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Contents

Introduction

The extensive and intense transformation of the audiovisual industry as a result of the impact of certain factors such as technological convergence, digitalisation, the spread of the Internet and the appearance of web 2.0, among others, has forced us to extensively rethink the legal regulation of audiovisual media and services. After a long period of consultation, in December 2007 the European Union finally adopted the new Audiovisual Media Services Directive which, without abandoning the guiding principles of the old Television Without Frontiers Directive (1989), aims to adapt the regulatory framework in Europe to the new structural changes. At the lower level of the member States, these changes mean that the frameworks of audiovisual regulation and of the distribution of powers between the public and private sector or between territories also need to be adapted. In Catalonia, the legislator has made a significant effort in this area over the last few years, while Spain's efforts have only managed to reform state radio and television, with state laws on audiovisual communication and the creation of a state audiovisual authority being postponed.

The aim of this edition of *Quaderns* has been to gather together work by highly qualified experts in order to provide a state of the art for this area and a critical evaluation of the main changes in audiovisual regulation of the last few years. The importance of the new European Directive is the subject that starts this monograph, written by Monica Ariño, advisor to the British broadcasting regulator Ofcom ("Online video content: Regulation 2.0? An analysis within the context of the new Audiovisual Media Services Directive"). Lecturer Antoni Bayona presents a conscientious analysis of the contribution and innovation provided by Catalan legislation from 2000 to 2007 ("Catalan audiovisual legislation: present and future"). With regard to debates on regulation in Spain, lecturer José Carlos Laguna de Paz ("'Twenty years is nothing' in television regulation") and lecturer Andrés Boix Palop ("Transformations in the media ecosystem and new patterns of the administrative regulation of audiovisual communication") argue their respective positions. From a more general perspective, the monograph concludes with an article by researcher Laura Gómez Bustos "The UNESCO convention on cultural diversity and the law of the World Trade Organisation: conflict or complementarity?" and the thought-provoking work by lecturer Marc Carrillo entitled "Internet: the law's response to virtual public space".

In the miscellaneous section of the "Observatory", we offer various articles from different lines of media research in Catalonia: "News production on television", by Rosario de Mateo, Laura Bergés and Marta Sabater; "The models of love in TV fictional series. Case study: *Porca misèria*", by Pilar Medina, Miquel Rodrigo, Sue Aran, Rosa-Àuria Munté and Joan Tharrats; "Television schedules in the transition to the 21st century", by Jordi A. Jauset, and "The debt of Sogecable and Prisa: analysis and genesis of a high risk global business strategy", by Núria Almiron.

Josep Gifreu
Director

Online video content: Regulation 2.0? An analysis in the context of the new Audiovisual Media Services Directive[1]

Monica Ariño

This paper explores the challenges faced by content regulators in Europe in the light of the increasing online delivery of video material. The discussion is informed by the recently adopted Audiovisual Media Services Directive, which modernises the European framework for content regulation and which will need to be implemented in the Member States by the end of 2009.

Keywords

Regulation, audiovisual, online video, web 2.0, Audiovisual Media Services Directive.

Monica Ariño
International policy advisor for Ofcom [2]

> 'The future is not an overarching leap into the distance; it begins in the present.'
>
> (Daniel Bell, 1967)

Introduction: A user-centric convergence

In 2006, U.S. *TIME* Magazine feature "You" as *Person of the Year*, an award that is given to a man, woman, couple, group, idea, place, or machine that "for better or for worse, ...has done the most to influence the events of the year".[3] Why?

> *"For seizing the reins of the global media, for founding and framing the new digital democracy, for working for nothing and beating the pros at their own game."*

This was a recognition of the impact that the so-called "Web 2.0" phenomenon, which can be described as a second generation of Internet based services that emphasize online collaboration and sharing among users, has had in the architecture of communications and media more generally, and by extension in the way citizens' all around the world engage with and participate in their societies.

1 This paper draws on an earlier publicationr: Ariño, M. "Content Regulation and New Media. A case study of online video portals" in *Communications & Strategies*, no. 66, 115-135.

2 Monica Ariño works as an international policy advisor for Ofcom, the UK media and communications regulator. The views expressed in this paper are those of the author and are not endorsed nor do they necessarily reflect Ofcom's position in any of the issues discussed.

3 Time. *Person of the Year: 75th Anniversary Celebration*. Special Collector's Edition, Time Books, 2002

At the heart of the web 2.0 concept is the idea that users are not just browsing and consuming content in the traditional media fashion, but they participate, contribute, create, reuse, repurpose, rank, link, and share the content with other users, generally at a global scale. Examples include social networking sites (*MySpace* and *Facebook*), wikis, sharing sites allowing users to upload photographs (*Flickr*), music profiles (*Last.fm*), favourites (*del.icio.us*) or videos (*YouTube* or *Dailymotion*), and mash-ups. Crucially, applications and services are not just rivals, but mutually enhancing (40% of *YouTube*'s videos are viewed on *MySpace*). The fact that consumers actively look for content as opposed to waiting for the content to be pushed to them, that they not only consume, but also create, alter and share that content, has brought in a whole new perspective of the potential of convergence. It illustrates the central role that the user –rather than the provider or the device– is meant to play in a convergent environment. As John Naugton (2006) suggests, in a "net-centric" world the consumer is in charge.

Convergence and the ubiquitous Internet are thus altering the very foundations of information and communications exchanges, providing for a new and powerful means of freedom of expression, encouraging greater participation in democratic processes, and contributing to the development of a new and different public sphere. As high-speed broadband penetration grows, next-generation networks are rolled out, and spectrum is freed up for new and varied uses, the integration, combination of services and platforms and the extent of consumer empowerment will continue to increase.

In this context, this paper considers the challenges faced by traditional content regulators through a case study of online video portals. These are widely defined as websites or applications providing access to television services, or to video material, which can be either of a professional nature, semi-professional, or created by users and that is generally viwed on a PC. The discussion is limited to regulatory approaches within Europe, and informed by the new Audiovisual Media Services (AVMS) Directive, which reviews the Television without Frontiers Directive, in an attempt to modernise the rules that apply to the cross-border provision of television broadcasting services and address the challenges posed by new video content delivery.[4] Despite agreement on what the newly extended scope of the Directive should be, there are still open questions as regards the treatment of audiovisual services that remain outside of the Directive's scope, as well as those services which might sit in the boundary. These questions are critical, since Member States are currently considering the options for transposition and implementation into national law. This creates an opportunity to reflect on whether traditional approaches to the regulation of content (including current institutional arrangements) remain fit for purpose.

After a short description of current trends in consumption and distribution of audiovisual content on the Internet, I discuss the challenges to regulate content in a new media environment, with an emphasis on the difficulties around the practical application of the criteria that should determine the "regulability" (i.e., elegibility for sector specific regulation) of online video services. The AVMS Directive is used as the starting basis for the analysis, but the discussion aims to be wider in scope in an attempt to break free from what risk being artificial distinctions between services, looking at the ultimate rationale for regulation.

I argue that traditional regulatory instruments and tools are not only inappropriate but also unlikely to prove an effective means of delivering protection in the online video environment, particularly if consumers remain unaware of where regulatory protection begins and ends, and of where they should be taking greater responsibility. Even if the unsuitability of traditional models is increasingly accepted, it is yet to be translated into regulatory practice. Furthermore, the question of what alternative mechanisms should be used to deliver protection remains subject to debate and controversy. In the new environment, regulators should also adapt their roles, focusing their efforts on facilitating a dialogue between the various actors, encouraging greater and more informed involvement from users and cooperating with their

4 Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 332/27 of 18 December 2007.

international counterparts. There will always be a 'next YouTube' that will test regulatory solutions and question the fundamental principles behind them. The credibility of media regulatory systems critically depends on whether they pass such test.

Online video portals. And then there was video…

Whereas just a few years ago, demand for online video content was technically constrained and there was little mainstream content legally available, today it seems almost impossible to discuss content regulation without mentioning *YouTube*, the paradigm of online video distribution. And yet, online video portals are a relatively new phenomenon. *YouTube* itself was created in February 2005, but only officially launched in December 2005, the same month when the Commission published its proposals for a new Directive.

Over the last couple of years, video blogs (online diaries where individuals post personal videos alongside text), online video portals and video sharing sites that allow users to upload and share videos, music, pictures and other information have mushroomed and their popularity is growing rapidly. Based in California and with less than a hundred employees, *YouTube* was receiving around 70,000 new uploads per day in 2007, and over 100 million downloads, with videos lasting from 5 seconds to 20 minutes.

Not all video portals are the result of Californian inspiration. *YouTube* is probably the most popular of the thousands of services offering online content distribution, but it is certainly not the only one. Some of the most prominent sites include *Dailymotion*, a French-based video portal translated into six languages and which offers search and zoom options. *Metacafe*, an Israeli site specialised in astonishing or particularly provocative videos, also offers other content such as games or gallery images. Other major video sharing sites are *Google Video, VideoEgg, Guba, Grouper, Blip.tv, Gotuit, iFilm, Neave.tv* or *Veoh Networks*. There are also video aggregators like Mefeedia who do not host content themselves but rather help users navigate and find content from other various sources. While most are largely platforms for the delivery of amateur content, some aspire to provide a TV-like viewing experience, and are starting to offer professional and premium content. In addition, social networking sites such as *MySpace, Facebook* or *Bebo* are increasingly offering video sharing features and are planning to reach beyond computer screens to mobile phones.

If you can't beat them, join them

Several traditional broadcasting, print and telecommunications companies are responding to these developments by embracing the philosophy and technologies of Web 2.0. In the UK, for example, broadcasters are expanding into the online content distribution market. The *BBC*'s interactive Media Player uses P2P technology to give viewers the chance to catch up on TV and radio programmes they have missed for up to seven days after broadcast. *Sky Anytime* offers premium subscribers on-demand access to 400 films, news bulletins and pay-per-view content, while *Channel 4* and *ITV* are also making the majority of their output available for download.

This is a good illustration of how traditional broadcasters are seeing new media as an opportunity, and not just a challenge. Initially perceived as a threat to established media companies, who feared piracy and who viewed video sharing portals as simply enabling illegal copying, the TV and film industries seem to have learnt from the experience in the music sector and are seeking to develop innovative services designed to meet demand for downloaded video content in a manner that does not violate intellectual property rights. The established media have also seen the benefit of working in partnership with the new media, reaching deals and contractual agreements to enhance the distribution and promotion of their content through new outlets (e.g., *NBC* and the *BBC* with *YouTube*, or *MTV* with *iFilm*).

Get played and get paid

In the web 2.0 environment, business models primarily rely on making available content or services for free, with increasingly embedded advertising. For example, *Grouper* offers over 100 clips from Sony movies, and encourages users to embed, share and send them to others. Each video clip incorporates an advert at the end encouraging the user to buy the entire film, with a link to the *Sony* online store. But this is not just an ad-supported market, and a number of players are participating and generating revenue in non-

traditional ways. A few community video portals such as *Eefoof* or *Revver* have recently started to share revenue with video owners that upload their videos to the site. *LuluTV*, for example, puts 80% of the site's ad revenue into a cash pool and pays video creators based on their share of the traffic. *Metacafe* is also paying their top producers and keeps a running tally of the site's top earners on the front page.

Regulating new media content: The Audiovisual Media Services Directive

The new Audiovisual Media Services Directive represents the European attempt to address the regulatory challenges posed by new video content delivery, if only partially. The intention is to provide the basic framework for the regulation of new audiovisual services in a converged and technologically neutral manner. The European Commission also wanted to achieve a "level playing field" between traditional broadcasters and providers of video-on-demand services, so far categorised as "information society services" under the E-commerce Directive[5] and therefore excluded from the application of minimum content rules.

The Commission initially proposed to extend the scope of the Directive to cover "audiovisual media services" and defined these as any service providing moving images with or without sound, in order to inform, entertain or educate the general public by electronic communications networks.[6] This was a very wide definition, which could potentially have resulted in the extension of regulation far beyond traditional TV broadcasting to a wide array of other content services including video blogs, or websites hosting or sharing user-generated content, mobile multimedia applications, and even online games or gambling websites. After intense discussions in both the Council and the Parliament, the scope of the Directive has been narrowed down to so-called "television-like" services. In other words, the Directive only covers services which are essentially similar in form and content to television broadcasting, but delivered on-demand, and in respect of which users might expect some kind of regulatory protection. The Directive aspires to be technologically neutral, and covers any such services, irrespective of the technology used to deliver them, or the platform through which they are accessed.

In recognition of the fact that users exercise greater choice and control over on-demand offers, the Directive distinguishes between linear and non-linear services, and applies different regulatory requirements: linear services are defined as analogous to television broadcasting, with scheduled content 'pushed' by the broadcaster to the viewer, while non-linear services are 'pulled' by the viewer. The Directive applies a higher tier of regulatory controls to linear services, similar to the ones currently applied to television broadcasting, albeit with some modest liberalisation of advertising restrictions (for example the removal of the requirement that twenty minutes elapse between advertising breaks) and product placement, which can now be permitted in certain genres (e.g., cinematographic films and series made for television) and under certain conditions (e.g., signalling requirements and no undue prominence). On-demand services, on the other hand, are subject to lower levels of regulation, primarily designed to provide protections for minors against content which could seriously cause harm (i.e., adult and extremely violent content), prohibit content which incites to hatred on the basis of sex, religion, race and nationality, promote the production and distribution of European works, encourage greater access to services by people with disabilities, and ensure that the content meets minimum qualitative advertising rules (e.g., general prohibition of tobacco advertising and restrictions on advertising of alcohol to minors).

Finally, the Directive puts a strong emphasis on self and co-regulation as effective means for implementation of the non-linear tier, recognising that in the new media environ-

5 Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

6 Article 1a of Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, COM (2005) 0646 final.

ment where technology and markets change rapidly and where viewers are taking greater responsibility for their media consumption, self and co-regulation schemes can prove to be a better and more flexible means of delivering a high level of consumer protection. Debates in the Council and in the Parliament also highlighted the importance of media literacy, understood as the skills, knowledge and understanding that enable people to use media effectively. In this respect, media literacy is seen as a necessary condition for the success of any self and co-regulatory initiatives.

Implementation in the Member States

The Directive was finally adopted in December 2007, and stipulates a two-year period for transposition into national law. The challenges for legislators and regulators are many and varied. Far from being a straightforward exercise, national implementation will most likely raise, again, questions about the appropriateness or otherwise of regulating audiovisual content on the Internet.

The Directive establishes only minimum requirements, but Member States can go further and adopt stricter rules in accordance with their national interests and culture (which most have done in the area of broadcasting). The European Commission has called for a "light touch" implementation, in the hope that Member States will refrain from implementing a detailed and burdensome regime, as currently exists for television. Although this is certainly welcome, it is yet to be seen whether, in effect, the detailed design of national rules applicable to this new category of services will reflect the difference in consumption patterns, as well as the greater degree of choice and control exercised by users.

Approaches are likely to vary across Europe, as a result of different constitutional frameworks and institutional settings. In most European countries (including Spain), video-on-demand is currently unregulated beyond the application of the general law, while in other countries (for example the UK) an industry self-regulatory body (the Association for Television on-Demand or ATVOD) has been in place for some years now. It is expected that in the majority of Member States, legislation will be adopted to extend the remit of broadcasting regulators to cover video-on-demand content. In some countries, such as Germany, the regulatory framework already extends to video-on-demand and, more widely, to content in the internet, but only insofar as the protection of minors is concerned. Day-to-day monitoring and enforcement activities have been delegated to a separate self-regulatory body (Freiwilligen Selbstkontrolle Multimedia) set up by the online industry and formally accredited and entrusted to attend to issues concerning harmful and illegal material on the internet.[7]

It is important that Member States give careful consideration to the extension of the competences of broadcasting regulators, not only because of the practical challenges associated with it, but also because it will inevitably create a risk of progressive regulatory creep into Internet video content more generally, something that, as will be argued next, is both problematic in principle and in practice.

What criteria for regulability?

What criteria should determine the "regulability" of an audiovisual media service?[8] To answer this question, we need to look at Article 1 of the new Directive and accompanying recitals. Taken together, these various provisions define when a particular service falls within scope.

Firstly, we need to ask whether the specific object of regulatory attention is *video* (moving images with or without sound). In most cases, particularly as we move forward, it will be increasingly the case that Internet services will include some audiovisual component. Secondly, we need to look at whether the video can be described as being *'TV programming'*, in other words, whether the content is of a kind and in a form suitable for, or characteristic of, television broadcasting. The idea would be that the presentation, layout, shape and form of the programmes conform to what

7 For a detailed overview of the German co-regulatory system see Palzer (2003) and Schulz and Sheuer (2004).

8 *Regulability* means, in this context, the fulfilment of certain criteria that establish the nature of a service and, accordingly, the pertinence of applying sectoral rules in order to achieve specific public policy goals. It does not mean the practical possibility to regulate services in an effectively enforceable manner.

we recognise as television broadcasting. For example, the programme has opening and end credits, a narrative to it, and it is presented as an individual item. The Directive provides some examples of programmes such as feature-length films, sports events, situation comedy, documentary, children's programmes and original drama. Thirdly, we need to identify where the editorial responsibility for the service (and not necessarily for the content) lies. Editorial responsibility can be defined as the exercise of prior and continouos control both over the selection of the programmes and over their organisation either in a chronological schedule or in a catalogue. The concepts of editorial responsibility and service are intrinsically linked, and together will identify the "media service provider" who is liable for regulatory compliance. Fourthly, the service needs to be delivered over *Electronic Communications Networks* (ECN). These include cable, satellite, terrestrial, wireless, and IP networks. Lastly, and even if we concluded that there is a service which delivers TV programmes, there is a further, and crucial, test that needs to be passed: is the provision of programmes the principal purpose of that service, or is this merely incidental?

So far, the analysis does not fundamentally diverge from what is current practice for traditional television broadcasting services. However, when transposed to the new media environment described earlier, the application of these criteria is certainly not straightforward. The judgement will be particularly difficult to make for online services –as opposed to video-on-demand services delivered via say a cable or an ADSL network–, which are likely to provide some combination of text, graphic, and video content, and where distinctions about what constitutes "the service" become easily blurred (for example, is the service the whole of a website, or just the URL page(s) which offer the video content?).

Regulators will inevitably be called upon to exercise some kind of regulatory discretion. In doing so, they should be guided by three additional criteria that have been reflected in the Directive. First, there is a need to consider whether the service is *'mass media*'. Media sector specific regulation has been justified, in part, on grounds of the pervasiveness of the medium and its impact on society and on public debate. In a context with no significant barriers to entry, the specific regulation of certain content services (beyond that required by the general law) is only justified if the services are intended for and are likely to have a clear impact on a significant proportion of the population. Regulators will need to evaluate whether it is appropriate to interpret this on the basis of audience share, target, nature, and/or intended public of the service. Second, the regulator will need to make a judgement as to whether the service is *'TV-like'*. The idea here is to catch services essentially similar or identical to television in nature, content and presentation. Third, and linked to the above, the draft Directive makes a reference to the nature and means of access to the service (in other words, the *'context'* and not just the content), which can reasonably create consumers expectations of regulatory protection. When the core content of the offering is similar to that which the user has previously experienced via TV broadcasting, the user may carry, at least in some initial stages, some of their pre-existing expectations concerning regulation from the broadcast to the non-broadcast context (for example, they might expect a clear separation between editorial and advertising material).

This last consideration is critical when determining what the most appropriate regulatory model for an online environment is. The expectation that consumers have of regulatory protection will vary as services evolve. Thus, in a primarily on-demand environment, consumers will not expect to be protected by a 'watershed' restricting what hours of the day they may view the content (although it is not completely unreasonable to think that some time-restrictions apply). A focus on consumer expectations and their degree of media literacy will allow for the necessary degree of flexibility of regulation, and the possibility that it adapts as services develop, consumer attitudes and patterns of consumption change and media literacy levels grow.

All of the above criteria will need to be considered cumulatively, and decisions cannot be made before having carefully measured all of the various elements and aspects of the service. However, not all criteria might need to (or indeed should) be given equal weight, and some of them (e.g., existence of editorial responsibility) could carry more weight.

Even if the current scope criteria are somewhat clear and provide for useful guidance as to whether a service falls within or outside the scope of the Directive, implementation will be far from straightforward, particularly in areas that are

subject to rapid technological change. Furthermore, Governments and public authorities still face challenges as regards services falling outside the scope of the AVMS Directive, or at the margins. The next section outlines some of these challenges.

Beyond the AVMS Directive. Future definitional and regulatory challenges

A continuum of 'TV-like' services

We have seen above that the models of content production, distribution and consumption on the new media environment vary widely. Some services such as the *BBC iPlayer* in the UK, *Imagenio* in Spain or *Fastweb* in Italy that currently provide television programmes on-demand are likely to be covered by the future rules. Others, however, require much more careful consideration.

First, in many cases, it is unclear how significant the economic element needs to be for these portals to be considered "services". As explained earlier, most of these sites are developing some kind of revenue-generating mechanism, be it through general or targeted advertising, or through revenue-sharing models. Does this make them a "service" for the purposes of regulation? Are all users uploading video content and getting paid for it potentially "broadcasters"? When does user generated content become "professional"? Is there a minimum revenue threshold that determines the economic nature of the service?

In fact, in many of these cases, and even if the service incorporates some economic elements, the video content would not strictly qualify as a TV programme for the purposes of regulation. Also, it seems fairly straightforward that an individual user's videos posted on a video sharing site would be excluded from the scope of regulation not only because of the nature of the content, but also because the entity managing the portal does not exercise prior control over the videos (and therefore does not have editorial responsibility). Nor could we expect the individual users to exercise such editorial control, beyond what is required by the general law. Accordingly, it would seem inappropriate to hold these portals accountable for the content they carry, beyond what is required by the general law.

More difficult are cases of sites that put the emphasis on the "TV-like" characteristics of the service (primarily for marketing purposes). *Veoh Networks*, for example, describes itself as an "internet TV network", and is backed by heavy media names (including *Time Warner* and *Disney*'s ex-CEO Michael Eisner). Similarly, *Gotuit Media*, an established player in on-demand video, has launched a video portal with different components, including user generated material, inside-the-video search features, a blog space as well as direct access for free to a variety of mainstream content (music, news, sports and entertainment) from *Universal Mu-sic, Warner Brothers, Reuters* and the like (*GotuitTV*). What is "the service" here? Is it just *GotuitTV*, or is it the combi-nation of services offered by the portal? *Neave.TV* offers a service fed by *YouTube, Google Video, Blip.tv* and others where clips are played automatically in a TV-like full-screen user experience. Yet, it would be hard to define these as "programmes", or to argue that *Neave.TV* is exercising full editorial responsibility over content linked from other sites.

At the other end of the Internet spectrum, we have ser-vices, often provided by established broadcasters that pro-mise to deliver a full-TV viewing experience on the Internet (e.g., 4oD, *Sky Anytime* or the *BBC iPlayer*). In June 2007, a new British initiative code-named the "Kangaroo project" was announced. It aims to bring the various individual on-demand services together. The idea is to pool TV content from the major UK broadcasters (the BBC, ITV and Channel 4 as well as other players) and deliver it online in one single platform using the same P2P basis currently used by the iPlayer, with the potential to expand into a digital TV service.

Another interesting case is *Joost*, an interactive service that distributes over 20,000 TV programmes over the Internet using P2P technology, with near quality of standard TV resolution. Joost has been launched by Janus Friis and Niklas Zennstrom, the two men behind *Kazaa* and *Skype*, and offers about 20 channels, with content from the likes of *Endemol, September Films Warner Music* and *Viacom*. Viewing is for free with profits coming from advertising. Channels are like playlists of videos, and users can flip between them, or use a programme guide. Viewers can also blog while watching the channels or even create their own. Thus, *Joost* aspires to be a TV network on its own right, while taking full advantage of the interactivity and creativity characteristic of the online environment. Other services such as *Babelgum*, an on-demand video site offering both niche and mainstream content, are following this model,

and it is reasonable to expect more such services to develop in the near future.

What the above highlights is that online video portals are not of one kind, but, rather, there is a *continuum* of content services providing different combinations of linear, non-linear, professional and user generated material. Service providers are exercising different degrees of editorial responsibility, from pure 'blank upload' sites through to fully controlled film download services, with various degrees of production and editorial control, and with very different business models. At some point in this continuum, service providers might come very close to the traditional idea of a broadcaster as a gatekeeper, selector and organiser of content.

However, when audiovisual content is generated not by established media companies or established businesses, but by private individuals, start-up companies and small enterprises, to then be typically distributed via the internet or on open access platforms, shared, and often further modified by other users, it will be difficult to determine who bears the editorial responsibility for the content. In this continuum of services there are differences in the degree of control exercised by the host or service provider. For example, while *YouTube* is primarily an organiser of content, others such as *Gotuit* or *iFilm* are taking greater responsibility, and marketing professional content. The fact that something is described or advertised as 'TV' for marketing purposes, should not (mis)lead regulators into qualifying the service as a television service for the purposes of regulation. If application of the rules is too rigid or strict, there will be incentives for operators to structure their service so as to game the definitional criteria and escape regulation. Furthermore, if regulation is to be effective, the regulability criteria should lead to a coherent application of the rules to the party which is best placed to discharge them. This is a major challenge in an online environment, where, in contrast with the traditional television environment where there is a straightforward locus of regulation (i.e., the channel), it is no longer practical or possible to target a single entity or focus regulation just at one level. Critically, many of these services are aimed at global, not national, audiences, raising questions about the practicability of regulating them on a national basis.

In the new media environment, carriers, Internet service providers, content providers, access providers and users of online services all have different roles, degrees of influence and responsibilities. For this reason, any regulatory solution must incorporate incentives for all of these players to cooperate in delivering public policy goals, even if, strictly speaking, only one or none of these is identified as having "editorial responsibility" in the regulatory sense of the word.

Open and closed models

It is worth at this stage to differentiate between closed and open business models. In closed or 'walled garden' models there is control over content delivery and presentation, which is not dissimilar to that in the broadcasting industry. Cable, satellite and IPTV platform operators such as *Virgin Media, Sky* or *Telefonica* offer services over closed proprietary networks, manage the interface with the consumer, and, in doing so, have control over the presentation and navigation of content. Accordingly, it does not seem unreasonable to ask them to exercise control over how the content is presented and made available to consumers. Crucially, platform operators are typically located within jurisdictional reach of regulatory authorities.

By contrast, in open Internet models, there is a major challenge which relates to the fundamental disconnect between that single entity always within the jurisdiction of the regulator (the ISP) and the provider of the content who can be located virtually anywhere in the planet. This raises the question of the role of intermediaries, primarily ISPs, in carrying out some control or oversight over legal content that may be harmful for certain users. Even if, often, these intermediaries will have little or no oversight or control over the content that they carry or make available, public authorities might be inclined to focus on ISPs and other intermediaries.

However, content regulation should not (and in many occasions could not) involve extending responsibilities for the monitoring of content, nor could it require the imposition of sanctions for harm and offence at the ISP level. ISPs cannot be required to monitor content exante, nor to make judgements about the "context" of content consumption. This is an extremely hazardous path to go down, and bound to raise serious accountability and legitimacy concerns. Yet, this is precisely where the new AVMS Directive, if taken to its ultimate consequences, might lead.

Platform neutrality: a utopia?

An important challenge in this context has been the identification of the principle of technological neutrality (similar services should be regulated in a similar manner, regardless of the technology that is used to deliver them –cable, satellite, terrestrial, wireless or IP networks) with the principle of "platform neutrality".

The principle of technological neutrality reflects the ambition that regulation should neither impose nor discriminate in favour of the use of a particular type of technology, and is central to the model established by the Regulatory Framework for Electronic Communications and Services,[9] and at the heart of the EU's horizontal approach to communications regulation. Regulation is thus structured along activity lines as opposed to industries. This notion of regulating in a completely technology-neutral fashion is attractive and has proved vital to the success of the European regulatory model for electronic networks and services.

When translated into the broadcasting environment, the principle would suggest that a TV channel should be regulated in a similar manner regardless of whether it is delivered over a cable network, or through the Internet. This is the approach taken in the new AVMS Directive. The aim is to deliver a level playing field between incumbents and innovators, and to reduce the opportunities for regulatory arbitrage. However, if strictly applied to the content world, the concept of platform neutrality implies that the same piece of content or service should be regulated in a similar manner, regardless of the platform or device through which it is consumed or the conditions under which consumption takes place. This idea does not sit well with the basic principle that content rules need to be applied *in context*, and that the level of protection (and by extension regulation) that might be required critically depends on the conditions of access and use of the content service (for example whether the content is offered after the watershed, or whether there were pin protection systems in place). Already today, the same single piece of content is subject to a wide range of different regu-latory controls depending on whether it is broadcast on a free-to-air or pay-TV, delivered as video-on-demand, sold at a DVD store or shown in a cinema. Accordingly, restrictions (including advertising restrictions) that are suitable in a free-to-air television broadcasting platforms might not be appro-priate for on-demand, platforms (online, mobile, etc.) where the consumer experience is inherently different. Indeed, it is already the case that consumer expectations of protection differ depending on the platform that they are using to access the content.

This urges for a reconcilation of the principle of technological neutrality, with the principle of regulation "in context", and might require a certain degree of discretion for the regulator depending on the *platform* that is used. More generally, the principle of technological neutrality should not be regarded as an absolute, but rather act as a guiding principle, since there are still differences in technologies that need to be recognised by regulators (e.g., specific multiplex licensing, the use of specific spectrum). Regulating for convergence should not mean the replacement of a rigid vertical structure with a rigid horizontal framework. Principles of horizontality and technological neutrality should not encourage regulators to ignore the differences between networks and platforms, particularly in relation to their social impact.

Back to basics: Why regulate?

Traditionally, the case for regulating television broadcasting to a much stricter and higher standard than other media such as the printed press or other forms of artistic expression rested on two grounds. Firstly, there was a technological rationale: the spectrum needed for terrestrial distribution was both a public resource and a scarce commodity, and this justified public intervention designed to achieve an efficient distribution of frequencies. In addition, in order to avoid signal interference and chaos it was deemed necessary to put in place some regulation or organisation of the airwaves. Secondly, there was a public interest rationale linked to the immediacy and pervasiveness of the audiovisual medium (Feintuck, 1999; Tambini et al. 2001). Television was regarded as a powerful medium with a privileged

9 <http://europa.eu.int/information_society/policy/ecomm/todays_framework/overview/index_en.htm>

position in terms of access to mass audiences, and with a recognised capacity to influence the public debate and thereby directly affect political and democratic processes (Barendt, 1995). It is also argued that television coverage can cause direct harm to individuals (and particularly minors) through, for instance, unfair representation of views, depictions of extreme violent or sexual material and intrusion of privacy.

Whether these arguments can (or should) be transposed to the new convergent media environment remains an open and highly controversial question. The AVMS Directive starts from the premise that as television moves to other plat-forms, television regulation should follow. Though appealing as an argument, the reality is much more complex. I have argued that television is not simply moving to other platforms, it is also *changing* along the way, and converging with other media. The question is therefore, whether regulatory approaches designed for the traditional television environment are appropriate or should take priority over other regulatory approaches that might be better designed to address the challenges posed by new convergent technologies.

As digitalisation removes capacity constraints, the pervasiveness, impact and influence of the television medium becomes the most significant regulatory rationale. However, the critical –and yet unanswered– question is whether new audiovisual media services, particularly those delivered over the Internet, are of a similar kind from the point of view of their impact and influence in society. A comparison with the press helps to illustrate this point. The original justification for the lack of regulation of the press had to do with the idea that a relatively large number of independent publications co-existed and covered a broad range of political and ideological views and that entry and competition in the 'marketplace of ideas' was possible. It was argued that as newspapers were commercially competitive, other voices and other interests could counter biases. The task of governments in the print media was therefore limited to, on the one hand, allowing the free expression of opposing views (rather than providing a single platform that would convey a national consensus) and, on the other hand, avoiding excessive concentration of power. In contrast, there were only a limited number of television stations, and it was physically impossible to transmit more than one message on the same broadcast frequency without interference. Another reason for this differential (and deferential) treatment of the press related precisely to the immediacy and pervasiveness of the audiovisual medium. While readers, who are aware that newspapers carry politically relevant and biased information, actively seek printed content, television is readily available at the switch of a button.

It can be argued that, except for a minimum set of audiovisual services which are identical to television broadcasting but delivered using IP technology, most of the materials currently available on Internet platforms, are actually consumed and perceived by users in a way which reminds us more of the press than the television medium. When surfing the web and downloading content, users are actively pulling content, and, in the great majority of the cases, are not surprised or shocked by the content they come across. This consideration, at a minimum, challenges the assumption that new Internet services need to be subject to the highly strict regulatory controls traditionally imposed on television broadcasts. It rather makes the case for a reconsideration of how to best regulate broadcasting, given some enduring objectives such as the protection of minors or qualitative advertising controls. In the not so distant future, viewer behaviour will inevitably disrupt the TV hegemony (except possibly in the case of live events). Viewers might continue to consume the same content, just like they do with the cinema or the newspaper, but they will do so at different times, and from different sources. In this context, navigation tools, as well as personalisation and recommendation technologies that allow users to make some sense of the content maze become a vital element of the media consumption experience.

More fundamentally, when considering the extension of regulation to additional forms of media, it should not be forgotten that any intervention in this sector constitutes a restriction of the fundamental right to freedom of expression under Article 10 of the European Convention of Human Rights (ECHR).[10] Any restrictions to this fundamental right

10 Rome 4 November 1950.

need to be convincingly established, proportionate to the aim and strictly supervised. From this perspective, self and co-regulation would seem to provide not just for a more efficient way to deliver a high level of consumer protection (see below), but also for a more adequate and proportionate regulatory alternative.

Regulate yourself

The above does not mean that those entities that are not primary responsible for content regulation (for example because they fall outside the scope of the Directive) do not have a role to play in delivering protection to consumers. As far as illegal material is concerned the E-Commerce Directive requires intermediaries to take down material hosted in their servers when alerted to it, although they are not expected to monitor the content in advance.[11] Once content is ascertained to be illegal, authorised hotlines (such as the Internet Watch Foundation in the UK) will issue 'take down' notices to hosting service providers requiring them to remove the illegal content from their servers. In addition, ISPs can voluntarily block illegal sites hosted outside.[12] At the EU level, Inhope (International Association of Internet Hotlines) aims to eliminate child pornography from the Internet and protect young people from harmful and illegal uses, and to facilitate discussion between hotline providers to share expertise and develop effective common procedures for receiving and processing reports.

Industry also plays an important role in protecting users from "harmful and offensive" content and has been generally proactive in developing tools to enable the filtering of content deemed inappropriate for minors. Content creators producing material can label and insert metatags[13] that can then be used to filter the content downstream. Search engines such as *Google*, have developed "safe search" options with which users can set their preferences in order to block certain results, such as explicitly adult content, from being returned. In addition, some ISPs offer web filtering as a value added service, with individual subscribers able to choose their own settings (e.g., AOL's three settings or parental controls: kids only, young teens, mature teens). Finally, individual users can install software on their com-puters to help them filter content.

Industry action has been supplemented and encouraged by EU and national institutions. In 1999, the EU launched the Safer Internet Action plan, and its successor, the Safer Internet Plus Action Plan, in 2005. Its aim is to promote safer use of the Internet by combating illegal and harmful content on global networks. The plan promotes industry content-monitoring schemes, especially dealing with content such as child pornography and hate speech, and encourages development of filtering tools and rating mechanisms. So far, it has played a very important role in fostering international cooperation on the issue of illegal and inappropriate content.

There is increasing recognition that any regulatory ecology will necessarily need to rely, to a significant degree, on self and co-regulatory initiatives combined with media literacy schemes to empower end-users, rather than on primary legislation. The debate today is not on the merits of self and co-regulation for new media, but rather on how to best design self and co-regulatory regimes that successfully deliver on public policy aims. As mentioned above, the new AVMS Directive encourages the use of self and co-regulation as a means of implementation, with nevertheless some degree of involvement of public authorities. This is part of wider EU efforts in recent years to encourage cooperation by the industry, particularly as regards services on the Internet and mobile phones. It should be welcome since it gives a political signal as to the importance of such mechanisms not just for on-demand television services, but also more widely.

11 Articles 14 and 15 of the E-Commerce Directive (Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market).

12 In the UK, the IWF has been immensely successful, with reportedly less than 1% of identified illegal content being hosted in the UK today, down from 18% in 1997.

13 Metatags are text-based information tags which contain information about, among other things, the content type, copyright and ownership.

Conclusion. The regulator 2.0

As put by David Bell in 1967: "the future […] begins in the present". Today's regulatory choices, will largely determine our digital future, our degree of digital freedom, the scope of our media access and its potential uses. For better or worse.

The advent of the global Internet and its enormous potential in terms of the creation and distribution of content, as exemplified by recent web 2.0 developments, is testing many of the assumptions and premises under which content regulation currently operates. Digitisation and convergence have resulted in fundamental changes both in market structures and in consumers' attitudes towards their media, while the internet has entirely removed historical constraints on the number of players that can potentially operate in the communications environment, breaking not only traditional market divides, but also geographical boundaries.

The delivery of audiovisual content, and the case of online video portals in particular, presents itself at the heart of the convergence process, and consequently at the heart of current regulatory debates around convergence. This creates three distinct challenges for regulators.

Firstly, in respect to the licensing of traditional TV channels, regulators need to decide what criteria should apply to television services made available on the open Internet. This issue has not been at the centre of the debates so far because the majority of TV channels available on the Internet are anyway available on other platforms and, therefore, already subject to traditional forms of regulation. However, as demonstrated by cases such as *Joost* or *Babelgum*, the technology to convey quality video content over the internet is developing rapidly. Critically, many of these services will be offered from outside the jurisdiction of EU regulators.

Secondly, in transposing the new AVMS Directive into national law, Member States will need to make critical choices about both the types of services that will be covered by the new rules, and also the institutional regulatory model under which video-on-demand service providers will operate. This is will be particularly challenge in countries with a multi-level system of governance, such as Spain, Germany and Belgium, since choices will also have to be made about the appropriate share and distribution of competences at the State and at the regional level. As argued above, not only does self and co-regulation appear to be a superior alternative, but, crucially, a distinction will need to be made between closed and open models of content delivery, and a different solution for each might be required.

Thirdly, there is a fundamental challenge as regards services which are at the margins or which fall outside the scope of the Directive (for reasons of substance or jurisdiction), but that could nonetheless cause harm and offence and create public concern. Consumers will not necessarily be aware of where the content is coming from, nor should they be expected to make subtle, and often fairly arbitrary, regulatory distinctions. A false promise of effective regulatory control might discourage them from taking greater responsibility, creating an "illusion of protection" on which not even the most illuminated regulator can reasonably deliver.

As the analysis above highlights, the ambiguity over the eligibility for regulation remains the biggest challenge. As useful and as clear as the Directive's criteria may be, there will still be some scope for ambiguities at the margins, and it might not be possible to clearly identify the outer boundaries of the scope (i.e., what is an AVMS?), nor the inner boundaries (when does linear become non-linear?). The boundaries of what is inside and what is outside are likely to remain porous by necessity, as any attempt to clearly define a subset of services could have unintended and negative effects, leaving open the possibility for operators and providers to game the criteria, the regulator, and consumers.

