



United Kingdom
National Commission for UNESCO

Challenges Facing Public Service Broadcasting: Perspectives from the Communication and Information Committee

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1 Introduction

This report is a compilation of the perspectives of members of the Media in the Public Interest Working Group of the Communication and Information Committee of the UK National Commission for UNESCO.

The views herein represent different aspects of the challenges which confront us all. Focus is put on Public Service Broadcasting (PSB) and its weaknesses in the developing world, which are very different from the situations found in Europe.

Gareth Price's paper describes the situation as found in most of Asia, Africa and Eastern Europe; supported by Elizabeth Smith's case study of the situation in Hong Kong in 2006. Carole Tongue's paper explores the regulatory situation of PSB in selected OECD countries. Finally, John Precott-Thomas offers a step-by-step solution which can be adapted for specific requirements of individual countries who are prepared to accept the challenge of improving their broadcasting environments.

To put the discussion into context, in the words of Professor Ivor Gaber, Professor of Journalism at Luton University and a Vice Chair of the Communication and Information Committee, this is what PSB means to him:

"PSB is, for me, a mixed ecology of broadcasting which embeds in all the major practitioners (no matter what form of delivery they are using) the notion that broadcasting can and does play a vital role in the civic and social life of a nation. Hence there a major responsibility lies with broadcasters to ensure that a proportion of their programming:

- caters to minority tastes
- reaches all communities
- looks for new voices
- gives time and space to minority views
- nurtures cultural activities
- provides space for the 'democratic conversation' to take place
- encourages civic engagement and allows for experimentation on-air

I am reluctant to suggest particular norms and percentages for this activity - the real PSB comes in an attitude of mind and a broadcasting profile that can be perceived rather than measured."

The Media in the Public Interest Working Group hopes that these papers will bring to the fore the realities that practioners face in the craft of providing advice on the ground and that UNESCO, which has always had an excellent vision of the overarching goals of achieving freedom of expression and a pluralistic media, will take our perspectives into consideration in formulating its media policy and programmes.

The Working Group also hopes to initiate a dialogue and discussion with international colleagues on the challenges facing PSB in the world today.

Views expressed herein are personal views and do not represent the positions of the organisations and institutions to which Working Group members belong.

2 The Challenges Facing Public Service Broadcasting

By Gareth Price, Welsh Centre for International Affairs; Convenor of Media in the Public Interest Working Group; Vice Chair of the Communication and Information Committee, UK National Commission for UNESCO

In the beginning there were three distinct broadcasting types:

- the state broadcaster – in countries where Governments control the media;
- the public broadcaster – which first emerged in Europe as a cultural entity;
- the commercial broadcaster – for which the US free-market philosophy was the initial driving force.

Considerable confusion exists over the meaning of the term ‘public broadcaster’, usually because countries which still control content through government like to portray themselves as acting in the public interest. In reality the state broadcaster acts in the interest of the government of the day. The public broadcaster serves the audience. In a democracy, it is the audience as the electorate which votes parties into power and also dismisses them from office. Public Service Broadcasting is therefore an essential agent in the development of democracy. The audience requires to be informed of the opinions of all parties and not only those in power. Managing the news in a public broadcasting organisation is a very different activity from that of the state broadcaster. Managing general programmes outside the newsroom, however, should be the same in whatever organisation one works. Similar production values apply to directing a sports programme or a drama all over the world, namely the need to strive for professionalism, quality and efficiency.

The commercial broadcaster has to make a profit in order to satisfy the shareholders. In order to do so it is generally recognised that advertising income has to be maximised either through the provision of as much popular programming as possible, or by deliberately targeting key sectors of the audience e.g. the young, the opinion-formers, women and so on.

By today, few countries have a clear distinction between channels funded by a licence fee alone and those funded by advertisements alone. What therefore exists in most parts of the world are hybrid forms of broadcasting in which everybody – whether state, public or private broadcasters – competes for advertising income. This situation weakens the private commercial operator who can often ill afford to produce the expensive drama or documentary. On the other hand in many countries the commercial company has been the catalyst for positive change - the organisation which offers a news service which is partially independent of government. The word ‘partial’ is important in this context because of the constant danger that truly impartial news programmes can lead to the political threat of the withdrawal or non-renewal of the licence to broadcast. Editors are fully aware of how far they can go and operate varying degrees of self-censorship.

Hybrid or ‘mixed economy’ broadcasting structures can lead to the worst of all possible worlds. There are few countries in which the political pressures on the newsrooms are withstood. There are constant financial pressures through inadequate funding from the licence fees, even in countries where such a ‘tax’ has been added to the electricity tariff. Few public broadcasters exist without advertising revenue, and commercial pressures operate adversely on the programme schedule in favour of the popular and at the expense of more serious programmes.

Several examples also exist of State companies being given public corporation status while still dependent on Government funding. In these circumstances, managers find it extremely difficult to determine who the paymasters are – the government, the advertisers or the audience. This rarely leads to an encouraging working environment. Changing the name to a public corporation is often meaningless. However, while the development of Public Service Broadcasting (PSB) channels is problematic, there are distinct signs of the growth of Public Service Programmes (PSP) on a variety of channels. The growth of competition has improved news programmes. Educational, women’s and ‘nation-building’ series are more prominent even if these are rarely entertaining to watch. The broadcasting environment is improving in the developing world slowly and painfully, offering very different challenges to both managers and regulators.

