PART I

1

Introduction

The broadcasting sector in the European Union (the Union) is in a state of flux. Rapid technological development and increasing commercialisation have provided new challenges for regulators and policymakers, who seek to harness the potential of new technology to provide a regulatory environment that is for the good of everyone. Despite extensive consultation and reviews of the regulatory framework in the Union over the last decade or so, a failure to consider directly the broadcasting environment from the perspective of all viewers has created a regulatory framework in which a full range of broadcasting services is not universally provided. The underlying assumption of policymakers is that, in a properly functioning broadcasting environment, industry will thrive economically, develop new technology and new services and consequently cater for all viewers. The expectation is that the resulting environment will also create greater viewer choice and broadcasting will continue (somehow) to fulfil its public service remit, particularly its socio-cultural and democratic function. Yet, in so far as viewers are considered, it is as consumers of broadcast services and not as citizens. This approach, we argue, fails to represent the citizen viewer and neglects the valuable attributes of broadcasting that go beyond purely economic concerns.

The history of broadcasting in the Union began at national level with governments' various attempts either to monopolise or control it.[1] From the start, broadcasting has attracted a high degree of governmental involvement because of its perceived power to influence those who listened to radio or watched television. As television became established post-war,

[1] Television broadcasting was relatively slowly established in the Union, but by the end of the 1960s all member states of what was then the European Economic Community had at least one television station. The regulation of television built upon the structures established for radio, but because of the high costs of television production, spectrum scarcity and concerns about the political and ideological potential of television, member states deemed it necessary to establish public monopolies in order to ensure that the service worked for the national public good. See D. Krebber, *Europeanisation of Regulatory Television Policy: The Decision-making Process of the Television Without Frontiers Directive from 1989 and 1997* (Baden-Baden: Nomos Verlagsgesellschaft, 2002), p. 39.

public and private broadcasting emerged and audiences were regarded as either citizens in need of support or consumers in need of entertainment (sometimes both). Broadcasting policy is either regarded as something that operates in the interest of public service, operates in the interest of economic freedom or attempts to reconcile both. In essence, two arguments proceed in parallel: those based in non-economic concerns; and those based on economic concerns.

The Union's policy initiatives towards broadcasting were, and still are, regarded as a means to encourage and foster, depending on your point of view, national identity, a common Union cultural heritage or commercial freedom for a valuable Union-based market. National broadcasters were expected to reflect their respective national cultural heritages. Citizens were able to share in a minimal but 'common knowledge'.[2] The assumption that broadcasting has an impact, however ill-defined and insubstantial, forms the basis for the view that broadcasting should serve social, cultural and political purposes, beyond commercial objectives.[3] Parallel to these non-economic concerns was the issue of the evolving commercial identity of broadcasting, notably the introduction and expansion of the private sector, which began to coexist with public broadcasters. Of course, the philosophy of the two sectors is different. Private sector broadcasters do not necessarily have the public good as their primary purpose, whilst public sector broadcasters are often subject to public interest obligations. We will show how this bifurcated world constantly re-emerges in all aspects of Union broadcasting policy. Given the distinctions between the two types of broadcasting, and their respective interests, we are faced with the following problems: to what extent can we realistically expect private sector broadcasters to produce programming that serves non-economic purposes, therefore fulfilling the function of a public service broadcaster? Conversely, to what extent can we expect and do we want to expect public service broadcasters to provide commercial services? The answers to these questions need to be considered in the context of a highly competitive

[2] A. Graham, 'Broadcasting Policy in the Multimedia Age', in A. Graham, C. Kobaldt, S. Hogg, B. Robinson, D. Currie, M. Siner, G. Mather, J. Le Grand, B. New and I. Corfield (eds.), *Public Purposes in Broadcasting* (Luton: University of Luton Press, 1999), pp. 17–46, p. 19.

[3] These effects have generated what economists call externalities. Externalities arise 'once we suppose, as both common sense and research suggests (a) that television has some influence upon the lifestyles, habits, interests, etc, of those who watch it and (b) that these habits and interests have implications for those around us . . . even just the belief that television affects behaviour is sufficient for externalities to exist'; see Graham, 'Broadcasting Policy in the Multimedia Age', in Graham *et al.*, *Public Purposes in Broadcasting*, p. 26.

international environment. In short, the history of broadcasting in the Union centres on the interrelationship between commercial imperatives and a wide range of non-trade values.

