing of private media in 18 Western European and Anglo-Saxon media systems was compared (see Table 1 below). Such so-called simple comparisons aim at systematic analyses of similarities and differences and thus allow for developing classifications and typologies.<sup>41</sup> The selection of cases was, on the one hand, informed by Hallin & Mancini’s typology of media systems comparing liberal, democratic-corporatist, and polarized-pluralist countries.<sup>42</sup> On the other hand, the sample includes both big and small media systems, some of the latter also featuring a so-called next-door giant neighbor.<sup>43</sup> Accordingly, the comparison should allow us to find out whether characteristics of the media system and related features of media policy have any influence on the licensing of private broadcasting.

*Table 1: The media systems analyzed in this study.*

AU: Australia	DK: Denmark	NL: Netherlands
AT: Austria	DE: Germany	NO: Norway
BE/VG: Belgium/Flemish Community	FI: Finland	NZ: New Zealand
BE/CF: Belgium/French Community	FR: France	SE: Sweden
CA: Canada	IE: Ireland	UK: United Kingdom
CH: Switzerland	IT: Italy	US: United States

The comparison was based on a qualitative analysis of documents.<sup>44</sup> For this purpose, various documents that refer to licensing of private broadcasters were collected and analyzed. In a first step

<sup>41</sup> Puppis, Manuel and Leen d’Haenens, „Comparing Media Policy and Regulation”. In *Handbook of Comparative Communication Research* edited by Frank Esser and Thomas Hanitzsch (London, New York: Routledge, 2012); Todd Landman, *Issues and Methods in Comparative Politics. An Introduction* (London: Routledge, 2008), 4-6; Daniele Caramani, *Comparative Politics* (Oxford: Oxford University Press, 2008), 4.

<sup>42</sup> Hallin and Mancini.

<sup>43</sup> Puppis, Manuel, Leen d’Haenens, Thomas Steinmaurer, and Matthias Künzler, “The European and Global Dimension: Taking Small Media Systems Research to the Next Level,” *International Communication Gazette* 71 (2009): 105-12.

<sup>44</sup> Nick Forster, “The Analysis of Company Documentation,” in *Qualitative Methods in Organizational Research: A Practical Guide*, ed. Catherine Cassell and Gillian Symon (London: Sage, 1994), 147-166; Jennifer Mason, *Qualitative Researching* (London: Sage, 2002), 103-119; Philipp Mayring, *Qualitative Inhaltsanalyse: Grundlagen und Techniken* (Weinheim, Germany:



all relevant documents, including legal documents (e.g. acts, decrees, and agreements between governments and private broadcasters) as well as explanatory notes that accompany them, policy documents, and secondary literature that focuses on the current situation or reform proposals under discussion, were collected and critically assessed.<sup>45</sup> Subsequently, the documents were analyzed using a method of deductive content categorization.<sup>46</sup>

The category system for analyzing the licensing of private broadcasting is loosely based on the work of Hoffmann-Riem<sup>47</sup> and consists of three main parts (see Table 2 below). First, the general licensing regime is investigated. This includes requirements to obtain a license or to notify the regulator of a station's operation as well as the potential necessity to get frequencies allocated in a separate procedure. Second, the licensing process and conditions are inspected. This includes the authority in charge of awarding the license, the requirements for applications, the phases of the process, the selection principles employed, the privileges and obligations attached to licenses, and the term and renewal procedure. Third, the analysis focuses on sanctions in case of breaches of license conditions and potential evaluation processes.

*Table 2: Categories used for document analysis.*

Licensing Regime
Licensing and Notification Requirement
Approval of Frequencies
Licensing Process and License Conditions
Responsibility
Requirements for Application
Phases of Licensing Process
Selection principle
Privileges of Licensees
Obligations of Licensees
Term & Renewal
Supervision & Evaluation
Sanctions for Breaches of License Conditions
Evaluation Mechanisms

## RESULTS

In this section, the results of the comparative analysis are presented. Corresponding to the categories developed for empirical analysis, we will first give an overview of licensing regimes before dealing with the process of licensing and license conditions as well as with supervision and evaluation.

### *Licensing Regime*

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Beltz, 2010); David Silverman, *Doing Qualitative Research: A Practical Handbook* (London: Sage, 2000); David Silverman, *Interpreting Qualitative Data. Methods for Analyzing Talk, Text and Interaction* (London: Sage, 2001), 119-123.