The industry's national regulator has the power to change the broadcasting environment of the nation through its remit to manage the distribution of licences. Regulatory authorities are appointed by Governments through Acts of Parliament to oversee the broadcasting industry of the nation in whole or in part. Sometimes the regulator is given control of the commercial sector only and the public broadcaster may be self-regulating, publishing an annual report on its activities, its programmes and finances, for the general public.

Regulators are statutory authorities, their policies executed by senior managers who have several extremely important powers at their disposal, including:

- offering licences to broadcast through tenders
- setting the qualifications required of applicants for licences
- imposing public service quotas on programming
- warning licence holders of breaches of the licence
- approving the numbers and types of licences
- they may also have control of telecommunications
- some issue guidelines on best practice, ethics and compliance matters

The powers least known or understood in some developing countries relate to imposing public service quotas on various forms of programming. For example, a commercial licence can be offered subject to a percentage limit on purchased programmes or a percentage minimum of public service programmes such as local news or education series. Radio licences can be offered on the basis of minority talk or music channels. Warnings, fines or even loss of licences can be imposed on those who fail to meet the terms of the contract.

The creation of a competitive industry is healthy if the licences are limited to fit the ability of the economy to cope. Issuing too many licences can likewise lead to the law of the jungle in which the licence-holders struggle to survive with low budgets and low quality programmes.

Choice and competition is good for the audience – but only up to the point where the economy can allow for quality programming. Only a good natural regulator can judge how many channels can provide sufficient investment to guarantee good programmes and increase the number of licences in line with the growth of the economy.

As for the competition from satellite TV, the answer lies in the provision of community radio and an increased number of local radio and regional TV programmes which offer the opportunity for the audience to get ever closer to the programmes and participate in them. There can be no better way to win an audience than to feel that it is an integral part of the broadcasting scene. Such developments require a remit from both the regulator and the company or corporate boards.

In theory, the role of the regulator is a simple one – creating the broadcasting environment which maximises the public interest. But we all know that in fact regulators either live in fear of their political masters or are ignorant of what their potential powers are. In the simplest terms they have no background in broadcasting and sometimes do not even know how to access the necessary information or find out about the practices in other countries.

This matters less where community radio or local TV stations exist because they are closer to the audience and understand better the public interest. The problem remains in countries still dominated by 'national' broadcasters – whether state or commercial – where naked competition for the biggest audience at all times fails to differentiate between different target audiences.

The public interest is served by competition, which should not merely improve the quality of similar types of programming (e.g. news) but also offer a choice of programmes at any time of day or night. Choice should extend to a variety of depth in programming, so that viewers can choose between entertainment and serious programmes. Only the regulators can create the conditions for such a choice by demanding differences in the required target audiences in exchange for the desired licence.

The fact that some channels have a larger audience than others does not necessarily mean that they have a larger slice of the advertising cake. The wealthier segments of the audience often require programmes of a more sophisticated or intellectual nature than the populist channels. (This is known as the AB advertising audience in the UK). These upmarket channels attract quality advertisers and offer them a totally different market.

The public interest is therefore best served by a regulator knowledgeable on competition needs, advertising markets and a more mature attitude to increased choice in the public interest while measuring all these requirements against the state of the economy.

It is therefore of paramount importance that all interested parties in the promotion of Public Broadcasting - whether UNESCO, NGO's, Governments or Regulators – should note its changing nature in very different ways throughout the developing world. There is a particular need to recognise the difficulty of launching new public broadcasting channels in a world so dependent on advertising and state financing and, in recognising these realities, concentrate on the promotion of Public Service Programming (PSP) wherever possible.

Finally, regulators need to be trained in the specialist knowledge required to satisfy the public interest and improve the broadcasting environment, particularly in the world's emerging democracies.

3 What Future for Public Service Broadcasting in Hong Kong?

By Elizabeth Smith, Secretary-General, Commonwealth Broadcasting Association

What is public service broadcasting (PSB) for? It is set up to serve the public good. This can best be done if it is free - to the greatest possible extent - from pressures both from Government and from commercial interests.

In some parts of the world, the public broadcaster has evolved in such a way that it has the worst of both worlds: it is a state broadcaster, funded by advertisements. So it is expected to support the Government, especially at crucial times such as Elections, and it also has to please its advertisers which means not offending those who spend the most on ad campaigns.

A Case Study: RTHK

As pressures on public spending grow, and the audience share of Radio Television Hong Kong (RTHK) is affected by the multi-channel world, this is what RTHK has to avoid. RTHK has served its audience very well over the years, with excellent local programmes; the challenge is to ensure that public service broadcasting in Hong Kong, in a highly competitive broadcasting environment, continues in the future.

Are there ways in which this can be done? There are; and they need both appropriate legislation and public support.

Appropriate legislation should ideally start with regulation by an independent regulatory body. Fortunately, Hong Kong has the Broadcasting Authority set up in 1987. The status of RTHK is currently as a Government department serving as the editorially independent public broadcaster of Hong Kong. It offers high quality programming which inform, educate and entertain the community. This status could be altered in the future to set up an independent corporation, as has been discussed in Hong Kong at various times. The regulator would define the constitution and purposes of RTHK. Guidelines on sensitive issues such as political coverage and election coverage would be agreed in advance with the regulator, with input from legislators. Once in place, the regulator should then protect the broadcaster from the Government, assuming that the Guidelines have been observed. Appropriate legislation should also provide for security of tenure for both the regulator and the CEO of the public broadcaster, so that it is very hard to dismiss them unless in the case of financial or other impropriety.

