

# **A Critique of European Audio-Visual Policy**

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### **Introduction**

The EC, originally an international trading association, has developed into a complex and multi-dimensional *sui generis* organisation, which has moved away from purely economic concerns to encompass a range of political and socio-cultural issues. Reflections of this development can be seen in the approach which the EC has taken in its audio-visual policy, a policy which is important because it marks the confluence between internal market policies and non-economic values. This paper traces the development of the Community's audio-visual policy from its origins in ECJ case law to the Television without Frontiers Directive (Directive 89/552/EEC, amended by Directive 97/36/EC), the introduction of the Article 128 EC<sup>1</sup> and the Community cultural initiatives taken thereunder. These initiatives are particularly significant due to recent attempts to consolidate the EC's constitutionalisation by the introduction of European citizenship. We question whether it is possible to utilise European audio-visual policy to consolidate European citizenship and create a Community image whilst maintaining the diversity of the member state cultures.

### **From EEC to EC**

When the Treaty of Rome first founded the then European Economic Community, the Community was perceived in a very different way from how it is now. The original treaty could perhaps have been characterised as being purely concerned with economic issues, rather than as an organisation that could affect individuals directly or take into account issues other than the solely economic. As Advocate General Gand, in an early case, remarked, 'The Treaty

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<sup>1</sup> To be re-numbered as Article 151EC following the ratification of the Treaty of Amsterdam.

... was concluded in order to create an economic Community and not a Community of artistic, historical or ethnographic goods'.<sup>2</sup> Over the decades, however, there has been a move away from perceiving the Community as merely an international law organisation with little or no relevance or direct impact upon individuals. The European Court of Justice (ECJ), in a number of landmark decisions<sup>3</sup> emphasised that the Community constituted an independent legal order which did not have to rely on the intervention of the various Member States to grant rights and impose obligations on the individual. Since then the ECJ has repeatedly held<sup>4</sup> that the treaties upon which the Community (and now the European Union) are based are constitutional documents. Equally, the ECJ has consistently held that the need to ensure that the rights of the individuals are safeguarded is of importance within the Community legal order. Further, these rights were not limited to those of an economic nature, coming to include fundamental human rights as well as social rights. This development reached its apotheosis with the introduction of European Citizenship following the Treaty on European Union (sometimes known as the Maastricht Treaty) in 1993. The EC Treaty now also takes into account other non-economic values such as environmental protection, social cohesion and, importantly in this context, cultural values.

### **Historical Development of European Audio-visual Policy**

As we have noted, the EC Treaty was revised by the TEU. This treaty created the European Union and, as noted, introduced the concept of European Citizenship. Importantly, it also introduced specific cultural policy provisions through Art. 128 EC. This provision provides:

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<sup>2</sup> Case 7/68 *Commission v Italy (Re Export Tax on Art Treasures)* [1969] CMLR 1

<sup>3</sup> Case 26/62 *NV Algemene Transport-en Expeditie Onderneming Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1; Case 6/64 *Costa v ENEL* [1964] ECR 585.

<sup>4</sup> See e.g. *Opinion 1/94* [1994] ECR I- 5267

‘The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.’

This in itself is not an unambiguous provision. Not only has it two potentially contradictory aims: respecting the identities of the Member States whilst trying to forge a pan-European identity, but the precise ambit of the notion of culture is itself unclear.<sup>5</sup> Nonetheless a number of measures have been adopted to give effect to these policies, some of which fall into the audio-visual area. It should be noted that many of these measures pre-date the introduction of this cultural aspect of the Treaty, having been based on more free market provisions. This indicates tensions in EC audio-visual policy which constantly re-occur.

Although the EC Treaty in its original format did not specifically refer to television or to cultural issues in general, this did not mean that broadcasting as an industry was not within the EC competence. Instead, broadcasting fell within the general free movement provisions, being regarded as a service under Art. 59 EC.<sup>6</sup> Given the increasing problems with the regulation of transfrontier broadcasting, the Community sought to produce secondary legislation in this area. Despite concerns about the Community’s competence to legislate in this area, the Directive was enacted to facilitate, in accordance with the aims of the EC Treaty<sup>7</sup>, the creation of an internal market in television broadcasts. Importantly, however, the cross border transmission of broadcasts was also seen as an important means of "establishing an ever closer

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<sup>5</sup> See the comments of the ECJ in the recent case on the promotion of linguistic diversity within the EU see Case C-42/97 *Parliament v Council*, judgment 23/2/99. These measures were held to be only tangentially to do with culture, being seen instead as primarily economic.

