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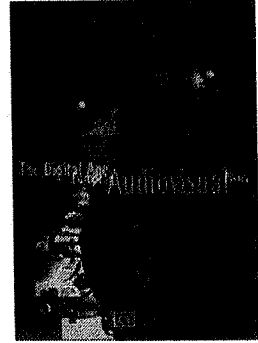
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The European
Commission

Directorate General



*The Digital Age:
European Audiovisual Policy*



Report from the High Level Group on Audiovisual Policy

October 26, 1998

chaired by Commissioner Marcelino Oreja
and composed of Francisco Pinto Balsemão, José-Maria Bergareche,
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CHAIRMAN'S MESSAGE

The audiovisual industry : vital, special

The audiovisual industry has been one of the defining features of the twentieth century. As the century draws to a close the industry is on the verge of a transformation, a kind of revolution. Just as the introduction of soundtracks, then colour film, transformed the film industry and colour television broadcasting, we now stand on the threshold of a new era ushered in by digital technology.

When the Lumière brothers first showed their invention to the world just over 100 years ago, nobody, including the brothers themselves, believed that they had invented much more than a fairground attraction. In fact, they had created a wonderful story-telling machine which would change human culture forever. The cinema became one of the most popular art forms of the twentieth century. In 1996, 702.4 million cinema tickets were sold in European cinemas, an 18% increase on the low point of 1990.

Then came television. The average European already spends over three hours each day watching television. He – or she – is about to be (or already is) faced with a quantum leap in the number of channels on offer, with digital technology enabling the transmission of hundreds of channels.

The importance of the audiovisual industry therefore cannot be over-estimated : for the vast majority of Europeans, it is the major source of information not only about events in their world, but also about the nature of that world. It plays an enormous role in developing and transmitting social values and influences not only what citizens see, but how they understand what they see. It is the single most important source of entertainment and culture.

The central importance of this industry in any society is therefore self-evident. Equally self-evident is the pre-ponderance in the European audiovisual market of imported productions. The European Community has in recent years adopted a series of measures to try to redress this imbalance. Most notable among these are the Television Without Frontiers Directive, which creates a single market for television broadcasts in Europe, and the MEDIA programme which provides a series of support measures. These measures, together with increasingly vigorous policies at national level, are beginning to bear fruit. Last year saw some notable European successes in cinema and the share of European programming on television in the 1990s is continuing to increase.

Audiovisual policy : next steps

The High Level Group was set up in 1997 as part of a general review of Community audiovisual policy. The other notable elements of this review were :

- The holding of a high-level seminar in conjunction with the Luxembourg Presidency on the "Advent of Digital Broadcasting" in November 1997;
- The European Audiovisual Conference, held on 6-8 April 1998, in conjunction with the UK Presidency, entitled "Challenges and Opportunities of the Digital Age".

In parallel, the European Commission published a Green Paper on the convergence of the Telecommunications, Media and Information Sectors in December 1997. A major consultation exercise ensued and the follow-up to this will be presented in a Communication from the Commission at the end of this year. The mid-term review of the Media programme is also due to be carried out this year.

This review is timely. The changes brought about by the advent of digital will be truly

profound. The analogue world of spectrum scarcity will be replaced by one where hundreds of digital television and radio stations will be available. Interactivity will increase and viewers will be able to call up programmes on demand and even arrange their own viewing schedules. A host of new or improved services will be offered to the television viewer, such as teleshopping, financial services, e-mail and even Internet access. Crucially, there will be an explosion in demand for audiovisual content.

Why the High Level Group?

The audiovisual market is at a turning point and the future is complex and very difficult to predict. This is why I decided that the Commission, if it is to devise policies suited to the digital age, should avail itself of a group representing the highest levels of expertise available.

Within the overall review process, the High Level Group had a very specific role. It was to reflect on future audiovisual policy guidelines for the European Union and, in the face of the imminent digital transformation of the audiovisual landscape, to consider in particular the following three questions.

- How can the European content production industry (film, television, multimedia) get the most out of the expected developments ?
- How can the authorities at European and national level contribute to helping European industry to rise to the industrial, cultural and societal challenges? What should be the role of the public broadcasting sector in the new environment ?
- What consideration should be given to the general public interest, particularly with regard to ethical issues, in order to safeguard the European approach to society?

The challenges

At the heart of the matter is the question of whether the predicted explosion in demand for audiovisual material will be met by European productions or by imports. The European audiovisual market is already fragmented due to linguistic and cultural diversity. The danger is that the channel proliferation brought about by digital technology will lead to further market fragmentation, making it even more difficult for European producers to compete with American imports.

Europe must maintain its cultural and linguistic diversity and uphold its core values also in the digital age. But more than this : there are tremendous opportunities opening up and Europe must seize them or others will simply do so in our place.

Added to this is the increasing concern among our citizens about the quality of much of what is available on our screens. Many feel that there is too much violence, for example, and that this can lead to emulative behaviour on the part of young people in society. There is a general view that more needs to be done to protect our children from harmful content and provide them with programming that is both entertaining and educational. Again, the solution lies, at least in part, in an increasingly vigorous and competitive European production industry.

What is needed

In the view of the Group, these are the key elements of a future audiovisual policy :

- The starting point for any examination of public policy for the audiovisual media must be the recognition of the specific role they play in our societies and the need to ensure balance between the free play of market forces and the preservation of the general public interest.
- It is vital that Europe makes use of the "window of opportunity" that is opening to

- establish digital broadcasting (in all its forms) in readiness for the information age.
- If "content is king", distribution remains the key to the kingdom. Policies to support European production must recognise this fundamental reality. The development of a high-performance distribution and rights management sector should be a priority.
 - Broadcasters are a key and driving force behind audiovisual productions, which they both distribute and finance. European audiovisual policy must build on this element of strength, act in a complementary way to national policies on audiovisual in general, and broadcasting in particular, and seek to bring the added European dimension.
 - Current support measures for the film/audiovisual content industries should be adapted and completed. In particular, the following are seen as key elements:
 - The introduction of a mechanism for attracting more investment into audiovisual production;
 - A network of European film and television schools should be established to link centres of excellence;
 - A European showcase event should be encouraged;
 - The MEDIA II programme should be strengthened and provided with resources appropriate to the size and strategic importance of the industry;
 - Partnership agreements between private broadcasters and public authorities should be developed (with possible Community support for the transnational dimension).
 - The implementation of a set of principles and criteria for the funding of public service broadcasting, following on from the Amsterdam protocol, would provide a sound basis for the future of the public service, while ensuring the necessary degree of respect for the principles of free enterprise and competition that private broadcasters need in order to develop their activities. The two main criteria for evaluating any funding system for public sector broadcasting are those of proportionality and openness.
 - There will continue to be a need for specific regulation for audiovisual content, based on the fundamental distinction between communication to the public and private correspondence.
 - The right copyright regime is vital for the development of the industry.

Finally, in recognition of the sweeping changes in Central and Eastern Europe since 1989, the Group included Central and Eastern Europe within its remit. These countries are partners in a common endeavour.

It has been a tremendous privilege for me to work with the Members of the Group. As is fitting for a Group which draws on all parts of the industry for its expertise, different points of view have been put forward and full agreement on all issues was not possible. Nevertheless, their diligence, their expertise and their commitment to the European audiovisual industry have, in my view, produced a policy guide of unparalleled excellence, one that will help us navigate the uncharted waters of the digital age. I commend it to the reader.



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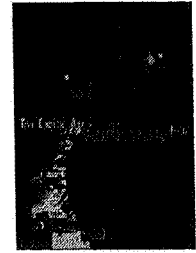
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The Digital Age: European Audiovisual Policy

Report from the High Level Group on Audiovisual Policy chaired by Commissioner Marcelino Oreja



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I. The Media and the European Model of Society

I.1 The role of the media for society and democracy in Europe.

This report is based on a premise which its authors view as incontestable, namely that a modern democratic society cannot exist without communication media which:

- are widely available and accessible ;
- reflect the pluralistic nature of such a society and are not dominated by any one viewpoint or controlled by any one interest group ;
- make available the information necessary for citizens to make informed choices about their lives and their communities;
- provide the means whereby the public debate which underpins free and democratic societies can take place, means that the market will not necessarily deliver on its own.

A society which restricts access to information or freedom of expression to a privileged few is no longer a democratic one. Even in this minimalist sense of the role of the media, it is clearly crucial to the functioning of democratic societies.

However, the role of the media goes much further than simply providing information about events and issues in our societies or allowing citizens and groups to present their arguments and points of view : communication media also play a formative role in society. That is, they are largely responsible for forming (not just informing) the concepts, belief systems and even the languages – visual and symbolic as well as verbal - which citizens use to make sense of and interpret the world in which they live. Consequently, the role of communication media extends to influencing who we think we are and where we believe we fit in (or not) in our world : in other words, the media also play a major role in forming our cultural identity.

In this context, television (the dominant audiovisual medium) is of crucial importance. The average European spends between 3 and 4 hours each day watching television and the figure for children is even higher. For the great majority of Europeans, it is the major source of information, of entertainment and of culture. It provides not only facts about and images of the world, but also concepts and categories – political, social, ethnic, geographical, psycho-logical and so on - which are used to render these facts and images intelligible. It therefore helps determine not only what we see of the world, but also how we see it. In the words of one recent study, television:

"supplies a set of fantasies, emotions and fictional images with which we construct our understanding (or misunderstanding) of all those parts of society beyond our immediate surroundings. It is, therefore, part not just of how we see ourselves in relation to the community within which we are embedded, but also part of how we understand the community – indeed part of where the very idea of community arises and is given meaning."1)

The audiovisual industry is not an industry like any other and does not simply produce goods to be sold on the market like other goods. It is in fact a cultural industry par excellence, whose "product" is unique and specific in nature. It has a major influence on what citizens know, believe and feel.

This point of view, which sees the audiovisual media as playing a crucial, formative role in our societies, is neither controversial nor new and is in fact reflected in the legal systems of all Western European democracies, systems which seek to ensure that the media in general, and the audiovisual media in particular, shall not be controlled either by certain private interests or by the state. Amongst other things, it is a recognition of the immense power of the audiovisual media.

The European approach has traditionally been one of balance. Recognising the role of the audiovisual media as a societal, democratic, cultural and economic factor, legislators have striven to achieve a balance between conflicting demands. For example, the right to freedom of expression has to be balanced against other rights with regard to matters such as the protection of minors, racial hatred and the right to privacy.

Of equal importance is a policy of balance with regard to the interests of private broadcasting and public service broadcasting. In most countries in Western Europe, private broadcasting has only been authorised since the 1980s.