Increased commercialisation, as a result of deregulation, liberalisation and privatisation policies; an increased number of players in the market, many of which are private sector entities; and more television channels, have together challenged existing assumptions about the Union's broadcasting environment and viewers' relationship to it, as well as the appropriate level and style of regulation. Economic pressures on broadcasters, driven by channel expansion, have led, across the Union, to increased competition for viewers. This has, in turn, had an impact on broadcasting content and formats, with successful formats and popular content tending to dominate programme schedules, arguably reducing choice and diversity of content available to viewers. Against this background, policymakers in the Union are under pressure to remove regulatory constraints from broadcasters in a commercialised environment so as to reduce their costs, which could also have an adverse impact on the quality and reach of content available to viewers.

The introduction of different distribution platforms and the subsequent growth of digital channels also have consequences for the level of access to content enjoyed by different viewers. Even if a diverse range of content were made available via this growth, the development of pay TV[4] means that some viewers cannot afford to access certain types of content, usually what is called premium content: film and sport. The trajectory towards pay TV is likely to continue and prove far-reaching, with television content increasingly being seen as a commodity that must, in one form or another, be paid for.[5] This is part of a more general trend in which content (however defined: entertainment, education or information) is seen, by transnational corporations, as a valuable commercial asset which may legitimately be restricted to those able and prepared to pay for it. At the same time, commercially driven technological developments are raising barriers to access to a diverse range of content and, increasingly, interactive television applications. This trend towards the reduction of free access is further exacerbated because it is no longer just films and sport that fuel pay TV, but the use of content archives, interactive dating,

[4] Pay TV refers to digital television services for which a viewer must pay a monthly subscription to a pay TV supplier.

[5] It is arguable that television was never really free, given the fact that public service broadcasters are often funded by licence fee or other form of tax. None the less they were free at point of access and the fee was not determined by reference to what one watches.

games and betting and, more recently, high-cost specially commissioned programmes and series.

While some viewers currently choose to remain in a passive linear, analogue, free-to-air environment, their freedom to do so will diminish and in some member states be short-lived. Across the Union, governments are preparing to stop transmitting analogue signals and to switch over to digital transmission. Although some digital television will be broadcast free to air, such as digital terrestrial television (DTT) in the UK (known as 'Freeview'), it is by no means certain that this will be the general pattern across the Union. Even if it were, free-to-air transmissions will increasingly introduce the viewer to newer technology, such as non-linear interactive television and the options to 'top up' their free-to-air viewing with subscriptions to further channels and services. Commercial services will certainly seek to benefit from anything that might be regarded as a meagre public service digital provision, as we have seen in the UK with top-up TV providers[6] doing so on the back of 'Freeview'.

These developments illustrate a trend in the Union broadcasting market, towards the commodification of information and the increasing digitalisation of content. Given this, two assumptions are prevalent. First, a consumerist approach is the best way to organise the television market. Secondly, free-to-air television is insufficient in either the amount of programming hours of particular types of programming, or in the variety of genres provided, and does not fully serve the preferences of viewers. These assumptions return us to the questions we raised earlier. Is the commercial sector sufficient for all purposes, or has the public sector a unique role to play? A policy environment that accepts the assumption about the necessity of a consumerist approach and the insufficiency of free-to-air television is likely to create a digital divide. This is nothing other than a payment divide, with basic subscription charges and additional service charges dividing up between them the content to which a viewer can have access. Against this background, regulation seeks to balance commercial interests and technical considerations[7] with the preferences of the viewer.

Our argument is straightforward. It is that, given the significance of broadcasting to the viewer and society, the viewing experience should be at the centre of policymaking, regulation and legislation. We are not

[6] See for example www.topuptv.com/

[7] There is some call for a distinction in regulation depending on whether the content accessed is broadcast traditionally or provided on demand. This push–pull distinction is very important in current regulation, indeed it could be said currently to define the way in which the viewer is perceived in regulatory terms.

suggesting that this should be the only concern, rather that it should be a central concern. The task of finding the 'right' balance is difficult and compounded by the fact that viewing experiences are diverse and the viewers' interests perceived to be in need of protection are not homogeneous. Regulation makes assumptions about the capacities of viewers to access and use technology and broadcasting services. We question the assumptions that geographical and financial barriers are not serious constraints to access and that the level of assumed competence of the viewer in using technology to create an individualised viewing experience. Within broadcasting policy, the viewer can be regarded as either a market-based consumer, or as a citizen with rights of access to certain content. Following on from this we propose that the viewing experience is shaped by whether regulation sees the viewer as a citizen or a consumer. This distinction remains central to our analysis of Union broadcasting policy. A secondary issue, linked to this distinction, is that of the expectations about how viewers engage with technology, which we refer to as the distinction between active viewing in a non-linear broadcasting environment, and passive viewing in a linear broadcasting environment (see table 1).

