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Public Service Broadcasting in Transition: A Documentary Reader

Abstract

This is a book of documents, comments, and cases that has been prepared, at the request of the European Institute for the Media, for the use of government officials and citizens interested in strengthening public service broadcasting in transition societies.

In this book we try to provide a small chest of tools and background information that will be of assistance. We start, in Chapter 1, with an overview of some of the general principles of public service broadcasting, and include pertinent comments on each of them. Here, as throughout the book, we concentrate on issues of governance and financing, with some attention as well to issues surrounding programming. In Chapter 2, we turn to current issues in the European-level debate, partly from the perspective of European expectations and standards that are employed in evaluation and accession processes. In Chapter 3, we look primarily at the UK and Germany, and also at Canada, presenting documents that might illuminate and help in the understanding of the respective models that these long-established systems represent. In Chapter 4, we provide documents on the experience with public service broadcasting in various transformations in transition societies in the last decades.

Disciplines

Broadcast and Video Studies | Communication

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Press and Information Office
of the Federal Government

PUBLIC SERVICE BROADCASTING IN TRANSITION: *A Documentary Reader*

Commissioned by

 THE EUROPEAN INSTITUTE FOR THE MEDIA
INSTITUT EUROPÉEN DE LA COMMUNICATION
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Compiled by

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PUBLIC SERVICE BROADCASTING IN
TRANSITION:
A DOCUMENTARY READER

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SEPTEMBER 1, 2001

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INTRODUCTION

This is a book of documents, comments, and cases that has been prepared, at the request of the European Institute for the Media, for the use of government officials and citizens interested in strengthening public service broadcasting in transition societies. We recognize the perils of this enterprise. First, the process of picking examples and models from one society and even parading them for another has its dangers. Too often, only the benefits of a proposed model are described without acknowledging the stresses they are under in their own homes. It is difficult to take a framework that has been shaped in one complicated organic context and adapt it in another.

Second, complex issues surround public service broadcasting all over the world. We discuss many of these in Chapter 5, but for the moment, a few opening comments are pertinent. Public service broadcasting finds itself in the uneasy perch between state broadcasting (where there is direct dominance) and commercial broadcasting, the seemingly inexorable consequence of widely-lauded "market forces." There are direct interests, direct lobbies, and direct instrumental consequences for each of these poles. Public service broadcasting is more of an ideal, more of a consummation of citizen desires and an element of a perfected democracy. Those who shape policy usually do so because of a specific output they desire. As a result, only if citizens and those who hold strongly to a set of public policy goals are deeply engaged can public service broadcasting obtain and hold a necessary constituency.

Third, it is essential to examine the specific utility and importance of public service broadcasting in transition societies as well as the special risks and dangers that architects of public service broadcasting will face. Over the last decade, patterns have become apparent in the post-communist transitions. Public service broadcasting is needed as a tool of pluralism and diversity, as an instrument of education, unification, and building a constructive national identity. Public service broadcasting can sustain languages and cultures and help develop national talents in production and creativity. Public service broadcasting can act as an aid to reconciliation.

But public service broadcasting comes at a price, financially, in the capacity of the state to tolerate criticism and keep its hands off management and, in the resources needed to nurture an audience against the pressures of the persuasive and appealing channels of a newly opened global bazaar of entertainment (and information). In economies that must contend with balancing extraordinary claims on a struggling budget, public service broadcasting must be widely understood and its principles appreciated for expenditures to be justified. In many societies, the license fee will be the appropriate means to finance (or finance in part) the public service broadcasting sector, but this does not always go down well (as it can be seen as another tax) and does not always perform its purpose of limiting state interference. In economies where there is an underdeveloped consumer economy, advertising as a measure of support can be weak, and the willingness of individuals to pay a supplemental fee is often absent. This is even more difficult at a time when state budgets are stretched.

As we try to show in Chapter 4, all transition societies have struggled with these questions. Governments have been loath to surrender control over boards of management, over the directorships of channels, or over the content of programming. Most transition societies have had financial difficulties. Finally, most transitional societies have found that the appeal of commercial television has weakened the hand of public broadcasting.

In light of all of this, building a sustainable, accepted public service broadcaster is a complex task. In this book we try to provide a small chest of tools and background information that will be of assistance. We start, in Chapter 1, with an overview of some of the general principles of public service broadcasting, and include pertinent comments on each of them. Here, as throughout the book, we concentrate on issues of governance and financing, with some attention as well to issues surrounding programming. In Chapter 2, we turn to current issues in the European-level debate, partly from the perspective of European expectations and standards that are employed in evaluation and accession processes. In Chapter 3, we look primarily at the UK and Germany, and also at Canada, presenting documents that might illuminate and help in the understanding of the respective models that these long-established systems represent. In Chapter 4, we provide documents on the

experience with public service broadcasting in various transformations in transition societies in the last decades.

We wish to acknowledge the assistance of Jessica Stalnaker, who was project coordinator and research associate in the development of the project. Bethany Davis and Darcee Olson, of PCMLP and Jennifer Green at Covington and Burling, London, were instrumental in bringing the project to completion.

CHAPTER I

PUBLIC SERVICE BROADCASTING: PRINCIPLES AND ISSUES

Public service broadcasting, in the spirit of serving the public interest, is driven by a small number of broad, general principles. In this chapter, we present a number of texts that attempt to synthesize these principles. In 2000, the World Radio and Television Council, an international nongovernmental organization supported by UNESCO, produced a basic document intended to define and outline the principles of public service broadcasting. This document introduces the reader to certain of the major debates that are faced in Europe, Canada, the US, and throughout the world. We have used it here as the core around which we have added other documents on the specific issues of financing, programming, and structure of public service broadcasting.

There is something fascinating about public service broadcasting at this very moment: in spite of its recognized importance, it is under attack, and in many states, in danger of serious decline. In spite of the proud rhetoric that surrounds it, despite all the effort to advocate the adoption of public broadcasting systems in transition societies, major problems face these channels. These are problems of financing and problems of purpose. There may be free speech questions, even in states that have the highest commitment to freedom to receive and impart information; more serious questions are those on the place of public broadcasting in a multi-channel world where competition and private enterprise are so highly vaunted.

*The main themes of this book are funding, programming, and structure. While subsequent chapters develop these themes, our goal here is to suggest some of the complexities with respect to each of them. On the critical question of funding, we present an extract from *Public Service Broadcasters Around the World*, a report prepared by McKinsey & Company at the request of the British Broadcasting Corporation in January 1999. This document highlights a number*

of controversial questions such as the appropriate mix of public and commercial revenues for public broadcasters, and the relative merits of various means of generating public funding. In this section, we also include an extract from a Canadian report that examined different models for the funding of public broadcasting. Regarding programming, we include a document about Ireland that discusses the problem of objectivity and impartiality in broadcasting. And to illustrate a generic approach to the question of ensuring the independence of public service broadcasters, we present an extract from the Model Public Service Broadcasting Law prepared by Dr. Werner Rumphorst of the EBU.

Finally, this chapter closes with an overview that addresses in a general way the problems that have been presented, in a brief article by Marc Raboy, originally published in the winter 1999–2000 issue of Diffusion EBU, the official bulletin of the European Broadcasting Union.

I. 1 GENERAL PRINCIPLES

The following excerpts represent the ideal of public service broadcasting. In looking at each point, consider the ways in which the principles are under fire, the particular rationales and techniques used to obstruct the goals, and possible strategies for structuring these institutions to render the goals achievable.

**World Radio and Television Council,
*Public Broadcasting, Why? How?, 2000***

Understanding Public Broadcasting

Public broadcasting rests on certain basic principles, defined in an era of general-interest media, long before the multiplication of channels and the era of specialization. These principles remain essential today and public broadcasting authorities must give them a meaning, reinterpret them in some way, in a world characterized by media fragmentation.

Principles

Universality, diversity and independence remain today, like yesterday, essential goals for public broadcasting. To these three principles must be added a fourth,

particularly important when the public broadcaster exists side by side with commercial broadcasters: distinctiveness.

(1) Universality

Public broadcasting must be accessible to every citizen throughout the country. This is a deeply egalitarian and democratic goal to the extent that it puts all citizens on the same footing, whatever their social status or income. It forces the public broadcaster to address the entire population and to seek to be used by the largest possible number. This does not mean that public broadcasting should try to optimize its ratings at all times, as commercial broadcasting does, but rather that it should endeavour to make the whole of its programming accessible to the whole population. This does not merely involve technical accessibility, but ensuring that everyone can understand and follow its programming. As well as democratic, public broadcasting programming must be “popular”, not in the pejorative sense that some give this term, but in the sense that the public forum it provides should not be restricted to a minority. Thus, public broadcasting, while it should promote culture, should not become a ghetto constantly frequented by the same group of initiates.

(2) Diversity

The service offered by public broadcasting should be diversified, in at least three ways: in terms of the genres of programs offered, the audiences targeted, and the subjects discussed. Public broadcasting must reflect the diversity of public interests by offering different types of programs, from newscasts to light programs.... Diversity and universality are complementary in that producing programs intended sometimes for youth, sometimes for older people and sometimes for other groups ultimately means that public broadcasting appeals to all.

(3) Independence

Public broadcasting is a forum where ideas should be expressed freely, where information, opinions and criticisms circulate. This is possible only if the independence—therefore, the freedom—of public broadcasting is maintained against commercial pressures or political influence. Later we will examine

specific means for guaranteeing respect for this principle and ensuring the credibility of public broadcasting in the eyes of the public. Indeed, if the government influenced the information provided by the public broadcaster, people would no longer believe in it. Likewise, if the public broadcaster's programming were designed for commercial ends, people would not understand why they are being asked to finance a service whose programs are not substantially different from the services provided by private broadcasting. This latter example, by the way, leads us to lay down another principle that is particularly important in countries where public broadcasting exists side by side with private commercial services.

(4) Distinctiveness

Distinctiveness requires that the service offered by public broadcasting distinguish itself from that of other broadcasting services. In public-service programming—in the quality and particular character of its programs—the public must be able to identify what distinguishes this service from other services. It is not merely a matter of producing the type of programs other services are not interested in, aiming at audiences neglected by others, or dealing with subjects ignored by others. It is a matter of doing things differently, without excluding any genre. This principle must lead public broadcasters to innovate, create new slots, new genres, set the pace in the audiovisual world and pull other broadcasting networks in their wake.

I. 2 FINANCING

While financing is always a critical issue, in many of the most developed societies, there is the luxury of choice: a strong economy, a group of supportive viewers, and a legislature with ample funds to allocate. One can read the following section and ask which of the financing options are really available, and what resources can be tapped in transition societies that would not be opportunities elsewhere.

Issues of financing public service broadcasting are—quite obviously—key to its success and its pattern of performance in a society. Globally, there has been a search for the magic way to provide financing that has aspects that are almost always impossible, in combination, to achieve. The ideal financing has these qualities: (a) it is guaranteed for many years so that politicians cannot interfere; (b) it is sufficient to achieve the multiple tasks the public service broadcaster must perform; and (c) it allows some opportunity for accountability.

As we shall see, there are several standard sources for financing. These are subscriber license fee, funds from the state budget, advertising and voluntary contributions from viewers and charities. There is support for the broadcaster and, from time to time, specific funding for programmes. To these, in transition societies, must be added support from European institutions, foreign governments and large scale NGOs.

World Radio and Television Council, Public Broadcasting, Why? How?, 2000

What type of financing should be favoured for public broadcasting? This question is important since the sources of financing may enhance or diminish the public broadcaster's ability to carry out its mandate and missions.

License fees—a tax linked to the ownership of receivers—have been the historical form of financing of public broadcasting. In principle, they create a direct relationship between the broadcaster and its public, the citizens. Consequently, license fees appear as the ideal form of financing. While license fees remain the most widespread form of financing in Europe, at least, they are far from being the only one; none are levied in many countries, where public

funds are instead allotted as subsidies. License fees are less widespread outside of Europe. In Canada and Australia, for instance, public broadcasting is financed out of the State's general funds. Indeed, a cursory examination of the various national situations shows a wide variety of situations; few countries rely on a single source of financing. The BBC and Japan's NHK, financed solely through license fees, are exceptions. We see more and more a mix of public and commercial financing. Thus, these past few years, many public television broadcasters have opened up to advertising or resorted to it more, created new subscriber services or launched wholly commercial activities to finance their main service.

Is reliance on commercial sources of financing acceptable for public broadcasting, considering it owes its existence to the desire to shelter this cultural sector from commercial pressures? The easiest answer perhaps, and also the most realistic, particularly as regards advertising income, is to say that it may be acceptable provided it does not interfere with the public-service obligations incumbent upon public broadcasting. But beyond a certain level, if the need for commercial financing becomes a dominant concern for the public broadcaster and changes the nature of the programming, we should obviously be concerned. Others, to the contrary, warn against advertising phobia. A French Senate report points out that to the younger generation, the absence of advertising would seem suspicious, a sign of something elitist, therefore boring, even square. The report considers that advertising, used in moderation, prevents public networks from cutting themselves off from the rest of the audiovisual landscape, while showing their difference.

On the other hand, what may be harmful to public broadcasting is to be forced into a very competitive position and have to hustle for advertising revenue to ensure its survival. The temptation then is very strong to stray from public-service obligations and produce the same type of programming as private competitors.

**Public Service Broadcasters Around the World: McKinsey & Company,
'Public Service Broadcasters Around the World: A McKinsey Report for
the BBC', 1999^{*}**

We found clear evidence that a PSB's funding model has profound implications for its ability to pursue successfully [its] new strategies. Many PSBs are funded, at least partly, through advertising. Our survey shows clearly the potential dangers of this approach. We have found evidence that the higher the advertising figure as a proportion of total revenues, the less distinctive a public service broadcaster is likely to be.

Pressures on funding are increasing as governments seek to reduce the overall tax burden and as increased competition reduces available advertising revenues (Exhibit 6). As a result of these challenges, and particularly the significant loss of share (and therefore influence) to the new commercial broadcasters, many observers over the past several years considered the PSB an outdated concept. The future, they argued, would bring a multiplicity of channels, as in the United States, with seemingly enormous variety. Many PSBs were considered inefficient relics of an earlier, state-dominated age. The PSBs did tend to carry much higher overheads as they contained large production units, education departments, and many other commitments, which the more streamlined commercial broadcasters did not; the absence of competition had made many of them complacent and overstaffed. Furthermore, commercial broadcasters were often more sophisticated in their use of marketing techniques. The new commercial broadcasters were seen as more progressive and exciting than the staid, familiar PSBs.

^{*} Online [September 2001] Available: <http://www.bbc.co.uk/info/bbc/pdf/McKinsey.pdf>

Pressure on Funding is Increasing

EXHIBIT 6:

Government Funding

- Other uses for tax revenue (e.g., health, education)
- Overall lower government spending for political reasons (e.g., to meet Maastricht criteria)
- Government spending is highly scrutinised, and funding a public service broadcaster from tax revenue is not always popular

Advertising Funding

- Competition from new terrestrial channels
- Competition from new cable/satellite channels
- Competition from other media (e.g., magazines, Internet, digital TV)
- Advertisers are becoming more sophisticated, and have many more options in how they reach their defined segments

Monopolies Evolving into Ecologies

However, the landscape has fundamentally changed. With the introduction of competition, broadcasting has been transformed from a simple, predictable monopoly into a complex, more volatile ecology, where the PSB is just one of a number of players fighting for survival. Each broadcasting market now has a number of key groups with varying degrees of power—audiences, government/regulators, infrastructure and equipment providers, advertisers, programme providers, and the public service and commercial broadcasters—that interact to reinforce or diminish the overall health of the market. Each of these groups has their own objectives or aspirations, which interact in complex ways.

Sweden provides a good example of how the different elements of the ecology—particularly the regulator and the PSB—can work together to improve the quality of the broadcasting market as a whole. Commercial terrestrial competition began in 1991, and new competitors like TV3 and TV4 gained significant share fairly quickly. However, as SVT is funded by a licence fee, this loss of share did not immediately affect SVT’s revenue. SVT adopted more sophisticated scheduling tactics (for example, scheduling its entertainment shows at the beginning of peak time) but maintained its overall broad-ranging schedule, and kept the appetite for high-quality programming alive in the market. Consequently, the overall programming standards of the Swedish market are quite high and SVT currently has a prime time share of over 50%.

Conversely, in **Portugal**, the elements of the ecology have interacted in a negative fashion and a spiral of decline has ensued, leading to a loss of overall distinctiveness for the market. Terrestrial competition began in 1992, and, as in Sweden, the commercial channels (SIC and TVI) quickly gained a significant share of viewing. However, as RTP is primarily funded by advertising, its loss of share prompted a significant reduction in revenues. Although the government eased the burden somewhat by increasing grant income (with restrictions on how it could be spent, e.g., orchestras, educational programmes), RTP was forced to adopt a much more commercial schedule in an effort to increase advertising revenues. As a result, the overall distinctiveness of the Portuguese market is now relatively low. RTP has lately been adjusting its programme mix to become more distinctive and has halted its slide in share.

***Determining the Appropriate Funding Model
for Public Service Broadcasters***

While there are many areas, which are critical to the long-term success of a PSB, perhaps the most important is the right funding model. Throughout this survey, we found examples of broadcasters whose funding model either acted as a key element of its success or as a burden. The ideal funding model is one, which is:

- Substantial enough to create a true competitor to commercial channels
- Independent from undue government or other influences

- Predictable over the medium term
- Growing at a similar or faster pace than the PSB's costs
- Sufficiently simple and equitable that it can be administered with minimum political controversy.

(1) Substantial

The level of funding of PSBs varies widely between countries, both on an absolute and a per capita basis. However, we found a close link between funding levels and the ability to maintain sufficient audience share to retain market influence. While it may be tempting to cut the funding of a seemingly underperforming (or high-performing) PSB, governments must bear in mind the critical role the PSB plays in the market ecology. Those PSBs that have been forced to chase market share (e.g., Portugal, Spain) in order to fill their funding gaps have had a very difficult time. The overall standards of the market have been affected and it has only taken a short while for audience tastes to descend to the lowest common denominator.

(2) Independent

One of the key elements of the PSB mission is that it be seen as unbiased and trustworthy. The funding method can have a significant impact on audience perceptions. Government grant income may imply a bias toward the government. In South Africa, the SABC's coverage of current events was regularly questioned by observers who found it too sympathetic to the government. Advertising can have an even more profound effect. Our analysis shows clearly that an increased dependence on advertising has led inexorably to a more populist and less distinctive schedule [...]. This has significant ramifications in those markets that have increasing competition for advertising. This effect is strengthened if the channel also depends on government grant funding, which tends to ebb and flow depending on the mood of the government. This reliance on populism at the expense of distinctiveness can potentially compromise the rigour of a PSB schedule. Our analysis also shows that, between 1993 and 1996, advertising as a percentage of revenue declined across a sample of PSBs, yet the programming mix of the advertising supported channels remained broadly the same. This implies that even the least rigorous advertising-funded PSBs are seeing decreasing financial benefits from their

relatively populist schedules. The principal cause appears to be increased competition for advertising. Accordingly, if advertising-funded PSBs are to increase their advertising revenue, they will have to become even less rigorous. Unless their funding mechanisms are fundamentally altered, these PSBs may find they have economic incentives to fritter away their distinctiveness, thereby harming the entire market.

(3) Predictable

The vast majority of PSBs are funded either by pure public funding (licence fees or government grant), or by a mixture of public funding and advertising and sponsorship. Our work has highlighted some key characteristics of each of these funding approaches:

Advertising. Advertising income tends to be quite volatile, due to its dependence on the business cycle and susceptibility to competitive pressures. This makes it difficult for a PSB to plan its investment strategy, whether for programmes or for operational improvements. As competition for advertising increases in markets, broadcasters will have to use increasingly sophisticated pricing and yield management tools to generate the same levels of income they now enjoy. Volatility may even increase, as existing sellers lose power in the market.

Government Grant. In countries where the PSB is heavily reliant on direct government funding, revenues have also been quite volatile, making it difficult for the broadcaster to stay within its budget and to meet its (and the government's) aspirations. Furthermore, its inclusion in the annual budget round makes it susceptible to reductions in its funding in times of economic downturn, and consumes an inordinate amount of management time.

Licence Fee. Our analysis shows that licence fee-funding has been more stable and predictable than the other forms of funding. This allows PSBs to invest in programming or operational improvements, as they can be confident about their revenue for the term of the licence agreement.

(4) Simple and Equitable

Within most licence-fee-funded systems, there exist concessions for certain groups in society. In most countries with a licence fee system, the blind are

exempt or pay a reduced rate (as in the UK). In some countries, fees have also been reduced for the elderly or those on low incomes. These countries have found that the resulting reduction in income has necessitated significant changes to legislation.

In **France**, a 1982 decree passed by the Mitterrand Government stipulated that persons over the age of 60 and on a low income would be exempt from paying the licence fee. However, as time progressed and the number of people falling into this category grew, the lost revenue associated with this concession became significant. Lobbying from France 2 and France 3 prompted a change to the legislation in 1993 with the age limit being raised to 65. (However, the rights of those already exempt were reserved.) Despite this adjustment, the revenue loss continued to be considerable and in 1996, further legislation led to the exemption condition being restricted from 1 January 1998 to those over 65 and on a *very* low income

A similar situation arose in **New Zealand**. People over 60 and receiving the New Zealand state pension or war pension were entitled to a 33% reduction in their licence fee but the age limit is currently being raised in three-month increments to 65.

Not surprisingly, cuts in funding through significant concessions must invariably be made up from some other revenue source—either funding is increased or service is cut. Neither one of these is optimal from the point of view of the government or the broad majority of viewers. As these examples show, concessions, if not drawn up with a longterm view, create strains in the system that lead to a series of politically difficult changes. Furthermore, those groups who are most often singled out for concessions—elderly, low-income, and disabled viewers—are often ‘superserved’. These groups watch more television than the average viewer, and can be thought of as having a low unit cost per hour of television consumed [...]. While the government may be inclined to offer concessions as a form of income benefit, this has little to do with the performance of broadcasters; in most cases, these groups are well served by both public and commercial broadcasters.

“Towards a Rational Funding System”, chapter II.6.4, in *Making our Voices Heard, Canada, Mandate Review Committee, 1996**

In developing our recommendations for an alternative funding system for the CBC, we [the Committee – *Eds.*] spent a great deal of time examining the way other public broadcasters around the world are financed. We discovered that relatively few of the major public broadcasters rely on the combination of government appropriation and commercial revenue for the bulk of their income.

The BBC, for example, is non-commercial, and is funded almost entirely by a licence fee (on radio and television sets). NHK and SVT in Sweden are funded predominantly through different kinds of licence fees. PBS, which is also non-commercial, is primarily funded through a combination of Congressional appropriation and direct financial contributions from its viewers.

A 1993 survey of public broadcasting funding, conducted by the well known American management consulting firm, McKinsey and Company, reached a number of fascinating conclusions:

- Public broadcaster dependence on advertising revenues creates a conflict of interest that prevents them from meeting public service obligations;
- The reliance on voluntary donations does not generate enough money to support a broadly based, public service broadcaster;
- Direct government funding has resulted in an annual budget squeeze for those public broadcasters who rely on it (particularly in the 1990s), and has led to declining program standards;
- Licence fee funding, although it tends to vary a good deal from country to country, has the fewest disadvantages for public broadcasters.

As we have indicated throughout this chapter, we tend to share McKinsey’s assessment; and as a result, we have adopted the following criteria for an alternative funding system.

- The system should provide for stable, predictable, multi-year funding.

* Online [July 2001] Available:
<http://www.canadianheritage.gc.ca/culture/brdcstng/pubs/juneau/Page-en.htm>

- It should provide sufficient revenue to support significant public radio and television services in English and French, which are strongly Canadian, distinctive, publicly owned, and deeply rooted in the regions of Canada.
- It must be compatible with the present budgetary policies of the Federal Government, and include a built-in productivity factor.
- It must be largely independent of advertising revenue.
- It must not be dependent on an *annual* subsidy or appropriation from Parliament.

In arriving at those criteria, the Committee has considered the recommendations of various royal commissions and fact finding committees over several decades, who have commented on the inadequacy of the CBC's present funding system and who have recommended approaches more consistent with the needs of a public service broadcaster.

We have also taken into account the often stated government intention (and the number of failed attempts) to establish a multi-year financing system for the CBC, based on annual appropriations. It now seems clear that such a system cannot work. As a result, we began the process of looking at a number of *other ways* to finance the CBC that met the criteria set out above.

The Options Considered by the Committee

The options considered by the Committee and its team of expert advisers ranged all the way from measures that were variations on a licence fee (such as an excise tax on new purchases of radios and television sets) to a dedicated income tax provision. The options were evaluated on their suitability for the CBC (whether it was likely to generate enough revenue at a reasonable tax rate)... and also from a broader, public policy perspective. Clearly, any levy or tax had to be relatively easy to administer, and have a fairly straightforward compliance mechanism. It also had to avoid placing an unfair tax burden on individual households or businesses. Two of the three of the options we considered are described here.

Option 1. As an example of the approaches we considered, the Committee reviewed whether it would be possible to collect dedicated revenues nationally, without having to establish a new agency to collect "licence fees." The income tax administration and collection system operated by Revenue

Canada, we concluded, could provide a potential way of collecting an annual fee from all Canadians to support the new CBC. The income tax system is a national one, and a dedicated fee imposed as part of income tax collection would be far less expensive than any new, stand-alone system.

While such a broadly based fee has obvious attractions because it retains some of the characteristics of the licence fee systems operating in Europe, we concluded that it was unlikely to be an acceptable mechanism to finance the CBC. All of the advice we received suggested that the designation of a general tax for a specific spending purpose would represent a difficult precedent from a tax policy point of view.

Option 2. As a second option, the Committee considered the introduction of a levy on all of the companies who are distributors of electronic communications. We took particular note of the fact that the House of Commons Standing Committee on Canadian Heritage; the Grant Report; the Report of the Working Group on Canadian Programming and Private Television; and the Report of the Information Highway Advisory Council have all recently advocated the concept of a levy on distribution systems to finance Canadian programming. Such a levy would build on a long standing tradition in Canadian broadcasting policy that has required the cable sector to provide some level of support to both broadcasters and independent production, in a number of different ways.

This option of a tax on communications distribution systems has a precedent in Canada prior to the introduction of the GST. From 1984 to 1990, all Canadian residential and business customers paid a tax on their cable and telephone bills, which reached 11% in 1990. A form of excise tax, these levies were called the Telecommunications Services Tax (TST), and the Telecommunications Program Services Tax (TPST). The TST excluded charges for local residential telephone services.

If such tax was reintroduced today, it would have to be broadened to include satellite companies and other service providers. We would argue that rapidly converging technologies require that direct to home satellite services and telephone service providers should be expected to support Canadian content programming in the same way as cable has. The Government has already signalled its determination to extend a similar Canadian content funding

obligation (a percentage of gross revenues invested in content) to the first generation of cable competitors—the direct to home satellite services.

This relatively broad definition of the communications services that would be included in the proposed tax base has several advantages. A broad base keeps the tax rate within an acceptable range. It recognizes the phenomenon of converging technologies, and the fact that enormous investments are being made by many potential broadcast service delivery systems. A tax that was limited to only the current signal providers would unduly handicap them in developing their systems for the future, particularly since it now seems that a broader range of competition is inevitable.

As a consequence, this option would involve a levy on all distributors of electronic communications—the Communications Distribution Tax (CDT). It would apply to cable, direct to home satellite companies, and other telecommunications services such as telephone companies. It could exclude, however, local residential telephone services.

I. 3 PROGRAM CONTENT

We turn to discussions of public service broadcasting and the choice of content. Here too most analyses reflect a context in which the public broadcaster has a choice: it has the production facilities, the ability to buy in the market for programming, the privilege of deciding on a programming strategy. This may not be true of all public service broadcasters in societies in transition. First, one can ask what role law can play, what role the institutional structure plays in the shaping of programming strategies. Then, one can ask whether those strategies fulfil the public purpose.

Among programming and content issues that are generally flagged, especially in the changing environments are the following: what makes THIS public service broadcaster distinctive and perhaps even necessary to meet the changing needs of a particular society? Is it the diversity, the addressing of minority needs and interests (cultural, ethnic, national and other substrata) not addressed by commercial broadcasters? Is it an obligation to provide information for citizenship? Does public service broadcasting have a special obligation to encourage creativity and production by its citizens? What, in post-conflict zones, is the special responsibility of public service broadcasting to act as a mode for reconciliation and identity-building? To what extent does public service broadcasting program perform differently in a time of global channels and new information technologies. Finally, how does a public service broadcaster (as opposed to a state-controlled broadcaster) ensure that the programming is objective and impartial, reflecting a variety of political views? These issues will be discussed here and throughout these materials (in subsequent chapters).

**World Radio and Television Council,
*Public Broadcasting, Why? How?, 2000***

What Programming for Public Broadcasting?

What programming should public broadcasting offer? Of all the questions raised in this paper, this is probably the one that calls for the most nuances. We

cannot ask all public broadcasters to adopt the same programming model. In television, for example, public broadcasters with substantial resources can produce expensive drama programs that others cannot afford. So the particular context of each public broadcaster demands that certain types of programs be given preference over others. For example, in a vast country inhabited by many different communities, there may be a need for more local or regional programs—a need that may not be felt in small countries. It is clear also that a distinction must be made between the public broadcaster's radio and television programs, since the resources required by production are not the same. Bearing in mind the principles linked to the very existence of public broadcasting and the threefold mission incumbent upon it—information, education and entertainment—this part of the paper seeks to clarify the question of public broadcasting programming.

(1) Unbiased, Enlightening Information

Because of the status of public broadcasting, because it is financed by the public and intended to be at its service, expectations in the area of information are high and so are the requirements. Public broadcasters must provide information enabling listeners to form the fairest possible idea of events; if not objective, the information should at least be unbiased. Such information will allow the different viewpoints to be expressed and foster an enlightened understanding of current events. Between the frequent propaganda of State broadcasting and the often-gratuitous polemics of some commercial broadcasting stations, public broadcasting must appeal to the audience's intelligence and understanding. The information broadcast by public broadcasting must be treated with a concern for in-depth explanation and examination to enlighten citizens on the issues at hand and, in so doing, enrich democratic life. It is often this ability to act as a reference in the area of information that brings the public to recognize the importance and role of public broadcasting, and identify with it.

(2) General Interest and Service Programming

For public broadcasting, information is not restricted to newscasts and public affairs programs; it extends to all programs enabling citizens to find out about

different subjects of interest to them and to all those programs simply called “service programs” or “general interest programs,” which often deal with matters of current or practical interest to people. These programs, which address consumer or legal issues, give practical advice, discuss health issues, publicize community services, etc., make public broadcasting itself a service offered to the public. It is through such programs that the public broadcaster gets closer to people’s specific needs. In a certain way, with greater means and on a greater scale, public broadcasting must, according to needs, offer the kind of useful information that rural and community radio provide in part in many developing countries. Many of these radio stations were in fact set up for the explicit purpose of meeting hitherto unsatisfied development needs.

Community radio stations have multiplied in the past few decades. Neither commercial nor State-controlled, these radio or television stations, if not tied to any particular interests, make up a new element of and an original contribution to public broadcasting. Sensitive to the needs of the communities they serve, community media facilitate citizens’ access to the broadcasting system and their participation in public life. Their programming is perfectly consistent with the spirit of public broadcasting.

(3) Programs that Leave Their Mark

Radio and television must promote the arts and culture, broadcast existing works and cultural products, and support the creation of original works: theatre, concerts, and also light music or variety programs. Public broadcasting, too, must feature entertainment programs intended for a wide public. But it must do so differently, distinguishing itself from commercial media. We can hope that public broadcasters’ programs will leave their mark. It is possible to present game shows that are both informative and entertaining. Drama, even at a low budget, also provides an opportunity to deal with contemporary matters of interest to people; historical drama may serve to teach about the past and, therefore, enlighten the present. On the other hand, the educational mission of public broadcasting should not be exaggerated. We must bear in mind, says Jacques Rigaud, that the media, and television in particular, are not night courses.

(4) In-House Production

Public television cannot merely be a programmer. The particular ethics of public broadcasting demand that programs be designed with particular care. This requirement implies that the public broadcaster should also become involved in audiovisual production. While public broadcasters may buy or commission some programs, in-house production not only guarantees that programs will adequately meet the purpose of the broadcaster, but also ensures the perenniality of expertise—some would say a “culture” of creativity—particular to the public broadcaster. This is even truer of new public broadcasters, which must develop an identity, a “signature,” distinguishing them from other stations.

(5) National Content

More than any other broadcasting programming, that of the public broadcaster must be national in content. This does not mean that foreign productions should be excluded; however, according to their role as a public forum, public broadcasters must first promote the expression of ideas, opinions and values current in the society where they operate.

I. 4 OBJECTIVITY AND IMPARTIALITY

We are including this short discussion of an Irish broadcasting statute because of its mention of the difficult concept of "objectivity and impartiality," a test sometimes applied to public broadcasting offerings. What is objectivity and impartiality? Does each program have to reflect these qualities? Can a balance of diverse partisan views be achieved, and will such programming be accepted by the viewers?

Irish Radio and Television Act, 1988

When the 1987 Bill was published, there was no prohibition on the expression of the sound broadcasting contractor's own views in relation to the reporting of news or in relation to the broadcast treatment of current affairs. In the Dail the opposition parties argued that the prohibition on the Radio Telefis Eireann Authority from expressing its own views in relation to these issues as stipulated in section 18(1) of the Broadcasting Authority Act 1960 (1960 No. 10) as amended by section 3 of the Broadcasting Authority (Amendment) Act 1976 (1976 No. 37) should be extended to the new broadcasting services. The Minister stated at the Committee Stage of the Bill that the reason why such an obligation did not appear in the Bill was because of advice received from the Attorney General's Office that such a provision would be contrary to the freedom of expression provisions in Article 40.6.1.i of the Constitution which oblige the State to guarantee the rights of the citizens to express freely their convictions and opinions subject to public order and public morality. The State is obliged pursuant to Article 40.6.1.i to endeavour to ensure that organs of public opinion like radio and television are not used to undermine public order or morality or the authority of the State (See *State (Lynch) v. Cooney* 1982 [I.R. 337](#)). The analogy was stated that a prohibition on the expression of the sound broadcasting contractors' own views would be tantamount to preventing newspapers from carrying editorials. In the light of the "unanimity of views in the House" on the issue, the Minister consulted further with the Attorney General's Office and while that Office considered that there would still be a risk that the provision would be declared unconstitutional, such a "risk was very small

indeed." (381 Dail Debates, Cols. 1155-1156, June 1, 1988). The Minister accepted the opposition's amendments in principle and the Act now prohibits each sound broadcasting contractor and, by virtue of section 18 of this Act, the television programme service contractor from presenting their own views in relation to the news broadcast by them and in their treatment of current affairs including matters of public controversy and the subject of current public debate.

A former Minister for Posts and Telegraphs, Dr. Cruise-O'Brien, correctly noted when the original section 18(1) of the Broadcasting Authority Act 1960 (1960 No. 10) was amended by section 3 of the Broadcasting Authority (Amendment) Act 1976 (1976 No. 37) that "objectivity and impartiality are probably philosophically unattainable by human beings." (81 Seanad Debates, Col. 47, June 4, 1975). However, the then Minister considered it desirable, on balance, that a public corporation supported by all the people should have the obligation enjoined on them to move in that direction.