Accordingly, regulators need to recognise the limits of what they can achieve through traditional top down regulation. They cannot recreate a system which relies primarily on ex-ante control by a licensed broadcaster and it would not be possible, nor desirable, to attempt to guarantee a tightly circumscribed expression of broadcasting regulation. Further, in the online content environment there are a number of issues (privacy, safety, copyright) that go beyond what is currently under most regulators' remit.

Above all, the focus must be on the consumer. From a consumer perspective, the boundaries of regulatory protection need to be as clear as possible. In a world of pure statutory regulation it was possible for the regulator to establish clear and well-defined limits beyond which the responsibility lies with the consumer. An example of this is

the watershed: consumers know that after the watershed there is an increased likelihood of content which might be harmful to minors and parents need to take responsibility for their children's viewing. In the new media environment, it will be much more difficult for consumers to know where the boundaries of protection are, and for them to understand when they are expected to take more responsibility.

In this context, regulators should induce behaviour rather than try to create a "journey to certainty" for the user. Their role might require them to progressively evolve from a pure regulator to an "educator" or a "facilitator" of an environment where there is certainty for industry and protection for consumers, without directly attempting to create it. This is why a greater focus on media literacy becomes a key imperative.

"In the age of consumption, control was what media were about. In the age of creation, they should be about enabling".[14] The same holds true for media regulators.

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Catalan audiovisual legislation: present and future

Antoni Bayona

The far-reaching transformation the audiovisual sector is undergoing, with the incorporation of new technologies, new uses, access and ways of communicating, among other factors, has highlighted the need to redefine broadcasting as a public service. In this respect, the legal community has been involved in debating the new bases that must establish an appropriate legislative framework for the new audiovisual situation. In Catalonia, the passing of Act 22/2005 on audiovisual communication attempts to provide a response to these changes in broadcasting. This article analyses Catalan legislation in this sphere, the situation of the public and private media, the functions of the Consell de l'Audiovisual de Catalunya (the Catalan Audiovisual Council) as the regulatory authority and, finally, there is a review of the future perspectives for Catalan audiovisual regulations.

Keywords

Regulation, Catalan legislation, audiovisual communication, public service, regulatory authority, Consell de l'Audiovisual de Catalunya, Act 22/2005 on audiovisual media in Catalonia.

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1. Initial considerations: the audiovisual legal framework from a constitutional perspective

A particularly characteristic element of the audiovisual legal framework in Spain has been the consideration of audiovisual communication as a public service owned by the state. This configuration was clearly established in the old Statute for radio and television in 1980 and also in the laws that allowed private intervention in this field under a system of licences (the private television act of 1988 and the local television act of 1995).

From a geographical point of view, we should note that the creation of channels for the autonomous communities was also established under a licence system by the state via the act for the third channel in 1983, a circumstance that underlined even more the state's monopoly in the area of broadcasting.

Considering this activity as a state-owned service led to an interesting debate on the extent to which this model was in line with the Spanish Constitution, especially regarding the right to information and communication guaranteed by article 20. Constitutional jurisprudence entered this debate and attempted to maintain a balance between these rights and other constitutional principles that recognise the power of public authority to reserve certain essential services for the public sector and the effects that may result from considering the electromagnetic spectrum as an asset that belongs to the state.

However, maintaining a solution so biased towards the public predominance over broadcasting could not withstand the consequences of its technological evolution and the necessary impact of making the legal framework more flexible. This meant a different conceptual approach with regard to cable and satellite television, and the general assertion that, with the new digital terrestrial television or

with whatever can be produced by means other than the electromagnetic spectrum, it was no longer possible to maintain the idea of a public service under a monopoly.

This new situation therefore meant that the audiovisual legal framework had to be rethought, using new bases in order to make it more coherent with a more balanced model, in which the public service and private activity could both make their play. These new bases should enable private broadcasting, considered as an exercise in constitutional and legal law, to live side by side with the publicly owned media. In other words, to evolve towards a mixed model of private business and public service, with the consequent modification of the status of those authorised to provide private audiovisual services via permits or licences.

In spite of there being significant agreement regarding the design of this new legal model, it has not yet been possible to establish this in general, as the circumstances have not allowed the state to pass a general act on audiovisual communication.

Notwithstanding this, over the last few years there have been several attempts to draw up and pass this law, a circumstance which Catalonia has taken advantage of to develop its own broadcasting act in parallel, compatible with the principles that are being used by the state administration.

But although the drawing up and passing of these two laws should have happened at the same time, what has actually occurred is that the Catalan audiovisual communication act has been passed (Act 22/2005, of 29 December) without the possibility to coincide and correspond with the more general framework provided by the Spanish general audiovisual communication act.

Certainly this legislative scenario is not ideal as it has inverted the usual sequence between state and Catalan law and results in a conceptual distortion due to the different philosophy behind the new Catalan audiovisual communication act of 2005 and the obsolete state legislation that is still currently in force.

However, without minimising the problems of legislative 'fit' that this entails, it should be noted that the Catalan audio-visual communication act has been able to implement its provisions, something that has led to the introduction in Catalonia of substantial changes in the regulation of audiovisual communication.

In this respect, the most significant innovations we can highlight are the definition of a new mixed audiovisual model in which the public and private sectors co-exist, the establishment of a new legal regime for private audiovisual communication that is now considered as exercising a right, and the reinforcing of the independent regulatory authority for the sector (the Consell de l'Audiovisual de Catalunya). At the same time, the passing of the audiovisual communication act has also provided the chance to systemise a notoriously fragmented legal area, something that has helped make it more coherent and has improved legal certainty.

2. Basic elements of the legal framework established by the audiovisual communication act

The following aspects are particularly of note in the new legal approach to audiovisual communication brought by the 2005 act:

a. The recognition of the freedom of audiovisual communication. This establishes, at a legal level, one of the rights from article 20 of the Constitution, which has legitimised private operators and the private sector, insofar as they are exercising their right and do not have the inevitable status of licence-holder for an activity owned by the state.
b. The principle of veracity of information as a responsibility resulting from exercising the right to information, which is essential to protecting this right.
c. The establishment and regulation of instruments that guarantee pluralism in audiovisual communication as a requirement resulting from the democratic principle and the need to ensure free public opinion.
d. Differentiation between the public and private audiovisual communication sectors. The former, made up of media owned by the Catalan government and local bodies and the latter by private providers of audiovisual services at a local or autonomous community level that have obtained the corresponding licence.
e. Protection of the rights potentially affected by communication, which are diverse and of a varied nature: personal rights (honour, privacy and own image), protecting the rights of children and young people with regard to audiovisual content and preserving copyright and

exercising the right to rectify.

f. Establishing a system of public intervention based on the recognition of a public service with regard to publicly owned media and organisation with regard to private activity, specified, essentially, in the need to obtain a permit, compliance with legally established obligations and being subject to an administrative disciplinary system in the case of violation, with the guarantee that an independent regulatory authority will be involved.

3. The public service regime

As we have already mentioned, in Catalonia the audiovisual communication act has led to the end of the public monopoly over audiovisual communication insofar as it establishes a regime of necessary competition between publicly-owned and private media. With the understanding, however, that this private presence is no longer provided with the format of a concession to manage a public service, but as a veritable act of exercising the right to information and communication.

The structure of the Catalan audiovisual service has a dual composition: on the one hand, the media owned by the Catalan government and, on the other, the media owned by local bodies. In accordance with the act, both must be managed directly, the former by the Corporació Catalana de Mitjans Audiovisuals (the Catalan Corporation of Audiovisual Media or CCMA in Catalan) and the latter by the municipalities themselves or by consortiums set up for this purpose.

With regard to public service communication, we should note the efforts made by the act to define those elements relating to private activity, which normally follow commercial or financial criteria.

Public service radio and television must be aimed at fulfilling public service missions provided by the act in article 26 and which the programme agreement between the government and the Corporation must specify. It is therefore not a question of competing with private television in the content broadcast but of providing society with a service that prioritizes certain values, which the legislator believes are the *raison d'être* of an audiovisual public service and which are closely linked to plural programming that respects people's dignity and content quality, without this necessarily leading to the abandonment of content of an entertaining or generalist nature.

In line with this approach, the act provides for a financing system that is principally made up of public contributions, with a partial or limited share from the advertising market. It should be noted that this model becomes almost indispensable in order to meet EU requirements to guarantee the principle of free competition in the audiovisual sector.

On the other hand, the establishment of a public service regime involves the need to ensure pluralism, in order to avoid its potential use in favour of the government majority. This guarantee is achieved via different means, as stated by article 29 of the act, among which we should note the recognition of the executive bodies' independence from the government in management terms, the participation of parliament and the Consell de l'Audiovisual de Catalunya in choosing the top executives for these bodies and the guarantee of professionalism in management. The internal aspect of this pluralism is complemented with the duty to ensure the participation of the most representative social and political groups in managing the public service by them forming part of an advisory council.

The act regulating the Corporació Catalana de Mitjans Audiovisuals has established a system to appoint members to the management council based on the requirement for a qualified majority in the parliament, but also requiring the accreditation of a suitable professional profile on the part of the candidates, duly verified by the Consell de l'Audiovisual de Catalunya. This is an important change from the previous system applicable to the Corporació Catalana de Ràdio i Televisió (Catalan Radio and Television Corporation) but it has not had the expected effect in its first and recent application. In fact, the professional criteria that should have been a priority for the candidatures presented by the parliamentary groups have given way to more political profiles, so that the previous system of political quotas has predominated which, in theory, the new Catalan Audiovisual Media act aimed to abolish.

The aim was also to preserve the guarantee of the internal pluralism of local providers of public audiovisual services, in a similar way to what happens in the area of the Catalan government, via organisational rules based on the same principles. Article 33 of the act contains these and, in theory,

they should be enough to achieve their objective, provided they are correctly incorporated into the organisational and functional regulations of the corresponding services.

With regard to private audiovisual communication, we have already noted that this conceptual change has an effect on the conditions for carrying out this activity. In accordance with state legislation, and apart from cable and satellite television, private audiovisual communication is carried out as a concession for a state-owned public service. However, in accordance with the audiovisual communication act of Catalonia, this private activity in the autonomous community or local area is carried out by means of administrative authorisation, so that the private nature of the operator appears with total clarity and transparency.

This does not mean, however, that there are no conditions or limits to exercising this right. In this respect, the differentiation made by the act between private audiovisual communication that uses the electromagnetic spectrum and that which uses other transmission technologies is essential. In the first case, given that the spectrum is limited, private communication remains subject to obtaining authorisation (licence), while the other is free, the only obligation being to notify the Administration prior to starting.

4. System of administrative intervention in private audiovisual communication

In accordance with the above, there are two regimes that depend on the technology used and that translate into two different degrees of intervention. As we will see, it can be stated that the system of intervention is particularly intense in the case of using the electromagnetic spectrum, while in the other case (e.g. television by Internet) this intervention is minimal and essentially preventative in order to ensure compliance with the minimum obligations established by the law for these service providers as well.

The licensing system entails a particularly close relationship with the administration given the fact that the provider benefits from using an asset in the public domain, namely the electromagnetic spectrum. Technological evolution and the implementation of digital terrestrial television have notably extended the possibilities to take advantage of this space. But this does not detract from its limited nature, which justifies the application of an especially strong regime of intervention, as provided for in article 46 of the act, according to which the licence grants operational authorisation because it establishes the obligations of the service provider and determines the framework of the relationship with the regulatory authority throughout the lifetime of the licence.

In any case, the most important conditioning factor for private audiovisual communication results from the limited number of licences. Unlike other rights, the exercising of which does not have this kind of limitation and everyone can secure a licence provided they meet the legally established requirements, in the case of providers of audiovisual services the first thing to be resolved is how authorisation can be obtained, which has a *numerus clausus*.

For this reason, one of the basic aspects of the administrative regime is the holding of tenders via which the licences are granted. The tender is an instrument that guarantees the application of the principle of equality, providing the audiovisual authority responsible for running and deciding on the bids with criteria to evaluate them and allocate the licences. The regulation of these criteria in the same act and their specification in the call for tender applications lead to an essentially regulated scenario in order to evaluate the bids, limiting the room for manoeuvre in deciding how to allocate licences. It is therefore a system designed to provide those involved with a guarantee, in an area where the procedures followed to date have not always upheld the minimal requirements of transparency, objectivity or equal treatment. The more detailed regulation of the tender, as well as giving an independent body the authority to decide on the licences to be allocated, is also a significant change in orientation in this area that must be valued positively.

The result of the tender is also upheld with the establishment of precautionary clauses that deter alteration by other means. One of these is the non-transferable nature of the licences and another the measures provided for in the act to guarantee external pluralism and to control operations that might entail the excessive concentration of media control, either through ownership or management or by other indirect means.

The communication regime for operators not using the electromagnetic spectrum differs slightly from the interven-

tion we have just explained, insofar as the element that justifies intervention has disappeared. As, in this case, a restricted communication area is not being used, the activity can be liberalised without harming the application of rules affecting content that are common to all communication activities.

In this case, the act merely requires operators to make a formal declaration before they start broadcasting, in order to notify the broadcasting authority. This notification therefore ensures that the authorities are aware of the activity, which is completely necessary in order to be able to supervise compliance with the obligations established by law.

5. Reserving a public communication space

The result of the schema we have just explained is the existence of a public broadcasting space (via public ownership) and a private space (licensed private providers).

However, a provision in the act affects this schema, obliging the public authority to reserve a space for private non-profit entities so that audiovisual communication may be carried out in a way other than that of strictly private or public activity. Forming part of this third sector are the community communication services that offer content aimed at meeting the specific social, cultural and communication needs of the communities and social groups they cover, applying criteria of participation and pluralism, as well as audiovisual services carried out by universities, which in the act come under not-for-profit services.

6. The obligations of audiovisual service providers

The organisation of the audiovisual sector determined by the audiovisual communication act of Catalonia involves the need for providers to meet various conditions in carrying out their activity, resulting essentially from the content of the licence and from the need to respect the rules governing audiovisual content to safeguard users.

The establishment of a licensing system has been provided for in the act in order to place the commitments resulting from the tenders within its scope. The criteria for awarding licences assess the applications presented by the bidders according to pre-established parameters and barometers, so that there is an undertaking to comply as a result of the operator's declaration of intent, based on which the bid has been evaluated. This is a characteristic feature of a licensing system that individualises the degree of requirement achieved beyond the minimums established by law for each case. These are therefore the particular obligations and commitments from the licence itself.

However, we should remember that audiovisual communication may have repercussions on the rights and interests of the audience that are worth protecting. A large number of these rights have extra protection since they result from the EU regulations on television without frontiers, regulations that have been transposed into national legislation. Notwithstanding this, the audiovisual communication act has systemised these again and we can find the following rights:

a. Respect for the dignity of people, non-discrimination, truthfulness of information and distinction between information and opinion.
b. Respect for the right to privacy (honour, intimacy and own image).
c. The prohibition of content that incites hatred due to reasons of race, sex, religion or nationality.
d. Compliance with rules to protect minors, specified in the absolute prohibition of certain content (e.g. pornography or gratuitous violence), in fixing a 'watershed' or in the obligation to provide warnings as to content.
e. Obligations with regard to the presence of the Catalan language and culture in the media.
f. Obligations concerning minimum quotas for broadcasting European audiovisual works.
g. Limits established concerning advertising, telesales and sponsorship.

Compliance with this wide and diverse range of obligations is supervised by the Consell de l'Audiovisual de Catalunya, which has the authority to apply the disciplinary measures provided for in the audiovisual communication act.

Some additional comments should be made concerning such a delicate aspect. Firstly, we should note that the existence of this administrative disciplinary regime is a legitimate option of the legislator that cannot, in any case, be seen as an act or instrument of censorship, which is prohibited by the Spanish Constitution. The possibility of an

administrative disciplinary regime being applied to an area in which a fundamental right is exercised is not excluded by the Constitution, provided the requirements are followed of the principle of legality and those affected are allowed to exercise their right to legal protection, as happens in this case. Secondly, we should also note the efforts made by the audiovisual communication act to encourage the implementation of formulas of self-regulation and co-regulation of content in order to minimise conflictive situations. Co-regulation is particularly of interest insofar as it is based on an agreement established between the provider and the audiovisual authority that leads to a situation of contractual commitment by delimiting and specifying the obligations and duties regarding content.

7. The consolidation of the audiovisual regulatory authority

One of the elements that characterise Catalan audiovisual legislation is the creation of an independent regulatory authority to exercise the functions attributed by this act to the public administration.

This existence of this kind of authority is unusual in the large majority of countries in our area and essentially responds to the need to separate the exercising of some powers from the ordinary administration by the government, powers that, due to their nature, might affect the exercising of the right to information and communication, so essential for a plural and democratic society. The allocation of these functions to an authority that is independent in nature supposes a guarantee of neutrality and objectivity in decision-making that would otherwise be in danger of being influenced by political or situational factors.

This provision by Catalan legislation comes as no surprise, but what is a surprise is the inexistence of an independent authority at a state level, which has yet to be created, most probably because of the same difficulties as those facing the approval of a general audiovisual communication act.

The creation of the Consell de l'Audiovisual de Catalunya has gone through different stages. At first, the council was created by the cable television act as a body related to the government and with strictly consultative functions.

Evidently, this format did not correspond to the characteristics of an independent authority in accordance with comparative law, so that this legal framework was modified with Act 2/2000, of 4 May, of the Consell de l'Audiovisual de Catalunya, establishing it as an authority independent of the government and attributing the functions of informing and also decision-making in some areas (e.g. disciplinary matters).

As from this point, we can say that the legislator clearly opted to reinforce this authority, with the firm will to convert it into an ordinary administration in the area of audiovisual communication. This process was consolidated with the audiovisual communication act of 2005, which delimits the basic functions that must continue in the hands of the government and assigns all others to the Consell de l'Audiovisual de Catalunya.

As a result of this last legislative modification, the Consell de l'Audiovisual de Catalunya now has the following powers in terms of decision-making, among others:

a. Those related to the guarantee of pluralism and respect for the rights and freedoms involved in audiovisual communication.
b. Monitoring compliance of the public service missions of the media owned by the Catalan government and by local bodies.
c. Granting authorisations (licences) for private broadcasters.
d. Holding tenders and awarding licences.
e. Exercising its powers of inspection, control and discipline in the area of audiovisual communication.

All these functions are executive in nature and must be related to the recognition that the audiovisual authority holds legislative powers to develop and specify various broad sectors of audiovisual legislation (conditions applicable to the licences and obligations of operators, basically).

The independence of the Consell de l'Audiovisual de Catalunya is achieved essentially in two ways. Firstly, via the guarantee of independence of decision-making without any kind of hierarchical supervision regarding the exercising of its functions. And, secondly, via a system to appoint members in which the government intervenes minimally and the weight falls to the parliament. The requirement for the candidates to have an appropriate profile, together with a super majority for the appointment, are instruments whose

aim is to guarantee the principle of independence, given the subjective position of the members that go to make up the regulatory authority.

However, we should stress that this independence to act is not ensured only with the instruments formally established for appointing members but also in the selection of candidates, as candidatures must be presented that are justified more by a person's professional profile than by reasons of their connection or political links to the party proposing them. Appointment by super majority is provided as a formula to ensure consensus concerning the appropriateness of candidates; but the system is watered down when this process is used as a mere formula to distribute quotas among parties.

Regarding this issue, the same reflections made can be transferred to the executive bodies of the public media and, most particularly, the governing council of the Corporació Catalana de Mitjans Audiovisuals. It is significant that the new act governing this body (Act 11/2007, of 11 October) establishes a clearly professional profile for candidates, at the same time as making the Consell de l'Audiovisual responsible for drawing up a report on the suitability of the candidates proposed. However, in spite of such clear requirements, the application of the act has not been free from controversy due to the excessive politicisation that may have influenced the appointment of the first governing council.

8. Balance and perspectives for the future of Catalan audiovisual legislation

From an objective and formal point of view, it cannot be denied that the parliament of Catalonia has been particularly active in legislating for audiovisual communication. This has even more merit if we take into account the very small margin for action provided by the statutory framework at the time, which was subsequently extended with the Statute of 2006.

The creation, in 2000, of the Consell de l'Audiovisual de Catalunya, its gradual empowerment over a relatively short period of time and the passing of the audiovisual communication act of Catalonia in 2005 are a palpable demonstration of the will of the public authorities in Catalonia to regulate and update a sector subjected to obsolete and often too destructured and ancient rules.

In this respect, we should particularly note the changes that the audiovisual communication act has introduced in the legal regime governing audiovisual communication, with decisions as innovative as the elimination of the public monopoly in audiovisual activity in Catalonia and the establishment of new bases to regulate private audiovisual communication. All this has also been established within a single legal framework of reference, applicable systematically to all subsectors inherent in the audiovisual field.

But it is evident that regulatory changes are not always enough in themselves to eliminate a system's anomalies or dysfunctions, especially when its characteristics make it highly complex.

In this respect, the practical question of applying legislation has aspects on both sides that should make us reflect on the future. A few of these are explained below:

With regard to the tenders to award operator licences, we should praise how it has been applied to the area of local television. The leadership of this process on the part of the Consell de l'Audiovisual de Catalunya has provided a guarantee of objectivity and the removal of potential bias, making the result achieved contrast clearly with the way in which these processes have been resolved in some other autonomous communities.

However, the very existence of a local public and private audiovisual sector, which must come together and compete in a national and state audiovisual communication space, can lead to saturation in terms of supply that is difficult to assimilate, and can also compromise the viability of programmes, especially with regard to economic performance and the fulfilment of locally-based communication content. We therefore need to see how this complex model turns out and whether the market is sufficient to absorb all the supply.

Another aspect that must be assessed of the present and future is that of content. The deterioration of a lot of content is undeniable, with the corresponding negative social consequences on certain particularly sensitive groups (young people, minors) and on the ethical and moral values of citizens in general. Regarding this issue, the limits established by legislation have so far appeared to be relatively inoperative and some attempts at self-regulation have also notoriously failed. This is therefore an issue that

must be pursued in order to ensure that the private media maintain a minimum level of quality in content and also to ensure that the public media are not conditioned by competition within the audiovisual market and that they are always in line with the public service missions they have been commissioned with.

Lastly, and as an important issue that is still pending, we should also highlight the necessary passing of a general audiovisual act by the state that completes the regulatory changes advanced by the Catalan legislation and, moreover, that does so respecting and defining the respective areas of action in accordance with that provided for in the Spanish Constitution and the Statute of Autonomy for Catalonia.

This act should consolidate the different territorial areas of audiovisual communication (state, on the one hand, and autonomous community and local, on the other) so that Spain and the Catalan government can exercise their respective powers over these sectors. However, choosing this territorial criterion, which becomes inevitable, should take into account the inherent de-location of new television formats that do not use the electromagnetic spectrum but that are also aimed at the public of Catalonia. And, closely related to this problem, it is also necessary to organise the relationship between any state-level regulatory authority that is established in the future with the Consell de l'Audiovisual de Catalunya.

We must assume that the start of a new legislature after the elections of 9 March will also see the return to the political agenda of preparations for a general law of audiovisual communication. This is therefore the first challenge of the future that must be tackled, as the room for manoeuvre and the options available to audiovisual policy that necessarily affect the evolution of Catalan legislation in this area will largely depend on this general law.

“Twenty years is nothing” in television regulation

José Carlos Laguna de Paz

As technology develops, so must the definition and regulation of television be updated. Broadcasting cannot be considered a “public service” to be granted by the state to just a few operators via discretionary ‘beauty contests’. Rather the freedom of broadcasting should be the cornerstone of the sector. Commercial operators should not be subject to the obligation of fostering (“quotas”) or financing European programmes. Public broadcasters are not justified under any circumstance. The state’s role is not to offer a mix of entertainment and information. Its duty is much more to foster as much competition as possible, to fight against undue media concentration and to safeguard the rights and values involved in broadcasting.

Keywords

Public service, freedom of television, competition, convergence, deregulation, liberalisation.

A new environment of technology, business and service convergence

Over the last twenty years, television has undergone an extraordinary change. We have gone from a medium with one or two operators to the current situation, characterised by wealth of channels: (i) broadcast via different means of transmission (Hertz bandwidths, satellite, cable); (ii) at different levels in terms of territory (international, national, regional (autonomous community) and local) (iii) and both freely available and subscriber only. The switchover to digital (2010) will also allow better use to be made of the electromagnetic spectrum.

We should also take into account the possibilities offered by technological convergence and the new telecom infrastructures. The digitalisation of content means that networks are no longer tied to providing specific services and take on a multipurpose function. Television and video services are already being sold on demand via the telephone line (DSL) and even the electricity network (PLC). A common strategy is currently being prepared at a European level to facilitate the development of television via mobiles, based on open standards (DVB-h). New generation networks (NGN) permit an unprecedented development of audiovisual services. Within this context, everything seems to suggest that television via the Internet will end up playing an important role (IPTV). For example, the BBC itself is preparing to launch a new version of its website that will provide access to all its programmes broadcast the previous week (*iPlayer service*).

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Work pending: from public service to television freedom

As in the words of the singer Gardel, twenty years is nothing – in life as it is in television legislation. The medium has undergone extraordinary development that even brings into question how we define the activity *[linear and non-linear (on-demand) services]*, as well as the foundations of its traditional legal regime. In contrast, regulations continue to respond to the model of television of the sixties, characterised by very few broadcasters.

Since its very beginnings to our present day, television has invariably been configured as a public service. The plasticity of this concept can lead to confusion. However, regarding television, public service unmistakably means public ownership of the activity, with it being reserved for public powers (section 2 of article 128 of the Spanish Constitution) (see Laguna). So-called private television consists, therefore, of the indirect management of a public service, after a licence has been granted by the public administration. In practice, it is also public television (see Muñoz Machado). As an exception, there are two types of television that have been liberalised: satellite television (Act 37/1995) and cable television (general telecommunications act 32/2003).

Classifying television as a public service has always been controversial. One sector of the doctrine defended its position using the Spanish Constitution (see De la Quadra; Chinchilla), while another considered it incompatible with the freedoms that underline the activity (see González Navarro; Ariño). For its part, the Spanish Constitutional Court (TC) admitted the constitutionality of the issue, although with increasingly more nuanced jurisprudence

In any case, at present public service does not seem to be justified. Technological development is making it increasingly more difficult to maintain an "excessive and unnecessary" legal regime (see Fernández Farreres) that could be an instrument of political power (see Meilán) and that restricts the freedom of television. With regard to this issue, the following arguments must be taken into account:

1. In public service, of note are the powers held by the public administration to direct the activity. To a certain extent, freedom is secondary within the institutional logic of public service, the reason for which is especially to guarantee, via public means, the provision of an activity essential to citizens as a whole (see Martínez López-Muñiz).

2. In public service, private initiative is replaced by the prudence of the governing body, which tends to plan the sector and restrict free competition based on aprioristic calculations of the number of firms the market can take (see Laguna).

3. Nowadays, it seems hard to deny the possibility of achieving real pluralism in TV supply as a whole. Moreover, the existence of technical limitations with regard to some types of transmission does not require television to be public but merely organised, so that an adequate selection is guaranteed for beneficiaries and, if necessary, the imposition of obligations of general interest.

We must recognise that television is a private activity, of general interest (see Laguna). Those regulations that consider television to be a public service whose management is "granted" to a few people must be supplanted. We must therefore affirm the freedom of television that, in all its modes, must be open to all initiatives that are technically possible.[1]

Naturally, this does not mean that television mustn't be subject to appropriate regulations in order to guarantee the general interest. We are also faced with the delicate question of whether private firms must be subject to the same rules as public bodies. With regard to this question, we must remember that public bodies are only justified as long as they fulfil the purpose for which they were set up (section 1 of article 103, Spanish Constitution), something that leads them to aim their programming towards these objectives. On the other hand, private companies simply exercise free enterprise (article 38, Spanish Constitution) in carrying out an economic activity with components of information, culture and especially entertainment. It does not seem, therefore, that regulations should be equally harsh in compelling these

1 "Also this does not imply that traditional broadcasting regulations need to be applied to IPTV services; rather it could imply that broadcasting regulations may be deregulated due to the increased competition in the relevant market(s)". OECD, IPTV: Market developments and regulatory treatment, 19.12.2007, DSTI/ICCP/CISP(2006)5/Final, p. 6.

two parties in aspects such as pluralism or the provision of programmes with components of general interest.

This is not an obstacle to there being a series of principles, related to the freedom of expression and information (article 20, Spanish Constitution) that constitute general limits to exercising the activity and that, as such, bind broadcasters, both public and private. This does not mean that each medium cannot have its own "tendency", something that is inevitable. The aim is to ensure that the media offer a balanced view of reality that complies with the duties of journalistic diligence, and that they don't become mere vehicles of propaganda, with biased information or information that attacks the values on which civil wellbeing is founded.

In addition to the outmoded legislative situation for television there is also the chaotic situation of the regulations. For example, Act 4/1980, of 12 January, of the Statute for radio and television (ERTV), was repealed by Act 17/2006, of 5 June, on state-owned radio and television, but its applicability is declared for the purposes provided for in Act 46/1983, of 26 December, on the third television channel (LTerC) and in Act 10/1988, of 3 May, on private television (LTPri) [section 1 of the sole repealing provision]. At present, the regulations for the sector are some of the most com-plicated, diffuse and unstable. Their reform is therefore a requirement that cannot be postponed. We need to put an end to the current legislative puzzle, which makes life unacceptably difficult for providers of audiovisual services and weakens their legal certainty.

The state also encourages self-regulation in the industry (see Esteve Pardo). This is a very interesting mechanism, through which operators undertake to exercise their freedoms appropriately, especially in aspects where the limits are difficult to determine, such as requirements for quality in programming or protecting children or young people. However, self-regulation can exercise a complementary role but it cannot replace public regulation.

The state is responsible for defining the model of television, notwithstanding its development and application by the autonomous communities

The state is exclusively responsible for telecommunications (art. 149.1.21a, Spanish Constitution), while the social media are only subject to basic legislation (art. 149.1.27a, Spanish Constitution). These are therefore different levels of authority, although they may need to be interpreted together: "they are necessarily limited and offset each other, and prevent the mutual emptying of respective content."[2] From this perspective, the granting of licences for broadcasting is linked to social media area of competence, while the technical aspects of transmission, including the approval of the corresponding technical plan, are related to telecommunications area of competence.[3] The executive powers of inspection, control and discipline come under the substantive area of competence.[4]

Within this context, convergence only fuddles the boundaries of business activity, not that of competence-related licences, the limits of which continue to separate transmission (telecommunications) from content (social media). In fact, the European regulation of 2002 aims to regulate the new electronic communications sector with the exclusion of content. The same occurs with Spanish regulations [section 2 of article 1 of Act 32/2003, of 3 November, on general telecommunications (LGTel)].

Since the beginning, the state has interpreted its authority extensively. However, the switchover to digital television has broadened the powers of the autonomous communities. Specifically, the basis of the system is made up of the following:

1. Television is classified as a state-owned public service (section 2 of article 1, ERTV). The logic of public service is also extended to transmission via digital technology, both at a state and at a regional level, although the plan is to grant as many licences as there are technical availabilities (sec-

2 Ruling of Spanish Constitutional Court (STC) 168/1993, 28 May, FJ 4; STC 244/1993, 15 July, FJ 2; STC 127/1994, 5 May, FJ 8.

3 STC 278/1993, 23 September, FJ 2; STC 168/1993, 28 May, FJ 4 (radio broadcasting).

4 STC 278/1993, 23 September, FJ 2 and 3.

tion 4 of additional provision forty-four of Act 66/1997). The only types of liberalised television are those broadcast by means of satellite or cable.

2. The Autonomous Communities (CAs in Spanish) have recognised powers to implement and execute regulations with regard to the different types of television, within the context of the autonomous community and at a local level:

- **Analogue television**: the CA can manage the "third state-owned television channel" (art. 1, LTerC), via authorisation from the government (additional provision six, LTerC). Pursuant to section 3 of article 20, Spanish Constitution, the CA must previously regulate the organisation and control via parliament of the third channel (art. 7, LTerC). Apart from the Basque CA, which started to broadcast television without state authorisation, most of the CAs have obtained the corresponding licence from the administration.
- The **third channel** is managed by the corresponding public limited company set up for this purpose (article 6, paragraph 2, LTerC), whose capital must be completely subscribed by the CA (art. 9, LTerC). This stops any indirect management of the service. Notwithstanding this, and within these limits, the CAs can independently manage the television channel without the state interfering in programming. Initially, the infrastructure for distributing the signal was owned by the state (art. 2 and 4, LTerC). However, later liberalisation meant that CAs could install their own infrastructures.

In spite of this, analogue broadcasts, of state or CA coverage, will have to end by 3 April 2010.

- **Cable television**: the CA is responsible for granting authorisation to provide broadcasting services that do not go beyond its boundaries, which must be entered in the autonomous registers set up for this purpose [Additional provision ten, LGTel (wording of Act 10/2005)].
- **Digital terrestrial television**: each CA has one digital multiple covering its region. The public bodies created pursuant to LTerC must alternate broadcasts via analogue and digital technology.

Once analogue broadcasts have ended, each CA will have two digital multiples covering its region. The CA will decide which channels will be managed directly (previously assigned by the government) as well as those run by private firms. The CAs will grant licences to manage the service indirectly, either at a regional or local level, subject to the technical plans and regulations for providing the service approved by the state (section 4 of additional provision forty-four of Act 66/1997).

- **Over-the-air local television**: the CAs have recognised powers to develop and execute state legislation [art. 2, *in fine*, of Act 41/1995, of 22 December, on over-the-air local television broadcast (LTLoc)].
- **Satellite television**: the CAs can also provide these services.

3. The electromagnetic spectrum is classified as a state-level public domain (section 1 of article 43, LGTel), so that operators must also obtain the corresponding licence.

As we have been explaining, state legislation can be criticised in some points. However, while it is in force, it links all public powers. Hence the Catalan Act 22/2005, of 29 December, should be considered unconstitutional, because it exceeds its authority and contradicts some essential aspects of state regulation: the definition of the activity's regime (art. 3); the electromagnetic spectrum (title II); the definition of audiovisual public service (title III); administrative operating permits (in spite of the contradictory Transitional provision six: licences "shall adopt the form of an administrative concession), guarantee of pluralism and control of concentration (title IV); regulation of content (title V), etc."

Local television: from anarchy to legality

For years, the state legislator failed to regulate the medium, which did not stop it from developing outside the boundaries of law. Act 41/1995, of 22 December, on over-the-air local television (LTLoc), regulated the sector in general. In spite of this, it will probably be regulated definitively when digital television is implemented.

The national technical plan for local digital television [R. SR. 439/2004] determines the multiple channels available, as well as their coverage (section 1 of article 3, LTLoc). On the request of local bodies, the CAs subsequently fix the programmes in each demarcation, at least 1 and exceptionally 2, reserved for direct management of the service (section 1 of article 9, LTLoc). The remaining programmes will be adjudicated by the CAs for indirect management of

the service (section 2 of article 9, LTLoc). Local terrestrial television stations will not be able to broadcast or form part of a television channel (art. 7, LTLoc).

Notwithstanding this, the switchover to digital has been postponed given the difficulties in effectively implementing digital television. So those authorised stations that have carried out broadcasts under transitional provision one of the LTLoc will be able to continue with their analogue broadcasts for two years, as from 1 January 2006, provided their territory does not exceed that of the digital licence granted and that such broadcasting is possible in terms of wavelength availability and planning (section 5 of transitional provision two, paragraph 1, LTLoc). The government may modify this deadline, taking into account the state of development and penetration of digital technology (section 6 of transitional provision two, LTLoc).

Public television requires sufficient justification

For decades, public television channels enjoyed a monopoly, something that has helped consolidate their position extensively. However, the appearance of private television has brought the legitimacy of this situation into doubt. In fact, in recent years programming, organisation and funding has been debated non-stop. The crisis has even reached the legendary BBC on the occasion of renewing its charter. We mustn't forget that the Peacock report (1986), now relevant again, stated that the content of public service not covered by the market did not necessarily have to be provided by the BBC: the private providers of audiovisual services could also receive public funds to provide content of general interest.[5]

The starting point is that public television is not a necessary component of the system. Section 3 of article 20 of the Spanish Constitution does not require public social media to be maintained.[6] The only requirement is to guarantee that the organisation, management and control of the media that, at any time, depend on public bodies follow specific criteria (against that, see De La Quadra).

For its part, European community law, although recognising the importance of the public broadcasting system, leaves the member States a lot of room to manoeuvre in structuring a television system that meets the requirements of general interest (Amsterdam Treaty).

In principle, the public powers must focus on specific functions, which are not to provide citizens with information and entertainment. Public television, like any other public intervention, requires justification. Unlike private television, which is the direct expression of the free initiative of citizens, public television is only legitimate as long as it pursues general interest, with the necessary, reasonable and proportionate means (see Laguna).

Consequently, the state, CAs and local bodies must precisely define the functions entrusted to public television. The promotion of regional language and culture justifies the creation of regional public television only if (in the context in question) it is considered to be a necessary measure, appropriate and proportionate.

The sector is constantly changing, so that no-one can say whether public television will have a role to play in the medium-term. As in any other sector, the development of private television can satisfy all the demands for general interest related to this activity. Notwithstanding this, although it may be considered appropriate, public television can exercise a complementary function, attending to aspects not covered by commercial channels. This does not mean that it cannot be set up as generalist television, with the aim of reaching a significant spectrum of the population (section 2 of article 2 of Act 17/2006). However, its programmes must stand out in terms of paying priority attention to information, education and culture. It must promote the production of programmes that reflect the historical and current reality of our country, intellectual, social and political debate or attention to the Spanish-speaking market. Broadcasts must not include products that offend the average viewer.

5 Along these lines, the Institute of Economic Affairs published a report entitled *Public Service Broadcasting without the BBC?* (2004).

6 STC 86/1982, 23 December, FJ 4, with Díez de Velasco voting against.

Programming: protecting the general interest and encouraging European works

Television organisations have the freedom of programming that, in the case of private firms, results from the freedom of expression and information [points 1a and 1d of article 20, Spanish Constitution], as well as free enterprise (article 38, Spanish Constitution). However, this freedom must be exercised while respecting the other rights, principles and values recognised by law (article 4, ERTV).

Firstly, television operators are subject to a series of duties of a constitutional level, consubstantial to the activity being carried out (article 4, ERTV): objectivity, accuracy and impartiality of information; their separation from opinion; respect for pluralism and constitutional rights.

Secondly, in a medium that penetrates homes with impunity, the protection of children and young people takes on particular importance (articles 17 and 20 of Act 25/1994, of 12 July, on television without frontiers = LTsFr). However, these regulations are difficult to apply. That is why the government has promoted self-regulation in this area (additional provision three, LTsFr). On the other hand, the development of digital television could be accompanied by greater choice for viewers. In *à la carte* television, protecting children and young people cannot be based so much on general rules but on the need to support (or impose) the development of technology to filter or block content.