While we avoid engaging in audience psychology, it is nevertheless the case that the Union does seem to rely upon assumptions about how people will behave. These assumptions are not clearly elaborated; we analyse them in terms of the distinction between active and passive viewers (see table 1). For us the terms active and passive viewer make explicit what is often hidden within Union broadcasting thinking. Consequently they will be considered, in what follows, under our primary distinction, consumer viewers and citizen viewers and can be represented diagrammatically as shown overleaf.

In our opinion the viewing experience is quintessentially different when using the distinction between consumer and citizen. The consumer resides in the commercial domain. This is market-based and economically determined, viewers are individualistic, and viewers and broadcasters both regard content, in all forms, as capable of being purchased and owned. Information is not necessarily a public resource to be disseminated on behalf of the public good, but is private property to be exploited for financial gain. The citizen resides in the public domain and regards particular types of content as a social and civic asset. Such content should be available to all and enjoyed communally. Communication infrastructures are seen as adding to the cultural fabric of collective identity and belonging. The citizen requires that certain civic functions are

Table 1. *The scope of regulatory considerations regarding the viewing experience*

Commercial Domain	Viewing Experience	Public Service Domain
ACTIVE VIEWING EXPERIENCE (PPV, subscription, non-linear)	PERSONALISED SCHEDULES AND INTERACTIVE SERVICES	ACTIVE VIEWING EXPERIENCE (FTA, wide range of PSB services, non-linear)
CONSUMERS		CITIZENS
PASSIVE VIEWING EXPERIENCE (FTA, commercial, linear)	RELIANCE ON LINEAR SCHEDULING	PASSIVE VIEWING EXPERIENCE (FTA, limited range of PSB services, linear)
INDIVIDUALISTIC INFORMATION AS A COMMODITY		COMMUNAL INFORMATION SEEN AS PART OF PUBLIC SPHERE AND CULTURAL HERITAGE

Key to abbreviations in table, above:

PPV – pay-per-view
FTA – free-to-air
PSB – public service broadcasting

fulfilled by broadcasters and, most importantly, believes that such services should not be subject to payment barriers. Naturally enough, the absolute nature of this distinction is heuristic. Many of us are both consumer and citizen. Thus, although the two categories are easily characterised as distinct, we also recognise that that distinction is, in reality, fluid. Nevertheless, our analysis of broadcasting requires the distinction to be maintained so that we can achieve a degree of clarity over what Union policymakers and regulators mean when discussing and deciding broadcasting policy.

The distinction between citizens and consumers also relates to the nature of the content that should be available to satisfy their respective viewing preferences. As regards citizens, content reach reflects programming which supports particular social, civil and political values, and which tends to emphasise the positive role of broadcasting in supporting democratic activity and in fostering a public sphere. Thus, we would expect to see a wide spectrum of programming covering different subject-matters

via a range of genres, importantly news, current affairs, documentaries, educational programmes and, it has been argued, sport.[8] Since the 'invention' of modern sport in the late nineteenth century, sport has been strongly associated with the inclusive and exclusive construction of identity and difference. Since the development of modern sport occurred at the same time as a wave of nation-building, it has also always been particularly associated with nationalism. As we will see in chapter 2, one of the roles ascribed to public service broadcasting (PSB) is that of fostering national identity and social cohesion. Accepting this, broadcast sport has an important part to play in building a citizen's sense of identity and belonging. The key aspect of citizens' programming is the fact that it is universally available and free to air.

Quite different from this is the content diet of the consumer. No content type (or genre) is, in principle, excluded from their diets, although particular groups of consumers tend to focus on a narrower range of programmes, reflecting pre-existing interests and consumption patterns. While the content range itself may appear to be wide, from guns to bikes to sport and so on, it is usually gathered around core interests. A caricature of this viewing type is that a consumer watches the same thing from different sources. This can be contrasted with a citizen who watches varied things from the same source.

The factors affecting the viewers' engagement with content, that is whether the experience is active or passive, comprise two categories: personal factors; and environmental factors. Personal factors relate to the viewers' own skills and abilities in navigating the choices available (media literacy) and mastering the technology needed to make those choices.[9] Environmental factors are those that arise from the broadcasting sector. Increased commercialisation has brought with it subscription and pay-per-view TV and some content types have become the virtually exclusive preserve of pay TV. To receive such content, a viewer needs to be able to pay for it and not everybody can afford to do so. Thus, a viewer might

[8] M. Roche and J. Harrison, 'Cultural Europeanisation through Regulation?: The case of media-sport in the EU', unpublished paper presented at the *International Association for Media and Communication Conference*, Media Sport Working Group, Barcelona, July 2002, p. 16.

