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Policy Bias and the European Audiovisual Media Industry

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'Changes in media structure and media policy, whether these stem from economic developments or from public intervention, are properly political questions of as much importance as the question of whether or not to introduce proportional representation...'
(Garnham, 1990: 104)

Introduction

This quotation from Nicholas Garnham's book on *Capitalism and Communication* leaves little doubt about the importance of media policy for a democratic society.ⁱ In the late 1980s, the European Union's Television without Frontiers Directive implicated media services in the project of building a competitive European common market, albeit 'without prejudice to the public interest role to be discharged by television broadcasting services' (European Commission, 1989: 1). The tension between the values of commercial and public service broadcasting was already apparent. More than two decades later, the contests between the economic and the political and cultural ambitions for the audiovisual media industries, are ongoing (European Commission, 2010b).

A particular vision of the information society serves as a focusing device for European policy with respect to the audiovisual media industries. This is a vision which privileges technological innovation and competition as the primary means of ensuring a vibrant market for the production of media content (European Commission, 2010b; Mansell and Steinmueller, 2000). This has implications for the structure of the media industries in Europe because it gives priority to the workings of the marketplace which, in turn, influences the performance of both the private and public components of the audiovisual media sector.

In this chapter I discuss the vision of the information society that serves as backdrop to audiovisual media policy, briefly explain the historical structural separation between broadcasting and telecommunications, and then consider the bias of policy in the audiovisual sphere, concluding that policy is inconsistent with the industry performance required for a media sphere that is consistent with the requirements of democratic societies.

Frictions in Audiovisual Media Goals

Audiovisual media rely on digital technologies as platforms for their production, distribution and consumption. A quotation from the European Union's Audiovisual Services Directive (AVMSD) emphasises the centrality of digital technologies in the changing landscape of audiovisual services. The Directive refers explicitly to structural change and competition as the optimal conditions for the sector. Respect for cultural and linguistic diversity is mentioned at the end of this clause, almost as an afterthought.

'In the light of new technologies in the transmission of audiovisual media services, a regulatory framework concerning the pursuit of broadcasting activities should take account of the *impact of structural change*, the spread of information and communication technologies (ICT) and technological developments on business models, especially the financing of commercial broadcasting, and should ensure optimal conditions of competitiveness and legal certainty for Europe's information technologies and its media industries and services, as well as *respect for cultural and linguistic diversity*' (emphasis added) (European Commission, 2010c: para 4).

The AVMSD refers to cultural services. These are implicated in democracy and in the goals of ensuring freedom of information, diversity of opinion and media pluralism, but it also brings these goals into contention with the aims of fostering growth and jobs in the information society (European Commission, 2010c: para 14). The AVMSD refers to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005: Art. 2(5)) which states clearly that 'the cultural aspects of development are as important as its economic aspects, which individuals and peoples have the fundamental right to participate in and enjoy'. Unfortunately, this equivalence recedes in the Commission's treatment of the audiovisual sector when it comes to assessments with regard to its competitiveness.

The Directive covers 'mass media', that is, television broadcasting and on-demand services 'which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public'. It excludes 'private websites and services consisting of the provision or distribution of audiovisual content generated by private

users for the purposes of sharing and exchange within communities of interest' (European Commission, 2010c: para 21). While the content produced by private individuals is outside this policy framework, other content production – regulated and unregulated – is seen as a key component of the European project of developing markets that can compete on the world stage. The audiovisual media sector is expected to contribute substantially to building a competitive European information society. As Pouwels and Donders (2011) point out, recent years have seen major changes in the focus of audiovisual policy in Europe. The media service provider is now defined as 'the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised' (European Commission, 2010c: Art 1d). This excludes, for the present, telecommunication operators, and the print and publishing industries, but all the commercial providers are seeking audiences and advertising or subscription revenues. Theoretically, they are all expected to compete on a level playing field, a field that should not be distorted by publicly supported organisations in the sector, that is, those charged with public interest obligations.