<sup>45</sup> Werner Reh, "Quellen- und Dokumentenanalyse in der Politikfeldforschung: Wer steuert die Verkehrspolitik?" in *Politikwissenschaftliche Methoden. Grundriss für Studium und Forschung*, ed. Ulrich von Alemann (Opladen, Germany: Westdeutscher Verlag, 1995) 201-259.

<sup>46</sup> Mayring, *Qualitative Inhaltsanalyse. Grundlagen und Techniken*.

<sup>47</sup> Hoffmann-Riem, 287-296.

**Licensing and Notification Requirements:** As in the analog past, in the majority of the analyzed countries private television stations need a license for digital terrestrial broadcasting. Only a few countries – namely Denmark, Switzerland, and the French and Flemish Communities of Belgium<sup>48</sup> – have replaced the traditional licensing regime with a notification system. Accordingly, television stations distributed digitally only need to notify the regulatory agency of their operation (see Table 3 below).

Requirements are less rigid for non-terrestrial television stations. In the French and Flemish Communities of Belgium, and in Denmark, Finland, Norway, and Sweden, a notification is sufficient for cable and satellite TV stations; whereas in Canada, Germany, Ireland, the Netherlands, and the United Kingdom a license is still needed. In Austria, a license is needed for satellite channels, but for cable channels a notification is sufficient. Only in New Zealand and the United States are neither a license nor a notification required.<sup>49</sup>

*Table 3: Licensing vs. Notification Requirements for TV Stations.*

	<b>Licensing Requirement</b>	<b>Notification Requirement</b>	<b>No Obligation</b>
<b>Digital Terrestrial Commercial Channels</b>	AT, AU, CA, DE, FI, FR, IE, IT, NL, NO, NZ, SE, UK, US	BE/VG, BE/CF, CH, DK	
<b>Digital Terrestrial Non-Commercial Channels</b>	AT, AU, BE/VG (regional stations), BE/CF (regional stations) CA, DE, DK, FI, FR, IE, IT, NL, NO, NZ, SE, UK, US	CH	
<b>Other Forms of Distribution</b>	AT (satellite), AU, CA, DE, FR, IE, IT, NL, UK	AT (cable), BE/VG, BE/CF, CH, DK, FI, FR (small stations), IT (internet), NO, SE	AU (narrowcasting), NZ, US

In contrast to television, the digital switchover has not yet taken place for terrestrial radio. Accordingly, analog radio stations are still in operation. While analog-terrestrial radio stations are subjected to licensing in all the analyzed countries, a license is usually also required for digital-terrestrial radio stations (mostly DAB-T). Only in Switzerland and in the French and Flemish

<sup>48</sup> Switzerland is a special case. While private broadcasters only need to notify the regulator about their operation, licenses are still widely used because radio and TV stations benefit from certain privileges (must-carry requirements and subsidies) in exchange for a program remit.

<sup>49</sup> Some media systems – i.e. Australia, France, and Italy – abstain from regulating market entry of certain TV stations (e.g. small stations or Internet TV).

Communities of Belgium do DAB-T stations not required the have a license, but they are subjected to a notification requirement<sup>50</sup> (see Table 4 below).

As with television, regulation of market-entry is less strict for non-terrestrial broadcasting. In half of the analyzed media systems, a notification system was implemented for non-terrestrial radio stations. In Finland, Norway, Sweden, Switzerland, and the French and Flemish Communities of Belgium, notifying the regulator is sufficient for cable and satellite radio stations. In contrast, in Canada, Ireland, Italy, Netherlands, and the United Kingdom a license is also required for cable and satellite radio stations. In Austria, a license is needed for satellite radio stations whereas a notification is sufficient for cable radio stations. Like in the TV sector, only New Zealand and the United States do without licensing or notification requirements for non-terrestrial radio stations.<sup>51</sup>

*Table 4: Licensing vs. Notification Requirements for Radio Stations.*

	Licensing Requirement	Notification Requirement	No Obligation
<b>Analog Terrestrial Stations</b>	all		
<b>Digital Terrestrial Stations</b>	AT, AU, CA, DE, DK, FI, FR, IE, IT, NL, NO, NZ, SE, UK, US	BE/CF, BE/VG, CH	
<b>Other Forms of Distribution</b>	AT (satellite), AU, CA, DE, FR, IE, IT, NL, UK	AT (cable), BE/CF, BE/VG, CH, DE (internet), DK, FI, FR (small stations), NO, SE	AU (pay-radio, narrowcasting), DK (internet), NZ, US

**Approval of Programs or Frequencies:** In the majority of the analyzed countries, a license for terrestrial broadcasting is automatically linked to the right to distribute the program on an analog frequency or in a digital multiplex. However, in some countries, such so-called program licenses offer no guarantee for terrestrial distribution (see Table 5 below). Consequently, either an additional distribution license or a contract with a multiplex operator is needed.