<sup>6</sup> See e.g. Case 52/79 *Procureur du Roi v Debauve* [1980] ECR 833

<sup>7</sup> Art. 2, 3(c), 7a EC

Union amongst the peoples of Europe".<sup>8</sup> Although the preamble to the Directive might reflect these dual purposes, the operative parts focus on the internal market. Its creation required the elimination of discrepancies between the different national rules regulating the operation and transmission of television broadcasts through the harmonisation of the national regulatory systems. The EC, and the Commission in particular, have always sought to eliminate the possibility of more than one level of control on the same business, whatever that business might be, by different States. To allow duplicate regulation makes it harder, or more expensive, for a product to travel from one country to another. Duplication, at the least, distorts the flow of intra-Community trade, at its worst, it creates barriers to the completion of the internal market. Thus, multiple regulation of the same broadcaster by the various Member States was to be eliminated, at least in so far as such regulation would impede "the freedom to provide television broadcasting services". The Television without Frontiers Directive also contains requirements regarding certain minimum quantities of European and independent European programmes to be transmitted by each broadcaster. Certain other provisions also relate to advertising standards.

The Directive is not the only result of EU audio-visual policy. The European institutions have variously discussed the precise requirements of its audio-visual policy. The European Parliament in response to the Commission's *Interim Report on Realities and Tendencies in European Television: Perspectives and Options*<sup>9</sup> suggested that a European television environment, which would form part of a united European Community, implied certain elements:

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<sup>8</sup> See Recitals to the Directive. See also Explanatory Memorandum to the Proposal for the Directive COM (86) 146 final

<sup>9</sup> COM (84) 229 final. See also the 'Television without Frontiers' Green Paper (COM (83) 229 final)

- reception of national channels in all Member States;
- the establishment of a multilingual European television channel by a
- European broadcasting organisation;
- support for Europe's programme making industry;
- safeguards to maintain the effectiveness of public service broadcasting;
- maintenance of cultural diversity and freedom of information by
- preventing the establishment of monopolies in the media;
- harmonisation of general broadcasting principles, technical standards
- and legal provision within a European convention on the media.<sup>10</sup>

The Commission subsequently divided the promotion of audio-visual policy, as part of its re-vamping of Community cultural policy generally, into three main elements. These were: the adoption of common technical standards for satellite broadcasting; a legal basis for the free movement of broadcasts from one member state to another (which subsequently became the Television without Frontiers Directive) and the promotion of the European audio-visual policy.<sup>11</sup> The market was thus divided into infrastructure and content.

As far as infrastructure was concerned the EC hoped to stimulate the development and adoption of common standards such as HDTV<sup>12</sup>. Further, as with telecommunications,

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<sup>10</sup> European Parliament Resolution on a Framework for a European Media policy based on the Commission's Green Paper on the establishment of the common Market for broadcasting, especially by satellite and cable OJ [1985] C-288/113

<sup>11</sup> *European File* 10/88 'The European Community and culture' and *European File* 4/88. 'Towards a large European audio-visual market'.

<sup>12</sup> Directive 95/47/EC relating to the use of standards for the transmission of television signals

directives were enacted requiring common standards (e.g. for satellite terminal equipment) to be used.<sup>13</sup> Similarly, copyright needed to be harmonised.<sup>14</sup> This approach would have a two-fold impact. This would minimise the risk of 'natural' partitions in the market occurring as a result of the various Member States adopting different technical specifications as had happened with video. A larger market meant the investment would be more worthwhile for the companies involved in the production of the new equipment. It also increases the chances of the rest of the world adopting the European standard given that the European market taken as a whole is a significant consumer group. The success of this policy has been criticised.

Content again can be divided into two elements; the removal of barriers and the stimulation of a European product, although some of the measures deal with both. We have noted the existence of the Televisions without Frontiers Directive, which is a fundamental element in European audio-visual policy, and which does both. Looking to the content of what is actually seen on television and cinema screens, the Commission has taken various measures (based on Council Decisions). These relate to the stimulation of European cinema<sup>15</sup> and the MEDIA programme (now MEDIA II<sup>16</sup>). The EC has proposed a guarantee fund to help reduce the risks which put banking and financial institutions off becoming involved in the

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<sup>13</sup> See also Directive 95/51/EC on the use of cable television networks for the supply of already derestricted telecommunications services.

<sup>14</sup> Directive 93/83/EC relating to the co-ordination of certain regulations concerning copyright and rights related to copyright applicable to copyright applicable to broadcasting via satellite and to re-transmission via cable; Directive 93/98/EC relating to the harmonizing the term of protection of copyright and certain related rights. Green Paper and a Communication of the Commission relating to copyright and related rights in the Information Society (COM (95) 382 final)

<sup>15</sup> Decision 93/424/EEC relating to the implementation of an Action Plan for the Introduction of advanced television services. Decision Proposal relating to the creation of a European Guarantee Fund to encourage audiovisual and cinematographic production (COM (95) 547 final).