The obligation of objectivity and impartiality first appeared in statutory form in these islands in section 3 of the Television Act 1954 (c. 55). The 1954 Act established the U.K. Independent Television Authority. This obligation of objectivity and impartiality has been a feature of U.K. legislation on broadcasting since the 1954 Act. It is noteworthy that the prohibition on the RTE Authority from expressing its own views in relation to current affairs does not apply to any broadcast in so far as the broadcast relates to any proposals concerning policy as regards broadcasting which is of public controversy or the subject of current debate and which is being considered by the Government or the Minister for Communications. (s.18(1) of the Broadcasting Authority Act 1960, (1960 No. 10) as amended by substitution by s.3, of the Broadcasting Authority (Amendment) Act 1976 (1976 No. 37)). No such exemption applies to broadcasting licensees under this Act. It is also of interest that the prohibition on the British Broadcasting Corporation, pursuant to clause 13(7) of the Licence and Agreement between the Secretary of State for the Home Department and the British Broadcasting Corporation dated April 2, 1981 (Cmmd. 8233) from sending any broadcast matter expressing the corporation's own opinion on current affairs and matters of public policy does not extend to the subject of broadcasting itself and any matter contained in programmes which consist only of proceedings in either House of Parliament or proceedings of a local authority,

a committee of a local authority, or a committee of two or more local authorities. A similar prohibition on all expressions of opinion in the programmes of the U.K. Independent Broadcasting Authority pursuant to section 4(2) of the Broadcasting Act 1981 (1981 c. 68) contains an exemption similar to that of the BBC in relation to a programme consisting of proceedings in either House of Parliament or, proceedings of a local authority, a committee of a local authority or a joint committee of two or more local authorities. (Broadcasting Act 1981, (1981 c.68) s.4(6)).

I. 5 STRUCTURE AND AUTONOMY

The key question is structure and the resolution of competing pressures. Again, the language of independence and accountability has different meanings from one society to another. But everywhere, there is this tension: how to demonstrate accountability while striving for independence.

As indicated throughout, “independence” is one of the most important attributes of public service broadcasting. But independence from whom? And how does one have accountability consistent with independence? Most important for this section, how does one establish a structure that has “independence” and accountability. There is no clear answer to this problem. Almost every society has had difficulties approaching this question.

**World Radio and Television Council,
Public Broadcasting, Why? How?, 2000**

Reconciling Freedom and Responsibility

How can the necessary independence of public broadcasting from government and its equally necessary accountability be reconciled? The question is complex. British researcher Nicholas Garnham sums up the matter as follows:

The search for an answer to the paradox of how to combine freedom for broadcasters from undesirable state control, while at the same time ensuring the necessary level of desirable political accountability. [...] In practice, of course, this circle cannot be squared, so that any structure and practice of accountability has to be a balance between the two.¹

It is in this context that the arm’s-length principle comes into its own and should serve as a guide for organizing the public broadcasting and its relationship with government.

¹ Nicolas Garnham, quoted in UNESCO, *Public Service Broadcasting: The Challenge of the Twenty-first Century*, Paris, UNESCO (Reports and Papers on Mass Communication, No. 111), 1997, p. 64.

(1) Organization of Public Broadcasting

The first way of ensuring that public broadcasting has enough autonomy is to distinguish, in its administrative structure, between two levels of management: day-to-day business, on the one hand, and general policies and long-term decisions, on the other hand.

The board of directors is usually responsible for general policies. For example, it approves the budget and policies of the public broadcaster, and appoints its executive officers. The chief executive officer is responsible for the management of day-to-day business, whether it relates to human or material resources or programming decisions. To avoid political interference with the day-to-day affairs of public broadcasting, the CEO is accountable only to the board of directors. The latter usually reports on general activities to political authorities. In a certain way, the board of directors and its chairman act as a buffer between the CEO and the government. In Australia, the Board of Directors of the Australian Broadcasting Corporation (ABC) even has an obligation to preserve the independence and integrity of the public broadcaster.

(2) Accountability

While it is difficult to conceive an ideal system applicable everywhere, because of the difference in political culture from one country to another, there are a various means to provide public broadcasting with a degree of independence from government, while ensuring that it accounts for its actions. The goal is to make the relationship between public broadcasting and government as transparent as possible and discourage any attempt by government to interfere.

In theory, the public broadcaster should be accountable only to Parliament, not to the executive branch, at regular—usually annual—intervals. Public representatives should be able to evaluate, in the light of the annual report submitted by the public broadcaster, its general performance and use of public funds over that period. In practice, we know that in most cases, public broadcasting officials maintain contact with the executive branch, if only through representatives of the department responsible to Parliament for the public broadcaster. However, if these informal contacts become too frequent, they are contrary to the spirit of “arm’s-length management” and liable to undermine the credibility of public broadcasting.

Many countries also have a body responsible for regulating and supervising broadcasting activities. Given a mandate by the legislator to manage and supervise all or part of the broadcasting and telecommunications system, this body can also be another buffer between government and the public broadcaster. Indeed, it may be responsible for evaluating the public broadcaster's fulfilment of its mandate. Such is the case in Canada, where the regulating body issues the public broadcaster's licences and peppers its decisions with various comments on the way the public broadcaster should discharge its functions. Such is also the case in France, where the *Conseil supérieur de l'audiovisuel* evaluates, in its annual report, how the public networks have fulfilled the obligations incumbent upon them under the law or their terms of reference.

Some public broadcasters have also innovated these past few years to try and create closer bonds with their publics. In Canada, for example, the Canadian Broadcasting Corporation (CBC) has created the position of ombudsman. Citizens can thus make their viewpoints known to the ombudsman and submit their criticisms of the public broadcaster, in the journalistic field. It is a particularly interesting means for the public broadcaster to discharge its responsibility to the public.

A final remark is called for. We must avoid, above all, making the public broadcaster accountable to too many bodies. This could become embarrassing—instructions might contradict each other—and prompt the public broadcaster, in trying to satisfy everyone, to no longer account for anything.

I. 6 A Model Public Service Broadcasting Law

The following portion of a “model statute” drafted for the European Broadcasting Union is included to highlight the problem of the “model” statute which is usually helpful, but can rarely claim to be applicable in all circumstances. Each aspect of a model statute on independence and structure (who appoints a Board, who appoints a Director, who can remove them, how representative should they be) is subject to inquiry and criticism.

“Model Public Service Broadcasting Law” by Dr. Werner Rumphorst, 1998

(Articles 10–14, Sections Dealing with Organization of Boards)*

Article 10 - The Organs of PSBO

The organs of PSBO shall be:

- The Broadcasting Council
- The Board of Administration
- The Director General.

Article 11 - The Broadcasting Council

§1 The Broadcasting Council shall represent the interests of the general public with regard to programming.

§2 The Broadcasting Council shall be composed of twelve members, coming as far as possible from different groups comprising the civil society.

§3 The Council members shall be elected by (the Lower Chamber of) Parliament, with a three-quarters majority, following a public hearing with potential nominees.

* Online [July 2001] Available: http://www.bild.net/model_law.htm.

§4 Each member is appointed for a fixed period of six years. However, as regards the initial composition of the Council, four members shall be nominated for a period of two years, four members for a period of four years and four members for a period of six years.

§5 The starting point for the initial periods shall be the date of the constituent meeting of the Council. Re-appointment of a member of the Council at the end of his or her term of office is possible.

§6 Members of the Council may not belong to or work for the national government or the PSBO itself, or be members of parliament.

§7 Members of the Council may not be revoked during their term of office. However, if for whatever reason a member is incapable of performing his or her duties, or if he or she has not attended Council meetings for a period exceeding six months, the member in question shall be revoked and be replaced by another person who shall finish the revoked member's remaining term of office. The provisions of §§3 and 6 above shall apply.

§8 The Council shall elect its own Chairman.

§9 The Council shall set up its own Rules of Procedure.

§10 Except where otherwise provided herein, the Council shall take decisions on the basis of the majority of the votes of members present. Where voting is equal, the vote of the Chairman shall be decisive.

§11 The Council shall meet at least once every two months. It shall also meet in extraordinary session whenever at least three of its members request a meeting.

§12 The Director General and the Chairman of the Board of Administration shall be entitled to participate in Council meetings, except where the Council

excludes them for particular reasons. Directors and other staff members or third parties may be invited to attend for particular reasons.

§13 Members of the Council shall not receive financial remuneration for their work. However, they shall be entitled to a free radio and TV set and yearly global compensation for their expenses amounting to one half-month's salary of the Director General.

§14 The Broadcasting Council shall

1. appoint the Director General, with the vote of at least eight of its members in favour,
2. approve the appointment of the Directors and the Editors-in-Chief for radio and for television proposed by the Director General. Unless at least six members of the Council vote against, or if no vote has been taken within three months of notification by the Director General, such appointments shall be taken as approved,
3. appoint the members of the Board of Administration, with the vote of at least seven of its members in favour,
4. adopt PSBO's Statutes, after consultation with the Director General and the Board of Administration. The Statutes shall, in particular, lay down the internal organization of PSBO in more detail. They should also define the responsibilities of the programming staff,
5. adopt PSBO's Bye-laws, after consultation with the Director General and the Board of Administration. The Bye-laws shall, in particular, regulate the matters expressly identified in this Law, as well as any other matters requiring detailed internal regulation of a binding nature,
6. advise the Director General on general programming matters and assist in carrying out programming responsibilities,
7. monitor observance of PSBO's programming responsibilities as laid down in this Law. It may declare, stating its reasons in writing, that certain broadcasts violate programming principles laid down in this Law, and may instruct the Director General, after hearing his or her position, to discontinue such violation or to ensure that no further violation occurs. The Council may not review individual programmes prior to their broadcast.

§15 The conclusion of contracts concerning programming which commit PSBO to a total payment exceeding shall require the Council's prior consent.

Article 12 - The Board of Administration

§1 The Board of Administration shall supervise the business affairs of PSBO, both internal and external, with the exception of matters relating to programming.

§2 It shall be composed of seven members. They shall be experts in matters of administration and finance and may not in the exercise of their function represent the interests of third parties.

§3 The Board members shall not belong to or work for the government or the PSBO itself, or be members of parliament or members of the Broadcasting Council.

§4 The Board members shall be appointed for a four-year period. Reappointment for a maximum of two further periods shall be possible.

§5 If for whatever reason a Board member is incapable of performing his or her duties, or if he or she has not attended Board meetings for a period exceeding three months and if at least seven members of the Broadcasting Council are convinced that he or she will not resume his or her activity within a reasonable period of time, the Broadcasting Council shall revoke him or her and replace him or her by another person who shall finish the revoked member's remaining term of office. The provisions of §2 above and of Article 11§14(c) shall apply.

§6 The Board shall elect its own Chairman and set up its own Rules of Procedure.

§7 The Board shall lay down binding Rules on financial matters, in consultation with the Director General.

§8 The Board shall take decisions with the majority of the members present. Where voting is equal, the vote of the Chairman shall be decisive.

§9 The Board shall meet in principle at least once per month. It shall also meet in extraordinary session whenever at least two of its members request a meeting.

§10 Members of the Board shall receive yearly global compensation of their expenses amounting to one month's salary of the Director General.

§11 The Board shall

1. represent PSBO in all dealings with the Director General
2. conclude the service contract with the Director General
3. advise the Director General on business matters not related to programming
4. approve PSBO's budgets and yearly accounts.

§12 The Board's consent shall be necessary for

1. the conclusion of service contracts with the Directors and any other employees whose salary exceeds the highest class of the staff salary scale
2. the conclusion of trade union agreements
3. the acquisition and sale of companies or of shares therein
4. the acquisition, sale and mortgaging of property
5. the taking-up of bank credits and the granting of financial guarantees and securities
6. the conclusion of contracts concerning investments, other than in programming, if the total amount to be paid by PSBO exceeds ...
7. the expenditure of any money not provided for in the approved budgets.

Article 13 - The Director General

§1 The Director General shall have final responsibility for programming and shall ensure that programmes are consistent with the programming principles laid down in this Law and do not violate any other laws.

§2 The Director General shall manage PSBO independently and shall be responsible for all its operations and activities.

§3 The Director General shall represent PSBO both in court and out of court.

§4 The Director General shall be appointed for a five-year term. Re-appointment is possible. As long as no successor has been appointed after the expiration of his or her term, the Director General shall continue in office if he or she is prepared to do so; otherwise, his or her functions shall be taken over by the Deputy.

§5 The Director General shall not be a member of parliament.

§6 The Director General may not be dismissed unless at least eight members of the Broadcasting Council decide to replace him or her by another person on whom they have agreed. In such a case, that other person shall finish the dismissed Director General's remaining term of office.

§7 The Director General shall appoint one of the Directors as his or her Deputy, for a period not exceeding his or her own mandate.

I. 7 TECHNOLOGY AND THE FUTURE

World Radio and Television Council, *Public Broadcasting, Why? How?*

Public Broadcasting in the Digital Era

The public broadcasting model has survived these past few years in an audiovisual universe otherwise dominated by commercial broadcasting. But the broadcasting world is changing quickly, very quickly. Will the multiplication of commercial services lead to audience fragmentation endangering general-interest public broadcasting, in that this fragmentation drives down ratings to such an extent that there is no longer any point in maintaining it? Should public broadcasters create specialty services, knowing their *raison d'être* is to serve the general public and not only particular audiences? Should they abandon certain types of programs, given the abundance of similar programs in these areas? Should they offer Internet services?

All these issues can finally be summed up in a single question: What is the place of public broadcasting in the digital era? The digital environment forces us to think not only of public broadcasting, but of all broadcasting, in a different light. The technical limits imposed on broadcasting in another era (the scarcity of frequencies for over-the-air broadcasting, in particular) no longer exist. Government intervention in broadcasting, therefore, can no longer be justified on technical grounds. To be sure, this raises questions about the future of regulation in this sector. It is already difficult to oblige commercial broadcasters to discharge certain public-service obligations. The convergence of broadcasting, telecommunications and Internet brought about by digitalization will in no way ease this situation, quite the contrary. In the field of telecommunications as on the Internet, we are instead seeing deregulation for the former and a reluctance to regulate the latter. If, as one might think, it is

becoming increasingly difficult to regulate digital broadcasting services, the best way to ensure that public-service objectives are maintained will be the existence of a public body responsible for carrying out these missions.

The real questions that need to be asked, therefore, are the following: Does digitalization raise questions about the need for a universal service addressing people as citizens rather than consumers? Does digitalization eliminate the possibility of having broadcasting services different from the myriad commercial services on the market? Will it supersede the need for a public forum in which all are invited to take part, regardless of social status or purchasing power? Will the individualization of audiovisual consumption that digitalization permits and the fragmentation it causes result in individuals losing interest in services that enable them to maintain a sense of belonging to a political community, to perceive themselves as citizens?

Unless we answer yes to all these questions, it is quite obvious that digitalization will not be an impediment to the maintenance of public broadcasting, quite the opposite. The democratic and egalitarian objectives inherent in it can still be invoked as justification. Thus, to the question of the future usefulness of public broadcasting, we can repeat Werner Rumphorst's answer:

[...] the future of public service broadcasting follows on from its mission, from its role within and for civil society. The more diversification and individualization of information sources there is, the more audiences become fragmented, the more important it will be to maintain at least one strong service which performs the function of a national point of reference and of national identification, and the role of the market place for opinion.²

The challenge of the years to come, for public broadcasting, is to evolve and to adapt to the digital era the principles underlying its existence. Thus, the vast majority of public television stations already have a foothold in the world of specialty channels and Internet. What they need to do is to use these new technologies to improve and complement their public-service mission. They

² Werner Rumphorst, *Model Public Service Broadcasting Law with Introductory Note and Explanatory Comment*, 1998, p. 6, (unpublished).

must proceed with caution, choosing sectors that follow logically from their *raison d'être*. In Germany, for example, public stations have created two theme channels to complement their basic offering: a news and documentary channel and a children's channel. These channels are fully consistent with a public-service mission.

On the other hand, the public broadcaster must not forget, as the French Senate Report points out, quoting sociologist Dominique Wolton, that its calling is really to create "social links." "Tomorrow," Wolton writes, "general-interest media, in a multimedia universe, interactive and cluttered with networks, will have an even more important role than yesterday, because they will be one of the few links in the individualist mass society. The objective of general-interest television is to continue to share something in a strongly hierarchical, individualist society."³

³ Dominique Wolton, quoted in Sénat (France), *L'audiovisuel public en danger*. Rapport d'information fait au nom de la commission des Finances, du contrôle budgétaire et des comptes économiques de la Nation sur le financement de l'audiovisuel public public [Public broadcasting at risk. Report on financing of public broadcasting]; par Claude Belot, Paris, (Les rapports du Sénat, n° 162), 1999-2000, p. 31.

I. 8 CONCLUDING OVERVIEW

“Public Service Broadcasting: The Challenges of the 21st Century,” by Marc Raboy, Winter 1999–2000

Broadcasting is a field of activity, which deserves just as much attention as education or health care and which should be organized to take into account the public interest. This does not mean that everything to do with broadcasting should fall exclusively within the public sector, but it is as an overall system that the place of public service radio and television needs to be considered. Against the present background of globalization, public service broadcasting has a more essential role to play than ever before.

The contemporary media scene is characterized by a rapid increase in services, an explosion of new technologies, the disappearance of national frontiers, and the merchandising of program content. In this situation, where everything is increasingly dictated by market imperatives, public service radio and television is becoming an oasis, a constant, a guarantor of quality, and as everyone knows, it is besieged on every side, threatened and called into question. So what sort of future does it have?

The surveys regularly carried out by analysts all emphasize the obstacles in the way of public service broadcasting. But inasmuch as we can legitimize and revalue its mission, these obstacles begin to appear less daunting. Where legitimacy is concerned, the inclusion in the 1997 Amsterdam Treaty of a European Protocol in favor of public service broadcasting was an important point of principle. Not only did this declaration demonstrate the power of politicians to resist commercial pressures, it was also the only concrete example to date of a cultural exception to the new rules of deregulation that are being applied by transnational authorities. It is no coincidence that this has occurred in the public service broadcasting sector. The declaration adopted by the conference of ministers of the Council of Europe on media policy, held in Prague in December 1994, was another step in the same direction. In its declaration, the Council of Europe identified the safeguarding of well-funded

public broadcasting institutions as essential to the health of the media in a democratic society.

A Democratic Space

The declaration then adopted includes a mission statement in nine points, which broadly restates the European outlook on the objectives of public-service broadcasting. This outlook remains valid, apart from the slight changes that now need to be made if it is to meet the specific challenges we are facing today. The fact is that public service broadcasting is the only factor contradicting the received wisdom that the mass media are now destined to march to the beat of the market drum. Apart from some noble local experiments of a marginal nature, there are no other media whose main vocation is to help build a democratic public space. Formerly restricted to the internal territory of nation states, the notion of public space, like many others, is currently being repositioned in a global context. It is already possible to speak of a transnational, or global, public space, in which the public service media can and must play a role equivalent to the one they played during the glorious, but now superseded, period of national monopolies.

Transnational

In a system, which is inevitably influenced by market forces, an important place should be reserved for institutions, which promote the cultural development on which the quality of public and democratic life depends. As an increasingly transnational political system emerges, we should even be thinking of establishing new cross-frontier media, founded on new transnational, or even global, bodies. Experiments such as TV5 and ARTE represent tentative steps in this direction. As the focus of political decision-making shifts from the national to the transnational sphere, there is a need for forums for democratic debate and cultural exchange, which correspond to this new situation.

Consumers?

Some people will say that, in society as we have it today, this kind of talk is a pipe dream. But is the idea of public service media any more radical than that of a press free of authoritarian state control, or of orderly management of scarce

frequencies, or the notion of deregulation of the air waves? Two main currents have in fact shaped the history of the media: technological development, and the political will to steer the broadcasting system in accordance with a collective vision of the future of society. The present heralding of the demise of public service radio and television stems more from neo-liberal ideology than from any objective reality. Having said this, its resurrection will not be accomplished unless the issue is placed high on the political agenda, and without massive support from the audiences that public service radio and television is supposed to be serving.

What should the mission of public service broadcasting be? By what means, with what type of content and with what resources should it aim to fulfill its mandate? We need to make a clear distinction between public service and commercial broadcasting. What is the motivating force, what is the priority, on what should the emphasis be put when difficult choices have to be made? For example, what should be given special treatment when programming schedules are drawn up? Symbolically, how does one behave to demonstrate the conviction that one's audience consists of citizens rather than consumers?

These are difficult questions to answer in a context where public service broadcasters are in competition with their private sector rivals for commercial revenues. To free public service institutions from market pressures is therefore the essential condition for them to be able to fulfill their mandate. So where will the funding come from? All the studies so far conducted show that the license fee remains the best way of ensuring funding which is adequate and relatively free of political constraints. However, in many specific national contexts, the license fee is not enough. Either it has never been effectively established, or citizens already overburdened with taxes oppose it, or quite simply it does not yield sufficient funds to meet all the requirements of top-class programming.

An Audacious Proposal

This leads to the inevitable conclusion that only the taxing of the private sector will enable the public sector to flourish and fulfill its mission. This solution was suggested by, among others, the World Commission on Culture and Development, which in its 1995 report defined the airwaves as belonging to the world's indivisible common heritage.

If we recognise that the media system as a whole constitutes a public service, the taxing of commercial enterprises which profit from this sector is justified. This may seem an audacious proposal, but it is no more audacious than suggesting that businesses should contribute a proportion of their profits to the public purse for the benefit of all sorts of activities regarded as essential by society. A *modus vivendi* would have to be negotiated, whereby market forces are allowed free play in part of the sector, in exchange for the reserving of substantial areas for public service broadcasting. Eliminating public service broadcasters as competitors for commercial revenues would make it possible to generate funds to ensure their survival out of the profits of the commercial interests involved. These funds would come mainly from the distribution sectors, where operating costs are relatively stable and controllable, and profit margins are, to say the least, respectable. Public service broadcasters could then concentrate on distinctive programming. They could rediscover their mission of being at the cutting edge where innovation and quality are concerned. A dynamic public service sector would have a beneficial influence on the system as a whole by demonstrating the very best of which broadcasting is capable and raising public expectations. Public service broadcasting should also show leadership in developing the new non-commercial services made possible by new technology and the emergence of audiences not restricted to a particular national constituency. This implies a new, transnational mode of organization.

Finally, we need to recognize that the future of public service radio and television is no longer being determined at the national level, but now depends on the on-going debate being conducted by organizations such as UNESCO, the International Telecommunications Union (ITU) and the World Trade Organization (WTO). It is there that the fate of culture—and of the media, which are its prime vehicles—is now being decided.

CHAPTER II

THE EUROPEAN UNION, THE COUNCIL OF EUROPE AND TRENDS IN PUBLIC SERVICE BROADCASTING

It is impossible to cover all trends within Europe in the area of public service broadcasting. In this section, we shall deal with several themes identified in Chapter I, themes that will be of increasing relevance to transition societies. First, there is the Treaty of Amsterdam, thought to be a charter reaffirming dedication to public service principles. The Treaty of Amsterdam is, however, about more than high-minded commitments. It concerns federalism within Europe and the right, as well as the responsibility, of each state to develop, in its own way, a public service broadcasting system that contributes to goals and principles of the kind articulated in Chapter I.

Second, we examine questions of financing. Issues concerning funding and competition are extremely important at present. We look at a recent EBU document and a survey of financing systems in a variety of states. Third, we include materials on ideas of conditionality and accession: how European institutions set standards, in the audio-visual sector, for progress by various states toward membership in the community. Fourth, we look at a growing issue of importance: the use of principles of competition law to adjust the relationship between public service broadcasters and their private competitors (who, themselves, may have public service responsibilities). While the Treaty of Amsterdam concerns the duties to fund a public service broadcaster, the Treaty of Rome presents limitations. Finally, we look at issues of convergence, and the future of public service broadcasting in a digital age

II. 1 THE TREATY OF AMSTERDAM AND THE
VALIDATION OF PUBLIC SERVICE BROADCASTING

The Treaty of Amsterdam is often considered a “charter” of reaffirmance for public service broadcasting in Europe. It must, however, be read carefully and understood in relation to the arguments about competition fervent in Europe. In one sense, the Treaty of Amsterdam is a call for a strong public service system. But the document is also closely related to questions of financing described below. In Europe, under the Treaty of Rome, there is an assault on public service broadcasters, arguing that they unfairly compete against private and independent broadcasters. The attack is based on the idea that public service broadcasters are heavily subsidized and that, as with other aspects of European competition, subsidies can lead to unfair competition. Does the Treaty of Amsterdam solve the problem—the problem of declining government support for public service broadcasting—that it was designed to address?

The Treaty of Amsterdam is also interesting because of its commitment to federalism: the notion that the particular structure of public service broadcasting is up to each Member State. Thus, one may consider whether the Treaty establishes a general standard for Member-State performance.

In the second document, “The Public Service Broadcasting Remit: Today and Tomorrow,” issued on 29 April 1998 (DAJ/ew/mp), the European Broadcasting Union seeks to describe what the Treaty of Amsterdam means. It addresses the difficult problem of the breadth of the remit of a public service broadcasting entity so that it can be immunized from the charge of unfairly competing with private broadcasters.

**Protocol on the System of Public Broadcasting in the Member States,
Draft Treaty of Amsterdam, Council of the European Union, Brussels,
August 1997**

THE HIGH CONTRACTING PARTIES,

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

HAVE AGREED upon the following interpretative provisions, which shall be annexed to the Treaty establishing the European Community,

The provisions of this Treaty shall be without prejudice to the competence of Member

States to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organizations for the fulfilment of the public service remit as conferred, defined and organized by each Member State, and that such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realization of the remit of that public service shall be taken into account.

The Public Service Broadcasting Remit: Today and Tomorrow, European Broadcasting Union, 29 April, 1998*

In the preamble to the Amsterdam Protocol, the Member States of the European Union consider "that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism". This express recognition of the role of public broadcasting in a Protocol to the Treaty on European Union is not merely an echo of the 1996 European Parliament Resolution on the role of public service television in a multimedia society; it enshrines the essence of this Resolution in a binding text which has the same legal force as the Treaty articles themselves.

How could the democratic, social and cultural needs of society, and the need to preserve media pluralism, be served by a marginalized broadcasting organization catering only for cultural elites or other minority interest groups and essentially concentrating on those types of programmes which—for understandable economic reasons—the commercial broadcasting sector will not provide? To fulfil their role, public broadcasting organizations need to be a major force on the national audiovisual scene, and they must cater for all sections and groups of society, through, in particular, quality mass-appeal programming.

* Online [August 2001] Available: http://www.ebu.ch/leg_public_service.pdf.

Public service programming obligations cannot possibly be reduced to a clearly-defined result which anyone could deliver. They are not quantifiable. Furthermore, the cost of programmes of identical duration within a given programme category (sport, films, magazines, etc.) tends to vary considerably, and so does quality and the degree of relevance of programming to civil society. Therefore, public service programming obligations cannot be performed by commercial broadcasting organizations, which—quite legitimately—are guided by commercial logic. In contrast, as not-for-profit organizations, public broadcasting organizations will—by definition—strive to meet the public programming remit as best they can with the various financial resources at their disposal. Without them, the "merit good" *quality programming for all sections of society* would not be provided, since the market itself cannot and will not produce it.

The Amsterdam Protocol wisely makes do with a reference to the public broadcasting remit "as conferred, defined and organized by each Member State". This recognizes the fact that public service broadcasting is defined and organized quite differently from one Member State to another. Far from requiring even so much as a minimum standard or level of definition of public broadcasting, the Protocol definitely does not prescribe that there must be "clearly defined public service obligations". Member States are perfectly free, for instance, to define the public broadcasting remit in a broad general manner by making a global reference to quality programming for all sections of the population, responding to the democratic, social and cultural needs of society (to repeat the terms used in the preamble to the Protocol). Furthermore, there can be no question of singling out specific public service obligations (implying that the rest of the public broadcaster's programming is not covered by the public broadcasting remit). The entire range of a public broadcasting organization's programme output constitutes public broadcasting, even if a *cahier des charges* or other such regulation may expressly highlight certain elements as an absolute must in the public broadcaster's overall programming. Fully consistent with this, the Protocol itself uses not the plural ("obligations") but the singular (*remit* in English, *mission* in French, *Auftrag* in German) when referring to the mandate of a public broadcasting organization.

II. 2 FUNDING: TREATY OF ROME, COMPETITION AND TRANSPARENCY

We start this difficult and puzzling problem of competition between public service broadcasters and private counterparts with excerpts from a Communication from the European Commission. The Commission noted that, in the 1970s, the big national public service broadcasters, for the first time, faced major competition as governments licensed competitors. But now a tension was created, one that persists to this day and faces all transition societies from the outset:

While opening the market to competition, Member States considered that public service broadcasting ought to be maintained, as a way to ensure the coverage of a number of areas and the satisfaction of needs that the private operators would not necessarily have fulfilled to the optimal extent.

There would be private entities that would expand their market share, leaving problems for the public service broadcaster. If the PSB tried to reprogram to compete more effectively with the new entrants, a different cry would be raised. Thus, as the Commission said:

The increased competition, together with the presence of State-funded operators, has also led to growing concerns for a level playing field, which have been brought to the Commission's attention by private operators. The vast majority of the complaints allege infringements of Article 87 of the EC Treaty in relation to the public funding schemes established in favour of public service broadcasters.

The Commission Communication first looks at the applicability of the Treaty of Rome and then, remarkably, suggested ways in which the "public service remit" could be more clearly identified so that problems of competition and subsidy would be avoided.

Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting: Excerpts, Press Release: 233—Nr: 9755/01, Luxembourg, 21 June, 2001

[...]

3. THE LEGAL CONTEXT

14. The application of State aid rules to public service broadcasting has to take into account a large set of different elements. The EC Treaty includes Articles 87 and 88 on State aid and Article 86, paragraph 2, on the application of competition rules to services of general economic interest....

[...]

5. APPLICABILITY OF ARTICLE 87(1)

5.1. State aid character of State financing of public service broadcasters.

19. Article 87 (1) states: "Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market".

20. The purpose of the State intervention is not determinative for the assessment of its State aid content under Article 87(1), but only its effects. State financing to public service broadcasters is normally to be regarded as State aid, as it fulfils the above mentioned criteria. Public service broadcasters are normally financed out of the State budget or through a levy on TV set holders. In some specific circumstances the State makes capital injections or debt cancellations in favour of public service broadcasters. All these financial measures are attributable to the public authorities and involve the transfer of State resources. Moreover, and to the extent these measures are provided in

* Online [August 2001] Available: <http://europa.eu.int/comm/avpolicy/c2361.htm>;
<http://www.ifj.org/working/issues/broadcasting/ecaid.pdf>

breach of the market economy investor test, they may favour only certain broadcasters and thereby distort competition.

21. As the Court of Justice has observed: “When aid granted by the State or through State resources strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid”. Thus, State financing of public service broadcasters generally affects trade between Member States. This is clearly the case for the acquisition and the sale of program rights, which often takes place at an international level. Also

advertising, for those public broadcasters that are allowed to sell advertising space, has a cross border effect, especially for homogeneous linguistic areas across national boundaries. Moreover, the ownership structure of commercial broadcasters may extend to more than one Member State.

22. According to the jurisprudence of the Court¹², any State finance transferred to a certain undertaking—also when covering net extra costs of public service obligations—has to be considered as State aid (provided that all the conditions for the application of Article 87(1) EC are fulfilled).

[...]

6. ASSESSMENT OF THE COMPATIBILITY OF STATE AID UNDER ARTICLES 87(2) AND 87(3)

28. State aid to public broadcasters must be examined by the Commission to determine whether or not it can be found compatible with the common market....

29. State aid to public service broadcasters will have to be assessed according to its specific purposes and effects. For example, a State may be willing to grant an aid to facilitate the restructuring of the public service broadcaster; if this is the case, the aid will be assessed according to the rules laid down in the Community guidelines on State aid for rescuing and restructuring firms in

difficulty 16; and if the conditions set there are met, then the aid can be declared compatible on the basis of Article 87(3)(c) of the Treaty.

30. According to Article 151 of the Treaty, the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures. ...As stated by the Commission in its *KinderKanal/Phoenix* decision, educational and democratic needs of a Member State's society have to be considered as distinct from the promotion of culture 17. Also the Protocol distinguishes among cultural, social and democratic needs of each society.

31. State aid to public service broadcasters often does not differentiate between these three needs mentioned in the Protocol. Therefore, unless a Member State provides for a separate definition and a separate funding in relation to State aid to only promote culture, such aid can generally not be approved under Article 87(3)(d). It can normally be assessed, however, on the basis of Article 86(2) referring to services of general economic interest. In any event, whatever the legal base for assessing compatibility, the substantive analysis would be conducted by the Commission on the basis of the same criteria, namely those set out in this Communication.

[...]

7.1. DEFINITION OF PUBLIC SERVICE REMIT AND ENTRUSTMENT

37. In order to fulfil conditions (i) and (ii) indicated above, and thereby allowing the Commission to carry out its tasks under Article 86(2), the Member State has to:

- define certain tasks as public service;
- entrust a certain undertaking(s) with the fulfilment of such tasks by means of an official act;
- define and implement a control system able to ensure that the public service mandate is fulfilled by the entrusted undertaking(s) according to the prescribed conditions.

38. The definition of the public service mandate is within the competence of Member States, which can decide at national, regional or local level. A “wide” definition, entrusting a given broadcaster with the task of providing a balanced and varied programming in accordance with the remit, is to be considered, in accordance with the interpretative provisions of the Protocol, as legitimate under Article 86(2), as aiming at ensuring the fulfilment of the democratic, social and cultural needs of the society and the guaranteeing of pluralism, by preserving a certain level of audience for public broadcasters.

39. In the context of a balanced and varied programming, it is not for the Commission to decide whether a programme is to be provided by the market or as service of general economic interest. However, according to the Treaty, including the interpretative provisions of the Protocol, the competence of the Member States in defining public service remits in broadcasting has to be considered as limited to those tasks which are related to public broadcasting systems, and should not include other activities which are not necessary to the accomplishment of that mission.

[...]

43. In practice, when assessing actual cases, the Commission would therefore examine:¹

- whether an official definition of the public service remit exists;
- whether this definition does not extend the scope of the public service remit to include activities that cannot constitute public service activities 20 ;
- whether a given undertaking has been entrusted, by means of an official act, with the performance of that remit;
- whether a control mechanism, by means of an independent body, exists, in order to ensure that the public service mandate is actually performed by the entrusted undertaking.

[...]

¹ The Commission’s purpose in obtaining clear definition was so that it would be “transparent” whether the state was subsidizing programs that competed with the private sector.

55. If the broadcasting undertaking only fulfils public service activities, no separation of accounts is necessary. However, if it also competes directly with private companies in non public service activities this must be done on an equal footing, i.e. on a correct cost-covering basis.

56. In the presence of both a public service remit and non public service activities, and in the absence of analytical accounting systems, which clearly and precisely separate non public service from public service activities on the basis of a proper cost allocation, it is difficult to assess whether the State funds are simply limited to offset the extra-costs of the public service and are not used to cross-subsidise the firm's non public service activities. A public service broadcaster might in fact take advantage of the State aid to finance its non public service activities. Under these circumstances the State would in fact not only compensate the extra costs of the public service obligation but also fund some non public service activities. Therefore it is necessary to carefully examine the effects of the aid in order to assess whether it affects competition and the development of trade to an extent contrary to the common interest.

The Public Service Broadcasting Remit: Today and Tomorrow, European Broadcasting Union, 29 April, 1998*

In this document, The European Broadcasting Union (DAJ/ew/mp, cited above), addresses the funding issue.

Licence fee funding, together with more or less limited revenue from other sources (such as programme sales, advertising or sponsorship), provides public broadcasting organizations in the large majority of European countries with the necessary means to accomplish their mission. Since it serves exclusively the fulfilment of the remit conferred upon a not-for-profit organization, rather than assisting that organization to compete with others, with the ultimate purpose of generating profits, it may seriously be wondered how this unique method of funding could possibly be referred to as "aid" (within the meaning of Article 92 of the EC Treaty). Nevertheless, even assuming that under special circumstances licence fee funding paid directly by viewers and listeners to the public

* Online [August 2001] Available: http://www.ebu.ch/leg_public_service.pdf

broadcaster could be regarded as "aid", the Protocol expressly prescribes that even where, furthermore, such funding should be found to affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, such a finding could not be definitive without the realization of the public service remit having first been taken into account. In other words, the "common interest" is conditioned by the need to fulfil the given public service remit.