For analog-terrestrial radio stations an additional distribution license is required in Canada, Denmark, Germany, Finland, the Netherlands, Norway, Sweden, and the French and Flemish Communities of Belgium. Keeping program licenses and the right for terrestrial distribution apart is also relevant in digital broadcasting. In a number of media systems a distribution license is required for digital terrestrial distribution, namely in Canada, Germany, Finland, the Netherlands, Sweden, and the French Community of Belgium. The licensing process varies considerably between media systems and is sometimes even more demanding than the process of getting a program license (see the *Licensing Process and License Conditions* sub-section below). In contrast, radio and television stations

<sup>50</sup> Norway still has a formal licensing requirement in place for DAB-T. In practice, however, it equals a notification system.

<sup>51</sup> Australia, France, and Germany have less rigid requirements in place for small stations or Internet radio stations.

holding a program license in Austria, Denmark, Italy, Norway, the United Kingdom, and the Flemish Community of Belgium have to negotiate the terms of digital terrestrial distribution individually with multiplex operators on the free market. However, in some countries (e.g. Austria and Norway) multiplex operators have to carry certain stations.

*Table 5: Countries that do not guarantee terrestrial distribution.*

Additional License for Terrestrial Distribution		Negotiation with Multiplex Operator
Analog-Terrestrial Radio Stations	All Terrestrial Stations	
BE/VG, DK, NO	BE/CF, CA, DE, FI, NL, SE	BE/VG, DK, NO

### ***Licensing Process and Licensing Conditions***

**Responsibility:** Both government ministries and regulatory agencies are involved in the licensing of private broadcasters and the allocation of terrestrial frequencies (see Table 6 below). In two-thirds of the analyzed media systems, the regulatory agency for broadcasting is responsible for awarding licenses to radio and TV stations. However, in one third of the analyzed systems, government retains the right to license broadcasters. Partly, we find divided responsibilities for different kinds of broadcasters:

- In the French Community of Belgium, government is only responsible for the licensing of regional television stations, whereas other licenses (non-regional digital terrestrial broadcasting and as analog radio) are awarded by the regulatory agency.
- In Italy, government awards licenses for terrestrial and cable broadcasting, whereas the regulatory agency grants licenses for satellite channels.
- In Norway, government is responsible for licensing national channels, and the regulatory agency is responsible for the licensing of regional channels.

Distribution licenses for terrestrial distribution are in most cases awarded by the regulatory agency for either broadcasting or telecommunications.

*Table 6: Responsibility for awarding licenses and frequencies.*

	Government	Regulatory Agency
<b>Program License</b>	BE/CF (regional TV), BE/VG, CH, FI, IT (terrestrial & cable), NZ, NO (national)	AT, AU, BE/CF (analog terrestrial radio), DVB-T), CA, DE, DK, FR, IE, IT (satellite), NL, NO (regional), SE, UK, US
<b>Distribution License</b>	CA, DK, NL	BE/CF, BE/VG, DE, FI, NO, SE

**Requirements for Application:** Applicants for licenses usually have to fulfill certain requirements. First, they often have to prove their financial and/or technical ability to operate a radio or TV station. In Austria, Norway, and the United Kingdom, applicants have to show a contract with a multiplex operator assuring terrestrial distribution. Second, applicants in most media systems have to be independent from political organizations. Third, the number of licenses that can be awarded to an applicant or the maximum audience market share that a single company is allowed to gain are often limited in order to prevent ownership concentration. Austria, Australia, Belgium, France, Germany, New Zealand, Switzerland, and the United States have implemented such barriers.

**Phases of the Licensing Process:** Generally, applicants have to submit a written application containing information about ownership and the planned program as well as proving compliance with the above-mentioned requirements. However, there are differences as to when applications can be submitted. While licenses for terrestrial broadcasting are mostly announced by a call for tender, applications for the licensing of non-terrestrial stations can usually be submitted at any time (see Table 7 below). Only in Canada, Germany, Italy, and the Netherlands can applications for all types of licenses be submitted continuously.