This friction between the cultural and economic ambitions for the audiovisual media sector in Europe is captured in a European Commission discussion document on the development of the market for creative content in Europe. Here it is asserted that 'the online distribution of creative content in the EU has the potential to create more choice and diversity for consumers, new business models for commercial users and more sustainable growth for rightholders' (European Commission, 2009b: 1). The tension is between those who benefit from the relative scarcity of digital content which can be sold in the commercial market and citizens who may benefit from the broadest availability of such content in line with the information requirements of democratic societies. With the changes in the structure of audiovisual media industries over the past two or more decades, policies aimed at creating a competitive marketplace for audiovisual media, while preserving cultural diversity and safeguarding media pluralism, stand in contradiction to each other.

Information Society Biases

In the information society, competition is the predominant value. This is not surprising given the value of the information and communication technology (ICT) sector as a whole. Total ICT spending worldwide was estimated at USD 3,398 billion in 2009. North

America accounted for 30 per cent of this, with Western Europe accounting for a further 30 percent. Of this spending 50 per cent was on communication services and hardware (OECD, 2010). The spending on ICTs contributes to the output of creative content where the audiovisual media play an important role. On a worldwide basis in 2008, UNCTAD put the value of the creative 'economy' at USD 406,992 million.ⁱⁱ

In Europe, the creative industries in the 27 European Union countries are estimated to have generated some 560 billion Euros in value added in 2008, or 4-5 per cent of total GDP,ⁱⁱⁱ and to have accounted for about 6.5 per cent of the total European Union workforce. The biggest players in the world media markets are Time Warner, Walt Disney, Comcast, News Corp, DirecTV, NBC Universal, Viacom, Echostar, Liberty Global and CBS. The structure and performance of the European audiovisual markets inevitably become issues for policy in the face of this global competition. As the European Commission's report on industrial competitiveness for 2010 states,

'The economic rationale for government intervention in favour of the creative industries starts from the notion that this sector constitutes a significant locus of economic dynamism in the post-industrial world. This view evaluates cultural events, institutions, and creative activities according to their significance for, or their positive contribution to, the aggregate economy' (European Commission, 2010d: 222)

Coupling audiovisual media with the information society doctrine of competitiveness creates a bias towards investing in technological innovation and boosting the production, transmission and consumption of digital information. The fact that information, and media content in particular, has symbolic meaning and is important for cultural diversity and democratic conduct is not a component of this doctrine. This absence is consistent with the post World War II efforts to develop new information and control systems (Wiener, 1948/1961). While the technologists and mathematicians were developing the technologies that would become the precursors to the digital systems of today, economists were attracted by mathematical depictions of information control systems. They soon shifted from modelling information transmission systems to examining the impact of these systems on the economy. They struggled with the challenges of modelling the immaterial characteristics information as compared to material goods, but they were concerned principally with market relationships for the production and consumption of information.^{iv} They realised that if markets in digital

information were to grow, information resources must be perceived to be scarce.^v When information society services, including audiovisual media services, are examined in this market oriented framework with its focus on scarce resources and the price system, there is no scope for a consideration of cultural issues of plurality or diversity.

The information society vision took hold of the popular imagination in the 1990s and the political classes quickly picked up the message with Vice-President Al Gore promoting the information highway in the United States and internationally and Martin Bangemann doing so in Europe (European Commission, 1994; Gore, 1993). Analytically, innovations in ICTs were associated with a change in 'techno-economic paradigm' resulting from the declining cost of storing, processing, communicating and disseminating information (Freeman and Soete, 1994). These changes in the role of ICTs would transform all sectors of the economy, and the audiovisual media services sector would not be an exception. The pressure would grow to ensure that policy would favour the operation of a competitive market in Europe for audiovisual media services, with increasingly less concern for the variety of purposes associated with the production of digital media content.