<sup>16</sup> Decision 95/563/EC and 95/564/EC relating to the implementation of a programme of encouraging the development and the distribution of European audiovisual works (MEDIA II – Development and distribution 1996 – 2000) and a training programme for professionals of the European industry of audiovisual programmes (MEDIA II – Training 1996 – 2000).

media markets to help stimulate European productions, particularly cross border productions. This proposal is still in draft form, however. The EC is also supporting various cinema/audio-visual festivals. The advantage of these are that they allow films which would not normally be released to be seen and also assist those who are inexperienced perhaps to attract the attention of both audiences and the industry.

The MEDIA programme was started in 1990, on its expiry being replaced with MEDIA II. The Commission recently proposed the approval of the MEDIA III programme in its Communication on the Results of the Public Consultation on the Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors (COM (1999) 108). The MEDIA programme in its various incarnations is perhaps one of the main pillars in the Community audio-visual policy. Currently it is divided into three key sectors: the training of professionals; the development of works; and the development of distribution networks. In this sense, the MEDIA programme also concerns infrastructure as well as content. The MEDIA programme 'stimulates co-operation and exchange of expertise between universities, film schools, training institutes and businesses'. As far as substance goes, the MEDIA programme consists of financial and technical support which is aimed at pre-production phases so as to allow professionals more time to script writing, finding creative and financial partners and developing marketing and distribution strategies – areas where things often go wrong for European film producers. Particular emphasis is paid to those nations where production is low and to those works 'imbued with a European dimension'. Distribution includes automatic support for the distribution of European films, consisting of a financial grant covering a proportion of costs, scheduling costs and promotion costs. Loans are also available for video, multimedia and television distribution.



Most recently, when the Treaty of Amsterdam was being negotiated, a Protocol was agreed which re-iterated the importance of public service broadcasting and re-emphasised the Member States' commitment to its underlying principles. As the Commission noted in its recent Communication (COM (1999) 108), however, the term public service broadcasting needs to be defined.

### **Difficulties with European Audio-visual policy**

Originally the rationale for EU involvement in European media policy was primarily economic<sup>17</sup> although there has been a strengthening of the view (if not the policies) that the audio-visual sector has a major role to play in promoting cultural and political integration of the EU<sup>18</sup>. But there has been a shift from the initial optimism about creating a European culture towards a more realistic concern about the role of the media in preserving Europe's existing cultural diversity (Collins, 1994). The primary concern of European audio-visual policy has been economic with the aim being to turn the audio-visual market into a single market within the European Union. This imperative was reinforced by the 1992 Internal Market Programme introduced by the 1987 Single European Act. By strengthening the internal market the goal has also been to improve the competitiveness of Europe in the external global market. Consequently, as indicated above, European audio-visual policy has primarily been focused on the following: liberalisation of the internal European audio-visual market and its protection from the external market; the creation of a common legal framework throughout Europe to ensure that compatible regulatory standards would not impede

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<sup>17</sup> See CEC (1998) Audiovisual Policy of the European Union. p.4.

<sup>18</sup> *Ibid.*

transnational broadcasting; compatible standards for technology and the support and development of European programme industries via the MEDIA programmes. The cultural elements of these actions seems, by contrast, to be incidental.

Although the MEDIA programmes may be a positive trend, a note of caution should be sounded. The increased number of viewers seeing 'European' films may be just a reflection of the fact that cinema attendance in general has risen of late. The Commission's Guide to Audio-visual Policy gives the figure of 7.6% in 1996 and the first 6 months of 1997 saw an increase in Germany of 10.2%. Against this, we must acknowledge the fact that the share of the market taken by American films remains high; the Commission puts it at about 70%. It is not clear how much of this is to do with the fact that the distribution networks are dominated by American distribution companies, often tied to a Hollywood studio. A significant number of films in the UK alone are never seen because a distributor is not willing to take the chance on them (or prepared not to show an American film). This may change: some European groupings are being formed and the Commission has threatened to take steps under competition rules regarding some of the distribution companies. The problem, however, remains.

A key paradox is formulated by the hybrid view which the European institutions hold regarding the nature of the European Union. On the one hand Europe has the potential to become a single trading space which can, via internal co-operation and integration become a formidable competitor in global markets. On the other hand Europe is filled with symbolic cultural content which has the potential, via exchange between different Member States, to promote greater integration and cohesion (Schlesinger, 1997). The diverse nature of

European culture provides a barrier to internal cultural integration and greater economic rationality via a single audio-visual market. But at the same time the diversification and fragmentation of European audiences into niche markets provides a new opportunity for digital industries and content providers. The potential to exploit the further diversification of European markets has been recognised. At the European Audio-visual Conference held in Birmingham in April 1998 it was predicted that the EU's audio-visual market is expected to grow by 70% over the next ten years. This expected growth is due in part to the development of digital technology which will enable interactive television and multimedia applications. As this is occurring within a predominantly commercial environment the concern is that there will be increasing homogenisation and standardisation of broadcasting content<sup>19</sup>.