Television regulations curtail the free management of the business by imposing controversial screen quotas, whose aim is to promote national and EU audiovisual works (section 1 of article 5, LTsFr). These obligations are not imposed on broadcasts with local coverage that do not form part of a national network, although the CAs can introduce equivalent rules regarding local television to encourage audiovisual works in their own language (section 5 of article 2, LTsFr).

These limits have always been the object of discussion: (i) the screen quotas and particularly the obligation to fund European films are a restriction to free enterprise and to the right to property, and of doubtful constitutional validity; (ii) the existence of public television companies should release private operators from requirements concerning general interest such as these; (iii) the effectiveness of these measures is highly doubtful, as technological development guarantees the viewer's freedom, who cannot be forced to watch European works.

Defending competition

Television regulations include specific rules that attempt to protect free competition and, with this, the pluralism of information, essential in a democratic society. In those aspects not regulated by the industry's legislation, the general rules are applied that defend competition, which thereby develop a complementary function of growing importance.

Initially, Act 10/1988 (LTPri) established restrictions aimed at guaranteeing internal pluralism, limiting to 25% the holding that one person could have in a company authorised to broadcast. However, this limitation has disappeared, as it not only made it difficult to run the firm but also became meaningless as technological development increased the medium's broadcasting capacities.

In order to protect (external) pluralism, the Act limits the holding of shares, as well as voting rights in more than one authorised broadcaster, in particular when operating in the same geographical area (article 19 LTPri). However, unlike what happens in other countries, the regulations do not establish any restriction to multimedia concentration, something that seems to be a serious failing, as the joint ownership of television and radio channels and the press could seriously affect the pluralism of information.

Exclusive rights are particularly relevant in television. This is a licit commercial practice provided it does not violate the right to access information on the part of the public nor free competition. That is why exclusive rights are subject to some limits:

1. Those exclusive rights are prohibited that, either due to their duration, scope or context, have the effect of blocking the market, limiting access to third parties during too long a period of time or that might falsify competition.

2. Events of great social relevance (including sports broadcasts) must be broadcast openly [section 3 of article 4 of Act 21/1997, of 3 July, regulating live and recorded broadcasts of sports competitions and events (LEDep)].

3. The right is recognised to broadcast a news summary regarding events of public relevance subject to exclusive

rights (article 2, LEDep).

4. The acquisition of exclusive rights by regional television channels must not impede dissemination on a national scale (article 16, LTerC).

The development of subscriber digital television depends on a series of associated services (conditional access, interfaces to apply digital electronic programmes and guides). It's important for the business control of these services not to introduce barriers to entering the market, nor to distort competition, so that they must be offered and applied under reasonable and non-discriminatory conditions.

The Protocol annexed to the Amsterdam Treaty allows states to choose the financing system for public service broadcasting they considered to be most suitable, including the combination of public subsidies and commercial income. This is the model followed by public television in Spain.

However, this financing system is only justified as long as public television implements programming of general interest. If not, state funding (irrespective of the format adopted, be it a duties, subsidies, waiving of debt, state-backed guarantees), would constitute public aid (article 87, Amsterdam Treaty), which might distort the conditions of competition.

States therefore have to accurately define the tasks of general interest entrusted to public television bodies (section 2 of article 86, Spanish Constitutional Court). One key aspect with regard to this issue is that the European Commission allows public television channels to develop generalist programming, aimed at achieving broad audience levels, provided these are of good quality. However, from this perspective, it does not seem at all easy (as also required by the Commission) to distinguish between the two types of business, commercial and public service, that may be carried out by public television channels, apart from the separation of accounts and analytical accounting. In reality, all programmes must meet requirements of quality that justify the existence of public television so that, inevitably, the financing system must refer to programming as a whole. Moreover, the classification of public service can also depend on other factors, such as universal coverage or the open nature of broadcasts.

On the other hand, the Commission recognises that its function isn't to control the opportunity, content or quality of programmes. Its role is limited to penalising "manifest errors" in defining tasks of general interest, when the democratic, social or cultural needs of a society cannot be deemed to be met.

Discussion of the expediency of independent administrative authorities

One of the recurring themes in television is how expedient it is to entrust public powers and sector supervision to independent administrations. Attempts are made to achieve their political 'asepsis' via the "protected" status of the members, which are also chosen by broad parliamentary majorities, by the combined action of the main public powers or by the most representative social forces.

The aim of the model of the Board of Directors of the RTVE Corporation is to respond to this proposal (art. 10 and sub., Act 17/2006), assisted by an Advisory Council, as a body made up of representatives from society (art. 23) and Informative Councils, with the participation of information professionals (art. 24). With one or more variants, the organisation of some CAs also follows this same philosophy.

In terms of organisation, technical solutions must be judged by their results. In spite of this, a number of general observations can be made:

1. The natural framework for this kind of organisation is the open administrative model from the Anglo-Saxon world, not in our system where administrative bodies are constitutionally bound to objectively serve the general interest (art. 103, Spanish Constitution), with impartiality and independence.

2. In practice, it is by no means easy to delimit functions that are completely "neutral", that do not have some degree of *indirizzo* or other. Regarding the government of public issues, there is no full or scientific technical 'asepsis', nor a complete axiological order shared by all throughout their extension or hierarchy. Beyond some general principles concerning the role that must be played by (public) television, which the majority agree on, differences of opinion immediately appear concerning the opportunity of specific programming, whose evaluation depends not only on their own understanding of the situation but also on specific interests, from which it is very difficult to distance oneself. Moreover, these organisations, once set up, quite often feel

called upon to develop their own policy. This is how they progress towards constitutional legitimacy as, beyond the exceptions expressly provided for in the Constitution, the government is responsible for directing their executive function (art. 97, Spanish Constitution), being responsible for its exercise, always blurred whenever these organisations intervene.

3. Experience shows that independent administrations are yet another organisational instrument, not the panacea for all ills. The technical and legal guarantees provided by legislation to ensure their independence, although admittedly to varying degrees, have a relative virtuality. Ultimately, the key to effective functioning lies in something as difficult to build up and as fragile as institutional prestige. In the long-term, only this can keep them safe from any interference from politicians or particular interests.

4. The arguments in favour of these administrations would lose force if the activity were suitably organised. Affirming the freedom of television, per se, would reduce the risks of the state being involved in this sector. On the other hand, if the legislator defined a precise model of public television, some points of conflict with private operators would be eliminated and, consequently, the need to look for a neutral arbitrator outside the government administration.

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Transformations in the media ecosystem and new patterns of the administrative regulation of audiovisual communication

Andrés Boix Palop

The regulation of audiovisual communication in our country, as in other countries under the same legal regime, has historically been based on the definition of these activities as a public service*. This definition has shaped the model of how public administrations should act on the sector. The progressive erosion of the idea of public service, its disappearance in part of the sector and the emergence of new technological possibilities, as well as the growing importance of spheres where communication is organised based on the freedom of expression, on the one hand, and on the freedom of enterprise, on the other, means that we have to rethink the manner and orientation of public intervention in the sector.*

Keywords

Radio and television, broadcasting rights, Internet, broadcasting regulatory authorities, freedom of expression.

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1. Trends in the evolution of our media panorama

The legal framework that, in Spain, currently governs the communication of ideas and opinions and the dissemination of information by audiovisual media is the consequence of the institutional architecture and peculiar dogma that our law has been endowed with over the last few years. The central element that explains the existing regulations has been (and continues to be at present, at least formally, in which it is substantial) the notion of *public service*. Rather than stopping to analyse the notion's specific foundations (and correct foundations, if necessary), an issue that has been analysed in detail in terms of doctrine and jurisprudence on numerous occasions (Bastida Freijedo 2004), at present it suffices to refer to a precipitated list of events that have shaped our audiovisual law, necessarily deduced from the traditional declaration, which still survives (at least, as has been said, formally, and with the exceptions of satellite and cable since 1995 and December 2003, respectively), that considers radio and television to be public services.

1.1. The 'publification' of the sector and its legal consequences

So, this declaration of public service involves the 'publification' and reservation of the sector and the correlative exclusion of the law of the market and freedom of enterprise. It obviously entails great public control, which will be exercised by the administration declared to be its owner. Something that, in Spain and until recently, has also had significant consequences in terms of competition. For example, it has allowed the whole system to revolve around the state administration, insofar as broadcasting, and most particularly television, has been reserved for the public sector and, within this sector, initially, it has been reserved exclu-

sively for the state. We must remember, for example, the particular nature of the fact that, legally, public television channels for the autonomous communities started their operations, as in the case of private television channels, as licence holders of a public service owned by the state, as provided for in the Third Channel Act (Barata i Mir 2007). Only very slowly and progressively has the authority to first manage and then own some services (FM radio at first, autonomous and local television channels more recently) passed into the hands of the autonomous community.

The broad decision-making powers that such a structure grants to the public administration range from deciding whether to accept new operators in the market and, if necessary, establishing the optimum number of operators, to establishing all kinds of controls and requirements with regard to the actions and contributions of those involved.

a. The position of private operators and their subordination to the public administration

The participation of private players in the audiovisual market is possible only after they have been accepted by the public authority and, for this reason, only in accordance with the limits and always within the margins established by the legislator and specified by the public administration. Starting with the first television channels for the autonomous communities and continuing with the radio and television channels that are normally called "private", in reality the operators are licence holders that are assigned to provide a public service on behalf of the public administration that has chosen them. They obviously do so within a framework of rights and obligations that are entirely conditioned by this situation, which may be as extensive as the public administration believes is appropriate. This is because a licence holder is actually an instrument that aims, albeit via private management and with the participation of companies from the sector, to achieve the objectives and goals pursued by the administration in providing the service, i.e. it is carried out exactly under the terms desired by the public authority.

This can be explained by the fact that the different private operators have traditionally been subject to an extensive and generous catalogue of provisions, in theory highly demanding and forcing them to operate so as to guarantee these objectives of public service. On the other hand, for this same reason these objectives do not differ between state public operators (RTVE) and the rest, including the "private" operators.

b. The public predetermination of the economic architecture and conditions for competition in the sector

It is evident that the whole model being organised around the notion of public service also has notable implications with regard to the legislator's different decisions, public policies and choices concerning financing for the different operators, or in determining the conditions for competition under which they must operate. Here we should not forget that the very decision to open up the market or not to a certain point, the decision to establish a specific number of administrative permits or the possibility of establishing operators with conditional access (subscriber) are public decisions that affect competition. And they do so from the same structural base as the television and radio markets. Any call for free competition in a sector affected in this way must be highly aware of the very special conditions under which a strongly intervened market is carried out, among others, with the specific intention of helping operators be economically viable.

These are not the only consequences of the 'publification' of the sector in terms of its economic organisation, resulting from the fact that it is legally considered to be a *public service*, and we could continue with a list of manifestly disproportionate dimensions, given the intention of this article. We will therefore limit ourselves to stating that they have historical restrictions regarding media ownership in order to guarantee internal plurality, as well as limitations to the concentration of media ownership, both being highly questioned by the sector (and not complied with, more or less flagrantly in quite a few cases).

c. Administrative intervention in a sector organised as a public service

When applying the logic of *public service*, the relationship between the administration and the licence holder is naturally very intense with regard to organising the activity, and such powers may entail all kinds of instructions and prede-terminations on how this service should be provided. These include the orientation of the programming and service but can also go much further and establish all kinds of specific obligations. And they allow the administration to

inspect and take disciplinary measures that, logically and without this supposing any legal problem, can end up with the licence being withdrawn, if the catalogue of obligations established by the agreement between the public authority and the private operator are not met. This agreement is the means by which the administration specifies to the operator how audiovisual production should be carried out and under what exact conditions, namely those of opening up the market and the entrance of the private operator which, otherwise, would have had no other option than to remain outside the market.

1.2. The birth of independent authorities to control audiovisual communication that is still conceived as a public service

This is the specific panorama for the different independent administrative audiovisual authorities in Europe and in Spain, whose mission is to implement, in line with a different orientation and more legitimacy and technical thoroughness, the mission of public control that a schema such as the one described above confers, to a maximum degree, on the public administration (Tornos Mas 1998). We can only understand the creation of these independent authorities, the functions they are assigned and the specific position in the structure assigned by their respective regulations, in Spain or in other neighbouring countries, including a large number of public powers such as those of inspection and discipline, from this historical process, from this exact inclination of public functions in the audiovisual field, from *the structuring of the whole sector* and all *the public intervention in public service*. (However, it should be noted that these concepts, at least until 1995, were strictly synonymous in Spain and that even now they continue to overlap in what is essential, given that 'publified' intervention in broadcasting, although no longer equal throughout the sector, continues in almost all relevant communication models in economic and social terms).

Our familiar bodies to control broadcasting that were created, on the other hand, by laws rooted in the continent of Europe, are understood and make sense within a model of public service where there are private operators acting in the market with the corresponding administrative authorisation. In fact, it is not by chance that the most important body, the French Conseil Supérieur de l'Audiovisuel, appears within a traditionally highly interventionist context, namely that of French law. It is evident that the regulation of a free market, that administrative action on an area of economic activity where the freedom of enterprise prevails, although perfectly possible (and it being also conceivable that this should be carried out by an independent authority), must have different features. As happens, for example, in the North American market (Betancor Rodríguez). Features that are obviously not possessed by the authorities for audiovisual management in Europe, as they have been born within a context where public service still reigned (and reigns now formally), and their functions are based on traditional public action.

1.3. Beyond public service audiovisual communication: fractures and patterns for liberalising the industry

Notwithstanding this, the 'publification' of audiovisual communication is subject to growing pressure. As a consequence of technological, economic, social and also political evolution in our societies, the different reasons that have historically allowed us to comprehend and justify reserving this for the public sector have almost all declined. Moreover, they have done so by pressurising the institution from two radically different directions:

– On the one hand, there is growing pressure with respect to the areas subject to restrictions to the freedom of enterprise. If we take the Spanish example, from 1994 onwards areas have spread in which audiovisual services are provided without the need to apply for administrative authorisation. Some, such as local television channels or some radio stations, had operated up to that point on the margin of any legal or regulatory support, but various rulings from the Constitutional Court, taking note of the interposition of a right such as the freedom of enterprise on the sector and of the social and political importance of this right, since 1994 have protected their situation up to a point, supporting the notions that undermine the consideration of public service as the cornerstone of regulation. We cannot underestimate the legal relevance of this position and it probably marks the point when our constitutional regulations, understood according to the aforementioned constitutional jurisprudence, take the position of not allowing the state to

monopolise television completely (Muñoz Machado 1998; Bastida Freijedo 2004). In other cases this has become even more obvious since legal regulations themselves have taken note of growing social and political awareness concerning the liberalisation of the industry, as well as the technological impossibility of controlling certain audiovisual communication effectively and, lastly, of the economic maturity of the industry. Consequently, restrictions have been lifted, as happened in 1995 with satellite television and in December 2003 with cable television.

– At the same time, we can also discern an undeniable erosion of the legal consequences resulting purely from reservation for the public sector in those areas where this practice still survives (and it does so to a greater degree, or at least in the most socially and economically relevant areas). This means that the spaces where television and radio are still (and continue to be) a *public service*, are not perceived as such, not by a long shot. Not only by social and economic actors but also and even by the public administration itself. In fact, the inveterate practice of inaction when faced with repeated and notorious violations on the part of operators (in the area of content, but also with regard to requirements regarding the composition of shares and others) is explained precisely by this absence of awareness of the reality that the audiovisual sector continues to be a *public service*. So, it's not only the case that, for most citizens, "private" television and radio channels are, in general, just that, i.e. private, and that's why it's considered absolutely normal for their programming to be planned according to purely market criteria, i.e. that their content is not related to the mission of public service but to the search for market share that helps to improve commercial performance. Not only do operators and the audiovisual market generally function according to market criteria and not only are the structure of company ownership, the management, alliances and commercial strategies manifestly evident of this (Boix Palop and López Garcia 2006). But the very administrations responsible for inspecting and disciplining, legally responsible for a service that, albeit indirectly managed, is carried out under their name, act as if this authority and these powers actually didn't exist. Inspections are minimal, in general; disciplinary action, exceptional directly. Obviously, this very lack of action helps to create the typical sensation of surprise and relative controversy. As the ultimate proof of this situation, we only need to mention the widespread assumption in the industry that licensee companies have the "right" to their licence being renewed once it expires, irrespective of whether there are other actors in the market proposing more serious and solvent projects (which, it goes without saying, there are not, given that the industry assumes there's no point in applying for a licence, as a consequence of what we have mentioned before).

Lastly, on top of this state of affairs, superimposed on a clear opposing trend, appears the incipient impact on the emission of ideas and opinions and the dissemination of information in audiovisual format of the revolution in communications that has occurred in the last two decades. The evolution in telecom supports and advances in compression have created a panorama in which not only does the traditional argument of scarcity that used to justify public regulations no longer make any sense but, thanks to the digitalisation of content and the Internet, the field in which the industry moves has completely changed.

The legal protection in this industry (the aforementioned reservation) and its very economic structure have delayed the impact of these information and communication technologies so that we still have the audiovisual model inherited in its basic structure from the eighties. Not only does it still survive but it still has undeniable pre-eminence. However, apart from this fact, at times the emergence is already evident of new communication models, of growing influence and importance that, moreover, given the convergence of supports and the increasingly complementary nature of content, are designed to co-exist, with increasing weight, with the established audiovisual panorama that we know and in which we have been brought up.

The technical and legal conditions in which these new media are appearing are totally different to those of the past and, moreover, make it hugely difficult, and sometimes impossible, to redirect regulation along traditional patterns (Muñoz Machado 2000). So they become a new kind of pressure, growing stronger, on the model rooted in the idea of public service. And, in turn, they go to make up an increa-

singly larger and more important area where the structuring elements of the legal framework are the freedom of enterprise and the exercising of the freedom of expression. This is an additional factor, whose importance cannot go unnoticed. In an environment with a potential supply as large as the one we are considering, is it possible to maintain the old schema of regulation of content, so obsessed with detail and so meticulous? Probably not. Simply because it is unviable (Botella Corral 2007, 19). But neither is audiovisual communication in which alternatives are structured and appear in this way compatible with 'publification'. Consequently, this model of control is not only no longer viable but neither is it legitimised by any legal foundation.

However, as we have already mentioned, this does not mean that public intervention isn't possible in this area, with the aim of regulating the market in order to defend a number of assets and values of constitutional relevance. However, this must be carried out in another way, without the patterns that have appeared over the long years of intervention based on the idea that the sector was a public service. After a brief explanation of the context, we now dedicate the rest of this analysis of regulatory trends to a reflection of how this should come about, in an environment where, moreover, it is now evident that the independent audiovisual regulatory authorities will be increasingly important.

2. Independent audiovisual regulatory authorities and the emergence of a free market

2.1. Independent administrations and audiovisual communication in free competition

a. Generalisation of the model of independent audiovisual supervision

The legal framework current applied in Spain for the communication of ideas, opinions and information via audiovisual media is logically a consequence of the peculiar institutional and legal architecture it has been built around, as we have briefly described. But we can also note the emergence of a new model for managing public powers that is based, in part and at present (and will surely be totally based on this in the future) on assigning these powers to an independent administration, i.e. the establishment of a regulatory authority for the audiovisual sector in the corresponding area of authority, while broadly recognising its independence in terms of function, finance and personnel.

The emergence of different audiovisual bodies is a response to the need for public powers to guarantee the existence of a market and, at the same time, to intervene in the control of content, especially when the importance of this intervention is considered to be fundamental, and increasingly so, given the appearance of new media and a growing spread of supply. This is an unstoppable trend that has transferred to our country the intervention method that, in countries with regulations structured around the tradition of *public service*, has passed on the exercising of public powers by the administration (and the inevitable suspicion of it acting with political bias) to an independent authority. With an additional advantage, insofar as, in almost all countries, the public authority still has operators that depend on it directly, of separating the responsibility for decision-making from the body responsible for organising and supervising the industry, something that lessens the traditional suspicion that decisions are essentially adopted in line with the interests of the public operator more than those of the whole industry or general interest. In this context, it makes complete sense to set up authorities (by the way separate from those regulating telecommunications) provided their independence and, on the other hand, their technical capacity are assured (Tornos Mas 1998).

In Spain, we can start to see institutional support for the model established in several European countries (based on the action of the French Conseil Supérieur de l'Audiovisuel) as from the famous *Camps Report*, passed by the Spanish Senate in 1995, in which the proposal was already made to create an independent regulatory body. This initiative was followed by the effective implementation of authorities to develop growing powers in the industry in Catalonia, Navarre and Andalusia (Guichot and Carrillo, 2007, allow us to consult the legal landmarks accompanying the creation of the different bodies in their introduction to an analysis of Andalusia). Other cases appear in addition to these, such as in Galicia and Madrid, with peculiarities that force them to position themselves at a different level, beyond the political controversy that has surrounded them in some cases, given their less ambitious attributions of power (Barata i Mir, 2007, 259). Along similar lines, basing its incorporation on the

model but without actually putting it into practice, in 2006 the Community of Valencia passed a law on the autonomous community's audiovisual industry and planned to create an audiovisual *consell* (council) by means of a specific act (Boix Palop, 2007), although this has not actually come about as yet (so that these powers are still exercised by the administration of the autonomous community).

At a state level, the trend is also along these lines and recent legislative reform affecting the state public media in 2006 also plans to set up an audiovisual council in charge of administratively supervising compliance with the public service obligations established by law. Although the council hasn't actually started operating yet, something which would allow us to verify the scope and ambition of its powers, it is evident that this is following the same general lines we have described earlier.

In any case, the delay in Spain, which is trivial at these critical times, is always assessed from the perspective of transferring powers from the administration to an independent authority, i.e. from an analysis of whether the powers remain in the hands of the political authority or not. It is not a question of critically passing judgement on a model that might be different and freer, less regulated and more judicially-based, for example (Botella Corral 2007, 17), but of calling attention to the fact that the administration has retained its powers, always without abandoning the logic that, in the hands of one body or another, the order in which we move is that of traditional *public service*.

b. Fractures in actions by audiovisual authorities coherent with the appearance of a competitive environment and of a market

The fact is that regulatory councils (also in Spain, at last) are appearing at a time when the customary passivity, self-limitation and secular prevention that used to afflict the administration in taking action on the audiovisual industry is starting to be overcome. This is a consequence of the convergence of a number of factors that, just as they explained the earlier panorama of restriction, provide a context for transition towards a more active role for public powers. The dominant trends that can be noted today are of a diverse order, sometimes seemingly contradictory but, at heart, they are in line with the idea we have already mentioned: the progressive assumption, de *facto* and *de jure*, of the industry's competitive and market-driven nature and the unrelenting evolution towards this situation that, now, it is hoped to control in increasingly more detail. So:

- The *appearance of independent authorities* allows them (in those cases, such as the Catalan case, where the powers are more complete) not only to assume all the administrative powers the territorial public administrations had historically retained and exercised in order to control the market (especially, and in this particular case, the political power of licences, which in Catalonia is the responsibility of the Consell de l'Audiovisual, the body that, for example, is responsible for the tender for local TDT in Catalan regions). It also allows them to assume powers of supervising the area of public service content. This is probably due to the elimination of the "original sin" that the traditional administrations still committed when exercising these powers, namely that they were perceived, on the one hand, as a "judge and party", as has already been explained, and, on the other hand, because their actions in this field, in spite of exercising powers resulting from classifying an activity as a public service, were eternally suspected of attempting to silence the media that might criticise their actions, using these instruments unfairly. Consequently, prudence was the dominant note but, in a new context, we can see a rise in actions as the independent authorities establish themselves (Amenós Álamo and García Quintana, 231).
- *Growing evidence of a social perception that mostly disapproves or accepts this kind of action with a lot of reservations*, justified or not. The fear of the 'chilling effect' these controls may have, either mediately or immediately, together with citizens' increasingly sharper perception that the media, including audiovisual media, operate *de facto* (for many they have the right) under a free market regime, makes any pattern of control incredibly difficult when based on the idea of guaranteeing certain content or a certain orientation in programming, which is defined not on the concurrence of market forces but on regulations concerning a certain orientation (in values, for example, or in pluralism or neutrality) which afterwards, moreover, must be interpreted administratively. Beyond strict time-based neutrality or the equivalent (in which the French CSA has shown itself to be

passionately interested), this kind of action is not easy to implement, nor is it understood by citizens, not even when it comes from independent authorities. Essentially, once again the reason for this reaction is merely the realisation that the audiovisual media's real economic and social functioning is currently the same as that of the printed media, for example, in terms of substance, and this is how their positioning and how they handle information and facts are perceived, this therefore not requiring any intervention, supervision, control or administration guidance.

– *Tendency to equal action on media acting under a free market regime with those media fulfilling a public service function*. The social dynamic lends itself to this as well as industry legislation in the area of content (which feeds back into the feeling that, at heart, all radio and television channels are legally the same). The regulations on the powers of regulatory councils for the media, although clearly based on the idea that control functions must be essentially focused on those operators fulfilling a *public service* (beyond very specific additional requirements that do establish legislation for everyone and that can also control), has been overtaken by an expansive interpretation of these bodies. This presents many problems, given that it is not evident, not even remotely, that all their powers and authority (which are very broad and inherited from a public service model) can be transferred lock, stock and barrel to the audiovisual media.

  It's only fair to acknowledge that this has been helped by the growing demands, based on community law, shown by regulations on content. Notwithstanding this, we should note, however, the importance of the law that has transposed community requirements, the regulation known as *Televisió sense Fronteres* (Television without Frontiers), in the 1994 version and in the 1999 reform, which is notably evolving due to the marked requirements of the European Union, precisely in determining a legal anchor that allows intervention. We must therefore not lose sight of the fact that this law, whose importance is only too well known as it is the only regulation establishing obligations of content and programming for operators, at heart regulates only three broad areas: commercial advertising on television, the establishment of programming quotas for European works and the protection of minors from television programming in general and advertising in particular. All three are evidence of the possibility of establishing restrictions that do not require the administration to control in terms of *public service*. All three can be applied to limit the freedom of expression due to the need to regulate the market so that it protects other goods and interests protected constitutionally. That's why the disappearance of the 1994 wording is perfectly coherent, which circumscribed the area of application to "broadcasts carried out from Spanish territory for entities providing, directly or indirectly, *public service* television", which was replaced by the territorial criterion, assuming the regulation would be applied to all broadcasts (including those in liberalised markets). The scope of application is defined without referring to the increasingly weaker concept of public service, taking the criterion of establishment as its central element (Gay Fuentes 1999, 3). Community law and subsequent Spanish regulations are evolving, and we can note the appearance and growing importance of areas where it is the market and not public service that regulates the audiovisual media. Given this situation, the option chosen is to regulate so that the rules include all operators. This option is legitimate and reasonable but we must realise that the possibilities for intervention will be fewer. The fact that the very reform previously used in public service to restrict is now the one that obliges all operators equally (as well as the fact that the administrative instances that must comply with this new legislation are the same ones) helps to increase confusion. It might suggest that the community endorses the extension of all the old public control over *public service* broadcasting to any sphere concerning the media exercising its freedom of expression and freedom of information, and nothing can be further from the legal reality.

The intention to establish a single regulation and type of intervention with the same aims in all spheres, however, has not made much of an effort to investigate this issue. It is increasingly clear that the idea is for control and supervision to be carried out under equal conditions for all broadcasts, whether they are public service or not. This even happens, for example, with Internet audiovisual services, where the attempts to supervise them are clear proof of such an intention, given that it entails

advocating an overall model of content control of administrative origin that, no matter how much it is based on regulatory bodies, would involve a radical differentiation between the regime for audiovisual and other models of communication (Barata i Mir 2006). In this respect, the opinion of the Consell de l'Audiovisual de Catalunya, for example, is clear. But it is not the exception, given that it agrees with the notion that the audiovisual regulatory authorities in Europe that can be officially approved have more or less agreed to adopt (Domènech and Costafreda).

In this respect, we should point out that, although it is obvious that the Internet has not been born in a vacuum and that audiovisuals via the Internet, as a free market, can perfectly well have their own regulation, this regulation must be based on the recognition of free speech, not on the traditional pattern of public service. This does not mean that limitations cannot exist, in fact there are limitations and with highly diverse types of intervention (García Morales). The problems appear when this attempt at equal treatment aspires to transfer limitations to audiovisual communication working under a free market regime, or to the exercising of free speech occurring on the Internet, that are common to the rest of audiovisual communication that follows the logic, which is necessarily more limiting, of public service.

– Precisely for these reasons, in part, and also because the market dynamic is clear in the sense that it does not take kindly to more intense intervention than that required to regulate free speech, intervention by regulatory bodies (clearly shown by the actions of the Catalan Consell de l'Audiovisual) has adopted an approach that is increasingly more anchored in indirect and mediated mechanisms of intervention, based on the idea of *auctoritas* more than on the exercise of *potestas* (Gichot Reina and Carrillo Donaire) and has developed a broad panoply of *soft law* mechanisms (reports, recommendations, workshops to reflect on how to organise communication, etc.), whose effectiveness may be questionable but which are better than nothing in a context where direct intervention can be seen to be scarce. Moreover, this goes wonderfully with the kind of public action that is effective in a competitive market under the scrutiny of public opinion, the conditioning factors of image and where market logic rules. This tendency proves, once again, the failure of the hard option in the industry, where the greater the detail and rigour of the regulation, the more it is violated (Celeste Gay, 9).

– The examples of this are increasingly varied. As an example of this trend we can mention the text "Consideracions del Consell de l'Audiovisual de Catalunya sobre el tractament televisiu del atemptat de Madrid del dia 11 de març de 2004 i dels esdeveniments posteriors fins a les eleccions del dia 14", (Considerations of the Catalan Audiovisual Council on the television treatment of the Madrid attack on 11 March 2004 and the subsequent events up to the elections of the 14 March) (*Quaderns del CAC*, no. 19-20, pp. 79-85), produced on 31 March 2004, together with a protracted document that analyses the grids and programming of the different media and studies to what extent they fulfil their duty of objectivity and impartiality, as well as how they treat the rights of victims and their relatives. But the direct legal effects of this, even when referring to the public Catalan radio and television stations, are in any case of an indirect type. Along the same lines, the CAC, by mandate from the Catalan parliament, produces reports on news programmes, sent to the parliament itself and used to assist parliamentary control (see López, C. "Methodology of the Catalan Audiovisual Council for monitoring pluralism in news broadcasts" in *Quaderns del CAC*, no. 26, pp. 9-16). This situation, on the other hand, is widespread in Europe, as pointed out by Anna Estrada in "Monitoring news pluralism on the radio and television in Europe" in *Quaderns del CAC*, no. 26, pp. 17-27).

Ultimately, the different lines of rupture outlined here are totally coherent with this dominant trend, which explains all the changes as a result of the progressive transformation of the regulatory model, which must adapt to the new challenges, being necessarily lighter but without abandoning regulation, beyond access to the market as an operator, which is generally seen as a fundamental right by citizens and not as authorisation granted by public powers (Botella Corral 2007, 21). For this reason, basing the relationship between public administration and providers of audiovisual services on administrative authorisation is no longer the determining factor it used to be, particularly in

understanding and analysing the regulation of the sector (Barata i Mir 2007, 255). Consequently, and once their independence has been won, audiovisual bodies should not attempt to continue with the control patterns based on the idea that there is collaboration between the owner of the services and those responsible for providing these services. Their actions must be redirected to regulate the exercising of freedom of expression and information and their limits in a context comparable to a free market. The question is how to organise intervention in this context, which is based on the freedom of expression and the free market, with the necessary corollary of the possibility of free entrance to this market, de facto. It's important to do this properly as this is the industry that will have to be attended to in the future (Petit 2007). Or perhaps it is already necessary.

2.2. Regulating an audiovisual industry from the perspective of the freedom of expression/ enterprise and free entrance into the industry

Such regulation of an industry must logically be completely different, even though it comes from the same base. Given the public service model that (at least legally) allows a great degree of control, as shown by the fact that, in abstract, it could even appear to 'publify' the sector under a monopolistic regime (something which, a *maiore ad minus*, gives an idea of the extensiveness of powers that could be deployed), the structuring of public intervention supported by the freedom of enterprise and the exercise of free speech must be radically different, as shown by the model of administrative intervention, developed over decades, in a sector that operates under this regime: the printed press.

Notwithstanding this, the authorities that control audiovisual communication, born in a different explanatory context and whose design is based on this context, will be those that must act in this new environment. In principle, there is nothing against this. We must remember that, just because the industry is seen as a free economic area where the freedom of enterprise reigns, this does not mean there can be no administrative intervention. The economic regulation of different markets, with the aim of achieving highly diverse public goals, is a habitual practice. In fact, within a context such as that of the European Union, markedly liberalising, sector regulation is promoted, for example, in the area of content or most particularly in that of advertising, in order to protect European works and audiences. However, it must take on this task being highly aware of the fact that this modification in the conceptual framework necessarily means rethinking the way intervention is carried out and its possible limits. And at present it's only fair to acknowledge that we are still very much anchored in the traditional explanatory schema, which is to some extent logical because, as we have already mentioned, this is the origin of its powers and its actions (this can be clearly seen, for example, in the report by the Consell de l'Audiovisual de Catalunya, *La definició del model de servei públic al sector de l'audiovisual*, 2001).

What are the structural bases of this new model of intervention, of this new foundation of audiovisual control that will have to be carried out by the controlling authorities in the future, assuming the radical transformation of the panorama and context? Summarised very briefly, the basic elements revolve around two key notions: on the one hand, radical respect for an extremely broad regime of free speech as the basis of the system and, on the other, accepting that the administration can outline how this right can be exercised.

a. Freedom of expression, an ancillary point in the model of regulation and supervision

Intervention that aims to be global, omni-restrictive and common for all types of audiovisual communication, that aspires to act over all of them, must assume the impossibility, at present, of seeking out theories such as that of public service, given the restriction imposed on its ambitions by the recognition and interposition of a fundamental right such as that consecrated in article 20 of the Spanish Constitution. From this we can deduce, necessarily, a significant decrease in the possibilities for public action, given the demanding jurisprudence of the Constitutional Court (Barata i Mir 2000, 37). It's obvious that restrictions imposing prohibitions, such as that of prior censorship, go to make up a paradigm of control that is different from and more paralysing than the licence-based model (Amenós Álamo and García Quintana 2007, 251).

It's important to accept this reality right from the start but, in

turn, we must also be fully aware of the possibilities for intervention that survive in spite of this. No matter how well the model provided by the printed press with regard to how intervention can be structured in a sector where the two constitutive aspects (free speech and free market) are as we have mentioned, this does not necessarily mean that any market structured around both characteristics must be regulated administratively, by force, identically. Although, with regard to the printed press, the choice of our law has been that of minimal intervention and control based on the *a posteriori* repression of excess via judicial channels, the Constitution does not state that these patterns must be generalised just because we also assume that, from now on, the audiovisual industry will also be based on these two elements. It could be thus but it doesn't have to be. Just as many other sectors are regulated administratively without this affecting the freedom of enterprise, in order to achieve justified goals of general interest, the audiovisual industry can also be regulated in this way. And, of course, there is also the possibility of accepting limits to free speech within the framework of the Spanish Constitution and the European Convention on Human Rights. The traditional intervention in the United States (not exactly based on the notion of *public service*) shows to what extent it is perfectly possible, by other channels, to accept controls and restrictions: from setting up a technical classification of the sector to restrictions on media concentration, the regulation of advertising and even recognising a broad capacity for supervision and proscription regarding the "obscenity", "indecency" and "irreverence" of messages transmitted (Betancor Rodríguez, 33-34).

As is evident, there are limitations to fundamental law which we all bear in mind, that constitutional jurisprudence has outlined and that community law, as we have seen, supports. Based on these limitations, it will be possible to restrict the freedom of expression and regulate and structure the exercising of this right. But we must not go too far and, moreover, we must always maintain due proportion between restrictions and the benefits and guarantees resulting from these limitations for other assets of constitutional importance, such as respect for honour, for personal privacy and one's own image, the rights of minors, the preservation of pluralism and non-discrimination, instances of illicit advertising or the protection of other rights of consumers and users.

However, we must also take into account the fact that free speech involves an undeniable limit and that the constitutional prohibition of censorship, given the concern of the Spanish Constitutional Court to avoid the *chilling effect*, also constitutes a significant barrier, as numerous rulings (STC 77/1982, 52/1983, 13/1985, 52/1995, 176/1995, 187/1999) have reaffirmed the idea that interdiction must be extended to "as many measures as can be adopted by the public authority that not only openly impede or prohibit the dissemination of certain opinion or information but any other that simply restricts or may have an undesirable dissuasive effect". The specific way in which the model of audiovisual control is organised and structured can therefore have effects that must be taken into account. Similarly, there are certain rules that could come up against the constitutional prohibition of prior censorship.

The conclusion of all the above, albeit brief, is clear. The administration can intervene but it is important to do so also accepting that it must have good legal reason and that it must redirect practice to also become an active bastion in defending the freedom of expression and information in the audiovisual media. It is essential for the administration to accept this in order to reposition itself correctly within the context that beckons.

b. Administrative delimitation of the exercising of fundamental rights and public freedoms

In a way, the discussion therefore focuses, ultimately, on determining whether these functions, necessarily redirected based on the assumption that the structuring elements recognise the abovementioned freedoms, may be modulated or delimited when a public administration exercises them. And how this should be done. Especially when one freedom, free speech, has the rank of a fundamental right, which entails some alterations with regard to the legal architecture of its framework of action. In that case, it is useful to delimit actions and powers, rulings that have frequently been incompatible with the new legitimising paradigms we are developing, as a consequence of their roots being sunk in the old model of intervention.

Regarding this, we must first point out that the open paradigms that currently grant broad powers to the bodies responsible for regulating broadcasting present problems,

based as they are on justified intervention in the confluence of numerous indeterminate and evanescent legal concepts,. It is evident that, in any perfectly legitimate market regulation, such as *Television Without Frontiers*, must be provided with regulatory delimitation that respects the principles of legality, type and, in general, all requirements in terms of disciplinary administrative law. In such a context, these open and ambiguous paradigms present numerous problems (Amenós Álamo and García Quintana 2007, 230-231). So that, with a view to profiling positive administrative action that aims to be global, first we must globally rethink the regulations that specify the types and possible interventions and restrict them from exercising policies with a capacity to limit free speech.

We must also reflect on the possibility of continuing to control certain facets of broadcasting. If we take as an example the powers held by the Consell de l'Audiovisual de Catalunya, its functions include safeguarding "respect for political, religious, social, linguistic and cultural pluralism, and also for suitable territorial balance overall in Catalonia's audiovisual system" (article 115 of the Audiovisual Communication Act of Catalonia). It is clear that this kind of attribution (mentioned by way of example but normal in the industry), cannot operate in a free market context and would entail an unconstitutional restriction to free speech if attempts were made to impose this on broadcasters not subject to the requirements of *public service*. Think, for example, of the evident limitation on free speech represented by transferring these to the printed press. With regard to audiovisual communication, given the evolution of the medium, this perception will be no different in the future. Moreover, we could say that, at present, it is already accepted as perfectly normal that the different private operators can markedly define their political leanings (and this within a context of public service!) if they have such leanings, when these form part of their identity or constitute a market strategy they judge to be useful.