Structural Transformation and Convergence

A link between the structural composition and dynamics of this industry and its output has long been assumed to exist, even if there are disputes about whether media diversity and plurality can be achieved best as a result of market competition, through policy intervention, or a combination of both. McQuail (2005: 277), for example, states that market structure has important implications for 'the type and amount of media content produced and offered to audiences'. The issue is whether, in a convergent ICT marketplace characterised by both 'competition-enhancing and competition-reducing effects' (Bauer, 2005: 80-81), public interest goals are likely to be achieved. Studies in the political economy tradition, consistently posit a link, however indirect, between market structure and output based on empirical research addressing issues of labour, ownership, the mode of production, and regulation.

The structure of media production is assumed to be intimately related to the consumption of symbolic content and the consequences for democratic participation in society (Garnham, 1990). Unlike the neoclassical framework in economics where existing distributions of power are assumed to be given or unalterable (Melody, 1994),

in the political economy tradition, the challenge is to investigate the link between markets and the media's output in a given historical period. The dimensions of power relationships are examined although it is usually acknowledged that there is no 'necessary coincidence between the effects of the capitalist process proper and the ideological needs of the dominant class' (Garnham, 1986: 23). Attention focuses on the strategies of the dominant firms in a given market. Until the 1990s when the convergence of ICTs started to become a significant feature of the industrial structure of the audiovisual media sector, the policy focus for broadcasting was distinctly separate from the focus of policy in the complementary telecommunication industry which was also experiencing enormous change in the wake of the ICT paradigm.

The media content and telecommunication (computing) industries were structurally separate historically. In the former, policy was mainly concerned with radio and television, issues of ownership and the public interest. In the latter, the focus was on infrastructure, networks and services and their economic characteristics and performance in the marketplace.

The idea that a competitive international market should emerge for telecommunication services with the goal of stimulating innovation in the sector and enabling the global spread of networks and advanced digital services took hold in the 1980s (Ergas, 1985; Mansell, 1989). Debates about market liberalisation culminated in trade liberalisation which set the stage for market liberalisation at the regional level in Europe and around the world (Bressand, *et al.*, 1989). Policy began to focus on the capacity of nationally based telecommunication operators to respond to the challenges of digital technologies. The commitment to trade liberalisation was reflected in the global information infrastructure initiatives and the policy mantra was privatise, liberalise, compete. This 'western liberalisation model', originating in the United States, was then exported worldwide (Mansell, 1992).

In media markets, defining the public interest in broadcasting had always been a challenge (Blumler, 1992; Melody, 1990). Some argued that greater play of market forces would stimulate content production, claiming that broadcasting policy had been ineffective in generating public services responsive to the interests of the majority of citizens (Collins and Murrone, 1996). Most analysts argued, however, that in the face of changing technologies, policy measures would be needed to secure the future of public service broadcasting (PSB) in a competitive era (Curran and Seaton, 1997). Debates

about policy were politically charged because of the links between market structure, media freedom and democracy.

Comparative accounts of changing policy regimes for media showed that adjustments to the ICT paradigm had not been uniform (Hallin and Mancini, 2004; McQuail, 2002; McQuail and Siune, 1999; Venturelli, 1998). At the beginning of the 2000s, Verhulst (2002) argued, nevertheless, that there had been a paradigm shift in digital content regulation. ICT convergence had provided a new basis for many-to-many distribution, non-linear programming, and the transnationalisation of media markets. With the development of many new digital platforms, followed by mobile and Internet access to media content, the competitive broadcast market model had also been exported globally. The bias of policy was to foster the competitiveness of firms in the audiovisual sector. As Hamelink (1996) observed, the result would be disempowering as the prospects of media producers with an explicit public service mandate waned in most, though not all, countries. This was so despite the proliferation of user generated content enabled by the digital revolution. Technological convergence has fostered industry convergence and policy convergence such that the greatest emphasis is on competition and innovation, consistent with the prevailing information society vision.