Along with corporatisation would come RTHK's own TV channel or channels. If Singapore and New Zealand, with lower populations than Hong Kong, can sustain PSB TV channels run by MediaCorp and

TVNZ, there is no reason why RTHK cannot do this too. These two have mixed public and private funding, which is also an option for Hong Kong. It is crucial that RTHK's channels be allowed to offer a range of programming to satisfy all tastes; if they are confined to what the commercial market cannot provide, then they will lose mass relevance and support. Their schedules should not only broadcast in the key languages of Hong Kong but offer local news, sport, soaps, quiz shows and entertainment, as well as local history, current affairs, children's programming, financial news, weather etc.

The other defence for the broadcaster is a culture where independence is expected and it is taken for granted that this is how the broadcaster should behave. When the public expects it, and the Government expects it, and the employees expect it, then there is no self censorship. Public support can additionally be mobilized by citizens' organizations for quality broadcasting. They can speak up – independently – for good programming and criticize measures which lead to bad programming, and generally keep the regulator and the public service broadcaster performing to a high standard.

Operating Models

So what is the best way for a public service broadcaster to be set up? Possible sources of income include:

- advertising
- license fee
- state grant
- sponsorship and foundation grants
- appeals to the public for funds on-air
- pay per view
- subscriptions
- programme-related income such as programme sales, income from high-rate phone calls etc.

Any of these can fund a public service broadcaster if the regulatory regime, and the public expectation, is right.

For example, a station with only advertising income can be required, as condition of its licence, to fulfil certain defined PSB requirements. These cannot be so onerous that the company is unable to attract the necessary audience, and loses money, but they can ensure a proportion of programming in specified quantities which provides unbiased news, serves minorities, offers educational programming and so on. This is what the UK's commercial [broadcasters] were required to do until recently, when the regulatory requirements were relaxed.

Another model is that of the UK's Channel 4 which was set up to receive commercial income, via the ITV companies, and to spend it on serving minorities. Australia's SBS, with a mix of commercial and state funding, is also set up to serve minorities and does this very successfully. None of these have allowed their commercial funding to diminish their public service role. These arrangements work because of clear legislation and regulatory regime under which they operate, and the public expectation that they will operate fearlessly.

The next model is to use a licence fee, which is essentially a device to distance the broadcaster from Government funding – because the license fee is essentially a dedicated poll tax from the Government. It is a useful device. For it to work well, the broadcaster needs to enjoy wide support from the population, so that there is no mass refusal to pay. In order to ensure this broad support, the broadcaster must make sure a broad appeal and not only to an elite audience. They need to show soaps, football, quiz shows etc that command the mass switch-ons. The trick for them is to do these in a way which differentiates their broadcasting from that provided by the commercial sector, by serving minorities and offering high standards within these kind of shows. A quiz show, for example can either pander to the greed of the audience by offering huge wins, or it can be educational by rewarding those with real depth of knowledge. Any license-funded organization will have the amount of the fee fixed by Government which does expose it to Government pressure. This can be minimized by 3-5 year agreements on the level of the fee. An appointment system for the CEO, distanced from the Government, should also be built in. For example, the Government appoints a Board which has a statutory requirement to act

independently and in the public interest. They are then expected to appoint and protect the CEO when he fulfils these requirements, even if he or she is in conflict with the Government.

The third model of direct Government funding is almost universal in Asia and generally means varying degrees of control of the public broadcaster by the Ministry of Information (or similar Government departments). Much of the programming may be dedicated to the public good, but, at crucial times, support for the Government is expected in return. With the growth of independent broadcasting regulators, however, this model can be greatly improved. The regulator can be a buffer between Government and broadcaster, requiring certain performance from the broadcaster, and in return offering some protection if the broadcaster fulfils requirements such as Agreed Guidelines for Election Coverage. There is no reason why a public service broadcaster cannot be both independent and funded by a Government grant – the BBC World Service offers such an example.

Sponsorship and foundation grants are the model used for US public broadcasting, supplemented by the next category which is appeals for funds from the public. Sponsorship can lead to the same pressures as advertising, and grants are not usually given without the expectation that the programming will contribute to the objectives of the grant-giver. On-air appeals can go on relentlessly for days, till the public donates – not a happy experience for the listener or viewer, or the station.

There is one kind of grant-giving, however, that I think could be adopted more widely. This is practiced in different ways in Singapore and New Zealand. Sums can be allocated by Government to grant-giving bodies to spend on specific broadcasting activities e.g. the broadcasting of Parliament, the support of a broadcasting orchestra, or local historical features. Then any broadcaster can compete for the funds. Such a system works well in Canada for the support of film-making and in the UK for the support of the Arts. Though broadcasting organizations complain it is too stop-go to let them build up essential expertise in an area, it can give public funding in a way which distances it from its Government source. With appropriate regulation, some elements of this kind of financing can be added to the mix without harm. And there is no reason why their grants could not be on a 3-5 year basis, though at present they are usually annual.