In this respect, we should remember that the freedom of expression makes sense precisely as a guarantee for expression that might bother society, that might injure or offend. And it goes without saying that it's also expression that has not been considered. So it must be the case that any non-neutral, partial manifestation that does not respect pluralism must be understood as equally covered in the case of free market regulation, and not in the case of a licenser that must safeguard the market. The proliferation of audiovisual media on the Internet has helped to highlight, once again, this important assumption (Boix Palop 2002). So that, as we have pointed out in another context, the capacity to inspect and discipline in line with these parameters, when we are not within the sphere of public service, is not constitutionally admissible in our opinion (Boix Palop 2007).

In addition to these initial concerns regarding the legal specification of restrictions and the consequent administrative capacity to inspect and discipline, as well as the need to delimit restrictions differently (excluding controls such as the ones mentioned), there are at least two additional structural issues that must be analysed regarding the repositioning of administrations responsible for controlling audiovisual communication, both related to the possibility that they might go beyond controlling compliance with the aforementioned legal requirements.

The first is whether, excluding the capacity to control, inspect and discipline contained in the functions that can be carried out by the administration to determine the ideal nature of the message, it can even be understood that intromission for the purposes of evaluating, criticising or guiding may be a problem, even when there is no disciplinary issue. In this respect, we only need remember the huge controversy accompanying the rulings of the Consell de l'Audiovisual de Catalunya, such as the one from December 2005 on the possible violation of constitutional limits to exercising the fundamental rights of free speech and freedom of information, or the agreement of September 2006 on the television advertisement for the platform that promotes Catalan squads in sport.

In general, we should note that it is precisely a broad interpretation of free speech that supports the fact that the manifestations of independent administrative bodies to regulate broadcasting can, in turn, take full advantage of this broad interpretation in order to combat, precisely in the terrain of the debate of ideas, certain ways of communicating or of using freedoms. So that, in a free market (this consideration cannot be transferred, however, precisely to the *affaire* on behalf of the COPE channel, whose relationship with the CAC is one of a service licensee), there is no reason why this kind of denouncement, condemnation or evaluation cannot be formulated provided that it does not

lead to effective measures of retorsion. Evaluating the suitability of certain advertising, on the other hand, when involving withdrawal (evident silencing effect) forces action within a strict framework of analysis of the possibilities for limitation given the considerations already mentioned. On the other hand, if the idea is to take part as an authoritative voice in the consensus of self-regulating mechanisms in this field, it is obvious that the respective independent administration's capacity to guide and establish guidelines must be seen as highly superior.

Lastly, there is the absolutely basic question of whether the generally acknowledged disciplinary measures that can be validly adopted by these bodies, framed within the aforementioned terms, may lead to the definitive or temporary closure of the medium in question, or whether this decision is only possible via judicial ruling. There are numerous opinions against the possibility of closure being the responsibility of an administration, albeit temporary, although this may be the result (penalty) established by the law on exercising the powers of inspection and control on aspects of economic activity of the medium (related to the composition of shares, for example, or any other issue related to the administrative organisation of the economic sector) or of the content, which can indeed be controlled by the administration without this presenting problems of free speech (for example, those affecting the rights of minors). The opinion I have given coincides with these opinions on other occasions (Boix Palop 2007), along similar lines to the idea that this is only admissible when undertaken by a judge (Betancor Rodríguez, 58). Other authors, such as De la Quadra-Salcedo, believe this action to be at least "shocking" (*apud* Torns Mas 2007, 179). For Salvador Coderch (*El País*, 13 February 2006), this possibility would not only constitute a case of prior censorship (prohibited by the Spanish Constitution) but, more directly, it would be its own "apotheosis, as it would not only be the case that the authority demands to control, before each programme, the content in order to purify it, but that it would prohibit *a priori* any broadcast for a period of three months, which would ruin the channel in question, would be its financial demise". Slightly more qualified, there are those who believe, nonetheless, that in these cases it's not technically correct to talk of censorship and they claim that the suspension of activity always occurs *a posteriori* (Torns Mas 2007, 179, who none-theless admits that, in any case, criticism is also possible.

It is my belief, however, that the opinion against an authority other than judicial being able to close down a broadcaster is not too difficult to justify. Not only the opportunity, which liberal constitutionalism has made clear and which our constitutional system of values is very keen on. But also its absolute correctness in legal terms, which I believe is unquestionable. With our current media environment, in the light of what I have described, it is totally evident that the aforementioned generous doctrine of the Constitutional Court is totally applicable, in order to believe that not only censorship but any kind of measure with an equivalent effect is constitutionally prohibited. But it also seems obvious that, from a minimally demanding legal point of view, this is not only a question of interposing section 2 of article 20 of the Spanish Constitution ("The exercising of these rights cannot be restricted by means of any kind of prior censorship") but also that established by section 5 of article 20, which states that "the seizure of publications, recordings or other means of information can only be agreed by virtue of judicial ruling". In other words, it seems complicated enough to argue, given the constitutional prohibition, that the simple seizure of publications, information or any other means of information is banned for any authority other than judicial when, on the other hand, the administration can close them down without any problem. This must be denied radically because, in law, it is not simple to accept, a m*inori ad maius*, that a party that cannot carry out the *minori* should, on the other hand, be entitled to carry out what is *maius*. Whoever isn't convinced of the coherence of our regulations by this structural principle should remember that the Constitutional Court has already ruled on this and assumed its validity (STC 199/1987) and the correlative impossibility of Spain closing down the media via actions that are not jurisdictional in nature (Mira Benavent 1987).

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The UNESCO convention on cultural diversity and the law of the World Trade Organisation: conflict or complementarity?

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Conflict, complementarity or both? This is the question about which this article is structured which, very briefly, explains the relations between the UNESCO Convention on the protection and promotion of the diversity of cultural expressions and the General Agreement on Trade in Services (GATS) of the World Trade Organisation. Adopting a legal perspective, the article presents the effects the UNESCO Convention has or could have on the law of the WTO. A brief analysis of the legal instruments in play also helps to clarify the difficult situation experienced at the intersection between commercial and cultural issues.

Keywords
UNESCO Convention, World Trade Organisation, cultural diversity, audiovisual services, GATS.

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The UNESCO Convention on the protection and promotion of the diversity of cultural expressions, better known as the UNESCO Convention on cultural diversity, came into force on 18 March 2007, less than a year and a half after it was passed. The ratification process for this legal instrument, which has been the fastest in UNESCO's history,[1] is indicative of how important this Convention has been since the start, when it still hadn't been decided what form it would adopt as a legal instrument nor its specific scope.

In this article, we will try to indicate the reasons why this legal text has moved beyond the frontiers of UNESCO and entered the area of international trade (more specifically, that of the World Trade Organisation or WTO) and even to what point legal instruments of a multilateral nature in the cultural sphere and the commercial sphere are contradictory or complementary.

The UNESCO Convention on the protection and promotion of the diversity of cultural expressions

Negotiations for the UNESCO Convention started in October 2003, when the UNESCO General Conference asked the Director General of the organisation to present a draft

1 The 30 ratifications were achieved in little more than one year, this number being required by article 29 of the Convention for it to come into force. According to this article "This Convention shall enter into force three months after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession, but only with respect to those States or regional economic integration organizations that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other Party three months after the deposit of its instrument of ratification, acceptance, approval or accession".

convention to the general assembly of October 2005.[2] During the period of almost two years between the two dates, first there were meetings between groups of experts and then government representatives. As had been established, the Director General of UNESCO, Koichiro Matsuura, presented the report, which summarised the whole negotiation process and the draft of the convention, on the date planned.[3] Negotiations continued up to the last minute in higher governmental spheres between those in favour of the Convention (led by the European Community and Francophone countries) and those against, who counted among their number countries such as the United States, which declared itself to be openly against the Convention because it believed its wording did not fit the objectives being pursued.[4] Finally, on 20 October 2005, the UNESCO Convention on the protection and promotion of the diversity of cultural expressions was passed, complementing the Universal Declaration on cultural diversity, also adopted by UNESCO on 2 November 2001.[5]

The Convention is made up of 35 articles and one annex (with 6 articles), which contains a conciliation procedure. The first part of the Convention (articles 1 and 2) establishes nine objectives and eight guiding principles that reflect the desire of those drawing up the text to strike a balance between protection and promotion.[6]

The scope of the Convention is quite broad because, as specified by article 3, "This Convention shall apply to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions".[7] The rights and obligations of Parties are included in part IV of the Convention (articles 5 to 19). The key provision of the Convention is article 5, which recognises

2 UNESCO. *Desirability of drawing up an international standard-setting instrument on cultural diversity (17 October 2003)*, Resolution 32C/34, document UNESCO CLT/CPD/2004/CONF.201/5 [Online]. Paris: July 2004. <http://portal0.unesco.org/culture/es/file_download.php/8bcd1880ce9b69485b00e7e9f3979de3Spa-Resolution32C34-conf201-5.pdf>

3 UNESCO. *Preliminary report by the Director-General setting out the situation to be regulated and the possible scope of the regulating action proposed, accompanied by the preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions,* Resolution 33C/23, document UNESCO, [Online]. Paris: 4 August 2005. <http://portal.unesco.org/culture/admin/file_download.php/33C23_Es.pdf?URL_ID=28182&filename=1124819722533C23_Es.pdf&filetype=application/pdf&filesize=177682&name=33C23_Es.pdf&location=user-S/>

4 The United States, when explaining their vote, strongly attacked the text of the Convention and classified it as "ill-defined" and the text as a whole as "deeply flawed, ambiguous and inconsistent". 33rd UNESCO General Conference October 17, 2005 - Statement by Ambassador Louise V. Oliver - Permanent Delegate of the United States of America - Explanation of Vote of the United States on the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (As Delivered). [Online] <http://unesco.usmission.gov/GC_09082006_Statement_10202005.cfm>
and Draft Resolution submitted by the United States of America to Item 8.3 – Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions and Report by the Director-General Thereon (As Delivered). [Online] <http://unesco.usmission.gov/GC_09082006_Item83EX_10172005.cfm>

5 The Universal Declaration on cultural diversity contained guidelines on an action plan for applying this Declaration, among which was the evaluation of the desirability of drawing up an international standard-setting instrument on cultural diversity. This reflection is included in the UNESCO document *Preliminary Study on the Technical and Legal Aspects Relating to the Desirability of a Standard-Setting Instrument on Cultural Diversity*, Doc. 166EX/28, [Online]. Paris: 12 March 2003. <http://unesdoc.unesco.org/images/0012/001297/129718e.pdf>

6 In this section we find principles such as the principle of international solidarity and cooperation (item 4 of article 2), the principle of the complementarity of economic and cultural aspects of development (item 5 of article 2), the principle of equitable access (item 7 of article 2) and the principle of openness and balance (item 8 of article 2). According to some authors, the Convention has managed to balance these two aspects. See BROUDE, T. "Comment: Cultural Diversity and the WTO: A Diverse Relationship". In: *ASIL Insight*, [Online], 21 November 2005. <http://www.asil.org/insights/2005/11/insightcomment051121_000.html>

7 Such a vague determination of the scope of application has been criticised. See HAHN, M. "A Clash of Cultures? The UNESCO Diversity Convention and International Trade Law". In: *Journal of International Economic Law*, vol. 9, no. 3, September 2006. P. 24-25.

the "sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions […]".

The nature of the obligations has been debated at length. Most experts consider that, in the strict sense of the term, they are not obligations but undertakings or good intentions that may be difficult to put into practice.[8] The very wording of the articles that go to make up the chapter dedicated to rights and obligations demonstrates this, as it uses expressions such as "each Party may adopt measures", "Parties shall endeavour to create", "Parties shall endeavour to strengthen", "Parties shall endeavour to integrate", "Parties shall endeavour to support", "... shall facilitate", etc.[9]

The provisions that cover the relations of the Convention with other legal instruments can be found towards the end of the articles, in articles 20 and 21. This point was the focus of the negotiations as it was one of the most delicate. The final wording of article 20 is proof of this, because it strikes a difficult balance of relations based on concepts such as mutual supportiveness, complementarity and non-subordination.

The main weak point of the Convention lies in its lack of executability. In other words, although it is a legally binding text, its obligations are difficult to carry out.[10] Moreover, there is no mechanism to resolve differences. The only mechanism provided is a conciliation procedure that not only is not binding but is also optional.[11]

Audiovisual services and the General Agreement on trade in services of the World Trade Organisation

At the same time as the negotiations for the UNESCO Convention, negotiations were also being carried out at the WTO within the context of the round of negotiations called the Doha round. Unlike the previous round of negotiations (the Uruguay round), the audiovisual sector has not been observed in the current round. This is not an issue exclusive to the audiovisual sector but to the services sector. The WTO negotiations are carried out en bloc, and an agreement is only reached when agreements have been reached in all the fields.[12] In the current round, suspended since July 2006, there is a negotiation blockade in the areas of agriculture and access to industrial product markets that has paralysed negotiations in the rest of the sectors, including the services sector.

The degree of commitment in the audiovisual sector was very low at the Uruguay round,[13] a trend that has been reversed in the case of later members joining. Of the 23 states joining the WTO after the Uruguay round, 11 established commitments in the audiovisual sector and 17 of these 23 included measures in the annex of exemptions to the principle of most favoured nation. This principle means that all foreigners must be treated in the same way, thereby avoiding discrimination among foreigners. This principle is

8 Bernier, I.; Ruiz-Fabri, H. "Synthèse résumée des analyses et commentaires sur l'avant projet de Convention sur la protection de la diversité des contenus culturels et des expressions artistiques". [Online] <http://www.francophonie.org/diversiteculturelle/fichiers/aif_synthese_ruiz_bernier_septembre2004.pdf>

9 Articles 6, 7, 12, 13, 14 and 16 of the Convention on the protection and promotion of the diversity of cultural expressions.

10 See Germann, C. "Towards a Global Cultural Contract to counter trade related cultural discrimination". In: Obuljen, N.; Smiers, J. (ed.) *UNESCO's Convention on the Protection and the Promotion of the Diversity of Cultural Expressions: Making it Work*. Zagreb: Institute for International Relations, 2006 and HAHN M., V. note 5 and Graber, C. B. "The New UNESCO Convention on Cultural Diversity: In Counter-balance to the WTO?". A: *Journal of International Economic Law*, vol. 9, no. 3, September 2006. P. 553-574.

11 Item 4 of article 25 provides that states, when ratifying, accepting, approving or accessing the Convention, can declare that they do not recognise the conciliation procedure provided for in the annex. To date, only Chile and Vietnam have not recognised this procedure.

12 This is what is called a *single undertaking*.

13 Only 18 states agreed undertakings. On the other hand, with regard to exemptions to the principle of most favoured nation, which are those allowing film or television co-production agreements a place in the multilateral trade system, a lot of states recorded such exemptions (35 states). This gives an idea of the high level of protection granted by the states to the audiovisual sector.

very important in the audiovisual sector as, according to this principle and as an example, co-production agreements would not be possible. The annex of exemptions to the principle of most favoured nation has meant that co-production agreements are considered legitimate within the WTO framework, provided the states have made the corresponding exemptions.

In the current round, the negotiating mandate given by the Council of the European Union to the European Commission has continued to exclude the audiovisual sector from the topics the Commission can negotiate.[14] Canada has maintained a similar position. On the other hand we find the Friends of Broadcasting. This group is made up of countries that wish to advance in the processing of liberalising the audiovisual sector.[15] There are groups in different sectors, among them the audiovisual sector. Some of the demands are: more liberalisation of production and distribution services for films and videos, as well as within the sector of promotion and of advertising services and film projection services, the elimination of quotas and restrictions to foreign investment and the elimination of discriminatory behaviour with regard to tax treatment and the granting of licences.

It is worth noting the strategy adopted by the United States in the initial offers, where some specific audiovisual sectors were reclassified, such as the production and broadcasting of radio and television programmes within the section of telecommunications services. Also of note is the introduction of the word "entertainment" linked to the audiovisual sector. In this respect, projection services had to be transferred to the section of "other recreational services". These manoeuvres illustrate the United States' desire to obtain a greater degree of liberalisation, transferring audiovisual sectors to other more liberalised categories such as telecommunications and cultural and recreational services.

Another factor to bear in mind when talking about the audiovisual sector and the WTO is the degree of liberalisation obtained in the sector through other means, more specifically bilateral and regional trade agreements. Given the stagnation experienced by the multilateral sphere, bilateral initiatives have turned out to be the exit for all those wishing to see liberalisation advanced in certain sectors where advances in scarce at the WTO, such as broadcasting.[16]

Relationship between the UNESCO Convention and the GATS: conflict or complementarity?

Throughout the whole negotiation process for the UNESCO Convention a lot has been spoken about what the effect would be on WTO law. There are opinions, principally from the cultural sector, that want to give it a role that it cannot assume: that of an instrument to modify WTO law. They forget that this Convention is not applied in a vacuum but in a prior context within which states have assumed other commitments at an international level. It is within this scenario, characterised by a mesh of international obligations, where it must be determined whether the UNESCO Convention and the WTO agreements, and more specifically the GATS, co-exist in conflict or complementarity.

To determine whether the relations between the UNESCO Convention and the GATS are conflictive, first we must define the term "conflict" within the context of international law. Doctrine has dealt with this issue extensively and has revealed differing opinions concerning the understanding of "conflict of norms". In an article of these characteristics, we cannot pursue this point but we should mention, albeit briefly, the options proposed by doctrine. In the strict meaning of the term, it is understood that there is "conflict"

14 LAMY, P. *L'Europe en première ligne*. París: Seuil, 2002. P.135

15 The Friends of Broadcasting group is made up of the United States, Chinese Taipei, Hong Kong, China, Taiwan, Japan, Mexico and Singapore.

16 The case of the United States is a perfect example of resorting to bilateral means to achieve liberalisation, which cannot be achieved multilaterally. See BERNIER, I. "The recent free trade agreements of the United States as illustration of their new strategy regarding the audiovisual sector", 2004. [Online]
<http://www.mcc.gouv.qc.ca/diversite-culturelle/eng/pdf/conf_seoul_ang_2004.pdf>

when the obligations that come from a rule impede the compliance of obligations coming from another rule to which the state is also a party. It is therefore impossible to comply with both obligations simultaneously. In a broader sense, conflict occurs when the obligations coming from one rule prevent a right from being exercised that comes from another rule to which the state is also a party. In this article, the option chosen has been that of conflict in its broader sense, i.e. two rules are in conflict when one constitutes, has caused or could cause a violation of the other.[17]

In the case in point there is, on the one hand, a text that includes rights and obligations, such as the GATS and, on the other hand, a UNESCO Convention composed basically of rights. What remains at the heart of the UNESCO Convention is precisely the sovereign right of states to formulate and apply their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions. Consequently, we should disregard conflict in its strict sense, given that there are not two obligations (one in the GATS and the other in the UNESCO Convention) whose simultaneous compliance is incompatible. With regard to "conflict" in the broader sense of the term, we should note that this does not necessarily occur. The definition of this kind of conflict takes into account those cases in which exercising the right provided by a rule necessarily involves the violation of an obligation provided by another rule. The only possibility to avoid the conflict would therefore be to stop exercising the right.[18] But in the case of the UNESCO Convention and the GATS, exercising the rights contained in the Convention does not unfailingly lead to the violation of the obligations contained in the GATS. Whether there is conflict or not will depend on how the right is exercised (i.e. on the cultural policy measure that is to be adopted) and on the situation of the state in particular in the GATS.[19]

Having examined the "conflictive" aspect of the relationship, we should not forget the side of "complementarity". Does this potentially conflictive relationship annul the possible complementarity of the two texts? In no way. Firstly, because article 20 of the UNESCO Convention recognises complementarity as one of the concepts that must govern the relationship with the other instruments (together with mutual supportiveness and non-subordination). No-one doubts that audiovisual services have a dual component, cultural and commercial. The applicable regulation must therefore take into account this dual component and must come from the two spheres in which audiovisual services are located: the commercial and the cultural sphere. The greater or lesser degree of success in how complementarity is achieved does not eliminate the need for coordination between the two regulatory sources. In fact, this aspect does not form part of the Convention's success. Although there were consultations between UNESCO and the WTO, the World Intellectual Property Organisation (WIPO) and the United Nations Conference on Trade and Development and there was an exchange of ideas, in reality these contacts were reduced to mere formalities, where there was no true exchange but rather a defence of the spheres of powers of each organisation, especially in the case of the WTO. We might say that instead of "sharing" they dedicated themselves more to "competing". This "struggle" was not limited to just the organisations but was reproduced in the states themselves, between the departments in charge of culture and trade, respectively.

What we have explained so far allows us to state, therefore, that conflict between the UNESCO Convention and the GATS is not inevitable.

Firstly, because the rights provided in the UNESCO Convention can be exercised in a way so that the obligations

17 PAUWELYN, J. *Conflict of laws in public international law: How WTO law relates to other rules of international law*, Cambridge: Cambridge University Press, 2003. P.175.

18 Waiving the exercising of a right (with the consequent non-violation of an obligation provided by another rule) is seen by those in favour of a strict definition of conflict as a "non-conflict".

19 We should remember that the GATS is a flexible agreement that has basic rules of general application and lists of undertakings where the states determine for which sectors and to what extent the principles of access to markets and national treatment are applied, and an annex where measures can be included that are not compatible with the principle of most favoured nation. Each state therefore has a particular situation according to its annotations in the corresponding lists and annexes.

contained in the WTO agreements are not violated. Obviously, this won't always be the case (all will depend on the cultural policy measure to be applied and the undertakings with the WTO of the state in question) but, in principle, there is no inherent conflict between the two international instruments in legal terms.[20]

Secondly, many countries have not listed undertakings in the audiovisual sector within the framework of the GATS and, therefore, are not bound by the obligations of access to the market and national treatment. If we add the exemptions to the principle of most favoured nation we obtain a highly favourable situation, because these states develop their cultural policies with a very significant margin of freedom regarding their obligations at a commercial level. We must remember, however, that part IV of the GATS agreement establishes the principle of progressive liberalisation as a guiding principle for negotiations. According to this principle, in each round the negotiations should produce advances in liberalisation, and audiovisual services would be no exception.[21]

Thirdly, we should note that even those states that have adopted undertakings in the GATS in the audiovisual sector can have significant room to manoeuvre. All will depend on the depth and scope of the undertakings. The GATS system allows a highly varied level of commitment once a sector has been added to the list.

Lastly, the fact that many states have ratified the UNESCO Convention reduces the probability of conflict generated by adopting a restrictive trade measure accepted on the basis of the Convention. In other words, a state that has ratified the UNESCO Convention will not attack a cultural measure adopted by another state based on this Convention, as the mere fact that both have ratified the Convention implies that they agree with its principles and objectives.

So what is the role played by the UNESCO Convention concerning WTO law? In order to determine this we must take into account the provisions concerning relations between treaties, which have taken on a key role as international law has become more fragmented. In spite of the specialised powers of international organisations, their spheres of action are never completely isolated from the rest. This explains why, in such a globalised world as ours today, there are some policies that are within the sphere of action of more than one organisation. The trade of audiovisual products is a clear example of this, as it is at the intersection between the powers of the WTO and of UNESCO.

International treaties usually include provisions concerning possible overlaps with other legal instruments. If this were not the case, customary international law would apply in the form of article 30 of the 1969 Vienna Convention on the Law of Treaties (VCLT), concerning the application of successive treaties to the same subject matter. This article is applied even when the subject matter of the treaties is not identical. The treaties only have to deal partially with the same subject matter (as is the case of the WTO and UNESCO).

Article 30 of the VCLT provides for two situations:

- Relations between states that are parties to both treaties (e.g. relations between Canada and India, which are party to the UNESCO Convention and to the GATS): in this case, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.[22] This is called the *lex posterior* principle (when later law prevails over earlier law in those areas where there is incompatibility).
- Relations between states that are only parties to one treaty and states that are party to both treaties (e.g. relations between the United States and India). In this case, the *lex posterior* principle does not apply and the treaty

20 This is probably a case of conflict of systems ruled by different objectives and values but not a conflict of rules per se.

21 The Recommendations of the Service Trade Council in its Extraordinary Session contained in the Decision adopted by the WTO General Council on 1 August 2004, known as the "July Package", mention the desire to progressively achieve higher levels of liberalisation without excluding a priori any service sector or any means of supply. Annex C paragraph d). [Online]. Geneva: World Trade Organisation.
<http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm>

22 Vienna Convention on the Law of Treaties, document of the United Nations A/CONF.39/27 (1969), 1155 UNTS 331, 23 May 1969, Vienna, item 3 of article 30.

to which both states are parties governs (in this case the GATS).[23]

In the case of UNESCO-WTO relations, these principles of customary international law would not solve the possible contradictions between the two treaties, given their different nature (the WTO agreements are commercial in nature while the UNESCO Convention is cultural) and the scope of application is different (WTO agreements are concerned with multilateral trade whereas the UNESCO Convention is concerned with protection and promoting the diversity of cultural expressions). Therefore, other principles of general law need to be used, such as the *lex specialis* principle, which establishes that the most specific provision has priority. What problem does the *lex specialis* principle present? Well, that the greater or lesser specificity of a rule depends on the specific case being dealt with. Consequently, no rule can be characterised *ex ante* as general or specific in abstract, without taking into account the situation in which it must be applied.[24]

Before examining properly how relations are regulated between the UNESCO Convention and the GATS, it is worth establishing the difference between the states that have assumed undertakings in the audiovisual sector with the GATS and the states that have not done so, as the situation varies considerably.

On the one hand, those states that have not assumed undertakings in the audiovisual sector maintain room to manoeuvre, as they are not subject either to the principle of market access[25] or to the principle of national treatment.[26] And if they have also established exemptions to the principle of most favoured nation, their degree of autonomy increases for determining cultural policies.[27]

The situation is complicated in the case of states that have adopted undertakings in the audiovisual sector, as they would encounter difficulties when exercising the rights provided in the UNESCO Convention without violating any of the undertakings assumed within the framework of the WTO.

Point 1b of article 20 of the Convention must be taken into account when interpreting WTO law. What does "take into account" imply and what scope does it have? Is it truly relevant? Four possibilities can be proposed within this context: consider the UNESCO Convention as a criterion of international law (item 1 of article 31 VCLT), as an interpretative criterion (point 3c of article 31 VCLT) or as a fact that helps to determine the nature of a measure or as a legal autonomous defence.

a. The Convention as a criterion of international law

Item 1 of article 31 VCLT establishes that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty within its context and in the light of its object and purpose. According to this provision, the UNESCO Convention

23 *Ibid*., item 4 of article 30.

24 International Law Commission. *Fragmentation of International Law. Topic (a): The function and scope of the lex specialis rule and the question of 'self-contained regimes': An outline*, [Online] <http://untreaty.un.org/ilc/sessions/55/fragmentation_outline.pdf>

25 According to the market access principle, the limitations established in article XVI of the GATS can only be set if the state indicates this in the lists. The limitations provided are: limitations to the number of service providers (e.g. limiting the number of service providers for film distribution to three foreign firms), limitations to the total value of assets or service transactions (e.g. establishing a value of transactions above which foreign firms cannot continue operating), limitations to the total number of services or to the total amount of production of services, limitations to the total number of individuals that can work in a specific sector, measures that limit the kind of body corporate (e.g. require that TV production houses be limited companies) and limitations to the percentage of foreign capital (e.g. establish that companies providing film projection services cannot be made up of more than 30% foreign capital).

26 The national treatment principle means that national and foreign services and service providers must be treated equally.

27 It's worth remembering once again the principle of progressive liberalisation that governs these negotiations, which has been mentioned previously.

can be used to interpret the terms related to cultural diversity included in the WTO agreements (in the context of controversy). In this case, the UNESCO Convention would be similar in use to a dictionary.

b. *The Convention as an interpretative criterion*
According to point 3c of article 31 VCLT, a treaty must be interpreted taking into account, among other aspects, the international law applicable in the relations between the parties. This means that the UNESCO Convention should be taken into account when interpreting WTO law in those cases where the states involved are parties to both treaties. According to some authors, it's not necessary for the non-WTO rule to be ratified by all WTO members but that it should at least be implicitly tolerated or accepted by all and that it should express the intentions or common meaning given by all members. In the case of the UNESCO Convention, the fact that the United States has declared itself decisively to be against the Convention from the start makes it impossible for it to be considered as a common reference accepted by all WTO member states.[28]
If this option is rejected, it is even more difficult to use the most common interpretation among authors and that supported by the WTO's Appellate Body, which would mean that all WTO members would have to ratify the UNESCO Convention in order for it to be used as an interpretative criterion.

c. *The UNESCO Convention as a fact that determines the nature of a measure*
The UNESCO Convention could be taken as a fact that would help to fix the nature of a measure examined by the decision-making bodies of the WTO.[29] For example, if there were a controversy where a measure of cultural policy of a WTO member state was considered to be in violation of the WTO agreements, the defendant could use the UNESCO Convention to prove that the measure in question is cultural in nature.

d. *The Convention as autonomous legal defence*
This last possibility is the most controversial and is currently not accepted by the decision-making bodies of the WTO. According to the authors in favour of this possibility, the UNESCO Convention could be used as an autonomous legal defence in relations between the states party to it. In this way, the Convention would serve to justify the adoption of measures that violate WTO obligations.

Having examined the possibilities for the UNESCO Convention to be taken into account when interpreting WTO agreements, we need to see which WTO provisions could be interpreted using the UNESCO Convention. And it is at this point where we find one of the main obstacles: in principle, there is no term within the WTO agreements that could provide a link between the resolution of WTO controversies and the UNESCO Convention. Unlike the environment and health, culture does not have a general exception within the articles of the GATS. This exception would be the one that would give cause for the Convention to enter. It's difficult to find in the WTO agreements other terms that might serve as an entrance to the Convention. The expression "respect for national policy objectives" might give cause for the protection and promotion of the diversity of cultural expressions considered as a national policy objective, as has occurred in other texts, such as the UNESCO's Universal Declaration on cultural diversity and the Declaration on cultural diversity of the Council of Europe. Another concept is that of "sustainable development" which, according to the WTO's own Appellate Body, is a concept subject to an evolving interpretation and must be understood according to the contemporary concerns of the community of nations.[30] If we consider the large majority of

28 See above, note 4.

29 Comments by Gabrielle Marceau in ICTSD/RUIG-GIAN Meeting "The Mexico Soft Drinks Dispute: Implications for regionalism and for trade and sustainable development", [Online]. Geneva: World Meteorological Organisation, 30 May 2006. <http://www.ictsd.org/dlogue/2006-05-30/dialogue_materials/Gabrielle_Marceau_speaker_notes.pdf>

states that have adopted and ratified the UNESCO Convention, we might interpret that cultural diversity has become one of the "contemporary concerns of the community of nations". Some declarations and international treaties have already considered cultural diversity as an essential element in sustainable development.[31]

Point 1b of article 20 of the UNESCO Convention stipulates that it must be taken into account in future WTO negotiations. What effects might the Convention have on these negotiations?

With regard to the Doha round, one effect already caused by the Convention is that of stopping negotiations in the audiovisual sector. As we have already mentioned, the pace was already slow but the negotiations of the UNESCO Convention have acted as a brake, awaiting the final text of the Convention.

In addition to acting as a brake to liberalisation, the Convention can also act as an incentive to redirect negotiations in horizontal disciplines, principally regarding subsidies, towards considerations of a more cultural nature.

It is currently difficult to determine whether the UNESCO Convention will have the force to produce changes in the articles of the WTO agreements so that cultural considerations might be introduced within the framework of the multilateral trade negotiations. Right now, these changes seem improbable but they should not be rejected. One option might be for states to introduce references to the Convention in their lists of undertakings in order to incorporate the text by reference. Another option might consist of making amendments to the text of the WTO agreements, such as the introduction of an exception concerning cultural diversity or the introduction of certain requirements, such as the presence of cultural experts when resolving controversies related to cultural issues,[32] or introduce a sector-based annex covering specific issues of the sector. Cultural considerations could also be introduced in the preamble to the Agreement establishing the WTO, as occurred with the mention of sustainable development. At the moment, however, these options do not seem probable in the short or medium term.[33]

Conclusions

Potential conflict and natural complementarity. This is the diagnosis with regard to the relations between the UNESCO Convention and the GATS. In legal terms, conflict between the two legal instruments is not inevitable, although potentially it can arise depending on how the rights are exercises provided for in the Convention and according to the undertakings of the states at an individual level within the context of the GATS. On the other hand these are complementary texts, as they represent the two sides of the same coin. The task remaining is how to put this complementarity into practice through the appropriate channels of cooperation and coordination, without these channels being seen by organisations as gaps through which they might lose part of their powers. In the case of UNESCO and the WTO, these are organisations with clearly defined operations and powers, whose authority should not be seen as jeopardised by taking into account elements outside their framework of action. Until this is done, the treatment of audiovisual ser-

30 WTO, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, report by the Appellate Body, Document WT/DS58/AB/R, 12 October 1998, paragraph 129, p. 48 and PAUWELYN, J., *The UNESCO Convention on Cultural Diversity and the WTO: Diversity in International Law-Making?*, [Online] ASIL Insight, 15 November 2005. <http://www.asil.org/insights/2005/11/insights051115.html>

31 UNESCO. Universal declaration on cultural diversity, article 11, and Convention on the protection and promotion of the diversity of cultural expressions, article 6; COUNCIL OF EUROPE. Declaration on cultural diversity; Implementation plan of the world summit on sustainable development.

32 This has already been carried out in the field of financial services.

33 The reason is the two thirds majority required to make these amendments. Article 10 of the Marrakech Agreement establishing the World Trade Organisation. [Online] <http://www.wto.org/spanish/docs_s/legal_s/04-wto_s.htm>

vices will be partial and therefore will not respond to the challenges provided by the reality in this field.

In spite of the numerous "grey areas" of the UNESCO Convention, its entry into force is very positive, as it has managed to focus attention on the existing problems between trade and culture and to promote the protection and promotion of cultural diversity. The UNESCO Convention has placed cultural aspects in the centre of debates in non-cultural forums, especially in the case of developing countries. The fact that the Convention was adopted by the vote in favour of 148 states, with only two votes against and four abstentions[34] and, furthermore, has entered into force in record time and whose pace of ratification is much faster than UNESCO's average, gives an idea of the importance given by the states to the question of cultural diversity.[35]

The greater or lesser relevance of the UNESCO Convention will be determined by its implementation and by the number of ratifications that may be achieved over the next few years. This last aspect will be key to the Convention gaining weight within the context of international law as a text that represents a common concern among the members of the international community.

For the moment, however, we will have to content ourselves with seeing how the Convention is implemented in practice and how it is applied at the different levels of government (national, regional and local) and in the relations between the states in order to assess its true force.

34 The votes against were from the United States and Israel, and Australia, Liberia, Honduras and Nicaragua abstained.

35 To date, 83 states have ratified the UNESCO Convention (most of which are developing countries) and one organisation of regional economic integration (the European Community).

Internet: the law's response to virtual public space

Marc Carrillo

The Internet and information and communication technologies (ICTs) are one of the most relevant elements in human progress that have characterised the end of the 20th century. In the area of law, ICTs have created a new reality: electronic administrative law. Spanish regulations have been sensitive to the regulation of services in the society of information and e-commerce, e-administration and in storing data regarding communications. The universal nature of the Internet means that it is a platform for citizen participation, without the applicable legal rules needing to be different.

Keywords

Internet, telecommunications, blog, privacy, software, childhood, youth.

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1. The Internet: a new alphabet, a new legal reality

The Internet is one of the modalities of information and communication technologies (hereinafter ICTs) that has most revolutionised the information and communication space. The impact it has had as an instrument to access information, removing any kind of border, means it is surely one of the more relevant objective factors in human progress that has characterised the end of the 20th century.

Its desire to be universal has been and continues to be a decisive influence on the new forms that go to make up a state, whether or not democratic, on organising society and, therefore, on exercising and guaranteeing the rights and freedoms of citizens. Law, regulations, as a consubstantial part of the state, now the so-called state-network (Castells 1999, 361 and sub.) and e-administration, in spite of its slow adaptation to new social realities, have started to respond to the effect ICTs are having on citizens and how they organise and conduct themselves. Especially regarding what affects the promotion of education and culture by encouraging public powers and the guarantee of fundamental rights.

UNESCO has been intensely active in encouraging states concerning research into and developing the possibilities of ICTs in order to improve how administrations and public services function, thereby encouraging the use of remote media to facilitate better citizen participation in the decision-making processes in democratic institutions. In this respect, the international institution of culture recognises that ICTs are instruments that support decision-making and potentially enrich the forms of democratic participation, a good and incipient example of which is the incorporation by some states of electronic voting in their electoral legislation.

The progressive prevalence of ICTs in the sphere of public authority, private corporate and citizen organisation and action in general has led UNESCO itself to speak of a

revolution in the world of information and communication, which can be compared with the appearance of a new alphabet, given the universal nature of digital representation. And insofar as communication networks are a new way to access and communicate information, of equal or greater relevance than what is currently provided by conventional media, UNESCO has even suggested to the international community the need to take suitable measures to recognise and encourage the human right of access to communication networks as another way to broaden the scope of citizen participation in public affairs (González de la Garza 2004, 539).

This right to universal access to cyberspace must allow public powers to foment multilinguism and the diversity of cultures on world networks, as well as access under equal conditions to information of public interest. And it must also contribute to training people, provided, of course, that ICTs are understood as what they truly are, i.e. an instrument to develop prior conditions which public authorities must guarantee and without which (as we were reminded not so longer ago by Professor Castells)[1] the Internet and ICTs in general are pure fallacy. These prior conditions are, firstly, achieving a suitable level of education and afterwards facilitating access to work and professional training. Once established, the Internet and ICTs can also help decisively towards social integration and a greater degree of political participation.

It is evident that this recommendation by UNESCO cannot be seen as yet another example of the rhetoric that sometimes characterises international rights organisations. A good example of this is that offered by the ferocious resistance of the Chinese dictatorship to its citizens' access to certain western websites with content that is particularly critical of Beijing's regime. Or the example provided in another context by the controversial USA PATRIOT Act 2001 (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism), passed by the United States Congress after the attacks of 11 September, and declared partially unconstitutional by the Supreme Court five years later,[2] which focused a large part of its repressive arsenal on communication via Internet in order to combat terrorism, with a penal logic in which the struggle for security easily beat the always essential guarantee of freedoms, calling into doubt the essential bases of the rule of law.

The Internet and ICTs have led to a change in the organisation and functioning of public administration and in the regulation of the legal regime of information. In fact, we could even say that ICTs have created a new reality to the extent that, within the context of public rule, electronic administrative rule is already being talked about, connected not only to the classic principle of effectiveness in the organisation and functioning of public powers of section 1 of article 103 of the Spanish Constitution (CE) but especially to the democratic principle of section 1 of article 1 CE. This is because access to information is a basic component of the principle of publishing the acts of public powers and the Internet is an instrument that facilitates this to an extraordinary degree. A good example of the response given by current positive law to the appearance of the Internet, within the framework of the exclusive powers of the state in the area of telecommunications, among others, are the following acts of the Spanish parliament: Act 34/2002, 11 July on information society services and electronic commerce (LSSI); Act 32/2003, 3 November on telecommunications, subsequently revised in 2005 (LGT). And, more recently, Act 11/2007, 22 June, on the electronic access of citizens to public services and Act 25/2007, 18 October, on the conservation of data regarding electronic communications and public communications networks.