Whilst some would dispute the existence or even the value of a European audiovisual area, it remains true that the great majority of the present 15 Member States of the Community have, in broad terms, pursued similar policies in the broadcasting field since the inception of television. This should not surprise us since, despite their rich diversity, contemporary European societies share certain values, such as:

- a desire for fairness and justice;
- the conviction that democracy should be the political basis for managing society;
- the co-existence of different schools of political, philosophical and religious thought;
- pluralism;
- the need for a balance between the market and the role of the State.

Despite the many differences between the audiovisual markets of individual Member States, this common approach to broadcasting indicates that these national markets nevertheless have much in common in terms of social and cultural values and historical experience. If we compare this approach with that adopted in the United States, which has one of the largest and the most competitive markets in the world, we see that the starting point for the Europeans was different: namely, that it has never been assumed in Europe that the broadcasting and audiovisual sector should be treated as an economic subject only or that the market would per se guarantee a pluralistic service.

This is not to say that American regulators have not intervened decisively in the market when they have considered it necessary for industrial and other policy objectives – witness the famous "fin-syn rules" of the 1970s, the recent introduction of a programme rating system to protect children and the Federal Communication Commission's policy, backed up by legislation, of bringing about a rapid transition to an all-digital broadcasting environment. However, in Europe the approach to the audiovisual sector has systematically encompassed more than a simple need to ensure

the operation of the market : the specific nature of the sector and its crucial social function have always been clearly recognised by European governments. Consequently, a core element of European broadcasting policies has always been to educate and inform the viewer, over and above purely commercial considerations.

Given the technological advances we are experiencing - in essence, the advent of digital - the question now arises of whether the European approach to audiovisual policy, and broadcasting in particular, needs to be revised in the light of these advances and, if so, how. It is this question which the High Level Group has attempted to address in this report.

RECOMMENDATIONS

- The starting point for any examination of public policy for the audiovisual media must be the recognition of the specific role they play in our societies and the need to ensure balance between the free play of market forces and the preservation of the general public interest.



I.2. Technological developments and their impact on the audiovisual media.

The history of civilisations is linked to networks, from the network of Roman roads, through the Phoenician Mediterranean ports, the canal networks of Europe, the railways and air travel, electricity grids, telephone networks to television networks. All these networks have provided links, broken down barriers, reduced distances both psychological and physical, and, above all, allowed the exchange of goods, services and ideas. Digital communication networks will rapidly bring about economic and social consequences which are difficult to predict. The new environment will present many challenges and many opportunities.

But what exactly is meant by this "new digital environment"? At its heart is the fact that digital transmission technology allows hitherto unprecedented amounts of data to be provided over many different networks. For broadcasting, the spectrum scarcity which characterised analogue broadcasting and which limited the number of available channels is gradually disappearing. It will eventually be replaced by spectrum abundance. Hundreds of digital television and radio services will be delivered by terrestrial, cable and satellite networks. They will be both free-to-air and pay services. They will be accompanied by other value-added services or transactional services (teleshopping, financial services, e-mail, etc.).

Technological developments are also leading to a merging of the traditionally separate delivery platforms for images, text, sound and voice. In the on-line world, Internet already enables users to access certain television services with reasonable quality. It is possible that, in the coming years, increasingly rapid data transmission and consequent improvements in picture quality will enable premium content such as feature films to be distributed on the Web. However, it is in the broadcasting environment that European communications companies have their main strengths. It is vital, both from an industrial and cultural point of view, that Europe makes use of the "window of opportunity" these years provide us with to establish digital broadcasting as an important medium in Europe. This is essential if European broadcasters and producers are to be able to compete in a world where audiovisual material can be distributed equally and simultaneously over any platform.

Faced with a choice between hundreds of channels, the viewer will need navigational tools, such as electronic programming guides (EPGs), to help guide him through the

maze of programmes available. Moreover, the viewer will need to be "media literate", that is, he or she will need a sophisticated level of knowledge in order to overcome information overload and to track down those audiovisual products which correspond to his or her interest. Education and training are therefore essential if Europeans are to inhabit the new digital environment successfully. Accordingly, national governments should give greater importance to education in "media literacy" in school curriculae from an early age.

Spectrum abundance will not only affect viewing habits, it will also impact significantly on the market. As channels multiply, audience shares per channel will inevitably fragment. Advertising revenues will not be sufficient to finance many of the new channels, since their audience share will be too low. The majority of new services will therefore have to be funded through pay-per-view and pay-tv. While free-to-air television will continue to exist, digitisation will lead to additional services and more choice for those who are willing and able to pay for it. According to one study carried out for the European Commission, by 2005 some 48% of total revenues in the media sector will come directly from private households (up from 33% today) ²⁾. The increasing consumption of media services, like the advent of the Internet, will lead to increased expenditure per household, which raises the question of the extent to which the new services will be effectively available to society as a whole.

The same study points to a likely positive development : not only is the European audiovisual market the fastest growing in the world, its growth rate far outstripping that of the United States' market³⁾, but European programme producers look set to account for a larger share of the revenue in this rapidly expanding market. Their share of the industry's total revenue is reckoned to rise from 28% in 1995 to 30% in 2005, with a 55% increase in revenue over the period, even though they will still be very much in a minority position on their home markets. Innovative products and services, such as interactive television and multimedia applications are expected to make a significant contribution to this growth, but will expand the market and complement existing products and services rather than replace them. The increase in the market share of European programme producers is likely to be particularly marked in markets other than free-to-air television (cinema, video, pay television, interactive television and multimedia applications). In these industries, which are largely dominated by American products, the market share of European products could rise from 13% in 1995 to 21% in 2005, if current policy is merely sustained.

The sector therefore has significant potential for job creation. A recent European Commission document ⁴⁾ put the number of persons directly employed in the cinema and television sectors in the European Union in 1995 at one million: if the European audiovisual industry can meet the new demand, its employment level could double. The inherent potential of the audiovisual industry has also been confirmed in the United States. A study published in April 1998 on the "Economic Impact of the Entertainment industry on California" showed that employment in the entertainment production sector rose by 38% from 1992 to 1996 – seven times faster than the total Californian economy⁵⁾. The sector accounted for over 450.000 jobs (226.000 directly, the rest indirectly). The study concludes by stating that "the issue now is whether the future economic activity that such growth may generate will occur in California or elsewhere. A continued, supportive public approach to entertainment sector expansion is essential to assure that the industry will continue to generate jobs, payroll, taxes and other critical economic benefits for California".

These considerations are particularly important in the light of the high priority given to job creation in the European Union at the highest level as confirmed by the Luxembourg Employment summit. In its Communication on Community support policies for Employment⁶⁾, drafted for the Cardiff European Council, the European Commission stressed the importance of making the most of the new opportunities provided by digitisation, with particular reference to the need for public support for

facilitating access to financing and for improving training.

It seems likely that another effect of digital technology will be to accentuate the trend to concentration in the audiovisual market. Audiovisual productions have always been expensive, in particular drama and especially feature films. The proliferation of channels in recent years is just one of the factors which has led to these already high costs increasing even further (this is dealt with in greater detail in the following section of this report). With such high market entry barriers, the audiovisual production industry has shown a tendency to market concentration. However, the phenomenon of network convergence is also leading to economies of scope : that is to say, digital technology allows content to be easily used in many different formats, opening up a wider market for what is essentially the same product. This is leading to alliances and concentrations between companies hitherto involved in different sectors of the economy, such as broadcasting and telecommunications, alliances and concentrations which seek to take advantage of these economies of scope (and which also aim to overcome the high entry costs to certain new audiovisual services, such as digital broadcasting and video-on-demand). Once again the paradigm is one of balance. On the one hand, European companies need to work together to be competitive players in an increasingly globalised market. On the other hand, abuse of dominance must be avoided, both for democratic and economic reasons. However, the Commission must be prepared, in its application of Community competition law, to take account of the special characteristics of the audiovisual sector. It must send a clear and consistent message of encouragement to those market players who are developing digital television services, without whose investments the digital television market, which is important for Europe, cannot prosper.

RECOMMENDATIONS

- It is vital that Europe makes use of the "window of opportunity" that is opening to establish digital broadcasting (in all its forms) in readiness for the information age.
- This implies that European policy makers should vigorously encourage the development by market players of digital television services.
- Education and training are essential if Europeans are to inhabit the new digital environment successfully. Accordingly, national governments should give greater importance to education in "media literacy" in school curriculae, from an early age.

I.3. The impact of the new technologies and the globalisation of markets on audiovisual content.

It is often argued that the progressive disappearance of spectrum scarcity and the proliferation of transmission channels will automatically increase the viewer's choice. Obviously, there will be a wider choice in terms of the quantity of programming available to the viewer. But the key question is whether the quality, the variety and the originality of the programming will be enhanced. Linked to this is the question of whether spectrum abundance and the proliferation of channels will actually benefit the European production industry.

Put another way, will the result of digitisation simply be more repeats of archive material and more cheap imports?

As a result of the increased demand for programming with the advent of channel proliferation, prices for television rights have skyrocketed in recent years. Between 1990 and 1995 the cost for drama, series, sitcoms, features and documentaries rose by

about 5% per year in real terms⁷⁾. The American NBC television network recently offered to pay \$13 million per episode for ER, a hospital drama shown around the world : NBC had previously paid \$2 million per episode. Similarly, in sports, the price recently paid for the rights to the 2002 and 2006 Soccer World Cup events was 1,7 billion Ecus, as compared to the 241 million Ecus paid for the 1990, 1994 and 1998 events⁸⁾. Only powerful, major enterprises with a strong position in the market can afford such astronomical figures. Developments in Europe in this respect are clearly shadowing those in the United States.

The High Level Group therefore concurs with the thesis put forward in the European Commission's recent Green Paper on convergence in the telecommunications, media and IT sectors ⁹⁾, namely that under conditions of spectrum abundance, content is the key as to whether European companies can have a say in the future.

Just as premium content is scarce, so is talent. Moreover, the idea that globalisation will create a larger market capable of offsetting increased content costs may prove, in a European context at least, to be largely false. Much European audiovisual material reflects and addresses the tastes, interests, events, cultural preferences and languages of viewers in individual countries. Nobody outside Germany, for example, watches the Rhineland carnival events on television (even though these events are now largely financed through the sale of television rights and this year resulted in around 124 hours of television broadcasting).

This holds true not only for news and current affairs programmes, but also for entertainment, educational and sports programmes. Paradoxically, this is demonstrated by the trends in transfrontier television, which represents an important activity. Non-national channels have significant audience shares in at least 9 West European countries (Austria, Belgium, Denmark, Sweden, Norway, Ireland, Luxembourg, Switzerland and the Netherlands). However, to compete with domestic channels, non-national broadcasters are increasingly having to "localise" their content (examples are MTV Europe's regional windows and Sat 1's Swiss windows). In contrast, the history of channels based on European-wide programme material, such as Euronews, shows that this market is limited. Hollywood, on the other hand, has succeeded in creating "content" which is global in its popularity. Thus, in Europe, the phenomenon of network globalisation is counterbalanced by cultural and linguistic diversity in content. Demand for domestic, regional or local material will remain a strong feature of the content market, alongside demand for certain "global" products (e.g. blockbusters).