To provide additional understanding of these complicated competition questions, we include a statement by the Association of European Radios, a Europe-wide trade body representing the interests of private commercial radio, as to its concerns about "unfair" competition from public radio. One consequence is a demand for "transparency" an accounting system that will allow competitors to determine whether a public service broadcaster is receiving a subsidy that violates or might violate European competition policy.

Association of European Radios Policy Statement Concerning the Financial Transparency and Role of Public Broadcasters, 7 July, 2000*

IV. The Situation in Some European countries: Unfair Practices

European private radio has long been calling for a level playing-field for private and public radios and has requested greater transparency of the finances of public broadcasting. Problems with public broadcasters differ in nature from country to country. Some concrete examples follow.

France

In France, the public broadcaster Radio France has just announced its intention to present to the CSA a new plan (so called the "plan bleu") that proposes a complete restructuring of its networks. The plan foresees the abandonment of stations such as FIP and the launch of two new national networks, which will change the radio landscape in France dramatically.

The first network will offer music programmes targeted at adults with content absolutely similar to that already offered by private stations such as

* http://www.aereurope.org/submissions/pdfs/AER_PSPR_07072000.pdf

RFM, Nostalgie, Chérie FM or RTL 2. The second network will target young audiences (le Mouv') and offer a music programme comparable to the private stations' product—Fun, NRJ, Skyrock for example. This is not sensible use of public funds.

French private radios have shown their opposition to this project. It jeopardises the existing balance and pluralism in the French radio panorama and contradicts the mission of the public broadcaster as it is expressed in its "*cahier des charges*". Radio France should continue offering the complementary and distinctive services that have justified up until now its public funding. Citizens will gain nothing from having Radio France reproducing private radios' programmes.

Radio France should not be allowed to change its formats and outputs at will, while private radios must adhere to particular formats.

Germany

In Germany, private radios find it difficult to compete with public broadcasters due to public radios' advantages and their structural complexity, which lacks real financial control. The financial statements presented by public broadcasters ARD and ZDF to the KEF (the Commission responsible for establishing the financial needs of public broadcasters) are not clear particularly regarding the outsourcing of private subsidiary companies that carry out different activities (i.e. marketing, advertising, licensing, etc.) for public broadcasters. These companies are partly funded by the State; therefore the KEF should be able to evaluate how they are funded.

There are other problems in Germany, such as the expansion of public broadcasters into multimedia services without any relation to their public service remit, but the main problem remains the lack of transparency in the public broadcasters' accounts.

Italy

In Italy, the public broadcaster RAI has taken the decision to carry out commercial activities while maintaining its privileges of public entity. A holding has been created to break up the different activities in different companies that will compete in the open market. For example, RAI Way is the new carrier

company that is in charge of network operations. They are advertising its forthcoming privatisation (only up to 49% of total stake) and, while maintaining their public service's privileges, are offering services in open competition with private companies. In particular, RAI Way benefits from frequencies, transmitters and infrastructure usage for an indefinite period of time, while private operators have limited licences.

This situation becomes more serious because there are no systems of control. Concerning the development of digital radio, a complaint was presented to the Communications Authority by private radios, which denounced that RAI had used public funds allocated for this purpose to develop other services, without respecting the contract that had been signed with the Italian government. The Communications Authority has declared itself non-competent for ruling this case and has sent the dossier back to the Ministry for Communications. Since the Ministry is owner of the public broadcaster and at the same time is responsible for its public funding, its ruling on the case does not offer to private radios any guarantee of either observance of competition rules or a transparent use of public funds.

This situation is blocking the development of digital radio, in which Italian private radios are investing very large funds.

Sweden

In Sweden, radio regulation clearly favours public broadcasters. Sveriges Radio (SR) dominate the Swedish market, while private broadcasters have been restricted from creating ad hoc networks.

The Netherlands

In the Netherlands, public radios (5 national channels) are granted the best frequencies covering up to 100% of the national territory while commercial radios are only awarded frequencies to cover 70%. Furthermore, public terrestrial frequencies are planned on a different basis to commercial radio frequencies. The result is that public radios use many more frequencies than necessary. If public radio was planned on the same basis as commercial radio then at least two more national frequency packages could be made available for commercial use. The Dutch government has decided to auction all frequencies

to commercial operators, while public radios will get the best frequencies for free. For T-DAB (Digital Audio Broadcasting), public radio as the only user gets frequencies for free with national coverage and with more space than they need for their five channels. Commercial radio again faces auctions and can only bid for regional rather than national frequencies.

Public radios in the Netherlands carry advertising. Public broadcasters are "double funded"; experts know that the amount of advertising revenues they get is enough to cover at least the costs of the five public radio channels. These costs are not transparent and an insight of these costs is refused. The sales organisation of the Dutch public radio (STER) is the most dominant agent in the market with a share of 41% (on advertising). That market share and the fact that only public radio can offer national coverage to advertisers allows public radio to set the price for radio advertising in the market. Commercial radio can only follow the STER and ask for lower prices.

United Kingdom

In the UK, the publicly funded broadcasters' services are paid for by licence fee without commercial funding. This is good. However, the BBC is the only UK media company that is allowed to have national radio, national television, local radio and magazine publishing interests. This gives it a well-promoted, dominant brand that the highly regulated, terrestrially transmitted commercial sector cannot match. The BBC is self-regulated and can change its formats and outputs at will. The commercial sector is independently regulated and must adhere to particular formats. BBC Radio has been able to change one of its five national channels from serving older listeners to one serving younger listeners without any constraints. This has proved disadvantageous to the commercial sector, which does not have these freedoms.

II. 3 ACCESSION AND EVALUATION

One of the important questions for the institutions of the European Union has been the “progress” various countries are making to meeting standards for entry or recognition. This document indicates how the European Parliament and the European Commission assesses the progress of particular countries in Central and Eastern Europe.

The European Parliament in the Enlargement Process: “Briefing No 47: Audiovisual Policy: applicant countries and the community *acquis*,” Secretariat Working Party Task Force “Enlargement”

POSITIONS OF THE INSTITUTIONS OF THE EUROPEAN UNION ON THE PROGRESS MADE BY THE APPLICANT COUNTRIES IN THE INCORPORATION OF THE AUDIO-VISUAL ACQUIS

1 European Parliament

1.1 General Assessment

The Parliament has made several statements on the enlargement and the audiovisual sector. It considers the incorporation of the audiovisual *acquis* by the applicant countries as being of “paramount importance”. The Parliament stressed that “it attaches to progress in particular [...] areas, while acknowledging that improved respect for human rights and democratic principles is a continuing challenge for both current and future EU Member States: [...] the right to free speech, and the freedom of the media”. In order to implement strategies of integration of the Central and Eastern European countries, the Parliament urges the Commission to draw its “attention to the enormous potential of modern telecommunications technology in a comprehensive communication strategy with the countries of Central and Eastern Europe and urges the Commission to cooperate with those countries in its development and ensure that it can promote culture and a responsible

^{*} Online [August 2001] http://www.europarl.eu.int/enlargement/briefings/47a2_en.htm,
http://www.europarl.eu.int/enlargement/briefings/pdf/47a1_en.pdf

approach to information;" It also emphasises the need to give urgent practical and financial support to promote "free and independent media in order to eliminate material problems faced by the media in the countries of Central and Eastern Europe, as these problems could promote lasting dependence on government and thus prevent full development of a democratic order."

1.2 Hungary

The Hungarian audiovisual landscape has undergone many changes since 1989. Hungary is one of the best-equipped of the East European countries to guarantee the freedom of expression. Therefore the European Commission in 1997 presented a proposal concerning Hungary's participation in the MEDIA II programme. The Committee on Culture delayed the adoption of this proposal for several months, waiting for Hungary to bring its legislation on media into closer alignment with Community legislation. In its resolution of 8 December 1998 Parliament stated that Hungary had made some progress in the field but it found that much still remained to be done before harmonised legislation could be applied to all enterprises in the audiovisual sector. It therefore approved the Commission's proposal subject to the following conditions: establishment of a timetable for the adjustment of Hungarian legislation to European Provisions and for the adoption of the body of EU audiovisual legislation, particularly with regard to the status of the broadcasting organisations and the programming of European Works.

1.3 Cyprus

In 1998 the European Commission presented a proposal concerning Cyprus' participation in the MEDIA II programme. The European Parliament approved this proposal on 15 September and emphasised that consideration of Cypriot projects accorded with the desire of the European Union to promote the audiovisual sector in all its cultural diversity.

2 European Commission

2.1 Pre-accession strategy

The Community has adopted a pre-accession strategy for preparing the process of legislative alignment with the candidate countries. This strategy consists of the analysis of the legal and economic status quo, and is developed on grounds of far-reaching and mixed Association Agreements concluded between the candidate countries and the Community, which entered into force between 1994 and 1997. One of the sectors covered by these agreements is the audiovisual sector, with specific reference to transfrontier television. The agreements require the Parties to "co-ordinate and where appropriate harmonise their policies concerning the regulation of cross-border broadcasting, technical norms in the audiovisual field, and the promotion of European audiovisual technology".

To monitor the implementation of the agreements, the Commission since 1997 carries out regular evaluations on the progress made by each candidate country concerning reaching the EU standard. These evaluations are known as the Regular Reports. The last such evaluation by the European Commission was carried out in 1999, and the situation of the incorporation of the *acquis* in each applicant country was recorded in the Regular Reports as follows:

2.2 Bulgaria

Significant progress has been made by Bulgaria with respect to alignment with the Television without Frontiers Directive. In July 1998 the *Law on Telecommunications* was adopted and in November 1998, the *Radio and Television Law* was adopted. Moreover, in March 1999 the Council of Europe *Convention on Transfrontier Television* was ratified. Consequently, the audiovisual legal framework in Bulgaria is very closely aligned with the *Television Without Frontiers Directive*, though some minor problems need to be addressed. Administrative and implementation structures (National Council for Radio and Television) are in place, though it is too soon (following the adoption of the *Radio and Television Law*) to know if the body carries out its work effectively.

2.3 Cyprus

Cypriot broadcasting legislation is largely in line with the audiovisual *acquis*, although full alignment will require some amendments to the existing legislation. Administrative and implementation structures (Cyprus Radio-Television Authority and the Cyprus Broadcasting Corporation) are in place and work effectively. These structures are in the process of being strengthened.

2.4 Czech Republic

In its 1997 Opinion, the European Commission already noticed the discrepancies between the audio-visual legal system of the Czech Republic and the Union standards. The 1998 Regular Report reported the limitation of progress made in this field. While some developments have taken place since 1998 (elaboration of draft broadcasting legislation), no significant progress has been made with respect to the adoption of the audiovisual *acquis* (*Television without Frontiers Directive*). Czech broadcasting legislation is not in conformity with Community legislation in this field and there is a need to amend and align it with the *acquis*. As the Accession Partnership identified alignment with the audiovisual *acquis* as a medium term priority this is an urgent need. While administrative and implementation structures (Council of the Czech Republic for Broadcasting) are in place, there will be a need to ensure that this body is empowered with proper monitoring and sanctioning powers.

2.5 Estonia

In its 1997 *Opinion*, the Commission expected Estonia to meet the EU requirements in the medium term. Like other East European Countries, the audiovisual sector had suffered major upheavals since the end of the 80s. The 1994 *Law on Broadcasting* was deficient regarding requirements of freedom of reception, advertising rules and promotion of European products.

Some progress has been made by Estonia since, notably the signing of the Council of Europe *Convention on Transfrontier Television* in February 1999 (ratification will follow), and the entry into force of the *Act to Regulate the Dissemination of Works, which Contain Pornography or Promote Violence or Cruelty* in 1998. However, Estonian broadcasting legislation is not yet in full conformity with Commission legislation, and since the Accession Partnership

identified alignment with the audiovisual *acquis* as a medium term priority, there is an urgent need to align the existing legislation with the *acquis*. Administrative and implementation structures are in place (Ministry of Culture) and work effectively within the confines of the existing legislation.

2.6 Hungary

Hungary has made considerable efforts since 1990 to meet the Union requirements. The 1996 *Law on Radio and Television* dismantled the State monopoly on information and created a regulatory body. However, no significant progress has been made with respect to the adoption of the audiovisual *acquis*. Hungarian broadcasting legislation is not yet in full conformity with Community legislation in this field and there is a need to amend and align it with the *acquis*. Administrative and implementation structures (ORTC) are in place and work effectively, within the confines of the existing legislation.

2.7 Latvia

The 1997 Commission's *Opinion* considered it possible for Latvia to reach the EU standard in the medium term considering the efforts made for the harmonisation of legislation. Deficiencies were noticed concerning the freedom of reception, promotion of European products and the advertisement rules. The government began to tackle some of those problems in 1997.

In November 1998 the *Law on Radio and Television* entered into force. This new law brings Latvian broadcasting legislation closer to the audiovisual *acquis*. However, further amendments need to be introduced in order for the law to be fully aligned with the *acquis*. Administrative and implementation structures (National Radio and Television Council) are in place and work effectively.

2.8 Lithuania

The lack of information available made it difficult for the Commission to assess the level of incorporation of the *acquis* in the Lithuanian legislation. Despite this uncertainty, the Commission was able to judge in 1997 that the legal system, encompassing a 1990 *Law on the Press and Mass Media* and the 1995 *Law on the Licensing of Postal and Telecommunication*, was unable to guarantee the

minimum requirements of the community (freedom of reception, promotion of European products, advertising and sponsorship rules, protection of minors...).

While some developments have taken place since 1998 (elaboration of draft broadcasting legislation), no significant progress has been made with respect to the adoption of the audiovisual *acquis* (*Television Without Frontiers Directive*). Lithuanian broadcasting legislation is not yet in conformity with Community legislation in this field. As the Accession Partnership identified alignment with the audiovisual *acquis* as a medium term priority, there is an urgent need to amend and align the existing legislation with the *acquis*.

The Radio and Television Commission (est. 1996) continues to work effectively within the limit of existing legislation. However, its technical, financial and human resources are rather limited, and a more *acquis*-oriented approach to implementation will be developed during 1999/2000 under the PHARE SEIL project.

2.9 Malta

Thanks to the 1991 *Broadcasting Act*, Malta's audiovisual legislation is broadly in line with the EU *acquis* in this sector. The audiovisual sector grew rapidly during the last few years through the licensing of new private channels and the introduction of 52 channels on cable. The Broadcasting Authority carries out implementation and enforcement of audiovisual legislation, and is a dynamic body. It has been an active member of the European Broadcasting Union and of the Commonwealth Broadcasting Association for many years. The authority is also a member of the European Institute for the Media and a founder member of the EPRA--the European Platform of Regulatory Authorities--that was set up during a conference held in Malta in 1995.

Maltese broadcasting legislation shares common features with the audiovisual *acquis*, but it is not yet in full conformity with it. There is, therefore, a need to amend and align the existing legislation with the *acquis* in the field. Administrative and implementation structures are in place and work effectively within the confines of the existing legislation.

2.10 Poland

While some developments have taken place since 1998 (elaboration of draft broadcasting legislation), no significant progress has been made with respect to the adoption of the audiovisual *acquis* (*Television Without Frontiers Directive*). Polish broadcasting legislation is not yet in conformity with Community legislation in this field.

2.11 Romania

In its *Opinion* of July 1997, the European Commission expressed the view that, provided necessary structural adjustments of the industry were made, as well as sustained efforts to change legislation, Romania, should be able to meet EU requirements in the medium term. The November 1998 Report confirms the Commission's initial evaluation and notes that some progress has been made, notably the adoption of a number of compulsory norms by the National Audiovisual Council (NAC) and the creation of a number of administrative/implementation structures under the aegis of the NAC. However, Romanian broadcasting legislation is not yet in full conformity with Community legislation in this field and there is an urgent need to amend and align it further with the *acquis*.

2.12 Slovak Republic

In 1997, Slovakia had already made important progress in the harmonisation of its audiovisual legislation to reach European standards. The 1991 *Slovak Television Act* and *Radio and Broadcasting Act* dismantled the State's monopoly on the production of film and television and created a regulatory body, the Television Broadcasting Council. However, no significant progress has been made with respect to the adoption of the audiovisual *acquis* (*Television without Frontiers Directive*) since 1998. Slovak broadcasting legislation is not in conformity with Community legislation in this field and there is an urgent need to amend and align it further with the *acquis*. Administrative and implementation structures (Council of the Slovak Republic for Radio and Television Broadcasting) are in place and work effectively within the confines of the existing legislation.

2.13 Slovenia

While in 1997 the Commission expected Slovenia to meet the requirements in the medium term, this country did not progress substantially in the incorporation of the *acquis*. The November 1999 report states that the Slovenian legislation is still incompatible with the Community standards, although some developments have taken place (elaboration of draft broadcasting legislation). The administrative and implementation structures (National Broadcasting Council) are in place and work effectively within the confines of the existing legislation. The Council's monitoring powers are rather weak and should be strengthened in any new legislation.

2.14 Conclusion

Altogether, the audiovisual sector of the applicant countries has experienced deep upheavals since the end of the 80s, preventing them from adapting their legislation rapidly to the European *acquis*. Several countries have made important efforts to harmonise their legislation and implement the new rules. However, it is unlikely that all of them will be able to meet EU requirements in the short term. In the communication concerning "Principles and Guidelines for the Community's Audiovisual Policy in the digital age" (Com(99) 657) the Commission states its particular attention to transposition by applicant countries of the *Broadcasting Directive*. The Commission also plans to protect the audiovisual industries of applicant states and will assess, for each of them, how appropriate it is to implement specific measures in pre-accession instruments.

Guidelines on the Guarantee of the Independence of Public Service Broadcasting: Recommendation No. R (96) 10 of the Committee of Ministers to Member States, Council of Europe

In the evaluation and assessment phase, one important question is independence of public service broadcasters, as we have indicated throughout these materials. This is an excerpt document of the Council of Europe reaffirming such standards.

I. General provisions

The legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy, especially in areas such as:

- the definition of programme schedules;
- the conception and production of programmes;
- the editing and presentation of news and current affairs programmes;
- the organisation of the activities of the service;
- recruitment, employment and staff management within the service;
- the purchase, hire, sale and use of goods and services;
- the management of financial resources;
- the preparation and execution of the budget;
- the negotiation, preparation and signature of legal acts relating to the operation of the service;
- the representation of the service in legal proceedings as well as with respect to third parties.

The provisions relating to the responsibility and supervision of public service broadcasting organisations and their statutory organs should be clearly defined in the governing legal framework.

The programming activities of public service broadcasting organisations shall not be subject to any form of censorship. No *a priori* control of the activities of public service broadcasting organisations shall be exercised by external persons or bodies except in exceptional cases provided for by law.

II. Boards of management of public service broadcasting organisations

1. Competences

The legal framework governing public service broadcasting organisations should stipulate that their boards of management are solely responsible for the day-to-day operation of their organisation.

2. Status

The rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a

manner that avoids placing the boards at risk of any political or other interference.

These rules should, in particular, stipulate that the members of boards of management or persons assuming such functions in an individual capacity:

- exercise their functions strictly in the interests of the public service broadcasting organisation which they represent and manage;
- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with the management functions which they exercise in their public service broadcasting organisation;
- may not receive any mandate or take instructions from any person or body whatsoever other than the bodies or individuals responsible for the supervision of the public service broadcasting organisation in question, subject to exceptional cases provided for by law.

3. Responsibilities

Subject to their accountability to the courts for the exercise of their competences in cases provided for by law, the boards of management of public service broadcasting organisations, or individuals assuming such functions in an individual capacity, should only be accountable for the exercise of their functions to the supervisory body of their public service broadcasting organisation.

Any decision taken by the aforementioned supervisory bodies against members of the boards of management of public service broadcasting organisations or persons assuming such functions in an individual capacity for breach of their duties and obligations should be duly reasoned and subject to appeal to the competent courts.

III. Supervisory bodies of public service broadcasting organisations

1. Competences

The legal framework governing public service broadcasting organisations should define clearly and precisely the competences of their supervisory bodies.

The supervisory bodies of public service broadcasting organisations should not exercise any *a priori* control over programming.

2. Status

The rules governing the status of the supervisory bodies of public service broadcasting organisations, especially their membership, should be defined in a way, which avoids placing the bodies at risk of political or other interference.

These rules should, in particular, guarantee that the members of the supervisory bodies:

- are appointed in an open and pluralistic manner;
- represent collectively the interests of society in general;
- may not receive any mandate or take any instructions from any person or body other than the one which appointed them, subject to any contrary provisions prescribed by law in exceptional cases;
- may not be dismissed, suspended or replaced during their term of office by any person or body other than the one which appointed them, except where the supervisory body has duly certified that they are incapable of or have been prevented from exercising their functions;
- may not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organisations in media or media-related sectors where this would lead to a conflict of interest with their functions within the supervisory body.
- Rules on the payment of members of the supervisory bodies of public service broadcasting organisations should be defined in a clear and open manner by the texts governing these bodies.

IV. Staff of public service broadcasting organisations

The recruitment, promotion and transfer as well as the rights and obligations of the staff of public service broadcasting organisations should not depend on origin, sex, opinions or political, philosophical or religious beliefs or trade union membership. The staff of public service broadcasting organisations should be guaranteed without discrimination the right to take part in trade union activities and to strike, subject to any restrictions laid down by law to guarantee the continuity of the public service or other legitimate reasons.

The legal framework governing public service broadcasting organisations should clearly stipulate that the staff of these organisations may not take any instructions whatsoever from individuals or bodies outside the organisation employing them without the agreement of the board of management of the organisation, subject to the competences of the supervisory bodies.

V. Funding of public service broadcasting organisations

The rules governing the funding of public service broadcasting organisations should be based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions.

The following principles should apply in cases where the funding of a public service broadcasting organisation is based either entirely or in part on a regular or exceptional contribution from the state budget or on a licence fee:

- the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation;
- the level of the contribution or licence fee should be fixed after consultation with the public service broadcasting organisation concerned, taking account of trends in the costs of its activities, and in a way which allows the organisation to carry out fully its various missions;
- payment of the contribution or licence fee should be made in a way which guarantees the continuity of the activities of the public service broadcasting organisation and which allows it to engage in long-term planning;
- the use of the contribution or licence fee by the public service broadcasting organisation should respect the principle of independence and autonomy mentioned in guideline No. 1;
- where the contribution or licence fee revenue has to be shared among several public service broadcasting organisations, this should be done in a way, which satisfies in an equitable manner the needs of each organisation.

The rules on the financial supervision of public service broadcasting organisations should not prejudice their independence in programming matters as stated in guideline No. 1.

VI. The programming policy of public service broadcasting organisations

The legal framework governing public service broadcasting organisations should clearly stipulate that they shall ensure that news programmes fairly present facts and events and encourage the free formation of opinions.

The cases in which public service broadcasting organisations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities, should be confined to exceptional circumstances expressly laid down in laws or regulations. Any official announcements should be clearly described as such and should be broadcast under the sole responsibility of the commissioning authority.

VII. Access by public service broadcasting organisations to new communications technologies

Public service broadcasting organisations should be able to exploit new communications technologies and, where authorised, to develop new services based on such technologies in order to fulfil in an independent manner their missions as defined by law.

II.4 PUBLIC SERVICE BROADCASTING IN A DIGITAL AGE

In 1997, the European Commission produced a "green paper" on issues related to technological "convergence" in communication. The paper represented a further step in the realisation of an Information Society in Europe. It examined policy issues relating to the broad infrastructure of telecommunications, media and information technology sectors.

Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation, Towards an Information Society, European Commission, Brussels, Belgium, 3 December 1997*

Chapter IV: Regulatory implications

IV. 3 Meeting public interest objectives

[...]

The need for public interest objectives to be clearly defined

Universal service obligations in general ensure the universal availability of defined services at an affordable price, whilst the public service mission of broadcasters extends beyond issues of universal availability and price and lays down conditions relating to the content of the services provided. Against this background the starting point for any analysis of public interest objectives in the light of convergence must be the need to define public interest objectives so that market actors have a clear idea of the obligations with which they must comply. Some consider that such an assessment is also essential in order to gauge whether these objectives remain valid in the face of the evolving

* Online [August 2001] Available: <http://www.ecommerce.gov/green.htm>

communications and media environment, whilst others argue that the objectives remain valid and only the way in which they are satisfied may evolve. In either case, a proper assessment seems to require a clear identification of underlying objectives.

In the case of certain objectives in the different sectors, specific obligations have been placed on one or more operator to guarantee these objectives. This is the case with universal service carriers in the telecommunications sector or broadcasters who have been given a public service mission. In the telecommunications case, the cost of those obligations may, where they represent an unfair burden for the operator concerned, be shared with other market players.

Some argue that given that such a framework exists within telecommunications, the absence of a similar framework for the public service mission in broadcasting will deter companies wishing to operate on an integrated basis or favour the position of those entering the telecommunications market from the media side. Others respond that convergence does not challenge the existence of different approaches, given the underlying objectives are quite different. They further argue that it is simply not possible to cost obligations relating to the public service mission in any meaningful way, and that comparisons with the experience of telecoms are unhelpful in this regard.

A further issue is who might in future be able to fulfil a public service mission or offer universal service? Obligations have traditionally fallen on a single designated organisation, (though that is now changing in the case of universal service in some Member States). However, the possibility of offering voice telephony services over a computer or a television, or the ability to use the Internet to read, watch or listen to broadcasters' programming illustrates the possibility that new platforms may play a role in meeting such obligations. The question arises as to whether this is an additional reason for such obligations to be properly identified.

Additionally, the issue is whether existing frameworks should be changed in order to create a coherent framework for both public and private broadcasting organisations, for example so that different organisations are allowed to bid to undertake such obligations, including organisations from outside the traditional sector. Where specific support in the form of industry or

even public funding is available for the provision of such services, the issue arises, *inter alia*, as to whether that mechanism would need to be open to any organisation willing to be designated as fulfilling public interest obligations.

Content-Related Objectives

Convergence is already leading to a reassessment of approaches to the means of implementing objectives regarding content. This has already been the case with approaches to harmful and illegal content on the Internet. At its most basic, the central issue is not the validity of particular rules but whether the impact of technology on particular services requires a reassessment of the means of achieving the objectives in question.

Essentially this is an application of the principle of proportionality, which means that current approaches must be assessed in the light of the specific characteristics of the service concerned. This means that there does not have to be a single standard applicable to the same content whatever the channel used for distribution. Instead, different standards might apply. For example, it is likely that the controls applied to advertising on a free-to-air broadcast would be considered inappropriate, if applied to a pay-TV programme or an Internet service, because of the specific characteristics of the service concerned.

The Role of Public Service Broadcasting

The public service mission entrusted to public service broadcasters is recognised as of cultural importance and the organisations with responsibilities in this regard are entitled to appropriate funding, subject to compatibility with the rules of the Treaty. The recent Protocol on public broadcasting attached to the Amsterdam Treaty confirms this point.

Convergence may however enable many more sources of audiovisual information to be accessed by viewers. Public authorities will need to monitor on a continuing basis the extent to which desired policy objectives are being achieved by normal market activity, including the impact of other media, and whether, as a consequence, regulatory obligations placed on broadcasters may be lightened.

Traditional public broadcasters will need to reappraise their role in the convergent environment. On the one hand, their market share is likely to

diminish as users face an increasing choice in a market already near to saturation in terms of the individual potential for consumption of audiovisual services within a 24-hour day. Moreover, escalating prices for premium content could subject them to budgetary pressures that might outstrip the capabilities of existing funding mechanisms. The issue will be whether public broadcasters can continue to have access to attractive content in the face of fierce competition for the acquisition of programme rights, within the constraints of their existing funding mechanisms. Many are preparing to exploit their reputation and their customers' "brand loyalty" to compete with new pay-television broadcasters.

On the other hand, technological convergence offers public broadcasters a range of new possibilities, in terms of both activities and potential avenues to viewers and listeners. This can enhance their current role and provide valuable new sources of revenue alongside current funding. The regulatory framework should allow broadcasters to take advantage of these new opportunities. It should also permit them to benefit from economies of scale and scope where these also bring benefits for the consumer. However, if state funds intended to support a public broadcaster in fulfilling its public service mission were used to leverage and cross-subsidise these new activities or the use of new technological platforms, such as the Internet, then such practices would be subject to the Treaty rules on competition and on the freedom to provide services.

**The future of public service television in a multi-channel digital age,
Committee on Culture, Youth, Education and the Media, Draftswoman: Ms
Carole Tongue, September 1996***

In 1996, a special committee of the European Parliament also asked questions about the future of public service broadcasting in the new technological context. We include an excerpt from the Tongue Report, as it is commonly known after its principal author.

* Online [August 2001] Available: <http://www.poptel.org.uk/carole-tongue/index2.html>

The future of public service television in a multi-channel digital age

Will there still be a need for public service broadcasting in the future?

Public service broadcasting is under attack. Gone is its monopoly of the airwaves and unquestioned public mandate. Its future is being threatened by new technologies and by some governments eager to privatise this key public sector.

A recent article in the *Economist* went straight to the point: "Increasingly Public Service Broadcasters will have to compete with hundreds of new television channels. As they erode their audience, they will inevitably erode their legitimacy. The world which has allowed Public Service Broadcasting to flourish is disappearing. Can Public Service Broadcasters survive?"

Public service broadcasters in Europe face similar challenges.

- They formerly enjoyed protected environments and are now faced with unprecedented levels of competition from new channels; Will there still be a need for PSB when dozens of new channels are available to meet viewer`s needs and interests?
- Will the new technologies, for example digital, not offer many more opportunities to broadcast? Will the future not be more like print publishing: the big commercial channels will continue to supply the mass market but an increasing number of newcomers will set up to serve minority tastes?
- Broadcasting is a key sector of the economy, central to an expanding audiovisual industry, which relies heavily on public service broadcasting investment.
- The television audience is now shared with more channels. For example the BBC`s share of national TV audience has already changed to 44%, from 50% in 1989. Looking at the sector as a

whole, the audience share of public service broadcasters in the European Union moved from an average of 82 per cent in 1984, to 57 per cent in 1990 and 46 cent in 1994.

- Adapting to declining audiences by complementing commercial schedules would lead public service broadcasters into a cultural ghetto, but fighting decline may mean scheduling similar programmes to their commercial competitors.
- Does public financing of public service broadcasting constitute a distortion of the market? Should public service broadcasters operate like a true public service augmenting the market by only providing the programme genres which are less commercially attractive?

Commercial broadcasters, cable and satellite channels, competing with each other for revenue in an increasingly competitive environment are bound to follow the safest commercial strategy. Commercial television is now almost entirely about profits. Its main duty is to the shareholders and to the advertisers. Commercial stations can take few risks. This drives them towards popular programming which generates the highest viewing for every commercial break.

These terrestrial cable and satellite operators are very good at supplying high rating programmes and they do invest in popular drama, but its content range is small. For example, there is a growing proliferation of police and hospital thrillers with less drama on other themes. Commercial channels are less interested in programme types which can only produce low-to-medium sized ratings. Regulation is, therefore, important to establish and enforce requirements for minimum standards as companies will increasingly do no more than the bare minimum. Their business is to raise the greatest revenue from advertisers and the maximum dividend for shareholders. They will rarely have a motive for putting say, risky and innovative documentaries in prime time television. From the viewer's perspective this represents real market failure.

Although all of us enjoy the most popular programmes for much of the time, very few of us want them all the time. Research shows that, by and large,

the public wants to spend two thirds of the time watching undemanding entertaining fare but wants to watch something more challenging for the other one third. Commercial television schedules are prepared to achieve volume and in so doing the range of programmes is severely restricted. Programmes which are likely to deliver smaller audiences, however good, and however highly valued by those viewers are not commissioned (except in the case of Channel 4 TV with a special mandate to do so).

Public service broadcasters therefore have a crucial function to discharge. Free from commercial pressure, they are free to address the full range of audience interests, not just those which are commercially the most attractive. They spend their revenues to provide budgets for programmes which extend the range of viewing choice. In addition to high quality popular programmes for mass audiences they fund many innovative, risky and challenging programmes which inherently appeal to smaller audiences. The crucial fact is that the viewers of these "minority" programmes are not some exceptional elite. They are the same people as those who watch the soaps. We all want wider choice at some point of the viewing week and public service broadcasting is providing these programmes.

Universal access in the information society

Our society is divided into those who can pay and those who cannot pay for new services – which is why public service broadcasters have a crucial role. Citizens must have access to a wide range of high quality services, impartial information and news, to educational programming, to diverse cultural programming -- and their choice should not be narrowed by market fragmentation, which the new services will bring. The EU must legislate to ensure that broadcasts that are provided free at the point-of-use continue to be available free on both cable and satellite in the future. This EU legislation should place "obligations" on cable and satellite operators to provide free-access for public broadcasting programmes.

New technologies will also allow public service broadcasters to fulfil their public service remit to higher standards. For example, the BBC is already investing in new educational CD-Roms, and ARD and ZDF are planning to launch specialised channels—a children's channel, a parliamentary channel

and an education channel. Public service broadcasters are well placed to take the lead in the development of the Information Society because public service broadcasters have extensive experience of programme making, and the richest programme libraries and are the main investors in audio-visual production in Europe. The figures speak for themselves. As non profit-making institutions, all revenues are reinvested in programme materials and development.

The BBC alone invests 1.3 billion ECU in new programming each year, more than the total spending in the European film industry. In 1994, European public service broadcasters (excluding Greece and Luxembourg) spent 7.62 billion ECU on original programming, 168 million ECU on co-productions and 954 million ECU on commissioned productions—totalling a massive 8.742 billion ECU. Public service broadcasters will clearly be the key provider of quality content on the information superhighway, enhancing our cultural heritage and strengthening our audiovisual industry.

What about the impact of digital television?

Some argue that the current failure of commercial television to supply a wider range of output will be remedied by new technology. New channels, they say, will find new niche markets. This is what has happened with the magazine market over the past 20 years and has led to many propounding what the broadcasting consultant Peter Ibbotsen calls the “bookshop fallacy” – the idea that that multi-channel television will provide the “bookshop of the air” in which the public can browse among a plethora of titles to find the publication of their choice. In the same vein, they say, commercial television will blossom and will succeed by constantly adding new choices for the viewer, thus making the present role of public service broadcasters entirely redundant as viewers become their own schedulers from diverse material transmitted on hundreds of channels.

This will not happen for two reasons. First, the cost of entry, that is setting up a television channel, is much greater than going into print. And secondly, the running costs are also vastly different from print: any television channel consumes material at a frightening rate and even the cheapest programming costs thousands an hour. The problem is compounded by the

facts that viewers are used to getting TV very cheaply and that the amount of viewing time is saturated and cannot conceivably increase.

To fund the bookshop of the air, to give new minority channels a realistic expectation of a profit from much smaller audiences in a fragmenting market, the public would have to pay much more for the privilege. As Ibbotsen says, "The bottom line is that digital technology is unlikely to produce a cornucopia of new choices for viewers. The "bookshop" is an illusion, because it is neither commercially attractive, nor does it fit with the public's habits or expectations". Given the general desire for mixed programming, the best vehicles for carrying minority interests are likely to remain public service broadcasting channels or closely regulated commercial channels, where programmes of all kinds can be found, for example Channel 4 in Britain.

Regulation

How do you ensure that public service broadcasters deliver a wide range of programmes fulfilling their mandate; are held accountable for the service they provide; while also safeguarding their independence and provide training?

An effective and efficient regulatory framework will remain key for securing the continued existence of public service broadcasters within the European Union. As John Birt, the director-general of the BBC, puts it, "Broadcasting needs a constant pressure towards good quality. In the past this has come from public service broadcasters. By setting standards and taking risks, public service broadcasters 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 public service broadcasters to promote the forms of regulation which will enable broadcasters to make good the market failure 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 public service

broadcasting sector and to ensure effective editorial independence.

Broadcasting and broadcasters must be accountable for several reasons:

- 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 and political role
- To ensure that there are means for independent adjudication of, and redress for, users complaints.