The need to reconcile the contradictory forces in the audio-visual environment has led to a peculiar set of policy assumptions and objectives (Spa and Garitanonandia, 1995). European audio-visual policy has been predominantly economically based leading to the encouragement of greater commercialisation of information and cultural products. In practice this has led to a prioritisation of quantity over quality of products and preference being given to the interests of transnational private commercial enterprises at the expense of public service broadcasters. Public service broadcasters have been buffeted in all European countries by deregulatory policies which have led to concentration of large pan-European companies and minority cultures, languages and regional programming have not been protected. Compensatory regulatory policies to offset concentration and the market-driven liberalisation of media industries and content have not been forthcoming. Policies which have tried to compensate

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<sup>19</sup> For a more detailed discussion of this issue see Harrison, J.L. *Terrestrial Television News in Britain: The Culture of Production*, Manchester: Manchester University Press, forthcoming.

for the overtly free-market focus, such as the introduction of the quota system and the MEDIA programmes to protect programme making in the EU, have had some success but are still insufficient. Liberalisation of the internal audio-visual space and protection of external audio-visual space has not produced either a coherent internal market for audio-visual commodities, or cultural exchange of content due to the barriers of language and cultural diversity. As we shall see the commercialisation of the broadcasting environment and its consequences are problematic in relation to European citizenship.

### **The Attempts to Consolidate European Citizenship**

Given the tensions inherent in European audio-visual policy, we question whether it can be used to consolidate European citizenship. European citizenship was, as noted, introduced by the TEU. It was introduced as a way of creating a link between the individual and the European Union, the link operating in two contexts: the political and the socio-cultural. The problem with the Union was that it was perceived as being relatively undemocratic, the institutions not being subject to the control of the peoples of Europe, and that many people were not interested in Europe and did not perceive themselves as European. As far as these problems are concerned, the notion of citizenship can be seen as a mechanism for involving the citizen in the running of Europe and reflecting, if not creating, a bond between individuals through the expression of a European culture. In this we can see a link between some of the provisions introduced by Maastricht - to match this cultural aspect, we see also Art. 128 EC. As noted earlier, the question of what constitutes a European culture (i.e. is this a pan European identity or reflecting the diversity of individual Member States) is problematic.

Can audio-visual policy create a community? Of key importance is the nature of the relationship between the media and society. Two broad views are that either the media can strengthen or weaken social cohesion in a society. Those who see the media to be strengthening social cohesion view the media's role as one which is necessary for maintaining social order in a society.<sup>20</sup> From this perspective the media have a role to play in promoting and maintaining democratic values and fostering communication between different social groups (Scannell, 1989). Television in particular has become important as a type of proxy for public discussion and debate (Dahlgren, 1995; Herman and McChesney, 1997). Following this reasoning, European audio-visual policy is underpinned by the assumption that the media are a force for good both in the political and cultural sphere.

‘Audio-visual images attract us as they can simultaneously be a window on the world and a mirror of our own lifestyles and concerns. They can be a powerful instrument of integration and dialogue within a wider Europe and for the spread of our culture outside the Continent’<sup>21</sup>.

The impact of television in this scenario relates to the liberal democratic ideal of cultivating an informed and an involved public. To help citizens make sense of their world, television needs to provide a diverse range of information to feed into the ‘market-place of ideas’ (Patterson, 1997: 155) in order to perpetuate cultural and ideological plurality. In this context we can see

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<sup>20</sup> It is worth noting that those who see the media to be weakening social cohesion interpret the media's activity to be predominantly hegemonic, which favours and protects partial elite interests. (See Golding and Murdock, 1991) or even act as a force for control and exploitation of the citizenry (see Chomsky, 1989).

<sup>21</sup> Audiovisual Policy of the European Union 1998, Office for Official Publications of the European Communities, p.6

similar concerns to those that underlie the freedom of expression debate. Freedom of expression is closely linked in many legal systems with the protection and proper functioning of democracy<sup>22</sup>. Although individual citizens each have a right to freedom of expression, the media (and television in particular) have a role to play in ensuring that a diversity of viewpoints are transmitted to the viewing citizens, without domination by particular groups.

The narrowest definition of the role of the media in the public sphere is that of creating the opportunities and fora in which issues of importance to the political community can be discussed, in other words, presenting information vital to a citizen's participation in community life. The public sphere, however, needs to be broader than a political forum and should provide places and fora where issues of cultural and social importance are debated and understood. Whilst a democratic society depends on an informed citizenry making considered political choices, a complex and technologically advanced democracy also relies on citizens having an understanding and tolerance of their own, and others' needs within the broad framework of the common culture upon which citizenship is based.

