European broadcasting policy has attracted attention from many disciplines because it has dual nature: cultural and commercial. This book offers a detailed treatment of European broadcasting law, set against an overview of policy in this area. In this respect the authors identify tensions within the EU polity as regards the appropriate level, purpose and mechanism of broadcast regulation. Key influences are problems of competence, the impact of changing technology and the consequences of increasing commercialisation. Furthermore, the focus of the analysis is on the practical implications of the legal framework on viewers, and the authors distinguish both between citizen and consumer and between the passive and active viewer. The underlying question is the extent to which those most in need of protection by regulation, given the purpose of broadcasting, are adequately protected.

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In view of the economic and cultural importance of the broadcasting sector in the EU and its Member States, the appearance of this study of European broadcasting law and policy is timely. The content and delivery of broadcast media such as television are of central importance both for the viewer and for society more generally. Watching television remains a very important leisure activity for most people. Clearly technological innovations such as the internet have combined with the emergence of digital television to produce an increasingly diverse set of ‘offerings’ for consumers, but although internet broadcasting remains for the most part in its infancy, at the same time the introduction of interactive services on digital TV has led to a narrowing of the divide between what is ‘online’ and what is ‘TV’.

Bringing together expertise from the fields of legal and journalism studies, the two authors fill an important gap in the available literature by providing an analysis and critique of the role of the European Union institutions in regulating broadcast media. They draw an important distinction in terms of seeing the viewer both as consumer and as citizen, ensuring that their analysis is not solely market-based, but is also informed by the difficult considerations which surround the future of public service broadcasting, alongside commercially driven offerings.

Part I of the book sets the scene, identifying the general issues which have shaped broadcasting policy in the EU context over the past thirty years, and highlighting the differing provisions of EU law which apply to different aspects of broadcasting policy in the context of a single market, including the regulation of ownership, content and delivery. Part II looks in more detail at some specific questions such as ownership, the broadcasting of sport and advertising, which touch upon some of the most controversial issues facing regulators at the present time. In their analysis, the authors seek to reflect the difficulty of combining both an economic viewpoint and a cultural viewpoint in relation to the social, political and economic centrality of broadcasting. As they note, this is complicated by
the factors which shape an EU-level response in the area of broadcasting such as the complex and incomplete nature of the EU’s competences in the field, as well as the problems of regulating such a swiftly changing technological domain.

The authors argue that broadcasting is best understood as something which can contribute to social, political and cultural purposes. They find that current broadcasting regulation at EU level takes a multi-faceted approach to the role of broadcasting in relation to these purposes. Regarding viewers as citizens requires a different nature of regulatory thinking than does regarding them as consumers in a market-place. The citizen’s domain is characterised by universal availability (even if in practice not all citizens take up what is on offer), whereas in the consumer domain private interest considerations of ownership and access dominate: the ability and willingness to pay is crucial. The authors perceive a shift in European broadcasting towards commercial overstatement and public service understatement, and they call for attention to be paid not merely to the creation of European champions capable of competing globally, but also to diversity of suppliers and content.

This work makes a stimulating contribution to the interaction of European law and broadcasting policy, and its careful and critical assessments and warnings are a most welcome contribution to the analysis of the current and future developments in the European Union’s competence in broadcasting. Accordingly, we welcome this work’s appearance in the series Cambridge Studies in European Law and Policy.

Laurence Gormley
Jo Shaw
The origins of this book lie in a discussion we had one summer about the broadcasting of sporting events, and the way in which access to such broadcasting rights was affecting the broadcasting sector. During the course of this discussion, we realised that similar themes were arising as arose in other contexts, such as the quota provisions in the Television without Frontiers Directive. Further, although there were some detailed treatments of the tensions within the EU polity as regards the appropriate level, purpose and mechanisms of broadcast regulation, there were no similar treatments of the substance of broadcasting law and policy at the EU level. Moreover, the existing discussions of the area seemed rather abstract; we considered that in looking at the substance of the rules, we should consider the practical implications from the perspective of those arguably most influenced by those rules, that is, the viewers. This has meant that, in addition to providing a detailed and accurate picture of the law (admittedly one of the objectives of this book), we would analyse that law and underlying policy to identify the extent to which the needs of viewers are protected.

One of the initial questions for us related to the scope of this book. As we point out, there is no one thing within the Union as a single broadcasting policy. Instead, the broadcasting sector is affected by a number of instruments: some, such as the Television without Frontiers Directive, are clearly aimed at regulating broadcasting, but others, such as the four freedoms and competition policy, have a more incidental effect. Where, then, to draw the line, as a complete treatment of all potential relevant areas would have resulted in an encyclopaedia rather than a book? The Television without Frontiers Directive was an obvious starting-point, but we then decided to include those aspects of law which would have an impact on the range of content available to viewers. To this end, we included a review of the infrastructure regulation, media mergers and the state-aid rules relating to public service broadcasting. A full treatment of the communications package and of competition rules and the
broadcasting sector in general lies outside the scope of this book. Likewise, although television standards are central to the reception of television services, and copyright issues may also affect content, they too have not been covered. The law is up to date as of 31 July 2006. We have, however, included in an appendix the main issues arising from the revised text of the proposal as agreed by the Common Position of the Council, 24 May 2007. Although at the time of correcting proofs the European Parliament had yet to vote on the revised proposal, it was not envisaged that there would be major changes to the proposal.

This book is long overdue. We would therefore like to thank the commissioning editor and series editor for their patience. We would also like to thank the many friends and colleagues, too numerous to mention individually, who have helped us, directly or indirectly, in the writing of this book. Particular thanks must go, in no specific order, to Neil Sellors, Chris Marsden, Steve Anderman, Christian Twigg-Flesner, Roger Brownsword and Sheldon Leader. Finally, this book is in memory of Henry, who inadvertently was responsible for starting this project off.

Jackie Harrison
Lorna Woods
September 2006
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