These regulations reveal the degree of intervention by public powers to regulate this new way to express oneself, communicate and receive information. The state and, before this, the European Union (insofar as most are acts trans-

1 *Domingo*. In: *El País*, 6 January 2008, p. 10

2 548 US 557 (2006), Supreme Court of the United States, 29 June 2006 (case HAMDAN v. RUMSFELD Secretary for the Defence, et al.) <http://www.supremecourtus.gov/opinions/05pdf/05-184.pdf>
<http://supremecourtus.gov/opinions/casefinder/casefinder_1984-present.html>
<http://en.wikipedia.org/wiki/Hamdan_v._Rumsfeld>

posing European legislation) have not been indifferent to ICTs. But the question presented here is whether the technological singularity of the Internet compared with traditional media means that it should be treated differently in legal terms, both with regard to the technical framework that supports these media as well as the content broadcast. And the answer cannot admit any doubt: because beyond any specificity offered by the regulation of the legal regime of communication via the Internet and its relation with the different social actors, the legal rules regarding the form and content of messages emitted via the web have a suitable framework of application in current regulations, and especially in the jurisprudence of the Spanish Constitutional Court (TC) concerning the conflict between the fundamental rights of articles 20 (expression and information) and 18 (rights of person, inviolability of communication and protection from the illegal use of information), without there being sufficient reason for it to be treated differently. Nonetheless, from an analysis of some of the aforementioned provisions, the conclusion arrived at, as we will see, is not the same, given that in some cases, such as article 12 of the LSSI, it has a more restrictive legal treatment that raises serious doubts regarding its constitutionality. Neither do we reach the same conclusion with regard to the right to the inviolability of communications since, insofar as this is a formal guarantee of the right not to endure any intromission in the message, it includes not only immunity regarding content but the guarantee of confidentiality must particularly cover any data that allow the subjects to be identified who are involved in the transfer of the communication, irrespective of the message's content.

In another context of the rights of freedom and participation of citizens, the Internet is already a platform of social participation for citizens in matters of individual and general interest. In a not-so distant future, its role as a platform of political participation in representative institutions may also become more widespread in order to establish a context of deliberative democracy that, as such, does not remain restricted within representative institutions but also reaches other levels of social participation. This is because the Internet can enable collective debate and reasoning, both private and public, without the obligatory intermediation of actors (parties, associations, etc.) which can mediatise discourses, and it places citizens more centre stage, considered as individuals, therefore providing the debate of general interest with a reasoning more in line with his or her private beliefs.

Regarding the contributions offered by ICTs within the context of communication and political participation, electronic voting is, today, already a reality in some states and particularly in private corporations. In the public sphere, in spite of being a minority practice, e-voting is nothing new in comparative electoral law, as shown by some states in the United States, Belgium, Brazil, the Philippines, Colombia and Venezuela. Moreover, in others it has already been applied experimentally, albeit not valid legally, as is the case in Argentina, Chile, Spain, France, the United Kingdom, Holland, Japan, Australia, etc. (Carrillo 2007, 85). In all cases, the challenge of legally regulating this form of exercising our right to suffrage via computer is no other than that resulting from the constitutional mandate, according to which voting must continue to be universal, fair, free, direct and secret (section 1 of articles 68 and 69 EC, and section 1 of article 56 of the Statute of Autonomy of Catalonia).

2. Information and communication technologies in Spanish regulations

The new ICTs have led to intense debate about their effect on legal institutions, to the extent that various sectors of the doctrine openly claim that ICTs constitute a new reality to which public rule must adapt itself (Bernadí Gil 2006, 359). As well as introducing the idea that their degree of influence has encouraged people to talk clearly about electronic administrative law, it is stressed that the inclusion of ICTs in public administration, already announced prematurely in 1992 by article 45 of Act 30/92 on the legal regime of public administrations and common administrative procedure, should be linked to the principle of administrative effectiveness and especially, given their universal nature, to the democratic principle itself, insofar as they must permit the widespread access of citizens to greater and better knowledge of public matters. Although we must state that access to administrative information cannot be understood as a prolongation of the fundamental right to receive information from point *d* of section 1 of article 20 CE, but rather as an expression of the constitutional principle of point *b* of article 105 CE, which confirms a principle of the functioning of

public administration that recognises citizen access to administrative files and records, with exceptions regarding the guarantee of state security and defence, as well as investigating offences and the guarantee of privacy.

From the point of view of authority, it's evident that the claims held by the state regarding those powers belonging to autonomous communities (CA) to regulate this area are more numerous and more incisive in their effect (legislation in civil, penal and mercantile areas, as well as culture, technological research and development and telecommunications) but the CA are nonetheless not excluded a *radice* from legislative involvement in aspects regarding civil law and culture.

Within this context of authority, over the last few years Spain has passed a series of legal provisions that highlight the importance of ICTs in the world of law.

a. *Act 34/2002 of 11 July on information society services and electronic commerce (LSSI).*

   The aim of this Act was to incorporate into Spanish law Directive 2000/31/EC of the European Parliament and of the Council of 8 June on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. It also partially incorporated Directive 98/27/EC of the European parliament and of the Council of 19 May on injunctions for the protection of consumers' interests. Among the aims of the Act, in its statement of reasons, it establishes that "it is only permitted to restrict the free provision of information society services in Spain from other countries belonging to the European Economic Space [...] that entail a danger or hazard to certain fundamental values such as public order, public health or the protection of minors [...]". As a result of this objective, article 12 of the Act introduced measures regarding the duty to retain electronic communication transit data, measures which clearly penalise information transmitted via the Internet, because of the renowned ambiguity, disproportion and lack of legal certainty that do not befit a rule restricting a fundamental right. In effect, section 1 of this article establishes that "operators of electronic communication networks and services, suppliers of access to telecommunication networks and providers of data hosting services must retain the data of connection and traffic generated by the communications established while providing an information society service for a maximum period of twelve months [...]". The retaining of these data, says section 4 of the same precept, will be carried out "for their use within the context of a criminal investigation or to safeguard public security and national defence, be placed at the disposal of the judges or courts or the Fiscal Ministry that so demands". Previously, section 2 reminds us that "in no case shall the obligation to retain data affect the secrecy of the communications".

   This article is a specific transferral to Spain of the North American anti-terrorist legislation included in the USA PATRIOT Act 2001 (which was highly questioned and finally declared unconstitutional), and violates the fundamental right regarding the inviolability of communications (section 3 of article 18 CE). Because, although it warns that it will not be affected, what it is actually introducing is an exceptional regime, as the intervention of judicial bodies is established *a posteriori* of the data being retained, when the CE only establishes this circumstance in individualised cases (section 2 of article 55 CE). Likewise, the CE formally guarantees the inviolability of communications, irrespective of the communication's content, which means that, above all else, such inviolability includes the identity of the subjects involved in the communication traffic. Moreover, from a formal point of view, article 12 of the LSSI also presents problems of constitutionality, as fundamental rights can only be regulated by organic laws, a status the Act does not have.

   On the other hand, the proportionality of the measure restricting the right is more than questionable, if the content is taken in relation to the jurisprudence of the European Court of Human Rights (ECHR). For example, this was established in the cases of Klass et al. v. Germany (1978) and Rotaru v. Romania (2000), in which the ECHR reflects on the existence of suitable and sufficient guarantees against abuse, and where it states that a secret system of vigilance aimed at protecting national security supposes the risk of destroying democracy. In the case of the LSSI, moreover, it is not a secret system but a public one, which begs even more the question as to whether a measure for retaining data without specifying the people affected, for a maximum period of 12

months and with judicial control *a posteriori* is proportional to a democratic system.

Certainly, as a result of these rational indications of unconstitutionality, article 12 of Act 34/2002 (LSSI) has been repealed by the new provision on this area, Act 25/2007 of 18 October on conserving data related to electronic communications and to public communication networks.

b. *Act 25/2007 of 18 October on conserving data related to electronic communications and to public communication networks.*

This new Act stresses that the neutral nature of technological advances in telephony and electronic communications does not prevent undesired or even punishable effects from occurring through their use. In order to avoid such consequences, Directive 2006/24/EC of the European Parliament and of the Council of 15 March on the retention of data generated or processed in connection with the provision of publicly available electronic communication services has amended Directive 2002/24/EC and has also led to the aforementioned LSSI in Spanish law being amended in one of its most restrictive aspects.

The aim of the law is therefore to regulate the obligation of operators to retain data generated or processed in connection with the provision of electronic communication services or public communications networks, as well as the duty to pass on these data to empowered agents, provided this is required by means of the corresponding judicial authorisation in order to detect, investigate or pass judgment on the serious offences established in the Spanish Penal Code or in the special penal laws (article 1). With this prior judicial control, Act 25/2007 avoids the flagrant problems of unconstitutionality that used to result from article 12 of Act the LSSI, which has now been explicitly repealed.

Notwithstanding this, the degree of public intervention in data that must be retained by operators is intense. The data are those required to investigate and identify the origin of the communication; to identify the end purpose of a communication; to determine the date, time and duration of the communication; to identify the type of communication; to identify the users' communication equipment or what might be considered the communication equipment and the data required to identify the location of mobile communication equipment (article 3).

Empowered agents, those being provided with this information, are members of the criminal investigation department, officials from the Assistant Department for Customs Surveillance when carrying out the functions of the criminal investigation department and personnel from the National Intelligence Centre (section 2 of article 6).

c. *Act 11/2007 of 22 June on the electronic access of citizens to public services*

This provision highlights the efforts made to adapt the state to the challenges thrown up by ICTs in terms of structuring new, more direct ways to relate citizens to public authority. In this respect, the Act's statement of reasons establishes that, in order to provide a service to a citizen, the administration is obliged to become an electronic administration as a result of the principle of effectiveness established in section 1 of article 103 of the CE. The introduction of electronic methods to manage public affairs is a kind of decentralisation insofar as it establishes new bases to bring public administration closer to citizens, because ICTs make it possible to get closer to the administration in citizens' living rooms and in the offices of firms and professionals.

Act 30/1992 was the first stage in the public administration's commitment to ICTs. More recently, Act 4/2001 of 27 December has led to a more direct adaptation as it allows the establishment of remote records to receive or issue applications, documents and communications via remote means. The amendments made to the general taxation Act of 2003 are in a similar vein, as they also allow remote notifications and automated administrative action, as well as the electronic imaging of documents.

With regard to administrative obligations in the area of e-administration, the new Act aims to go a step further insofar as all public powers must be ready to change from the traditional normative phase of they "may" to reach that of they "must" attend citizens via ICTs. However, the use of electronic media must obviously not lead to any reduction in the right of citizens interested in accessing a file and, in general, to be attended via traditional means, if they so wish.

On the other hand, the inclusion of ICTs in the organisation and functioning of public administrations is not conceived as a simply technical issue. In December 2005, the Committee of Ministers of the Council of Europe adopted a recommendation by which electronic administration is not merely a technical matter but also one of democratic governance.

3. The internet and the media: Bill Gates versus Gutenberg

But where the impact of ICTs and particularly the Internet has been particularly decisive in changing how public powers and business corporations are organised, as well as personal and collective behaviour and attitudes, has been in the exercising of the fundamental rights of free speech and the right to receive and communicate information.

The world wide web is becoming increasingly more aggressive in providing citizens with data. The attraction or seduction created by the virtual public space and offered by Internet operators has relegated conventional media to second place, especially the press. The recurring question might be as follows: can Bill Gates really annihilate Gutenberg?

Beyond predictions for the future, which are not within the scope of this article, it is evident that information via the Internet has encouraged the diversification of subjects that can emit information. The right to information is not the monopoly of journalists and it does not make any distinctions in terms of entitlement, although professionals have been the object of special judicial treatment by means of rights that only correspond to them, such as the clauses concerning conscience or professional secrecy. But the desire for universality that runs through the Internet means that it is a platform accessible by most citizens for them to express themselves and, if necessary, also inform. In this case, the rules of law established by legislation and jurisprudence cannot be any different when the subject emitting this information is not a professional, but must be the same and, therefore, must be subject to the same criteria of legal liability.

The attacks on 11 September in the United States were an exceptional opportunity for the Internet to exercise an opportune complementary and sometimes alternative informative function to the conventional media. For example, it was used in order to follow the effects of the attacks on the Twin Towers, in the statements of those affected and the drawing up of lists of those who had disappeared, in addition to providing, in the initial moments, data that had not been available due to the censorship carried out by the high instances of political power.

The Internet has also served as an outlet for political expression repressed under dictatorship or authoritarian political regimes. In spite of all the difficulties imposed by public powers to stop it, the Internet has served and serves as a platform to denounce the violation of human rights and of public freedoms. This has been the case of the situation in China where, notwithstanding this, access to the western websites of certain NGOs is prevented by the Chinese government through their own software, operating as a kind of virtual wall to prevent global knowledge of their own disgraces. Something similar can be said of Cuba or, more recently, the cruel repression carried out by the military Junta governing Myanmar (formally Burma) with an iron fist.

The Internet has also encouraged people to publish their own information which, in many cases, is of public interest. Blogs, the personal web-logs that are starting to be a popular instrument of communication of public relevance, are a complementary or we might even say alternative means to the traditional media, allowing their owners to express themselves without any formal or editorial restrictions about issues they consider to be of interest to a potential audience. This audience does not exclude even the media themselves (press, radio and television), which can find a permanent source of opinion and information on these personal sites. From a legal point of view, there can be no doubt that emitting opinions or the providing information via a personal blog are subject to the same legal rules governing, for example, the guarantee of the accuracy of information, understood in terms of diligence in obtaining and protecting, if necessary, the rights of honour, privacy and self image of those affected, plus the blog owner's right to free speech and to communicate information who, if necessary, is liable for what he or she has said.

The Internet has also pierced the heart of the most traditional media. The press have set up electronic versions of their editions. This has led to a plurality of information and

editions, as the press no longer waits until the first edition is out on the street to publish certain news items. Because the Internet allows information to be provided in real time, the printed and Internet editions therefore produce a duality in the newspaper's edition and the informative value of the newspaper now depends on both editions.

Not all the information on the Internet can be evaluated positively, however. Perverse effects are always present (Lepage 2002, 67 and sub.). So a pessimistic view of the information society might lead to the conclusion that, beyond the advantages provided by the Internet for democratic life (transparency, citizen participation, administrative effectiveness, etc.), there is always the feeling that the necessary confidentiality linked to the guarantee of certain fundamental rights might be lost. Among the least desirable effects of the Internet are, as pointed out by Lepage (2002, 67), the problem of identifying the information; its reliability and the perverse effect of an abundance of information that is not always synonymous with relevant information of objective interest.

Identifying information on the Internet means differentiating between information *stricto sensu* and what is published, given that there are many operators that use the Internet to communicate information to their clients about their commercial activity, which means that information is often mixed with simple advertising.

Another aspect of the Internet as a support for information of all kinds is the reliability of content, as it is well known that the universal nature of its access means that it is very easy for the virtual network to become a field sown with rumours and speculations that alter the duty to inform diligently that should preside whenever disseminating facts of general interest. There is also another facet to the problem of reliability of the information appearing on a website: the falsification of information carried out by hackers who manipulate the information for various purposes. And not always to destroy but also to highlight the negligence of those in charge of certain websites that (repeatedly) contain incorrect information, as in the case of the Yahoo News website "victim". Finally, a particularly frequent perverse effect on the Internet is the excess of information provided, since it is not always easy to discriminate between what is superficial and what is really of interest.

Without doubt, one of the legal problems of particular relevance presented by exercising the right to information on the Internet is determining authorship and establishing liability. An example that is quite illustrative regarding this issue is that offered recently by the website for the online encyclopaedia, Wikipedia, owned by the Wikimedia Foundation, a non-profit organisation based in Florida. This organisation was sued before the Court of First Instance in Paris (Tribunal de Grande Instance, TGI) for references to the sexual options of the appellants included in an article in this virtual encyclopaedia. The TGI ruled that the American foundation was exempt from any liability because, given that the organisation did not exercise any control over the content of articles, it did not have to bear any liability of an editorial nature. Regarding this particular fact, and according to French legislation (Act of 21 June 2004 on the digital eco-nomy or 'Loi pour la confiance dans l'économie numérique'), the owner of a website is not a priori obliged to supervise or control all the content it contains, apart from the obligation to notify any manifestly illicit content (with a registered letter with proof of receipt sent to the author), a circumstance that occurs in the case of child pornography, openly racist or revisionist content, when the website owner must suppress such content without delay.[3]

On the Internet, as mentioned before, the common rules established by law and jurisprudence are applied to tackle conflicts that may occur between the right to inform and the rights of person. In this respect, the starting point that must serve for the legal treatment of a controversy concerning legally protected rights is to take into account the fact that the Internet is, per se, an autonomous publication. Irrespective of whether, as often happens, the information involved in the controversy has already been disseminated via another medium. From the logic of law, the infraction that may have been committed is new because so is the information platform from which the infraction has been committed. Therefore, prior authorisation is always required from the person that is the object of the information in images on the Internet. The exemption of this prior autho-

3 *Le Monde*, 3 November 2007, p. 3

risation may be permitted in those cases of information where, due to its up-to-date nature, require the immediate dissemination of images of a person. But once this up-to-date aspect has lapsed, there is no guarantee that another reproduction of the image of a person on a website will still be exempt from liability for those who have disseminated it via the Internet. It seems evident that, if this is an anonymous person, he or she will be in a position to safeguard their right to their self image, when the up-to-date issue based on a previous reason of the new item's "public interest" is no longer valid.

Finally, we should also note that the interest paid by states and various international organisations (e.g. the Council of Europe) to protect the rights of especially vulnerable sectors in society, such as children and young people, has been developed thorough penal and civil legislation. However, sometimes the criminal policy pursued, especially in the case of paedophilia, has clashed with the due protection required by the freedom of expression and artistic creation. A good example was provided in the nineties by the ruling given by the Supreme Court of the United States on 26 June 1997 (case Reno *v.* American Civil Liberties Union), that declared the Communications Decency Act of 8 February 1996 to be unconstitutional as it violated the first amendment because of the general and abstract nature of the infractions established by the Act to combat pornography on the Internet.

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News production on television

Rosario de Mateo, Laura Bergés and Marta Sabater

This article presents the key findings from research analysing the production of news on television from an economic and financial perspective. The aim of this research was to analyse what kind of information is offered and for what target on the most widely consumed television channels in Catalonia – TVC, TVE, Telecinco and Antena 3 TV, and how this news content is produced. To this end, a study was carried out of the companies, the news content supplied and the quantity and profile of the demand generated. The news production factors and costs were also analysed, as well as how the news is marketed, in order to assess the economic and financial factors that condition the kind of information we can receive via television.

Keywords

TV news economy, TV news production, TV news costs and revenue, TV news market.

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Informing has been and continues to be one of the main functions of the media, such as television. The right to information is, in fact, one of the bases of democratic societies because it lays the foundations for public debate and participation in decision-making. And in modern capitalist societies this right is guaranteed by the existence of corporations, both public and private, that are responsible for news. This is the case of television stations, which traditionally have taken on the functions of information, entertainment, dissemination and, according to some writers, training.

In spite of the differences between public and private television stations, all believe that the news they offer is a public service and, albeit less explicitly, a way of creating opinion and of increasing their influence on society and political power. They therefore see their news programmes as an important part in reinforcing their corporate image and, as a whole, to define and develop their marketing policies.

If, from the point of view of supply, information appears as one of the fundamental contents of the different television models, then television information also occupies a leading place from the point of view of demand. Television is the medium most widely used among all groups in society and the main source of information for broad segments of the population, older in age and with less buying power. The size and characteristics of the audience for news programmes is also of interest for TV companies in their commercial strategies. Audience ratings are the main commercial argument for all TV channels (in addition to elements of image, credibility and quality associated also with information), insofar as they are the key factors in setting the price of advertising and therefore of revenue for TV companies.

TV news is therefore many things at the same time: public service, a space to create public opinion, a popular source of information, part of a broader supply of programmes with

commercial objectives. Information forms part of corporate communication tools, it helps to create a corporate image and generates advertising revenue according to the size and quality of the audience achieved. But how is information made? What kind of information is offered and for what public, on the most widely consumed TV channels in our homes? What are the economic and financial conditioning factors affecting the information that is offered and that we can receive through our TV sets?

This is the challenge taken on by the research we are presenting in this article: analysing, from an economic perspective, the production of news on television. This has entailed an analysis of the position occupied by news in television companies as a whole, in their organisational structure. Analysing the market conditions affecting how TV channels operate, the news offered by their rivals and how the demand is shared out. Analysing how information is produced on television, what production factors are used to make information and at what cost. And analysing the economic results obtained by television channels from their news activity, what revenue they achieve by selling news programmes to the audience.

To study these four aspects, we have selected the most widely consumed TV stations in Catalonia: Televisió de Catalunya (TVC), Antena 3 TV, Telecinco and Televisión Española (TVE), which represent four kinds of television. Two are public but with different coverage and administrations, namely TVC (Catalonia) and TVE (Spain); and two are private: one, Antena 3 TV, with in-house production and another, Telecinco, with outsourced production.

In addition to the novelty of the questions being asked, the research has also presented a challenge in terms of the sources of information required. On the one hand, the annual accounts of the television stations studied give consolidated figures, so that it's practically impossible to obtain disaggregated data to analyse the economic and financial performance of the news programmes. Hence, without ignoring these and other secondary sources, we have also had to resort to qualitative methodological instruments, which are also quantitative due to the information content, such as a questionnaire and interviews with those in charge of news programmes or other related areas from the four firms analysed. There have been difficulties in obtaining information via this channel, particularly in the case of Telecinco-Atlas, and in carrying out the comparative economic and financial analysis due to differences in how these television companies manage their accounts, using different methods when attributing costs and revenue from news production. However, the work carried out has allowed us to draw significant conclusions regarding the aforementioned aspects. This article presents some considerations on how the different points contained in the research have been dealt with, as well as providing the most noteworthy conclusions.

1. Information and news within the structure of a television company

Information and news production delimits an area of business management within the broader activity of television that includes various tasks and content also with diverse production requirements and marketing possibilities. To see the position occupied by the news within each company and how it is organised, the research has taken into account three levels of analysis: the structure of the whole company, the organisational structure of the television station and the organisation of the news services.

Analysing these three levels, we can see how the news, due to production needs, occupies its own area in all television stations but with significant differences between public and private firms. Public corporations have a simpler structure at the higher level (business structure) and a more complex structure at the lower level (news services), while private broadcasters have a more complex group structure but a simpler organisation chart for television and news services.

At the higher level, public corporations have separate companies for television and radio and centralise the corporate management and some other aspects of human and material resource management and economic and financial management. However, it is the company in charge of television (TVC and TVE) that takes on the management of production and marketing aspects related to the channel. The information and news services constitute an area within television, differentiated from other types of content, and are organised by criteria of frequency, topic and geographic location of the news programmes in order to coordinate the territorial network. This structure meets the need of some

public television companies with a greater supply of information and news and a more extensive territorial coverage using their own resources.

Unlike public corporations, the private groups of Gestevisión-Telecinco and Antena 3 TV have a more complex group structure. The television business groups per se form part of larger business groups that also own local press, radio and television and have an international dimension. For example, Vocento and Mediaset form part of Telecinco, while we can find PlanetadeAgostini and RTL with Antena 3 TV. Moving downwards, in Gestevisión-Telecinco and Antena 3 TV we can find subsidiary companies that centralise the sale of advertising for the different supports for the group, such as television, and various subsidiaries for the production of different content (series, films, entertainment). For its part, the dominant company is in charge of managing the television channels and centralises the management functions, such as production and financial resource planning or defining corporate strategy.

This greater complexity in group structure is followed by a simpler organisation within the broadcaster and the information and news services, in line with programming that, in the case of private television, dedicates less time to information genres. There are, however, big differences between the two private stations. The information and news services of Antena 3 TV go to make up an area within the television department and have quite a simple organisation charge according to thematic specialisation (editorial areas) and the different editions of the news programmes. On the other hand, at Telecinco information and news production is carried out by a group company, Atlas, which is organised into two broad areas: information and news production for Telecinco and the marketing of this content, once transformed, to other clients. Production services are also sold to ensure a return on the investment in the equipment required to produce news programmes. Moreover, Atlas also has subsidiaries, Salta and Aprok, to produce other programmes and content for the agency, particularly specialising in "gossip news".

In spite of the differences between the public and private broadcasters, the analysis highlights some common elements that correspond to the characteristics of TV production and broadcasting, and of information and news in particular. Within television, the different types of content (according to function, frequency and genre) have sufficiently different production requirements to delimit different business areas, and in the case of the private firms even specific companies and operations. On the other hand, from a commercial point of view TV news principally generates revenue only as yet more content within programming where advertising can be placed and, in this respect, the marketing of advertising space in information and news programmes is no different from the sale of advertising in other spaces and supports. This can also be seen in the organisational structure of the companies where the management of advertising sales and marketing is centralised, especially in private firms, that have sales head offices for all the group's media. But there is a trend to look for new sources of revenue to sell information and news content and market services that increase the yield of the work, equipment and investment in technological innovation. Telecinco, together with Atlas, is the key exponent of this trend, but we can also see it at Antena 3 TV, with the New Business division that explores new markets to take advantage of technological applications within the context of digitalisation. TVC has also joined these new forms of distribution of news content via CCRTV Interactiva, but more for social profitability than, at least at present, for economic profitability.

The organisational changes produced by digitalisation are less significant in production, where it is supposed they have yet to arrive. Digitalisation has only meant organisational changes at TVC, where an indexing area has been created within the editorial area to exploit the new possibilities of storing and recovering information and images. However, no significant changes have yet occurred in important areas such as the convergence of functions and/or messages of the different media in each group to which the broadcasters analysed belong, although some steps are being taken in this respect.

2. The TV information and news market: supply and demand

In a saturated market such as that of television, characterised by an oligopoly and by the appearance of new distribution channels that take audience share from their rival broadcasters, television companies must consider how to

tackle strategies to continue maintaining economic profitability. If previously the question was "what can a TV company do?", now the question is "what can a TV company afford to do?", as the revenue will not increase exponentially: if there are fewer resources, TV companies will try to optimise their audience and reduce costs by adjusting their supply in order to maintain and increase profitability .

Supply and demand, or in this case news supply and demand, are the two aspects tackled in the analysis of the news market, which reveals the conditions of competition in which broadcasters move. From a methodological point of view, the main difficulty in this section has been deciding what to include as *news programmes*. The secondary sources available to analyse the television supplied (GECA, OEA) include different types of programmes in the category of news and provide disparate and not very conclusive findings, so that we have also carried out our own analysis, limiting the concept to a classic definition that excludes gossip news and society magazine programmes, which we have considered as entertainment, and also excludes informative programmes. This analysis reveals clear differences between public broadcasters, with more supply, and private broadcasters (table 1).

In addition to general news programmes, with four daily editions on the three first broadcasters analysed and three daily editions on Telecinco, TVE and TVC, various non-daily news programmes are offered, broadcast by the second channels and some of the first channels (table 2). The public channels also offer geographical news when they split into their local channels, as well as more diversity in content, format and genre, with a notable proportion of sports news programmes. They also have 24-hour news channels and international channels where news plays an important part, especially on TVE's international channels. The two private broadcasters, on the other hand, almost include no daily news programmes on their grids. The two private broadcasters base their news principally on information on society, sport and "gossip", Telecinco being the channel that dedicates most time to domestic stories and daily situations that aim to get an emotional response from the audience, justifying comments made by critics of news items who believe that, currently, for a news item to have an impact on the audience it needs to show someone crying. On Telecinco, the supply of programmes on "matters of the heart" even exceeds that of news.

Regarding the demand for news content on television, the news programmes on the four channels analysed total a maximum rating of 29.8% in the evening edition, the one with the highest audience figures. At lunchtime, the rating of the four news programmes totals 21.4%, while at night and in the morning they total a rating of 2.5% and 2.4%, respectively. So following the news on television attracts the attention of between a fifth and a third of the population aged 4 and over in the two main editions at lunchtime and in the evening.

The non-daily news programmes, which are mostly broadcast on the second public channels, have lower audience figures. As an exception, we should point out the good results achieved by documentary or report type programmes, while those of debates, interviews or specialist news broadcast on the second channels at prime time or at night, competing with entertainment and fiction pro-

Table 1. News supply by television channel. 2007

	TVC	TVE	Antena 3 TV	Telecinco
Daily news programmes	3.163	2.431	1.846	1.621
24-hour channel	8.506	5.443		
Non-daily news programmes	256	687	0	±20*

Source: In-house.

* The non-daily programmes on Telecinco are not weekly but broadcast irregularly.

Table 2. News programmes on the programming grid

	TVC (TV3 and 33)	TVE (TVE-1 and La 2)	Antena 3 TV	Telecinco
Morning	3/24 (2 hrs) Magazine (5:15)	Euronews (1 hr) Morning news (2 hrs) Magazine (1:15) Weekly programmes: News for the deaf (0:30) Parliamentary news (1 hr)	Morning news (2 hrs) Magazine (2:15)	Morning news (2:40) Magazine (1:35)
Lunchtime access	Local channels (0:20) Environment (0:10) Immigration (0:15 CS) Lunchtime news (1 hr)	Local channels (0:30)		Lunchtime news (1 hr)
Lunchtime	Final Lunchtime news	Lunchtime news (1 hr)	Lunchtime news (1 hr)	Final Lunchtime news
Afternoon	Children's news (0:30)			
Prime time access	Parliamentary information (0:25 CS)	Local channels (0:30) Weekly programmes: Reports (0:35)		
Prime time	Evening news (0:40) Weekly programmes*: Reports (1:30) Debate (1:30) Economy (0:30) Feature (0:30)	Evening news (1 hr) La 2 News (0:30) Weekly programmes*: Reports (6 hrs) Debate (1 hr) Interview (0:35) Feature (0:30)	Evening news (1 hr)	Evening news (0:25)
Night	Late news (1:35)	Late news (0:30) Weekly programmes: Culture (0:30)	Late news (0:15)	
Early morning		Euronews (3 hrs)		

Source: In-house.

* Some of these programmes go on into the night time band.

grammes, have very low audiences, with ratings below 2%.

In the first quarter of 2007, in the Catalan market, TV3 was the channel that achieved the largest audience taking into account all daily news programmes, thanks to more regular results than Antena 3 TV, although the latter leads in evening news with over 500,000 viewers. These two channels achieve a share for news programmes in line with the channel's total results, while Telecinco, which leads the ranking for all broadcasts, is only third and fourth with regard to news audience figures. On the other hand, TVE-1 had better audience figures for news than for all its programming in total. In general, public TV news programmes seem to perform better, particularly so on TV3, although Antena 3 TV also considers news to be an important element in their fight for audience figures. Telecinco, for its part, can't manage to increase its market share for its news programmes and therefore, in competing for most audience for the channel as a whole, it tends to prefer entertainment programmes.

One of the fundamental elements when negotiating the insertion of advertising is the audience profile. TVE is the broadcaster with the least commercial profile in Spain and in Catalonia, with an older audience with less buying power. In Catalonia, TVE-1 is the channel most affected by competition from TV3, which achieves a middle to high class audience for its news programmes (even beating the private broadcasters), with a younger audience from smaller municipalities. The news programmes on Antena 3 TV and Telecinco have a middle class audience and, to a lesser extent, a middle to high class audience, adult and urban, although the audience for the former is younger and, with regard to habitat, Telecinco is more present in small and me-dium-sized municipalities. The social class is the variable that seems to be most dependent on the channel when broadcasting a news programme, as can be seen in the ca-se of TV3, where the programme *La nit al dia* even achieves a 40% audience share among the middle to high class group. We should also note the little incidence of people under 24 in the audience for daily TV news programmes, except in the case of Antena 3 TV, which takes advantages of strategies to transfer audiences from one programme to another to get a younger audience profile.

3. News production for television: production resources and costs

With regard to production, the research analysed aspects of location and decentralisation of production, revealing the criteria of news coverage and production resources (personnel, equipment and purchases) involved in news production, with the corresponding costs.

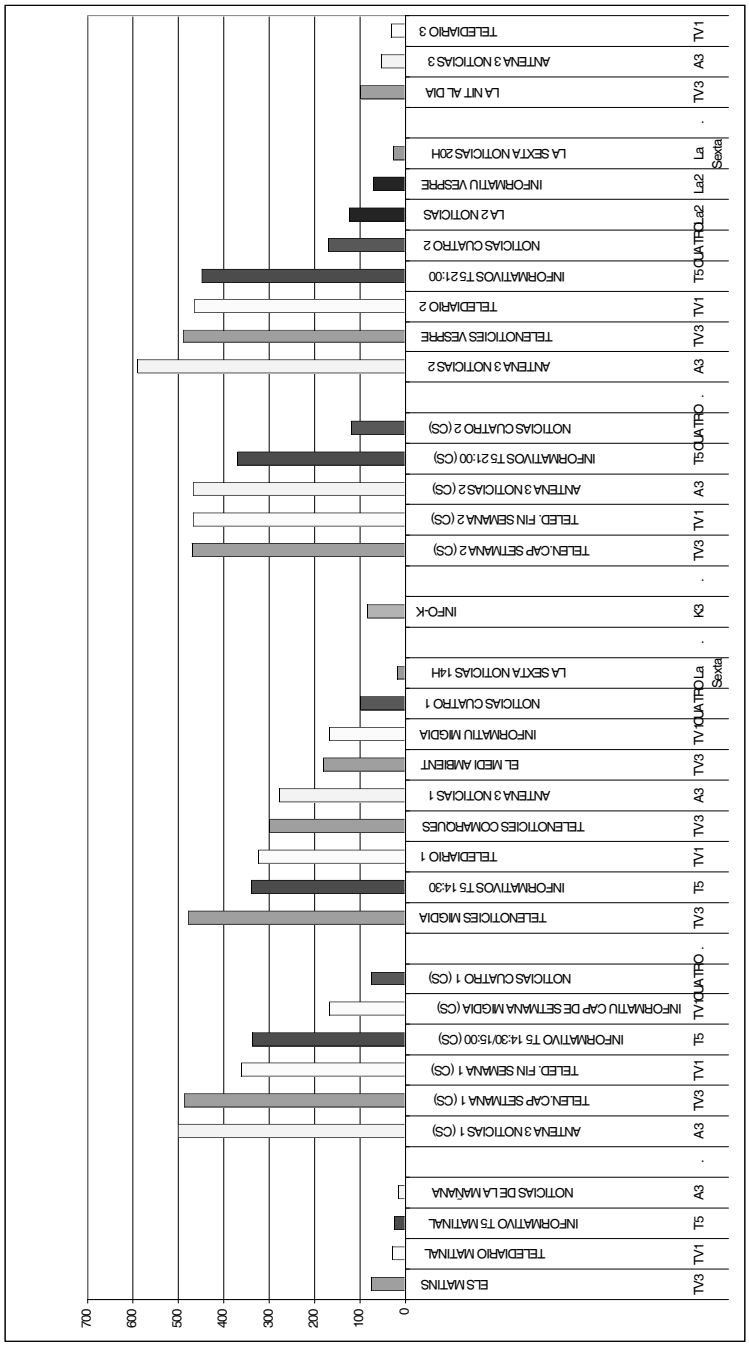
The public broadcasters, more TVE than TV3, maintain a more extensive geographical network than the private broadcasters Antena 3 TV and Telecinco at the level of Spain, Catalonia and internationally. Moreover, the first two broadcasters have opted to provide this coverage with their own resources, something that is more costly in terms of equipment and personnel, in this case aggravated by the need to distribute personnel for tasks and topics required in news production. The private broadcasters coincide in concentrating their production resources in Madrid and outsourcing personnel and equipment to cover Spain and abroad. Antena 3 TV has gradually eliminated its geographical branches in Spain and now has only one delegate in each autonomous community, hiring personnel and equipment from Mediapro. Neither does it have permanent international correspondents. At Telecinco, Atlas has eliminated its delegations in Spain and neither does it have permanent correspondents, as well as dissolving its branches in Catalonia and the Basque Country and has therefore opted to hire freelancers and independent production houses.

Table 3 shows the differences in provisions of personnel at the broadcasters analysed and the distribution of journalists by news area. The areas where the three channels coincide in providing most personnel are *society* and *sports*. After *society* and *sports*, by number of workers, comes *politics*, while in other areas there are more personnel at public broadcasters than private.

The outsourcing of the private broadcasters, Antena 3 TV and Telecinco-Atlas, reduces the need and cost of permanent staff and investment in equipment, and increases the profitability of TV companies in two ways: on the one hand, they can better adjust their investment in equipment as no resources are under-used and, on the other hand, it turns investment decisions into purchase decisions, the company saves expenditure on maintenance and repairs, as well as on investment, avoids problems of obsolescence, reduces the need for control and ensures that its production capacity responds more flexibly to its production needs and variations in demand. On the other hand, the choice of the public broadcasters, TVE and TVC, to produce in-house supposes more personnel and investment costs but is justified by criteria of social profitability associated with criteria of quality in news coverage, as well as making them less dependent on external suppliers and betting fitting their own requirements for quality regarding: the selection of information, use of own sources and treatment of information. Moreover, the increase in investment in equipment increases their production capacity, which is reflected in a more extensive and varied supply of news programmes.

Be it a model with more in-house production or with a model of outsourced production, all broadcasters must acquire some goods and services from outside. Here we include the purchase of news items and images from agencies, the hiring of signal transmission services, both for production

Graph 1. Audience for daily news programmes in Catalonia by time band. 2006 (Ind. +4)



Source: In-house, with data from Sofres.

Table 3. Workers from the news services and sections by area. 2006

	TVC*	TVE	Antena 3 TV	Atlas
Total news	403	1.564	189	182**
Journalists (with ENG)	108 +ENG	1.100	105	s.d.
By section				
Politics	13	20	15	s.d.
International	9	18	7	s.d.
Society	59	22	18	s.d.
Culture	9	10	1	s.d.
Economy	9	13	7	s.d.
Sports	-	24	22	s.d.
Other	9	6	-	s.d.

Source: In-house with data from the companies.

* TVC includes, within *society*, the journalists from the different local delegations and has a sports area separated from the news
** Data for 2005.

(receiving news items and images, live connections) and also for broadcasting, as well as the purchase of production and broadcast technologies. The information provided by the TV companies regarding these purchases (quantity and costs) is limited, as their supplier contracts are subject to individual negotiation and are confidential among audiovisual service providers.

With regard to the type of technological applications used to produce news, of note is the predominance of systems developed by AVID, the most widely used systems by all broadcasters to produce their news programmes. In some cases in-house systems are also used, such as TVC's image management and recovery program (Digition), or the editorial applications developed by Antena 3 TV.

With regard to news and image agencies, all broadcasters use the same suppliers: EFE, Europa Press, Reuters and APTN for images, and these same agencies plus France Press and Servimedia for text. The public broadcasters also have the agency services provided by the different networks they belong to. TVC has information and images provided by other autonomous community broadcasters via FORTA and TVE has the public television network services of the European Broadcasting Union (EBU) and Euronews.