Equally important is training. Traditionally public service broadcasters have provided a very wide range of production and technical training which immediately benefitted the broadcasters and ultimately the entire film and TV production sector. In the future, public service broadcasters must maintain and build on this commitment to quality training—a strong production base is dependent on excellent training within broadcasting institutions.

We must not be fooled by promises of diversity and choice that hundreds of channels will bring. Particularly worrying is the possibility that these new channels could be dominated by a few very powerful global players under the guise of unfettered operation of market forces. The Writers Guild of America recently commissioned a report which predicted that, by the end of the century, the world's media could be controlled by just four organisations. If unrestricted competition leads to a restriction in either the quality or range of products available then intervention is clearly justified in the public interest. In European Union terms this must mean an intelligent and flexible interpretation of competition rules, not a rigorous adherence to ideological purity.

The same approach should also apply to the rules governing mergers in the audio-visual and telecoms sector. Public service broadcasters should not be covered by any future European Union directive on media concentration and pluralism. However, to the extent that public service broadcasters enter into commercial joint ventures with private undertakings, such commercial subsidiaries should fall within the scope of media concentration rules.

Policy Issues

Over the coming months we face important broadcasting policy decisions that will have significant implications for broadcasters, in particular public service broadcasters.

- The extent of future restrictions upon cross-media ownership
- Future development of the information society
- Protection of copyright
- Regulatory framework for the development of new audiovisual services, such as video-on-demand

These policy issues arise within a broadcasting environment which is changing rapidly, principally because of the pace of technological change. Given how all pervasive technological this will be, we must build upon the comparative advantage of our public service broadcasting rather than abandon it. Europe should, moreover, recognise the strength of its tradition of public service broadcasting. Arguments for its continued support remain strong:

- To provide a service aimed at society at large
- To provide services which answer a different set of criteria than simply the need to make profits for shareholders
- In small countries, particularly those with minority languages, public service broadcasting may continue to be the only source to broadcast a range of programming for the population at large, as commercial broadcasters will not provide for these small markets.
- Freed from short-term concerns about maximising audience ratings, public service broadcasting can be an innovator in programme making, enriching the culture of the nation.

Conclusions

Over the coming decade public service broadcasting will become more not less important. Firstly, it will not be replaced by dozens of viable minority interest services. Secondly, it will remain a major engine of providing budgets for new rather than recycled or bought-in programmes. Thirdly, as commercial competition intensifies and mainstream commercial channels become more similar in their mass market appeal, it will provide the best method of

maintaining the widest range of accessible choice for the public. I believe that public service broadcasting will continue to command the attention of the majority of viewers and listeners in the future. To ensure that this will happen, however, public service broadcasters must through regulation ensure that they are:

- Objective and independent
- Providing diversity, choice and accurate and balanced news and current affairs programmes which are key building blocks of modern citizenship
- Representing public opinion
- Accountable to their public
- Politically and financially independent
- Giving all homes access to the best of national and European culture and entertainment
- Providing programmes which satisfy the needs of all the population
- Providing programmes which are innovative, informative, educational and entertaining
- Helping build knowledge and opening up opportunities through education and factual programmes
- Providing programmes which the market will not produce because they are high risk in the commercial market place
- Leading the development of new audiovisual services and funded to develop new technologies
- Leading in the transition to digital terrestrial broadcasting
- Able to draw on consistent and stable funding.
- Playing to their strengths, their universality, their professional skills and their considerable resources.

To conclude, Michael Grade, Chief Executive of Channel 4 Television, has eloquently summed up today's reality: "A division is clearly growing between channels whose primary purpose is public service, and those which are obviously businesses seeking to maximise profits. For the former the ambition is to succeed in innovation, in refreshing the pool of home grown programmes, in accurately reflecting and stimulating the public mood and taste... Perhaps the best medicine is to make sure that the public service broadcasters, those who put the public interest first, those who are committed to sustaining a creative, non-derivative production base, are properly supported, properly sustained and properly funded. We are heading towards an exciting

but uncertain future. ... In the end, the public interest will remain very much the same as it is now: a right to free and fair communication, to choice, to unbiased news and to enjoy the highest standard of output—in all genres—that our native talent can produce."

II.5 CONCLUDING OVERVIEW

We close with an excerpt of an essay by Werner Rumphorst addressing many of the questions included in this chapter. The present article is a condensed version of a paper presented at a Baltic media experts' meeting in Vilnius, Lithuania 31 January 1998.

“Public Service Broadcasting: No End to the Misunderstandings?,” by Dr. Werner Rumphorst, 1998

[A]t the 4th European Ministerial Conference on Mass Media Policy (Prague, 7.–8. 12. 1994) participating States agreed that public service broadcasters must provide, through their programming, a reference point for all members of the public and a factor for social cohesion and integration of all individuals, groups and communities; that they must provide a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed; that they must develop pluralistic, innovatory and varied programming which meets high ethical and quality standards, and that they must not sacrifice the pursuit of quality to market forces, etc. Participating States furthermore undertook to maintain and, where necessary, establish an appropriate and secure funding framework, which guarantees public service broadcasters the means necessary to accomplish their missions.

Three years later, the 5th European Ministerial Conference on Mass Media Policy (Thessaloniki, 11 – 12 12. 1997) expressly reaffirmed the content and the importance of the Prague Resolution, "stressing the continuing importance of public service broadcasting, as an essential factor of pluralistic communication accessible to everyone and hence of social cohesion, in this new environment" (viz. in the information society).

Similar language to that employed in the Prague Resolution was used by the European Parliament in its Resolution on the role of public service television in a multimedia society (19. 9. 1996). Public service broadcasters themselves could hardly have drafted a more forceful document in support of their own cause.

More recently still, in agreeing on the celebrated Protocol on the System of Public Broadcasting in the Member States, the Members of the European Union considered in a preamble "that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism". How could these needs possibly be served by a marginalized public broadcaster (such as PBS in the United States)? Public service broadcasting needs to be a major force on the national audiovisual scene in order to fulfil this important role and to serve as "a reference point for all members of the public and a factor for social cohesion and integration of all individuals, groups and communities" (to quote once again the Prague Resolution). Or, in the words of the European Parliament Resolution, "public service broadcasting is a fundamental player in the public sphere with a remit (i.a.) to offer a wide range of quality production in all genres to the whole population".

Nevertheless, in spite of these clear statements, even the recent EC Commission Green Paper on convergence raises the question of whether commercial organizations should not be given the possibility to bid to undertake public service broadcasting obligations, which are publicly funded. After all, one might argue, since publicly subsidized universal service obligations in the telecommunications sector are provided by commercial organizations, why should the same not also be possible in the broadcasting sector?

Such reasoning might even draw support from other sectors, which were also traditionally operated as public services: electricity, gas or water supply, postal services, or public transport in scarcely-populated areas. Whenever it would not make commercial sense to supply an individual house or small settlement with any of these services, the universal service notion comes into operation. Everybody should have access to these basic services. Where necessary, public subsidies (from whatever source) must ensure that a defined minimum service is provided in such cases.

All these services, including telecommunication services, have one key element in common: there is a concrete, precisely defined result to be achieved. A given house must be linked to the nearest available connection point for water, gas, electricity or the telephone. All houses in a given village must be provided with a regular (precisely defined) mail service. Another village, small

town or suburb must have a regular public bus service, with the entire route, each stop and the daily schedule precisely defined. Once the result is clear, it is obvious that different companies may be able to deliver that result at different costs. Hence the current practice of tendering for such publicly-subsidized services.

In stark contrast, with one "exception" (viz. technical coverage, which is in fact a universal service obligation) all the characteristic features of public service broadcasting, as recalled in the above-quoted Prague Resolution and the Resolution of the European Parliament, cannot possibly boil down to a clearly-defined result which anyone could deliver and which could therefore be the subject of tenders. "Reference point for all members of the public", "factor for social cohesion and integration of all individuals, groups and communities", "forum for public discussion", "as broad a spectrum as possible", "pluralistic, innovatory and varied programming", "high ethical and quality standards", "of interest to a wide public while being attentive to the needs of minority groups", "reflect the different philosophical ideas and religious beliefs in society" (to quote only some of the typical components of the public service mission highlighted in the Prague Resolution, and repeated in substance in the European Parliament Resolution); all these are non-quantifiable, non-definable aims. As a not-for-profit organization, a public service broadcasting organization will, by definition, strive to meet those goals as best it can with the various financial resources at its disposal.

To demonstrate how ludicrous it would be to try to quantify certain public service missions, let us assume that the cahier des charges of a public broadcasting organization prescribes that the programme service has to include a minimum of, for example, one major evening news bulletin per day lasting at least 15 minutes, religious programming of at least 60 minutes per week, one symphony concert or opera/opera per month, one theatrical play every two months, three hours of sports programming per week, one programme per week lasting at least 25 minutes devoted to the environment, another one of the same length devoted to women's issues, to education, to children, and so on, and that for each category the (approximate) time-slot is likewise prescribed. How could tenders for even that kind of "public broadcasting service" be made in any meaningful way? Nothing would—or could—be said of the quality of the

programming, even if it were prescribed that, say, 50% of all such programming must be produced and/or commissioned by the broadcasting organization itself. The cost of programmes of identical duration within a given category (sport, films, magazines, etc.) tends to vary considerably, in extreme cases by up to several thousand per cent. There is similar—non-measurable—variety in programme quality, as well as in the degree of relevance of programming to the civil society.

CHAPTER III

CHALLENGES TO THE PUBLIC SERVICE BROADCASTING REMIT: THE UNITED KINGDOM, GERMANY AND CANADA

In this chapter, we take the great themes—funding, governance structure, the nature and meaning of public service—and focus on two European systems, those of the United Kingdom and of Germany. Of course, we cannot present a comprehensive view of any of these systems in the space available. Volumes have been written and can be written about each of them. The purpose here is to deploy comments and materials that help in understanding the context of those systems, and especially the conceptual strains and limitations they are now facing. We introduce an additional important point: the distribution of public service obligations to private broadcasters as well as the historic centralized public service broadcaster. These models, as embodied in the history of public service broadcasting in Germany and the UK, are significant and instructive. But they are not only models for adoration. Each system is interesting not only because of what has been achieved, but also because of current experiences in adapting to new technologies and market forces.

We conclude with a brief section touching the same issues in Canada—a country where public broadcasting has never enjoyed a monopoly but has a long history as an instrument of public policy used to promote values such as cultural diversity and national sovereignty. Many of the issues related to national identity and state-building, present in transition societies, have emerged starkly there. Problems of pluralism, of dealing with the overwhelming influences of globalisation, of coping with extensive competition for audience, of the need for

cultural subsidies—all these are present in Canada, rendering it an important exemplar.

III.1 PURPOSES OF PUBLIC SERVICE BROADCASTING

GERMANY

“The Mission of Public Service Broadcasters” by Bernd Holznagel, 2000

Whether we like it or not, the media world is in a state of upheaval, and the extent, duration and goals of this transformation cannot be estimated precisely. New digital technology, with new possibilities for transmission and reproduction, will profoundly change the television industry, its programming and audience behaviours.

In Germany, more than 30 channels are currently financed through license fees and advertising, and it may be expected that in the near future there will be an additional 100 to 150 services for which the viewer will have to pay extra. Special interest channels will complement what public service and commercial generalist channels provide. All this will redefine viewing habits. The broadcasters will bundle their services in programme bouquets. Electronic programme guides (EPGs) will enable viewers to have access to an enhanced variety of programming. Only providers who at this stage already have successful, popular brands affiliated with their services will be able to succeed in this multichannel environment. New technologies will also facilitate the launching of new media services. One example is the worldwide distribution of on-line offers available over the Internet. In the long run, the technology for broadcasting and for new media services will converge, and may one day even partly replace one another.

Not for the first time in the history of broadcasting, technology has become the motor for changes in the fields of regulation, programme making and the use made of television by the viewer. But public service broadcasters (PSB) cannot simply let themselves be driven by technology. Public service

broadcasters have their own understanding of how to implement their mission, defined by the law, and achieve their specific programming goals.

The Public Broadcasters' Specific Functional Remit. In Western Europe, the obligation to provide a balanced and pluralistic program offer has often been derived from the national Constitutions. The French *Conseil Constitutionnel* and the Italian *Corte Costituzionale*, for example, argue that pluralism in the media sector is an "objectif de valeur constitutionnelle" or a "fondamentale valore costituzionale". They also stress the important role of PSB to fulfil this legal obligation. The German Constitutional Court (*Bundesverfassungsgericht*) requires PBS to be the "fundamental provider" (*Grundversorgung*) of broadcast programming. Only "as long and so far" as PSB efficiently accomplishes this assigned role, according to the Court, can it be justified not to require the same range of programming diversity from private broadcasters. Therefore, PSB is entitled to have its existence and future development guaranteed. This entitlement includes, for example, sufficient financing. The framework for the functional remit of *each* of the broadcasting organizations is, for example in Italy, Spain or Germany, defined by the national legislator. A more specific description of PBS tasks can often be found in governmental regulation like the French Cahier des Charges or the British Royal Charter. In most cases, the establishment of guidelines for the *ongoing fulfilment* of these obligations and for programme development comes within the remit of the self-governing bodies of each broadcaster.

The specific functional remit of German Public Broadcasters covers basically eight dimensions. They may serve as a typical example for the mission of European PBS:

- *Information remit:* PBS has a duty to convey objective information as a basis for the free forming of opinions. Coverage, therefore, has to be comprehensive, truthful and factual.
- *Guiding role:* as a source of independent and unbiased information, PBS provide reliable, credible reference points and, consequently, guidance for a free forming of opinion.
- *Role of forum:* PBS has to ensure that all relevant opinions on a particular subject receive a hearing. They have to offer a forum for public discussion in which the relevant social groups can participate.

- *Integration role*: PBS should aim for mutual understanding and, thus, foster social cohesion.
- *Benchmark*: PBS has the obligation to provide guiding, high-quality and innovative programming. In this way they set standards.
- *Cultural mission*. PBS programming has to reflect Germany's cultural diversity and the events taking place in all the *Länder*.
- *Mission to produce*: appropriate fulfilment of the respective obligations cannot be guaranteed by the mere acquisition of foreign productions. Because of that, PBS has a mission to produce independently and creatively.
- *Innovative role*. PBS is encouraged to take an innovative lead in testing and using new technology and new services in the broadcasting sector.

THE UNITED KINGDOM

“BBC Evidence to the License Fee Review Panel,” 1 March, 1999

1. The core question is what society needs and expects from the BBC entering the 21st Century? Evidence from recent consultations and debate suggests a range of purposes:

- a civilising force
- a benchmark for quality and innovation
- support for democratic debate (news and information)
- the investment engine for high-quality domestic content
- cultural ‘glue’ for the nation
- educational impact
- creating an information society for the many not the few.

2. The UK has a good broadcasting ecology. But as services multiply and competition increases (from multi-channel to on-demand), so government’s ability to ‘regulate for quality’ diminishes. A strong and influential BBC will be more necessary than ever as a benchmark for quality and help to maintain that ecology. But this requires a BBC able to hold significant reach, share and breadth.

3. Technological change and globalisation pose significant long-term challenges but also offer major opportunities. The challenges arise from fragmentation as audiences consume their media in different ways, whether multi-channel or on-demand.

Distribution costs rise as distribution methods multiply and new media and devices come on stream (e.g. online; mobile devices); the need for good quality, UK—originated content increases as major international corporations offer global values and culture through imported content. The cost of high value content will rise, driven both by relative scarcity and the increasing revenues, which pay TV operators, can use in acquiring such content. In 1992 the commercial TV sector had twice the BBC's TV revenues; now the figure is four times; by Charter renewal it is likely to be eight times BBC TV revenues.

4. Over time, the commercial networks are likely to follow the emerging American pattern: investing in a popular, but relatively narrow, range of good quality programmes. This will be expensive (e.g. the cost of each ER episode in the US has jumped from \$3m to \$13m). Even network broadcasters will begin to rely for a significant proportion of their revenues on exploitation in the pay market. This will inevitably feed back into their scheduling and production decisions on the network channels themselves. The BBC, on the other hand, will continue to focus on providing the widest possible range of high-quality programming free-to-air. It will continue to be the production and training powerhouse for Britain's broadcasting industry. The BBC is also ahead of the game in establishing a successful range of subscription channels in the UK and around the world, to extract and return to licence fee payers the full secondary value of their investment. New technology brings major opportunities for public service broadcasting: interactivity offers much greater richness and a closer relationship between audiences and the BBC. New channels and new media (e.g. online) offer new ways for the BBC to meet audience needs for distinctive content.

5. The BBC needs to retain an attractive shop window in its network channels. These will cater for the significant part of the population, which has not yet embraced digital as well as providing a way in to the wider range of services for those who have. They will continue to inform, to entertain and to educate; not least to educate audiences into the benefits of and participation in

the knowledge revolution which digital is making possible. These network channels will continue to be the investment engine for high quality/high value content for all. They will provide the core of the content which, at low marginal cost, audiences will be able to access through new media and new devices to obtain greater depth, richness and convenience. It is that combination of strong networks and value added public services, which will enable the BBC to deliver the values society wants from its media in the 21st Century. It is that strength of the BBC's domestic operations which allows the BBC to be an effective global broadcaster.

**“Public Service Broadcasting, from National Culture to Multiculturalism”
by Paddy Scannell, 1997**

Public service broadcasting in Britain has developed in three broad periods, each of which can be shown to have a core characteristic: first as national, then as popular, and finally as pluralistic. All three characteristics are present in the make-up of the mix of services currently available to British listeners and viewers. Each has modified and been modified by the others. They stand out as distinctive strands woven into the fabric of broadcasting today. They colour attitudes within the industry, in politics, and among the public.

Popularity

Popular television continues to be at the heart of debates about broadcasting and, in particular, the strategies of the BBC and ITV toward the national television audiences. The question of "quality," and what it means in respect to broadcasting, has been periodically debated since the introduction of commercial broadcasting, but it recurred with a new vigour in the early 1990s.

The BBC, unsure how to play its cards in the period of debate and discussion about its own future in the run-up to the renewal of its charter and licence in 1996, appeared at first to contemplate a strategy of vacating the centre and withdrawing to the cultural high ground, leaving popular programming to the commercial sector (BBC, 1992). This would have been a folly indeed, and it was soon modified. Even so, in its most recent mission

statement, the BBC acknowledges the difficulties in the "quality versus popularity" debate (BBC, 1995: 25).

The struggle for the centre ground—an inevitable consequence of any competitive system—will continue. It is right and proper that nationally networked television services should have, as a core concern, the production of popular, entertaining programmes. Equally, it is proper for a public service broadcaster to have to balance this commitment against other commitments to the national audience—especially the preservation of a genuinely diverse, wide-ranging mix of programme material in channel output.

Public Service Broadcasting and Multiculturalism

Pluralism was the word used in the mid-1970s to catch and respond to the changing nature of the times. Today, it is more accurately caught by "multiculturalism." It is a new kind of "identity" politics whose struggle is not so much against the market or the state as against prevailing social attitudes that marginalize particular groups by denying, refusing, or failing to recognize their claims to identity as women, as non-white, as gay, etc. Charles Taylor has called it "the politics of recognition". Multiculturalism poses the question as to whether the notion of a shared national culture is any longer meaningful. Can the BBC, for instance, continue to summon up notions of the British people and a British way of life in any meaningful way?

III.2 PROGRAM CONTENT

GERMANY

“German Broadcast Regulation: A Model for a New First Amendment?,” by Uli Widmaier, 1998*

Content Regulation of Private Broadcasting

In its 1991 decision, the Constitutional Court upheld a state law that defined the substantive parameters for private broadcasters in the state of Northrhine-Westphalia. These provisions are interesting and worthy of full citation. The government-created list of values that must be honored by private broadcasters constitutes an official espousal of a certain perspective on what is desirable for society and democracy. By ruling that the following provisions regulating private broadcasting in Northrhine-Westphalia were constitutional, the Court essentially endorsed a governmentally created ethics of human interaction:

§ 11. Programming Mission.

[Broadcast is] a medium of and factor in the process of the free formation of opinion and thus is of concern to the general public; in this way broadcasters fulfill a public function. Broadcast programs . . . must contribute to comprehensive information and free individual and public opinion formation. Broadcast programs must serve education, counseling, and entertainment; they must fulfill the cultural task of broadcast. Every broadcast channel must devote attention to public events in Northrhine-Westphalia.

* footnotes omitted

§ 12. Basic Tenets of Programming.

(1) All broadcast programs must conform to the constitutional order. The provisions of the general laws and the laws for the protection of personal honor must be respected.

(2) Broadcast programs must respect the dignity of the human being. They ought to contribute to a strengthening of the respect for life, liberty, physical inviolateness, and the faith and opinion of others. The moral and religious convictions of the population, as well as marriage and family, must be respected. Broadcast programs ought to foster understanding among nations, they ought to admonish people to pursue peace and social justice, they ought to defend the democratic freedoms, they ought to contribute to equality between men and women, they ought to be committed to the truth. No broadcast program may take into account only one-sided and isolated opinions. No broadcast program may serve, in a one-sided fashion, one party, one group, one interest, one denomination, or one world view.

(3) In fulfilling its mission, every station's overall offering must express the diversity of opinions as broadly and completely as possible. The significant political, ideological, and social forces and groups must be represented in every station's overall offering. Every station's overall offering must provide appropriate time for the treatment of controversial themes of general significance.

(4) Informational programs must respect recognized journalistic principles. News must be general, independent, and rational. Before they are aired, news programs must be checked concerning their content, origin, and truth, as far as the circumstances allow. Commentaries must be separated from the news in a clear fashion, and they must be labeled as such, giving the name of their authors.

These legislative enactments are more than politically correct sermonizing. The state makes decisions as to what values should be espoused on all private broadcasting; competing or conflicting standpoints are explicitly excluded and outlawed. Section 12(2) is a dramatic infringement on editorial freedom and an attempt by the state to control the messages of a whole medium. What is surprising about this list of demands is not its general tenor—

its labored inoffensiveness in favor of freedom, democracy, objectivity, truth, diversity, and family values—but its specificity. Private broadcasters must respect human dignity, the ethical and religious convictions of others, and the institutions of marriage and family. They must contribute to international understanding and to equal rights between men and women. They may not run a single program that espouses only one viewpoint.

But what about those who do not respect marriage, family, and the religious convictions of the majority, viewing an appeal to these institutions and beliefs to be ideological warfare on their non-traditional lifestyles? Those who find the expression "social justice" to be an emotional rallying cry of "bleeding-heart" liberals, a cry that may lead to ill-considered legislation with dangerous unintended consequences and that must be kept in check by cool economic reasoning? Those who believe that broadcasting extreme viewpoints grabs people's attention and stimulates opponents to put forth their best arguments? Those who seek radical political change and thus wish to challenge the "constitutional order"? Thus, the gay activist, the hard-core libertarian, the political commentator with a strongly partisan agenda, or the socialist is systematically discriminated against in the name of liberal democratic inclusiveness.

The law demands that broadcast programming be committed to tolerance and respect for others, balance of viewpoint, and objectivity. Partiality and one-sidedness are unlawful and, ultimately, unconstitutional. This plainly creates the danger that broadcasters will avoid controversial programming and prevent strongly one-sided views from being expressed on the air. After all, any station that allows a program to take a strong stance on one side of an issue might, by adversaries of that stance, be accused of failing to meet the legal requirements of breadth, completeness, and balance. Perhaps in order to forestall this problem, the law includes a requirement that controversial themes be appropriately covered. But this provision calls only for "appropriate" coverage of "controversial" topics of "general" interest, without defining these terms. The controversy coverage requirement can thus be expected to be virtually meaningless.

THE UNITED KINGDOM

“ZAPPED: Why public service TV has to change,” Excerpts from a Speech by Mark Thompson, director of BBC Television, at the Banff festival in June 2000*

The Explosion of Choice

Greater choice, which many public broadcasters argued was unnecessary or even against the public interest, is being seized by viewers with enthusiasm and appreciation. We've done some research in Britain in the past few weeks, looking at the way in which viewers consume digital television, and in particular, how they use the EPG, the electronic programme guide. We spent time in people's homes, talking to them about how they used television now and watching them navigate their EPGs. And the basic finding is that most of them either like it or love it. They feel it puts them—not the broadcaster—in control. As one man said to us: 'it's in a totally different league, so far apart it's unbelievable'. And, although many families still turn to the terrestrial channels for blockbuster programmes—the big soaps like *Eastenders* or *Coronation Street* or other favourite programmes from comedies like *dinnerladies* to some of our new lifestyle/entertainment hybrids like *Groundforce*—we came across quite a few households who are excluding terrestrial TV altogether.

We're also beginning to see early audience research about TiVO, the first home storage device to market in the US. Again, this is a technology, which puts viewers in charge of their own viewing. As you may know, TiVO enables viewers to record up to 30 hours of TV on a hard disk, presenting the recorded programmes again on an EPG. You can command the box to record your favourite shows automatically; you can skip commercials; you can even 'pause' a live baseball or soccer game. Within a few weeks of getting the box, many of the admittedly small number of households studied so far were watching the majority of their television off the box rather than off the air. We think that a

* Online [August 2001] Available: <http://www.bbc.co.uk/info/news/news245.htm>.

significant number are now not watching off-air at all. And the users report that they are now enjoying TV more than they used to.

So what do developments like the EPG and home storage mean for public service broadcasters? I think they radicalise many of the issues that have been brewing for years.

In the first decades of choice and competition, I suspect that many public broadcasters thought that the impact of commercial competition was going to be limited to crude audience numbers. Yes, the public service channels would lose share, but because commercial broadcasters were bound to go for lowest common denominator programming, there was a good chance that much of the public service remit could remain almost unchanged: there would still be a need for all those kinds of programmes which realistically the market would never provide; as well as the need to serve all those audiences who wouldn't be satisfied by one-size-fits-all mass market television.

But of course, as the universe of commercial TV expanded, it diversified and segmented. In Britain on ITV, soap commercials gave way to car adverts, and suddenly ITV started commissioning large numbers of the programmes that the buyers of Rovers and Volvos wanted to watch; high quality film dramas, for example, which had once been substantially the preserve of the BBC. All over the world, channels began to target specific audiences: the young, so loved by advertisers; older, documentary-watching men; ethnic minorities; and so on.

In fact, many public broadcasters have ridden the storm of competition pretty well so far, particularly those like the BBC and the big German systems, who enjoy substantial public funding. Public broadcasters with more limited funding—PBS and I guess the CBC would both be examples—face difficult choices even to maintain their existing niches. Perhaps the current debate about the regional news in Canada is an example of that. But digital television changes the argument for every public service broadcaster, no matter how resilient.

Thinking the Unthinkable

Take the mixed schedule. The BBC has argued for many years that one of the things that makes us different from our commercial competitors is the sheer range of programmes in our schedule. Each year we report to Parliament how

many different kinds of programmes we show on our main channels: this past year, for example, we showed 14 different genres on BBC ONE and BBC TWO in peak-time. Now, I believe that commissioning a truly broad range of programmes, including less popular genres like the arts, music, religion, current affairs, as well the popular ones, really is an article of faith for a public broadcaster. The question is whether, in the world of the EPG and TiVO, it will still make sense to place them all on a single channel. The whole point of the EPG is to enable viewers to assemble their own mix. The channels and content-clusters which are likely to be most useful to them are ones, not necessarily showing a single genre, but certainly with a pretty clear proposition or flavour: clear strong colours, in other words, from which viewers can mix their own palette. Now, I don't think it would be right (or possible) to move overnight from our traditional mixed schedules into fully genre-based or attitudinally-focused channels, but I believe that unless we start the journey soon, we risk becoming irrelevant.

So we are looking hard at the shape of the two networks which are seen by both analogue and digital viewers, BBC ONE and BBC TWO, as well as at our newer digital channels, especially BBC CHOICE which we launched as a younger-focused entertainment channel and BBC KNOWLEDGE which was launched as a factual and learning channel.

III. 3 STRUCTURE AND INDEPENDENCE

GERMANY

“The Regulation of Broadcasting,” by Wolfgang Hoffmann-Riem, 1997

The Supervision of Broadcasting

For the purpose of monitoring the legal requirements of the public broadcasters, the broadcasting laws have provided for two special internal organs, the Broadcasting Council (*Rundfunkrat*) and the Administrative Council (*Verwaltungsrat*). The Broadcasting Council's main tasks are to ensure pluralism by monitoring independence and diversity in programming; the Administrative Council is to ensure that the administration and financial management comply with the regulations. Since supervision is thus accomplished "internally"—by an organ of the broadcaster itself—there is no need for an additional "external" supervisory body for public broadcasting.

In spite of political affinities, public broadcasting is, on the whole, marked by political balance and a relatively high degree of journalistic independence. Proponents of political interests have a relatively insignificant amount of influence on daily programming. Because the Broadcasting Council's control over programming is restricted to exceptional cases, journalists are left to orient their work according to their own professional and ethical values. At the same time, however, even control measures that are limited to exceptional cases have an effect on day-to-day work, since they help to define the zone of "permissible" activities and thereby prompt or even provoke anticipatory compliance. The government's supervisory competence helps to promote informal respect for government interests, and influence generally tends to be exercised in informal interactions.

“German Broadcast Regulation: A Model for a New First Amendment?” by Uli Widmaier, 1998*

The following state law regulating the composition of a supervisory and decision-making board that controls licensing and programming of private broadcasters meets the Constitutional Court's requirements of guaranteeing a fostering of the values of Article 5.1. The law provides:

§ 55.

Composition of the broadcast commission, time in office of its members. The broadcast commission consists of 41 members. Women are to be appropriately taken into account in the selection of members Eleven members are elected by the state parliamentEighteen members are selected from among the following organizations [one member from each category]:

1. Protestants,
2. Catholics,
3. Jews
4. and 5 members of various unions,
6. state employees,
7. employers,
8. manual workers and farmers,
9. professionals,
10. town and regional administrators,
11. people active in charities,
12. athletes,
13. consumers,
14. environmentalists,
15. young people,
16. homeland and folkloristic organizations,
17. the handicapped,
18. family or women's groups.

One member is selected from the resident aliens Eleven further members are selected from the areas of publishing, culture, art and science, as follows:

* Footnotes omitted.

1. a writer who is a member of the union for printing and paper,
2. a member of the broadcast-film union or of the organization of theater actors,
3. a musician,
4. a journalist,
5. a film or broadcast entrepreneur,
6. a sculptor,
7. a person who works in higher education,
8. an education administrator,
9. a newspaper publisher,
10. a member of the German Society for Media Pedagogy and Communication Culture,
11. someone active in public interest broadcasting or local broadcasting.

The forty-one people selected under the law are responsible for ensuring that all relevant political and social positions and groups are appropriately represented in the overall programming of private broadcast. In the process of upholding the law and accepting its strong focus on organized interests, the Constitutional Court explained that the legislature used the organizations named in the lists as proxies for representative social interests. The members of these organizations are not supposed to act in a partisan manner in favor of their specific organizations; rather, they are supposed to act as guardians of the public interest who contribute their specific experiences without engaging in interest politicking.

Northrhine-Westphalia's broadcast law was challenged in court. The challenge issued from the political right, specifically, from Christian Democratic (CDU/CSU) members of the German parliament. Among many other flaws the CDU/CSU found in the law, the conservative plaintiffs challenged what they felt was essentially an overrepresentation of liberal groups, in the contemporary American sense, and a concomitant underrepresentation of conservative groups. The plaintiffs claimed in particular that the total absence of "*Vertriebene*" ("Expelled People") among the members of the broadcast commission was evidently unconstitutional. These *Vertriebene* are ethnic Germans, and their descendants, who lived in what was formerly Eastern Prussia, Silesia, the Sudetenland, and similar territories and who, at the end of World War II, fled from the advancing Red Army into what later became the

Federal Republic of Germany. The *Vertriebene* were and are a powerful conservative voice in German politics. Not many conservative politicians have dared to affront this extremely vocal and well-connected group--which explains its substantial influence on conservative policy in post-war (West) Germany.

At any rate, the state government of Northrhine-Westphalia did not include the *Vertriebene* in its broadcast diversity list. Rejecting the conservative plaintiffs' argument that the exclusion violated the diversity requirement under the freedom of broadcast, as well as the equal protection provision of the Basic Law (Article 3), the Constitutional Court stated:

The exclusion of the *Vertriebene* organizations in the broadcast commission does not violate [the equal protection provision or the freedom of broadcast]. Rather, the legislature was permitted to assume that, 45 years after the end of the war, the *Vertriebene* are integrated into the society of the Federal Republic. Most of the *Vertriebene* are not distinguishable anymore by their financial situation. Rather, they are distinct from other social groups only by virtue of their geographic origin and the cultural peculiarities associated therewith. With respect to the second and third generation of *Vertriebene*, their expulsion and loss of homeland recede, as a rule, into the background to such a degree that there is no factual basis for differentiating them [as a distinct group].

UNITED KINGDOM

“British Television,” by Jay G. Blumler, *

Three organisations have been central in the governance of British television. First, government responsibility for broadcasting is lodged with [Department of Culture, Media and Sport, formerly] the Department of the National Heritage (succeeding the Home Office in 1992, which had previously taken over from the Postmaster General). This appoints the members of all regulatory bodies,

* Online [August 2001] Available: <http://www.mbcnet.org/ETV/B/htmlB/britishtelevis/britishtelevis.htm>

oversees policy development (sometimes jointly with the Department of Trade and Industry), and initiates legislation and debates in Parliament.

Second, a Board of 12 Governors is required to direct the British Broadcasting Corporation in the public interest. The BBC is a large organisation of approximately 25,000 employees and a £2 billion annual income, the bulk of which comes from a licence fee that is levied on every household with a television set. Fixed by negotiation between the BBC and the government, the level of the fee has broadly kept pace with the retail price index since the mid-1980s. The BBC's obligations are outlined in a Charter and Agreement, the present terms of which will run until 2006 (although BBC finance will be reviewed in 2001). For the first time, these spell out in some detail both its public service programming role and the Governors' supervisory duties as well as authorising BBC involvement in commercial activities. The Governors appoint the BBC Director-General and, in consultation with him, other members of a Board of Management. Traditionally, Management decided most matters of BBC policy and programming with the Governors serving more as a sounding board and ultimate authorizer, commenting only after the fact on individual broadcasts of which they approved or disapproved. From the 1970s, however, the Governors became increasingly active and in the late 1980s were even a spur for fundamental organisational reform.

Third, all advertising-financed television is under the jurisdiction of the Independent Television Commission (known in previous incarnations as the Independent Broadcasting Authority and the Independent Television Authority). Its writ runs over Independent Television, a federal grouping of 15 regionally-based companies, plus companies of national news and breakfast television, which jointly schedule the nationally networked portion of Channel 3; Channel 4, a non-profit "publisher-broadcaster" (commissioning and scheduling but not making programs), which is legally required to be innovative and to cater for different interests and tastes from those served by Channel 3; Channel 5, a new terrestrial service that will cover approximately two thirds of the country from 1997; and cable and satellite services originating in the U.K. The ITC will eventually be responsible as well for any channels of digital terrestrial television that may be introduced.

The ITC's duties are set out in the Broadcasting Act of 1990 [now superseded], and its 12 Members are appointed by the government. The main tasks are to franchise the commercial television companies by a process of first tendering for and then auctioning the licences and to enforce the licence conditions thereafter. The act posits a "quality threshold", which all applying companies must cross before being admitted to the auction itself, at which the highest bidder would normally be the winner. Since 1993, when the new Channel 3 licensees took over, the ITC has been a relatively resolute regulator, holding the companies to their obligations (through directives, warnings and fines as necessary) and annually reporting on their programming performance.

III. 4 PUBLIC SERVICE BROADCASTING AND PUBLIC SERVICE OBLIGATIONS OF PRIVATE BROADCASTERS

Most discussions—in the post-Soviet era—have been about the transformation of “state” broadcasters into public service broadcasters, with adequate funding and structural immunity from direct political control. But there is another debate as well: should private and commercial broadcasters have public service obligations? More than that, what public service obligations require a national broadcaster along BBC lines, and what public service obligations, if any, can be distributed among private competitors?