This represents both a challenge and an opportunity for European producers. European audiovisual markets have traditionally been fragmented due to cultural and linguistic diversity. Channel abundance brought about by digital television will lead to even greater market fragmentation. Given the enormous and rising production costs for high quality content, either consumers will have to pay very high subscription fees or broadcasters will simply not be willing or able to invest in domestic, regional or local content and will fill their schedules instead with cheaper archive and imported material. The smaller the market, the greater the risk of market failure. For example, while the large German language market appears able to sustain a strong supply of domestically produced television drama, this is already much less the case for medium-sized markets (e.g. Italy, Spain) and for small markets (e.g. Belgium) co-production is often the only economically viable option.

The question raised is therefore the following:

How can the European production industry meet the challenges posed by the traditional market fragmentation brought about by cultural and linguistic diversity, on the one hand, and the additional market fragmentation brought about by channel proliferation on the other hand, while making the most of overall growth in the market?

As already mentioned, the market for multicultural, multilingual audiences has proved itself to be limited. Euronews, Arte and 3Sat, for example, cater mainly for niche markets (multicultural tastes not otherwise satisfied) and experience with transposing magazine formats from one European market to another shows that such formats, even in such universal genres as nature and travel, often need to be substantially changed and adapted to the tastes and preferences of the new target market in order to succeed. Pan-European or international programming, when successful, supplements national, regional and local programming. Some production companies, such as the Dutch producer Endemol, have been highly successful in developing programme formats for entertainment shows, series and game shows that can be sold to broadcasters across Europe. Such content needs to be encouraged, as it helps to pay for the production infrastructures that are required to sustain productions that are only local or national in appeal.

To sum up Chapter I, it may be said that the advent of digital poses new challenges and offers new opportunities to audiovisual production in Europe. The success of the US industry shows the importance of having a distribution-led production strategy. In the field of distribution, Europe's greatest strengths lie in its broadcasting companies.

The digital revolution will offer the viewer superior broadcast quality, channel abundance and a host of complementary services, including access to parts or all of the Internet via a set-top box costing no more than a few hundred Euros. European broadcasters must grasp the opportunities of the digital age, or others will do so in their place. European broadcasters must meet these challenges if they are to continue to contribute to sustaining strong local production bases, capable of providing content of local, national and international appeal. Nowhere in the world other than in Europe can audiovisual programmes in European languages, with European journalists, presenters, actors, directors and sports personalities, about European topics, events and ideas, be produced.

RECOMMENDATIONS

- The advent of digital will not obviate the need for continued support for European production.
- If "content is king", distribution remains the key to the kingdom.
- Consequently, policies to support European production must also recognise the vital role that broadcasters can play in making the most of the opportunities offered by the advent of digital.

NOTES TO CHAPTER 1

1) *Broadcasting, Society and Policy in the Multimedia Age*, COPY (University of Luton Press, 1997), p. 28. [[back](#)]

2) NORCONTEL Ltd., *Economic Implications of New Communication Technologies on the Audio Visual Markets*, Final Report, 15 April 1997. [[back](#)]

3) The NORCONTEL study estimated that the industry's overall revenue is likely to grow

by 69% over the period 1995 – 2005 and that the proportion of these revenues accounted for by direct expenditure by households is set to rise from 33% to 48 %. [[back](#)]

4) Commission Staff Working Paper Sec (1998) 837 of 14/5/1998. [[back](#)]

5) "State of the Industry: the Economic Impact of the Entertainment Industry on California", Motion Picture Association of America (M.P.A.), April 1998. [[back](#)]

6) COM(1998)354 of 3/6/1998. [[back](#)]

7) *Ibid*, p. 12 [[back](#)]

8) "Les Echos", 16 June 1998 [[back](#)]

9) COM(97)623 [[back](#)]



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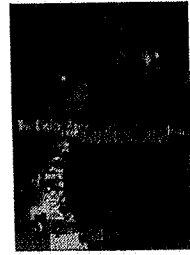
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The Digital Age: European Audiovisual Policy

**Report from the High Level Group on Audiovisual Policy
chaired by Commissioner Marcelino Oreja**



II. Improving the European Audiovisual Industry's Competitiveness

II.1. The General Framework – competing in the global market

The strong presence in the European, and indeed the global, audiovisual markets of American productions is a familiar characteristic of this century. Currently, most European markets are characterised by a dual "bi-polarity" :

- television programming consists mainly of material of national or American origin, with, generally speaking, a stronger presence of the former;
- feature film markets are dominated to varying degrees by American films, with most of the remainder of the market going to national films.

In both cases, non-national European material generally comes in a distant third place, at least in the larger markets. Europe's greatest weakness is in the market for non-national feature films, which is precisely where the American presence is strongest.

The reasons for the strong American performance in world and European audiovisual markets, in particular in films, have been analysed elsewhere, but in essence they are :

- the fact that American products can be sold very competitively on the world market because their costs are usually covered to a larger extent than elsewhere through sales in their large, homogeneous domestic market;
- the export advantages given by the English language;
- highly effective marketing and publicity;
- Hollywood's success in this century in creating a kind of global audiovisual language and grammar;
- the dynamism of the American industry and the quality of much of its product and marketing thereof;
- the failure of other audiovisual industries to rise to the challenge;
- the strong and consistent support of the U.S government.

Content drives consumer interest and Europe needs to develop forward-looking policies aimed at enabling European companies to become more competitive in the global marketplace.

The following sections will deal mainly with feature film and television drama and documentaries, which constitute the heart of programme catalogues (what would be called the "copyright industry" in the USA), which themselves are the assets on which the audiovisual industry is based. The analysis will concentrate on film in Section II.1 and give more attention to television production in Section II.2. If the Group has chosen to concentrate its analysis on these categories of content, it is not because it is unaware of the importance of other categories of programmes (e.g. sports and news) or the development of new types of content (e.g. interactive games), but because it considers that film and TV drama are of strategic importance and require special attention for the purposes of this report.

Following a long period of decline, cinema attendance in the European Union is increasing (up 7.3% compared to 1995) and the number of screens in the Union is rising rapidly thanks, in part, to the development of multiplexes. This increase, though, has so far mostly benefited the American industry, which has seen its share of the market rise from 56 to 78 % in ten years. European films saw their market share decrease from 19 to 10% over the same period. The American industry is in fact becoming increasingly reliant on exports for its revenues, which now account for 43% of the income of the American "majors" compared with 30% 10 years ago. Moreover, the motor behind this growth is sales to non-American television channels, in particular pay-TV channels. Earnings from pay-TV now account for 25.7% of the American majors' total revenue.¹⁰ As well as simply exporting programmes, the majors are also in the process of establishing thematic television channels in Europe, such as the Disney Channel in France.

The strong position of the U.S. industry demonstrates the importance of the link between production and distribution. The US industry has achieved mastery in both. In Europe, by contrast, while production is healthy in quantitative terms, the European audiovisual industry's ability to distribute its products leaves much to be desired. In 1996, 669 films (412 national productions, 242 co-productions) were produced, compared to 421 in the US and 279 in Japan¹¹). However, European films have considerable difficulty with regard to actual distribution, especially outside their home countries. Rates of export within the European Union (i.e. the percentage of admissions for non-national market measured against admissions for the European Union as a whole, including the home market) show weak results for Germany (8,8%), France (16,2%) and Italy (27,9%). British films, on the other hand, brought in two-thirds of their admissions from exports to other EU countries¹²). Paradoxically, British films have much greater difficulty obtaining distribution within the United Kingdom itself, where US distributors dominate (the five US majors shared 78% of total UK box office receipts in 1997)¹³). Overall, the EU/US trade deficit is growing at a faster pace, going from an 11% increase in 1995 to an 18% increase in 1996. The negative trade balance in films, television programmes and video reached a total 5.6 billion dollars in 1996 in favour of the US¹⁴). The last time an EU Member State had a positive trade balance in this field was in 1989, when the UK achieved a positive result of +66 million GBP (the 1996 result was -191 million GBP). By contrast, in 1996, the US film industry earned more on foreign (12.095 million USD) than on domestic (9.083 million USD) markets¹⁵). These recent figures demonstrate the potential of a successful, integrated audiovisual production/distribution industry, potential that has not yet been realised in Europe. They bring added credence to the Birmingham Audiovisual Conference's strong request for increased public support for the industry in Europe, and underline the need to move from production-led and fragmented structures to a distribution-led, integrated approach.

Europe is still failing to recognise the strategic importance of controlling catalogues of rights to premium content. This is not merely a cultural consideration : those who control the rights to content will influence to a considerable degree how that content is distributed. In fact, control of content confers control over distribution, and even exhibition : for example, the U.S. Majors are currently investing heavily in cinema

theatres in Europe. It is important the European media enterprises seek to maximise revenues from the content they produce and/or control by fully exploiting all possible means of distribution, including those provided by the new on- and off-line media.

In attempting to meet the rapidly rising demand for feature films and television drama, Europe can learn much from Hollywood in terms of competitiveness. For example:

- much more time and money should be devoted to the development of screenplays, and the tendency in Europe to go into production with an undeveloped script should be curbed. Whereas the European producer will spend on average 1% of a film's budget on development, the U.S. majors spend 10 % of their (much higher) budgets on this;
- producers and executives should continue to receive training in greater business efficiency and market awareness;
- there should be higher investment in professional training and re-training of producers, directors, writers and technicians on a European level;
- there is a need for more and better marketing. U.S. majors often spend up to 50% of a film's budget on this alone;
- although there are obvious cultural and linguistic limitations of exporting European productions, in particular to the North American market, there is no reason why the present tiny share of foreign markets should not be increased. Here a strategy is needed and, once again, American methods should be analysed;
- mechanisms should be created which spread the risk of investing in films over a slate of films.

There are grounds for cautious optimism. Since the nadir of the early 1990s, European productions, in particular feature films, have staged something of a comeback. In 1997, European films increased their market share in France (35%), Spain (30%), Italy (40%) and in Germany (from 7% to 17%), although, as has been said, this increase was mainly due to the success of national films on their home markets. Television, which is the heart of the market, has seen a clearer audience shift away from American programmes to European ones. Whilst their actual effects are difficult to quantify, it would indeed appear that the various support mechanisms for the European audiovisual industry, inaugurated at both European and national level over the last ten years, are contributing to this success.