The responsible bodies proceed with a simple check of legal requirements before awarding licenses – at least when there is no competition for a certain license. In several countries – namely Canada, France, Switzerland, and the United States – authorities can organize a hearing or conduct a consultation to assess applications. In Austria, ministries of the Länder can state their opinion if radio stations in their area apply for licenses.

The two different proceedings are also found in the approval of terrestrial frequencies. In general, stations can apply for a distribution license as soon as they are granted a program license. However, in Germany and the French Community of Belgium, frequencies are announced by a separate call for tender.

*Table 7: Tendering of licenses and frequencies.*

	<b>Call for Tender</b>	<b>Continuous Application</b>
<b>Program Licenses</b>	AT (AR), AU (terrestrial), BE/CF (AR), BE/VG (AR), CH, DK, FI, FR (terrestrial), IE (AR), NO (AR), SE (terrestrial radio), UK (AR, local DVB-T), NZ, US	AT (digital terrestrial & satellite), AU (cable, satellite & internet), CA, DE, FR (non-terrestrial), IE (cable & satellite), IT, NL, NO (digital terrestrial), SE (DVB-T), UK (digital terrestrial, cable & satellite)
<b>Distribution License</b>	BE/CF, DE	FI, NL, BE/VG; CA, DK, NO, SE

Note: AR = analog-terrestrial radio.

**Selection Principle:** As just mentioned, licenses are usually granted when all the predefined legal requirements are met. However, in case of competition for licenses (and frequencies), the

responsible agency or ministry has to select between applicants. Two different systems of selection can be distinguished: auctions and beauty contests (see Table 8 below). In the majority of analyzed media systems, licenses are awarded using a so-called beauty contest that evaluates applications in light of their fulfilment of license conditions. Often-used criteria include the plurality of programs and providers, program concepts, the willingness to produce programs locally, solid funding, or the experience of the applicant. In some countries auctions are held to sell licenses to the highest bidder. While in Denmark and Sweden auctions are used for analog-terrestrial radio licenses, in Australia, New Zealand, and the United States licenses for commercial stations are sold to the highest bidder.

*Table 8: Selection Principle in Case of Competition.*

	<b>Auction</b>	<b>Beauty Contest</b>
<b>Program Licenses</b>	AU (commercial free-to-air), DK (AR), NZ (commercial free-to-air), SE (AR), US (commercial)	AT (AR), AU (non-commercial), BE/CF, BE/VG, CA, CH, DK (digital terrestrial), FI, FR, IE (AR), NO (AR), NZ, (non-commercial), SE (digital terrestrial), UK, (AR, local DVB-T), US (non-commercial)
<b>Distribution License</b>	NL	BE/CF, NL, DE, FI

Note: AR = analog-terrestrial radio.

**Privileges for Licensees:** Licenses are often linked to privileges (see Table 9 below). The most common privilege is a must-carry obligation for cable distribution. While in Switzerland and the United States all licensed stations have to be distributed via cable, in other countries must-carry rules are only coupled to certain stations (e.g. local stations or non-commercial stations).

*Table 9: Privileges linked to licenses.*

<b>Must-Carry for Cable Distribution</b>	<b>All channels</b>	CH, US
	<b>Specific channels</b>	AT, BE/CF, BE/VG, CA, DE, FI, IE, SE
<b>Subsidies</b>		BE/VG, BE/CF, CA, CH, DK

A less-common privilege is the subsidization of licensed broadcasters. Stations can either apply for subsidies, or they receive a slice of the license fee for public service broadcasters:

- In Canada, campus or community radio stations may receive support by the Community Radio Fund of Canada; until recently local television states in rural areas could benefit from the Local Programming Improvement Fund.<sup>52</sup>

<sup>52</sup> After a public hearing, the Canadian Radio-television and Telecommunications Commission decided to phase out this fund on September 1, 2014. The fund, which was created in 2008 in order to support broadcasters in a difficult financial

- In the French and Flemish communities of Belgium, regional TV stations can receive production aid.
- Non-commercial terrestrial broadcasters in Denmark can apply for subsidies (TV) or receive a slice of license fee revenues (radio).
- In Switzerland, radio and TV licenses for local broadcasters are coupled to a share of license fee revenues.