In Germany, this question has been decided, consistently, by the German Constitutional Court. In the United Kingdom, on the other hand, the courts have had nothing to do with this issue, and it has been decided as a matter of government policy, usually on the basis of the report of a distinguished Commission.

GERMANY

“German Broadcast Regulation: A Model for a New First Amendment?,” by Uli Widmaier, 1998*

The [German Constitutional] Court mentioned three rationales that justified a special treatment for broadcast. These three rationales were: (1) the potentially dangerous power and influence of broadcast; (2) spectrum scarcity; and (3) economic scarcity. Rationales two and three are lifted directly from the 1961 opinion; the Court does not elaborate on them any further. The first rationale, concerning the dangerous power of broadcast, had not appeared in the earlier decision. The Court used this argument aggressively for the purpose of foreclosing any constitutional presumption in favor of a laissez-faire regime of broadcast, holding that such a regime would be unconstitutional. Specifically, the Court stated:

* Footnotes omitted.

Not least due to the developments of television technology, broadcast has become one of the most powerful means of communication, as well as one of the most powerful mass media. Because of its far-reaching effects and potentials, as well as because of the danger of misuse for the purpose of exercising one-sided influence over public opinion, broadcast *cannot* be given over to the free play of forces.

In 1981, the Court addressed broadcast issues for the third time in its history. In that decision, the Constitutional Court held that private broadcasting was in principle constitutional and thus opened the door for a subsequent expansion of private, commercially financed television.

After the 1981 decision, freedom of broadcast shared few similarities with the traditional freedom of the press, in terms of the right to be free from government regulation and intrusion. Freedom of broadcast became a subordinate interest in the service of a greater good, namely, helping the public to form opinions:

The freedom of broadcast is primarily a freedom . . . *in service of* the freedom of opinion formation. Under the conditions of modern mass communication, the freedom of broadcast constitutes a necessary supplementation and reinforcement of the freedom of opinion formation; the freedom of broadcast serves the task of guaranteeing free and comprehensive opinion formation through broadcast.

The Court thus dismissed the libertarian approach and held that the Basic Law *required* legislative supervision of broadcast. Explaining the new doctrine, the Court briefly mentioned the classic interpretation of freedom of expression as a guarantee of freedom from state interference, but then explained why this interpretation cannot be controlling for broadcast:

The free individual and public formation of opinion by means of broadcast demands first that broadcast be free from domination and intrusion of the state. In this way, the freedom of broadcast, like the classical libertarian rights, is defensive in its meaning. *However, the value to be pursued is not yet guaranteed by freedom from state interference.* Mere freedom from state interference does by itself not mean that free and

comprehensive opinion formation through broadcast becomes possible; this task *cannot* be accomplished through a merely negative constitutional structure. Rather, what is needed is a *positive order* that ensures that the multiplicity of existing opinions is expressed through broadcast in the greatest possible breadth and completeness, and that thereby comprehensive information is offered. In order to accomplish this, substantive, organizational and procedural regulations are necessary that are designed according to the task of the freedom of broadcast and are therefore able to accomplish that which Article 5.1 of the Basic Law is supposed to guarantee.

This passage sums up the Court's modern position on the issue of freedom of broadcast. Laissez-faire is decisively rejected, state regulation is embraced. The result is a highly complex and surprisingly intrusive constitutional jurisprudence that necessitates an examination of the details of state legislation to ensure that every facet of the legislation does indeed serve public opinion formation.

In the next broadcast opinion, its fourth overall, the Court provided a more elaborate articulation of the constitutionality of private broadcasting. While affirming the constitutional permissibility of private broadcasting, the Court held that, if a state legislature decides to allow private broadcasting, it must sufficiently regulate the private broadcasters:

The legislature, however, is free to choose other structures as long as it guarantees through appropriate regulations that the totality of the domestic broadcast offerings in fact essentially corresponds to the existing diversity of opinions. If the legislature wishes to create and maintain freedom of broadcast through external ("externally pluralistic") diversification, then even this solution does not make the need to secure the freedom through law and regulation superfluous.

In order for the lack of internal regulation of private broadcasters to be constitutionally acceptable, the public broadcast stations must first guarantee a so-called "basic service" of broadcasting. Basic service entails the "classic task" of broadcast, consisting of its role in the formation of opinion and of political will, but also going beyond entertainment and reporting of current affairs to include

the "cultural responsibility" of broadcast. Basic service is that type of programming that the private stations cannot deliver due to their market orientation.

Once basic service is guaranteed, a legislature may relax its regulation of private broadcasters. Relying, in a very limited fashion, on the diversification among stations to provide the requisite breadth and plurality of opinions constitutes somewhat of a departure from the Court's previous iron control over all of broadcast and the Court's insistence on an *a priori* guarantee, through legislation, of a constitutionally acceptable end result. The Court conceded that its ruling constituted somewhat of a departure from its earlier holdings concerning the unacceptability of *any* imbalances in private broadcasting. The Court acknowledged, however, that a perfectly balanced broadcast offering is neither achievable nor exactly definable. Given this built in indeterminacy, minor and insignificant imbalances arising within private broadcasting are acceptable, as long as the overall legislative regime is designed constantly to optimize balance and pluralism. Thus, a legislature opting for the externally pluralistic system must design a set of laws that allows the enforcement of a basic standard of evenly balanced pluralism. As the Court emphasized in a 1991 decision, Article 5 is violated if this standard is not satisfactorily provided:

As a serving freedom, [the freedom of broadcast] is granted not primarily in the interest of broadcasters, but rather in the interest of free individual and public opinion formation. The legislature is, therefore, under a duty to structure the broadcast system in such a way as to guarantee that this goal is reached.

The Court continued:

The Basic Law does not prescribe models for the structure of broadcast, but only a goal: the freedom of broadcast. Broadcast must be able to fulfill its task of serving free individual and public opinion formation. This task is independent of any specific [organizational] model. Every form of broadcast organization that makes the accomplishment of this task possible is constitutional.

The legislature may choose a broadcast model in which with the public stations provide basic service, while the private stations operate under a less stringent regulatory regime. The legislature, however, is not *obligated* to do so. If it desires, the legislature can choose an internally pluralistic structure and regulate all relevant features of each private broadcaster.

UNITED KINGDOM

Public Service Broadcasting and Regional Broadcasting Vision for the Future, 2001

This is a Response to the Government White Paper, A New Future for Communications (2001) by an NGO specially assembled for the commenting on the government's broadcasting policy.

1. Public Service Broadcasting in the New Communications Context

1.2 Public service broadcasting has been about the accessibility of good quality broadcasting and ensuring universal access, maintaining diversity and plurality and securing quality. Public service broadcasters must be willing to deliver these qualities regardless of their commercial viability. The Peacock Committee reported a consensus among public service broadcasters on the duty to "inform, entertain and educate" and on the principle of geographical universality.

1.3 However, there is grave doubt about the willingness of television companies to continue to provide the present level of service in the areas of public service broadcasting and regional broadcasting. Many producers have concerns that the increasing market pressures will threaten quality public service broadcasting. Existing regulatory bodies such as the Independent Television Commission (ITC) have had difficulty in attempting to sustain even light-touch regulation in the face of commercial pressure. This is in part because some of the reasons that justify regulation in the past no longer exist, or are not seen as desirable in the new era.

1.4 Broadcasting is undergoing a profound revolution. Digital technology now permits many more channels to be carried, both by traditional terrestrial transmitters and by satellite. As technology surrounding the Internet improves, moving pictures can be accessed via simple phone lines. The distinction between radio, television and internet has become less clear. The potential for change and greatly increased choice is now with us, but there remains uncertainty as to what kind of change will result from the combination of finance, technology, and consumer demand.

1.5 Digital technology has allowed the establishment of a plethora of new channels, all competing for audience attention. Some would argue that when technical restrictions are gone there will be opportunity for the market to deliver what people want, unfettered by regulation. But these restrictions have not yet gone. Most of the population, for reasons of availability, choice or cost, or a combination of these, still receives only four or five channels via the analogue terrestrial network of transmitters. When digital reception is a reality for everyone, there are issues of competition to be addressed, for example the commercial advantage of existing channels in having established themselves, and the power of carriers, cable and satellite, who are also owners of individual channels.

2. The White Paper

2.1 Amid this climate of change and uncertainty, the Government published a White Paper in December 2000: A New Future for Communications. For the first time, it is not a broadcasting white paper but a communications white paper. It argues that: It is vital that government has a clear policy framework for this rapidly developing sector, which will be so central to our economy, democratic life, culture, entertainment and education. (1.1.23)

2.2 The Government in its White Paper makes the following general points:

- Our world is changing and communications are central to this change;
- We want to ensure the widest possible access to a choice of diverse communications and services of the highest quality;
- We will make sure that people can continue to receive much-loved broadcasting channels;

- We will strengthen the regional dimension to UK broadcasting and continue to support the independent production sector, as well as consider new plans for community media.

2.3 Because the boundaries of the broadcasting industry are not so clearly defined as they once were there is a huge difference from the way most of us have perceived broadcasting up until now. The framework for which the White Paper argues would have very strict guidelines and be able to be implemented. Thus rather than try to combine existing regulators the Government proposes the radical measure of creating, as the White Paper puts it:

a single regulatory body for the communications and media industries—an Office of Communication (OFCOM)—which will cover telecommunications, television and radio. Its remit will cover both content and communications network. It will promote competition and manage spectrum. (1.3.6) This new body, however, will not cover the BBC who will still be regulated by a Board of Governors, albeit with reduced power.

2.4 With the huge changes taking place and with the end of spectrum scarcity, some people are suggesting that the end of public service broadcasting is imminent, simply because of the competition in a vibrant market. However the existing terrestrial channels have public service obligations laid upon them in return for the privileges granted to them. In the case of the BBC the privilege of the license fee and in the case of ITV, Channel 4 and 5 the limited spectrum available for transmission has limited the number of channels. Although digital and cable and eventually the Internet will provide opportunities for transmission of many more channels, these terrestrial channels remain uniquely privileged in competitive terms in having access to analogue spectrum. Therefore their public service obligations remain.

2.5 The White Paper insists that: Public service broadcasting will continue to have a key role to play in the digital future, potentially an even more important role than it has now. However the way public service broadcasting is regulated and delivered by the broadcasters will have to change to reflect the new conditions in which they operate.

2.6 The new structure of regulation, it is proposed, would allow broadcasting to adapt quickly and efficiently to change, and clearly backs the maintenance of the PSB statutory commitment for quality, variety and levels of PSB. OFCOM is expected to ensure that it will be possible for all channels to carry the entire range of public service broadcasting.

2.7 The White Paper assures us that: We will give OFCOM powers to ensure that public service broadcasting channels are given due prominence on devices such as electronic programme guides and that access to them is easy. Accessibility to public service channels, however, is also vital. If the viewer cannot access them easily they will not watch. The broadcasters may use this as lack of public interest and in turn use this as an argument for dispensing with them altogether. This accessibility includes the issue of the listings of public service channels and whether this should be by genre as well as by channel. These arrangements would refer to the channels already mentioned but [the Government] will retain the right to add new public digital services to this list, where we consider that these are essential for full social inclusion. (3.5.1)

2.8 The key elements, therefore, of the proposed regulatory framework are:

- to create a system which allows flexibility for public service broadcasters
- to maintain mixed, varied and high quality schedules, and
- to ensure a level playing field for different broadcasters who have different aims and objectives and funding sources.

The White Paper sees this mixture as a national treasure. By having a mixture of publicly owned, publicly regulated and purely commercial broadcasters, the UK has in many ways had the best of both worlds. The competition from commercial broadcasters has been a spur to innovation and serving consumers. The public service broadcasters have provided a guarantee and benchmark of quality for the rest of the market, halting any slide towards lowest common denominator content. That mixed ecology of broadcasting is worth fostering, indeed is essential for the digital world. (5.3.12)

2.9 The White Paper retains a commitment: to ensuring that public service TV channels are available to everyone, as now, free at the point of

consumption, both before and after the switchover to digital television. Because more than 99% of the population has access to most television channels, the Government wants to maintain that kind of service and will work actively to ensure that everyone has easy access, either free at the point of delivery or at an affordable price. (3.2.1) [...]

[...]

4.2 The White Paper promises that: We will maintain and extend obligations to secure the carriage of public service channels over cable and satellite. But perhaps it is more important to define what is meant by PSB. Do cable and satellite providers mean the same as the Government does? This issue will be especially important after the switchover to digital as many people with digital will want all services through the set top box they have without needing additional equipment for terrestrial signals. For this reason cable and satellite operators will also deliver PSB.

4.3 Not only is the range of programmes available important, viewers and listeners should have a choice of providers for these services. Digital technology makes this plurality much easier and gives rise to competition between providers. This, it is hoped, will encourage innovative investment leading to the excellent delivery of services that society requires. However, without a regulatory oversight, investment may only be made in the more popular programmes and therefore the full diverse service, which we now enjoy would not be available.

4.4 The Committee urges that a measure of public service should be a channel's willingness to use as a criterion for scheduling not just ratings or share but reach, for reach is about valuing the viewer. Factual, including religious, programmes may not always achieve the ratings of a soap, but there is clear evidence that their reach is significant. The audience will not be well served if such programmes are squeezed to the margins of both budget and schedule. In many ways the BBC World Service, to which there are to be no changes in existing arrangements, is an excellent example of quality where reach, rather than ratings, must be a measure of its success.

4.5 While not being complacent about the future of public service broadcasting, the fact remains that it has been a major and valued part of UK broadcasting for all of broadcasting's life. Developments that have already taken place with the multi-channel revolution have made improvements, especially in the areas of films, sport and news. And PSB has proved thus far to be the best way of making original UK programmes that people want to see. The White Paper notes that the public service broadcasters still command 61.6% of the total audience in multi-channel homes and 70% in peak time.

4.6 These programmes are the basis of much of the programming for digital channels, as these television and radio programmes are what economists call "public goods". Once a programme has been completed extra copies are virtually free and with access virtually free at the point of use, the programme can be repeated many times without increasing cost. The public interest is best served and access not restricted by continuing the practice of everyone paying for television through advertising or the licence fee.

4.7 But if the economic argument holds good so does the democratic one. Public Service Broadcasting ensures that the interests of all viewers are taken into account and we should not tolerate a market that results in exclusion. This means ensuring that the best programmes remain available to the maximum number of people.

III. 5 THE EXAMPLE OF CANADA

We turn briefly to Canada as a counterpoint to the British and German models. We do so, as indicated, because of the special problems faced in Canada that should be of relevance to transition societies. We emphasize, in these excerpts, the significant problem of identifying the main characteristics of the public service ideal and the structural and financial difficulties of maintaining it.

“The Hybridization of Public Broadcasting,” by Marc Raboy, 1997

All broadcasting in Canada, according to the Canadian Broadcasting Act, is declared to be "a public service essential to the maintenance and enhancement of national identity and cultural sovereignty" (Canada 1991: art. 3). By virtue of this legislation, Canadian broadcasting is deemed to be a single system comprising public, private and community elements. It is to be effectively owned and controlled by Canadians (foreign ownership is restricted to 20 percent in any single broadcasting undertaking), is to make maximum use of Canadian creative and other resources, and is to serve the needs and interests and reflect the circumstances and aspirations, of Canadian men, women and children. These circumstances include equal rights, linguistic duality, the multicultural and multiracial nature of Canadian society, as well as the special place of aboriginal peoples within that society. In the event of conflicting interest between public and private sector elements of the system, the objectives of the public sector are supposed to prevail. Overseeing and implementing all of this is an independent public authority for the regulation and supervision of the Canadian broadcasting system, the CRTC.

But the gap between policy and practice is such that the promise of public broadcasting in Canada has more often than not been a pious wish. The history of Canadian broadcasting is intimately tied to the political sociology of twentieth century Canada, and its present circumstances provide a suitable snapshot of the cultural politics of a middle-sized liberal democracy with a relatively developed economy as it faces the challenges of globalization in the third millennium.

Canadian broadcasting, from the 1930s through the 1950s, developed as a "hybrid" of the commercial and public-service-monopoly systems, as private commercial radio and national public radio evolved side by side. Television was introduced first as a public monopoly and then, after 1960, according to a similar "mixed" (public-private) model.

As the broadcasting system became more complex, and as it became clear that different types of broadcasting enterprises had to co-exist within this single system, a major change came with the introduction of an independent agency for the regulation of all broadcasting activity. First introduced in 1958, the role of the regulator became extremely important in the 1970s and 1980s, as the system had to deal with new technologies as well as a range of economic and political challenges. Today, it is known as the Canadian Radio-Television and Telecommunications Commission (CRTC), and is responsible, as the name implies, for all telecommunication as well as broadcasting activity in Canada. In 1995, its main concern was charting the new regulatory requirements indicated by the convergence of broadcasting and telecommunication technologies in the emergence of the new communication environment popularly known as the information highway (CRTC 1995).

As a hybrid system, there are two ways to look at the developments in Canadian broadcasting over the past fifteen years. On the one hand, there has been a definite shift toward privatization of conventional public broadcasting, as commercial and budgetary pressures on the CBC force it to adopt a posture increasingly resembling that of the private sector, as its production activities are farmed out to privately owned independent companies, and as public funding which used to go to the CBC is diverted to subsidizing private broadcasters via a broadcast program development fund (Telefilm Canada). On the other hand, these developments can be seen as a "publicization" of the private sector, insofar as that sector has become increasingly reliant on public funding and public policy measures, not only through such mechanisms as the Telefilm fund, but also various CRTC regulations and the protection afforded Canadian cultural industries under the Canada-U.S. Free Trade Accord, the North American Free Trade Agreement, and the General Agreement on Tariffs and Trade.

So, as the multichannel environment continues to expand, as the relationship between audiovisual product and distribution system takes on a new shape and form, and as the policy apparatus redefines its role under the guise of adapting to the so-called information highway, the question of the future of public broadcasting has to be properly repositioned.

The Broadcasting Act is not naive when it describes all of Canadian broadcasting as a public service, but the system governed by the act has been inconsistent and, at times, incoherent, in operationalizing that description. The most striking example of this inconsistency is still the chasm between Parliament's mandate to the CBC and the government's refusal to provide the resources the CBC needs in order to do its job. But there are more. Community broadcasting (in television) has as its only institutional base the obligation of cable companies to provide a community access channel. Educational broadcasting has become a viable complement to public and private broadcasting in some parts of the country, in spite of the fact that its structure has more to do with the bizarre peculiarities of the Canadian political system than the public service requirements of broadcasting. The policy discourse continues to emphasize access—the core element of any public service—but concrete developments and innovations are increasingly tied to some variant of the consumer model, where the quality of service is invariably tied to the ability to pay.

“A Public Purpose” in *Making our Voices Heard, Canada, Mandate Review Committee, 1996**

Parliament created the CBC, the National Film Board and Telefilm to give Canadians a stronger voice in their own country. Since then, the world around us has changed significantly, but this basic public purpose remains.

Today, a number of Canadian cultural industries, including broadcasting and the independent production sector in television, are flourishing. Ironically, the very success we have had in using public policy tools to create these industries has led some to conclude that it is now time for governments to

* Online [August 2001] Available:
<http://www.canadianheritage.gc.ca/culture/brdcstng/pubs/juneau/Page-en.htm>.

withdraw and to let the marketplace take over—to compete on strictly commercial terms for the hearts and minds of Canadians.

This is a dangerously wrongheaded conclusion: we still have a small and fragmented audience bordering the world's largest entertainment market; we still have enormous difficulty financing indigenous film and television production domestically; we still have a limited number of Canadian feature films and Canadian dramas available for Canadian consumption; and we still have fundamental problems communicating across 5,000 miles of scattered population centres.

The facts speak for themselves. We own radio and television networks, but in English Canada most of the stories available to us are American. We own one of the most elaborate and sophisticated cable systems in the world. But only about 14% of all the fiction it carries in English Canada is Canadian. Almost all our film theatres are foreign owned, and about 95% of the films shown in English or in French are foreign. Most of the large film distribution companies operating in Canada are under American control, and they earn 85% of all the revenue from distribution to movie theatres. We have developed a feature film and television production industry, but a good deal of its product is created specifically for the American market, without reflecting a Canadian reality.

The bottom line is that the vast majority of all the entertainment offered on Canadian television and theatre screens is American and this is unlikely to change. Many Americans are worried about what television and radio offer to them and to their children. At least their programming does not originate in a foreign country.

A major public policy question facing Canadians today is how to ensure that the communications systems of the near future, particularly the information highway, meet Canadian goals and not become what American radio threatened to be for Canada in the thirties.

We must ask ourselves realistically where the content provided on the information highway will come from. It will not come from the technology itself, that is from the hardware. It was always clear that regulatory systems by themselves would not be sufficient to stimulate the production of sufficient Canadian content for our needs in both languages. We think, as indeed does

the Canadian Content and Culture Working Group, that regulatory systems are still needed. But these will still be insufficient. Creative, productive institutions, whose mission is serving the social and cultural needs of Canadian citizens, will be more indispensable than ever.

We need Canadian programs and films to enable our citizens to understand one another, to develop a national and community consciousness, to help us shape our own solutions to social and political problems, and to inspire the imagination of our children and express their hopes.

The issues facing Canada today—issues of civic understanding, of tolerance and acceptance, of diverse cultural development, of national pride and confidence, and of our reputation in the world—are only exacerbated if so many of our entertainment and cultural products are either imported from other countries, or imitate another country's stories and formats for commercial reasons.

A stable democracy presupposes respect and understanding, a sharing of views and a common political language. Citizens need to appreciate one another and to enjoy what they have in common. They need to join in shared celebration of heroes and accomplishments, and to accept and respect the differences that exist. Understanding and tolerance are basic values that societies must work on constantly; they are not given. Like liberty, they are a prize that must be won by constant effort.

Our national cultural institutions, like those of most western democracies, are also based on a long standing recognition and belief in freedom of expression. No social understanding can endure and develop without expression, which is free of commercial or political constraints. The Canadian Broadcasting Corporation, the National Film Board, and Telefilm, and others like the Canada Council, have been symbols of a well-established national policy, and of a respect for freedom of expression and unfettered commentary. This approach has been based on the profound conviction that it is the wisest policy in the long run. It represents such a force that it is worth putting up with the risk that some may abuse it. This is one of the most important virtues that a country can take pride in.

Canada, "Broadcasting Act", article 3., Excerpt from Canada's
Broadcasting Act, Statutes of Canada, Chapter B-9.01 [1991, c.11]*

Broadcasting Policy for Canada

[Declaration]

3.

- (1). It is hereby declared as the broadcasting policy for Canada that
 - (a). the Canadian broadcasting system shall be effectively owned and controlled by Canadians;
 - (b). the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;
 - (c). English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;
 - (d). the Canadian broadcasting system should
 - (i). serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,
 - (ii). encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,
 - (iii). through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural

* Online [August 2001] Available: <http://www.crtc.gc.ca/ENG/LEGAL/BROAD.HTM>.

- and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and
- (iv). be readily adaptable to scientific and technological change;
 - (e). each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;
 - (f). each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;
 - (g). the programming originated by broadcasting undertakings should be of high standard;
 - (h). all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;
 - (i). the programming provided by the Canadian broadcasting system should
 - (i). be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,
 - (ii). be drawn from local, regional, national and international sources,
 - (iii). include educational and community programs,
 - (iv). provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and
 - (v). include a significant contribution from the Canadian independent production sector;
 - (j). educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;

- (k). a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;
- (l). the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;
- (m). the programming provided by the Corporation should
 - (i). be predominantly and distinctively Canadian,
 - (ii). reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
 - (iii). actively contribute to the flow and exchange of cultural expression,
 - (iv). be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,
 - (v). strive to be of equivalent quality in English and in French,
 - (vi). contribute to shared national consciousness and identity,
 - (vii). be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and
 - (viii). reflect the multicultural and multiracial nature of Canada;
- (n). where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);
- (o). programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

- (p). programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;
- (q). without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;
- (r). the programming provided by alternative television programming services should
 - (i). be innovative and be complementary to the programming provided for mass audiences,
 - (ii). cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,
 - (iii). reflect Canada's regions and multicultural nature,
 - (iv). as far as possible, be acquired rather than produced by those services, and
 - (v). be made available throughout Canada by the most cost-efficient means;
- (s). private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,
 - (i). contribute significantly to the creation and presentation of Canadian programming, and
 - (ii). be responsive to the evolving demands of the public; and
- (t). distribution undertakings
 - (i). should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,
 - (ii). should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,
 - (iii). should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide

reasonable terms for the carriage, packaging and retailing of those programming services, and

- (iv). may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

[Further declaration]

(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

CHAPTER IV

TRANSFORMATIONS, TRANSITIONS, AND PUBLIC SERVICE BROADCASTING

In this chapter, we turn specifically to several of the transition states to examine some of the complexities of shifts from state broadcasting to public service broadcasting. In reading these materials, one must ask what is the difference between public service broadcasting in countries that have long democratic traditions, and those where democracy is not yet established or more recently achieved? It is easy to hold models up for admiration without recognizing the conditions that underlie their existence. Public service broadcasting efforts in transition societies have, in many ways, a much tougher set of tasks to accomplish than do many of their counterparts. In a moment, virtually of creation, they are called upon to perform a set of miracles: pulling society together, helping establish community and democratic principles, assisting in ensuring peace. Yet, in these very transition societies, public service broadcasting organizations face a larger number of barriers: greater political interference, a non-working economy (which makes the funding debate more complicated), and historical and social traditions in which to root enterprises that often differ from those that have developed over time in Western Europe.

Each transition state has had its own specific difficulties in making the shift from highly controlled state broadcasting to autonomous and civil-society oriented public service broadcasting. Starting with snapshots of these difficulties of transition, we then turn to a small case study in statute drafting. The case study involves Croatia, and the interplay between statute drafting at home and review or scrutiny by the Council of Europe or other similar institutions. Not enough is written about this now-frequent dialogue between those struggling to define institutions within a transition and the model-builders or statutory experts

brought from outside. The familiar areas of concern, structure, management, and independence of funding here arise again.

We turn next to the phenomenon of “media wars,” a too common aspect of the post-Soviet transitions. The intensity of these media wars—usually between political parties or between branches of government—underscores the importance of media (and public service broadcasting) in transitions. Different versions existed in Hungary, the Czech Republic, Ukraine, Russia, almost everywhere. We include excerpts here from the media battles in Hungary and the Czech Republic to suggest the kinds of obstacles and political shifts that developed.

Finally, in this chapter, we present short accounts of the evolution of public service broadcasting in Poland, Uzbekistan, and Bosnia and Herzegovina. In these accounts, we look at the relationship between democratic society and free and independent broadcasting as well as a relatively new modality: the use of public service broadcasting as part of peacekeeping.

IV. 1 WHAT PROSPECTS FOR PUBLIC SERVICE BROADCASTING IN CENTRAL AND EASTERN EUROPE

In this essay, The Enemy Within: Unexpected Barriers to the Development of Public Service Broadcasting, by Karol Jakubowicz, Ph.D., the author examined the problems of transformed roles that journalists faced as they moved from one political system to another. His point may well be that for all the emphasis on statutes and structures, deep political attitudes mean that the difficulties in reaching a public service goal can be quite substantial even if all the proper laws and appointment practices are in place. Jakubowicz draws examples from the early days in many of the transitions when journalists were being weaned from one system of operation to another. It is possible that the efforts to provide training and development for a new generation of journalists has yielded a greater commitment to modern professional standards.

“The Enemy Within: Unexpected Barriers to the Development of Public Service Broadcasting” by Karol Jakubowicz, 1996

Creation of a broadcasting system capable of implementing “public service requirements” as defined by the Council of Europe and of safeguarding its impartiality and independence against political interference naturally requires that its managers and staff share those values. That, in turn, requires in Central and Eastern Europe a redefinition of journalism from advocacy, propaganda-oriented to impartial-reporter or watchdog function, an autonomous professional group serving the public and not the authorities or the owners of the media. That has proved much more difficult than once expected because of the intense politicization of the media and society. Many journalists regard freedom of speech as freedom to express their own views or biases, or continue to define themselves as “guardians” or “leaders” of society, called upon (by virtue of their superior access to information and understanding of the situation) to be in the forefront of political developments. The view of journalism as politics conducted by other means dies hard.

[...]

Another reason, to be found especially in less prosperous countries, is the dire financial straits the media and journalists often find themselves in:

The circumstances, which prevail in Ukrainian media, and the general economic situation in Ukraine as a whole, render the widespread commercialization of editorial space likely. Journalists are not highly paid, and their editors-in-chief face enormous financial difficulties in running their media outlets; in the printed press, for instance, the shortage of paper, inflation, prohibitive newsprint prices, sharply falling circulation, and requirement of advance payment for distribution and the small advertising market are all factors which undermine the ability of the media to be properly independent ('The Ukrainian Elections: A Monitoring Report', 1994: 13).

[...]

The press system emerging in Central and Eastern Europe can be described as a "pluralistic system of party-oriented newspapers", with particular newspapers committed to promoting a set of political interests or views. This lends substance to Splichal's (1994) view that instead of media autonomy and differentiation, what Central and Eastern Europe has so far seen is, by and large, "Italianization of the media", i.e. development of a media system traditionally associated with Italy, in which (i) the media are under strong state control; (ii) the degree of media partisanship is strong; (iii) there is a strong degree of integration of media and political elites; (and (iv) there is no consolidated and shared professional ethic among media practitioners.

These tendencies are clearly visible also in public service broadcasting in many Central and Eastern European countries. Even where, as in Poland, there are effective guarantees of independence and outside interference, which might disrupt impartiality is excluded, the political orientation and ambitions of the management of some public service broadcasters lead to subordinating programming to the pursuit of political goals.

On the other hand, continued political involvement of the media and journalists personally slows down their professionalization and maintains a situation in which journalists are unable to separate their political views from their profession. This is a heritage of the past both in the "old guard" of

journalists once employed by official media and in the "new guard" of those once writing for dissident, underground media (who could be described as fitting the Leninist definition of "journalists as mass propagandists, agitators and organizers" even more than the other group).

[...]

Thus, many journalists regard freedom of speech as freedom to express their own views or biases, or continue to define themselves as "guardians" or "leaders" of society, called upon (by virtue of their superior access to information and understanding of the situation) to be in the forefront of political developments. The view of journalism as politics conducted by other means dies hard.

IV. 2 Variations in Appointment Processes to Regulatory Boards and Management Bodies

Whatever the political difficulties, the processes that exist for appointment and compelling resignation from key bodies remain important. Professor Jakubowicz, in his writings, has made an effort to systematize the study of public service broadcasting and broadcasting regulation generally. Here we include two tables (from the essay above) that try to capture the techniques and combinations that lead to greater or lesser degrees of control. The purpose of our inclusion of the tables is to suggest a range of issues involving the structure of regulatory bodies that arise from the appointment and dismissal process of board members and management. Statutes change with surprising rapidity: each state must be analysed for current approaches. Still, the very nature of these processes is important because it was an instrumental part of the “media wars” described later in this chapter.

TABLE 1

Appointment of Governing/Supervisory Bodies of State/Public Broadcasters

	Government	Parliament	President	Regulatory Auth.	Other
1. Armenia			Yes		
2. Bulgaria	Does not apply (no such body is envisaged)				
3. Croatia		Yes			Yes
4. Czech Rep.		Yes			
5. Estonia		Yes			
6. Georgia				Yes	
7. Hungary		Yes			Yes
8. Latvia					Yes
9. Lithuania		Yes			
10. Macedonia	Yes				
11. Poland	1 member			8 members	
12. Romania		Yes			
13. Russia	Yes				Yes
14. Slovakia		Yes			
15. Slovenia					Yes
16. Ukraine	Yes	-	-	-	-

TABLE 2

Appointment of Top Management of Public/State Broadcaster

	Government	Parliament	President	Regulatory Authority	Supervisory Board
1. Armenia					Yes
2. Bulgaria				Yes	
3. Croatia		Yes			
4. Czech Rep.		Appoints			Nominates
5. Estonia					Yes
6. Georgia					Yes
7. Hungary					Yes
8. Latvia		Yes			
9. Lithuania		Appoints			Nominates
10. Macedonia	Yes				
11. Poland					Yes
12. Russia					Yes
13. Romania		Yes			
14. Slovak Rep.		Appoints			Nominates
15. Slovenia		Confirms			Appoints
16. Ukraine				Yes	

IV. 3 Statutory Drafting and Review: the Croatian Example

We continue with a set of materials about statute drafting in Croatia. Throughout the region, there have been episodes of law-creation, followed, often, by periods of criticism and then trial and error in implementation. This section is about HRT (Hrvatska Radiotelevizija), formerly a classic state broadcaster, its content directly controlled by the government. For elements of democracy to evolve, HRT had to change, structurally and, particularly in terms of its relationship to government. In the period from 1999 to 2001, the Croatian government, which itself underwent political change during the drafting, organized several evolving drafts on structure and financing. Outside experts from the Council of Europe and from a wide variety of sources, expressed their views on the wisdom of the statutory solutions. At times, these views provoked strong reactions from Croatian government officials. We, here, present excerpts from the debate.

Report of the Council of Europe Expert Mission on the Draft Law on HRT, Zagreb, Croatia, 26–27 June 2000

I. Major Issues Raised by the Revision of the Law on HRT

A. As to the Independence of HRT

The consultants welcomed the fact that the Croatian authorities intended to transform HRT into a genuine independent public service broadcasting organisation, in line with the relevant Council of Europe instruments (Resolution on the future of public service broadcasting adopted at the 4th European Ministerial Conference on Mass Media Policy and Recommendation No. R (96) 10 of the Committee of Ministers on the guarantee of the independence of public service broadcasting) and the recommendations made in the course of previous Council of Europe expert missions on the Law on HRT.

This being said, they noted that the draft was not entirely satisfactory on the question of the independence of HRT as a number of provisions could give

rise to political interference with its operation. While appreciating that there is no infallible method for securing the independence of public service broadcasters, they recalled that a number of minimum measures should be taken in order to avoid such interference. In this respect, they reiterated their previous recommendation that members of Government and Parliament should not be allowed to become members not only of the HRT Board of Management but also of the HRT Council.

Against this background, the experts noted that the first alternative wording of Article 15 was more satisfactory than the second since, unlike the latter, it would prevent not only State officials but also Parliamentarians from becoming members of the HRT Council. This being said, it was suggested that the term "State officials" should be replaced with "public officials", as the latter term would be broader and encompass all types of persons holding public functions, at both the national and local levels.

Furthermore, the consultants stressed that the possibility to replace the members of the HRT Council and/or the Director of HRT before the expiry of their normal term of office should be possible only in exceptional cases which should be clearly and narrowly defined in the Law, so as to avoid the risk that such power be misused on political grounds.

As regards the management organs of HRT, the consultants expressed concern about the fact that the draft Law included too many structures which would be involved in the operation of HRT (the Director, the Board of Management and the Chief programme managers), as this might give rise to conflicts of competence and diverging views which would run counter to the need for effective management, and in particular rapid action or reaction vis-à-vis competing broadcasters from both within and outside Croatia.

As regards chief programme managers, concerns were in particular expressed about the fact that, under Articles 26 and 27, they would be responsible for deciding on the content of the programmes, as this decision-making power might run counter to the editorial policy as well as the business and financial strategy defined by the Director. In this respect, it was noted that possible conflicts between the chief programme managers and the Director of HRT were to a certain extent already anticipated by the insertion of paragraph 2 in Article 26. It was recommended that, in order to avoid such conflicts, the

question of the powers entrusted to chief programme managers be seriously reconsidered.

Along the same lines, the consultants expressed serious doubts concerning the role of the Board of Management vis-a-vis the Director, since according to the second indent of Article 21, the Director of HRT would have the power to "propose to the HRT Council the appointment and dismissal of the members of the Board of Management". They underlined that, as a result of this provision, the Board of Management would be completely under the control of the Director and, therefore, would lose both its utility and credibility as a management organ.