With regard to transmission networks, the broadcasters can use their own, shared or external networks. After the privatisation of Retevisión (RTVE network) and of Tradia (network of the Catalan government), the public broadcasters no longer had their own broadcasting networks but, unlike the private broadcasters, they do not totally depend on external resources. TVE has its own network that links the different local channels of the public broadcaster and uses the resources of the FINE network from UER for international connections. In the case of TVC, the broadcasting services are included under a contract with the Telecommunications Centres of the Catalan government and it is this centre, the owner of the audiovisual transmission network of Tradia before it was privatised, that negotiates with Abertis (current owner of the network) in accordance with the conditions established during privatisation. Moreover, TVC also has shared contracts for transmission services with FORTA.

The private broadcasters have always hired external firms, both for receiving transmissions and for broadcasting. The fact that Telefónica holds shares in Antena 3 TV resulted in some low-cost contracts with the same company, which continue to the present day.

Beyond these differences, the providers of external transmission services (entry and exit) are the same in the four chains analysed. Abertis is the main supplier for all the broadcasters, especially when broadcasting to Spain, both in analogue and digital. The broadcasters also use TSA's services (Telefónica), in this case more for transmissions between local centres or connections for production. For satellite transmissions they use the services of Astra, Hispasat and Eutelsat.

In the four broadcasters analysed, the daily news programmes are those that generate most costs, as they require more personnel, more purchases from agencies, they intensively use signal transmission services for broadcasting and production, they include live connections, both national and international, and require frequent travel, with the corresponding cost for transport and expenses. TVE clearly stands out as the broadcaster with the highest costs (table 4), caused by its larger staff and more extensive network. For example, its local centres in Spain cost 57 million euros, more than that spent by the other three broadcasters analysed on all their news services.

All the channels reduce the unit cost of daily news programmes thanks to the broadcasting of morning programmes of 3-5 hours, while if we only take into account the TV news, this unit cost rises considerably. The unit cost falls even more in the two public broadcasters and compensates their expenditure on personnel and investments with a more extensive supply of news programmes and the policy of repeated broadcasts via the different group channels, news and international channels, something which means TVC can reduce its total unit cost to 3,995 euros and TVE to 7,229 euros. Notwithstanding this, repeated broadcasts have not brought additional revenue to the public corporations, as these news channels do not include advertising.

4. Commercial exploitation of news programmes: revenue and economic results

News programmes also generate significant revenue for TV companies, principally by selling advertising. Other sources of income such as the sale of content and provision of services are residual, except in the case of Telecinco-Atlas, which precisely opted to produce the channel's news through a subsidiary in order to take advantage of these secondary markets.

At the four channels under consideration, an analysis of the costs and revenue generated by news programmes shows that these programmes should not be considered merely as a service of public interest that reinforces the channel's image but also as a source of income. The profit margin of the two private channels is higher than that of the public channels, as the news offered is adjusted to the most profitable programmes (general daily news programmes) and they are exploited more thoroughly for advertising.

Table 4. News production costs. 2006

	TVC	TVE	Antena 3 TV	Telecinco*
Total	43 million euros	166 million euros	42 million euros	55.4 million euros
Cost/hour	€3,995	€7,229	€22,752	n.d.
Cost/hour daily news without repeated broadcasts	€13,000	€29,000	€22,752	n.d.

Source: In-house with data from the companies.

* Data from 2005

At Antena 3 TV, profit from news programmes corresponds to practically half the advertising revenue generated by these programmes, this being 38.4 million euros. In spite of the lack of official data on revenue and profits at Telecinco-Atlas, the secondary sources analysed, such as the annual accounts of both companies, also indicate a high profit margin. For their part, the two public broadcasters, TVE and TVC, also achieve profit margins, as their revenue for advertising in news programmes, 137.4 million euros and 48 million euros, respectively, exceeds their costs. Notwith-standing this, their profit is lower than that for the private broadcasters, as they produce more news programmes, many of them operating at a loss. Moreover, in the case of TVE, although it has a profit margin of 28 million euros for central news, its news services as a whole make a loss, as it has clearly loss-making local centres associated with this area.

5. Conclusions: information, news, public service, commercial service and quality

The four broadcasters included in this analysis, two public (TVC and TVE) and two private (Antena 3 TV and Telecinco) appear as cases with significant differences both with regard to business objectives and also how they are organised, their coverage, production systems and sale strategies. These differences correspond principally to the criterion of ownership, as in the first case we can talk of two different models, for public broadcasters and for private. Although both sets claim to provide a public service with their news programming, we can clearly differentiate between public broadcasters, where criteria we might call *social profitability of public service* have more weight, and the private broad-casters, where the main objective is the company's profit.

The public broadcasters invest more heavily in producing news, including more supply that is also more diverse, aimed at an extensive audience but also to meet more specific demands. In order to achieve this they use their own resources, leading to very high expenditure. While the daily programmes make a profit in terms of the audience and the advertising they attract, the non-daily programmes, all news and international channels and local networks for news production make a loss. In the case of the private broadcasters, news contributes positively to the channels' results. In this case, supply is reduced to the most profitable news (generalist information with a lot of *society* and *sport*), with a more commercial audience profile and an external production model that allows them to reduce personnel costs and fixed assets. These differences in supply and production are closely related to the quality of the TV news service, in terms of the diversity of the information offered, the criteria used to select topics, geographical coverage, resources to interpret information and the diversity of information sources.

Table 5. Revenue attributed to news programmes

	TVC	TVE	Antena 3 TV
Revenue	48 million euros	137.4 million euros	80.4 million euros
Income/hour (not including repeated broadcasts)	3,713.73	16,055.15	43,553.63
Income/hour (TV3/33 and TVE -1 La 2)	14,002.33	44,094.99	-

Source: In-house based on data from the companies.

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The models of love in TV fictional series. Case study: *Porca misèria*[1]

Pilar Medina, Miquel Rodrigo, Sue Aran, Rosa-Àuria Munté and Joan Tharrats

Television provides us with insights into our society's discourse on what is considered to be love and on the relationships of couples: audiovisual fiction feeds off reality to facilitate viewer identification and, at the same time, ends up being a source of information. In this way, the model feeds back on itself. We are therefore presenting a model to analyse discourse and we apply this to the fictional series Porca misèria*. Of the three levels proposed by the analytical model this article focuses on the second (the narrative structure of romantic feeling, NSRF), analysing the narrative discourses of the three main couples from the series and drawing basic conclusions.*

Keywords

Fictional series, discourse analysis, romantic relationship, romantic stereotypes.

1. The inter-subject construction of emotions and their representation in the media

A fertile concept to study emotions, their inter-subject construction and how they are represented in the media is that of the 'structure of feeling' by Raymond Williams. As pointed out by Nightingale (1999, 89), "the structure of feeling became a means to achieve the purpose of explaining consumption (why we consider the texts are agreeable), instead of a way of understanding culture". For Williams (1975, 64-65), the structure of feeling is "the culture of a specific period: it's the specific consequence of how all the elements are experienced that occur in the general organisation […] This does not mean that the structure of feeling, to a greater extent than social character, is shared in the same way by all individuals in a community. But I believe that it constitutes a very deep and extensive pro-perty, in all contemporary communities, precisely because communication depends on this." We should remember that, for Williams (1975, 63), social character is an important system of behaviours and attitudes that is learned both formally and informally. For this author, the dominant social character conditions the structure of feeling but each new generation will construct its own structure of feeling that, obviously, does not appear *ex nihilo* but is a different way of interpreting and experiencing everyday realities. So this structure of feeling becomes evident, from the different types of dress to different musical tastes, in the idea proposed by Nightingale (1999, 88) when talking

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of "the structure of sensibility" of an era. Along these lines, Ang (1996, passim) applies Williams' concept to the genre of TV melodrama and talks of the tragic structure of feeling. Viewers of TV soap operas recognise and share the structure of feeling of the melodramas they consume and that is why they feel attracted by these programmes and are gratified by them. Following this same argument, Ang (1996, 87), in his analysis of the reception of the TV series *Dallas*, arrives at the conclusion that "at least what these fans like is the sense of emotional realism. More specifically, this realism is related to the recognition of a tragic structure of feeling, which is considered real and which makes sense for these viewers."

For our part, being inspired partly by Williams and Ang, we would like to propose a number of concepts that help us to analyse the representation and appropriation of TV romantic stories. That is why we will focus, with regard to the structure of feeling, on romantic models and relationships in television fiction.

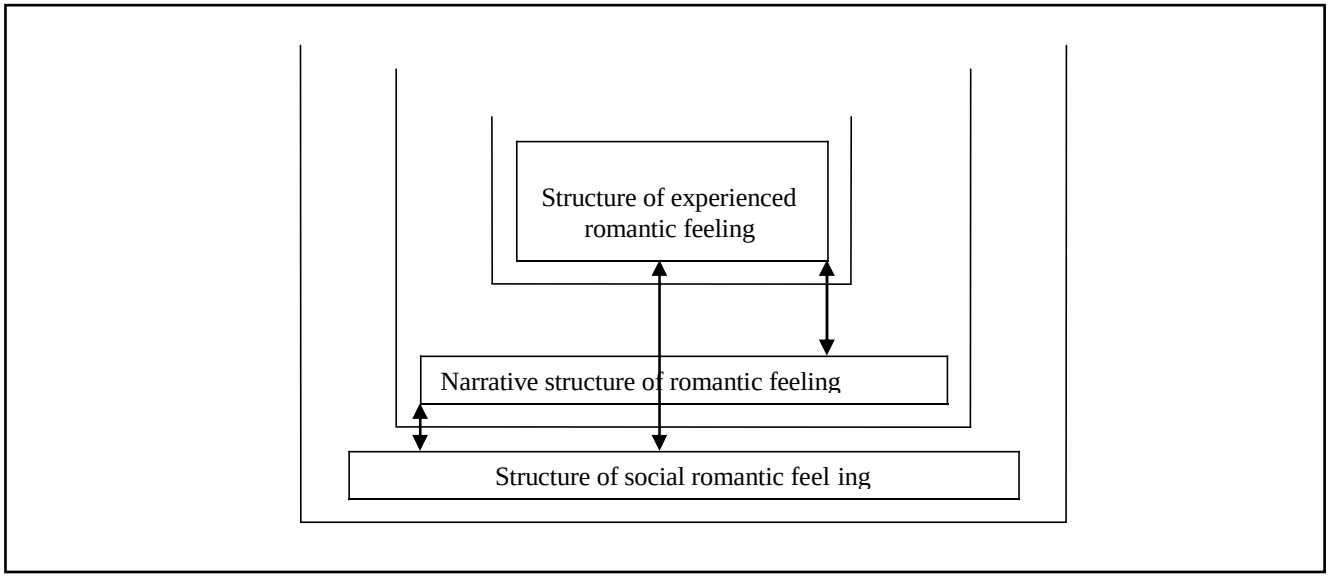
Levels of analysis of the structure of romantic discourse

Our proposal focuses on the specific study of romantic feeling based on three levels of analysis. Firstly, there is the **structure of social romantic feeling (SSRF)**, the general framework shared by most people and that forms part of the dominant feeling. Here we come close to the concept of Williams, although more specifically for the aspect we are studying (romantic feeling). Evidently, we are at the sociocultural level of a specific community where there can be different ways of making sense of romantic feeling. Notwithstanding this, we can readily agree that the hegemonic model, although it might not be accepted, is definitely the most well-known by all members of the community.

Secondly, there is the narrative structure of romantic feeling **(NSRF)**, the romantic models that appear in the media stories analysed. In other words, the idea is to recognise what the structure is of the feelings narrated. At this level would be the analysis of the romantic representation specified in the media story. Due to the characteristics of mass culture, the representation of this romantic structure is usually easy to recognise by viewers as, except in highly alternative television programmes, it forms part of the hegemonic model of the "structure of social romantic feeling".

Finally, there is the **structure of experienced romantic feeling (SERF)**; i.e. how media stories are interpreted by

Table 1. Levels of analysis of the structure of romantic discourse



Source: In-house.

specific social actors. Consequently, firstly we can appreciate how they react to the television narrative and, secondly, how they creatively re-interpret the structure of social romantic feeling.

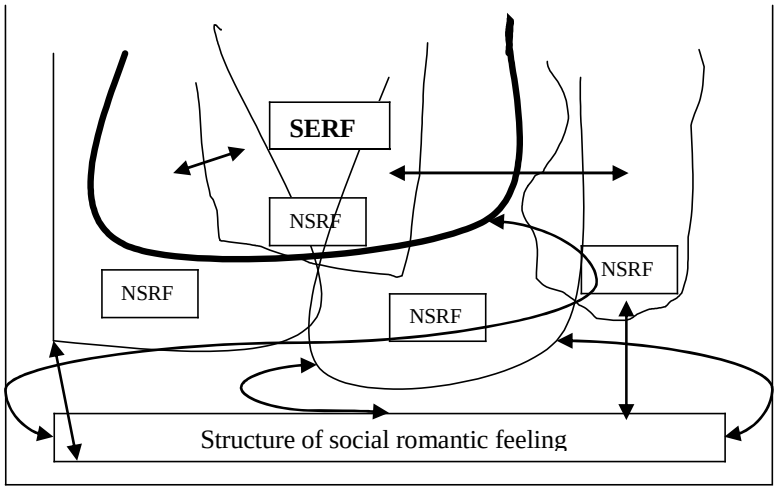
As can be seen, these three levels are interconnected. Although the schemas are a poor approximation of complex phenomena, we can establish some of the relations between these three levels. We can therefore consider that the first level is the most general and the third level the most specific. As if it were a *matrioska* or Russian doll, the structure of social romantic feeling (SSRF) holds the narrative structure of romantic feeling (NSRF) while this, in turn, holds the structure of experienced romantic feeling (SERF).

The structure of social romantic feeling (SSRF) conforms to the spirit of an era, subjecting to norms and sanctioning different ways of loving. It's a social text of undefined contours and sometimes contradictory content. This structure, like any open system, ranges from preserving the system to the changes that will modify the same system. In other words, this is not a written, closed social text but a text that is continuously being written and rewritten and that, at the same time, has permanence. This social text would in fact be a palimpsest.

The narrative structure of romantic feeling (NSRF) is made up of different narrations and self-narrations. Narrations come from different genres and subjects of the narrative enunciation. They are fictional stories, stories that refer to reality and hybrid stories that refer, directly or indirectly, to romantic relations. Here many different heterogeneous stories are involved, from films to novels or traditional tales narrated orally and a whole heteroclite group of narrations within the narrative genre of fiction. These stories establish the narrative structures of romantic feeling, which may be different in each narration.

On the other hand, we must recognise that, at a general level, it is difficult to establish the structure of experienced romantic feeling (SERF) in each specific case. It's complex to establish how the structure of social romantic feeling (SSRF) and the narrative structure of romantic feeling (NSRF) are experienced in each person and in all their nuances. But it is also difficult to clarify which story of the narrative structure of romantic feeling has the strongest influence on the structure of social romantic feeling and how the different stories interact in the narrative structure of romantic feeling; i.e. their intertextual relations and how they achieve extratextual relations with the self-stories of each person.

Table 2. Relation of the different stories in the narrative structure of romantic feeling



Source: In-house.

In spite of this difficulty, we can note a couple of elements we consider to be significant. Firstly, the narrative structure of romantic feeling of a specific story (in our case, the fictional series *Porca misèria*) can be a trigger for interpreting romantic self-stories. Hence its influence on the structure of experienced romantic feeling. Secondly, fictional works can have a modelling effect. In their narrative structure of romantic feeling, they offer models of romantic relations that can frequently be sanctioned, positively or negatively. Below we detail some aspects in the series under study.

2. Narrative structure of romantic feeling (NSRF) in *Porca misèria*

In accordance with the analytical model proposed, we now present the application of the second level of the model (NSRF) to a specific audiovisual product: the series *Porca misèria* (first and second episode). For evident reasons of space, we are focusing this analysis on three of the four narrative structures of romantic feeling (NSRF): the relationship between Pere and Laia, the relationship between Roger and Sònia, and the relationship between Natàlia and Jordi, and we will leave for another occasion the analysis around the narrative structures of Àlex, as well as reflections resulting from the first level of analysis of the model (the narrative structure of social romantic feeling, SSRF).

a. *Confluent love. "We're a team": Pere and Laia*

In addition to being the central characters in the series, the narrative structure of romantic feeling (NSRF) of the relationship between Pere and Laia appears as the ideal prototype that needs to be achieved in our new times of post-modernity (Lipovetsky 1999). It is a relationship full of commitment and romanticism, albeit adapted to the sign of the new times, with spaces for certain moments of idealism but very rooted to the reality of everyday demands. The ideals of romantic love shown by the characters are framed within the ideals of personal freedom, where a person feels free to commit him or herself to another. A relationship that includes sexuality and passion, although also going beyond these. Starting with falling in love, Pere and Laia arrive at a romantic relationship of real commitment to each other, along the line that makes us think of the concept of "pure relations" or "confluent love" as discussed by Giddens (2000): "In a pure relationship, confidence does not have external supports and must develop on a basis of intimacy. Confidence means trusting the other and also believing in the capacity of the respective ties to withstand future traumas. [...] Trusting the other is also putting your faith in the individual's capacity to *act with integrity*" (Giddens 2000, 128; our italics).

However, the character of Pere reminds us that the social changes in relations between men and women are only feasible if both (men and women) change. In other words, that Laia also finds a man, Pere, in her biographical path, who has managed to distance himself from the *corset* of a male identity that focuses on virility or, as pointed out by Connell (2003), on "hegemonic masculinity". Badinter (1993) says this in a more radical and provocative way, adapting the formula of Simone de Beauvoir: "like a woman, a man is not born, he is made". This new confluent-romanticism is based on the premise of an active relationship of equality in what is given and received emotionally and that is no longer based on desire and the promise of eternal future. Unlike the romantic love of the 19th century, focusing on "that special person", confluent love has more of a chance to become established because it looks for a "special relationship" with that specific person. While the role of the man in the romantic forms of the past was relegated to a role of emotional distancing and inability, in confluent love he is expected to be able to show and talk about his emotions and also to be able to give affection.

Pere and Laia's relationship is an example of seeing relationships as a joint task of mutual emotional collaboration. For Giddens (2000), this idea of emotional collaboration is precisely one of the great transformations of modern society as it represents the incorporation of emotional intimacy into the sphere of matrimonial ties. In this respect, the characters give life to a renewed concept of emotional intimacy understood as "a transactional negotiation of personal ties by equal people... The intimacy entails the absolute democratisation of the interpersonal domain" (Giddens 2000, 12-13). Bauman refers to this more poetically, which we particularly like: "Without humility or courage there is no love" (Bauman

2005, 22). And Pere does this in a more direct and commonplace way: "Hey! As far as I'm concerned we're a team". In the words of Beck and Beck-Gernseim (1998), this is not, at any time, a call to return to the tranquil past of traditions but a detailed, critical analysis of the elements of risk entailed by an increasingly individualistic society in the economy-based demands of the employment market which, however, do not protect the individual from loneliness or rootlessness. As proposed by the authors, one of the questions implicit in the couple made up of Pere and Laia is related to the difficulty in uniting two *self-planned biographies* (Beck and Beck-Gernseim 1998, 98).

The more complicated it is to make sense of external pressures (self-realisation, struggles regarding work, advancement, success [...]), the greater the need to find in the world of relationships a personal sense of bond, of being rooted, of security and the prevention of loneliness. In these everyday conversations between Pere and Laia on their respective jobs, we can see an example of intimate conversation, intimate if you will, in their arguments but full of complicity. Without doubt, being able to share with a partner one's headaches of pressure at work is one of the current indicators of emotional intimacy. Reality reminds us of the importance of being flexible, autonomous and independent in the world of work, but the human need remains to find in another (in this case one's partner) the companion in life who listens to all our fears and weaknesses.

With regard to sexuality, for Giddens (2000) monogamy is no longer an undeniable requirement imposed *a priori* but has become a way of demonstrating (albeit a particularly relevant way) mutual trust. This is perhaps the other great change introduced by the author in addition to his claim for a democratic conception rather than a more traditional view of love: the alternative that a relationship of emotional intimacy contains sexual exclusivity not as a predetermined obligation but as evidence of the trust placed in the other. In some way, we are reminded of the fact that what causes harm in terms of unfaithfulness is not infidelity per se but the pain of having been deceived and the difficult consequences this has for mutual trust (which, without confusing this with blind or puerile trust, does represent the peace of mind of not having to suspect or doubt one's partner). In fact, *Porca misèria* is also sensitive to this new possibility: while Laia is in Utah she meets John, with whom she has sexual relations (or perhaps we should call it "sexual contact" since, while he shows himself to be interested in a more continuous relationship with Laia, she rejects this possibility). However, the context in which this sexual contact is shown does not come from a pact of sexual freedom between Pere and Laia. If Giddens perhaps is noting a future possibility, *Porca misèria* shows us a more present and contemporary reality in our real life streets: infidelity as a result of confusion, anger and loneliness, with the subsequent price to pay the morning after: remorse and feelings of guilt. These emotional precedents (confusion, anger and loneliness) and their results (remorse and guilt) are the elements that establish a radical difference between this kind of infidelity and that of the character of Roger, to whom we dedicate the next section.

b. Narcissistic love. A zapping relationship: Roger and Sònia

Although the main characters in the series are Pere and Laia, the narrative structure of romantic feeling (NSRF) of Roger and Sònia is interesting as an example of how Sònia puts herself into risky situations with the internal belief that she is in love (but blind to the external evidence). On the other hand, Roger embodies a new format of romantic relations characterised by weak, loose commitment that must not interfere with other one-off, pleasurable or uncommitted experiences. Hence the word *zapping*, in the same way that a viewer who prefers a certain programme still doesn't hesitate to "jump" to other programmes (and, extending the metaphor, to other people, experiences, jobs, etc.) that are more interesting at that moment... Why fidelity?

As we are reminded by Lasch (1991), narcissism has spread as a prototype of social functioning. Unlike the Victorian times when Freud could note the importance of guilt and emotional repression, today is a time of desire and impulsiveness. In a society where all dreams might come true, sacrifice no longer means what it used to. In narcissistic functioning one is entitled to everything and personal pleasure ends up being the driving force

behind one's actions. Roger is the image of the successful person who is proud of/satisfied with himself and who does not hesitate to show this to others. There are no weaknesses or doubts but desires that are satisfied voraciously and impulsively.

Together with addictive behaviour, narcissism is one of the typical diseases of our time. In some way, the narcissistic style unconsciously believes that, if everything outside might fail, the best solution is to focus on the unrepeatable marvels of oneself. Feeling oneself to be someone who is superior, dividing up the world into strong and weak people is an unconscious attempt to overcome the fear of being abandoned or rejected. Narcissistic people (Roger) cannot achieve intimacy with another person because this would mean having to expose their own pains and fears with the internal confidence that the other loved one will know how to resolve them and will know how to protect their importance. A narcissistic person cannot share with another except in situations of extreme conflict and personal collapse, because to communicate with another person one first needs to recognise pains and weaknesses in oneself. Hence the importance of the narcissistic protective shell: there is nothing to communicate because there are no weaknesses or pain.

While internal anxieties are mollified via a narcissistic structure, Roger represents an egotistical narcissism that is more focused on impulses and desires, features that, as noted by Lipovetsky and Charles (2006), would more properly characterise our "hypermodern" time. In this narcissism, there is no room for scruples or remorse. And this he puts into words when his brother recriminates him for having sporadic sexual relations with other women while married to Sònia.

Under his or her soft, superficial sociability, the narcissist of the 21st century hides difficulties in psychological intimacy and relational commitment. Like a child, nothing can be definitive because they always hope and long for the possibility of new exciting adventures and new appetising gifts (in the form of consumer products but also as relationships to be consumed), which must not be sacrificed. Only weak people make sacrifices and only frustrated people commit themselves, using the argument of commitment as an excuse to hide their failure and the impossibility of continuing on the path of adventure. Roger is neither weak nor frustrated, he is not a social loser because he knows perfectly well the rules to "selling yourself" and voraciously looks for pleasure both at work and in love. But this is *zapping*, in the sense of giving the external appearance of commitment (in this case with Sònia) but with the intimate internal belief that this commitment does not justify sacrificing adventure with other people and situations where Sònia is not involved.

One of the questions that must be asked is how individual narcissism can overcome the examination of romantic commitment with another person. And Roger gives us the answer: by transforming emotional ambivalence ("it's either one or the other, but not both at the same time") into emotional division ("he's in love with Sònia but that has nothing to do with his sexual relations with other women. They're two different things"). If earlier we remembered the Freudian times of guilt and repression, now is the time of a divided I where there is no chance for remorse or guilt to arise because the aim is to keep each parcel of joy separate from the rest.

Sònia represents the dangerous force of love when it is blind and deaf to the numerous signs of risk appearing at so many times in her relationship with Roger. Seeing how she behaves with Roger's imperative and demanding requirements, it reminds us of the romantic female ideology of sacrifice and abnegation. It's not hard to give in because it's all in the name of love. And personal sacrifice for love continues to be a great social predicament, from which thinkers are not always immune. We have an example of this in Bruckner (2002, 182) when he writes: "Above all, love supposes that we accept to suffer because of the other and because of his indifference, ingratitude or cruelty" and that, out of context, this can even be understood as a defence for abnegation, in spite of the suffering.

Returning to sacrifice, one of the basic characteristics in sacrifice is the dynamics of power. Roger always ends up imposing his will and Sònia consciously gives in. The trick is the unconscious belief on the part of the woman that constantly giving in to the desires of her partner shows just how strong her feelings are for him and, at the same time, shows "subtle" dominance because,

since she allows herself to be dominated, in reality she is the one that dominates. But we must not forget that believing yourself to be free while in a trap does not mean that you are not entrapped.

It should be noted that Sònia is aware of her submission to the imperative demands of her partner but, if this doesn't put her on the alert, it's because she is in love with Roger and, in some way, "the sacrifice doesn't matter if it's because I love him". As this is voluntary sacrifice, not forced, there is no possibility of complaint (in the mind of Roger, but also in Sònia's own mind). If she has decided to make the sacrifice then it's because she wants to and this eliminates any chance of protest because she could have always fought more to defend her own position. This is one of the great situations of risk in the female romantic ideology.

When talking about this female romantic ideology, we must also talk about the role played by a number of beliefs and expectations concerning falling in love and romanticism. Sònia is not the only woman in the series who values romanticism (remember Laia's words "I believe that, if you're in love, you know for certain... If you doubt, then you're not in love... because falling in love is something physical, when you see him, I don't know... your heart jumps and your legs tremble and... What's happening?! I really believe it!"). But we are interested in highlighting the character of Sònia because her romantic expectations hinder her capacity to realise that the partner she has chosen cannot commit in the same way that she is prepared to commit. Although a romantic relationship can arise based on mutual friendship, the western prototype instilled since the end of the 18th century (the structure of social romantic feeling of the model we have proposed, SSRF) emphasises the role of romantic passion as a fundamental ingredient, especially for women. There are many ways of starting and maintaining a romantic relationship but it seems that there is one that prevails over the rest: the one that comes from falling in love, from the intense thrill in discovering the other and one's own thrill in the discovery.

However, we should make an important proviso here: before we spoke of the *zapping* of Roger as an unconscious shell that protects him from possible disappointment, but interpreting his unconscious mechanisms is one thing and excusing him the pain he causes to others (in this case Sònia) because he is unaware of this is quite another. Confluent love between two adults must be based more on the emotional resources each one is capable of contributing to the relationship than on the weaknesses and/or lacks once has and that the other might feel the unconscious need to protect and justify. Through Sònia's suffering, it is easy to understand the risks of an emotionally unbalanced relationship.

c. Love-friendship. Natàlia and Jordi: affection without passion

The narrative structure of romantic feeling (NSRF) acted out by Natàlia and Jordi is, in some way, the confirmation of the importance given in today's world to passionate falling in love as a basic element to consolidate a relationship.

We should remember that Natàlia has fallen deeply in love with Roger, is aware of her feelings but has decided to take it no further with him because, as she herself says, she has suffered with him and is afraid of suffering again. It's within this emotional context that the character of Jordi appears, a good man, sincerely in love with her and ready to commit himself seriously to the relationship. In this respect, it is interesting how *Porca misèria* treats the male characters. Unlike other series studied,[2] the personal relationship the different male characters in *Porca misèria* have with love, their expectations in terms of their relationships and their romantic demands are complex and not very stereotypical (in some cases not at all). The character of Jordi is a clear example of this. A man appears who is sincerely in love and sincerely committed to his romantic relationship, capable of verbalising his feelings, his needs and his fears, sensitive enough to realise Natàlia's moods and respectful

2 "Estereotips del món de la parella i la seva representació en les sèries de ficció. Implicacions per a la construcció de la identitat en la jove preadolescent i adolescent" (research focusing on the series *Los Serrano*). Research subsidised by the Institut Català de les Dones (2005, file U-55/05). Unpublished report.

enough to observe and wait, capable enough to be ashamed of his own attack of jealousy... Why does Natàlia have any doubts? Surely because *affection* without passion is not love, or at least it doesn't seem so to us within our contemporary context (Castillo and Medina 2007; Medina, Castillo and Davins 2006).

If we take the romantic models proposed by Sternberg (1989), we understand that, while Jordi is capable of giving Natàlia (and feeling with her) the three basic factors according to the model for a romantic relationship -passion, emotional intimacy and commitment– she needs to deceive herself and she commits to him and to the relationship (the "commitment" element of the model) because she feels cared for and valued by Jordi (element of "intimacy" that she feels towards him) although her passion lies, more or less consciously, with another man, Roger. Far from the stereotypical views of the role of *self-deception*, that of Natàlia is not at all stereotypical nor is it far from what we might observe in the real lives of real people. But how many real couples could start from this unbalanced base? When a relationship starts, unless it's an adolescent one, it does not start from an *even playing field*; we all, to a greater or lesser degree, start a new relationship with our own *romantic baggage* on our backs, but it's not always baggage of bad memories. There is also the possible melancholy for a relationship that couldn't go on. We look at the new relationship from this personal circumstance, from our own baggage, and there are some who will have a go and succeed, while others will always drag the initial imbalance with them, to a greater or lesser degree, and others won't be able to overcome this and the couple will break up. What does all this depend on? The series opts for this last possibility and leads the couple made up of Natàlia and Jordi to their break-up, based on the fact that Natàlia continues working with Roger and therefore continues to see him every day. There is no possibility of distance (in time and/or space) which might help the memory to become diluted and fade away. The passion can be created anew every day by going to work and, the option chosen by the script, the passion towards Roger could end up being stronger than the intimacy and commitment towards Jordi. We should be thankful that the series does not present this path as the classic triumph of love (in the quaint manner of romantic novels) but a more human, more ambivalent Natàlia appears, capable of recognising the value of Jordi and his sincere feelings and of knowing she is guilty of her own contradictory feelings. It shouldn't be easy to sacrifice passion with the feeling of making do with intimacy... Or at least it's not easy at a time when passion is so championed.

In short, romantic passion has fallen out with compassion. Natàlia seems to agree with Bruckner (2002, 184) when he says "A demanding freedom is not a freedom that is preserved but a freedom that exposes itself to burn-out. Passion is perhaps condemned to misfortune; but never feeling passion is an even greater misfortune". This is the possibility but also the tyranny of our new romantic scenarios.

3. Conclusions

The system, against the proposed romantic models of the different narratives, opposes its ability to integrate (as non-hegemonic, possible, minority, marginal, etc.) or not these models into the structure of social romantic feeling. The different difficulties and romantic plots of Pere, Laia, Sònia, Roger, Natàlia, Jordi, etc. help us to understand how the romantic constructs form part and are a manifestation of a cultural symbolic world. This fiction has helped us to analyse and reflect on the symbolic keys to how romance functions in today's society.

Without conflict there is no story and the romantic plot has always been a good source of dramatic conflict for scripts and this is taken into account in many successful fictional series in Spain (for example *Médico de familia, Los Serrano, Cuéntame cómo pasó, Aquí no hay quien viva*...). Remembering the words of Fuenzalida (1992, 161), "the couple and family also appear as a social space in which emotion is valued, since conflicts of feeling and affective reactions to life are expressed there". *Porca misèria* moves away from the family as a stage for members of different generations to come together and opens the doors of the script to a specific social reality: *couples* and their specific discourses.

With the proposed model with three levels of analysis, we are interested in *Porca misèria* because, among other rea-

sons, the script figures strongly in the romantic narrative, so that we can easily make the jump from the first level (structure of social romantic feeling, SSRF) and the second level (narrative structure of romantic feeling, NSRF) of the theoretical model we have produced. Following Morin (1972), we can state that), as a system, the structure of social romantic feeling (SSRF) imposes interpretive and evaluative power on romantic media stories. In fact, we can interpret the models offered in the narrative structure of romantic feeling (NSRF) because we have interpretative powers that are provided by the system. In this way, the system opposes the whims of the external world with its determinism. In other words, it offers us the interpretive and evaluative keys and provides a context for the romantic proposals of the narrations. Homeostasis occurs in the power of the new romantic realities to define and provide a context. Via this power to define and classify, the disruptive power is diminished of the new elements arising in romantic relations. The structure of social romantic feeling (SSRF) tends to impose itself as an interpretative matrix, even integrating those narrative structures of romantic feeling (NSRF) that it initially rejected or ignored (as has happened, for example, with the incorporation of homosexual couples as another narrative element of the script). In this way, the structure of social romantic feeling changes based on the narrative structures of romantic feeling that circulate in society and in the media. The different narrative structures of romantic feeling (NSRF) presented in the series are the representation of how, in our new times of individualism, a romantic couple attempts to place themselves on an equal footing emotionally (Pere-Laia; Roger-Sònia; Natàlia-Jordi). Feelings are also a key element to the survival of the relationship: romanticism, sensuality, passion and happiness form part of this new "romantic demand" that is so attractive and, at the same time, so tyrannical.

In his reflection on the new role of intimacy, Giddens (1998, 47) wrote that "someone said that romantic love was a plot by men against women to fill their minds with impossible dreams". We agree, but with some provisos, all those awoken in us by observing the male and female characters of *Porca misèria*. Beyond the conditioning factors imposed by the demands on femaleness or maleness, our characters offer us the chance to see non-stereotypical adults who try, with more or less success, to live their lives in company. Neither the women of *Porca misèria* seem dazzled by the myth of "Mr. Right" that does so much harm and that still awakens so many sighs of love, nor are the men in the series a vulgar representation of a maleness focused on virility and the absence of emotional complexities. Almost without realising it, we live together reproducing the asymmetries in affective roles. Taking as "natural, essential and consubstantial" the female condition of taking charge of affective relations, and considering "sentimental illiteracy and emotional coarseness" to be the male condition of all men end up being an exercise that impoverishes the mind of any person, at the same time as limiting their personal potential if these beliefs are taken on without being capable of questioning them. In this respect, we must not forget that one of the interests of the research team and around which this work was structured has always been the role of romantic stereotypes and their representation in audiovisual fiction. Finding audiovisual material that refuses to abide by these archetypical approaches was no easy task and that is why *Porca misèria* has been the ideal material for analysis for our objectives.

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Television schedules in the transition to the 21st century

Jordi A. Jauset

Television scheduling consists of placing different types of programme at specific broadcasting times according to different patterns that depend on the business objectives of the different channels, among other factors. These programme types can be classified into genres that are constantly evolving in order to adapt themselves to audiences' preferences.

This research presents an analysis of the programming genres of the main television channels in Catalonia during the years 1998-2003, based on the classification used by Taylor Nelson Sofres (TNS). The article comments on the similarities and differences observed on these television channels, taking the channel's owner and coverage into account.

Keywords
Channels, Catalonia, genres, television schedules, television.

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1. Introduction

1.1. TV scheduling

The study of TV scheduling is one of the fundamental components in the complex process of media production, as it must juggle the channel's own interests and the communication on offer with the audience's preferences. This is a very broad concept that deals with diverse aspects of the content of television broadcasts.

According to Gómez-Escalonilla (2002, 28), "[...] scheduling may be understood as the organised proposal of television products that are offered to the audience at a specific moment". In other words, scheduling consists of placing the different "products" or spaces into broadcasting bands following specific patterns that depend, among other factors, on the objectives each channel has defined in its respective strategic plan. These placements in terms of time and space constitute the so-called "programming grid". Although the grid is designed, in general, for yearly periods, it is planned in weekly periods and is subject to the daily retouches required to adapt to the latest events, both expected and unexpected.

The factors influencing scheduling, understood as the result that ultimately appears on the TV screen, are many. Apart from the historical context, for many years scheduling has been significantly influenced by chronological considerations (daily, weekly and seasonal variations) and is subject to the diverse social, economic, political and undoubtedly programming criteria of the different TV channels. However, nowadays the chronological factor is perhaps less impor-tant, as technology allows users themselves to control or adapt the programming grid at their own convenience. Personal video recorders (PVR) mean that the different programmes broadcast by channels throughout the

day can be programmed. In this way, users choose, in their leisure time, the events that interest them most, irrespective of their "temporal placement" on the day's programming grid.

Programmers must take into account the habits and tastes of the public as important factors when taking decisions in their daily work. This has been explained by Fuenzalida (2002, 39-40): "[…] for TV scheduling, understanding audiences means understanding viewers in their relationship with a TV channel and with TV programmes: their likes or dislikes, their entertainment or boredom, their empathy or rejection, their motivation to watch or to change a programme, their sympathies or prejudices, their meanings and appropriations with regard to the screen. The aim is to understand the differences between TV viewer segments: the different preferences according to class, gender and age; the historical evolution of perceptions and expectations."

This all seems to suggest that there is a wide range of factors affecting the scheduling offered by a channel that cannot be ignored. As noted by Gómez-Escalonilla (2002), the content supplied may be conditioned by factors such as the ownership of the channel, the TV model adopted by the channel, whether there is a monopoly or not, as well as the social and political conditions of the time. Scheduling practice requires knowing how to juggle a large number of factors and interests of the chain with those of the viewers (commercial, political and ideological interests), as well as the target's likes and habits.

In fact, the same author (2002, 29) states that "[...] the factors that would therefore explain the reason behind a certain kind of scheduling are highly diverse in nature […]" and, as pointed out by Palacio (Contreras and Palacio 2001, 26), "[…] in short, TV scheduling is a complex phenomenon, related to a culture, customs and habits in society".

1.2. Conceptualising the term "genre" and its classification

Cebrián (1992, 17) defines genres as "[…] the different ways in which textual productions can be classified, either written or audiovisual and, within each of these productions, according to the different variables that go to make it up […] They configure information by type of organisation or journalistic structure".

So a genre is no more than a way of communicating, a series of rules familiar to both the transmitter and receiver. Regarding this question, as pointed out by the same author (1992, 15), "[…] genre presents itself as a way or mode of textual configuration. It is a series of combined procedures, of game rules, that produce texts in accordance with certain conventional structures, established previously, recognised and developed repeatedly over time by various authors". Genre is therefore not determined by particular content but by the written and audiovisual forms employed according to distinctive combinations.