However, we have been here before and it is too early to proclaim the revival of the European film industry. It is essential that the momentum built up over the last few years is not allowed, as has happened so often in the past, to simply dissipate; the current support structures should therefore be updated and improved so as to maximise efficiency and value-for-money.

To sum up: as was argued in [section I.3](#), the main consequence of digitisation will be an explosion in demand for audiovisual material. The question for Europe, therefore, is really the following:

Will this explosion in demand for audio-visual content, especially films, television drama and documentaries, be met by archive and imported material, or will it be met by new, home-produced programming?

If it is to be the latter, then there is an absolute need to create the conditions for a competitive European audiovisual industry.

RECOMMENDATIONS

- Europe must create the conditions for a competitive audiovisual production industry that will be in a position to make the most of the predicted explosion in demand for audiovisual material.
- To achieve this, Europe must build on its own special strengths, in particular through greater cooperation between European countries. In doing so it can learn much from America, in particular with regard to methods of distribution and marketing techniques on international markets.
- The development of a high-performance distribution and rights management sector in Europe should be a priority objective for European policies.

II.2. The funding of production by television

In any examination of ways of improving the competitiveness of the European industry, it must be recognised that television broadcasters play a leading role in funding both film and television programme production (carrying out, in many cases, much of the latter "in-house").

It is difficult to obtain precise figures on investment by European television channels in production. Part of the problem is that their involvement can take the form of sole producer, co-producer or purchaser of distribution rights. An additional problem is the distinction between investment in television drama (films for television, series, mini-series etc.) and feature films. However, the total amount is estimated at a little under 15 BECU, of which three quarters comes from German, British, French and Italian broadcasters.¹⁶⁾

The United Kingdom, Italy, France and Portugal have obligations for television channels to invest in the film industry. Indeed, investment by television channels in cinema productions is substantial in these countries. In the United Kingdom, for example, over a third of the films produced in 1997 were part-financed by broadcasters¹⁷⁾. In Italy, a new law compels public broadcasters to invest 20% of the licence fee in producing drama for television or cinema and compels private television companies to devote 30% of their total investment budget in the production of, or purchase of, European drama. In France, no less than 42% of total investment in the film industry comes from television channels, of which more than half comes from advance sales to and productions by Canal+¹⁸⁾. In Portugal, the proceeds from a 4% tax on television advertising constitutes a major source for the funding distributed by the Portuguese Cinema and Audiovisual Institute (IPACA) to finance film production.

Even in those countries where there is no statutory obligation to invest, the role played by television channels is nonetheless considerable: in Germany, about 50% of films are co-produced by television companies¹⁹⁾. In Spain, the public broadcaster RTVE invested 12 MECU in purchasing the distribution rights to Spanish films in 1997 and Sogecable plans to spend 16.9 MECU on such rights between 1996 and 1998.

That being said, it should be remembered that production is not only feature film: productions made purely for television can have as much cultural significance as cinema productions and are essential for the development of the industry.

European television production has been steadily increasing over recent years. The main reasons for this are:

- The advent of private television has given rise to more competition and a demand for new productions;

- Audiences express a clear preference for their own language and culture on the screen;
- American productions are becoming more expensive and appear to be suffering from a "creativity deficit".

The current high level of investment in audiovisual production is due to the increased programming expenditure of both private and public broadcasters (the former having significantly increased expenditure from initially low levels, the latter maintaining and even increasing traditionally high levels of investment in European production).

The members of the Group felt that broadcasters should pay more attention to marketing as an integral part of the production and distribution process. The success of Hollywood productions is largely explained by the fact that budgets for marketing them are proportionally very much larger than is the case for European productions and the attention given to marketing much greater. In this respect, private television channels in Europe, since their survival depends on the commercial value of the programmes they broadcast, can bring much needed expertise and experience to the process of audiovisual production.

Whilst members of the group emphasised the roles of private and public broadcasters to differing degrees, they agreed on the following points :

- Broadcasters, public and private, are a key and driving force of audiovisual production, including film, in Europe.
- Behind this common reality, there is a high degree of diversity in practices in the various Member States : North and South; small and large countries; countries with links outside Europe and those without; those which favour dubbing and those which use sub-titling; those where public service broadcasting is highly regarded and those where it is less so; those which import significant proportions of programming from other Member States and those which don't; those which are deregulating and those which are re-regulating; etc.
- Demand for local content is high: whether a market can produce sufficient supply depends at least in part on its size (economies of scale). Even in the larger markets, there is considerable public intervention although this takes different forms (cf. France, Germany).
- Some form of partnership between the public authorities and local and national broadcasters can catalyse local production. The Portuguese example (see section II.3 below) is innovative and perhaps offers a way forward, in particular for the smaller markets.

RECOMMENDATIONS

- Broadcasters are a key and driving force of audiovisual production and policies to support European production should recognise this reality.
- Broadcasters themselves, as major investors in production, should pay more attention to marketing as an integral part of the production and distribution process.



II.3 Support Measures

As has been argued in Section I.1 of this report, the audiovisual sector is not simply an industry like any other : it plays a vital cultural and social role. A European audiovisual market dominated by the cultural products of another society would eventually result in a citizenry which would be partially alienated from its own cultural and historical context. Such concerns are not purely European but are shared by many societies in the

Far East and even by countries on the American continent, such as Canada. In addition, as was pointed out in Section II.2, the economic significance of the sector, given its potential for growth and job creation in Europe, is enormous. But public intervention should, as a matter of principle, be limited to areas where there is clear market failure. Moreover, European support (which is relatively small in scale compared to support at national level) must take account of the diversity of national situations, by seeking to act in a complementary way to national policies and by bringing the added European dimension.

Whilst the ideal situation would be a European industry no longer needing public support and intervention, this appears impossible for the foreseeable future. The question, then, is what form should this support and intervention take to achieve optimal results ?

Information content (news services, financial services, recreational services, documentaries) rarely creates catalogue value. The exception is the documentary, though this is in general substantially cheaper than feature films. Entry barriers are therefore relatively low and such genres should arguably not be a priority for European level support (except for documentaries).

Entertainment content consists of two main categories : sport and feature film.

With a few exceptions such as Formula 1, sport does not really have an international audience. Even events such as the Olympics and World Cup football often have to be presented differently according to the domestic audience, and the level of interest in any particular country is largely dependent on the performance of the national teams or representatives in the event (it is no coincidence that a record 28 million French people watched the 1998 World Cup Final on television). The revised Television Without Frontiers Directive 20 allows Member States to require that certain events of major importance to society should be accessible through free television. Sports programming as such, for which demand and prices are high and supply plentiful, is an example of content which does not require European support. Feature films, in contrast, whilst having great international potential, are expensive to produce. There are, therefore, high entry barriers to this market segment. The same argument applies, mutatis mutandis, to television drama and documentaries. Conversely, such content is the most valuable in the long term because of its catalogue value. If support is needed, it is here. The Group's proposals for such support are set out below.

Securitisation funds

One major problem facing European producers is finance. The Conclusions of the Council of Ministers meeting on 28 May 1998 specifically refer to the interest expressed by the professionals at the Birmingham Conference in the creation of a financial instrument for attracting private capital into European production. This is a reference to the Commission's proposal for a European Guarantee Fund 21 which was welcomed by the industry, the European Parliament and the majority of Member States, but which has failed to achieve the necessary unanimity in Council. However, even those Member States that were not able to join the majority in favour of its proposal expressed sufficient interest in the principle (of a Community instrument for attracting more private sector investment into the production of European works with an international sales potential) for the idea not to be purely and simply abandoned. On the contrary, either the idea of the Guarantee Fund should be pursued vigorously, or a new, different set of proposals should be worked out and presented to the European Parliament and Council on the occasion of the MEDIA II review.

Here, the funding mechanisms, known as "securitisation", which have been used by Fox and Universal (2 U.S. majors) and Polygram, are of interest. This mechanism involves the use of a limited 3rd party equity capital base (typically 3 to 4%) coupled

with bank debt in the form of securitisation notes. The funds raised in this way are used to finance the negative (i.e. production) costs of movies produced by the studios, with the studios themselves retaining all distribution rights. While the studios do not guarantee repayment of the bank debt, they are required to take a subordinated position on the recoupment of their distribution and marketing costs which, in order to ensure a suitable film release, are required to equal at least 60% of the negative cost. This minimum spend requirement in a subordinated position, coupled with a crossing of the results of all films financed under the structure, provides an effective (but not absolute) "guarantee" to the banks.

Such mechanisms provide the Hollywood studios with significant levels of relatively low-cost financing for their film slates. They could also serve as a model for a similar scheme at Community level. For example, the following scheme should be considered:

- the Community could identify a limited number of production and/or distribution companies (or consortia composed of several companies) with an international product capacity of around 10 films each over a three year period. These films would have to be internationally marketable.
- The Community would provide the necessary equity capital - say 25 MECU to leverage a further 475 MECU from banks to create a fund of 500 MECU, covered by insurance companies.
- This money would be distributed to the companies or consortia chosen and used to fund mainly the development and production of the films involved up to pre-agreed levels. Of the money spent on production, a minimum amount should be spent by companies independent of the consortia. In this way the scheme could contribute to maintaining a healthy independent production sector in Europe.
- The companies or consortia involved would be required to spend from their own resources 60% of their films' negative costs (i.e. actual production costs) on prints and advertising. It would be possible to insure against the loss of part of this 60%, the insurance premium to be paid by the company or the consortia from its allocation for the fund.

The funding, besides being relatively inexpensive, would be off-balance sheet for the companies concerned, which constitutes a major advantage in accounting terms (e.g. through avoiding unnecessary anxiety on the part of shareholders).

In this way, an extra 800Mecus could be injected into European production and distribution for a Community contribution of 25 Mecus. This type of scheme has already been shown to work for large companies capable of offering the necessary slate of films²²). The key question regarding its feasibility in Europe is whether consortia, possibly made up of companies from several Member States, could be constituted that would be capable of offering between them the required production and distribution potential. If so, the structural impact of such a scheme would be considerable and it would therefore provide considerable value for money ²³). As the amount of the Community contribution would be relatively small, a separate proposal could be dispensed with, and the necessary provisions included in an overall proposal for the review of the MEDIA II programme.

A network of Film and Television Schools for Europe.

There exists in Europe a great tradition of film and television schools which provide a plentiful supply of initial training courses at national level. This tradition should be built upon at European level in three ways :

- the exchange of best practices and the cross-fertilisation of ideas between schools are needed in order to maintain and improve their level of excellence and bring the added European dimension;
- current curriculae need to be supplemented by courses that enable budding

- European professionals to acquire the international business skills required for them to be able to compete on global markets;
- there needs to be a symbolic centre of European film and television excellence.

In concrete terms, this would translate into increased support from the MEDIA programme for a network of institutions providing continuous and professional training courses on international media corporate management skills (business, financial, marketing and legal).