B. As to the Financing of HRT

The consultants disagreed with the principle that, under Article 24, paragraph 1, 4th indent of the draft Law, the Board of Management of HRT would determine the level of the licence fee to be paid by the public. They underlined that a system whereby the management organs of HRT would decide on the level of the resources which they would then spend would not be conducive to cost-effective management, as they would not be required to make any efforts towards that objective.

Against this background, they recommended that the decision-making power concerning licence fee revenues should be entrusted to a body or organisation which would be independent not only from HRT, in order to avoid the above problem, but also from public authorities, in order to prevent any risk of political interference (cf. Chapter A above).

It was suggested that such decision-making power could be entrusted with the Telecommunications Council, provided its independence would be adequately secured under the Telecommunications Act. Alternatively, an independent committee comprised of experts specialising in audiovisual, financial and accounting matters could be appointed with the task of determining the level of the licence fee.

Prime Minister Račan's Press Conference, February 5th 2001

The critical views of "outside experts" are often matched by opposition from within. Often expertise is ignored or politely acknowledged. In the case of Croatia, the Prime Minister expressed some regret for the comments of the Council of Europe delegation. The process of criticism and comment resulted in acceptance of many of the experts' suggestions.

I can say that I believe that the law that will be adopted will be to a great extent in line with these expectations and standards (existing in Europe and the European Union), so as far as the selection of the Council or the body that selects the management of the television and radio service. In this respect, there will be no shortage of democracy in Croatia. You know that in all these countries these bodies are selected by kings, presidents, parliaments and governments, and sometimes not even parliaments but parliamentary committees and so on. We are nevertheless committed to bringing into these bodies representatives of interest groups in Croatia, especially if we adopt the provision for 16 associations that have to provide representatives to the Council.

I believe that Parliament will not pass a provision that states that the licence fee for radio and television should be determined every year. I never supported this idea. You know how budgetary debates are carried on, and this could then lead to a variable situation. I am in favour of having a public radio and television licence fee determined as a percentage of the average income in Croatia. I think that the amendment proposes 1.5 per cent. If this is adopted, then this objection is resolved (concerning the discretionary allocation of finances for public radio and television on an annual basis, which I also think is a valid objection)."

**Draft Law on Croatian Radio and Television (HRT), Zagreb, 11 May 2000
(Sections Dealing with Establishment of the HRT Council)**

Article 14.

1. The HRT Council is established in order to ensure the influence of the general public on radio and television programmes.
2. The HRT Council shall comprise 15 members.
3. Members of the HRT Council may be persons who are dedicated to upholding the principles contained in Chapter II of this Law.
4. When electing members to the HRT Council, care must be taken to ensure representation by sex, age and social standing.

Article 15.

1. Members of the HRT Council are appointed by the House of Representative of the Croatian State Sabor on the basis of a public competition conducted by the Committee for selection and appointments of the House of Representative of the Croatian State Sabor.
2. Representatives in the Croatian State Sabor, or state officials, cannot become members of the HRT Council.
3. Employees of HRT cannot be appointed members of the HRT Council.
4. Persons employed by, or performing any kind of activity in, rival companies, i.e. companies engaged in radio and television activities, or who are members of their management or supervisory boards, or who perform roles the performance of which could lead to a conflict of interests, may not become members of the HRT Council.

Alternative to item 1) and 2).

1. Members of the HRT Council are appointed by the House of Representatives of the Croatian State Sabor, by a two-thirds majority vote of all representatives, at the recommendation of the Committee for selections and appointments of the House of Representatives of the Croatian State Sabor.

Competence of the HRT Council

Article 16.

The HRT Council performs the following:

- definition, in accordance with programming obligations and the programming orientation of radio and television programmes, and supervision of its implementation and assessment of its realisation;
- gives consent to the proposal of a financial and business plan, as well as its opinion on the annual report on HRT business operations;
- gives consent to the level of radio and television licences, benefits and modes of payment;
- appoints and removes from office the HRT Director, following a public competition in the case of appointment;
- appoints and removes from office, at the recommendation of the HRT Director, members of the Management Board;
- appoints and removes from office, at the recommendation of the HRT Director and based on the obtained opinion of the profession (Programming Board), editors-in-chief of information programmes, following a public competition in the case of appointment;
- reconciles disputes between the HRT Management Board and the Editor-in-Chief related to the production and broadcasting of programmes;
- submits regular reports on operations, at least once a year, to the House of Representatives of the Croatian State Sabor.

Work of the HRT Council

Article 17.

1. The HRT Council operates publicly.
2. The HRT Council elects and removes the Council President.
3. The mandate of the President and of HRT Council members shall be four years.
4. Exceptionally, the mandate of eight members of the first HRT Council shall last for two years, with seven Council members being appointed every second year.
5. The manner in which the HRT Council operates is defined by the Rules of Procedure.

Article 18.

1. The HRT Council establishes the Programming Boards with a view to ensuring effective monitoring and supervision of individual programmes.

2. Tasks and method of operation of the Programming Boards are defined in the Decision on the formation of the Boards, and in the Rules of Procedure.

**Law on Croatian Radio and Television (HRT), Zagreb, 26 February 2001
(Final)**

Article 16.

- (1) The HRT Council shall represent and protect the interests of the television and radio public in terms of the production and supervision of the programme.
- (2) The HRT Council shall have 25 members.

Article 17.

- (1) One member each shall be appointed into the HRT Council, by:

- Croatian Academy of Science and Arts,
- Association of Universities,
- Central Croatian Cultural and Publishing Society,
- Croatian Emigration Institute,
- Croatian Writers' Guild,
- Croatian Journalists' Association,
- Croatian Olympics Committee,
- national minorities in the Republic of Croatia,
- Catholic Church in the Republic of Croatia,
- other religious communities in the Republic of Croatia,
- trade union associations,
- employers' associations,
- film professional associations,
- drama professional associations,
- fine arts professional associations,
- musical professional associations,
- associations from the Homeland War,
- pensioners' associations,
- civil and ecological initiatives,
- associations of consumers
- youth associations,
- peasants' associations.

(2) The associations as per Paragraph 1 of this Article shall appoint their representatives into the HRT Council pursuant to the procedure stipulated by law and their statutes for the election of members of their management bodies.

(3) The Minister of Culture shall, upon the previously obtained opinion of the Minister of Justice, Administration and Local Self-government, establish the procedure, manner of election and appointment of representatives in the HRT Council, who are appointed by two or more associations, by his decision.

(4) Three members from among the respectable non-party public officials shall be appointed into the HRT Council by the Speaker of the Croatian Parliament, with previously obtained opinion of a competent working body of the House of Representatives, by the Prime Minister and by the President of the Republic of Croatia.

(5) The HRT Council shall initiate the procedure of appointing the members of the HRT Council by addressing a public invitation at least three months prior to the expiration of mandate, compile the list of the appointed members, and forward it to the Minister of Culture. The Minister of Culture shall by a decision establish that the procedure of appointing the members of the HRT Council was conducted in compliance with this Law.

(6) New members of the HRT Council must be appointed until the expiration of the mandate of the HRT Council members from the prior composition.

(7) HRT Council shall be considered constituted once two thirds of the total number of the HRT Council members have been appointed.

(8) The candidates for the HRT Council shall be respectable public officials, who have distinguished themselves in the public life by advocating respect of democratic principles and the rule of law, the construction and improvement of the highest values of the constitutional system of the Republic of Croatia set forth by the Constitution of the Republic of Croatia, defense of human rights and freedoms, as well as protection of freedom of expression.

(9) The members of the HRT Council may not be representatives in the Croatian Parliament, nor other state officials.

(10) HRT employees may not be appointed to the HRT Council.

(11) The members of the HRT Council may not be the persons employed or performing any other activity in rival firms, i.e. the firms performing the activity of

radio and television broadcasting, the members of their management or supervisory boards, or performing the tasks which could cause a conflict of interests.

Article 18.

Mandate of a member of the HRT Council may cease before the expiration of the term to which he was appointed:

- at his own request,
- by submitting the resignation,
- by ceasing of the membership in the association that appointed him,
- by revoking the association or leader of the state power body that appointed him,
- should he, by his work, severely, or on several occasions, violate the law and other regulations, which refer to the work and performance of activity of the HRT public institution,
- in other cases stipulated by law and the Statute.

Article 19.

(1) The HRT Council shall:

- in accordance with the programme obligations propose, approve, monitor, evaluate and supervise the programme orientation of the radio and television channels;
- give prior opinion to the HRT Board of Management on appointing and relieving of duty of the Director of HRT,
- appoint and relieve of duty the Chief Programme Manager of the Croatian Radio and Chief Programme Manager of the Croatian Television, on the basis of public tenders, with prior consent of the HRT Board of Management,
- appoint and relieve of duty programme managers, upon the proposal of the Chief Programme Manager,
- give its prior opinion on the proposal of the financial and business plan,
- give its prior opinion on the HRT Statute,
- give its prior opinion on the Rule Book on Labour,
- give its prior opinion on other general acts regulating the programme issues,
- establish the conditions and procedure for appointing the HRT Council members, in accordance with the law and the Statute,
- adopt the Standing Orders on its work,
- perform other tasks in accordance with the law and the Statute.

- (2) The HRT Council shall regularly, and at least once a year, submit a report on its work and implementation of the programme orientations of radio and television channels to the House of Representatives of the Croatian Parliament.
- (3) The HRT Council shall at least once a year inform the public on the implementation of the programme orientations of radio and television channels.

Article 20.

- (1) The work of the HRT Council shall be public.
- (2) The HRT Council shall elect and recall the Chairman of the Council.
- (3) The Chairman and the members of the HRT Council shall have a four-year mandate.

Article 21.

- (1) The HRT Council may establish Programme Councils as advisory bodies for the purpose of monitoring and improving particular programmes.
- (2) The tasks and manner of work of the Programme Councils shall be established by the Decision on Establishment and the Standing Orders on the HRT Council's work.

IV. 4 “MEDIA WARS”

IV. 4. 1 HUNGARY AND THE CONFLICT OVER THE GOVERNING BOARD

Hungary, though advancing rapidly in the post-Soviet transition, has had its share of “media wars,” a condition of intense infighting over control of the media by the political parties. In an earlier stage, these conflicts involved the power of the President of Hungary to appoint or remove the head of Hungarian Television. In the excerpts which follow, based on a report of the International Federation of Journalists, another, more recent episode is traced, involving the composition of the ORTT, the National Radio and Television Board, and the stalemate among political parties in appointing members to it.

As background, a news account in May, 2001 stated the following: “Hungary's state-owned television is staring at a very clouded picture of late: viewers deserting en masse, multi-million dollar losses, charges of political bias, and to top it off a fraud investigation. Magyar Televizio (MTV) has been struggling ever since 1996 when Hungary liberalised its media sector, allowing two national commercial channels and a host of cable broadcasters to suck away its audience. In five years the broadcaster has had nine presidents and its viewing figures plunged to below 10 percent of national audience even at prime time viewing slots... Even its spokesman admits the situation is dire. MTV “is in a difficult situation,” Ferenc Koeszegi said, “primarily due to the debts it piled up over the past years.” Before 1996 the state broadcaster had a monopoly on terrestrial television, and a virtual monopoly overall, complemented by a satellite state TV station set up in 1992 to serve ethnic Hungarians living in neighbouring countries. But after the arrival of private competitors it suffered hugely, hit both by the commercial programming of the new broadcasters and its loss of credibility as viewers realized its pro-government political bias compared to private rivals.” (Eszter Szamado, Agence France Presse, May 25,2001).

The excerpt below comes from a report of a team sent by the IFJ, the International Federation of Journalists, a non-government organization that has been active in improving the status of journalism and the press in transition

societies. This report deals with a long-standing debate over political control of the Regulatory Board and charges that the government was controlling the process of appointments through a problematic reading of the law.

Public Broadcasting in Hungary: Television on the Brink, Report of IFJ Mission to Hungary, February 2001*

István Szijártó, the Acting President of Hungarian Radio, was pessimistic about the possibility of selection of a new President, given that there was no harmony between the government-dominated presidium of the board and other trustees elected from civil society groups. He said a new board of civil members would be elected on April 1st by a lottery. If no new President were in place, the current management would stay in place until then. As he had sensed, the political deadlock at the top meant no new President was elected in March.

Within the leadership of the Radio station there is strong support for revision of the media law in order to replace and reformulate the organisation of Hungarian Radio and to bring order into its financial arrangements. The service was hamstrung by limits on its activities—only 6 per cent of time is allowed for advertising compared to around 15 per cent of time in the rest of Western Europe, for instance.

... the independence of programme editors is an “increasingly difficult issue” for the radio. The introduction of commercial broadcasting has led to a severe “brain drain” of talent from the public stations. There is an urgent need for training of new people. “In God’s truth we don’t know who to turn to in order to have good supply of people”, said Szijártó. He said that money would have to be spent on establishing a training unit to produce five to ten students a year for the Radio service.

The management keeps out of editorial affairs leaving what is said, in what format, and responsibility to correct mistakes to the editorial managers. The management admitted there is no protective professional umbrella to guarantee journalists’ rights, but said that feedback from employees suggested the situation was not bad.

* Online [August 2001] Available: <http://www.ifj.org/publications/mission/hung.doc>

The Radio service does not, unsurprisingly, favour the creation of a single audiovisual public broadcasting structure; the profound crisis in Hungarian Television would almost certainly mean that radio would “lose out”.

The President of the Radio Board of Trustees Károly Szadai shared this approach and stressed the nature of the deep professional crisis as a result of a failure to generate new norms that are accepted in Western Europe. The radio service was stronger than television and there was no wish to sell off real estate as in television.

The management admits that there is no clear strategy for radio and television in the country although there is a desperate need for rejuvenation of the public service ideals in broadcasting and the modernization of equipment, updating of programming and strengthening the skills and professional quality of staff.

“The profession is in crisis and we need to start a debate for the future,” said Szadai. “We must not let the political difficulties interfere with our mission. In my view the business must let the political side lose when it comes to controlling how we work.”

At Hungarian Television, the beleaguered President Lázlo Zsolt Szabó, whose demise had been demanded, or predicted, by almost everyone the mission talked to, was removed from office a few days after the visit.

He had risen to the President’s job at breathless pace: joining the Television in 1993 as an economist and progressing rapidly through the ranks from reporter, to financial and technical director, chief editor and finally, in May 1999 reaching the high office of acting President. The creation of truncated boards of trustees had made his job “quite impossible”, he said.

The crisis in television was partly due to the inadequacies of the Media Law, which had laid down rules about advertising revenue at a time when Hungarian Television was still dominant in the market and did not consider the impact of introducing two other terrestrial broadcasters in 1997. By 1998 public television revenues had dropped considerably.

Of the Television’s 18.2 Billion Forints debt at the end of the previous year, the government had written off 9.5 billion. Losses over previous years were heavy—8.2 Billion Forints in 1998, 8.6 billion Forints in 1999, 9.12 Billion Forints in 2000—a total deficit of around 26 billion Forints. The deficit was

building up at the rate of around 25 million Forints a day (more than 80,000 US\$).

The new competition from the private sector had also led to a dramatic loss of audience. At the same time Hungarian Television lost talented people to new competitors, which meant that inevitably “variable programmes would be made”. At the same time, the management laid off 1,200 members of the workforce—40 per cent of full time staff. Many of these people were re-employed on a freelance basis and were among those complaining that they had not been paid for months. These were people that produce the content for the vast majority of Hungarian Television programmes.

A plan to redevelop the existing television headquarters—by selling off the site, renovating the property and paying rent in the future—would bring in much needed cash in the short term. This would be used to pay the staff.

Lajos Bakó insisted that the Media Law, which does not empower the board of trustees to manage the financial affairs or distribution of property effectively, aggravates the problems of management of the Hungarian Television. “The board of trustees cannot act like a normal company,” he said.

Amendments to the law are needed urgently, said Szabó, but that requires a two-thirds majority in Parliament and at a political level there is paralysis. The responsibility for a lack of progress in dealing with the television crisis rested with politicians.

There had to be a new system of financing that tied the licence fee to a percentage of the country’s gross domestic product and that avoided government control of the purse strings. “If we want government to pay out of its budget that will put the independence of the institution in peril”, he said. In fact, the Government has been covering debts in recent years.

It was not surprising then, that according to a survey of consumers public television is seen in people’s eyes as more representative of the government side in its news and information coverage although the management said that political coverage was roughly equal between government and opposition.

IFJ Conclusions and Recommendations

1. The mission believes that Hungarian public broadcasting, and public television in particular, has been weakened to the point of destruction because of political manipulation and willful neglect by the responsible authorities.
2. The evidence of government interference in media affairs since 1998 is compelling. We conclude that there has been a circle of improper political influence, which threatens freedom of expression in Hungary.
3. We confirm that there has been a marked deterioration in quality of news programmes at Hungarian Television and a perception of government influence over content that has undoubtedly contributed to a catastrophic collapse in public and professional confidence.
4. This perception has been reinforced by the failure of the Parliament and the Government to resolve the crisis of unbalanced political management of the public service radio and television system. It is intolerable and unacceptable that the Government has exercised control over public television for two years. There is, we believe, no place for politicians in the formal administration of public broadcasting.
5. In the face of enormous debts Hungarian Television has been subject to crisis management and severe cutbacks, including draconian cuts in staffing and the disposal of vital property and technical assets. While commercial rivals have taken advantage of a liberalised broadcasting market, no steps have been taken to protect and enhance the special and particular role of public service television in democratic society.
6. The journalists and other media staff at Hungarian Broadcasting have been treated with contempt by management that has cynically delayed payments of salary and fees, creating hardship and intolerable pressures on staff and their families. The workforce has been driven to take strike action to secure their rights.
7. The authorities have failed to provide any strategic vision or practical programme to secure the future of public broadcasting. Instead, there has been a drifting, aimless management, supervised by a complacent political process.
8. Government complacency over the crisis at Hungarian Television is symptomatic of failure to recognise the importance of public service media in democratic society and demonstrates a deplorable lack of respect for the need to uphold the principles of truth and impartiality in public broadcasting.

This is contrary to the aspirations of Hungarian people and to the Hungarian constitution.

9. In sum, the mission concludes that the actions of the governing coalition call into question Hungary's commitment to the basic principles of genuinely independent public service broadcasting. As a result there is widespread cynicism within Hungary over political interference in media and concern abroad that is profoundly damaging to the reputation of Hungary. We believe that current negotiations over Hungarian accession to the European Union dealing with cultural and media matters are jeopardised by the crisis in broadcasting.
10. The mission welcomes the revival of professional solidarity among journalists and supports initiatives from unions and professional associations and some political parties for urgent and radical reform of the broadcasting landscape to end the current crisis.
11. Noting that some journalists have compromised themselves by serving the interests of their political friends, we believe it is vital, if lasting reform of broadcasting in the public sector is to succeed, that all media professionals defend journalistic independence and resist political contamination of their work.
12. The mission concludes that professionalism in the work of journalists is the best defence of media from political interference and believes more support should be given on all sides in Hungary to efforts by journalists to improve levels of ethical conduct and to secure editorial independence.

Recommendations:

- That the system of political appointments to the Boards of Trustees of public media and the Commission of Radio and Television must be abolished as soon as possible. It should be replaced by the introduction of structures based wholly on civil society representation to ensure the widest possible range of social interests and opinions;
- That current political domination of "incomplete" Board of Trustees by the Government must be ended forthwith. Interim structures should be put in place while rules for a new system of administration are formulated;
- That a complete and urgent review of the public broadcasting system should be carried out in order to:
 - **Ensure** that public broadcasting in Hungary meets the minimum standards for public service systems in Europe as recommended by the Council of Europe (See Appendix Three).

- **Establish** new mechanisms, legal and otherwise, that will eliminate pressure on public service media by political groups;
- **Review** financing and funding arrangements for public broadcasting and create appropriate levels of investment in public service media in line with other countries of Europe;
- **Institute** rules for transparency and accountability in financial administration of public broadcasting;
- **Elaborate** principles for internal pluralism and editorial independence for journalists and media professionals.
- That the IFJ Executive Committee should protest strongly to the Government of Hungary, to the European Union and to the Council of Europe about the current media crisis and the mistreatment of journalists.
- That the IFJ should seek urgently commitments from the Hungarian authorities to
 - Defend public broadcasting
 - Prohibit interference in the work of media
 - Support systems of self-regulation in media
 - Put in place legal protection of the employment rights of journalists and other media staff
- That the IFJ should give its full support to journalists and media staff within Hungary who are striving to resist political interference. In particular, the IFJ should strengthen efforts to promote professionalism by the journalists' associations and unions through projects to support self-regulation and training of journalists.
- That the IFJ Executive Committee, recognising the appalling social conditions and treatment of journalists and media staff in Hungarian broadcasting, should demand urgent reforms in the structure of industrial relations to ensure that:
 - a) There is full consultation with staff prior to changes in employment or working conditions
 - b) All contractual obligations by the management are met promptly and that payments due to all staff, both fully employed and freelance, are made immediately.
- Finally, given the problems in Hungary and noting recent events in the Czech Republic and Bulgaria, the IFJ and the European Federation of

Journalists should launch a regional-wide initiative to strengthen commitment to public broadcasting and professionalism in media.

IV. 4. 2 THE CZECH REPUBLIC AND THE GOVERNANCE OF CT (CZECH TELEVISION)

The danger of politicisation of Czech Television through the appointment process of its head has been a persistent problem, erupting, in late 2000 in a much-noted strike by employees that gained international attention and caused a change in the mode of selection, and had a domino-effect in the region, including, at the least, Bulgaria and Hungary and fears that it would spread to Poland. Again, we turn to an evaluation by the International Federation of Journalists.

Striking News: Czech Television and the Struggle for Public Broadcasting, Report of IFJ Mission to Czech Republic, January 2001*

Findings and Conclusions

1. The origins of this confrontation are themselves a matter of dispute. Some argue that this was party-political wrangling with three distinct players—on one side the Civic Democratic Party (ODS) led by Vaclav Klaus, notoriously engaged in a privatisation project and reputedly influencing events behind the scenes, on the other the so-called 4Coalition, a grouping of centre-right parties, led by the Freedom Union and supported by President Vaclav Havel. In this scenario, the Governing Social Democratic Party led by Prime Minister Milos Zeman stood in the middle and, according to some commentators, was “desperately split”.¹
2. On the other hand, the strikers themselves and their trade union, had no doubt that while politicians wrestled for the moral high ground and party advantage, their struggle was rooted in the country’s failure to create a genuinely public service system of broadcasting. Their demands—a new law and system of appointing the broadcasting

* Online [July 2001] Available: <http://www.ifj.org/publications/mission/czreport.doc>. Footnotes omitted.

administration, a full and transparent audit of financial affairs, and an end to political interference in the Czech TV Council as its supervising body—are a restatement of the fundamental principles of public broadcasting.

3. To many journalists, and to the IFJ, this battle goes beyond local political squabbling. It reflects a malaise widespread in the region: a growing crisis of confidence in public media because, in spite of superficial changes in rules, old-style interference by the political elite, sustained by passivity on the part of journalists, continues to prevail.
4. The immediate origins of the strike lie in the nomination of a weak Television Council, appointed through a process that was politically flawed. Despite attempts by the TV Council to promote reform (particularly in the financial administration of the station and its newsroom operations) its actions lacked credibility and were interpreted as politically motivated.
5. When it appeared that the General Director, Dusan Chmelicek, was not going to carry out reforms, the Council dismissed him in the middle of December 2000, initiating the chain of events that led to the crisis at the station.
6. The flashpoint for the confrontation came with the Council's appointment of Jiri Hodac as his replacement. A so-called compromise candidate, Hodac was already discredited within the station. His appointment, made in extreme haste and in an increasingly bad-tempered political atmosphere, was subsequently repudiated by almost all political groups, as well as by the majority of journalists, producers and directors of the television system.
7. It is not evident that Hodac was politically compromised, although his style of management had lost him many friends in the television newsroom.
8. But his selection was so extraordinary and took place in such murky circumstances that few were ready to believe it was anything other than a political manoeuvre. In fact, it appears more likely that his appointment and the circumstances surrounding it represent a monumental error of judgement on the part of the Television Council.
9. The fact that he moved immediately to make appointments that were themselves controversial—a former ODS adviser as News Director, and a man criticised by the Prime Minister for involvement in a banking scandal as Finance Director—only confirmed the strong feeling within Czech TV that a political coup was in progress. The dismissal of 30 newsroom personnel by the new head of news came as a further provocation.

10. The criticism of the strikers that they compromised themselves because of a close relationship with political supporters from the 4Coalition might have carried more weight if there was evidence of any particular political bias in their actions or demands. There was none.
11. Indeed, the strikers sought to appeal to the community at large and their demands for a new law, for financial transparency and for editorial independence are shared—in principle at least—by all political groups. They made a stand on issues that struck a deep chord within Czech society, raising awareness about quality and pluralism and the role of media and tapping into a groundswell of public concern.
12. To suggest, as some have done, that the thousands who demonstrated were manipulated by misinformation from politically-engaged journalists and duped into taking to the streets is not sustainable. Whatever the detail of political and editorial in fighting, the confrontation quickly developed into a full-blown debate about the quality and reliability of information. The comment by Jan Kavan, that the strike, the demonstrations and the public debate they generated reflect not weakness, but a maturing of Czech democracy, is well put.
13. The failure to carry out long-needed reforms in the political and financial management of Czech TV and to promote confidence-building measures to strengthen professionalism in journalism were undoubtedly factors in creating the climate of intrigue and uncertainty that undermined the Council's work.
14. The debate over media privatisation added to the uncertain atmosphere. While former Prime Minister Vaclav Klaus says he wants a considered discussion, he may have contributed to fears that the ODS objectives were firmly in place, namely the break up of the public media system. A barely-concealed attack on the independence of Czech TV, the fall-out from the Prorok affair and the former Premier's capacity for off-the-cuff speaking, which had him proposing the abolition of public television in favour of privatization, may have added considerably to public fears. However, there are few clean hands. Political forces on all sides tried exploit the weakness of Czech TV for political advantage.
15. The Government was shaken by the possibility the strike could have a serious effect on the country's image abroad. Concerns expressed by Romano Prodi, President of the European Commission, and statements by leaders of the European Parliament and the Council of Europe, added to fears that there were implications for European Union membership.
16. Although Government leaders and politicians on all sides make a strong defence of the country's commitment to freedom of expression, the status of the public media remains an important factor in estimating the

quality of Czech democracy. The political consensus to improve the standing of public broadcasting following events at Czech TV will be put to the test in coming months, as the country prepares for national elections next year.

17. The strike, which in all its important demands was swiftly won, represents a significant turning point in the debate about the role of the public media in the Czech Republic and, more importantly, about the relationship between journalists and politicians.
18. The action of the journalists and media staff exposed how Czech TV was vulnerable to political manipulation and poor management. It has provided an opportunity for lasting reform. A political consensus now exists to carry out reforms quickly. In particular, by eliminating direct political involvement in the nomination of the supervising Council and handing this over to civil society groups.
19. There is an overwhelming need for a wholesale review and overhaul of Czech Television and its management. Such a review needs to take place within a process of urgent structural change, including:
 - **Rapid implementation of the new law for public television** and the creation of a transparent process for the nomination, selection and Parliamentary confirmation of civil society representatives to sit on the TV Council;
 - **Introduction of strict controls and a transparent and accountable process of financial administration**, including openness in tendering and awarding of contracts and public disclosure of such information;
 - **Introduction of structures for internal pluralism** to assess and strengthen quality of content, particularly in news and current affairs, including the adoption of an editorial statute guaranteeing editorial independence and allowing journalists and other media professionals the right to act according to conscience.
20. Internal structural change, no matter how well crafted will not be enough. The political and professional culture that led to the crisis at Czech TV arises from attitudes that are deeply-rooted in notions of authority over and control of information that have no place in modern democratic society.
21. A wider awareness raising campaign is required among politicians, media professionals and within civil society to strengthen public consciousness about the importance of pluralism in public information services. The mandate for public television needs to be articulated in clear and accessible terms so that citizens and consumers, staff and

administrators, political and social partners can develop an understanding of the imperatives of political independence and professionalism.

22. There is also a need to promote wider understanding of the role of journalists and the need for professional independence. The Syndicate of Journalists has an important role to play, but its efforts to establish wider respect for journalistic values needs stronger encouragement from the authorities and less hostility from media organisations, many of which foster unethical and unacceptable practices.
23. The challenge to journalists is to engage in professional and trade union solidarity and to break with practices that undermine the independence and plurality of information.
24. Journalists themselves should work together, in co-operation with the Syndicate of Journalists, to establish mechanisms for monitoring public broadcasting that will promote the highest quality and ethical performance.

IFJ interview with Vaclav Klaus, Chairman of House of Deputies and Leader of the Civic Democratic Party, January 2001

The IFJ conducted an interview with Vaclav Klaus, Chairman of House of Deputies and Leader of the Civic Democratic Party (ODS) as part of their evaluation.

Mr Klaus began by insisting that the difficulties at Czech Television did not reflect any problem related to the fundamental principles of freedom of expression or political pluralism or democracy within the country.

He denied vigorously that his party or he himself had provoked the crisis at the station. There was no dispute about the fundamental problems and the need for reform but what had happened was the dramatic misuse of a technical dispute.

He said groups like the 4Coalition—supported by President Havel—who were preparing the ground for the parliamentary elections next year, were manipulating the dispute. The crisis had been used to destabilise relations between the ODS and the governing Social Democrats. “We did not mastermind this confrontation,” he said.

He denied any relationship with the TV Council, despite suggestions that his party was influencing events behind the scenes. “I don’t know the names of the Council members. The decisions of the Council are theirs and not decisions of the ODS.”

He said that the appointment of Mr Hodac may have been a mistake—“he is not the right person”, he said—but it was the decision of the Council alone. He said that the Council may have been trying to solve the controversial issue of who could lead the TV by appointing someone from outside the inner circles of Czech political life and who had been absent from the country for some years. In the event, it was a mistake, he said. “It was not organised by us.”

He said that a compromise was necessary to solve the dispute and he suggested that Hodac and some of the high profile people from his side and some of the strike leaders should step down to allow a settlement to be agreed. He was in favour of the new law being considered by the Parliament.

But then new problems would arise—how, for instance, to sift through nominations from civil society groups, perhaps up to 10,000, for the positions on the Governing Council of the new TV administration. In the end, he said, the major parties in the parliament would probably have to agree on the distribution of places. This would then have to be endorsed by the Parliament.

Reflecting on allegations of ODS interference and bias against the television system, he said that he wanted to put on the record his objections to this. He referred to the controversy over the dismissal of Roman Prorok, a well-known chat show host where he had personally been accused of being instrumental in his removal. He explained that he had been invited to attend a round table debate with other political leaders, but he objected to this sort of discussion being stage-managed by media. “It should be for us politicians to decide when we meet and when we debate or it should happen when there is a clear issue of public concern to discuss, in this case there was not,” he said. He complained and refused the invitation to attend.

Nevertheless, he said, the TV maintained the format of the programme and despite his protests they indicated that they intended to have an empty seat in the studio designated for him. He had called the Director to complain

because he was going to be out of the country. In the event he returned from abroad and attended the show.

He had not intervened to press the management to discipline Prorok. The decision to suspend the programme host was entirely their responsibility, not his.

Mr Klaus was pressed on his declared preference for privatisation of the broadcasting which had provoked suggestions that political influence was directed towards creating instability and paving the way towards the break up of the public broadcasting system and its distribution into private hands.

He said that it was absolutely valid to raise the debate about privatisation. He said that some of the cuff remarks in reaction to the television crisis should not be interpreted as reflecting only one fixed point of view. He submitted a written statement that he hoped would clarify his position and the position of his party.

IFJ interview with Helena Havlikova, Chief Executive, Council of the Czech Republic for Radio and Television Broadcasting, January 2001

Another key part of the IFJ evaluation was an interview with Helena Havlikova, Chief Executive, Council of the Czech Republic for Radio and Television Broadcasting.

The Council is a state institution responsible for issuing licences and monitoring content of broadcasting institutions in both the private and public sector. It was established under Law 103 of 1992 and is responsible for the supervision of 238 licences and registrations currently in force.

Each of the state media institutions—the radio, television and news agency—has its own council of administration, established by law, and responsible for management of internal affairs, specifically the appointment of General Director and budgetary matters. However, the Broadcasting Council deals with complaints regarding content of all broadcast media and monitors how all services meet their obligations under the licensing law.

The Council has 13 members elected or removed by Parliament “ensuring the representation of various opinion trends” (Section 3 of the attached law, Appendix 3). This has meant that the Council is set up according to the relative strength of political groups in Parliament. The same process of selection is applied to the Councils that separately administer the Radio and Television services.

The Council became involved in the Czech Television crisis almost from the beginning and began an investigation into whether the Broadcasting Law had been violated. On December 21st a letter was sent to the General Director of Czech Television asking who was in control of broadcasting at the station. No reply had been received.

The Council had met to discuss the crisis at Czech Television and had found that the law had been violated. The General Manager had now been instructed to respect the law and to ensure the continuation of broadcasting. They were waiting for a response. If there were no compliance, the matter would be taken to trial. The broadcasting Council took no position on the appointment of the General Director at Czech Television, this being a matter for the Czech Television Council. However, they were responsible for ensuring that the Broadcasting Law of 1991 was properly respected.

The Council welcomed the draft proposals being considered by Parliament that would introduce new principles for the selection of Council representatives from wider civil society and not just according to streams of political opinion.

IV. 5 COUNTRY STUDIES: POLAND AND UZBEKISTAN

We turn, now, to accounts of the role of public service broadcasting in transition societies. These short excerpts are taken from a book: Media Reform: Democratizing the Media, Democratizing the State, edited by Monroe E. Price, Beata Rozumilowicz and Stefaan Verhulst (Routledge: 2002). The purpose of the book was to ask this chicken-egg question: is a free and independent media only possible in a democratic society or is a democratic society only possible if there is a free and independent media. One can ask a similar question about public service broadcasting: is an ideal public service broadcaster only possible in a mature, democratic society or is a mature, democratic society only possible if there is a strong public service broadcaster? In a sense, these essays are about this question.

“Media in Transition: The Case of Poland,” by Karol Jakubowicz, in *Media Reform: Democratizing the Media, Democratizing the State, 2001*

At the end of the 1990s, the 1992 Broadcasting Act was the major piece of legislation regulating broadcasting in Poland. This law established the National Broadcasting Council as the main regulatory authority. In consultation with the prime minister, it was charged to formulate general state policy in the broadcasting sector but remained effectively outside governmental structure. The council was comprised of nine members who held six-year terms and cannot be recalled. They directly elected their own chairman and were barred from holding either political party office or parliamentary seats.

The Broadcasting Act determined the status of public broadcasters, the licensing of commercial broadcasters, the programming obligations of public and commercial broadcasters, advertising and sponsoring, registration of retransmission of program services by cable operators, and the collection and distribution of broadcasting fees.

* Footnotes omitted.

Licensing constituted a special administrative procedure based on the Broadcasting Act and the administrative procedural code. The license authorized program distribution as well as televised text communications. In the licensing process, the council evaluated the type of proposed programming, the applicant's ability to make necessary investment, the share of the broadcaster's own programming in transmission time, and past observance of broadcasting regulations. The council was obliged to examine the overall position of the applicant within the mass media market, refusing the license if the applicant holds a dominant position. This assessment was to include the press market and programming production. The council also determined the licensee and the conditions of the license. The president of the council issued the formal licensing decision, which could be contested before the Supreme Administrative Court.

Articles 15 and 18 of the Broadcasting Act determined content requirements. The most significant, in 2000, was the domestic production quota, which may not be lower than 30 percent of the annual transmission time according to in Article 15.1. The exact amount of domestic production for specific types of program services was determined by Broadcasting Council Regulation of 22 September 1993. The quotas were differentiated and ranged from 60 percent for nation-wide public television program services to 35 percent for program services transmitted via cable or satellite. Other quotas impacted independent producers. These stood at 10 percent of annual transmission time and affected all broadcasters according to Article 15.2. Finally, the broadcasting council, under authority of the Broadcasting Act, introduced a European production quota.