The final categories are pay per view, subscriptions and income from programme-related activities. Pay per view can provide good income from prime sporting events and other must-see programming, but generally fails when it comes to the coverage of the arts and sciences or minority languages. Subscriptions offer a commercially-funded product, independent of Government. But subscriptions cost much more than a licence fee so are a burden on the poor, or exclude them, and subscription channels rarely offer a full range of every kind of programming. Combined with good regulation to require a certain amount of public service broadcasting within subscription channels, they can be a good option; but they provide the best material if in competition with a strong public service broadcaster. Programme-related income, even when chased with vigour, is only likely to yield a small proportion of what is required to fund a strong public service broadcaster. But it is nevertheless a useful part of an income mix.

Best Model for Hong Kong?

So what sort of funding model would be best for Hong Kong? Taking into accounts the Hong Kong experience of a strong public service broadcaster in RTHK, with a history of quality programming and independence, it would be best to build on this.

For Hong King, I would favour a direct Government grant, administered through an independent regulator. However, if desired, this could be supplemented by a certain amount of commercial income, as with SBS in Australia, TVNZ, the commercial income from 24 hour news for CBC and the commercial income for BBC World. The regulator would have the power to require certain specified hours of programme genres, and a minimum quality, measured by audience research. Sensitive matters such as political and election coverage would be run according to Guidelines agreed with both Government and the broadcaster. The regulator would appoint the Board of Governors who would in turn appoint the CEO. Assuming he or she abided by the agreed guidelines, it should not be possible to dismiss him of

her on grounds of political coverage embarrassing to the Government. I also think that the proposed regulator should impose light PSB requirements on the commercial broadcasters as a condition of their licenses, which will lift the standard of broadcasting generally. And the regulator or another public body should have a sum of money to allocate on a bidding basis, for 3-5 years, for certain kinds of public service broadcasting. And programme-related income should be encouraged, for example from some of the new platforms such as i-pods, from links between telephones and broadcasting and so on. This would yield a minor mixed income to RTHK, at the same time as independence from both Government and commercial interests.

So the first requirement, before making any alterations to the position of RTHK, is to set up an independent regulator in Hong Kong, backed by legislation requiring an independent public service broadcaster, and defining the expected performance. Then, and only then, can RTHK's role and funding be defined so that Hong Kong can continue to have a world class media and develop its role as a broadcasting hub of Asia.

A free media, respected by all, is the key to the development of Hong Kong as a broadcasting hub, with all the economic benefits which this can bring. As one country, two systems, continues to develop, there is every argument in favour of Hong Kong leading the rest of China into a new broadcasting system, led by an independent regulator, with a strong public service broadcaster, with, additionally, some PSB requirements imposed on the commercial operators.

Some may argue that the role of PSB is no longer needed in a multi-channel world. The problem with leaving everything to market forces, however, is that the most money is in mass produced, mass audience programming, often bought cheap from abroad. The strength of the PSB is in local programming and in a range of genres – this is what needs to be preserved and strengthened for Hong Kong in the years ahead, and it can only be done through a PSB provider.

4 How Regulation Contributes to Fair Competition, Democracy, Cultural Diversity and Identity

By Dr Carole Tongue, Executive Director, Sovereign Strategy

An effective and efficient regulatory framework will remain key for securing the continued existence of Public Service Broadcasting.

Broadcasting needs a constant pressure towards good quality. In the past this has come from PSBs. By setting standards and taking risks, PSBs limit any tendency among commercial broadcasters to focus on the lowest common denominator. At the same time, commercial channels providing popular entertainment channels and niche services constantly challenge the public service offering. This will also be needed in the future. It is in the interest of all PSBs to promote the forms of regulation which will enable broadcasters to make good the market failure which is unavoidable in untrammelled commercial broadcasting environments.

Most countries have some form of legal framework governing quality and standards but these do vary. Legislative safeguards are essential to guard against Government or Parliamentary intervention in the PSB sector and to ensure effective editorial independence. Broadcasting and broadcasters must be accountable: to ensure that the character and content of broadcasting services reflect the needs and desires of the audience; to ensure that broadcasters perform their important social, cultural and political role; to ensure that there are means for independent adjudication of, and redress for, users complaints. They must be accountable, open to scrutiny and should be representative of the public, not of the government of the day. Regulation is also crucial in ensuring consistent high levels of investment in a nation's audiovisual industry and thus investment in its most influential cultural medium.

Most governments believe that unrestricted competition can lead to a restriction in either the quality or range of products available and thus intervention is clearly justified in the public interest.

Public service obligations

All OECD countries want to enhance cultural and linguistic diversity and plurality in audio-visual production, independent production and broadcast output, as well as strengthening their indigenous audio-visual industry.

In Canada, the legislation is clear in that each element of the broadcasting system are asked to contribute to the creation and presentation of Canadian programming. Australian legislation is clear about what it expects from one of the standards it sets “is to promote the role of commercial television in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community’s continued access to television programs produced under Australian creative control.”¹

British law does not spell this out in the same unequivocal way. Linguistic diversity has been seen to have been dealt with by the creation of S4C. Investment in creation and broadcasting of local programming tends to be looked at channel by channel as opposed to the Canadian, French and Australian holistic approach. British television ecology does however produce high levels of investment in fiction programmes second only to Germany in the European Union. This is particularly attributable to Germany and UK levying two of the highest licence fees in the world. For example, BBC investment in original programming is greater than the total investment in the EU film industry. British commercial free-to-air channels account for virtually all other investment in original production.