**Obligations of Licensees:** In many countries licenses come not only with privileges but also with obligations. These can concern either the organization of the licensed broadcasters or the program content:

- On the organizational level stations can be committed to adopt an editorial charter (Austria, Switzerland, and the French and Flemish Communities of Belgium) or to become a member of the press council (French Community of Belgium). Furthermore, requirements for the composition of the board of directors may exist (e.g. for regional TV stations in the French and Flemish Communities of Belgium).
- On the content level, radio and TV stations can be obliged to transmit a program for a minimum number of hours per day (e.g. in Austria, Finland, France, New Zealand, and Norway); to broadcast local content about the license area and/or to produced their content locally (e.g. in Australia, Ireland, Italy, New Zealand, Sweden, Switzerland, the United Kingdom, and the Flemish Community of Belgium). Non-commercial stations are often forbidden to air advertising (e.g. in Denmark, Switzerland, United Kingdom).

**Term and Renewal of Licenses:** In most cases licenses are valid for five to twelve years (see Table 9 below). While in most countries the same duration applies to all types of licenses, in other countries the term for which a license is awarded varies.

*Table 9: Term of license.*

5 years	6 years	7 years	8 years	9 years	10 years	12 years	No term or variable term
AU, DK, FR (AR), NL	IT (AR, DVB-S),	NO (AR)	SE (DAB-T, AR), US	BE/CF, BE/VG	AT, CH, FI, FR, NZ (AR)	IT (DVB-T, DAB-T), UK (cable and satellite radio, local DVB-T)	CA, IE, NZ, UK

Note: AR = analog-terrestrial radio.

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period, is argued to have fulfilled its purpose. Canadian Radio-television and Telecommunications Commission, “Discontinuing the Local Program Improvement Fund (LPIF),” press release, Mar. 21, 2014, accessed Oct. 4, 2014, [http://www.crtc.gc.ca/eng/info\\_sht/tv13.htm](http://www.crtc.gc.ca/eng/info_sht/tv13.htm).

Half of the analyzed media systems (Australia, Canada, France, Ireland, Italy, the Netherlands, New Zealand, the United Kingdom, the United States, and the Flemish Community of Belgium) have implemented a simplified procedure for the renewal of licenses. In Ireland for instance, such a simplified procedure is conducted if the incumbent is the only applicant for the license in question. In France, licenses can be renewed up to two times without announcement if the incumbent has not violated the license conditions and is able to reach an agreement with the regulatory agency.

### *Supervision and Evaluation*

**Sanctions for Breaches of License Conditions:** A variety of sanctions exist in case of non-compliance with license conditions. The most common sanctions are fines and the revocation of the license (see Table 10 below). Most regulators also make use of official letters to stations that are in breach of conditions and have the option to order temporary suspension of operation. In some media systems, radio and TV stations are obligated to air a reprimand in their own programming or to pay for the publication of a reprimand in the local newspaper.

*Table 10: Sanctions in case of infringements.*

	Official Letter	Fine	Airing Reprimand	Printing Reprimand in Newspaper	Ban of Single Programs	Suspension of Operation	Reduction of License Term	Revocation of License
AT	X	X	X					X
AU	X	X				X		X
BE/CF	X	X	X	X	X	X		X
BE/VG	X	X	X	X		X		X
CA		X				X		X
CH	X	X				X		X
DE	X	X			X			X
DK		X				X		X
FI		X						X
FR	X	X	X		X	X		X
IE		X				X		X



IT		X				X		X
NL		X						X
NO	X	X				X		X
NZ	X	X						X
SE		X						X
UK		X	X			X	X	X
US	X	x						X

**Evaluation Mechanisms:** Compliance with license conditions is evaluated only partly:

- In some media systems, licensed broadcasters have to report on the fulfillment of their program remit. This is the case in the French Community of Belgium (for analog terrestrial radio and TV stations), New Zealand (for non-commercial channels and local terrestrial radio), Norway (local analog-terrestrial radio), and the United Kingdom (for all licensed stations).
- In Switzerland, licensed local broadcasters must not only commission regular evaluations of their organization (the results of which are then discussed with the regulator) but their programs are also analyzed by communication scholars on behalf of the regulator.

## DISCUSSION AND CONCLUSION

In this article we set out to examine the licensing of private broadcasting in 18 Western European and Anglo-Saxon media systems. Due to digitization and related market developments that have brought about a myriad of radio and television stations available to viewers and listeners, policymakers are increasingly forced to scrutinize the meaningfulness of traditional market entry regulation for private broadcasting. Yet up-to-date comparative research that analyzes the repercussions of digitization for the licensing of broadcasting is missing. Given that licenses are an important instrument for committing broadcasters to public interest objectives, we ask the question of whether licensing of private broadcasting is still used to shape the media system in the digital era or whether licensing is just an irrelevant blast from the past.