In this context, McQuail (1992) identifies certain cohesive functions of mediated communications through which social links are made and maintained. The first function is the creation of the feeling of belonging to a social group through which a citizen is able to experience cultural values which are personally relevant. The second is the symbolic representation of national events and the fostering of group identity. In relation to fostering a sense of belonging the media perform many functions and serve many needs at individual,

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<sup>22</sup> See, for example, *Sixth Broadcasting Decision* of Bundesverfassungsgericht, BVerfGE 83, 238 (1991), especially page 296.

regional, national and supra-national levels. They can, at the individual level, provide a linkage to society at large, developing a sense of being connected and belonging; and this is a key element of citizenship identified earlier. This sense of solidarity with the wider society (or in some cases isolation from society) arises in part through an emotional connection provided by the media, where the media create outlets evoking collective sympathy, grief, sadness, pride and so on. Televised national and global media events (Dayan and Katz, 1992) such as state funerals, the Olympic Games, the moon landing and the death and funeral of Diana, Princess of Wales<sup>23</sup>, often forge a sense of temporary and sometimes permanent sense of solidarity and interconnection between citizens. The media also provide information about the past and present and speculate about the future in a way which creates and nurtures a common culture and value system. Through the reporting of cultural tradition and a shared sense of history and values individual, regional, national and possibly supra-national identities are developed and promoted.

A key method of encouraging the fostering of national identity and citizenship has been for national governments to incorporate such requirements into broadcasting policy and regulatory frameworks. In Britain the BBC, via its public service broadcasting requirements, has to ensure that its programming,

‘reflect(s) the national identity of the United Kingdom ..... ensur(ing) that the rich cultural heritage of all parts of the United Kingdom is represented in its programmes and is available throughout the nation’ (HMSO Cm 2621:6).

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<sup>23</sup> Harrison, J.L. and Sanders, K. B. *The Press, Privacy and the People*. *British Editor*, December 1997 pp.2-7.

The aim is to provide information which will enhance the constitution of the public sphere in the broadest sense and encourage communicative competence of the citizen. This is the key to defining the role the BBC has in promoting democracy, serving the 'public interest', providing quality programming and fostering national culture and identity.

On these assumptions, the media seem to be a vital ingredient in creating a European community of informed individuals. There are concerns, however. The key concern relates to the extent to which television programming can and should be expected to contribute to a citizen's understanding. Jurgen Habermas's critique of public communication in modernity is a useful starting point. He provides within his analysis of the public sphere a picture of what would constitute an *ideal public sphere* (Habermas, 1989). The bourgeois public sphere envisaged by Habermas is not ideal in the sense of its constitution and membership, but ideal in terms of the communicative rationality it represents. Crucially, Habermas believes that human communication is possible without the exercise of coercion or manipulation, whereby mutual understanding can be reached. This ideal is important as it distinguishes between communication which is heavily power laden, where democratic communication is blocked, and communication which is comparatively unrestrained by power-holders. For Habermas (1989) however, commercial media production has created a pseudo public sphere within which a culture-consuming public exists, set in its private consumption pattern (Stevenson, 1995). The transformation of the general culture of the public sector in the 1980s and 1990s, which has elevated the individual to the status of sovereign consumer, has further exacerbated the trend towards the private consumption of cultural goods. As most communication is now forced to channel itself via commercial media the viewer is prioritised as a private consumer rather than as a public citizen (Garnham, 1990). The commercialisation of communication



systems acts against the creation of the conditions whereby rational critical discourse can be conducted. The market model, in theory, should improve access for all voices and produce a supply of content relevant to all consumers. The market processes of innovation and improvement of products should produce a flexible response to audience wants and needs, leading to greater choice for consumers. Whilst market-led diversification leads to greater choice for the consumer, it does not necessarily lead to a more pluralistic service. Diversity of representation and diversity of access in practice are generally compromised by a market-led service. The flaws in the market model often lead to weak representation of society via the neglect of poor or marginal groups of media consumers and high access costs, where ability to pay is paramount for access to high quality information and entertainment<sup>24</sup>. This difficulty reflects criticism leveled at the Community (and Union) that despite its attempts to introduce citizenship, it is still mainly concerned with the economically active, the market citizen.

Given the impact of the broadcast media, and the importance of the debate about freedom of expression, we can see some justification for regulation of the media, whether this be in respect of frequency allocation or content requirements. Public service broadcasting generally attempts to redress some of these imbalances by equalising the chance of media access (via policies such as universal service obligation)<sup>25</sup> and by encouraging fairer and broader representation of society via a diverse supply of programming. In this we see a close link between the public sphere arguments and public service requirements, a point recognised by the High Level Group Report (1998). The European Commission and the courts have also

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<sup>24</sup> See High Level Group Report (1998).