Broadcast quotas

EU governments all believe that broadcast quotas of national and European audio-visual and cinematographic production are both practical and necessary for cultural and economic reasons.. This is borne out by their application of the Television Without Frontiers Directive which stipulates that where practicable over 50% of screen time should be comprised of home grown programming. This directive is now under revision and being debated in the European Parliament. The main issue at stake is how non-linear online audiovisual services should be regulated to ensure fair competition and appropriate investment in the EU audiovisual industry.

Canada and Australia also stipulate precise broadcast requirements for audio-visual and cinematographic production from their own country. Canada has even recently established an audiovisual fund to receive monies levied on video-on-demand services to ensure that these new audiovisual services make a fair contribution to the nation’s audiovisual industry and culture. This fund stands at approximately \$200 million per annum which is then reinvested in Canadian audiovisual production.

All EU countries include broadcast obligations as laid down in the TVWF directive, that 50% or more of transmission time must be filled by European audio-visual works, principally drama, documentary and television or feature film (excluding news, sport, current affairs in studio, talk shows, game shows, advertising and teletext).

However since the late 80s we have seen the number of cable and satellite channels explode in the EU. Many rely almost wholly on imported material and, as recorded in national reports to the EU Commission, have difficulty in achieving more than 50% of broadcast time for national/European audio-visual works. The result of this trend is well illustrated in the UK which has seen its £151 million surplus in television programmes with the USA in 1985 become a £403 million deficit by 1999². Alarmingly ‘the deficit between the value of British television exports and imports leapt by more than 60 % from £248m in 1998 to £403m in 1999’.³ Furthermore Arthur Andersen has documented that competition for the acquisition of sports rights and US film has increased their purchase price, resulting in cable and satellite pay television channels investing less and less in national/European programming as defined in the TVWF directive⁴. In addition, the European Audio-visual Observatory has documented a decline in

¹ Australian Broadcasting Authority Content Standard, www.aba.gov.au/tv/content/ozcont/std/index.htm

² DCMS Creative Industries Mapping document 2001

³ Broadcast magazine. 16 March 2001. Page 2

⁴ Arthur Andersen Report for the EBU (1998) *The Impact of Digital Television on the Supply of Programmes*. Arthur Andersen Consultants.

recent years in the amount invested in television fiction. Production in the 5 main European TV markets diminished in 2000: "Ever-rising production costs and the trend towards entertainment programmes, in particular reality and game shows, show their impact on the production of TV fiction in the year 2000. For the first time since 1996 all three main Eurofiction indicators (hourly volume, number of titles, number of episodes) for the level of television fiction programmes produced are in decline. In the five main European markets, Germany, the UK, France, Italy and Spain, the hourly volume produced in the year dropped by 3.9%, from 5786 hours in 1999 to 5564 in 2000. The number of new episodes produced dropped by 4.7% and the level of new titles produced - the only indicator already negative in 1999 - diminished by 5.3%. These figures seem to indicate that the status of fiction is tending to become somewhat blurred and marginalised compared to the position occupied throughout the 90's.⁵" Also documented in the report is that Southern Europe is catching up in terms of its investment in fiction. The comedy genre is in decline. There are more series and less TV movies. National differences are eroding.

In the face of these trends, EU and most individual member state broadcasting legislation has therefore sought to maintain a majority broadcasting space for national/European audio-visual works and in particular sustained high levels of investment in drama, documentary and film. This has been achieved through the imposition of broadcast and investment obligations on all channels in law. There is however a significant disparity among those countries studied as to whether an investment obligation is enshrined in all and applicable proportionately according to the nature and longevity of the channel in question.

Investment obligations

France, Spain, Italy and Canada have developed their broadcasting legislation to ensure that every channel makes a contribution to the national/European audio-visual industry by demanding an investment commitment into national/European drama, film and documentary production as a proportion of annual advertising revenue or turnover. Importantly this is applied to all channels. It is argued that it is practicable, fair and ensures a steadily increasing investment in original local production and particularly the film industry.

In Germany, UK and Sweden there is no provision in law for investment quotas in particular programme genres. In Germany, Sweden and Spain investment agreements are signed between broadcasters and the national or regional Film Institutes or Boards to ensure regular sums are invested in local film production or co-production.

This is expressed differently in the UK. The BBC invests over £1 billion per annum in original programming. With public service obligations in their licence, ITV invested £244 million in original drama in 2001 and £29 million on documentaries out of annual advertising revenue of £1,703 million. As OFCOM reduces ITV's PSB commitments it will be important to monitor the effect on levels of investment. **Channel Four invests.....in original production and Channel Five.....**

It is clearly necessary to balance public interest objectives with wider concerns of economic viability. In this sense, it would appear from the majority of countries studied that if cultural and economic public interest objectives are to be met fairly and consistently, then proportionate investment obligations on cable and satellite channels should be considered.