The network would also offer training in script writing and development for the international market, special effects, technology and computer animation. The existing MEDIA funded organisations should be invited to make every effort to extend their activities beyond the North and West of Europe, both geographically and linguistically, to address the current imbalance that is unfavourable to Southern and Eastern Europe.

The strengthening and widening of European training networks in the MEDIA framework requires, for consistency's sake, a high degree of coordination between centres of excellence. This should be facilitated, and the European film and television industry be given a symbolic "centre of centres", through the setting up of a "European Film and Television School" i.e. an actual physical centre where coordination activities could be carried out and where professionals in training could periodically come together. This centre should be partly self-financed and partly industry-financed, with additional support (at least initially) coming from the MEDIA programme and national governments.

European showcase awards

If the European audiovisual industry were provided with the requisite capital base, regulatory environment and training, it would nevertheless need a showcase event for its television and film productions. For some years now, the European Film Academy has organised film awards (previously known as the "Felix" awards). The Academy is making substantial efforts to raise the profile of those awards. The United States has the Academy Awards (the "Oscars") and their equivalent in television (the "Emmys") which serve as excellent marketing tools. The European industry could benefit greatly from an awards ceremony with comparable impact. The High Level Group considers that this idea should be rapidly progressed by interested industry players, in particular the Academy, with the Commission playing an enabling role. This proposal, which first emerged in the High Level Group, was endorsed by Jacques SANTER, President of the European Commission, at the European Audiovisual Conference in Birmingham. 24)

The MEDIA II Programme

The MEDIA programme is a necessary complement to national support programmes. Considering the limited amount of funding available, it should remain focused on promoting the pan-European distribution of European films and on enabling European companies to become serious players in Europe as well as internationally.

Drawing on the lessons of the MEDIA I programme, MEDIA II identifies 3 key areas:

- training
- development
- distribution.

The programme came into effect on 1 January 1996 with a budget of 310 MECU. The High Level Group agreed on certain initial observations with a view to the mid-term review of MEDIA II.

The Group expressed itself in favour of the 3 key areas prioritised by MEDIA II. This

narrower list of priorities, in comparison with MEDIA I, makes the programme more comprehensible and transparent. It has also significantly reduced management costs.

The Group also approved the launch in 1997 of an "automatic support" system for film distribution in theatres, which links support for films to their box-office success in non-national markets across Europe. The support mechanism rewards success and therefore contributes to making Europe's audiovisual industry more competitive. Moreover, it allows the collection of vital statistical information which contributes to a better knowledge of the European market. This support system should therefore be established on a permanent basis and the budget allocated to "automatic" (as opposed to selective) support should be increased. Serious consideration should be given to enlarging the scope of automatic support for other forms of distribution e.g. video (again, in non-national markets).

Dubbing and subtitling costs should continue to be exempt from repayment costs under the MEDIA programme, since these activities contribute to the circulation of European films. It would be highly desirable that support for the dubbing or subtitling of television productions be increased and extended in scope to foster programme exchanges between European broadcasters.

Whilst MEDIA II is working well, there is still room for improvement. Management practices should be improved and the 12-week period required to deal with contracts and payments should be cut down to 4-6 weeks. Transparency should be improved, for example by giving reasons for Commission decisions, while safeguarding the independence of the project assessors.

In the field of continuous professional training, the MEDIA programme could contribute decisively to the network of European Film and Television Schools, as described above.

The budget devoted to development should also be increased. It is proposed that EU support for development should cease to be a single, one-off, never-to-be-repeated loan, but should be by stages, with the potential of the screenplay assessed at every stage, with the total possible having a much higher ceiling. A 'two-tier' approach could be envisaged, with the first tier being open to all, as in the current system, and the second tier being targeted at companies with a proven track record, a proven ability to develop a slate of films and demonstrable access to partnership funding.

One of the most successful national funds has been British Screen's Development arm, and with their practice in mind it would be desirable to see the Development Fund as a rolling fund with full recoupment plus a premium sought from films that go into production. This should help to build an ever-larger fund, to help more producers, and to increase the incentive to develop a film properly before going into production.

The system of payment and repayment inaugurated at the start of Media II should be scrapped altogether. If a film supported by Media Development funding does not achieve production, then that support should be written off 100%. Unless the producer is in breach of contract, it is the judgement of the Development Fund which has as much responsibility as the producer, and to penalise a producer after he/she has seen a project go down is wrong and punitive.

Development finance is a very high-risk investment, and should be awarded on an even more rigorous basis to producers, taking into account both industrial and cultural criteria. The chosen projects should be nurtured as long as they seem viable, supported further when more development is needed, or cut off when seen to be going wrong.

Video often accounts for significantly more revenue than theatre exhibition. The only support under MEDIA II, however, is in the form of a cash flow benefit and the

amounts available are too small. The current scheme is of little benefit and should be reviewed. Once again, an automatic support system should be considered and the potential of Digital Video Disk should be taken into account.

Finally, when compared with EU expenditure in other areas, and given the strategic importance of the sector and its huge growth potential, the budget consigned to the MEDIA programme seems insufficient and should be substantially increased. MEDIA should also be made a pluri-annual rolling programme, like the Framework Programmes for RTD. Consideration should be given to making the necessary adjustments to strengthen the programme as early as possible and, in any event, well before the current expiry date i.e. 31 December 2000.

Encouraging investment in production by TV broadcasters

The funding of audiovisual production, particular feature films, by broadcasters is usually done via direct funding. However, there are many other ways in which television could play a greater role in the funding or supporting of production. For example:

- broadcasters could engage in more pre-purchases of the broadcasting rights to a feature film ;
- broadcasters in smaller states often have problems, caused by the limited size of their markets. Agreements with broadcasters in other countries could increase the available funding and the potential market. This could also be helped by an automatic support system;
- broadcasters could also organise an exchange of films and other programmes, thus allowing a more rapid renewal of stock and again widening potential markets (cf. the suggestion for targeted support for subtitling and dubbing above);
- permanent points of contact between television and cinema producers could be established; and
- advertising feature films on television can have a significant effect on their success in the market place: broadcasters could undertake this as a part of funding.

Much that broadcasters can do to support production can be done on the initiative of the broadcasters themselves or, in the case of public broadcasters, through the public service remit. However, voluntary "partnership" agreements between the public authorities and private broadcasters can also play an important role, as is demonstrated by what has been done in Portugal.

Under this agreement, the Portuguese government repays the investment of the broadcaster (SIC) in film production²⁵). This refund by the State must be used to finance further audiovisual production. The broadcaster may choose from a range of productions, including those selected by the Portuguese Institute for Cinema and Audiovisual (IPACA), and therefore may choose those most suited to its particular audience. Funding may be by direct finance or by promotion. The broadcaster benefits, since he gains a measure of control over projects selected for funding and will have the right to broadcast the film. The producer benefits from the intensive promotion of the film and the guarantee of television showing. The overall result is an increase in production. Although such arrangements are primarily national in character, the Community and the Member States should consider how their spread could be encouraged, and in particular how the transnational potential of the films and programmes produced could be realised. This is particularly important for the smaller markets.

RECOMMENDATIONS

- Current support measures should be adapted and completed. In particular, the following are seen as key elements:
- A mechanism for attracting more investment into European production, such as a "securitisation" scheme, should be introduced;
- A network of European film and television schools should be established to link centres of excellence, perhaps with a symbolic "centre of centres";
- A European showcase event should be encouraged;
- The MEDIA II programme should be strengthened and provided with resources appropriate to the size and strategic importance of the industry. Particular emphasis should be placed on training, distribution, script development and marketing. There is a need to act urgently in this respect;
- Partnership agreements between broadcasters, including private broadcasters, and public authorities should be developed (with possible Community support for the transnational dimension).

NOTES TO CHAPTER II

- 10) *The European Film Industry under Analysis : Second Information Report 1997* European Commission, DG X/C (Directorate of Culture and Audiovisual Policy), p. 15. [[back](#)]
- 11) EUROSTAT "The Audiovisual sector in the European Economic Area in the 1990's" Statistics in Focus 98/2 of 10/2/1998. [[back](#)]
- 12) Source: *European Audiovisual Observatory*. [[back](#)]
- 13) "A Bigger Picture: The Report of the Film Policy Review Group", Department of Culture, Media and Sports, March 1998. [[back](#)]
- 14) European Audiovisual Observatory, 1998 Yearbook. [[back](#)]
- 15) European Audiovisual Observatory, 1998 Yearbook. [[back](#)]
- 16) IDATE: *Le marché mondial de l'audiovisuel et du cinéma. Analyse sectorielle*. (November 1996) [[back](#)]
- 17) Screen Finance, October 1997. [[back](#)]
- 18) CNC info, May 1997 [[back](#)]
- 19) Evangelischer Pressedienst (Special Edition) [[back](#)]
- 20) Directive 89/552/EEC as amended by Directive 97/36/EC (Official Journal of the European Communities n° L 202/60 of 30.7.97) [[back](#)]
- 21) The Commission's proposal for a European Guarantee Fund COM(95)546 remains on the table but has not achieved the required unanimity in Council. [[back](#)]

22) Universal has recently raised \$1,1billion, Fox \$1 billion and Polygram \$690 million in this way. [[back](#)]

23) Especially if the Community itself were second or third in the ranking of beneficiaries from the profits made by each slate of films, which would enable it to re-constitute its initial investment with a view to insuring against loss or re-investing. [[back](#)]

24) It subsequently created significant interest and was welcomed by Ministers responsible for Audiovisual matters at the Council Meeting on 28 May 1998. [[back](#)]

25) The first film produced under this agreement, "Temptation", was released in December 1997 and achieved 300,000 admissions in three months in Portugal, a record for a Portuguese film in Portugal. [[back](#)]



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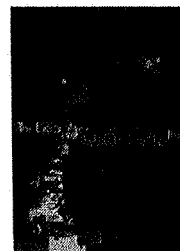
The European
Commission

Directorate General



The Digital Age: European Audiovisual Policy

**Report from the High Level Group on Audiovisual Policy
chaired by Commissioner Marcelino Oreja**



III. The Role of the Public Authorities in the Media

Under this heading the Group tackled two distinct areas of activity on the part of government : the definition, organisation and funding of public service broadcasting on the one hand and, on the other, the general legislative framework for the electronic media, as enshrined in "media" or "broadcasting" laws in all Member States and as implemented through various types of regulatory bodies. In both respects, it is a truism to say that the detailed arrangements vary greatly from one Member State to another. However, all have made arrangements for some form of public service broadcasting, all have media legislation in which common principles (such as freedom of expression) figure prominently, and all have made arrangements in some form for the relevant legislation to be implemented and/or monitored by regulatory bodies (independent, to varying degrees, of government). This commonality is, to a considerable degree, due to the implementation by Member States of international legal instruments in this field (such as the European Convention on Human Rights) and Community directives (such as the "television without frontiers" Directive).