<sup>25</sup> See Murrioni, C. and Irvine, N. (1998) *Access Matters*, London, IPPR for an analysis of access policy in the EU and in particular the current arrangements for universal provision of telecommunications and broadcasting services.

accepted its relevance in their approach to competition policy, in particular in relation to state aid to cultural industries (Arts 92-94 EC) and as regards the position of state monopolies (Art. 90 EC). For example, similar arguments underpin the European Court of Justice's reasoning in its jurisprudence under Art. 90(2) EC in the *Corbeau*<sup>26</sup> and *Almelo*<sup>27</sup> cases. It focused on the need for all individuals to have uninterrupted access 'at uniform tariff rates and on terms which may not vary save in accordance with objective criteria applicable to all customers' (*Almelo*: 1521). Clearly this is one element of the universal service obligation which most broadcasters are subject to and has been one of the key user entitlements. Public service broadcasting, however, also characterises wider entitlements in relation to the universal service principle (see Appendix 1) such as the broadcasters' duty to ensure that a plurality of voices are heard.

There is, however, a further fundamental problem, that of the mediated promotion of national culture and identity. The BBC can be used as an exemplar in this regard. The construction of national identity via symbolism, ritual, ceremony and pageantry was a priority of early BBC radio, followed by BBC television. Both have traditionally broadcast royal events such as anniversaries, visits, births, deaths and marriages and the Christmas message from the Monarch. The BBC has also traditionally transmitted a variety of ceremonies and historical occasions such as the Coronation, the royal wedding, VE Day, VJ Day, Remembrance Day, the eightieth anniversary of the Battle of the Somme. Such ceremonies invoke a 'living past', a golden age in which the nation can locate itself (Smith, 1986). Television and radio therefore have 'brought into being a culture in common to whole populations and a shared

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<sup>26</sup> Case C-320/91 *Corbeau* [1993] ECR I-2533.

<sup>27</sup> Case C-393/92 *Almelo* [1994] ECR I-1477.

public life of a quite new kind' (Scannell, 1989:138). The cultivation of this particular type of national identity was enhanced by the BBC's ability to formulate and design a set of precedents for reporting events deemed to be in the 'national interest'.

The process of mediation has traditionally been limited to structuring and ordering national identity and in the case of Britain this has been partial, unrepresentative and nostalgic. In reality there has been dominance in Britain by England which has been exacerbated by urbanisation, increase in population and the electoral system and parliamentary representation. Further, British history has tended to produce a partial and divisive history (Hoggart, 1995) which has tended to concentrate on English history. Kearney (1991:2) argues that 'the view from Buckingham Palace, Westminster and the Home Counties easily leads to the assumption that Britain can be safely equated with England'.

Problematically, throughout its entirety the BBC has clung to a particular sense of national identity which has been achieved via an adherence to a particular type of *English* political and cultural values as opposed to British values or the values of each of the nations making up the UK. The BBC has maintained its English national cultural identity first via radio and then via television<sup>28</sup>. These values are also exported outside the UK as the BBC has also occupied an important cultural location in the world and has therefore played an important role in defining and promoting a particular version of national identity (based primarily on a Home Counties view of Englishness) abroad in the former British Empire and Colonies.

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<sup>28</sup> Despite criticisms levelled at the BBC's partial representation of the UK the Corporation is still unwilling to relinquish its historical role of broadcasting to the whole nation from London. The current pressure placed upon the BBC by broadcasters in Scotland to allow them to have their own discrete Scottish Six O'clock News programme is being resisted strongly by the BBC Governors and management.

The concern about promotion of a limited type of identity can be viewed from another perspective, relating to questions about rights to freedom of expression and to one's own culture. The difficulty arises because, 'broadcasting was provided *for* the citizens, it was certainly not provided *by* them.' (Crauford Smith, 1997:108, italics in original) Thus, the voices of all individuals were not heard. Despite the rhetoric of freedom of expression and the role of the media in democracy, the control of the airwaves was concentrated in the hands of a small group, as in many states the limited frequencies were granted to state broadcasters. Even if those broadcasters claimed to be standing by some form of public service broadcasting ethos, this resulted in a limited and partial view of society because alternative views had no outlet. So, in addition to concerns about the paternalistic nature of public service broadcasting, there are further problems in relation to the monopoly status which the BBC, and other state broadcasters, once enjoyed.

One might therefore suggest that the public service option carries with it huge disadvantages in terms both of facilitating the democratic process and of presenting or representing its viewers. The answer for policy makers has been a removal of the monopoly status of state broadcasters and, more worryingly, a move towards determination of content by market forces. However, as already suggested, unrestricted market forces do not provide the appropriate balance of programming necessary adequately to reflect the myriad facets of society and to inform the viewing population of a broad range of political issues. This problem is implicit in Habermas's theory of refeudalisation of the public sphere<sup>29</sup> which, in relation to television, is exemplified by an increase in particular types of programming such as

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<sup>29</sup> See also McQuail's (1992) analysis of the failure of the market model to deliver a diverse range of media products.