Independent Production definition and quotas

France demands 10% of terrestrial channel budget to be spent on independent production and 10% of budget or time for cable and satellite channels. All terrestrial channels in France, including pay TV, have also to devote at least 75% of their feature film expenditure on contracts with independent producers. In Italy public service broadcasters have to reserve 20% of their transmission time for independent production and private broadcasters have to allocate 10% of transmission time. In the UK the BBC and the terrestrial channels have to reserve 25% of their total transmission time allocated to independent production. Spain requests broadcasters to reserve 10% of their broadcasting time for "European

⁵ 9.10.2001. The European Audiovisual Observatory "EUROFICTION, Television Fiction in Europe".

independent productions.” Germany is the only country surveyed that does not set percentage figures but uses the term that programmes should include ‘a significant part’ of own, commissioned and joint productions from the German-speaking area and Europe as whole. Only Germany and Sweden, of the countries surveyed, does not include a definition of independent production in its broadcasting legislation. There are significant variations in the definition in other countries⁶.

Compliance

The responsible regulatory authority for monitoring and applying EU quotas and other similar national provision, including investment obligations, is by and large carried out by one regulatory authority in France, Canada, Australia, Sweden, Italy. In Germany and Spain the system is more complicated due to the federal structure of those countries.⁷ In the UK it used to be the Department for Culture, Media and Sport (DCMS), with assistance from the ITC, but now the responsibility has passed to OFCOM.

A number of countries, France, Spain, UK and Canada have mechanisms for warning and fining channels for failing to meet quota requirements. In France warnings or fines are possible. In the UK, warnings, fines, shortening or revocation of licence are all provided for. In Sweden and Germany there exists no such ability to impose sanctions.

Reasons cited for channels not meeting the TVWF broadcast and independent production quotas are once again the high costs of European programming, the special nature of the channel, the fact that a country has a restricted language area and the need to respond to public preferences.

France and Canada tackle these problems by applying very detailed investment provisions tailored to the individual channel. Spain and Italy join with them in applying investment quotas which are arguably practical, transparent and fair, being calculated as a percentage of turnover or advertising revenue. Spain and Canada allow for progressive implementation of quotas preventing any slip-back.

Other countries in their submissions to the EU Commission on the application of the TVWF broadcast and independent production quotas just provide reasons for non-compliance but no details as to how progress will be made, particularly where cable and satellite, thematic and pay TV channels are concerned.

On the other hand, as regards cable and satellite channels, UK law imposes no sanctions for their not achieving the 50% quota in the TVWF directive, nor does it demand investment from them in national/European production. The outcome of this is evident if one compares the investment of £100m a year by Canal + in national/European film and that of BSkyB which until 2000 was approximately £16 million per annum. It is unclear what investment is now being made in UK Film by BSkyB. UK governments have hitherto preferred to rely on encouraging more exports working with experts on special industry groups.⁸

What is missing from UK provisions is clear criteria, applied consistently and fairly by one regulatory authority, such as in Canada or Spain, for consistent and progressive advance towards achieving broadcast and/or investment obligations for channels who are at present failing to meet the provisions of the TVWF directive: “There is an ongoing discussion on whether programming obligations should be replaced by a system at EU level involving obligations of investment in production”⁹

Broadcast and independent production quotas are however still strongly supported in the vast majority of countries surveyed and particularly by the creative community of writers, producers, directors, musicians, actors, journalists, technicians as well as public interest groups.

⁶ Study on the provisions existing within the Member States and the EEA States to implement Chapter III of the TVWF directive by Eleftheria Pertzidou, May 2001 for the European Institute for the Media. Pages 109-112

⁷ Ibid. Pages 118-121

⁸ Broadcast Magazine. Ibid.

⁹ European Audiovisual Observatory – Developments in digital television in the EU. Version 2 of 4.12.1999

Certain states surveyed see no contradiction with maintaining and in some cases increasing the obligations under the broadcast and independent quota system and supplementing this with investment obligations on all channels as well, particularly in support of the indigenous/European film industry.

Conclusion on Regulatory Structures

It is as crucial today as it has ever been to steer the broadcasting market in order to derive the maximum benefits to as many viewers as possible. It is therefore necessary to have the right regulatory structures in place to enable public service broadcasters, as well as the commercial sector to take advantage of the new opportunities that multi-channel digital television offers. In the UK an extremely healthy market is emerging in multi-channel television, which includes a central position for the BBC. A free-to-air digital terrestrial platform is clearly in the interests of viewers and an important addition to the diversity and universality of the digital offering. However, the position of the BBC clearly needs to be strengthened in the interests of democracy and audiovisual investment. This could be realised through establishing a statute on public service broadcasting which lays the BBC's Charter down in perpetuity as part of the infrastructure of citizenship. This process must go hand in hand with making it more accountable and acceptable to the public, which it was established to serve. This could be achieved through a more independent, larger and more representative Board of Governors.

In regulatory terms the British, German and the Swedish method of regulatory separation has been successful in allowing for the development of the opportunities that new media offer. Though some services are yet to take off, the public broadcasters have a clear set of purposes and strategies, which extend public service provision into a digital multi-channel television environment.

In the interests of transparency, accountability and consistency, one broadcasting authority in each country should be responsible for the monitoring and compliance of broadcast, independent production and investment obligations.

Where convergence of regulatory practice has recently taken place, such as in Italy, there appears to be little obvious benefits in real terms. Though both systems come under one umbrella organisation, content and carriage issues remain separate concerns. Therefore how an OFCOM¹⁰ style super regulator deals with both issues in a fast moving and complex audiovisual environment still remains to be seen. Interestingly, the European Commission clearly recognises this problem and distinguishes between carriage and content and the need to regulate the two sectors separately with a policy of co-operation.