III.1 Public service, its role and funding

The Group noted that there are wide divergences between the views expressed by public and private television broadcasters on their respective roles and on the public policy approach that should be taken at European level.

Quality and diversity must be the basis for public service broadcasting. Public service broadcasting has an important role to play in promoting cultural diversity in each country, in providing educational programming, in objectively informing public opinion, in guaranteeing pluralism and in supplying, democratically and free-of-charge, quality entertainment. It is legitimate for broadcasters entrusted with a public service remit to seek an important audience in order to cater for the needs of all social groups. Moreover, public service broadcasters have traditionally played a role in the funding of European and national production. They must be able to continue to fulfil this role by participating in the strengthening of European production and its adaptation to new markets, as well as in new digital developments.

What is needed are balanced solutions which at the same time pay due respect to what appear to be the two main principles : the first is that public television plays a vital role

in most Member States of the European Community, a fact which has recently been acknowledged in the protocol on the system of public broadcasting attached to the Treaty of Amsterdam. The second is that European economic integration is rooted in competition and the free market. The future of Europe's distinctive "dual" public/private broadcasting system depends on these two apparently incompatible principles being reconciled as far as possible. The relevant European Community Treaty provisions (in particular Articles 90 and 92), as interpreted specifically with regard to the system of public broadcasting by the protocol, can be of considerable assistance in achieving this objective. In concrete terms, the Group considers that certain basic principles and criteria for funding arrangements should be drawn up along the following lines :

Basic principles

- The protocol²⁶ confirms that it is the unanimous will of the Member States to stress the role of public service broadcasting, which is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism.
- It is the responsibility of each Member State to define and organise the system of public service broadcasting on whatever terms it considers most appropriate by entrusting it with the remit that that Member State considers necessary in the public interest.
- The Treaty is without prejudice to the competence of Member States to provide for the funding of public service broadcasting, insofar as such funding is granted for the fulfilment of the public service remit as defined by each Member State.
- However, such funding must not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the public service remit must be taken into account.

It goes without saying that, in the Community system, it is the Commission's responsibility, under the control of the Court of Justice, to ensure compliance with Treaty provisions in general, including competition rules and the protocol. In this respect, certain criteria for funding arrangements are necessary.

Funding arrangements

The funding of public service broadcasting must :

- Be in proportion to, and not more than, what is needed to discharge the public service remit (the criteria of proportionality).
- Be granted on open terms such that compliance with this principle can be checked on at any time (the criteria of openness).
- A public service broadcasting remit may be entrusted to public or private sector operators, as each Member State chooses.
- When there are public and private sector operators on the market, there must be safeguards to ensure fair competition.
- Each Member State must therefore define clearly, in its national legal system, the scope of the public service requirement and the specific obligations in terms of programming and other requirements associated with it.
- To ensure compliance with the criteria of proportionality and openness, public sector funding must be provided exclusively for broadcasters with a public service remit as defined by each Member State.
- For this purpose, financial openness should be applied, in particular where a public sector operator receives funding from sources other than public sources in the realisation of its public service remit. Furthermore, when that operator engages in purely commercial activities (i.e. that go beyond those activities defined as part of its public service remit), separate accounting should apply. This is necessary to avoid public sector funds being diverted to commercial activities.

- Taking account of the specific situation in each Member State, the funding of public service activities should come mainly from public funds; recourse to the advertising market should remain secondary.

From this it can be seen that, whilst different points of view were expressed in the group, there was nevertheless a measure of agreement on the need for a balanced approach with regard to public and private broadcasting, as well as on the basic principles and general criteria for funding arrangements.

RECOMMENDATIONS

- The "dual system" (private and public broadcasters) is a distinctive feature of the broadcasting landscape in Europe. This should not be questioned as such, and it should be left up to individual Member States primarily, as well as to market forces, to determine the respective importance of the public and private sectors in each country. However, certain basic principles should apply, and should be translated into a set of concrete criteria for funding arrangements. The "Amsterdam" protocol annexed to the EC Treaty is of assistance in this respect.
- The basic principles that should apply are based on the Member States' will, as expressed in the protocol, to stress that public service broadcasting is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. It is up to the Member States to define and organise their public broadcasting systems and provide for the necessary funding.
- Two fundamental criteria that should be applied in making funding arrangements are proportionality and openness. The first implies that public funds are provided exclusively for public service activities and do not go beyond what is necessary in this respect. Public service activities should be funded mainly from public sources. The second implies that Member States provide a clear definition of the public service remit, that financial openness is ensured and that, where public sector operators engage in purely commercial activities, separate accounts are kept.
- These principles and criteria would provide a sound basis for the future of public service broadcasting, while ensuring the necessary degree of respect for the principles of free enterprise and competition that private broadcasters need in order to develop their activities.



III.2. Legal framework and regulatory bodies

All Member States have in place "media", and generally more specific "broadcasting" legislation, some of which is quite detailed. This legislation generally covers both public and private broadcasting i.e. it creates the legal framework for broadcasting as an activity. Moreover, in order to ensure the implementation of this legislation, most European countries have long recognised the need for regulatory bodies for the audiovisual sector which are independent of political power.

The European Commission's Green Paper on the Convergence of the Telecommunications, Media and IT sectors, published in December 1997 has already launched a timely debate on the possible consequences of digital technology for regulation ²⁷). The debate has raised a number of fundamental questions, such as:

- what changes will the digital revolution imply for the role of the regulators?
- will there be a need to alter the way different sectors, for example telecommunications and audiovisual, are regulated, even to abolish the distinction between them?
- will there be a need to change the division of responsibility between national,

regional and global bodies?

One of the prime tasks of regulatory bodies today is to issue broadcasting licenses. Licences are issued with regard to two basic goals: to ensure pluralism in broadcasting and to ensure compliance with rules on content, which include measures to attain public policy objectives, such as cultural diversity, and measures to protect the general public interest. Digitisation raises the question of the extent to which "traditional" licensing procedures need to be maintained or adapted. Whilst the digital revolution will eventually reduce spectrum scarcity, this moment is still some years away. It should be remembered that viewers today are equipped with analogue receivers and that a period of simulcasting of up to fifteen years may well be necessary before analogue transmission can finally be "switched off". Moreover, simulcasting may actually exacerbate the problem of spectrum scarcity.

Digitisation does not alter the basic purposes of licensing. Nevertheless, the ever-increasing number of services available will require adaptations and improvements in licensing or authorisation procedures, for example the introduction of a single licence for providing a range of services, along the lines of the British legislation of 1996 on multiplex providers. In some Member States there is already an urgent need to simplify licensing procedures. For example, cable networks in Germany already allow the transmission of 150 channels but the existing licensing procedures delay economic activity for several months. In general, "traditional" procedures should be replaced by lighter, simpler systems operating in a graduated way as a function of the pervasiveness of the medium (e.g. pay-per-view and near video-on-demand services should only be subject to minimal requirements whereas terrestrial free-to-air television will continue to need a higher level of regulation in the general public interest).

It will be necessary, moreover, to consider whether any procedures are needed for on-line services : indeed, it may not be necessary to subject certain services to a licensing requirement at all. For example, it would seem unnecessary to require an information service on the Web to have a licence. But if this same service were to be included in a terrestrial digital package the problem of scarcity would arise again, and with it a selection procedure.

All Member States have introduced specific rules in order to guarantee pluralism in the media, competition rules having so far been judged insufficient to achieve this objective alone. Some Member States (United Kingdom, Germany) have recently adapted these to take account of the consequences of digital technology. Ideally, this matter should be dealt with at the European level but the practical difficulties of doing so are enormous. In the long term, the approach of having specific media concentration rules might have to be reviewed.

The Internet in particular poses daunting challenges to the various regulatory activities currently carried out at regional, national and even European level. However, for regulatory purposes, there is a fundamental difference between the Internet and broadcasting. In the latter case, it is clearly the broadcaster (who is easily identifiable) that is legally liable for the content of his broadcasts and, in both international and Community legislation, it is the country of origin principle that applies. The Internet environment, however, functions in a different way, involving infrastructure suppliers, service providers, access providers and content providers (which may be located in different countries for the same service). The question of liability is therefore far more complex. Neither it nor the matter of which State has jurisdiction has yet been resolved.

Whilst transmission on the Internet with full broadcast quality may well become a technically and economically viable option, it is impossible to say at this stage how and when this will happen. There are a wide range of costly obstacles concerning infrastructure provision, switching technology and consumer devices to be overcome before broadcasting - in the true (qualitative) sense of the word - via the Internet

becomes a reality

Nonetheless, it is clear that the digital revolution is already bringing about changes in the markets concerned, in particular in the development of new services. For example, Internet services via a set-top box for televisions are already available (Canal+, Premiere). If Europe wishes to remain competitive in an environment where video services come from all over the world, it is necessary to put in place a regulatory framework that fosters competitiveness, innovation and, above all, the rapid development of digital TV services.

The regulatory framework, in order to evolve without the need for constant adaptation and the consequent lack of legal security, should be more based on principles and consist of less detailed rules. Such principles, however, should include pluralism, the need to provide for quality content, respect for linguistic and cultural diversity and the protection of minors. In addition, clear rules and safeguards are needed to ensure open, non-discriminatory, and equal access both for competing providers and for users to digital networks and services. The framework should also be conducive to fostering European, national and local audiovisual production.

On a global level, it is essential that the specificity of content and legitimacy of public policy objectives based on cultural diversity and pluralism of expression is recognised in international trade negotiations.

Further to the above, the Group considered two particularly relevant questions with regard to the nature of regulation and the role of regulatory bodies in the digital age.

Should the telecommunications and audiovisual sectors continue to be regulated separately?

The United States and Canada have single regulatory bodies covering both the audiovisual and telecommunications sectors. In most Member States, on the other hand, audiovisual and telecommunications are handled by separate regulatory bodies (Italy and Spain being notable and recent exceptions, although in both cases the regulators have two separate sets of law – telecommunications and broadcasting – to administer and separate internal departments to do so). Which is the most appropriate approach for the digital age?

In the case of terrestrial free-to-air services, there would seem to be little reason why the generally prevailing model in Europe should be changed as a result of digitisation. There is, however, a case to be made for the relaxation of unnecessarily restrictive regulations, especially as terrestrial free-to-air services will have to remain competitive with a host of new services emerging as a consequence of higher capacity on all networks. With regard to these new services, many of which could be interactive and/or on-demand services, it may in some cases be unclear whether they come under existing telecommunications or broadcasting regulations or both. From an operator's point of view, it is important that regulation should be consistent: the same service should not be regulated twice, on the basis of different regulatory structures which have fundamentally different aims, with the risk that contradictory results arise.