Genres are not rigid, immovable structures but "[…] they evolve constantly to adapt themselves to audience preferences" (Blum and Lindheim 1989, 18). This is along the same lines as Cebrián (1992, 17-18) when he states that "genre is never a rigid corset but a flexible mould […] genre refers to global structures common to the different ways of doing […] genres enjoy huge vitality […]".

In the early days of television, scheduling was arranged around the base of a series of impervious spaces, each one contained within a corresponding genre. Later, spaces appeared that, although they might be called "programmes" in terms of form, include a range of content, such as modern-day magazine programmes. These are the so-called "containers". As pointed out by Wolf (1984, 195), "container programmes reorganise the existing genre system, not modifying the form or content but the communicative relationship between them and the viewer. A diverse mode of receiver involvement is indicated or encouraged".

Genre-based classification

Consulting different documentary sources, it has been observed that there is no single standardised classification but rather these different sources use different groupings, adapted or designed according to a specific situation. Designing an operational classification that predicts and adapts itself to the constant transformation of different genres is no easy task.

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) offers a classification that includes the following categories: *news, educational, cultural, religious, children, entertainment programmes, advertising* and *others* (those not classified in any of the previous categories).

The Audiovisual Communication Studies Office (GECA in

Spanish), which publishes television year books, classifies genre principally into *game and quiz shows, sports, informative, docushow, fiction, humour, news, magazines, musicals, reality shows* and *talk shows*.

On the other hand, TNS Audiencia de Medios, the company responsible for measuring audiences in Spain, used the following terms in 1993: *cinema, series, game and quiz shows, bullfighting, sports, musicals, religious, informative, miscellaneous, news, children-young people, drama* and *others*. As from 1995, these were modified and replaced by *fiction, game and quiz shows, bulls, sports, musical, religious, cultural, miscellaneous, information, infoshow, TV selling* and *others*. Each of these genres is subdivided into various specialities which might include several levels.

This last classification is the one used in this study to catalogue the different programmes broadcast during the period under analysis.

2. Objectives

The study's main objective is to analyse the genres offered by the major television channels in Catalonia based on programmes broadcast from 1998 to 2003.[1]

The channels analysed, classified according to their ownership and scope of cover, were as follows:

- Public channels (free):
  - State cover with local slots: TVE-1 and La 2.
  - Autonomous community: TV3 and 33 (K3/33).
- Private channels (free):
  - State cover with local slots: Tele-5 (T5) and Antena 3 TV (A3).
- Private subscriber channels, with some programmes with open access:
  - State cover, analogue terrestrial channel: Canal + (C+).

The study has been carried out based on the information consulted in the broadcasting database of TNS Audiencia de Medios.[2]

3. Methodology

The procedure was based on a series of consultations of the broadcast database and has been conveniently grouped into the fields of information and the appropriate filters have been used according to the information considered of interest and suitable for analysis. The results have been presented in several Excel tables, used to make the calculations and produce different graphs in line with the study's objectives.

For each year and each period of interest, channel by channel, the number of programmes broadcast has been quantified for the different genres according to the above-mentioned classification and only the specialities have been taken into account, not other levels.

4. Results

The results for each of the channels are provided in the enclosed tables and graphs, with information on the number of broadcasts and their annual distribution, based on the aforementioned genre classification.

The graphs allow us to visually evaluate those genres that have been more important or have had more weight in the different programming grids during the period analysed.

The results are commented individually by channel below.

4.1. TVE-1

The results indicate a high concentration of two genres, *fiction* and *information*, which in all cases account for more than half the number of annual broadcasts. *Fiction* predominates in the first four years and *information* in the

1 The study takes into account the programmes broadcast via terrestrial analogue transmissions in a period from 7 am to 2 am the following morning).

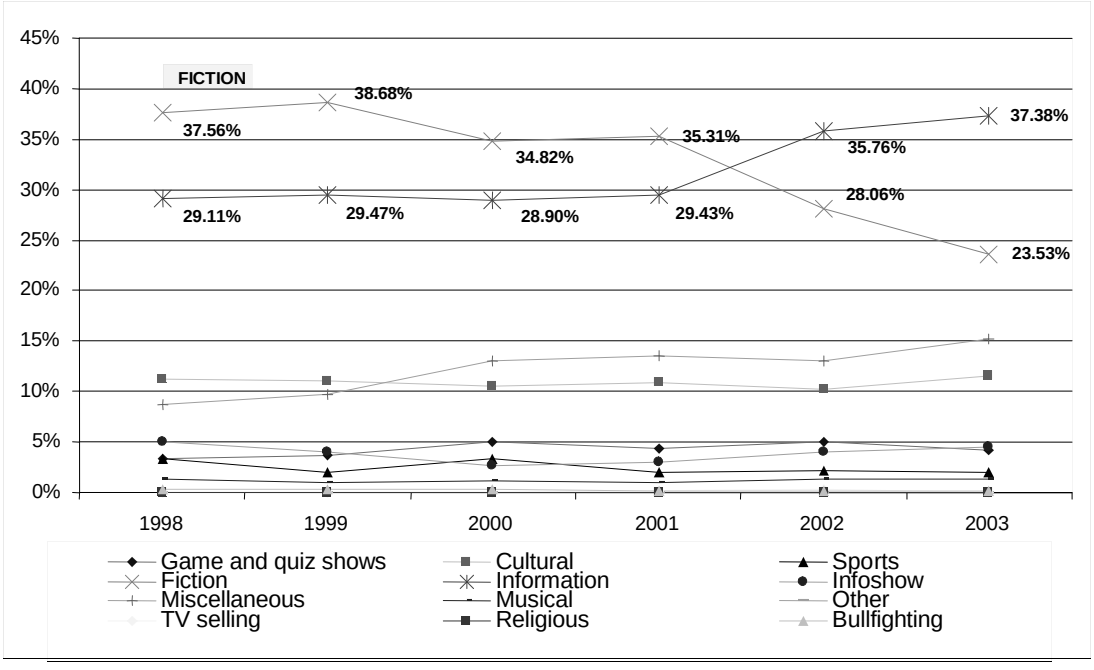
2 The work is based on the author's doctoral thesis (Jauset 2006), tutored by Dr. Amparo Huertas (UAB).

Table 1. Number of broadcasts on TVE-1 classified by genre. Period 1998-2003

	TVE-1						
Genres	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Totals**
Game and quiz shows	272	298	397	323	330	271	**1.891**
Cultural	922	893	836	804	668	748	**4.871**
Sports	273	163	266	145	141	129	**1.117**
Fiction	3.069	3.113	2.746	2.600	1.850	1.525	**14.903**
Information	2.378	2.372	2.279	2.167	2.358	2.423	**13.977**
Infoshow	415	321	217	220	268	292	**1.733**
Miscellaneous	705	777	1.026	1.003	860	983	**5.354**
Musical	111	81	94	79	84	91	**540**
Others	1	1			1	2	**5**
TV selling				10	20		**30**
Religious		1				2	**3**
Bullfighting	24	28	26	13	14	16	**121**
Totals	**8.170**	**8.048**	**7.887**	**7.364**	**6.594**	**6.482**	**44.545**

Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Graph 1. Annual distribution of broadcasts on TVE-1 by genre. Period 1998 – 2003



Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

rest. Approximately one third of the scheduling is based on each of these genres. Then, by order of importance, we can see *miscellaneous* and *cultural* programmes, accounting for 12.02% and 10.94%, respectively, of all broadcasts for the period analysed. TVE-1 is the channel that dedicates most space to information and the only one that offers broadcasts in each of the 12 genres defined. It is the most varied channel from the genre point of view.

4.2. La 2

This channel gives priority to cultural programmes, which account for almost one third of its scheduling, without forgetting space for *fiction* and *information*. It is the channel that openly broadcasts most sport, to which it dedicates between 7.40% and 11.90% of its scheduling throughout the period being analysed. It does not have any programmes related to *TV selling*.

4.3. TV3

Table 3 clearly shows the annual predominance of *fiction*, with a proportion greater than 37% in any year. Then comes *information*, to which around a quarter of the scheduling is dedicated. In total, almost three quarters of the broadcasts are made up of these two genres. It does not have any programmes related to *TV selling* or *bullfighting*.

4.4. K3/33

Similar to the second channel from the state broadcaster, the autonomous channel K3/33 stands out for its cultural programming, in which it invests a third of all broadcasts for the period. *Fiction* is also important, which achieves almost a quarter of the schedule. In the last two years, an increase has been observed in *miscellaneous*, which was greater than *fiction* in 2003. *Musical* programmes have also acquired a certain relevance, as they account for 14% of the broadcasts in the period analysed.

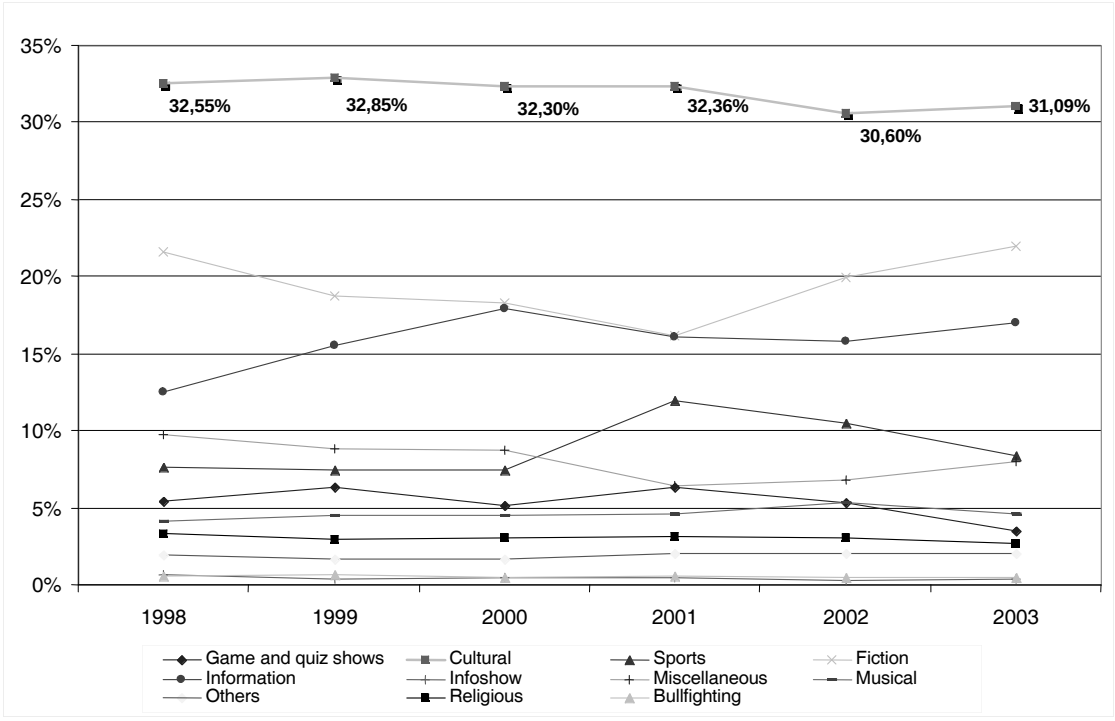
In short, half the scheduling is shared among *cultural* and *fiction*, and a quarter among *miscellaneous* and *musical*. *Information* is as important as *sports*. Like TV3, it doesn't have any programmes related to *TV selling* or *bullfighting* and there has been a notable fall in *religious* programmes as from 2001.

Table 2. Number of broadcasts on La 2 classified by genre. Period 1998-2003

	La 2						
Genres	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Totals**
Game and quiz shows	451	563	456	544	456	317	**2.787**
Cultural	2.715	2.902	2.849	2.765	2.638	2.809	**16.678**
Sports	637	656	653	1.017	900	758	**4.621**
Fiction	1.797	1.656	1.615	1.384	1.722	1.982	**10.156**
Information	1.044	1.373	1.581	1.372	1.359	1.539	**8.268**
Infoshow	50	36	38	38	23	31	**216**
Miscellaneous	814	782	770	553	586	719	**4.224**
Musical	348	396	401	389	458	415	**2.407**
Others	164	148	147	172	175	185	**991**
TV selling							**0**
Religious	273	262	266	266	264	238	**1.569**
Bullfighting	47	60	44	44	40	41	**276**
Totals	**8.340**	**8.834**	**8.820**	**8.544**	**8.621**	**9.034**	**52.193**

Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Graph 2. Annual distribution of broadcasts on La 2 by genre. Period 1998 – 2003



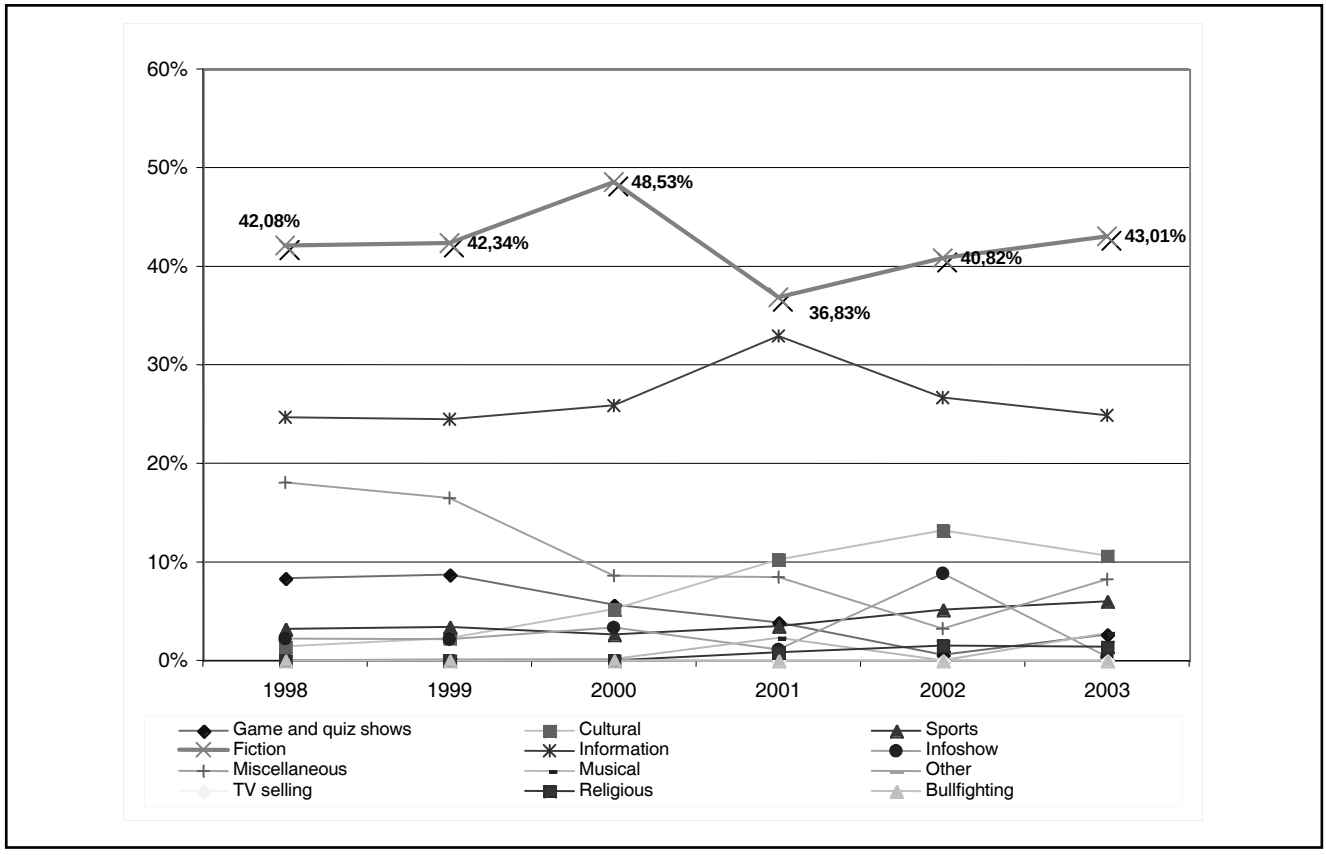
Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Table 3. Number of broadcasts on TV3 classified by genre. Period 1998-2003

	TV3						
Genres	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Totals**
Game and quiz shows	511	516	408	335	51	215	**2.036**
Cultural	87	133	375	891	1.136	870	**3.492**
Sports	195	201	190	302	442	491	**1.821**
Fiction	2.574	2.502	3.504	3.202	3.514	3.514	**18.810**
Information	1.510	1.447	1.869	2.862	2.296	2.033	**12.017**
Infoshow	134	127	240	95	760	29	**1.385**
Miscellaneous	1.105	974	623	736	276	675	**4.389**
Musical		7	10	198		227	**442**
Others	1	3	2	3	5	3	**17**
TV selling							**0**
Religious				71	128	113	**312**
Bullfighting							**0**
Totals	**6.117**	**5.910**	**7.221**	**8.695**	**8.608**	**8.170**	**44.721**

Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Graph 3. Annual distribution of broadcasts on TV3 by genre. Period 1998 – 2003



Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

4.5. Telecinco

Tele-5 is the second of the channels analysed that has a higher percentage of *fiction* (40.99% throughout the period), in 1998 this exceeding 50% of all scheduling. However, this proportion has fallen over the years. There are other important genres, such as *information* and *miscellaneous*. The latter has been increasing as *fiction* has fallen. On this private channel, *TV selling* programmes are significant (9.60% of all broadcasts) compared with the public channels (state and autonomous) mentioned in the points above. No *religious* programmes are broadcast and, exceptionally, one *bullfighting* programme was broadcast in 1998.

4.6. Antena 3 TV

The two basic pillars of this channel are *fiction* and *information*, overall contributing 36% and 20.87%, respectively, for the whole of the period analysed. A notable fall in *fiction* can be seen, in particular during the first two years, and an increase, among others, in *information, cultural, game and quiz shows* and *infoshows*. *TV selling* programmes account for a higher percentage than even *miscellaneous* programmes, particularly in 2000, 2001 and 2002. Neither does this channel have any *religious* or *bullfighting* programmes in its scheduling.

4.7. Canal +

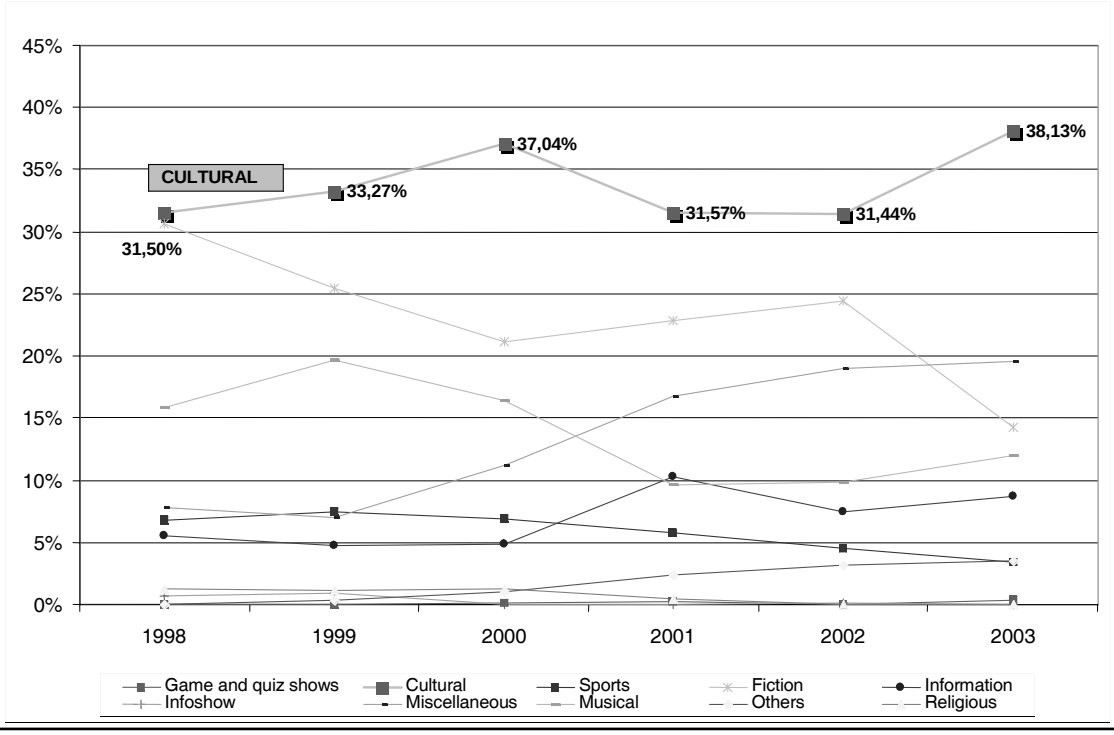
Canal + stands out due to its relatively high amount of *fiction*, which accounts for more than 40% of the scheduling for all the years in question. As a second priority genre, although at a notable distance, comes *sports*, with

Table 4. Number of broadcasts on K3/33 classified by genre. Period 1998-2003

	K3/33						
Genres	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Totals**
Game and quiz shows	3	3	10	16	3	26	**61**
Cultural	2.478	2.810	2.852	2.361	2.472	2.902	**15.875**
Sports	532	633	527	434	356	260	**2.742**
Fiction	2.410	2.152	1.632	1.706	1.916	1.083	**10.899**
Information	433	400	378	772	587	662	**3.232**
Infoshow	51	77	1		11	3	**143**
Miscellaneous	611	590	862	1.255	1.495	1.491	**6.304**
Musical	1.248	1.657	1.265	718	775	913	**6.576**
Others	1	28	77	181	246	270	**803**
TV selling							**0**
Religious	100	95	96	36	1	1	**329**
Bullfighting							**0**
Totals	**7.867**	**8.445**	**7.700**	**7.479**	**7.862**	**7.611**	**46.964**

Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Graph 4. Annual distribution of broadcasts on K3/33 by genre. Period 1998 – 2003



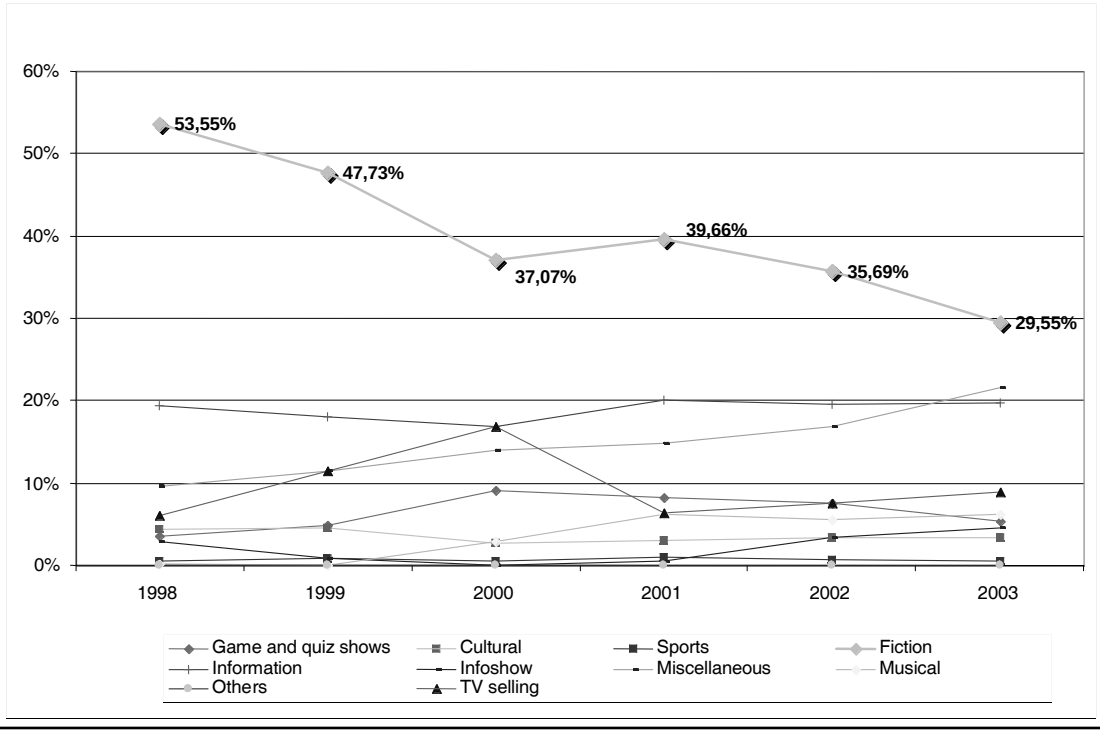
Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Table 5. Number of broadcasts on Telecinco classified by genre. Period 1998-2003

	Telecinco						
Genres	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Totales**
Game and quiz shows	303	419	781	677	573	383	**3.136**
Cultural	377	386	233	241	250	238	**1.725**
Sports	46	78	48	81	52	35	**340**
Fiction	4.628	4.044	3.181	3.233	2.696	2.100	**19.882**
Information	1.673	1.532	1.443	1.629	1.473	1.403	**9.153**
Infoshow	246	65	6	41	250	326	**934**
Miscellaneous	831	975	1.197	1.214	1.272	1.537	**7.026**
Musical	16	6	245	514	420	447	**1.648**
Others	1		1	1	1	2	**6**
TV selling	520	967	1.446	521	567	635	**4.656**
Religious							**0**
Bullfighting	1						**1**
Totals	**8.642**	**8.472**	**8.581**	**8.152**	**7.554**	**7.106**	**48.507**

Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Graph 5. Annual distribution of broadcasts on Telecinco by genre. Period 1998 – 2003



Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

percentages close to 20% in 2001 and 2002. *Cultural* and *miscellaneous* programmes have similar percentages (13.39% and 11.64%, respectively), with *miscellaneous* tending to increase as from 2002.

Curiously, there are only broadcasts catalogued as *game and quiz shows* in 1999. Neither does it broadcast any programmes related to *TV selling* or *religious* programmes.

This channel broadcasts both openly (free of charge) and scrambled, for subscribers only. The openly available programmes include news, magazines and sports news, and cinema, sports and documentaries are reserved for subscribers.

5. Conclusions

To summarise the analysis individualised above, and taking into account the ownership and scope of the channels, we can draw the following conclusions:

State public channels

- The channel TVE-1 broadcasts all kinds of genres and has two basic pillars in its scheduling: *fiction* (33.46%) and *information* (31.38%). At the same time, the second channel (La 2) has specialised in *cultural* programmes (31.95%), without forgetting *fiction* (19.46%) and *information* (15.84%).

Autonomous public channels

- The autonomous channels follow a similar pattern to the state channels. On TV3 there is a predominance of *fiction* (42.06%) which exceeds *information* (26.87%) and, via the second channel (K3/33), *cultural* programmes (33.80%) have priority. Unlike their state peers, autonomous channels do not broadcast programmes related to *bullfighting* or *TV selling*.

State private channels, openly available

- The free private channels of Tele-5 and Antena 3 TV also have *fiction* (40.99% and 36%, respectively) and *information* (18.87% and 20.87%, respectively) as their main genres. In addition, there are also *TV selling* programmes, which do not appear on the public channels (apart from some exceptions on TVE-1 in 2001 and 2002). There is no case of any *religious* or *bullfighting* programmes, apart from the one case mentioned previously (T5).

State private channels, subscriber only

- The private subscriber channel Canal + is the leader in *fiction* (42.71%) and is the channel that broadcasts most *sports* programmes (17.92%), genres on which it bases 60% of its scheduling. *Religious* or *TV selling* programmes are not included on its programming grid.

In general, a tendency towards multi-genre scheduling can be observed aimed at majority audiences. Apart from two or three basic pillars, characteristic of a particular strategy, each channel colours what it offers based on the remaining genres, although the boundary between public and private channels is quite blurred.

The possible differences between the different scheduling on offer are determined by the desire to lead (TVE-1, TV3, Tele-5, Antena 3 TV) or to be complementary (La 2, K3/33, Canal +) and aim at specific segments or targets.

Of note are the *fiction* programmes offered, especially by TV3, Tele-5 and Canal +, as well as *information* (TVE-1, TV3, Antena 3 TV), and *cultural* scheduling (La 2, K3/33). *Miscellaneous* programmes remain stable throughout the channels, with a percentage ranging from 8.09% to 14.48%. There is also a notable contribution from *musical* programmes on K3/33, with a percentage of 14% and TV *selling* programmes on Antena 3, with 16.29%. Finally, we should also mention the contribution made by sports, led by Canal +, followed by La 2 and K3/33.

There can be no doubt that television is a reflection of the changes and evolution of society. What scheduling strategies will predominate in the future? The strong segmentation of the market, the fragmentation of audiences and the consolidation of new technologies (IP television, television on mobile devices) are key elements that will affect the programming grid and its genres, as well as future television formats.

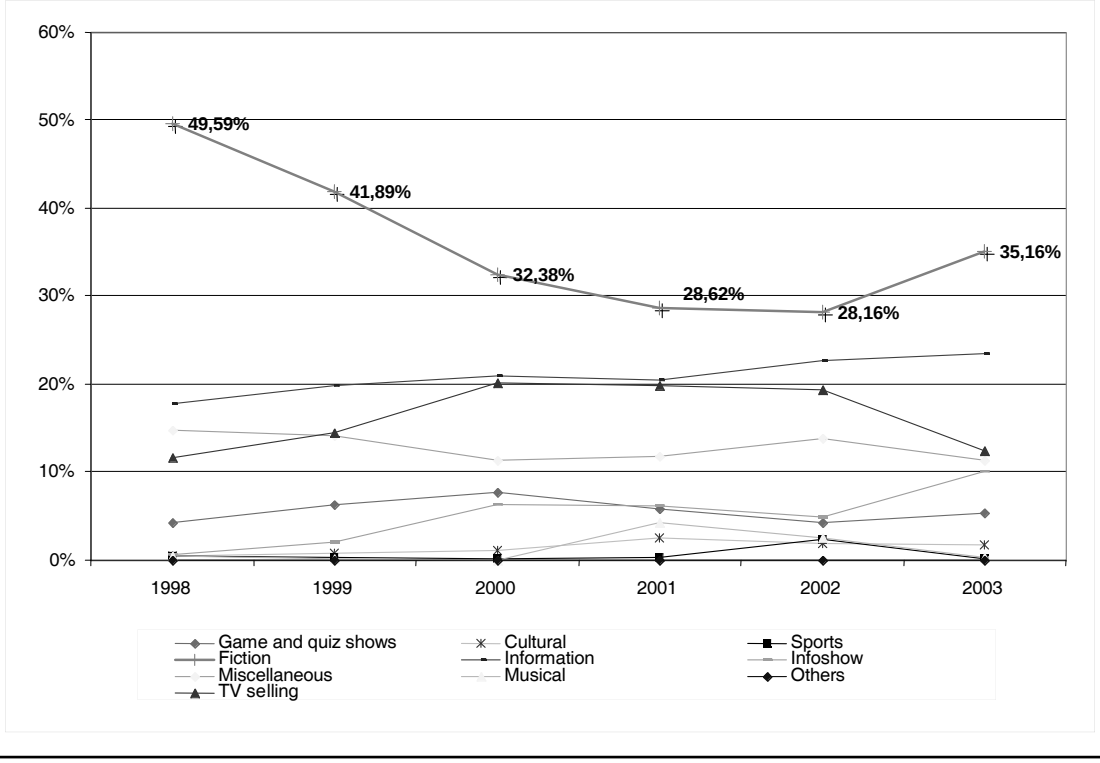
At the end of the decade, it will be interesting to carry out a new comparative study to show the changes that have occurred and analyse how television has evolved and adapted to the new media environment influenced by the habits and customs of citizens of the 21st century.

Table 6. Number of broadcasts on Antena 3 TV classified by genre. Period 1998-2003

	Antena 3 TV						
Genres	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Totales**
Game and quiz shows	353	480	620	475	343	444	**2.715**
Cultural	35	61	92	203	151	147	**689**
Sports	37	25	10	25	197	12	**306**
Fiction	4.135	3.231	2.588	2.307	2.281	2.899	**17.431**
Information	1.480	1.534	1.675	1.675	1.841	1.925	**10.107**
Infoshow	51	160	499	501	392	822	**2.425**
Miscellaneous	1.233	1.095	901	957	1.121	930	**6.237**
Musical	37	14	2	339	200	26	**618**
Others	1	1	1	1	2	2	**8**
TV selling	977	1.112	1.605	1.602	1.567	1.019	**7.887**
Religious							**0**
Bullfighting							**0**
Totals	**8.339**	**7.713**	**7.993**	**8.062**	**8.100**	**8.216**	**48.507**

Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Graph 6. Annual distribution of broadcasts on Antena 3 TV by genre. Period 1998 – 2003



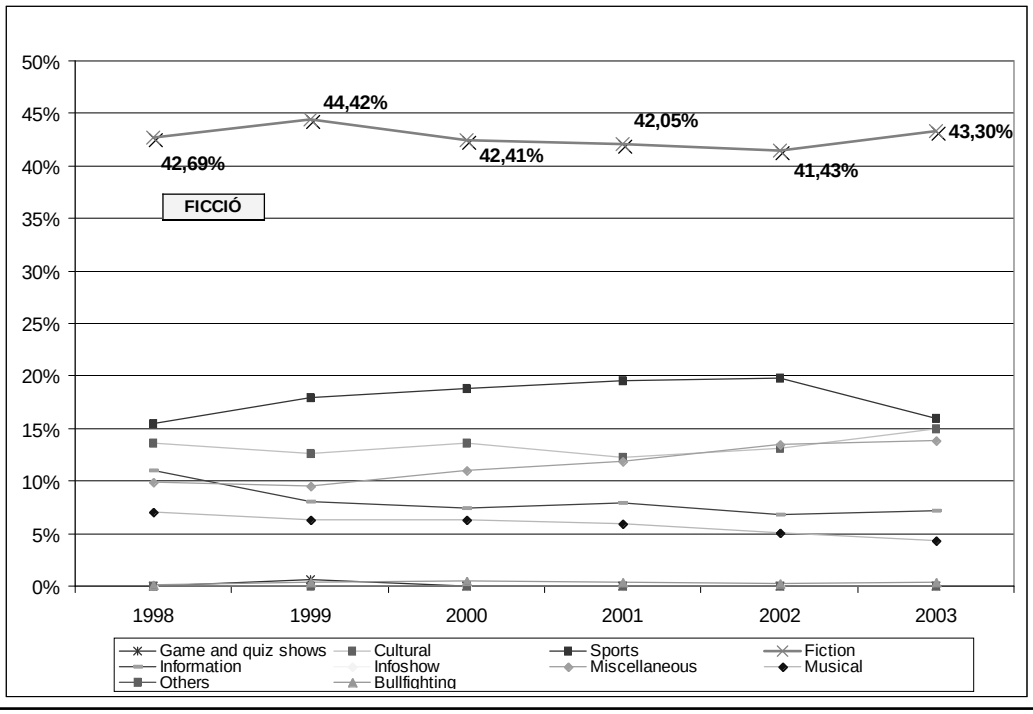
Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Table 7. Number of broadcasts on Canal + classified by genre. Period 1998-2003

	Canal +						
Genres	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Totals**
Game and quiz shows		50					**50**
Cultural	1.093	965	1.062	967	1.056	1.230	**6.373**
Sports	1.244	1.367	1.463	1.547	1.594	1.316	**8.531**
Fiction	3.421	3.385	3.306	3.325	3.336	3.559	**20.332**
Information	887	614	577	625	550	588	**3.841**
Infoshow							**0**
Miscellaneous	792	729	857	941	1.083	1.140	**5.542**
Musical	563	481	495	474	413	352	**2.778**
Others	1	1			1	1	**4**
TV selling							**0**
Religious							**0**
Bullfighting	12	29	36	28	20	34	**159**
Totals	**8.013**	**7.621**	**7.796**	**7.907**	**8.053**	**8.220**	**47.610**

Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

Graph 7. Annual distribution of broadcasts on Canal + by genre. Period 1998 – 2003



Source: in-house based on the broadcasting database of TNS Audiencia de Medios.

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The debt of Sogecable and Prisa: analysis and genesis of a high risk global business strategy[1]

Núria Almiron

This article analyses the financial debt of the groups Sogecable and Prisa within the context of their corporate history. The aim is to evaluate the results of a commercial and business strategy applied within a framework, namely that of financial capitalism, that encourages 'colossalism' or media empires and concentration in sectors of intense production, as is the case of cultural industries. The article studies the investment that has led to the current extent of debt of Sogecable and concludes that, driven by a growth strategy typical of large global communication groups, the Prisa group has achieved appropriate levels of financial risk that nonetheless don't come close to either to the size or results of these groups.

Keywords

Sogecable, Prisa, debt, corporate strategy, financial capitalism, risk.

Introduction

To date, the Sogecable group, now fully integrated in accounting terms into the Prisa group, has been the largest audiovisual corporate adventure undertaken with private capital in Spain. Originally founded as Sociedad de Televisión Canal Plus in 1989, it represents the principal economic commitment of the Prisa group's majority shareholders in their strategy to diversity and expand nationally as a multimedia communication platform, as well as penetrate the sectors of radio, press, local television, publishing and the Internet. However, none of these areas equals the size of the financial efforts made at Sogecable, especially since 1996, the time when Canal Satélite Digital (now Digital Plus) was set up.

This financial effort forms an integral part of the growth strategies that have reigned in leading communication groups the world over (Segovia 2005), mainly based on alliances, mergers and acquisitions, although neither Sogecable nor Prisa has ever achieved a size comparable to the large global giants. The following pages analyse the history of this strategy and the resulting unprecedented debt in the leading Spanish communication group.

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1 This text is a revised and extended version of a chapter from the author's doctoral thesis ("Poder financiero y poder mediático: banca y grupos de comunicación. Los casos del SCH y Prisa (1976-2004)", defended at the Faculty of Communication Sciences of the Autonomous University of Barcelona in June 2006). The author would like to thank lecturers Oriol Amat, from the Pompeu Fabra University, and Montserrat Bonet and David Fernández Quijada, from the Autonomous University of Barcelona, for the help and invaluable comments provided for the original draft of this article.

Audiovisual expansion and the inflation of costs for Sogecable

Sogecable, founded as Sociedad de Televisión Canal Plus, S.A., is not the Prisa group's first large audiovisual project. In 1984, the communication group set up Sociedad General de Televisión, S.A. (SOGETEL) to channel its business in the area of television. This initiative, owned 50% by Prisa, subsequently included financial and industrial shareholders (Corporación Financiera Alba, Bankinter and the March group, the latter holding 30% as from 1992), anticipating the large alliance that would allow it to create, five years later, Canal Plus, this time with a European-scale industrial partner, Canal+ from France, and important financial partners, the BBV, March, Caja Madrid and Bankinter groups, as well as the support of El Corte Inglés and Fomento de Construcciones y Contratas. As the Spanish communication group did not have a controlling share in the firm of Canal Plus, (holding 25% of the equity or less) the audiovisual firm could not form part of Prisa's accounts and ran independent accounts as an associated company up to 2005, although Prisa was responsible for its management, following the subscriber business model of Canal+ in France. This stopped the profits from Canal Plus being reflected completely in Prisa's profits (only via the equity accounting method based on the controlled share capital), but it also meant that the losses wouldn't be reflected entirely.