In the context of information society developments, the spread of networks and new online applications has been associated with a flattening of hierarchies, the disappearance of capacity constraints, and empowered consumers. The bias in audiovisual media policy has been a presumption of fair competition as the guarantor of the public interest in media content. However, from a political economy perspective, the mere manifestation of competition in a given market is insufficient evidence of a weakening of the interests of firms in responding to the profit motive. Market power is associated with strategies that enable oligopolistic firms to entrench their positions, even in the face of destabilising change associated with a new techno-economic paradigm. Firms in the audiovisual media market have incentives to monopolize the market by controlling its 'choke points' or gateways (Anderson, 2010; Mansell, 1996). As Noam, comments, in the face of the declining costs of digital equipment, 'one major way for companies to deal with this price deflation is to try to reduce price competition. An oligopolistic market structure helps' (Noam interviewed by Gassot, 2005: 153). When these firms succeed in creating a perception of scarce resources, this inevitably gives rise to implications for media diversity. The case of the expansion of the Murdoch News Corporation empire in the United Kingdom with its proposed acquisition of shares in

BSkyB, even if it requires the spin-off of some holdings in the news market, is symptomatic of the strength of the market ethos in the European audiovisual sector. The significance of market dominance as a public policy issue does not simply fade away in the face the spread of the technologies of the information society.

Evidence on the Supply Side: The strategies of firms to dominate markets with anti-competitive consequences are evidenced by legal proceedings initiated under competition policy rules. In the United States, for instance, the Department of Justice has been examining Google Ads for its possible anti-competitive implications in diverting market share from Yahoo!^{vi} and Comcast has been charged with trying to establish an Internet video 'toll booth',^{vii} In the Microsoft case in Europe, the company was found to have abused its dominant position in the personal computer operating system market by refusing to disclose interoperability information, preventing innovative products from being brought to market and distorting competition in the streaming media market (European Commission, 2007). The European Commission recently has started an antitrust investigation into allegations that Google, which has a 95 per cent share of the European search engine market, is abusing its dominant position in online search. This case is focusing on whether Google lowers the ranking of unpaid search results of competing services. It is also investigating whether Google's exclusivity obligations prevent advertising partners from placing ads with other platforms (European Commission, 2010a). In these cases, the question is whether the market structure enables firms to restrict access to essential resources, thereby restraining the capacity of others to compete fairly and disadvantaging consumers by restricting choice.

Evidence on the Consumption Side: There are structural asymmetries in the composition of 'user/audience' communities as well. The information society vision plays an important role here by diverting attention towards the opportunities available as a result of social media platforms. Relatively homogeneous communities of empowered content producers (prosumers) are seen to be engaged in blogging and social networking, generating content without restraint. The structure of the market is seen to facilitate a plural, open information commons. An undifferentiated notion of the 'user' shifts attention away from firms that are dominating the market. ICT convergence is said to be consistent with values of inclusiveness and democracy or the 'wisdom of crowds' (Benkler, 2006; Surowiecki, 2004). However, these same platforms also are being used for citizen surveillance. Internet websites can be, and often are, blocked; mobile

networks can be shut down. A political economy perspective on these developments suggests that while 'audiences' are comprised of globally networked users who appear to derive pleasure from social networking, new forms of immaterial labour performed passively using Facebook or actively using Amazon's Mechanical Turk are offering firms a basis for targeting their content in ways that are inconsistent with a level competitive playing field (Coté and Pybus, 2007), and that are unrelated to the symbolic content of the media.

What kind of mediated public sphere?

Concerns about the transformation of the audiovisual media industries are connected with prevailing ideas about the relation between a mediated public sphere and democracy (Calhoun, 1992). In the Habermasian public sphere, a democratic polity emerges as a result of the quality of discourse and the level of participation. The mediated environment is expected to create spaces for consensus formation. In contrast to this view, Mouffe (1999: 746) argues that this conception of the public sphere downplays the contested interests of citizens. It 'consists in replacing the market-inspired view of the public sphere by another conception that conceives political questions as being of a moral nature and therefore susceptible of being decided rationally'. She suggests that the public sphere should be structured so as to acknowledge diversity and difference, to allow passionate debate, and to provide for conflicts among adversaries to be expressed.