Given the increasing reach of digital terrestrial broadcasting, we first proposed that traditional licensing regimes are replaced by light-touch regulation like a requirement for notification. However, the results indicate that despite digitization, most countries still heavily rely on licensing regimes in order to shape their media systems. With a few exceptions, not only analog-terrestrial radio stations but also digital-terrestrial TV and radio stations require licenses. Such licenses are still used to shape the media system in the public interest. This is done for instance through application requirements (independence from political organizations, limitations on the number of licenses to be held by a single owner), the formulation of license conditions (e.g. production and transmission of local

content), as well as elaborate beauty contests for awarding licenses to the applicant that best meets these conditions.

Provisions for non-terrestrial broadcasting (e.g. satellite and cable channels) are less rigid. In half of the analyzed media systems it is sufficient for radio and TV stations to notify the regulator about their operation. And while half of the analyzed media systems still award licenses to such channels, in the absence of competition most bodies responsible for licensing leave it at a simple check of legal requirements before awarding licenses. Accordingly, Proposition 1 (see above) is only partly supported. Whereas regulators are indeed mostly relying on light-touch regulation with notification requirements or formal checks only for non-terrestrial broadcasting, terrestrial radio and TV stations are still required to have licenses in most cases and thus are subject to regulation in the public interest.

Based on previous research into the relations between media systems and media regulation,<sup>53</sup> we secondly proposed that small democratic-corporatist media systems are more prone to an interventionist approach to licensing whereas liberal media systems rely on a market approach. Results are, however, not as clear-cut. They still provide some support for Proposition 2 (see above). To begin with, auctions to sell licenses to the highest bidder are less common in small democratic-corporatist media systems than in liberal media systems. Small democratic-corporatist media systems mostly rely on beauty contests to select which applicant should be awarded a license. Moreover, a simplified renewal for expiring licenses is found in all analyzed liberal media systems but only in a few of the democratic-corporatist countries.

However, the results unexpectedly indicate that especially large media systems like Germany, France, Italy, and the United Kingdom still rely on licensing regimes for all forms of distribution. In contrast, the Belgian Communities, Denmark, and Switzerland make do with notification-only systems for digital-terrestrial radio and/or television stations as well as for non-terrestrial forms of distribution. Hence it becomes clear that licensing practices do not simply correspond to Hallin and Mancini's three models of media systems. Scholars criticize that the attribution of countries to certain models is not always adequate, and they highlight the relative neglect of some system-differentiating factors. For instance, the path-dependency of countries' media systems and regulation is stressed from the perspective of historical institutionalism, pointing to a range of salient political, legal, and economic variables that ultimately also bear on market entry regulation in broadcasting.<sup>54</sup>

Digitization and connected social and economic developments challenge the traditional regulation of broadcasting markets. Therefore, market entry regulation by way of licensing private broadcasting could be assumed to be a blast from the past. However, the results indicate that licensing is still used as an instrument to shape media systems in the public interest and to commit private broadcasters to

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<sup>53</sup> Hallin and Mancini; Puppis et al., (2009)

<sup>54</sup> Peter Humphreys, "A Political Scientist's Contribution to the Comparative Study of Media Systems in Europe: A Response to Hallin and Mancini," in *Trends in Communication Policy Research: New Theories, Methods and Subjects*, ed. Natascha Just and Manuel Puppis (Chicago: Intellect, 2012), 157-176; Jonathan Hardy, "Comparing Media Systems," in *The Handbook of Comparative Communication Research*, ed. Frank Esser and Thomas Hanitzsch (New York: Routledge, 2012), 185-206.

societal objectives in most countries. Digitization alone does not determine a renunciation of traditional broadcasting regulation. Instead, the political will to reform seems to be equally important. Furthermore, the comparison of 18 Western media systems shows a wide variety of policy options for the design of licensing regimes and processes. Such knowledge is not only of scholarly interest but could also be useful for policymakers when scrutinizing the suitability of their current licensing regime. While technological developments are about to eliminate one of the traditional justifications for licensing, market entry regulation proves to remain a meaningful possibility for shaping the media system in the public interest – even in the digital era.

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