Such problems may arise in a number of Member States, because regulation of an economic and technical nature regarding infrastructure is not separated from rules on content, which are mainly concerned with the exercise of the freedom of expression. Certain services, whose nature is essentially that of a private communication, may therefore be subjected to inappropriate or disproportionate elements of broadcasting regulation simply because they use a particular network (for example, cable). One possible, if rather radical, solution to such difficulties could be the creation of a regulatory framework wherein infrastructure (networks) and content are regulated separately. In certain cases, ex-ante licensing procedures could be replaced by a

notification requirement. The practical implications of such an approach need to be carefully thought through, however, or it might create more difficulties than it resolves.

The regulation of content cannot be dealt with in purely economic terms. The key element is rather the nature of the service and the question should therefore be analysed in the following way:

- a service which provides information for the public (or a section of the public) or content which has copyright attached to it, is communication to the public and the same public interest principles apply as those that underpin traditional broadcast regulation.
- a service which provides the facilities for private correspondence between users does not raise the issue of content regulation or of copyright (except, possibly, breach of copyright). The issue here is that of protecting the confidentiality of private correspondence.

Digitisation will not alter these different forms of communication. The differences between them would remain even if both types of service are provided by a single operator or offered via the same network.

How should responsibilities be distributed between national, regional and supra-national bodies?

Digitisation means there is a need for more co-operation between national bodies in the Community. The rapid growth of transfrontier communications has already led to the development of common audiovisual and tele-communications policies at Community level. The Contact Committee established by the revised Television Without Frontiers Directive is one example of a mechanism put in place to facilitate co-operation. The British ITC, the German DLM and the French CSA meet several times a year to compare notes and the European Platform for Regulatory Authorities (EPRA) includes practically all EU and many non-EU states. Such practices should be intensified and extended. Similarly, national regulatory bodies responsible for different sectors will have to step up co-operation between themselves if they are to avoid divergent or contradictory administration.

However, the Group sees no need for a Community level regulatory body as long as cooperation proves sufficient to achieve the above objectives. On the contrary, national differences and customs and the need for the regulator to take account of local realities, as far as frequency management is concerned, require full respect for the subsidiarity principle in this field to the benefit of the national bodies set up by each Member State.

The rapid growth of transfrontier communications also has a global dimension and there is a need for rules and principles at this level too. Here, the European Union also has a vital role to play in ensuring that international agreements take account of fundamental principles with regard to freedom of expression and pluralism. In particular in the on-line service environment, the European Union should encourage self-regulation by the various service providers acting in co-operation with users and public authorities, in particular the bodies which regulate the audiovisual sector. The latter must naturally adapt their competences to the audiovisual services provided on-line on the new networks.

RECOMMENDATIONS

There will continue to be a need for specific regulation for audiovisual content based on the fundamental distinction between public and private communication. This regulation should encourage innovation and competitiveness. In particular

- licensing procedures need to be simplified and the level of regulation adapted to the nature of the service;
- the regulatory framework must be clear and consistent. It is imperative to avoid subjecting the same service to two sets of regulatory requirements with different objectives;
- the regulatory framework should abide by certain principles and in particular it should encourage competition, pluralism and open, non-discriminatory access. It may take account of other, more specific, public policy goals, primarily set at national level
- the regulatory framework should encourage the development of digital services and a smooth transition to an all-digital environment;
- whether there is one regulator for technological aspects and another for content aspects, or a unified regulator administering both sets of rules, is for national governments to decide. However, where there is more than one regulator, they will increasingly need to co-operate between themselves and with the competition authorities;
- European-level co-operation between national regulators should be encouraged to ensure mutual understanding and a degree of consistency;
- at a global level, it is essential that the specificity of the sector continues to be recognised and that the principle of the "cultural exception" be applied in international trade negotiations.

III.3 Copyright

The establishment, enforcement and keeping up-to-date of copyright legislation is also an important part of the public authorities' function.

Copyright gives artists, creators and the content industry the basic property rights that enable them to earn a living and generate revenue. It is therefore a key element to be considered in the development of audiovisual policy. The level and quality of copyright assets determine the wealth and financial resources of audiovisual enterprises : denying an enterprise the exclusive right to control the commercial usage of its production means stripping it of its assets. Enterprises must have control of the content they produce and pay for. The Community should address the problem of employment-related copyright and promote for the content industry a solution similar to that used in the software industry : the works produced under an employment contract must be able to be fully exploited by the contracting enterprise.

Piracy is already a huge problem for the audiovisual industry and digitisation will make the problem worse. Technological measures to combat piracy are essential, but technological measures by themselves are not sufficient. Strong legal protection is equally necessary : measures to this end should be adopted and enforced world-wide.

The two Treaties adopted by the WIPO Diplomatic Conference in Geneva in December 1996 provide the basic framework for the initial legal tasks. Effective implementation of the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty will give a big boost to efforts to raise minimum standards of copyright protection around the world –particularly in relation to digital delivery. The Community and its Member States should ratify the WIPO Treaties as a matter of urgency and promote their

application throughout the world.

The proposed Directive on Copyright and related rights in the Information Society, adopted by the European Commission in December 1997 (28), is of the utmost importance to Europe's audio and audiovisual industry. Whilst the Group welcomed this proposal, it emphasised that it is vital that it be improved in certain respects set out in the recommendation below.

RECOMMENDATIONS

The right copyright regime is vital for the development of the industry. In particular:

- enterprises must have control of the content they produce and pay for;
- private copying exemptions should be restricted to the analogue domain in order to allow intellectual property to be traded on-line. The relevant Directives in the computer and database sectors grant the computer industry the right to license private copying usage. The audiovisual industry should be put on an equal footing;
- technological protection to prevent unauthorised access or illegal dissemination of content protected by copyright is essential in the global electronic marketplace. The future Directive should therefore outlaw the circumvention of these technologies;
- temporary copying exemptions should be tightened up;
- telecommunication carriers and other providers of network access should be encouraged to cooperate in eradicating piracy.

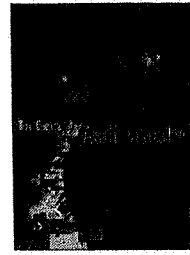
NOTES TO CHAPTER III

26) Art. 239 of the Treaty states that protocols form an integral part of the Treaty [[back](#)]

27) COM(97)623. [[back](#)]

28) COM(97)628 final [[back](#)]





IV. From the Command System to Free-Market Competition: the Prospects for the Audiovisual Industry in Central and Eastern Europe.

IV.1. The System Collapses and a New Order Emerges

The making, distribution and exhibition of films constituted a sophisticated sub-system in the cultural policies of the former Communist states. The process was handled by state-owned companies and the command system both supported and financed a large volume of audiovisual production, which in turn led to the creation of a large community of highly skilled audiovisual professionals.

After the collapse of the Communist regimes, the systems for supporting and controlling the audiovisual industry also disintegrated. It is perhaps ironic, but the contribution of Central and Eastern Europe to the development of European cinema before 1989 was undoubtedly greater than it has been since.

The audiovisual sector in Central and Eastern Europe has undergone huge changes since 1989 : however, the direction and the pace of change in the sector differ greatly from country to country.

Economic underdevelopment and lack of a real market in some countries mean they can at best be described as latent markets. To differing degrees, they can be characterised in the media field by the following features:

- lack of growth opportunities for large-scale broadcasting organisations due to lack of start-up capital and inadequate revenue from advertising;
- lack of indigenous investment capacity and consequently, in some cases, a disproportionate presence of foreign, non-European, investors;
- existing broadcasting organisations unable to sustain a high level of in-house or domestic production, relying instead on imports or, especially in the case of small, private stations, retransmission of existing programme services (e.g. satellite channels).

Demonopolization of television also encountered technical difficulties:

- a shortage of frequencies²⁹);
- lack of a frequency management plan;

- underdeveloped transmission capacity.

The Czech Republic provides a good example of one approach to the challenges of the post-Communist era. It has a relatively large advertising market and has pursued a liberal policy of no caps on foreign involvement in broadcasting enterprises, no statutory domestic production quotas and no quotas for independent production. It also set a very low limit for air time allotted to advertising on public television. It introduced private television by licensing a national channel (TV Nova) and turning over to it a ready-made nation-wide transmission network by eliminating Channel 1 of state television. The new channel is a resounding success (both in terms of audience share and advertising revenue) and has become a dominant force in the market. However, this success is largely based on imported programming : in 1995 this accounted for 53 per cent of air time, with U.S. imports accounting for 34 per cent. TV Nova has an almost monopolistic situation on the Czech TV market, though the quality of its programming and even the objectivity of its newscasting has been called into question.

Poland provides a contrasting example. A national private television channel was also licensed, but the fact that it had to build a national television network from scratch meant that for a long time it could not compete effectively with the public Polish Television. Polish Television was not limited in its access to the advertising market and, thanks to its revenues from that source, grew into a very large operation, broadcasting 2 national services, 1 satellite channel and 12 regional services. The large size of the market is combined with very fast growth of advertising spending, low caps on foreign capital involvement in broadcasting enterprises and high domestic and European production quotas. In addition, the policy of the regulatory and licensing authority, the National Broadcasting Council, requires all television stations to invest in audiovisual production. As a result of this policy, the Polish television market and independent production sector present a thriving and pluralistic picture.

The Polish film industry, for example, looks to have survived the crisis of transition. The elements of a new financing system are in place - a small subsidy from the state, major involvement of public service Television, obligatory investments from licensed TV broadcasters like Canal + - and, whilst the predominance of American audiovisual production is not really threatened, audiences are gradually returning to certain Polish films.



IV.2. Audiovisual Policy in Central and Eastern Europe - Challenges and Dilemmas

Development of a Fully-Fledged Broadcasting System

Though the countries concerned have as their goal the creation of a classical dual system comprising public-service and commercial stations, this is proving in practice to be problematic:

- in some countries, the power structure has led to an unwillingness to yield control over state broadcasting : new broadcasting laws sometimes sanction the continuation of government control. In other countries, the twin pressures of politicisation and commercialisation are preventing newly constituted public service broadcasters from truly fulfilling their remit;
- scarcity of frequencies and transmission capacity led some countries to privatise state/public television channels in order to enable commercial channels to go on air. This was sometimes accompanied by regulations, reducing the access of public service broadcasters to advertising. Both policies weaken the public service

- sector and may lead to its marginalization.
- lack of capital hampers the efforts of local entrepreneurs to develop broadcast media. At the same time, international companies have shown themselves more than willing to expand into the new markets.