The Act also stated, the broadcasting council chairman must register retransmission of program services by cable systems if they meet formal requirements determined by the Broadcasting Act and the council's regulations concerning registration procedures, model registers, and registration fees. Under must-carry regulations, the cable operator was required to introduce the program service in the following order: (1) national public program services (2) regional public program services (3) commercial domestic program services available in a given area (4) foreign broadcaster programming and domestic programming not available in the area.

The Broadcasting Act also made the following provisions for the allocation of national broadcasting airtime. Under Article 21, public broadcasters monitored appearances of political party representatives in their programming and sought to preserve a rough balance corresponding to that particular party's performance in the previous elections. Under Article 22, the president, prime minister, and speakers of the *Sejm* (Parliament) and *Senat* (Senate) could request airtime for an occasional address to the general public. Via Article 23, the National Broadcasting Council issued a regulation instructing public broadcasters to air programs devoted to the discussion of current issues with the participation of the main governing and opposition parties. Pursuant to Article 24, public broadcasters were to allot free airtime to candidates in presidential, general, or local government elections, under rules laid down in acts of parliament. The State Electoral Commission supervised their performance in this respect.

Licenses were granted under the act in Article 35 to Polish citizens or legal persons resident in Poland. Companies with foreign shareholders could be granted licenses if foreigners controlled less than 33 percent of opening capital or stock in the company and the initial agreement or statutes of the company specify the following: (a) Polish resident citizens constitute a majority of the directorate and management boards of the company in question, and (b) Foreign legal persons or persons controlled by them control less than 33 percent of votes in meetings of partners or in general meetings of shareholders. In other words, outright foreign ownership and control of Polish broadcast media was prohibited by law. Some stations did, however, have foreign co-owners, as will be discussed in further detail below.

Nevertheless, given the size and commercial attractiveness of the Polish broadcasting market, some television stations chose "delocalization," establishing themselves in other countries in order to evade the Polish ownership restrictions and production quotas and take advantage of a more liberal local broadcasting environment (for example, with regard to European quotas). For example, *Wizja* TV established itself in the United Kingdom where, among other things, it has not been obligated to comply with the European quota. However, in the year 2000 *Wizja* TV applied for Polish licenses both as the operator of a digital satellite platform and as the broadcaster of two original

channels offered on this platform (*Wizja 1* and *Wizja Sport*). This meant that it had decided to subordinate itself to Polish jurisdiction and by all accounts intended to move its operations to Poland.

Delocalization led to a debate in Poland over whether to raise the cap on foreign capital involvement in anticipation of accession to the European Union, when all limits to European capital have to be eliminated. Such a policy may encourage “delocalized” broadcasters to relocate themselves in Poland. For political reasons, however, such changes were rejected by parliament in 1998.

In autumn 1999, the government submitted another set of Broadcasting Act amendments to parliament; again they proposed that caps on foreign capital involvement be increased. The proposal was for the limit to be raised to 49 percent for terrestrial broadcasters and to 100 percent for satellite and cable broadcasters. Some commentators believe that this is a direct result of lobbying by *Wizja TV*, which operates both satellite channels and a large cable operation. However, parliament rejected any changes, though it is aware that no limits on foreign capital involvement can remain once Poland has joined the European Union.

In terms of political infringements, if public broadcasters deviate from political impartiality or neutrality, they do so either because of the political leanings of particular program makers or because of the composition of their governing bodies, and not because of direct outside political interference. Nevertheless, certain problems did persist in the implementation of the Broadcasting Act. In particular, successive Polish presidents and governments have been loath to accept the independence of the National Broadcasting Council or of a public service broadcaster, generally. Attempts have been made to interfere in Television Poland (TVP) operations and to curtail its independence.

In 1994, President Wałęsa dismissed the chairman and two other members of the council for granting a national commercial television license to an applicant he disfavored. The Constitutional Tribunal later ruled that the president had acted without legal authorization. Consequently, the Broadcasting Act was amended to provide for the direct election of the council chairman by its

members, instead of by presidential appointment. Measures were also introduced to prevent recall of council members.

Another instance of political interference occurred in January 2000 when the chairman and one of the Polish Radio board members were dismissed. Both had been Polish Peasants' Party (PSL) representatives who apparently displeased their political masters. The party forged a coalition in the supervisory board to have the two dismissed and replaced with other PSL appointees. This coalition brought together representatives of the PSL, their previous coalition partner, the Sojusz Lewicy Demokratycznej (SLD), and the AWS. The rationale behind the AWS's collusion lay in that party's need for the PSL's support in promoting an AWS parliamentary candidate to a public post. This deal was widely condemned as a political game of musical chairs with no concern for the public interest.

The Ministry of Telecommunications and its agencies, which collaborate with the National Broadcasting Council in the allocation of frequencies and in determining technical aspects of station operations, too, have often delayed procedures in order to complicate council operations. Since no legal mechanism existed to control the National Broadcasting Council, governments made every effort to marginalize it and to limit its influence.

The finance minister and later the state treasury minister have occasionally dismissed supervisory board members or entire boards, even though such actions are without legal basis. Since corporate law also governed public service broadcasters, ministers have invoked its provisions to dismiss members in spite of a constitutional tribunal ruling that members of these supervisory boards should not be recalled during their 3-year terms.

Since 1997, the state treasury minister has tried to stop TVP from entering the digital television field. The general meeting of shareholders has, for example, passed a resolution instructing the management board not to establish thematic digital channels. The management board, in turn, has taken the matter to court, requesting that the resolution be dismissed.

Having no other recourse to influence TVP development or to alter its governing bodies, the treasury minister has considered the possibility of liquidation, with the appointment of a liquidator to run the state broadcaster. To date, however, this action has not been taken.

As the new century began, however, a new attempt by the government to change TVP's status and method of financing appeared possible. These measures were ostensibly to depoliticize the broadcaster, but in reality they served to weaken it. The plan, spelled out in draft amendments to the Broadcasting Act prepared for the state treasury minister, called for ownership rights to TVP and Radio Poland to be transferred to state universities, with some shares also to be held by local government bodies and the ministry of culture. The shareholders, the state treasury minister, the National Broadcasting Council, and the employees would appoint members of the supervisory boards. Board members would be appointed by the universities, with one person each to be appointed by local government bodies and by the culture minister.

Under the proposal, one national channel would have been closed to advertising, but would have been compensated by commercial television levies that would be have been channeled into a fund used to commission or buy programming for TVP in line with its public service mandate. After two years, this programming would then become freely available to stations contributing to the fund. The stations would also have been granted access to TVP's archives. The proposal, however, remains highly controversial.

Under the structure at the time of writing, public broadcasters were financed from both license fee revenue and advertising. There were practically no state subsidies for public service broadcasters, apart from funds earmarked by the ministry of education for educational programming on the national channels. Private broadcasters were financed entirely from advertising revenue.

Plans were being mooted that would involve state broadcasters as shareholders in a new production company, *Telewizja Familijna* (Family Television), which would operate a nation-wide Catholic television channel. The company license was held by the Franciscan brotherhood, which previously operated the local channel, *Niepokalanów TV*. *Niepokalanów TV* programming was to be transformed into a satellite-to-cable channel and existing and future terrestrial frequencies were to be taken over by *Telewizja Familijna*. This process was to be financed by a number of state companies (from the copper, oil, and power industries to the state insurance company) and two, as yet undisclosed, foreign media corporations. One is reportedly European, the other American.

A former media adviser to the prime minister developed this project. Given the significant role played by *Radio Maryja* in mobilizing support for the right-wing AWS during the 1997 election, this project may also be interpreted politically as a way of countering the perceived influence of TVP. When media revealed this project, however, a number of state firms indicated uncertainty as to whether they would indeed invest in the new station.

In addition to the domestic Broadcasting Act, there are a number of international agreements and conventions which affected the audiovisual sector, for example, the Europe Agreement establishing an association between Poland and the European Community, the European Convention on Transfrontier Television, and international copyright conventions.

The general parity of Polish broadcasting regulations with the European Convention on Transfrontier Television resulted largely from the adoption and implementation of the Broadcasting Act. Polish regulations also generally comply with the requirements contained in the European Union's *Television Without Frontiers Directive* of 3 October 1989. A comparison of the main areas of European and Polish broadcasting regulation indicates that only a few domestic regulations need amendment to harmonize with European standards.

“Uzbekistan,” by Lutfulla Kabirov and Scott Smith, *Media Reform: Democratizing the Media, Democratizing the State, 2001*^{*}

During the Soviet period, television reached nearly 100 percent of the population and was an important tool for the formation of opinion and control of information. Broadcast media continue to play an extensive role in the life of Uzbek society. Watching television during the evening meal and into the night is part of Uzbek culture. Since market economics have limited the operation of print media and have reduced their impact, television and radio broadcasting have continued to be important tools for state propaganda. Since the advent of Uzbek independence in 1991, the state has controlled broadcasting media. In 1992, a state company for television and radio broadcasting was founded through which the government has supervised the broadcasting media.

^{*} Footnotes omitted.

In the last few years, as greater amount of information has reached Uzbekistan from the West, and the content of Moscow programs transmitted over Uzbek television has improved, the population has become increasingly disappointed by the lack of quality programming and information relevant to viewers. In response, the president issued a decree on 7 May 1996, "On the Rise of the Role of Television and Radio in the Public Life of Uzbekistan." With this decree Uzbek television was transformed into a national television and radio company, UzTeleRadio, and additional rights and creative possibilities were delegated to it. The organizational structure of the television and radio company is based on the eleven regional television companies, the radio network and the "TeleFilm" studios.

According to this decree, UzTeleRadio was to become financially independent from the state budget by 2000. No clear terms outlining privatization or financial sustainability were established, and as a result the company remained dependent on the state budget and control. By order of the ministerial cabinet, an independent governing board of founders was to assume control. The chairman of the television and radio company held the status of a government minister and his deputies and political commentators were appointed by a decree of the president. The company's executives have all the rights and privileges of high government officials, benefits which themselves may cause these officials to adhere strictly to state policies. UzTeleRadio remains largely funded from the state budget; nearly 60 percent of the funds allocated are spent on hardware, and the company must earn the remaining 40 percent through advertising or other commercial activity. These resources are then channeled into more creative purposes. Television programming is transmitted over four channels: 1-National, 2-Youth, 3-Regional, and 4-Urban. The total volume of programming across all four channels is sixty-four hours per day. In-house production accounts for forty-nine of these hours.

The government has failed to move away from its totalitarian control over television and radio broadcasting content and maintains the right to regulate informational programming. The right to report political events in the republic is granted to relatively few commentators. In Uzbekistan political comments can only be made by specially appointed journalists and commentators who have work experience and training in the central

governmental bodies; from these positions they are deemed qualified to speak on behalf of the government and assigned to TV. Journalists of state TV who do not follow this career path are only allowed to read comments prepared by governmental information agencies.

The freedom to political commentary faces certain important obstacles. Across the common grid of television broadcasting, one channel that transmits for 18 hours will broadcast informational programs in four blocks of thirty minutes each for a total of two hours. These four blocks, however, are absolutely identical. Within each of the informational blocks, the political events are reduced to releases, which have been provided to the station by governmental sources. Additional comments or the expression of political views by the commentator are prohibited.

The structure of radio broadcasting mimics the organization of Uzbek television. For instance, 80 percent of the radio network is open to inspection by the state. There are eight radio stations registered with the designated state committee. Five are state-run while three are non-governmental. In addition to these, there are about twenty state radio studios registered in the regions.

The low popularity of print media in Uzbekistan has led to a recent increase in the number of radio listeners. At the same time, the audience size of radio has decreased since Soviet times because people prefer to watch television. In addition, Uzbek radio often directly transmits news that was printed in the newspaper and may also have been transmitted by television because Uzbek radio does not possess its own information service. In the regions, private radio stations are not registered. In the capital city of Tashkent, three non-governmental radio stations are in operation: Grand, Sezam, Uzbegim Taronaci. The majority of the transmissions of these three stations are musical broadcasts. When they do broadcast "news," they very cautiously refer to political news and adhere to neutral subjects.

IV. 6 PUBLIC SERVICE IN PEACEKEEPING OPERATIONS: BOSNIA AND HERZEGOVINA

One of the new and difficult areas for establishing public service broadcasting is in conflict zones and at the behest of the international community. This notion—tied to ideas of the desirability of strengthening national identity, developing notions of tolerance, establishing a voice for stability, is different from the genesis and traditions of public broadcasting elsewhere. This process, first developed in Bosnia and Herzegovina and then in Kosovo, does not have a long history. We include here the excerpt of an essay by Mark Thompson and Daniel De Luce, prepared for Forging Peace (edited by Thompson and Price), to be published in 2002 by Edinburgh University Press.

“Escalating to Success? The Media Intervention in Bosnia and Herzegovina,” by Mark Thompson and Dan De Luce, in *Forging Peace*, 2002

Towards public service broadcasting

In the autumn of 1997, SFOR, the NATO-led Stabilization Force in Bosnia, seized the towers of SRT (*Srpska radio-televizija*, Serb Radio-Television) in order to ensure more fair editorial coverage at the station and stem its inflammatory coverage of events in the country. In the aftermath of this, British and other Western ambassadors urged the High Representative to move beyond SRT and launch broadcasting reform throughout the country. Carlos Westendorp, then the High Representative, turned his attention to RTVBiH (Radio-Television Bosnia and Herzegovina, formerly Radio-Television Sarajevo). Westendorp's office opted to promote genuine public service broadcasting reform as a way of breaking the nationalists' control of television and radio.

[...] The final result of prolonged negotiations was a document that supported admirable principles but set out contradictory paths. The

* Footnotes omitted.

'Memorandum of Understanding on the Restructuring of RTVBiH' called for the creation of a television for the Federation and the eventual establishment of a country-wide public corporation that would unify the Entity networks. The Federation would gain a 'new public Entity television [...] using the necessary technical infrastructure of RTVBiH'. In the longer term, RTVBiH would eventually form a single corporation with SRT, reflecting Bosnia's constitutional structure as a state with two Entities and three 'constituent peoples'. The memorandum focused media attention on the need to end political interference in publicly-funded broadcasting. For the first time, political leaders had to address how a new public broadcasting service ought to be arranged.

[...] There was no mechanism in the memorandum to prevent or punish political threats to RTVBiH's editorial independence. It was a recipe for delay and obstruction, encouraging Izetbegovic's SDA to believe it could preserve the existing RTVBiH indefinitely.

Momcilo Krajsnik, the Serb member of the Bosnian presidency, had refused to participate in the negotiations for Memorandum. He condemned the finished document as a violation of the Dayton Peace Agreement (DPA) and refused to sign.

The member states of the Peace Implementation Council (PIC), which was established in December 1995, hoping to bolster Bosnia's weak statehood and break the dominance of the nationalist parties, endorsed the public service broadcasting reform in June 1998, calling for a single broadcasting system for the whole country. Less than a year earlier, the Office of the High Representative (OHR) had only sought to broadcast public information programming on the local networks. Now it had international backing to redesign the public broadcasting system.

The June statement was amplified at the end of 1998, when the PIC adopted its fullest declaration to date on media reform. This called for legislation on public media that enshrined the principles of editorial independence, religious tolerance and financial transparency, prevented domination by political parties and ensured respect for the interests of Bosnia's three 'constituent peoples'. In effect, the PIC was authorising an even more intrusive role in media reform and development for the implementing organisations in Bosnia, above all the OHR and OSCE (Organization for Security and Co-operation in Europe).

The Madrid Declaration also called for the creation of a transmission system to service a single PBS.

Shortly after the Memorandum was signed, the High Representative appointed a multi-ethnic Board of Governors. Insolvent and grossly inefficient, RTV BiH could only survive through the generosity of public enterprises and banks controlled by Izetbegovic's appointees. The morale of the 1,200 employees was dismal. Several members of the RTV BiH trade union leadership had supported and signed the Memorandum, against the wishes of Izetbegovic loyalists.

The Board appointed a director of RTV BiH, a Bosniak by nationality, who was supposed to steer the network through the reform process. But he failed to make genuine reforms in the news programming or to recruit non-Bosniaks to top posts. [...] An international part-time 'adviser' appointed by the OHR, a Slovene television news producer, lacked the authority to carry out the vast restructuring that was required.

The Board of Governors, increasingly frustrated at their weak position, urged the director to rectify the ethnic, political bias in the news programme and bring in non-Bosniaks to management positions. Their appeals were ignored. Board members accused the OHR and donor governments of failing to support political rhetoric with substantial financial support for the reform project. [...]

For their part, the Bosnian Croat leaders continued to demand a separately administered channel as the price of accepting a unified Federation network (RTV FBiH). The Bosniak and Croat politicians could not agree to adopt a law on Federation broadcasting that would turn RTV BiH into RTV FBiH. Finally, in the spring of 1999, Bosniak SDA and Croat HDZ representatives in the Federation education ministry negotiated a compromise formula ... The compromise satisfied the HDZ but raised the danger of separate, partisan editorial operations. Bosniak nationalists in the SDA later disowned the compromise agreed by the education ministry. Throughout these negotiations, both the Bosniak and Croat ruling parties in Bosnia spent large sums on the cantonal broadcasters that were under their respective thumbs.

SRT and Public Broadcasting

In Republika Srpska, progress in reforming the broadcast sector had also been negligible. On 13 February 1998, under pressure from the OHR and with SFOR still controlling the main transmitters, the government of the Republika Srpska agreed to 'Interim Arrangements' for restructuring SRT in line with European standards of public broadcasting. In April 1998, use of the transmitters was restored to SRT. The following August, the government adopted a mechanism for transparent and reliable funding for SRT. These provisions were to be incorporated in a new law to be adopted by the end of 1998. No law was adopted. Since the July 1998 elections had given the presidency of Republika Srpska to an anti-Western (...) candidate, Nikola Poplasen, the political atmosphere did not favour reform.

The SFOR action in 1997 had improved the basic quality of SRT's programmes. Yet, although the blatant attacks on the international community and the DPA virtually disappeared from the screen, SRT presented itself as an exclusively Serb broadcaster. The station displayed a clear bias in favour of Biljana Plavsic's 'moderate' faction, led by Prime Minister Milorad Dodik. Seeing the Dodik government as a vital partner, the OHR and NATO states raised no objection to the biased programming. The Bosnjak SDA accused the OHR of applying double standards by insisting on public service principles for RTV BiH while allowing mono-ethnic, politically-slanted programming at SRT.

The international community paid a price for such political expediency. In 1999, SRT started to promote the Socialist Party of Republika Srpska (SPRS), closely tied to Milosevic's ruling Socialist Party in Serbia (SPS). The lack of genuine reform was confirmed during NATO's bombing campaign against FRY in spring 1999, when SRT reverted to its worst practices of disinformation and nationalist propaganda. Shortly after the end of the campaign, the Independent Media Commission fined SRT 2,000 Deutschmark for censorship, broadcasting false information, and publicising material potentially threatening to public order.

On 31 August 1999, the High Representative issued amendments to the Law on RTV RS that renamed SRT and went some way to redefining it along public service lines. [...] These amendments, upholding the principles of editorial independence, financial transparency and cultural pluralism, brought

RTV RS into line with the commitments that had been made, but not subsequently honoured, in February 1998. RTV RS subsequently failed to fulfil the spirit of the amendments and persisted with its mono-ethnic bias. [...] The Bosnian Serb authorities continued to resist any move to integrate the media space, describing it as an attempt to strip Republika Srpska of its autonomy.

The controversial supervisor, Dragan Gasic, was forced to resign and a new multi-ethnic Board was appointed in the summer of 2000. The OHR retained its seat on the new governing board. Citing the failure of Republika Srpska assembly, High Representative Wolfgang Petritsch instructed the new Board to prepare a comprehensive law for RTRS and to draft a strategic plan that would ensure RTRS programming and staff reflect the ethnic and religious diversity of Republika Srpska and BiH citizens. Petritsch's decision made clear that public service broadcasting principles would now apply equally to both Entities. The news programming has shown some signs of life and its coverage of events in Serbia improved markedly in the autumn of 2000.

The Creation of PBS

In 1999, with all three of Bosnia's nationalist regimes continuing to stall on elementary media reform, the OHR took action. [...] Following one of the [RTV BiH] Board's recommendations, OHR decided to impose a modest state-level public broadcaster that would be financially realistic and based on the mutual interests of the Entity broadcasters.

On 30 July 1999, more than a year after Izetbegovic and Zubak had signed the 'Memorandum', the High Representative used his power of decree to establish the Public Broadcasting Service of Bosnia and Herzegovina (PBS BiH) and Radio-Television of the Federation of Bosnia and Herzegovina (RTV FBiH), and called on the national assembly of the Republika Srpska to pass a law 'establishing one public broadcaster for Republika Srpska, which will for all legal purposes succeed to SRT'.

[The High Representative] cited Article III.1.h of the constitution, stating, 'establishment and operation of common and international communications facilities' was a responsibility of the state institutions. He also mentioned the 'accepted principle in all established democracies' that the allocation of broadcasting licences is a prerogative of the state. The decision also called for

the creation of a state-wide public corporation that would manage the transmission infrastructure. The Independent Media Commission and the Office of the High Representative hoped the body would generate revenue and foreign investment by offering access to transmission sites for mobile telephone and data transmission services, thereby allowing the new PBS to become self-sufficient. But the Dayton Peace Agreement's awkward framework, which allowed each Entity to claim ownership over infrastructure on its territory, posed a serious obstacle. The prime ministers of both entities had to agree on the body's formation, meaning the international community would have to persuade or coerce them to choose long-term economic benefit over short-term political control. By the spring of 2001, the transmission corporation had yet to be formed.

[...]

Implementing the sweeping reforms proved much more difficult than issuing principles on paper. [...] ... PBS remained an abstraction, without a budget, management, or a comprehensive law. It had to rely on the generosity of sceptical Entity networks, OHR diplomacy, and donor government funding. Two years after the 1999 decision, PBS had no regular evening news programme.

[...]

Frustrated with political obstruction of PBS, the High Representative, Wolfgang Petritsch, moved to assert greater international authority over the project. In October 2000, Petritsch issued the OHR's 'Second Decision on Restructuring the Public Broadcasting System in Bosnia and Herzegovina'. This act established 'two new public corporations, the Public Broadcasting Service of Bosnia and Herzegovina, and the Radio and Television of the Federation of Bosnia and Herzegovina, (hereinafter PBS BiH and RTV FBiH)'.

...Where the first Decision mentioned only 'a unified news service serving the whole country', Petritsch states that 'PBS BiH Television shall provide, from the outset, a statewide and international news service transmitted simultaneously to both Entities in prime time at a time to be decided, seven nights a week as the heart of an evening PBS BiH network schedule'. PBS would also commission programming from Entity broadcasters.

The Second Decision also redefined the all-important matter of national identities or components in the output of Federation broadcasting. The Decision stated that RTV FBiH would be 'mandated to produce two radio networks, and two channels of television. These services shall be complementary and mixed. Each shall reflect national and cultural diversities, and shall be staffed by people chosen on the basis of the highest professional criteria in accordance with the principle of national equality as expressed by the Constitution of BiH'. This was a clear improvement over the previous definition, quoted above, which would have divided the two Federation channels along linguistic lines.

For the Republika Srpska, the Decision held that 'the development of The Public Company Radio-Television of Republika Srpska Banja Luka (hereinafter RTRS) is a fundamental part of the creation of a public broadcasting system in BiH'. RTRS 'shall broadcast a single radio network, and one television channel'.

[...] While the Second Decision should be welcomed, it may be over-ambitious. [...] the OHR has come up with a proposal that may be too elaborate and expensive for a small, impoverished country. It will require sorting out the grossly inefficient operations of both Entity networks and scaling back a massive workforce. Laying off hundreds of employees is the one step that the local political parties have studiously avoided. Even if the collection of subscriptions is improved, international assistance will make or break the reform effort. It remains to be seen whether the donor community will be persuaded to pay the 14.5 million Euro that the OHR is seeking to restructure public broadcasting over the period 2001 to 2002. If such a level of donor support is secure, it is far from clear how the network will pay for itself in the long run.

The end of the struggle to reform the broadcast sector is not yet in sight. The OHR's initial approach aimed to set legal and political parameters for public broadcasting. Since 2000, the OHR has moved to assert managerial control over the public broadcasting sector and has employed a team of broadcasting, legal, and financial consultants to accomplish this task. [...]

Thus far OHR has managed to stop the excesses of the Entity networks, effectively neutralising the old propaganda. But a healthy alternative has yet to emerge. PBS has yet to launch its evening news programme two years since the High Representative's first decision. The delay raises the

question whether the OHR can build a successful network out of the ashes of RTV BiH.

CHAPTER V

TOWARDS THE FUTURE: CONCLUDING MATERIALS

The objective, in assembling these materials, was

- *To establish certain fundamental principles of public service broadcasting,*
- *To present important elements of the European debate on public service broadcasting*
- *To examine tensions in the United Kingdom, Germany, and elsewhere as public service broadcasting changes*
- *To provide some window into the difficult process—over a decade and more—of transformations from state broadcasting to public service broadcasting in the so-called “transition” societies.*

In this concluding chapter, our goal, drawing from certain of our previous studies, is to look toward the future and draw certain conclusions. We also wish to ask the reader to think, beyond the standard formulae, about the function and need for public service broadcasting, particularly in fragmented, redefining societies.

“Public Service Broadcasting: A Comparative and Analytic Approach,” by Monroe E. Price and Stefaan Verhulst, January 2001*

We reach several conclusions about the changes in public service broadcasting. First, we argue that societies are moving, at least at a rhetorical level, towards what might be called a concept of “distributed public service,” one in which the obligations are not so concentrated in a single institution or set of institutions. Such a model of distributed public service model is vital for planning because of the nature of media transformations. Distributed public service risks

* Footnotes omitted.

weakening the institutions of public service broadcasting themselves. A parallel set of conclusions deals with financing patterns. Almost universally, the blurring of the lines between public service broadcasters and commercial counterparts is putting pressure on modes of financing and subvention. In Europe, litigation and negotiation have already led to altered boundaries in service provision and the relationship to public financing or subvention through licensing. In a number of states, existing and traditional modes of reliance on the license fee is softening, partly because the practices of the public service broadcasters have been questioned and attacked.

All this said, another remarkable aspect of modern tendencies in public service broadcasting is a cross-boundary recognition and revival of the very notion of public service, of modes of identifying and meeting public needs for program services not provided through the marketplace. In some states, like New Zealand, earlier downgrades of the public service broadcaster have been reversed. In most societies, there is a noticeable concern at the decline of market share and the increasing isolation and identity crises that weaken this sector of program provision. The need for public service broadcasters continues though the standard justifications seem shaky. We conclude that there are emerging grounds for public service broadcasting tied to goals of international stability based on strengthened national identities.

A hazard of studying transnational transformations of public service broadcasters is to be too restrictive in terms of reference and purpose. The shadow of the BBC and Reithian ideas of public service is a long one. Most Anglo-US scholarship on public service broadcasting (even scholarship that is critical of the Reithian ideal) is in the thrall of a set of ideas of public service broadcasting and its relationship to society. We make some efforts to enrich the debate here. As part of this, we focus, in part, on the dilemmas of post-Reithian public service broadcasting in a dual system in the European Union.

Taxonomy Of The Notions Of "Public" Within PSB

In this section we propose to set forth a partial taxonomy of meanings of the term "public" in different public service broadcasting contexts. This taxonomy, like the one relating to social goals, is helpful in classifying and analyzing, comparatively, shifts in the public service broadcasting environment. Among the

potential meanings of “public” are “Public Interest,” “Public Funding,” “Public Accountability,” “Public/Universal Service,” “Public Taste and Choice,” “Public Identity and Representation (Minority groups),” “Public Choice: Quality and Complementary Programming” and “Public Service Obligations.” In this Study, we cannot provide more than an initial analysis of certain of these areas and indicate potential directions for further research.

(a) Public Interest

Much has been written about the idea of public interest. It is intriguing to try to determine the relationship between the phrase “public service” and the phrase “public interest.” It may well be that the term public interest exists, primarily in the US discourse, to describe those activities which are imposed upon private broadcasters in their partial function as trustees of the public airwaves. In this sense, the term “public interest” could be said to be a marker for what we call, later in the paper, a system of “distributed public service” where the functions are performed by public, private and mixed entities. The term “public interest” is also deceptively bland. It bears within it the mark of being readily defined, decent and generally acceptable. It is, however, culturally specific, contentious and disguises important possible areas of debate about the range of dissent, questions of pluralism, gender, and the allocation or redistribution of resources. As we shall see in the later section on public funding, the very definitional process takes on sharpness in the growing number of cases where public funds can be used primarily to fund public interest or public service duties that are not performed by commercial entities as part of their marketplace activities.

A recent exploration of public interest in this distributed way, looking primarily at the duty of commercial entities, is the document *Public Interest Obligations of Digital Television Broadcasters*. Produced by the US Gore Commission, the report has made one of the most thorough analyses in the new technological era. The report emphasized broadcast television and democratic deliberation. US licensing arrangements that gave rise to public interest obligations attempted to reconcile the prerogatives of commercial interests on the one hand with the needs of the democratic system on the other. In the Gore Commission’s view, the primary applications of the Public Interest Standard were as follows: (1) “Encouraging Diversity of Programming,” if

broadcasters are meant to act as trustees for the public interest, then they must affirmatively present a wide diversity of perspectives. (2) Broadcasting as a Forum for Political Discourse including Candidate Access to the Airwaves. Although Congress gave broadcasters broad editorial control of the airwaves under the Communications Act, it retained two common-carrier-like provisions to ensure access for legally qualified candidates for Federal office. (3) Citizen Access to the Airwaves. For many years, the chief legal vehicle for citizens to gain direct access to the airwaves or hear diverse viewpoints on controversial public issues was the Fairness Doctrine. (4) Broadcasting as a Force for Localism. Another long-standing tradition in broadcast regulation has been the affirmative need of stations to serve their local communities. (5) The Public Interest in Children's Educational Programming, (6) Access by Persons with Disabilities, and (7) Equal Employment Opportunity were the last three applications.

Another formulation on the public interest principle can be found in Ireland. In its entirety, it has probably come to embrace the following elements:

- Broadcasting is expected to serve the "public interest" or "general welfare" by carrying out tasks that contribute to the wider and longer-term benefits of society as a whole.
- Broadcast programmes should be available to the whole population.
- Broadcast programmes should cater for all interests and tastes.
- Minorities should receive particular provision.
- Broadcasters should recognise their special relationship to the sense of national identity.
- Broadcasting should be distanced from all vested interests and in particular from those of the Government of the day.
- The public guidelines for broadcasting should be designed to liberate rather than restrict the programme maker.

(b) Public Identity and Representation

One interesting area for studying the process of transformation lies in the principle of "Public Identity and Representation." The draft Charter for Television New Zealand (TVNZ), published in September 2000, demonstrates the importance of the question of representation. The document recognized that TVNZ would contribute to a sense of national purpose, identity, and pride in

New Zealand's diversity as well as extend the range of ideas and experiences available to New Zealanders. It would feature programming across the full range of genres and include programmes that entertain as well as inform and educate. The Charter was interesting in that it specifically asserted a role in maintaining a balance between programmes of appeal to New Zealanders in general and programmes of special interest. The Charter called for the broadcaster to "encourage creative risk-taking and experiment, investing in and promoting the talents and creative resources of the New Zealand film and television industry as well as those of the specifically Maori film and television industry." It was stated that TVNZ should feature programming that promotes Maori language and culture to all New Zealanders and serve the interests and informational needs of Maori audiences through programmes in the Maori language and programmes promoting the Maori culture programmes with Maori topics. It should also acknowledge in its programming the significant place of Maori in the New Zealand population. The TVNZ should provide shared experiences that contribute to a sense of citizenship and national identity. In the area of Information and Democracy, the Charter urges TVNZ to provide comprehensive, impartial, authoritative, and in-depth coverage and analysis of news and current affairs in New Zealand and throughout the world. To provide information that enhances the opportunities of Zealanders to participate in national or community life it should also feature programmes that serve the regions of New Zealand and that reflect the regions to themselves and to the nation as a whole.

Another extremely important example of diversity as a hallmark of public broadcasting is found in Australia's Special Broadcasting Service (SBS), Australia's national multicultural broadcaster. The Australian Parliament provided a Charter for SBS that states:

- The principal function of SBS is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society.
- SBS, in performing its principal function, must:
 1. Contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities; and

2. Increase awareness of the contribution diverse cultures to the continuing development of Australian society.
3. Promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people.
4. Contribute to the retention and continuing development of language and other cultural skills.
5. As far as practicable, inform, educate and entertain Australians in their preferred languages.
6. Make use of Australia's diverse creative resources.
7. Contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the public broadcasting sector.
8. Contribute to extending the range of Australian television and radio services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.

SBS television service is broadcast nationwide to a potential audience of 17.5 million people and the radio service is broadcast to millions of Australians of diverse cultural background. SBS Radio, which began in 1975, broadcasts 650 hours of programming each week in 68 languages. SBS Television began in 1980 and 4.6 million Australians now view it each week. In accordance with the Charter, SBS policy is that half of scheduled programming will be in languages other than English, which requires hundreds of hours of subtitling.

(c) Public Funding

One of the critical disputes concerning public service broadcasting involves public funding. In a sense, this dispute, quite important within Europe, has long term consequences for the structuring of public service broadcasting globally. This is because the issue—defined in terms of subsidies and competition policy—ultimately will be integrated with transnational concerns under the World Trade Organization. The nature of the issue is traced in terms of EU debate over whether state aid to public service broadcasters constitutes a violation of EU competition rules.

The approach which is at the basis of the amended Directive is also confirmed by the 1998 report of the High Level Group on Audiovisual Policy (chaired by then Commissioner Oreja) "The Digital Age: European Audiovisual Policy". The report states: "The funding of public service broadcasting must be in proportion to, and not more than, what is needed to discharge the public service remit". "For this purpose, financial openness should be applied ... Furthermore, when that operator engages in purely commercial activities (that is, that go beyond those activities defined as part of its public service remit), separate accounting should apply."

(d) Public Choice: Quality and Complementary Programming

Another meaning of public involves public choice or providing complementary programming. In a sense, this issue has been dealt with under the heading of pluralism and national identity, in the categories of public interest and in the discussion of the controversy over public funding. Often this question is put in terms of forms of identifying and encouraging a separate and autonomous group of programmers, a way of encouraging creativity in society. This has been the contribution, primarily of Channel 4 in the United Kingdom, which, from the start, determined that all programming should be commissioned rather than produced from within a broadcasting monolith. This idea is also incorporated in the Television Without Frontiers Directive, which, as a matter of European law, requires broadcasters to gain at least 10% of programming from independent sources.

Complementarity is difficult to achieve in an increasingly competitive environment. Multi-channel growth has often left the public service broadcaster moving to match or replicate services of commercial competitors. And in a multi-channel environment with new means to gain income, commercial sources have nibbled at areas that were the zone of *complementarity* for the public service institutions (such as history, nature programming, children's programming, even instructional programming). These factors have yielded a complex programming agenda for public service broadcasters as they seek to adjust to their own digital, expensive and multi-channel environment.

Broadcasting, Democracy and Independence

One of the functions attributed to public service broadcasting is its relationship to building a public sphere. But elements of this relationship have not been explored. Most tie the claim—certainly the geopolitical claim—self-unencumbered media to its role in reinforcing or fostering democracy. Edwin Baker has written, with a small bit of irony, "democracy is impossible without a free press. At least courts and commentators tell us so."

Does a "free and independent press" alone perform this function or is it, as well, some version of public service broadcasting? Because each democratic society has a different profile of its media, no specific matrix of media development can be considered "essential" as part of the project of democratization. Development of a "free and independent" press can, itself, take many forms and freedom and independence can have many gradations. Public service broadcasting can be an essential, central, causative aspect of "free and independent media." It is important to know what kind of media in what kind of society will perform the functions that are necessary for the process of building democratic institutions to proceed healthily. Given modern telecommunications, especially the Internet, and greater and greater cross-border data flow, the functions of the traditional press may be complemented though hardly superseded. Only with an understanding of basic elements of structure and function can policies to further a particular right to receive and impart information be evaluated.