[9] See Ofcom Special Report, *Consumer Engagement with Digital Communication Services*. An attitudinal segmentation model was developed to provide understanding of the way UK consumers engage with digital communication services. Five consumer segments were identified: enthusiasts, functionalists, economisers, abstainers and resisters. Available at www.ofcom/org.uk/research/cm/consumer_engagement/, p. 3.

have the personal capacity to be active, but be frustrated in so doing by environmental factors.

Consumers seeking an active viewing experience have to be able to pay for content and correspondingly arrange their viewing around a set of options that reflect their particular desired content reach and their willingness to pay. Such viewers assemble their own viewer package from a combination of free to air, subscription channels and pay per view, and construct their own particular programme schedule.[10] A caricature of such a consumer is that they are unconcerned that others cannot enjoy the same privileges and their viewing choices are based entirely on a selfish and individualised desire to maximise their own enjoyment. Their viewing choices could be characterised as being ones that could reinforce already held preferences and prejudices, and are located entirely in the commercial domain. Theoretically, such viewers may have a disregard for the social and cultural value of broadcasting and could choose endlessly to watch programming that is deemed to be 'unsuitable' or may be harmful.

Citizens who actively control their viewing experience will expect the content to be available to them, and from which they choose what to watch, to reflect the values and aspirations of their citizenship boundaries. This citizen seeking an active viewing experience assumes that not only are certain types of content available but also that access to that content is guaranteed. Such content is traditionally found, though today by no means exclusively, in free-to-air PSB, which is often supported by the state.[11] What is common to these two types of active viewing experience is that the viewers are media literate and able to locate the type of content they want. The bewildering world of multi-channels, different distribution networks and payment options is understood and,

[10] For this type of consumer, content can be chosen eclectically and may include a reality TV programme with programmes from a pay-per-view culture channel in the same package. Some programming which arguably serves elements of the public service remit (i.e. educates and informs the audience) is now only available on a pay-per-view or subscription basis. Channels, such as Artsworld shown in the UK, initially required an additional payment per month, but now is available as part of a bundle of other channels which are acquired when a subscription is paid. Television news is still protected and shown on a free-to-air basis (although the number of news sources available is restricted according to the type of technology the viewer purchases). In a multi-channel pay-TV environment the further privatisation of certain types of information seems inevitable. The area of greatest concern to date has been in relation to the privatisation of particular popular sporting events (see ch. 12).

[11] State support can take a variety of forms from cash subsidies, tax breaks, through to access to frequencies. State support does not necessarily imply a direct state control of content.

subject to overcoming any environmental constraints, is successfully navigated.

The phrase passive consumer requires clarification. What we mean by the phrase is the viewing experience of the traditional linear free-to-air commercial television viewer who was targeted by advertising and who, it was hoped, would respond by consuming what was advertised. The content range reflects a tendency towards entertainment rather than a diverse range of programming. This viewer is a so-called couch potato. What we do not mean are those consumers who wish to purchase a service but are constrained by environmental factors, for example, willingness and ability to pay, or reception difficulty. While clearly illustrating the difficulties created by considering television content to be purely a commodity, here the best one can say of such viewers is that they are rendered inactive, over-spend or are left frustrated in their viewing choices.

The passive citizen viewer also represents a more traditional figure. Instead of customised packages, citizen passivity is based on a linear viewing experience with content selected from a very limited range of channels, usually provided free to air, traditionally by PSB.[12] Essentially, the passive citizen viewer is in the hands of the scheduler, and consequently, the limited channel options represent a constructed viewer content reach. Obviously such limitations and constructions vary across the Union and for a variety of historical and political reasons. However, the point remains that passive citizens have traditionally relied on PSB content, but this is precisely the sort of content, with its formal scheduling, that is being undermined by multi-channel, niche broadcasting. The increasing commodification of information has also meant that the variety of content available for universal distribution is constantly being reduced, thus forcing citizen viewers into ever more commercial considerations. As such, this form of passivity is becoming scarcer.[13] In reality, such viewing looks irredentist, harking back to simpler times. The drift from this type of experience to a consumerist-driven environment is palpable and,

[12] The experience of Freeview in the UK is fascinating from this point of view. Initially offered as a free-to-air alternative to the pay TV channels provided by BSkyB, a subscription payment now allows for further channels to be added as top-ups, indicating that this type of viewing cannot escape from commercial options.

[13] The British public service broadcaster, the BBC, is restructuring its production and commissioning of content to allow '360-degree commissioning' of all content to be shown on all platforms. The BBC's vision is that, although linear channels have several more years of life (in the US, the prognosis for such channels is that they have only five more years of life), the future of broadcasting must be focused on on-demand media as audiences move to use other types of media platforms to access content (L. Rouse, 'The BBC's Vision Thing', Broadcast, 28 July 2006, 15).