Legitimacy with the public would be helped by having consistency and proportionality in our regulation as well as precise methodological framework for assessing the performance of broadcasters that makes clear their content and investment obligations and how and whether these are being met. Once government and Parliament have adopted legislation, its oversight should be left to the appropriate regulatory bodies mandated in law. There is novelty and innovation in other national systems which we might incorporate into our system be it German civil society involvement in public service regulatory oversight or their independent KEF which watches over ZDF and ARD. France, Canada, Australia and belatedly Italy and Spain ensure that all channels make a fair and proportionate broadcast and investment contribution to the culture and industry of their respective countries. Britain should be inspired by these examples and not imagine we have a monopoly on broadcasting wisdom. One of the enduring values we share in Europe is the protection and nurturing of a public space in broadcasting given its importance for democracy, citizenship and cultural diversity. That must continue to guide us as we seek to regulate anew.

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5 Ensuring Delivery through Regulation

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Media institutions

Designing a framework within which the broadcast media operate is a multi-layered process. Some elements will need to be specified in primary legislation, such as a broadcasting act; others may be delegated to an independent regulator with devolved statutory powers; media operators themselves will have their own internal codes of practice; and professional bodies may also endorse codes of ethics and standards.

One way or another, the framework needs to cover, essentially:

- The licensing of broadcasting outlets (including licence fees)
- The ownership of media outlets – particularly foreign- and cross-ownership
- Licence award procedures
- Licence compliance procedures
- The regulation of media practice

The framework needs to establish clearly that free media are an essential element in civil society and that publicly-funded broadcasting should not be just a mouthpiece for the government of the day – an idea which is often difficult to get past what we might call ‘the Ministry of Information mentality’.

Primary legislation

The media scene is developing at an extraordinary pace. Any system therefore needs to be flexible enough to accommodate rapid change without the need for the constant revision of primary legislation. So instruments such as broadcasting acts should define and establish the regulatory institutions but embody only the most fundamental principles in terms of delivery. Their detailed application should be governed by devolved regulatory codes which can be readily amended as circumstances change.

So, for instance, an act of parliament might establish the basic principle of observing acceptable standards of taste and decency; but it is the regulatory body’s code of practice which would interpret this broad intent in terms of the specific use of images, language or techniques. The regulator can then amend the rules in the light of experience without having to refer the matter back to government. Or the act might make broad stipulations of quality and diversity but it is the regulator which would, through the licensing process, define what is required in terms of actual programming output.

Regulatory bodies

This principle of regulation at arm’s-length from government is also a safeguard against the media’s becoming a tool in the direct control of politicians: an aspect of the ‘separation of powers’ principle which is crucial in democracies. In Britain, politicians (of all parties) will from time to time fulminate against some perceived transgression by the BBC; but the minister responsible for broadcasting (again regardless of party) will always reply that the BBC is not a government agency, that he or she doesn’t exercise direct control over it and that the complainant should take the matter up with the BBC’s own (independent) Board of Governors. The Board of Governors therefore acts as a ‘buffer’ between politicians and media practitioners: it makes the BBC a self-regulating body.

The case of commercial broadcasting is different. There the government delegates the overseeing of the industry to a regulatory institution with statutory powers to award broadcasting licences and to police the conduct of the industry. But here again regulation isn’t seen as a direct function of the state.

There are currently persuasive arguments in Britain that there should now be a single common regulator for all broadcasting outlets, whether publicly- or commercially-funded, so that everybody is obliged to work to the same standards and be held to account in the same way.

The licensing of broadcasters

There is no sustainable case for the licensing of newspapers – other than having the power to revoke the licence and so, under that threat, to keep the press compliant and subdued. Because there is no finite spectrum for the publishing of printed matter, the argument for ‘rationing’ a scarce resource doesn’t work. Printing-presses are universally available and, in most democracies, the licensing of them disappeared two hundred years ago.

Broadcasting isn’t the same. The allocation of broadcasting frequencies is determined by international agreements among governments and it is therefore not only reasonable but also essential for those governments to have a ‘gatekeeper’ and mechanisms for controlling their domestic allocation.

Though digital technology is making a vast multiplicity of outlets technically possible, many economies will be unable to sustain unregulated commercial competition on a very large scale – certainly if there is to be any concern for quality and diversity. This has already been seen in some Balkan states, where political change was accompanied by a headlong rush to set up literally hundreds of commercial stations in countries with tiny populations and a very low GDP. Needless to say, the advertising market couldn’t support this volume of output and many of them didn’t last long.

There are those who argue that’s fine: a free market should indeed be left to find its own level. But few countries-in-transition are likely to agree that such an approach meets the real needs of their people – particularly the poor. In a development context, the media have a vital role to play in educating the public, making people aware of their rights, encouraging participative democracy, exerting pressure for enlightened governance, exposing wrongdoing and providing a platform for the country’s culture. Universality and diversity are key to this concept of public service.

A market-driven commercial sector alone is, for quite understandable reasons, unlikely to meet all those needs. So it is right that there should be a system for awarding broadcasting licences and ensuring that any public-service requirements in the terms of the licence are delivered. It should be clear that what is being licensed is the provision of a specified service, not just the use of a specified frequency.