game shows, chat shows, quizzes, low cost productions, repeats and over-emphasis on entertainment programming at the expense of informational programming (Weymouth and Lamizet, 1996). Although the range and quality of programming actually decreases under certain market conditions, the illusion is often of increased choice which driven by the market-oriented rush towards the provision of niche products as terrestrial and global programme providers compete for the same audience. Further, all European public service broadcasters are now facing the same pressures of concentration of media ownership, the growth of new services, reorganisation and rationalisation of broadcasting organisations and the fragmentation of the media market (Weymouth and Lamizet, 1996). The price has been high. The RAI in Italy has become more commercially aggressive and is directly competing with commercial broadcasters; TVE in Spain is deteriorating in quality (Vilches, 1996); TFI in France was privatised in 1986 and in Britain the BBC has introduced a range of controversial quasi-commercial measures into the organisation and is currently undergoing a funding review<sup>30</sup>.

the primary problem in European broadcasting terms is how can these different layers of citizens' loyalties and interests be reconciled? Aron (in Meehan, 1993) suggested that there can be no such thing as citizenship of the European Union because the citizens of the various Member States are not loyal to it, but instead to their own Member States. Accepting this view would suggest that there is no sense of Euro-identity, nor could there be without removing the Member States as loyalty magnets. As noted earlier, the Treaty of Amsterdam reinforces the position of the various Member States and, further, European citizenship is

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<sup>30</sup> In December 1998 The Department of Culture, Media and Sport instigated a review of BBC funding which is aimed at ensuring the BBC can continue to meet its obligations to the audience and its need to operate in a competitive market place. The appointed panel will report to the Department of Culture, Media and Sport in Summer 1999.

dependent on national citizenship. If citizens have multiple loyalties and multiple identities (individual, regional, national and supra-national), as Meehan suggests, how can these be effectively represented given the complexities involved and the socio-economic and political context within which European broadcasting institutions are situated? Part of the problem is that the Community does not seem clear on whether the policy should aim to create a pan-European identity<sup>31</sup>, (contrary to most analyses, Howe (1995) would suggest that there would not need to be too much in common to create a Euro-identity) or whether the intention is to reflect the images of the constituent Member States to each other. This reflects the inherent contradictions in Article 128 EC. Further, given that even a national broadcaster with a specific remit like the BBC cannot adequately reflect the diverse range of views within the UK, how can this be achieved in a European context? Meehan's approach (1993) may be theoretically possible and probably desirable in that it is based on the multifaceted nature of individuals' identities that one intuitively recognises. To achieve this in the broadcasting sphere, however, raises complex and sensitive issues. Regulation of some description seems necessary to ensure a wide variety of perspectives are aired and to avoid 'dumbing down' and 'cultural imperialism', but of what nature and how prescriptive this regulation needs to be is a more difficult question.

The fragmented nature of the European market has further consequences in the piecemeal and unequal regulation operating throughout Europe and the different tastes of the various national audiences. Although all the Member State have, broadly speaking, accepted some need for regulation given television's role in society, each Member State may take a different

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<sup>31</sup> Crauford-Smith (1997) has identified clear differences within the Community's approach to audio-visual policy. She shows key differences between the European Parliament and the Commission. The various Directorate Generals themselves fell into dispute whilst drafting the media merger regulations (Beltrame, 1998).

approach to regulation both in terms of what is appropriate and how to achieve those aims. The High Level Panel Report (1998) noted that such commonality as existed seemed to be the result of rulings of the European Court of Human Rights in the context of freedom of expression or as a consequence of the Television without Frontiers Directive. This lack of homogeneity is further complicated by the fact that any attempt at European level to harmonise or to co-ordinate the various systems will be intertwined with the industrial and economic considerations traditionally influencing EC policy. In the same report, for example, it was noted in the context of public service broadcasting that, 'European economic integration is rooted in competition and the free market' (1998: Ch. III, 1).

Notwithstanding these practical difficulties, there is some support in Europe for public service broadcasting values which in theory at least ensure (informally) rights of access (via universal service obligation) and rights of representation of a diverse range of voices (see Scannell and Cardiff, 1991). The importance of maintaining public service broadcasting values in the European context has been recognised<sup>32</sup>. The preamble to the Amsterdam Protocol states,

'that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism'.