In this view, the interpenetration of the audiovisual media with democratic processes suggests that mediation has the power to frame issues, to prime people through cultivation and to engage in agenda setting. As Silverstone (1999: 143) observed, 'it is all about power, of course. In the end'. In this context, therefore, there is little doubt that the structure of the media matters – if it squeezes spaces for the contestation of views in the interests of profit or in the interests of the state, policy measures are needed which are not based primarily on issues of market share and commercial performance.

A consequence of the information society vision as indicated above is the bias towards markets. Although content regulation has not been abandoned completely it is discussed in terms of market value (Tambini and Cowling, 2004). The result is that the European Commission requires Member States to use 'public value tests' and market impact assessments to determine the scope of activities of public service broadcasters.^{viii} The

consequence is that these broadcasters have to quantify the 'value added' they contribute in the face of opposing claims by commercial broadcasters (Donders and Pauwels, 2008). The content produced is being monetized. Any new service must take account of the impact of that service on 'trading conditions and competition' (European Commission, 2009a: 20). Public funding of new audiovisual services must not 'distort trade and competition to an extent contrary to the common interest' (European Commission, 2009a: 21). The provision of public service content is sometimes even seen as chilling the entry of providers in the commercial market (Collins, 2002). However, as Freedman (2008: 157) argues 'the effort to quantify the value of PSB services fails to see broadcasting as a complex social and cultural practice'. The role of policy becomes that of curtailing the 'monopoly power' of public service broadcasters, placing assessments of their performance squarely in a market context.

Conclusion

Technological convergence in the ICT sector has provided the principal justification for the transformation of audiovisual media markets and for the decline of public service broadcasting. Policies at all levels call for competition to release the potential of digital technologies. Melody (1989: 29) asked, what will become of 'public interest' considerations in information societies governed principally by market forces? He suggested that 'to begin the process of redefining the public interest in the information society, it is necessary to return to the essential functions of information and communication in modern participatory democracy, that is, to provide opportunities for citizens to be informed and to be heard'. Unfortunately, we find increasingly that, 'the European viewer has gone from being a silent citizen in the state monopoly era to a valuable consumer in the digital era of private oligopolies' (Papathanassopoulos, 2002: 251).

Audiovisual media policy has become interchangeable with policies aimed at the enforcement of market relationships through the commodification of information, including media content. The use of terms like 'creative industry' or 'information society' serves to disguise the contradictions that arise when the policy thrust is to encourage technological neutrality and platform independence with the expectation that this will foster competition. The inevitable conflicts call for critical investigation of the links between media market structure and the performance of the audiovisual media industry, even as the information society gives rise to multiple platforms for

contributing media content. They also call for policy proposals that give greater weight to the contribution of the audiovisual media to the democratic process.

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Notes

- i See also (Garnham, 2005).
- ii (UNCTAD, 2010: 128). This includes arts crafts, audiovisuals, design, new media, performing arts, and publishing and visual arts. Definitions vary, see (Rosted, *et al.*, 2010).
- iii (TERA Consultants, 2010). This definition includes film and video, videogames, broadcasting, music, books and press publishing as core industries and non-core activity (on-site consumption at live concerts, art fairs and exhibitions) as well as design, architecture, and advertising. These estimates include software and databases and allocations from sectors needed to distribute the output of the creative industries such as transport, telecommunications and post.
- iv The non-rivalry of information (if I use your information you do not reduce my holdings and it is difficult to exclude people from accessing information), and 'expansibility' (once the costs of a first digital copy are covered, an unlimited number of copies can be made without significant additional cost) create challenges for standard economic analysis.
- v Key works on the economics of information include (Arrow, 1984; Lamberton, 1971).
- vi See http://www.theregister.co.uk/2010/11/30/yahoo_chief_economist_on_google_antitrust_question/, accessed 05/04/2011.
- vii See http://www.theregister.co.uk/2010/11/30/comcast_and_level_3_clash_over_transit_fees/, accessed 05/04/2011.
- viii The public value concept was developed in the United States (Moore, 1995) to understand how public sector organisations might aim to operate in a way that is perceived as being substantively valuable, legitimate and politically sustainable. See (Kelly, *et al.*, 2002) and (Jakubowicz, 2011; Moe, 2010).