The report of the late 1940s Hutchins Commission, in the United States, "A Free and Responsible Press" identified five responsibilities as a measure of press performance. The press should (1) provide "a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning," a commitment evidenced in part by objective reporting; (2) be "a forum for the exchange of comment and criticism," meaning in part that papers should be "common carriers" of public discussion, at least in the limited sense of carrying views contrary to their own; (3) project "a representative picture of the constituent groups in the society"; (4) "present and clarify the goals and values of the society"; and (5) provide "full access to the day's intelligence," thereby serving the public's right to be informed. The Commission also identified three summary tasks that are central to the media's political role: to provide

information, to enlighten the public so that it is capable of self-government, and to serve as a watchdog on government. It might be said that there is often an additional function of the media, namely to provide to various segments of the society a sense that they are represented in the public sphere of relevant discussion.

As Professor Baker has written, different conceptions of democracy demand somewhat different functions of the media. Visions of a democratic society that emphasize citizen participation, for example, would underscore the need for media that, as Baker puts it, “aid groups in pursuing their agendas and mobilizing for struggle and bargaining.” On the other hand, a more elitist version of democracy requires principally that the media provide sufficient information for those who participate in the public functions to act rationally, and, of course, perform a watchdog function. In some models, the media has a responsibility to assist in inculcating and transmitting “proper values.”

Frequently, the essence of transitions to greater democracy is the fragmentation or destruction of a previous monopoly or oligopoly of power (including the monopoly over information as a critical element of the monopoly over power). In many societies, reform means ensuring that there is access for a group of voices not previously included in the public marketplace of ideas. The question then is how the market is opened and to whom. Put differently, what new or additional suppliers in the market for loyalties are supported by what sources of power or money and with what objectives. Russia in the late 1990's provides an example of a transition in which media companies were, in large part, proxies for major formations of capital and political influence as each formation sought its own group of media entities.

Free and independent media may mean providing, in the marketplace of ideas, instruments for articulating values and summoning public support that are not wholly dependent on the state. Moving towards free and independent media early in the process of transition may provide a building block for the future stable set of democratic institutions. Even if the media do not perform the function of effective watchdog, of engaging in information-providing and value-transmitting functions in the early days, that may be because of lack of experience. Starting the media early on the right road means that when the watchdog and other functions are necessary, the media will be more prepared.

Free and independent media may organically arise in a mature democracy, but artificial steps are necessary in many transition contexts. Finally, one might argue that the emergence of democratic institutions in transition societies will come faster and with greater public support and involvement if there are free and independent media to develop and inspire public opinion.

When broadcast regulation is oriented towards pluralism, as Lucas Sierra has written, the reinvention of the “publicness” begins to materialise. He cites Thompson to illustrate this point:

So how, in the late twentieth century, can we create the conditions for a renewal of public life? How can we stimulate a kind of publicness that is neither part of the state nor wholly dependent on the autonomous processes of the market? We can best pursue this goal, in my view, by seeking to implement what I have described elsewhere as *the principle of regulated pluralism*.

Broadcasting, Peace, and Reconciliation

Broadcasting in general, and public service broadcasting in particular have a role to play in preventing conflict and healing in a post-conflict context. The critical nature of public service broadcasting and how it should be structured has not received the attention that it should. We have written about this question in our work on “information intervention,” namely the increasing process of the international community to enter a post-conflict zone and address the nature of the media structures there. We have above provided portions of a study of the construction of public service broadcasters in post-conflict areas such as Bosnia and Herzegovina and Kosovo.

One element of information intervention, “peace broadcasting,” is close to the role of public service broadcasting as it has evolved in the context of the international community’s relationship to conflict areas. “Peace broadcasting” has many elements. Intervention to provide “more speech” is generally acceptable and widely applauded by guardians of press and citizenship. Acclaim may be limited when those in power use “peace broadcasting” to force an entity to broadcast “corrective statements” or explanations of official positions. This type of information intervention took place in Bosnia.

In Bosnia, the international community established an alternative broadcast network and stitched together a network of existing independent stations to create alternative voices to those of the Bosnian Serbs during the period shortly after the signing of the Dayton accords. By reinforcing media independent of hard line voices, the international community sought to ensure that views in accordance with a plural and constitutional future were broadcast to the state in question. Finally, the international community could use “external radios” like Radio Liberty or the Voice of America to “peace broadcast” as, somewhat awkwardly, surrogate public service broadcasters.

Recent experiences raise important questions about “peace broadcasting.” Is it appropriate to create an “independent press” by using foreign funds, as is often attempted? Many argue that support only goes to those portions of the press that are inclined favorably to the donor’s point of view. Dr. Reino Paasilinna, a media policy scholar and Member of the European Parliament for Finland, attacked the Office of the High Representative (OHR) for supporting commercial broadcasting at the expense of public service radio and television in Bosnia “Democratization in the media cannot be guaranteed by letting the market have its way, by supporting a private network [. . .] and neglecting the public sector.”

In Liberia and elsewhere in Africa, one of the most interesting models that approximates a function of public service broadcasting is the work of the Foundation Hironnelle. We shall, as part of our more extensive research, prepare a short case study of Star Radio, Hironnelle’s important contribution during the post-conflict election period in Monrovia. Hironnelle, working together with international broadcasters, sought to establish a radio voice that would represent a plural approach to those competing in the election process, a temporary, election-specific public sphere that would give voice to entities that could not penetrate the precincts of the state broadcaster or who felt that the state broadcasting entity was biased against them. Hironnelle has a record of specialization, entering conflict areas and constructing, rapidly, public service radio outlets that can perform such missing functions.

The international mission in the Balkans, as U.S. and Western representatives saw it, was reconstitutive as well as preventive of further conflict. NATO sought to build, under the Dayton Accords (and the UN in

Kosovo), a plural society out of pieces that seem permanently fractured. The OHR believed that plural and peaceful media were indispensable to the rebuilding process. The Office proclaimed its desire to "use the opportunity to remove one of the most serious obstacles bedeviling our efforts to re-establish civil society in Bosnia," the fact that the media were ethnically based. More time is needed to judge whether or not the UN, NATO, the Organization for Security and Co-operation in Europe (OSCE), and the OHR's actions to encourage the pluralism that comes from a reconstituted public service broadcasting entity and free and independent media supported a more democratic post-conflict environment.

Regional Models

One might ask whether various evolutions are occurring that are regional in nature. For example, the debate within the European Union is pushing towards a clarification of distinct categories of offerings: one subsidizable and one that may be questionable under the Treaty of Rome. The consequence of shaping the debate in this way is to create structural distinctions. The BBC is required, virtually, to spin off certain activities that must then be free standing and have limited cross subsidization of the public service sector (at least it is a possible thrust that the public service sector cannot subsidize the profit-oriented sector; the other directional flow is considered desirable).

Broadcasting, Market Intervention, and Purposes

(a) Broadcasting, Social Goals, Public Goods, and Public Sphere

Many think that technology will aid in resolving public service broadcasting's identity and purpose crisis. To be sure, some redefinition will occur because adaptation to technology means taking structures apart and putting them back together again. But technology does not obviate choice; the new technology has the *appearance* of abundance, but public service television cannot do all things or perform best by trying to continue and intensify all of its prior goals. Barring a complete and quick technological revolution, it is necessary to look at the variety of possible definitions for public television. Among these are national

treasure, national identity; minority satisfaction or empowerment; public sphere; distributed public service; and lifeline.

National Treasure, National Identity. This definition is a reminder of the best traditions of European public television, in which the institution is culturally overarching and like the monarchy, a secular version of the Church of England, bearer and reflector of identity charged with a conscious strategic role in changing culture. This social role is enough to justify a license fee. This model is rarely the one that is used to explain public television in the United States, and U.S. public broadcasting does not have sufficient audience share to perform this role.

Minority Satisfaction or Empowerment Model. While it is often the case that a monopolist or close to monopolist state broadcaster sees it as its duty to reflect minority cultures, state broadcasters have rarely been in the service of empowerment and focus more on minimal satisfaction. Efforts toward empowerment include Channel 4 in the United Kingdom and Special Broadcasting Service (SBS) in Australia where the network is dedicated to Vietnamese, Indian, and other minority culture films and similar conscious counter-programming with the intent that diverse groups feel more meaningfully included in the Australian whole. The U.S. public broadcasting service performs this function to some extent. However, when it does it in too notorious a way, it is charged with ignoring its mainstream acculturating or reinforcing responsibility.

Public Sphere. We deal with this more specifically below, but another way of looking at purpose is to say that the public service broadcasting is an instrument of civil society, part of the creation of a public sphere. It increasingly takes on this function as the commercial entities in American television abandon that role more and more. Perhaps it will have a ceded monopoly on certain public events—like political conventions and broad-based, regional, and local television debates.

Distributed Public Service. This definition is based on functions, not specific entities. One could argue that too much of the discussion of public service broadcasting has been focused on the historic institutions rather than on the functions, while in a fragmented structural approach, the tendency is to look increasingly at the functions not the institutions. For example, the recent

Grossman-Minow study of possible funding entitled, “A Digital Gift to the Nation: Fulfilling the Promise of the Digital and Internet Age,” started with the question of what to do to assure financing of public service broadcasting. However, it ended with something quite different: a proposal to establish a Millennium Education Trust Fund “to enhance learning, broaden knowledge, support the arts and culture, and teach the skills that are necessary for the emerging Information Age.” Public stations, in this study, would be “a vital conduit” of the products and services funded by the Millennium Fund: a “mighty megaphone” rather than the cultural institution itself.

Furthermore, the function of public service would not only become detached in terms of product, but also dispersed. The mode of distributing those things, which ought to be produced in the society to establish its glue, its civic education and its cultural enrichment would devolve upon a large number of institutions which, themselves, would change. Museums would become communicators with their own websites, as would schools, universities, and ballet companies. These changes in institutional forms of content production and distribution are essential to include in a comprehensive picture of the evolution of dispersed public service broadcasting functions.

Entities that are now characterized as “commercial” might have enhanced public service functions either because of renewed obligations or because those entities that are subsidizing public service functions (foundations, corporations, and governments) determine that the commercial entities are better situated to perform them.

Lifeline. Under this definition, public service broadcasting takes on the residue of public interest obligations from commercial broadcasting, whatever they are. Under some proposals—the Children’s Television Act of 1990 in the United States is an example—commercial broadcasters, in the technological future, could shed public interest responsibilities if they were willing to pay non-commercial broadcasters to assume them in their stead.

Professor Hoffmann-Riem has written,

The example of Germany shows how difficult it is to realize the idea of a public service broadcasting in today’s context [...]. The German constitution clearly favoured the public broadcasting model, but in a commercially organized system,

public service obligations for broadcast programmes will not be guaranteed by legal regulations alone. Legal stipulations can be supportive—especially if they tally with the basic ethical view and the interests of those in position of responsibility.”

He has noted that,

The new legal battlefront makes clear that the issues have changed. Previously, the main ones were political communication and the assurance of the basic right to freedom of opinion and communication in a democracy followed by the guarantee of public service. Now the thrust is to ensure processes of economic exchange.

Perhaps the world is divided between two camps. One is where the structure of private competition has been effectively controlled or influenced by the public service broadcaster, or those who seek, as part of conditioning entry, to preserve or strengthen the place of the public service broadcaster. The other is where the development of private competition has been autonomous. Sweden and India are examples of the former category while the U.S. is an example of the latter. As the world moves toward greater distribution of public service functions, or as these functions are diminished, the response will be different depending on the proceeding broadcasting ecology. Germany may be an example where there was some effort, perhaps ineffectively, to protect the public service broadcasting. In the U.S., the “must carry rule” was an example of congressional planning specifically designed to support public service broadcasting in a time of technological change.

Mapping of the Transitions and Challenges to the Notions of PSB

Given all of this, we think that there are a number of challenges to public service broadcasting that are present in different ways in different settings. There is the challenge of digitalization, the puzzle of abundance and the continuation of shifts in the means of distribution so as to wholly shatter the image of the public service broadcaster (an image already rather shattered). Digitalization and the altered forms of distribution perforce require differences in functions and therefore differences in organization and, at the least, a reexamination of

purposes. In addition, there is the challenge of globalization. We interpret globalization, for this purpose, as the lowering of cost barriers to the access of information across national borders and, certainly, the development of new competitors challenging the hegemony of a domestic public broadcasting system. In India, the capacity of the BBC to take images from India back to London and then retransmit them to India in competition with Doordarshan has been a dramatic example of this form of globalization. New technology and globalization in this sense weaken the capacity of the state to control images that course within its boundaries. India cannot easily prohibit the depiction of the destruction of mosques or any country the depiction of images hostile to its governing authority—at least where there is active and effective competition between global public service broadcasters. At the present, there is a competition for the role of global public service broadcaster, with the BBC, through branding, extension of coverage and investment in programming leading the process. There are two additional trans-boundary challenges. The extensive transitions away from authoritarianism and toward democracy have meant a process of change, not always successful, from state to public service broadcasting. It has also meant a change within broadcasters to question whether they can contribute to the deliberative democracy aspects of transition. This has not always been a successful as transitions have also led to the kind of competition from commercial and independent broadcasters that puts pressure on the public service entity to be more aggressive and entertaining.

We have also drawn attention to two areas that are emerging as important and less frequently discussed as part of the historic and present role of public service broadcasting. These are the role of these broadcasters in preventing conflict and in helping to harmonize and soothe in the wake of conflict and the role of public service broadcasting institutions in nation-building and economic development. Most studies, which focus on US and Western European examples, do not focus on these roles as among the principal ones. But in newly independent states, in states where language fragility and cultural fragility is an important concern and in countries where there is a process of recuperation from conflict, the role that the public service entities can play is sensitive and critical.

"National, Transnational and Global Approaches to Public Media," by Marc Raboy, January 2001*

"The limits on PSBs will not be technical: they will be socio-political."

—Winsbury, 1999: 19

"In the total ecology of the broadcasting system, it seems more important to implement the criteria for good public service than to try to define what high quality is."

—Siune and Hulten, 1998: 35

"If we expect broadcasting to play the role of a 'forum for discourse' based on the new concept of the 'public', an international viewpoint is needed when looking into the role of public broadcasting as a venue for producing a space for mutual understanding.... In other words, the 'public' in the future should not be pursued solely for the people of any one country."

—Hamada, 1997: 49

Introduction

Once upon a time, states and governments representing the public interest, could—if they wished—exercise a certain constraining influence on the appetite of commercial media. Conventional wisdom has it that that era is past, although a healthy synergy still exists in many parts of the world between public policy instruments and objectives in the cultural sphere. Nonetheless, in the year 2001, it is useful—indeed imperative—to situate the future of the very idea of public service media in a global context.

* Footnotes omitted.

Great national institutions in the heartland of public service broadcasting—western Europe, Canada, Japan, Australia...—continue to occupy significant space in the media landscape. In the new democracies of Africa, Asia and central and eastern Europe, the public broadcasting model is seriously examined as an alternative to its strictly commercial counterpart. Public broadcasting no longer enjoys monopoly status, is no longer clearly distinguishable from the rest, but it remains an important reminder of the social and cultural possibilities of the media, in an age when the dominant thrust is overwhelmingly oriented towards consumerism (see Raboy 1996).

In this new, increasingly seamless and unprecedentedly global communication environment, public broadcasting is more than an outmoded utopian dream: it can be seen, in fact, as a model for public policy development with respect to media in the context of globalization, new technologies and shifting terrains of audience demographics, loyalties and behavior patterns.

There are two ways to think about public media in the context of globalization: the nostalgic vision of the conventional PSB model, fixed in time and place, a throwback to a bygone era... and a forward-looking vision focused on imagining new models, reproducing the *values* of PSB but searching for new institutional forms for promoting these values. Let me begin by recalling some aspects of the concept of PSB.

The Idea of the Public

In a remarkable article published in the only issue of a short-lived Canadian journal in 1960, an adult education activist by the name of Alan Thomas explored the distinctions between three notions of the same thing: the audience, the market, and the public.

Thomas reflected that the evolution of Canadian broadcasting had been dominated by the interaction between these different ways of describing the receiving end of broadcasting.

The market, Thomas noted, is characterized by attention to things rather than people; in the name of freedom of enterprise, it is attentive to the interests of "private" operators; in Canada, the market tended to be by nature continental rather than national, "and its uncontrolled operations have been seen as hostile to the existence of Canada as a national entity".

The public, on the other hand, is identified with the state and the community; Canada's problem was how to create a genuine public out of separate geographic (as well as linguistic and cultural) communities: "The whole history of Canada has been a conflict between the public which is Canadian and the market which has been predominantly American." There was a conflict here between the classical Athenian notion of the public and the public that had developed with the age of broadcasting.

The audience is something else again, Thomas wrote. Considered passive, the audience is made up of members of a public, as well as a potential market, when they are tuned in. Unlike the public or the market, the audience is wholly a creation of broadcasting—it does not exist without it.

The crux of Thomas' argument was that media tend to address people as members of an audience, not a public; media *policy*, however, attempts to restore the balance in broadcasting where market considerations have outstripped public ones in their relations with the audience. Audience and market tend to create a state of equilibrium. Restoring the role of the public requires some kind of intervention to counteract that.

The idea of the public in a context of globalization can be viewed through a similar lens. In *The Power Elite*, Mills recalled that the most important feature of 'the public of opinion', that had arisen with the democratic middle class, was 'the free ebb and flow of discussion' and the possibility of 'answering back' through autonomous organs of public opinion, actively realized within the established democratic institutions of power. (Thomas had written that one way of enhancing the role of the public was to create stronger two-way channels between producer and audience.) The image of this classical democratic public was already something of an illusion in the 1950s America of which Mills wrote.

Mills reviewed the political process through which this had come about: the arrival of mass democracy upset the democratic society of publics, by placing the sovereignty of 'the people' over that of the individual. The harmony of interests assumed by the democratic society of publics had given way to the doctrine of class struggle. The idea of rational decisions based on public discussion was bypassed by the insistence on a need for experts, and by the notion of irrational man.

Mills then made a clear distinction between the public and the mass, a distinction he tied explicitly to the role of media:

In a public... (1) virtually as many people express opinions as receive them. (2) Public communications are so organized that there is a chance immediately and effectively to answer back any opinions expressed in public. Opinion formed by such discussion (3) readily finds an outlet in effective action, even against—if necessary—the prevailing system of authority. And (4) authoritative institutions do not penetrate the public, which is more or less autonomous in its operations.

At the opposite extreme, in a mass, (1) far fewer people express opinions than receive them; for the community of publics becomes an abstract collection of individuals who receive impressions from the mass media. (2) The communications that prevail are so organized that it is difficult or impossible for the individual to answer back immediately or with any effect. (3) The realization of opinion in action is controlled by authorities who organize and control the channels of such action. The mass has no autonomy from institutions.

Nearly fifty years later, one can read in this passage an opposition of the realities of conventional mass media and the promise or potential of the best offered by the so-called "new media". Or, one can read this as an opposition between the ideal and the reality of conventional nationally-based public service broadcasting, as Thomas might have. Mills was not talking about PSB, of which we have no evidence he was even particularly aware. But his text, read alongside that of his contemporary, Thomas, allows us to think about the democratic possibilities of a new public service media model, grounded in the technological and geopolitical context of the 2000s.

The Idea of Public Broadcasting

Today's notion of the public collides and overlaps with other contested, still useful, notions in need of re-problematization: notions such as community, nation, citizen, consumer etc.

What holds these together is that they are all possible discourses of legitimation for public policy intervention in various spheres of human activity, particularly for national states.

The idea of the public, however, is a particularly useful construct when it comes to legitimating policy intervention with respect to media and communication. What are the new discourses on public media in an age of global politics and instantaneous communication? Can we speak of promoting and protecting normative values with respect to new media such as the Internet? Can we translate pre-globalization notions of the public, confined within the borders of national states, to anything approaching a transnational or global public sphere? Can there be such a thing as cultural rights and entitlements beyond the framework of the national welfare state?

National peculiarities aside, questions concerning media structures are increasingly global ones. In the new broadcasting environment, the issue of public service broadcasting can be reduced to this: What social and cultural goals attributed to broadcasting require a specially mandated, non-commercially driven organization, publicly owned, publicly funded to the extent necessary, and publicly accountable.

Broadcasters, politicians, media professionals and creative people, community activists, and scholars worldwide were wrestling with this question in the year 2000. While the diagnosis is global, the prescriptions are necessarily context-specific. When we put them together, however, we find in the range of models, examples, and ways of framing the issues the basis for a global portrait and a sketch of a solution.

The context of technological convergence and the accompanying policy debates can help to further clarify the concept of public service with respect to media generally and, hence, to develop a more appropriate conception of public service broadcasting. In telecommunication, for example, the concept of universal public service has been much more clear and straightforward than in broadcasting. The principle of universality has been tied to the operational provision of affordable access (not an issue in broadcasting as long as the main means of transmission was over-the-air, but increasingly so with the addition of various tiers of chargeable services).

The displacement of universal service by subscriber-based and pay-per-view services is the strongest factor favouring a shift toward the consumer model in broadcasting, and proponents of public broadcasting feel that this needs to be countered by policy measures and institutional mechanisms to promote the democratic function of broadcasting. This can only come about through a rethinking of what we mean by public service broadcasting.

For example, traditionally, public service broadcasting has been expected to represent the national as opposed to the foreign. It may be time to refocus these conceptual categories in terms of the local and the global. Global cultural industries recognize this by developing products targeted to "niche markets". Public broadcasting has a different role, which it seeks to fulfill principally by conceiving its audience as a public rather than a market. Some programmes may speak to a particular national public, but on any given national territory there will be less-than-national broadcasting needs to be fulfilled. National networks can no longer be expected to be forces of cohesion; they can, however, be highly effective distribution systems for programmes of importance to the communities they serve. For this to occur, public service broadcasting needs to be redefined in terms suitable to a new public culture, global in scope and experienced locally.

Nothing in the idea of public service broadcasting ties it intrinsically to that of nationhood. It is, however, necessarily linked to notions of community. In order to flourish in the future, public service broadcasting will need to be reconceptualized in the context of a changing role for the still-present, still formidable (for lack of a structure to replace it) nation state. As the alternative to the state becomes the market, the alternative to national public service broadcasting has been constructed as private sector broadcasting; this parallel is logically flawed as well as politically shortsighted. The globalization of markets is both global and local, in that global products are usually produced in a single place, distributed worldwide and consumed locally, everywhere. As the nation state struggles to find its way in this new environment, so does public service broadcasting. It is false to assume, however, that there is no longer a need for public service broadcasting, for this is at present the only established medium that can still be said to place social and cultural concerns before the imperatives of the marketplace.

Today, despite the rapid move towards globalization, broadcasting is still legally constituted within the confines of national borders. Every national government is at some point faced with making some basic decisions about broadcasting, if only to consider the allocation of frequencies to which it is entitled by international agreements. The immediate result of these decisions is a *national broadcasting system* in every country, made up of one or more component parts.

One encounters a variety of existing broadcasting institutions in this global environment. Despite a great variation from one country to the next, however, there are only three basic types of national system, each of which, while possibly encompassing different institutions, is built around a 'core' in which one particular institutional form is dominant. These three main types are what I call 'public service core systems', 'private enterprise core systems', and 'state core systems'.

Most of the countries we think about when we talk about public broadcasting in the conventional sense have established public service core systems. These are the systems in which the BBCs, CBCs, ABCs and so forth have flourished over the years. These are also the countries in which the question of financing has been most difficult recently. For obvious reasons, we have all been anxiously watching the evolution of these broadcasters and their efforts to adapt to the challenges of the new environment.

Public broadcasting has been relatively underdeveloped in those countries with what I call private enterprise core systems—such as the USA, where public broadcasting was never intended to be the central component of the system. In private enterprise core systems, public broadcasting has been positioned as a marginal 'alternative' to commercial broadcasting.

The state core systems include the 'residual' systems of countries which have not yet broken with the tradition of a single, monolithic national broadcaster, as well as 'emergent' systems which, although built around a state-owned and controlled broadcaster, are opening up to alternative commercial and community voices, such as one finds in parts of Asia and Africa where democratization is on the agenda. They also include the former Soviet-bloc countries, which can also be described as 'transitional', insofar as they seem to be inclined towards the existing dominant models.

In the context of globalization, *all of these hitherto national systems are merging into a single global system made up of a mix of public, private and other types of broadcasters*. As an increasingly transnational political system emerges, new cross-border public service media are beginning to emerge, buttressed by the existing national frameworks. Television services such as TV5 and ARTE are examples of this. Associations of community radio broadcasters, video makers, and progressive Internauts abound at other points of the spectrum. The point is this: In a system, which is predominantly influenced by market forces, an important place should be reserved for institutions, which promote the cultural development on which the quality of democratic public life depends. This is a political project that can be approached from a perspective of media policy. In the very near future we need to begin paying a lot more attention to the *global ecology of broadcasting* as a public service environment.

Transcending the National

In light of the growing commercialization of all media, public broadcasting continues to designate a strong value of social worth, the 'last best hope' for socially purposeful media acting in the public interest. But traditional public service broadcasters are all facing pressure to diversify funding sources and increase mass-market programming at the very time that all broadcasters' market shares are inevitably in decline (due to the sheer multiplicity of channels) and competition for revenues, both public and commercial, is more intense than it has ever been.

It is now apparent that, in order to survive, every broadcaster needs to find a place for itself within an overall broadcasting system that is simultaneously both local (which, in most cases, still means 'national') and global. There is still no substitute for independent, publicly-funded public service broadcasting organizations, as the Council of Europe acknowledged in 1994 when it identified public broadcasting as essential to the healthy functioning of the media in a democratic society. But at the systemic level there is an important shift underway: more and more, public authorities are looking towards the capacity of national broadcasting systems *as a whole* to meet public interest goals and objectives.

The inclusion in the 1997 Amsterdam Treaty of a European Protocol in favour of PSB was an important step in this direction. This was one of the first concrete transnational agreements to support noncommercial practices in the sphere of culture. Its basic point was that despite the emphasis on markets and trade in international agreements, national governments could still, legitimately, make policies and promote cultural institutions that would foster values and objectives outside the sphere of commerce. Not only did this declaration demonstrate the power of politicians to resist commercial pressures, it was the first and to this date most substantial example of a cultural exception to the new rules of deregulation that are being negotiated and applied by transnational authorities. It is no coincidence that this occurred in the area of public broadcasting. It is both an interesting policy model and a harbinger of the possible usefulness of the PSB model in developing new public media forms in the transnational, convergence-driven media environment.

The EU protocol considers 'that the system of public broadcasting in the Member States (of the European Union) is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism'. This in itself is important in terms of legitimation of public service broadcasting at a time when its basis is under attack on both ideological and economic grounds. It links public broadcasting to the question of democracy, emphasizes its sociocultural nature as a public service, and underscores the distinctive role of public broadcasting in an otherwise uniformly commercial system.

An analysis of the Protocol produced at the time by the European Broadcasting Union remarked that this was 'the first time that the role and specific nature of public service broadcasting have been explicitly recognized within the legal framework of the European Union.'

The Protocol strengthens the dual broadcasting system, for which all European states have opted, and provides legal security for public funding. Moreover, it conveys a strong message about Europe's approach to the information society and responds to the calls of the European Parliament and the Council of Europe for the independence of public service broadcasting to be safeguarded through an appropriate, secure and transparent funding framework.

The Protocol represented a political consensus and sent an important signal, according to the EBU, but 'the effectiveness of this guarantee will probably depend on a clear, sufficiently broad definition being set out by each Member State of the public service remit conferred upon the public service broadcasting organizations'.

Multilateralism

The question of public media has also figured prominently in recent debates at the multilateral level.

The World Commission on Culture and Development, created in 1991 by the United Nations and UNESCO, reported to the UNESCO General Assembly in November 1995. In a broad review of cultural issues ranging from ethics to the environment, the WCCD proposed an international agenda for developing global policy with respect to cultural development. Several chapters and proposals relating to mass media and new global issues in mass communication were framed by the following question: *'How can the world's growing media capacities be channelled so as to support cultural diversity and democratic discourse?'*

The WCCD recognized that while many countries were dealing individually with various important aspects of this question, the time had come for a transfer of emphasis from the national to the international level. While many countries still needed to be incited to put in place or modernize existing national frameworks, a transfer of attention was now justified.

"Concentration of media ownership and production is becoming even more striking internationally than it is nationally, making the global media ever more market-driven. In this context, can the kind of pluralist 'mixed economy' media system which is emerging in many countries be encouraged globally? Can we envisage a world public sphere in which there is room for alternative voices? Can the media professionals sit down together with policy-makers and consumers to work out mechanisms that promote access and a diversity of expression despite the acutely competitive environment that drives the media moguls apart?"

The WCCD admitted that it did not have ready answers to these questions, but that answers had to be sought through international dialogue:

"Many specialists have told the Commission how important it would be to arrive at an international balance between public and private interests. They envision a common ground of public interest on a transnational scale. They suggest that different national approaches can be aligned, that broadly acceptable guidelines could be elaborated with the active participation of the principal actors, that new international rules are not a pipe-dream but could emerge through the forging of transnational alliances across the public and private media space."

In short, "There is room for an international framework that complements national regulatory frameworks".

The WCCD's international agenda contained a series of specific proposals aimed at "enhancing access, diversity and competition of the international media system", based on the assertion that the airwaves and space are "part of the global commons, a collective asset that belongs to all humankind". Just as national community and public media services require public subsidy,

...internationally, the redistribution of benefits from the growing global commercial media activity could help subsidize the rest. As a first step, and within a market context, the Commission suggests that the time may have come for commercial regional or international satellite radio and television interests, which now use the global commons free of charge to contribute to the financing of a more plural media system. New revenue could be invested in alternative programming for international distribution.

The WCCD called for a feasibility study, to be conducted under the auspices of the United Nations system, to determine the possibility of establishing international alternative broadcasting services, including funding requirements. The study should begin to explore appropriate global mechanisms analogous to national models of public service broadcasting, the report said.

One of the most crucial aspects of this question that needs to be addressed is how to avoid such a discussion becoming yet another debate among states, each representing its own national interest and those of its partners in the private sector, rather than among a global public dealing with global issues, across national borders and in quest of a global public interest.

The "Action Plan for Cultural Policies for Development", adopted at the 1998 UNESCO-sponsored Intergovernmental Conference on Cultural Policies for Development in Stockholm, provided some important examples that can serve as a starting point for discussion on such matters. Recognizing that "in a democratic framework civil society will become increasingly important in the field of culture", the conference endorsed a dozen principles including the fundamental right of access to and participation in cultural life, and the cultural policy objective of establishing structures and securing adequate resources necessary "to create an environment conducive to human fulfilment."

Among the relevant policy recommendations, the conference asked UNESCO member states to:

"Promote communication networks, including radio, television and information technologies which serve the cultural and educational needs of the public; encourage the commitment of radio, television, the press and the other media to cultural development issues... , while guaranteeing the editorial independence of the public service media..."

"Consider providing public radio and television and promote space for community, linguistic and minority services..."

"Adopt or reinforce national efforts that foster media pluralism and freedom of expression..."

"Promote the development and use of new technologies and new communication and information services, stress the importance of access to information highways and services at affordable prices..."

The appearance of such an action plan endorsed by 140 governments under the sponsorship of a world intergovernment organization was certainly uplifting, but the subtext and context surrounding its adoption also pointed to the difficulties that lay ahead. It took two-and-a-half years to organize the Stockholm Conference, following the tabling of the WCCD Report on which the working documents presented in Stockholm were based. The proactive thrust of that report, based on the use of existing policy mechanisms and the extension of the national policy logic to the global level, did not survive the diplomatic horse-trading that culminated in the Action Plan adopted in Stockholm.

Furthermore, the draft version of the action plan presented at the outset of the conference was far more affirmative in encouraging member states to provide public radio and television (rather than merely "consider" their provision), and in calling for international as well as national legislation to promote media pluralism. Significantly, a proposal that such legislation foster "competition and prevent excessive concentration of media ownership" was changed to refer instead to "freedom of expression". A proposal to "promote the Internet as a universal public service by fostering connectivity and not-for-profit user consortia and by adopting reasonable pricing policies" disappeared from the final text.

Globalization

As we have seen, the limits and possibilities of policymaking are cast into sharp relief by the various aspects of what has come to be known as globalization—a situation that I would define as being characterized by the following six broad characteristics: the diminishing sovereignty of national states; the increasing integration of the world economy; the technologically-based shrinking of time and space; the passing of received ideas about identity; the emergence of new geographically dispersed yet locally-based global networks; and the establishment of a new framework for global governance.

In the sphere of media and communication, public policy has historically sought to overcome the constraints of scarce resources—as in the case of radio and later, television, air waves, for example. In today's information environment, scarcity is no longer the problem, the problem is access. Today's policy issues must address the problems raised by information abundance and the need to

be sure that this cornucopia of information is meaningfully accessible to citizens and not only packaged as marketable commodities or targeted to elites.

Access to the means of communication can be defined from the point of view of the receiver or from that of the producer, that is to say, as the capacity to receive everything that is available or as the possibility to bring one's messages to the audience. To the extent that market forces alone can never guarantee access, in either of these terms, governments, regulatory authorities and media institutions must develop and implement policies designed to maximize access. The need to ensure access thus remains an important justification of the need for public policy in the sphere of communication.

Regulation, too, still has a role to play in ensuring equitable access to distribution markets for producers and consumers, and in ensuring that the means of communication can be channeled towards social and cultural objectives. Regulatory frameworks may vary considerably from one context to another, but they are always, necessarily in democratic societies, part of a public policy process. Opening up the process of policymaking, policy evaluation and regulation to broader public participation is therefore an important aspect of access to communication.

Access is also one of the key operative concepts of models that see communication technologies as instruments of social and cultural development. In general, this requires mechanisms to ensure accessibility to channels of production and distribution for all those capable of rallying a minimal public, increasing interactivity in the relations between creators and their publics, and providing for feedback which can ultimately result in corrective measures.

According to classical liberal press theory, unconstrained access to the marketplace is considered to be the best guarantee for the free expression of ideas. The limitations of the market mechanism in providing freedom of information eventually generated its own critique, in light of which the idea that access to the means of communication needed legal and even constitutional assurances rapidly gained currency in the 20th century.

In countries such as Canada, Australia, Japan and most of western Europe, access to reception was guaranteed in the charters of public broadcasting organizations, whose mandates obliged them to make their signals available throughout the territories in which they operated. To a greater

or lesser degree, many of these organizations were also noncommercial and required to provide a range of diverse opinion in their programming.

With the emergence of an increasingly seamless global communication environment, critics concerned about the sociocultural role and democratic function of media have had to refocus their attention. The new context of technological "convergence" between established communication forms demands that we develop a new conception of access.

To illustrate, consider what happens when conventional broadcast media and telecommunication technologies converge. The notion of access has traditionally meant different things in broadcasting and in telecommunication. In the broadcasting model, emphasis is placed on the receiver, and access refers to the capacity to choose from the entire range of content on offer. In the telecommunication model, emphasis is on the sender, and access refers to the capacity to use the means of communication to get one's messages out. Within these two models, public policy and regulation have been recognized as necessary social measures for guaranteeing access.

In the context of new media, a hybrid conception of access is necessary, and public policy will need to promote a model of communication which combines the social and cultural objectives of established institutional forms—not only broadcasting and telecommunication, but also libraries, the education system, and so on. Critically, realizing the social and cultural potential of new media requires ensuring maximum access for people to the means of communication both in their capacity of receivers and consumers of services and as producers and senders of messages.

Convergence, globalization and the general evolution of contemporary societies thus provide a formidable new set of challenges to public broadcasting organizations, whose role and function remains critical to democratic society, as we have seen. To think that they can meet these challenges may well be a utopian dream. But the very possibility of channeling public media for the good of humanity make it essential to try turning that dream into reality, even if it means pushing the boundaries of imagination in new and audacious directions.

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