How should the licences be awarded? Not directly by a ministry, we should maintain, but by that independent regulatory body at arm’s-length from government. In most contexts, a straightforward tendering system for granting licences will be perfectly appropriate; but the process must be open, transparent and representative of the public interest.

It is also right that, since the spectrum is still, in most cases, a scarce national resource, the terms of the licence should be properly demanding. They should include at least:

- Commercial ownership of the broadcasting organisation
- Frequencies allocated
- Transmission coverage to be achieved
- Technical standards
- Nature of the service and minimum hours of transmission by programme category
- Minimum percentage of locally-produced programming
- Minimum percentage of programming commissioned from independent producers (if relevant)
- Maximum minutes of advertising material per hour
- Compliance with the regulatory codes of practice
- Mechanisms for dealing with complaints

Compliance with licences

In ensuring compliance, it may be that the quantitative aspects of the licence terms (that is the elements which can be measured objectively and aren’t matters of judgement – such as transmitter coverage, hours broadcast, percentage of local programming and so on) could be assured by a government agency. But in qualitative matters – the content of programmes and its treatment – it should always be a non-governmental body which is responsible for monitoring and judging performance. So, in most cases, it will make sense to entrust both kinds of activity to such an independent body.

It is important, too, to establish that, as well as dealing with compliance and the responsibilities of the media, the regulatory body should have a duty to protect their freedoms and to speak out when they come under threat, from whatever source.

Independent regulatory bodies

How should such a body be set up and the members of its governing board appointed? Ultimately, even if indirectly, this is bound to be to some degree a function of government. But there are ways of ensuring that the nominees are not just politicians' cronies or political placemen. In some countries, vacancies on the boards of regulatory bodies are advertised and, in principle, anybody may apply; in others, particular interest groups (industry, trade unions, religious bodies, arts organisations, the educational establishment and so on) may have the right to nominate candidates. Even when their appointment has, in the end, to be endorsed by a minister, this may at least ensure that the body is broadly representative of society in general.

The regulator will, of course, also need a team of professional full-time staff to implement policy on the ground. It is likely to require regular reports and returns on quantitative compliance and may sample-monitor output or conduct spot-checks on qualitative matters, both editorial and technical. And there will usually be an annual assessment meeting at which the broadcaster will be held to account for its overall performance.

Regulatory codes

The regulatory body has devolved to it the responsibility not only for awarding licences but also for ensuring compliance with their terms. Unless with this responsibility comes the power to impose sanctions on transgressors, the regulator will be a toothless creature. The government should therefore also delegate to the regulator the power of sanctions: for instance, to admonish broadcasters, to require them to broadcast corrections and / or apologies, to fine them, to suspend their licences – or even ultimately to revoke a licence altogether. (The more extreme penalties will seldom, if ever, need to be invoked, if only because of the broadcasters' instincts for self-preservation.)

The regulator will probably draw up more than one code with which broadcasters must comply if they are to retain their licences. There is, for instance, likely to be a technical code and a code governing advertising practice. But the most vital will be the programme or editorial code, which embodies the rules by which the station's day-to-day output will be judged.

Media ownership

The media are an industry and media development is a global phenomenon. Driven by technology and the market, media industries are everywhere proliferating, fragmenting, combining and diversifying. No country can insulate itself completely from these trends. And, indeed, foreign ownership can bring important inward investment to the country, in the media as in other fields. In some countries it may also provide some guarantee of media freedom.

There can clearly be no single universal formula for what degree of foreign ownership is acceptable or desirable; but any limitation should certainly be included in the terms of the licence. The terms should also ensure that foreign ownership should not traduce the interests, culture and heritage of the host country. Too many governments have sold off the seed-corn of their frequency spectrum to foreign providers, only to see them sell short the local audience.

Cross-media ownership is another matter. It would self-evidently be unhealthy for democratic pluralism if a single provider were to own, say, all the major newspapers and all the radio and television outlets in any country. Limits on such cross-ownership are clearly in the public interest and should be part of the terms of the licence. (Indeed, there is a good case for setting the permitted levels in the primary legislation.)

Public and commercial funding: a false dichotomy

There is a tendency to assume that public-service broadcasting must, by definition, also be publicly funded and that commercially-funded broadcasting need not concern itself with public service obligations. Neither is the case.

There are only three public-service broadcasters in the world of any significance which are still funded exclusively by public money: the BBC and NHK (through a licence fee) and ABC (through a government grant). Everywhere else PSB operators are required to supplement their public income from commercial and other sources, usually advertising.

On the other side of the fence, it is perfectly possible to impose public-service requirements on commercially-funded broadcasters as a condition for awarding their licences. Indeed, such requirements may be considerably more specific and demanding in terms of programme genre and quantity than those of the more general briefs usually held by publicly-funded operators.

The classic example is ITV in Britain, where historically, in some areas (such as regional television), the greater public service has been manifestly delivered by the commercial channel, not by the publicly-funded broadcaster.

Supporting PSB delivery

In many countries-in-transition the awarding of broadcasting licences is potentially a seed-bed for corruption – or at least for a failure to ensure that the media serve the best interests of the local community. But control of the ‘gatekeeper’ function gives governments the power to avoid both these snares if the political will is there. NGOs and other advisers can help countries-in-transition to develop regulatory systems which are designed to insist on – and to ensure delivery of – proper public-service output regardless of how the broadcaster is funded.