In pursuing the goal of creating a dual system, Central and Eastern European countries thus face a number of policy choices:

- how to overcome political resistance to relinquishing control over the state broadcaster;
- how to develop the commercial sector without sacrificing the public one;
- how to ensure economic viability and autonomy of public service broadcasters by giving them ample access to advertising, and at the same time prevent their commercialisation;
- whether or not to promote local entrepreneurs (who may need a considerable development period before being able to provide a service of full range and quality);
- how to ensure high professional standards in journalism (independence, objectivity, effective training, etc.).

Another new challenge is the relationship of broadcasting to civil society. Both before and after 1989, many voices in Central and Eastern Europe called for a media system which would serve the growth and development of civil society. In broadcasting, this was to be achieved both by creating socially accountable public broadcasters and by providing for the creation of an officially sanctioned and publicly supported third "civic sector": i.e., non-profit private stations representing a wide variety of opinions, orientations and beliefs. This approach has found reflection in some legal acts³⁰, but little has so far been done in practice to implement these ideas.

Protectionism or Liberalism as the Guiding Principle?

It is important to remember that the terms of this debate are skewed by the insistence of some countries that the matter should be approached purely in terms of trade relations and free trade and investment. In societies in transition, where the entire broadcasting system has to be created anew, an active public policy is required to create a framework for broadcasting which serves the needs and interests of the country in question, be they cultural, economic or technological. Otherwise these societies may find they have no broadcasting systems of their own and that they have lost the ability to pursue the goal defined in the preamble to the Political Declaration adopted by the 5th European Ministerial Conference on Mass Media Policy in Thessaloniki (11-12 December 1997) of „developing their media policy in accordance with the principles of independence, respect for human rights and pluralism, in the spirit of Article 10 of the European Convention of Human Rights, and having regard to cultural diversity".

European Integration

The European Community in the past often seemed to adopt an approach which saw Central and Eastern Europe purely as a market for the "European" (by which was meant Western European) audiovisual industry. The contribution in creative and production terms that Central and Eastern Europe can make, precisely to the goal of increasing the share of European products and works in the European market as a whole, was often disregarded. European organisations should acknowledge Central and Eastern European countries as partners in a common endeavour, and not merely as markets, and work with them to enable them to make their contribution to common goals.

Otherwise, they will indeed be a market, but not for European audiovisual products and services.

A number of countries have gone through the experience of joining the Organisation for Economic Co-operation and Development, only to find themselves under pressure to open their audiovisual markets to unrestricted flows of audiovisual content. The OECD finds European content quotas unacceptable because they discriminate in favour of one group of members.

On the other hand, the European Union, in view of the future accession of the Associated countries, requires the introduction of European content requirements in these countries. Central European countries which are members of the OECD, and which today introduce such European content requirements, find themselves in direct violation of their commitment to free trade as it is understood within the OECD. The support of the European Union for the countries concerned is essential if it is to achieve its goals.

The Information Society: What Prospects for Central and Eastern European Countries?

Smaller nations cannot really aspire to play an independent role in the Information Society with regard to electronic hardware and software. This will have to be imported from elsewhere. Their only hope is in the area of information and other content: this is the only thing they can contribute to the Global Information Network. In the Information Society, content is king. It is necessary to produce it in order not to be completely swamped by content from other countries. For both cultural and economic reasons, this is a matter of fundamental national interest to these nations.

Leading countries in Central and Eastern Europe have managed to close the gap in the development of a conventional audiovisual market in film making and television. They are approaching the completion of a dramatic process of transformation from a state monopoly to the dynamics of a competitive market.

But another gap is now appearing: the same countries are being left behind in the development of an information society. Once again they may need assistance to modernise their law, to develop coherent plans for the convergent future, to make the right choices and to find new sources of funding.

RECOMMENDATION

The European Union should work with Central and Eastern European countries as fully-fledged partners, in particular to ensure development of a healthy, balanced broadcasting system and to make the most of the wealth-creating potential the content industry offers in the emerging Information Society.

NOTES TO CHAPTER IV

29) Communist telecommunications authorities had not sought to obtain as many frequencies as possible at World Administrative Radio Conferences, since broadcasting and telecommunications were always to be tightly controlled and available to the select few. [[back](#)]

V. SUMMARY OF RECOMMENDATIONS

The role of the media for society and democracy in Europe

- The starting point for any examination of public policy for the audiovisual media must be the recognition of the specific role they play in our societies and the need to ensure balance between the free play of market forces and the preservation of the general public interest.

Technological developments and their impact on the audiovisual media

- It is vital that Europe makes use of the "window of opportunity" that is opening to establish digital broadcasting (in all its forms) in readiness for the information age.
- This implies that European policy makers should vigorously encourage the development by market players of digital television services.
- Education and training are essential if Europeans are to inhabit the new digital environment successfully. Accordingly, national governments should give greater importance to education in "media literacy" in school curriculae from an early age.

The impact of the new technologies and the globalisation of markets on audiovisual content

- The advent of digital will not obviate the need for continued support for European production.
- If "content is king", distribution remains the key to the kingdom.
- Consequently, policies to support European production must also recognise the vital role that broadcasters can play in making the most of the opportunities offered by the advent of digital.

The General Framework – competing in the global market

- Europe must create the conditions for a competitive audiovisual production industry that will be in a position to make the most of the predicted explosion in demand for audiovisual material.
- To achieve this, Europe must build on its own special strengths, in particular through greater cooperation between European countries. In doing so it can learn much from America, in particular with regard to methods of distribution and marketing techniques on international markets.
- The development of a high-performance distribution and rights management sector in Europe should be a priority objective for European policies.

The funding of production by television

- Broadcasters are a key and driving force of audiovisual production and policies to support European production should recognise this reality.
- Broadcasters themselves, as major investors in production, should pay more attention to marketing as an integral part of the production and distribution process.

Support measures

- Current support measures should be adapted and completed. In particular, the following are seen as key elements:
- A mechanism for attracting more investment into European production, such as a "securitisation" scheme, should be introduced;
- A network of European film and television schools should be established to link centres of excellence, perhaps with a symbolic "centre of centres";
- A European showcase event should be encouraged;
- The MEDIA II programme should be strengthened and provided with resources appropriate to the size and strategic importance of the industry. Particular emphasis should be placed on training, distribution, script development and marketing. There is a need to act urgently in this respect;
- Partnership agreements between broadcasters, including private broadcasters, and public authorities should be developed (with possible Community support for the transnational dimension).

Public service, its role and funding

- The "dual system" (private and public broadcasters) is a distinctive feature of the broadcasting landscape in Europe. This should not be questioned as such, and it should be left up to individual Member States primarily, as well as to market forces, to determine the respective importance of the public and private sectors in each country. However, certain basic principles should apply, and should be translated into a set of concrete criteria for funding arrangements. The "Amsterdam" protocol annexed to the EC Treaty is of assistance in this respect.
- The basic principles that should apply are based on the Member States' will, as expressed in the protocol, to stress that public service broadcasting is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. It is up to the Member States to define and organise their public broadcasting systems and provide for the necessary funding.
- Two fundamental criteria that should be applied in making funding arrangements are proportionality and openness. The first implies that public funds are provided exclusively for public service activities and do not go beyond what is necessary in this respect. Public service activities should be funded mainly from public sources. The second implies that Member States provide a clear definition of the public service remit, that financial openness is ensured and that, where public sector operators engage in purely commercial activities, separate accounts are kept.
- These principles and criteria would provide a sound basis for the future of public service broadcasting while ensuring the necessary degree of respect for the principles of free enterprise and competition that private broadcasters need in order to develop their activities.

Legal framework and regulatory bodies

- There will continue to be a need for specific regulation for audiovisual content, based on the fundamental distinction between public and private communication. This regulation should encourage innovation and competitiveness. In particular licensing procedures need to be simplified and the level of regulation adapted to the nature of the service;
- the regulatory framework must be clear and consistent. It is imperative to avoid subjecting the same service to two sets of regulatory requirements with different objectives;
- the regulatory framework should abide by certain principles and in particular it should encourage competition, pluralism and open, non-discriminatory access. It may take account of other, more specific, public policy goals, primarily set at national level;
- the regulatory framework should encourage the development of digital services and a smooth transition to an all-digital environment;
- whether there is one regulator for technological aspects and another for content

aspects, or a unified regulator administering both sets of rules, is for national governments to decide. However, where there is more than one regulator, they will increasingly need to co-operate between themselves and with the competition authorities;

- European-level co-operation between national regulators should be encouraged to ensure mutual understanding and a degree of consistency;
- at a global level, it is essential that the specificity of the sector continues to be recognised and that the principle of the "cultural exception" be applied in international trade negotiations.

Copyright

- The right copyright regime is vital for the development of the industry. In particular :
 - enterprises must have control of the content they produce and pay for;
 - private copying exemptions should be restricted to the analogue domain in order to allow intellectual property to be traded on-line. The relevant Directives in the computer and database sectors grant the computer industry the right to license private copying usage. The audiovisual industry should be put on an equal footing;
 - technological protection to prevent unauthorised access or illegal dissemination of content protected by copyright is essential in the global electronic marketplace. The future Directive should therefore outlaw the circumvention of these technologies;
 - temporary copying exemptions should be tightened up;
 - telecommunication carriers and other providers of network access should be encouraged to cooperate in eradicating piracy.

From the Command System to Free-Market Competition: the Prospects for the Audiovisual Industry in Central and Eastern Europe

- The European Union should work with Central and Eastern European countries as fully-fledged partners, in particular to ensure development of a healthy, balanced broadcasting system and to make the most of the wealth-creating potential the content industry offers in the emerging Information Society

VI APPENDIX

Members of the High Level Think Tank on the future audiovisual policy of the European Union

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Consejero - Director General, Grupo Correo
Former Chairman of the Spanish section of the International Press Institute
Former President of IFRA (INCA-FIEJ Research Association)

Hervé Bourges (France)
President of the "Conseil Supérieur de l'Audiovisuel"
Former Chairman and Managing Director of France Télévision and TF1

Liliana Cavani (Italy)
Film Director, Former Member of the Board of RAI

Michael Kuhn (UK)
President of Polygram Filmed Entertainment

John McGrath (UK)
Film, TV, Theatre : Writer, Director & Producer
Visiting Professor, Media, Royal Holloway College
Member BAFTA Council, BSAC ; ex-Channel 4 Board, PACT Council

Jan Mojto (Austria)
Chairman of the Association of Commercial Televisions
Chairman of the Board of Sat 1
Managing Director of Taurus Film/Kirch Gruppe
Former Chairman of Telepiù

Albert Scharf (Germany)
President of the European Broadcasting Union
Director General of Bayerischer Rundfunk

Boleslaw Sulik (Poland)
Film critic, scriptwriter, television producer
Chairman of the National Broadcasting Council of Poland

Secretary

Gregory Paulger,
Head of Unit, Directorate General for Information, Communication, Culture,
Audiovisual Media (DG X)