A statement by the European Broadcasting Union (EBU) reinforces this. For the EBU the absence of public service broadcasting organisations means that 'quality programming for all

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<sup>32</sup> For a resolution on public service broadcasting see Council of Europe R(96)10 on the Guarantee of the Independence of Public Service Broadcasting of 11/9/96. Later, the European Parliament Resolution was adopted 19/9/96, Doc A4-0243/96.

sections of society would not be provided, since the market itself cannot and will not produce it'<sup>33</sup>. Public service broadcasting values are perceived to be particularly significant in an era of information-overload and specialisation where good quality, informative and in-depth programming is needed to clarify events and retain a sense of social cohesion but reflect a plurality of views. European policy on this issue seems to be somewhat confused. The inherently economic nature of the Community means that there will always be tensions with incorporating public service values in practice. The High Level Group Report (1998) noted this, but suggested that the *market* be the mechanism through which any tensions be reconciled. This would, *prima facie*, weight the scales in favour of market forces. However, at the same time, the Commission has recognised the need to allow some state funding for public service broadcasting, suggesting guidance for the operation of the state aid<sup>34</sup> rules in this area be provided. More significantly, the Commission's recent Communication on Convergence (COM (1999) 108) has recognised that, in the developing the information society, public service broadcasting has a role to play, although it also states that a clear distinction must be made between public service activities and those in the competitive domain. This distinction in itself raises many questions about the nature of the future of public service broadcasting.

## **Conclusions**

The history of the Community illustrates an ongoing tension between the economic rationale of the creation of the single European market and the desire to create an ever closer union between the peoples of Europe. This is particularly so in the audio-visual environment.

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<sup>33</sup> URL <http://www.cbu.ch/leg-public-service.html> accessed 1/9/98.

<sup>34</sup> See OJ [1999] C 30/01 and Commission press release on state aid of 21 October 1998 1P/98/916.



There, not only do we see potential conflict between the economic and the cultural imperatives of European policy, but also the dilemmas raised by the attempt to use audio-visual policy as a mechanism to engender European citizenship. Such aims, whilst appearing to be straightforward and logical, actually add further conflicting elements to the debate.

Audio-visual policy assumes that the media have a cultural role without clarifying how it seeks to promote cultural diversity whilst contemporaneously developing a pan-European identity. Further, the assumption that the media are a powerful force for good which will deliver European citizenship and by implication help to develop a European dimension of the public sphere, ignores the fact that the media do not merely constitute a mirror on the world. The messages and images delivered by the media cannot be (nor should we expect them to be) value neutral. It is appropriate to ask whose identity and sense of belonging is being promoted and whose is likely to be marginalised. Finally, policies which have aimed to strengthen broadcasting industries to try to provide both a strong public and prosperous private broadcasting industries have been undermined by deregulatory and market-driven policies governing the audio-visual environment in Europe at both a national and European level<sup>35</sup>.

The problem is a complex one and is primarily underpinned by a concern as to whether the move towards further deregulation of the audio-visual environment contradicts the policy rhetoric which emphasises the need for broadcast material that promotes a sense of cultural identity, or enhances the political relationship of the citizen to the European Union. These concerns increase when we consider that the move to regulation by market forces has tended

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<sup>35</sup> Speech by Albert Scharf at 'The Media and the European Model of Society', European Audiovisual Conference, Birmingham 6-8 April 1998

to lead to a predilection for popular formats on the part of the broadcasters, encouraging consumer interest whilst doing little to encourage awareness and understanding of what constitutes citizenship. The market, in failing to provide for the development of quality programming, reduces television images to a basic common level which tends to promote homogeneity of content (McManus, 1994). We may thus achieve a common European identity of sorts, but, by allowing the market to determine the nature of this identity, we primarily become European consumers. This is doubly ironic in view of the fact that the Community over the last forty years is seen to have developed away from seeing individuals only as economic factors and further, that European audio-visual policy claims to perceive individuals as political and cultural citizens rather than market consumers.

Despite the rhetoric in support of public service broadcasting found in the Amsterdam Protocol, current European policy does not adequately address the range of forces acting on the audio-visual industries in the European context which compromise public service broadcasting values. In addition to identified pressures operating in the media environment the EU faces its own specific problems. Any attempt at coherent policy must deal with the two competing forces of national and Community interests. A coherent European audio-visual policy is needed to redress some of the imbalances which skew the broadcasting environment towards further commercialisation and which addresses the complexities and conflicting forces which are shaping the European media landscape. European audio-visual policy needs to be refocused away from acceptance and incorporation of market-forces towards more democratic and inclusive policies which will ensure that minorities are catered for, will foster diversity and quality of content whilst respecting values and judgements which are culturally specific. If the Community is to have broadcasting which promotes cultural pluralism and takes democratic

questions into account, as well as economic considerations, then regulation, the establishment of common standards and an agreement on what constitutes good quality broadcasting is necessary.

## Appendix 1

### Public Service Broadcasting - Principles

The Broadcasting Research Unit (1989) identifies eight basic principles of PSB:

- 1) Geographic universality;
- 2) Catering for all tastes and interests;
- 3) Catering for minorities;
- 4) Concern for “national identity and community”;
- 5) Detachment from vested interests and government
- 6) One broadcasting system should be directly funded by the body of users
- 7) Competition should be in relationship to good programming rather than increasing audience numbers.
- 8) Guidelines should be followed which liberate programme makers rather than restrict them.

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