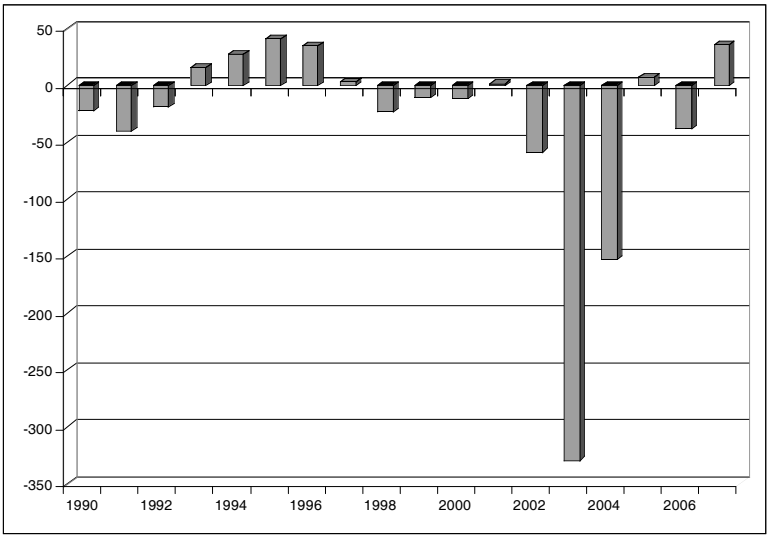
We must remember that private television had a difficult beginning from a financial point of view, at a time when the advertising market was going through a significant recession. Canal Plus, in spite of requiring hefty contributions from its shareholders, had the advantage of not depending financially on advertising and is actually the private television channel with the steadiest trend in turnover up to 1996 (Bergés 2004, 185-186). Its business was based on achieving a large enough number of subscribers to cover the broadcasting costs, whose break-even point had been fixed at half a million subscribers. This figure was exceeded in 1992, two years after its launch, and in 1993 it made its first profit. In 1994, 95% of its income came from subscribers and, in 1995, when it reached a million subscribers, it had its best results. As from 1997, now rechristened as Sogecable, the broadcasting group led by Prisa has once again entered an important cycle of losses, practically up to the present day.

The launch of the digital television platform of Sogecable (Canal Satélite Digital or CSD, now Digital+), the merger with Vía Digital and the launch of the non-subscriber private television channel Cuatro have all represented financial challenges of a magnitude hitherto unseen in the communication sector in Spain. They paradigmatically reflect how financial capitalism works where, as stated by Segovia, "maximum survival is only guaranteed by creating ever larger companies that operate in an oligopoly", where size is an excluding factor, because it stops small and medium-sized operators and also provides large operators with business opportunities, as size becomes a vital element to securing the essential lines of credit required to take on new challenges (Segovia 2005, 42). In the case of the communication sector, extensively transformed by technological and legal changes over the last twenty years, especially through digital convergence and the processes of liberalising, privatising and deregulating the market, we are faced with a scenario that is, per se, very capital intensive and that has political rivalries as well as business strategies that multiply the original inflation, in particular political and economic contexts such as in Spain.

However, added to the technical costs of launching a satellite digital television platform, Sogecable also experienced two commercial wars against the market's other platform, Vía Digital, owned by a company, Telefónica, that is very close to the (then) government of the Partido Popular. This was called the 'football war' (about the price of rights for pay-per-view football) and the war for cinema rights, both set within a scenario of much more extensive confrontation, the digital war (for decoders and subscriber funds) (Martínez Soler 1998).

As explained in detail at the time by Martínez Soler (1998), the war for pay-per-view football rights led Sogecable to commit huge sums to the teams. Up to the 1995-1996 season, Canal Plus paid a little over 12 million euros for the professional football league rights. When this season ended, the Spanish league had become the most expensive in the world (the league of stars, where clubs had spent all their advance payments for broadcasting rights on multi-million signings) and Canal Plus finally offered more than 1,200 million euros for the rights to seven seasons. A figure that, in the words of Martínez Soler, only a few months before would have been considered "extravagant" (1998,

Figure 1. Trends in net profit/loss of the companies Canal Plus (1990-1995) and Sogecable (1996-2007) (in millions of euros)



1990	1991	1992	1993	1994	1995	1996	1997	1998
(22,2)	(39,8)	(18,7)	15,4	27,2	41,2	35,1	3,5	(23,1)
1999	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007***
(10,2)	(11,8)	1,6	(58,5)	(329,0)	(152,8)	7,7	(38,2)	36,0

Source: *El País* archives and annual accounts of Canal Plus/Sogecable. Losses are in brackets.
* Up to 30 June.

106) but that would actually not be enough to secure the prized rights.

Antonio Asensio, president of Antena 3 TV and a dominant shareholder, had secured the key broadcasting contracts. The traditional 'armour-plated' protection had been broken thanks to the inexistence in the contracts (drawn up at the time of analogue television) of any consideration towards pay-per-view. By the start of the season for the 1996-1997 league, the rights to Spanish football ended up being split into two and, as a result of the peculiarities of the broadcasting rights system for sports events, the television channels that held these rights were forced to reach an agreement, otherwise the clubs and channels would have been ruined, as they had already committed themselves to broadcasts and signings. But the biggest and crucial consequence of that war of rights was the inflated costs of broadcasting vital content due to the success of the future satellite digital TV platforms.

In the final stages, these rights were brought together in a newly created company, Audiovisual Sport, made up of Sogecable, Antena 3 TV and TV3, at first, and by Sogecable, Telefónica and TV3 shortly afterwards, when Antonio Asensio sold his holding in Antena 3 TV to the Spanish telecom operator (and at the start of the 2007-2008 season, immersed in a conflict of interest with the company that was to be its new partner, the Mediapro group). In January 1997, Canal Satélite Digital (CSD) started to broadcast with the same football rights as Canal Plus, plus the pay-per-view rights, but had had to pay out an additional 90 million euros to Audiovisual Sport for exclusive pay-per-view of the games not played on Saturday or Sunday in the seasons 1998-2003. Taking into account the fact that 40% of

Audiovisual Sport had ended up in the hands of its rival platform, Vía Digital, owned by Telefónica, we might conclude that the excessive costs produced by football as a result of all these political media wars was largely met by Sogecable.[2]

The context of extreme competition in which the two satellite digital TV platforms were created also considerably affected the other large packet of content considered critical for a broadcaster's success: film rights. In this respect, CSD's audit report for the fiscal year of 1997 states that, as a consequence of launching the activity and the start of digital broadcasts, the company had been forced to take out a syndicated loan with different banks for more than 360 million euros.

At the end of 1997, the battle between the two platforms resulted in open war to secure to the best movies, which led to an unusual rise in the market prices of broadcasting rights. The ferocious competition between the two Spanish digital platforms with regard to North American film companies to get exclusive rights to the best movie packages resulted in inflated prices that Sogecable, the company that finally secured almost all the rights, had to take on almost singlehandedly. While Vía Digital got the rights from Metro Goldwyn Mayer, Canal Satélite Digital reached agreements with the seven large studios or 'majors' from the United States: Fox, Paramount, Sony (Columbia), Universal, Disney (Buenavista), Dreamworks and, most especially, Time Warner. Just the exclusive contract with Time Warner, lasting ten years (1997-2007), involved an undertaking to pay 541 million euros.[3]

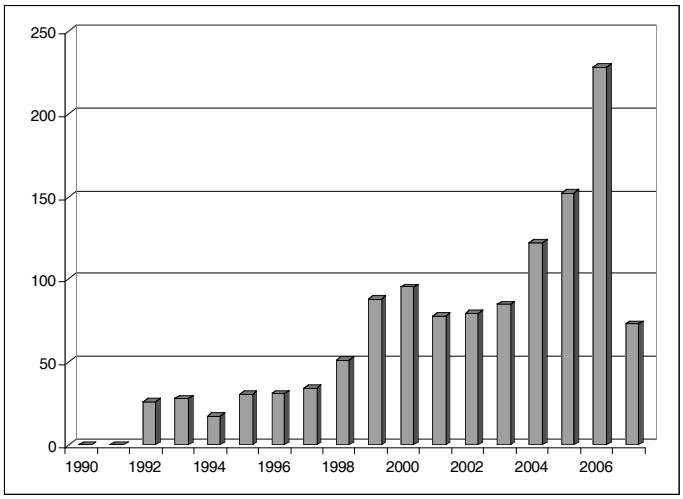
The war between platforms had a final unexpected cost for Sogecable. The merger between CSD and Vía Digital involved the biggest ever expense made by the Prisa group. The restructuring of activities that would give rise to the new Digital+, due to integrating the two platforms on the market, cost 126.9 million euros between January and September 2003 alone, as reported by Sogecable to the Spanish Securities and Investments Board (CNMV). Of this package of costs, 113 million euros were for programming, fundamentally the cancellation of services by specialist channel providers, and 13.9 million for expenses related to technical services, rent and compensation to staff. But the total figure for restructuring would far exceed these totals. In Sogecable's issue prospectus when the two platforms were integrated, it was estimated that the final price for the merger might have been between 300 and 400 million euros, which had to be distributed over 2003, 2004 and 2005 (Sogecable, 2003, 0-7). In fact, Sogecable claims that the merger between CSD and Vía Digital is mainly responsible for the losses the group reported for 2003 and 2004. Subsequently, we should also add the investment made for the launch of Cuatro to these losses (Sogecable, 2006, 10).

In March 2005, Sogecable asked the Spanish government to modify the contract conditions for providing public service television, taken out in 1989, in order to remove the restriction on the number of hours for open transmission. Not without some controversy, the Council of Ministers decided to grant this authorisation and on 7 November 2005 Sogecable stopped broadcasting Canal Plus in its analogue version and started to broadcast Cuatro, the non-subscriber national television channel. In 2006, the first full year of Cuatro, this new channel contributed 98.8 million euros of losses to Sogecable, losses that took the group back into the red, as we can see in figure 1, and which, according to

2 The scenario even gave rise to a law (Act 21/1997, of 3 July, on the broadcasting and retransmission of sports competitions and events), which the Partido Popular hurried to introduce so that Telefónica's digital platform would not be excluded from the prize of football broadcasts, something that finally did not happen thanks to the telephony operator joining Audiovisual Sport as a result of the purchase of the Antena 3 TV package in the hands of Antonio Asensio.

3 In February 2000, Warner Bros International Television, a company of the Time Warner group, exercised its call option for 10% of Canal Satélite Digital (thereby becoming the second shareholder of the platform). This transaction was carried out by virtue of the conditions agreed three years previously, during the purchase of the broadcasting rights, and could mean that some part of Sogecable's debt to Time Warner might have been settled with this share package, although it has not been possible to verify this. The different joint actions undertaken by Sogecable and Time Warner as from 1997 (to produce specialist channels, in distribution and broadcasting) must also be taken into account from this point of view. Subsequently, in 2006, Sogecable bought Warner's shares from Canal Satélite Digital and Cinemania.

Figure 2. Trends in the net profit/loss of the Prisa group (1990-2007) (in millions of euros)



1990	1991	1992	1993	1994	1995	1996	1997	1998
Na	Na	26,2	28,2	17,2	30,5	31,2	34,4	51,7
1999	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007***
88,2	95,5	77,9	79,3	85,07	122,4	152,8	228,9	73,31

Source: *El País* archives and annual accounts of the Prisa group.
Na: Not available.
* Up to 30 June.

Sogecable's auditor, Deloitte and Touche, are more than double those actually reported (82.6 million euros instead of the 38.2 million euros claimed by Sogecable).

Sogecable's huge debt does not have any direct repercussions on the results of the Prisa group (as can be seen from figure 2) but it is a sword of Damocles that increases the shadow of financial risk hanging over the parent company, particularly since Sogecable has been fully integrated into the multimedia group, after the latter launched a takeover bid for the former in 2005.[4]

This bid was also carried out at considerable cost given that, in November 2005, Prisa paid almost 1,000 million euros for 20% of Sogecable, the total costs of the transaction based on a share price at that time of 37 euros. A few months later, Sogecable shares lost up to 30% of their value and continued to fall for two years. However, the financial effort made by Sogecable and Prisa in their strategy to expand is reflected, and without any possibility of camouflage, in the degree to which both groups are in debt, as can been seen in the tables and figures below.

The impact of the cost of the bid for Sogecable is not the only reason for which the Prisa group's debt multiplied by four between 2005 and 2006, but it is the main one.[5] Nonetheless, Prisa's national and international investment

4 Control that has been held up to the present day. In 2007, Sogecable was owned as follows: Prisa group (43%), Telefónica group (17%), Vivendi group (4%) and Eventos (3%). The rest, 33%, is quoted on the stock exchange.

5 Prisa's debt has also grown principally due to bids launched between the end of 2006 and early 2007 for 100% of the Portuguese broadcasting group, Media Capital, consolidated by global integration and therefore under the absolute control of the Prisa group as from the 2007 fiscal year.

policy had already started up at an earlier date, and the communication group had already established a none too paltry debt before 2005 with a long string of multimillion purchases.[6]

It's important to remember, moreover, that most of the debt is with financial entities and that its accumulated bank debt might be higher than the net debt for any specific year. So, at 31 December 2006, Prisa's bank debt was 3,095 million euros (while the net financial debt was 2,555.70 million). In the case of Sogecable, bank debt stood at 916.10 million euros at 30 June 2007, once it had been fully integrated, in accounting terms, into the Prisa group.

Sogecable's debt within the context of the national and international communication sector

Within the Spanish market, the group to which Sogecable belongs is, without the slightest doubt, the one with the most aggressive growth strategy in the media communication sector.[7] However, the results of this strategy are more evident in the extent of debt, much greater than the rest of the multimedia groups, than in income or profit. In other words, Prisa is "large" particularly in terms of accumulated debt. Only Telefónica, which we include here principally for its business line with Imagenio, is greater.

But Telefónica does not concentrate its activity in the area of the media and, after a brief but disastrous experience of penetrating the media, has returned its priority to its business as a telecom operator. In any case, we have also included it in Table 1 because it illustrates the financial imbalance in comparative terms. If we take the level of debt as a measure of Telefónica's financial risk (59,057 million euros) compared with its EBITDA (earnings before interest, taxes, depreciation and amortisation)[8] reported in the 2006 annual accounts (19,126 million euros), we get a ratio of 3.1. This ratio, higher than 1, is the reason why the operator is usually considered to have an excessive financial imbalance, caused essentially by high debt.

Following this same formula, the level of debt of the Prisa group gives a ratio, based on its reported EBITDA (324 million euros) of close to 8 for the fiscal year 2006. Only the Godó group has a similar ratio (7.4) in 2005, with an accumulated debt of 142 million euros and an EBITDA of 19 million. But in spite of the evident financial imbalance, the Godó group's debt has a size, in absolute terms, that can be taken on entirely by financial entities, the main creditors, something that is not the case with Prisa or Sogecable, which have had to renegotiate their debt several times with banks (for example, and most noticeably, after the merger of CSD with Vía Digital).

The rest of the groups mentioned have very small debt levels, some even lower than 1. The highest level of debt is for Antena 3 TV. However, the debt ratio for the group controlled by Planeta de Agostini hardly goes above two points in 2006. Sogecable, first, and now Prisa have directly taken on unusual levels of financial risk in the communication sector in Spain, which even exceed those generated by the foremost corporate expansion strategy in Spain in this area, namely that of the Telefónica group.

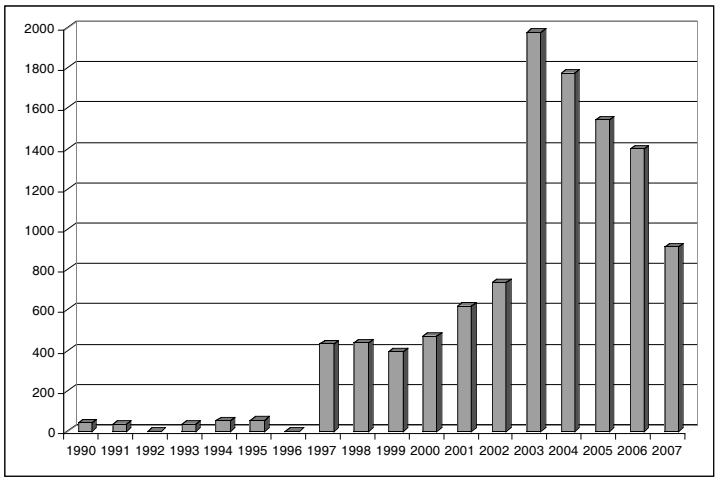
Finally, and lastly, we cannot compare the results of Sogecable's parent company without those of the leading international communication firms. Especially because, with the portfolio of partial or total takeovers carried out by Prisa over the last few years, it is evident that the Spanish group has manifest international ambitions, principally in the Latin

6 For example, in 1993 it bought 49% of Impulsora de Empresas Periodísticas, S.A., publisher of the Mexican newspaper *La Prensa*, for 77 million euros; in 2000 it paid more than 48 million euros for 100% of Gerencia de Medios; in 2001 it invested 60 million euros for 50% of the Mexican company Radiópolis, and in 2003 it acquired 100% of the Brazilian publisher Moderna for 82 million euros, among many other purchases of company share packages for which, since 1976, it has paid out figures ranging from 1 to 20 million euros (Source: annual reports).

7 We are using the concept of *media communication* in the contemporary sense of mass communication, as employed by García Jiménez (2007).

8 The EBITDA refers to the profit before taking depreciation, amortisation, restructuring of costs and other income/expenditure into account. In Telefónica's annual accounts, it is called "Operating profit/loss before amortisation".

Figure 3. Trends in debt of the Sogecable group (1990-2007) (in millions of euros)



1990	1991	1992	1993	1994	1995	1996	1997	1998
43.2	34,6	Nd	36,0	54,6	55,4	275,6	433,0	441,2
1999	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007***
393,2	473,9	622,3	735,5	1.977,8	1.778,0	1,543,4	1.398,4	916,1

Source: *El País* archives and annual accounts of the Sogecable group.
* Bank debt at 30 June.

American market. But above all because this expansion strategy, with high debt levels as its key feature, corresponds with that implemented by large international groups.

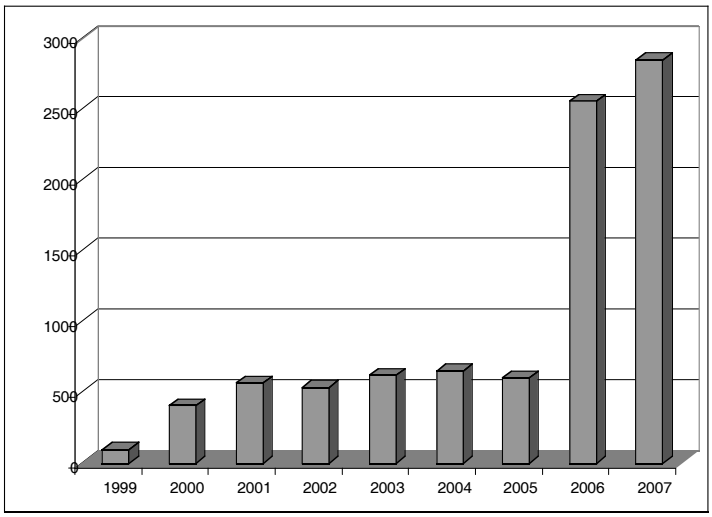
As can be seen from Table 3, in terms of income and profit Prisa is still a long way from the big giants of global communication, but this distance is less in terms of level of debt if we ignore the financial aberration suffered by Time Warner since its merger with AOL, letters that have disappeared from the group's name. The table also includes financial data from the other large communication group in the Latin American market, Televisa, much more balanced than those of the Spanish group, with half the debt and double the profit, in spite of having a lower income. Televisa has also set a highly aggressive pace of growth for its activities, but has managed to achieve a greater balance between income and expenditure or, in other words, has maintained high levels of debt but more befitting the ranking held by the company in the world, in second place overall.[9]

Conclusions

The rules of play in the longed-for liberalised market impose a concentration of companies that has grown relentlessly over the last few decades. The corporate giants that have gradually formed have done so based on financialised growth strategies, i.e. based especially on the strength of their shares on the stock markets and/or on credit from the financial system, whose main feature is heavy debt, via lightning transactions, essentially takeovers and mergers.

9 Referring to the map of groups that Herman and MacChesney drew in 1999 and that has served as inspiration for subsequent classifications (for example, Miguel de Bustos 2003).

Figure 4. Trends in debt of the Prisa group (1999-2007) (in millions of euros)



1999	2000	2001	2002	2003	2004	2005	2006	2007*
98,4	409,9	567,3	538,5	620,8	652,5	602,9	2.555,7	2.845,4

Source: *El País* archives and annual accounts of the Prisa group.
* Up to 30 June.

Table 1. Key economic data of the most important audiovisual or multimedia groups in Spain (2006) (in millions of euros)

Group	Total income	Net profit/loss	Financial debt	***Bank debt*** (*included within financial*)
Telefónica	52.901	6.579	59.057	29.557
Prisa	2.728	230	2.556	2.464
Antena 3 TV	1.002	290	687	208
Gestevisión Telecinco	979	314	79	78
Vocento	869	83	44	Na
Godó *	311	22	142	49

Source: Annual reports.
* Fiscal year 2005.
Na: Not available.

Table 2. Debt ratio (fiscal year 2006)

Group	Financial debt (million euros)	EBITDA (in millions of euros)	Ratio
Telefónica	59.057	19.126	3,1
Prisa	2.556	324	7,9
Antena 3 TV	687	311	2,2
Gestevisión Telecinco	79	440	0,2
Vocento	44	65	0,7
Godó *	142	19	7,4

Source: Annual reports.
* Fiscal year 2005.

Table 3. Financial data of the leading global communication groups (2006) (in millions of euros)

Group	Income	Net profit/loss	Financial debt
Time Warner (USA)	31,800	4,700	25,000
Walt Disney Co. (USA)	24,700	2,400	9,700
Vivendi Universal (France)	20,000	2,600	4,300
Bertelsmann AG (Germany)	19,300	2,400	6,800
News Corporation (USA)	18,200	1,700	8,200
NBC Universal-GE (USA)	11,500	2,100	8,000*
Viacom Inc (USA)	8,300	1,100	5,000
Prisa (Spain)	**2,700**	**230**	**2,800****
Televisa (Mexico)	2,500	560	1,200

Source: Annual reports. Figures rounded to the nearest hundred due to conversion from dollars to euros.
* Overall debt of General Electric, majority shareholder of NBCU.
** At 30 July 2007.

This is long-term and eminently bank-based debt that is balancing on a knife's edge. On the one hand, there cannot be fast growth and rapid profits without debt and, on the other, high debt is synonymous with many possibilities for the success, both short and medium term, that is so keenly pursued by stock markets. But, excessive debt also means an unwanted excess of risk that can be penalised by the very system that encourages and rewards living off credit. Moreover, given that share prices and investments alter principally based on expectation (share price does not depend on current, real financial results but on expected and potential future results), all in all this produces an unpredictable situation (no matter how much some insist they can predict it, as criticised by Galbraith).

Moreover, this is a situation that, as demonstrated by the different crises throughout the history of financial capitalism (that of mortgage banking as the most recent example), does not need any rational reason to end in disaster. Balancing on a knife's edge has such drawbacks. The groups Vivendi and Kirch and, to a lesser extent, Telefónica, have all experienced this to some extent over the last few years. Vivendi and Telefónica divested as quickly as possible their main expansionist ventures in media, while the Kirch group ended up calling in the receivers and disappeared after taking on financial risks that, as from a specific point in time, were considered excessive.

The outcome of Kirch is a good example of what financialisation or immersion in the irrationality of the virtual economy can mean, as experienced by the communication sector. With a staff of 10,000 people, a turnover of 6,000 million euros and between 8,000 and 13,000 million euros of debt in 2002, the German giant went from being seen as a group in aggressive expansion to a non-assumable financial risk. Between one perception and another nothing had changed within the group's financial situation (which was certainly precarious). What had changed was the external perception of creditors, principally the banks.[10] Since then, the case of the fall of the Kirch empire has been taken as a lesson in the accumulation of corporate strategic errors: a combination of excessive bank debt and excessive investment in parts of other companies over which it had no control (Fowler and Curwen 2002). But, in reality, this descent highlighted an ulterior issue that is none other than the situation of technical failure in which a large part of the sector finds itself.

This is the scenario which the Prisa and Sogecable groups have joined, except for the distances between Prisa and the Kirch group, which had built up a much larger portfolio of uncontrolled investments and didn't have the publishing strength of Prisa.

In the case of Prisa and Sogecable, the forced competition pursued by the neoliberal economy as a resource to combat the natural deviations of a free market led to a duopoly being invented that was unsustainable in the satellite digital TV sector in Spain, with a very high financial cost for both players and, most particularly, because of which the final merger had to take place, after a commercial war with a political backdrop that was as economically bloody as it was useless.

Since then, Prisa, with Sogecable, has become a small Hispanic giant but in no way is it a global player. Pursuing growth, the company has swallowed up numerous companies from the world of communication in the Latin American market. These have certainly made it grow in terms of readers, audiences and consumers and have made it an important player in this scenario, but without coming close, as yet, to the size of the seven or eight world giants. And following the rapid growth strategies of these giants has had its price in terms of exorbitant accumulated debt for the Spanish group. The corporate consequences that this financial dependence, especially bank dependence, may have on a group such as Prisa are impossible to predict, although their effects on the company's social responsibility should be a reason for great concern in any democracy. How does this dependence affect the news content of the media that

10 Certainly, the appearance of the threat from the Murdoch group, News Corporation, as a potential buyer of a part of the Kirch group, and the political concomitances of the case, given that the main bank creditor, Bayerische Landesbank, was owned 50% by the Bavarian state, were decisive factors in the change of perception. But the financial situation of the Kirch group was the same before Murdoch came into play as afterwards. The risk became unsustainable not because Kirch's finances got worse per se, in spite of the advertising recession, but due to a loss of virtual confidence that the financial and political, particularly the former, claimed to have in the group as from a specific point in time (Fowler and Curwen 2002).

form part of the indebted groups? How does it affect their editorial line? Why is almost no research carried out on this question? The consequences of the media system's financialisation have almost yet to be studied.

Here we have been able to establish, at least, that the Spa-nish group has taken on risks because of which its future, like that of most of the large communication groups deeply in debt, remains in the hands of the financial system and depends on how this decides to evaluate the current con-tingencies and expectations for the future. Expectations that, possibly, at the beginning of 2008, are not exactly good for Prisa. Sogecable's share price depends on increasingly more volatile and conflictive elements, such as football broadcasting rights, the group risks losing a part of the political support it had enjoyed to date with the new strategy of confrontation, and business projects are emerging that may catch up with Prisa in terms of size and strength (if Vocento doesn't manage to succeed, the Mediapro group is taking evident steps to become a large communication conglomerate, and Telefónica's ADSL television, Imagenio, is going up the ranking day by day at the cost of potential Digital+ subscribers). The recent disappearance of the founder of the company, which, in spite of being quoted on the stock market, has maintained a hard core of family shareholders, is yet another element of insecurity to be added to the previous factors.

In any case, it seems evident that the communication system is expanding around the world in the current status of financial capitalism, following a similar pattern of growth based on debt overextension that the Spanish or Hispanic market has also imported, and that has uncertain and unpredictable consequences both for the corporations and also for the democratic system.

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Critical books review

Understanding where we come from to know where we're going

HALLIN, D. C.; MANCINI, P. *Sistemas mediáticos comparados. Tres modelos de relación entre los medios de comunicación y la política*. Barcelona: Editorial Hacer, 2008.
ISBN: 978-84-96913-12-7
Original title: *Comparing Media Systems. Three Models of Media and Politics*
Translation: Sheila Waldeck
By Roberto Suárez Candel, researcher and associate lecturer at the Department of Journalism and Audiovisual Communication of the Pompeu Fabra University

When the publisher Hacer decided to take on the translation of this book, without doubt it made the right decision. *Comparing Media Systems. Three models of media and politics*, published in 2004, has been one of the most highly renowned academic works in the area of media studies in recent years. This can be seen from the different awards and academic recognition received by the book. Lecturers Daniel Hallin and Paolo Mancini, authors of the text, are continuously asked by universities, research centres and international conferences to present or discuss the content of the work. Plus several international seminars have been held to discuss the proposals of media models and their application in countries or regions not included in the book. So being able to have a Spanish version of this work (and we hope it will soon be available in Catalan) was certainly useful in order to introduce this book completely into our context of media research.

As its point of departure, *Sistemas mediáticos comparados* takes another leading work of media studies: *Four Theories of the Press* (1956). At that time, Siebert, Peterson and Schramm attempted to identify the different media models existing in the world in order to understand the differences between the media in each country and the reasons behind this diversity. *Four Theories of the Press* has been a reference work for nearly four decades but the changes undergone both by media systems and political systems made it advisable to review their proposals. So Hallin and Mancini took on this task in 1998 and started research based on the same premise as the one on which Siebert [et al.] founded their study: a media system cannot be understood without considering the nature of the state, of the political and party system and of the development of civil society and its structure. But the novelty is that *Sistemas mediáticos comparados* considers that the media are not a variable that is dependent on the political system. As a result of evolution, they have acquired the capacity to influence the political system to quite an extent, and have been repositioned in the social system and have occupied an increasingly more central and basic place with regard to their functioning. Consequently, when tackling the definition of media models, Hallin and Mancini prefer to do so by studying the links and interdependencies established between media systems and political systems. The models suggested are therefore systemisations of the relations between media agents and political agents, which allow us to understand the current configuration of the media.

As can be seen in various chapters of the book, the research carried out by Hallin and Mancini has taken very much into account the historical development of the social and political contexts of the geopolitical areas analysed. For methodological reasons, the analysis has been limited to the countries of Western Europe and North America. In spite of this, they realise that other media contexts should be analysed to verify whether the models suggested can be applied or whether they need to be adapted or, certainly, redefined. Moreover, the authors emphasise that their pro-

posal does not aim to be a normative definition of "boxes" where each country can be placed according to the values taken by a series of variables. The models must be understood as systems of relations that each particular case resembles more or less accurately, but the ultimate objective is to provide the elements of analysis required to understand why the media in a particular state or geopolitical region are configured the way they are. This book's proposal arises from an empirical study, which assumes that the models obtained are dynamic. In fact, one of the main conclusions is that there is an evident trend towards convergence among the models proposed.

The book has nine chapters and is divided into three parts. The first part defines the theoretical framework underlying the models defined (chapters 2, 3 and 4). So chapter 2 presents and analyses in detail the dimensions used to compare the media systems. Firstly, the book talks about the development of media markets, paying attention to issues such as the configuration of the press: the circulation, readership, type of newspapers, etc. It then goes deeper into the concept of political parallelism and analyses its presence and effect both on the press and on broadcasting. It also assesses the development of journalistic professionalism, based on the concepts of independence, the normative institutionalisation of the profession, orientation towards public service and the instrumentalisation of journalists. Finally, it deals with the intervention of the state in the media and observes the nature and intensity of this. Chapter 3 focuses on an analysis of the variables that define the political system. It therefore deals with issues such as relations between politics and the economy, the role of the state in society, the type of democracy and the party system, the types of civil organisation and the development of rational legal authorities or the predominance of patronage. Depending on the different values that might be acquired by the variables presented in these two chapters and the different combinations possible, in the fourth chapter Hallin and Mancini introduce the three models that go to make up their proposal: the Mediterranean or polarised pluralist model, the North European or democratic corporatist model and the North Atlantic or liberal model.

The second part of the book (chapters 5, 6 and 7) analyses each of these models in depth. With regard to the Mediterranean or polarised pluralist model, they point out that it is characteristic of countries or areas with high polarisation. The state and political parties play a relevant role in many areas of social life. For their part, citizens show a deeply rooted and diversified political loyalty. Consequently, it is difficult to define clearly what is in the general interest and how to achieve this. In this context, the consumption of media and information is unequal both in volume and in product type among those who are politically active and those who are not. The media structure is characterised by external pluralism accompanied by strong political parallelism. With regard to professionalism in the sector, and in spite of official training, patronage is habitual and the rational legal authorities do not usually have sufficient capacity to act to make them relevant or effective.

In the North European or democratic corporatist model, the organisation of civil society is solid and complex. The result is the definition of the public good and a strong commitment to achieving it. Great value is placed on the free circulation of information and the state plays a key role in guaranteeing and promoting the necessary circumstances to make this possible. There is a culture of the consumption of information on issues of public interest that is more deeply rooted than in the Mediterranean model. Moreover, the media are considered to be an important means of expression for different social groups and different ideologies. Professional colleges and codes or rules of conduct play a very important role in this. The state exercises great intervention in the media system but at the same time ensures the media are independent.

With regard to the North Atlantic or liberal model, we can say this is characteristic of countries where society is organised along more individualist lines. Consequently, state intervention is less valued and is considered to be negative for the free circulation of information. The media fulfil functions closer to entertainment and address themselves to citizens as consumers. On the other hand, they exercise the role of controllers of activities in the political sphere. The culture of professionalism is quite developed although, unlike the North European model, it is not usually so institutionalised.

In the third part of the book (chapter 8 and conclusions), Hallin and Mancini reflect on the predicted convergence of the models proposed and their future. The question is handled with a certain precaution and the authors debate

their limits. The endogenous and exogenous causes are identified for the homogenisation towards the liberal model. In the first case, the influence and effects are analysed both of the so-called Americanisation of media products and structures as well as of the appearance of an international media culture and of the repercussions of technological development. With regard to endogenous causes, the authors look deeper at the concepts of modernisation, secularisation and commercialisation of the media and society.

This is a book that is highly recommended and perhaps obligatory for all those researchers and educators in the areas of media structure and media policy. On the one hand, it is a solid and fundamental theoretical reference for research, especially in the case of comparative media analysis. On the other hand, it needs to be included on the curriculum to provide students with knowledge that will help them both understand the reality of the media system and also tackle the study of the media in other countries. Although it is academic, the text is easy to read. This also means that both media professionals and students can take advantage of it, as well as others interested in the industry. As mentioned at the start of this review, this book will soon be, if it isn't already, a work of reference for media research and studies.

The example of the United Kingdom in the switchover to digital

STARKS, M. *Switching to Digital Television. UK Public Policy and the Market*. Bristol: Intellect, 2007.
ISBN 978-1-84150-172-7
By David Fernández Quijada, assistant lecturer at the Department of Audiovisual Communication and Advertising of the Autonomous University of Barcelona.

Right in the middle of switching over to terrestrial digital television (TDT), there are also a lot of specific studies of this process. However, there are few that stand out from the abundant bibliography invading bookshops and this is undoubtedly one of them.

Read from a Catalan and Spanish perspective, moreover, it has arrived at a very opportune time: the rich British experience can provide useful tools to apply to our own, still incomplete and difficult transition process.

The author of the text, Michael Starks, explains the process of switching over to TDT in the United Kingdom from within, as someone who has played an important role in this story, given his position as director of the original TDT broadcasting project of the BBC in the nineties, subsequently managing the Digital TV Project that planned the digital switchover, as well as being founder chairman of the Digital TV Group, leading British industry in its adaptation to the new environment. No less important in his curriculum is his position as lecturer on the prestigious Programme in Comparative Media Law and Policy at Oxford University. Moreover, the publisher that has provided us with this book is the British firm Intellect, which in recent years has been approaching the reputation already held by other large publishers in the British Isles in the field of media studies, such as Sage and Taylor & Francis.

Switching to Digital Television is divided into ten chapters. The first five are in chronological order, hugely facilitating comprehension of the complex evolution of the market and regulation of TDT in the United Kingdom, especially for those who have not been able to follow such a dynamic market, as few have been. The other five chapters tackle specific issues related to the process: political strategy, the public communication of the process (without doubt a 'must' to read), the international perspective, the possibilities of reusing the electromagnetic spectrum and the keys to the switchover process per se.

Of particular note in this book is the balance achieved in approaching the digitalisation of television in the United Kingdom, based on public policies but also on the industrial strategies of the actors involved. The subtitle explains this: the book is primarily concerned with communication policies but those related to issues of technology, to the broadcasting system and consumption. In other words, what the policy is like beyond theory.

We should clarify that this is not simply a chronicle of the facts but also an in-depth analysis of a process in which the United Kingdom, like Spain, was a pioneer with a failed model, that of subscriber viewing. The difference between both countries was their response: rapid public intervention and a leading role for the BBC which has meant that, today, the country has one of the highest rates of digital technology penetration in Europe. Vital to understanding this is the chapter in the book that explains how the renewal of the BBC's *Royal Charter* included, among its public service duties, this task of driving technological change, the umpteenth example of a public service that is more questioned but also more appreciated. The text constantly displays the strong public service culture and awareness existing in British society. The situation of Spain, on the other hand, is well-known, both in terms of the four-year stoppage of TDT (2002-2005) as well as the lack of a public service culture regarding the broadcasting media. Just one example: in the United Kingdom, in spite of lobbying by the different interested parties, it is completely clear that, once the government and the regulator have taken a decision, this is carried out. This is far removed from our own case, where the schedules for implementing TDT and the obligations assumed by licence holders are not worth the paper they're written on.

Another reflection that is continually evident is the strong consideration of the public as citizen, beyond their position as purchaser. This notion of citizenry can be seen in the observation, during the design of the switchover process, of their rights and the protection of more disadvantaged segments of society. But this is not an obstacle to taking political influence into account as well, in an electoral system that is quite different from our own, as highlighted in chapter seven: "consumers are voters".

What is noticeable throughout the book is the intense detail of the switchover process to TDT in the United Kingdom. As an example: even the possible increases in energy consumption were examined, and how these might affect climate change. The book dedicates several pages to the policies related to this issue by the British government and the regulator, Ofcom.

Unlike most of the literature on the subject, this book refuses to resort to technological determinism or the usual equation of "digital television = better television", whose failure to conform we can clearly see in the impoverished TDT content in Catalonia and Spain. In this respect, one of the most interesting parts of this book is to see how, in the United Kingdom, the strategies have been coordinated and, no less importantly, how they have been communicated among all those involved, from legislators and regulators to television and network operators, including aerial manufacturers and commercial establishments that, as they are in direct contact with the consumer, have played a highly relevant role. Moreover, this coordination has involved all television bodies, not only those on the Hertz wavelength, In this way, both the satellite operator BSkyB and also cable operators have played a part that, in spite of the reservations shown in the book, has been combined with that of public service.

However, we can make two reservations concerning this book. Firstly, the lack of references to academic texts, when TDT has been a central issue in media research in Europe over the last decade. Secondly, the very political bureaucratisation of the United Kingdom leads to a succession of bodies with their respective acronyms that are in charge of very specific aspects but are sometimes difficult to place. This, however, does not detract from the merit of a book that has been written with accessible language and that only employs technical terms when strictly necessary.

In short, these are over 200 pages of beneficial text that, in the Catalan and Spanish context, have the merit of providing us with many lessons from a more advanced country than our own in the digitalisation process and of realising, in passing, that we still have a lot to learn.

Books review

AMBRÓS, A.; BREU, R. *Cinema i educació. El cinema a l'aula de primària i secundària*
Barcelona: Graó, 2007
ISBN: 978-84-7827-486-4

The authors of this book belong to AulaMèdia, the group for research into and teaching of audiovisuals in schools. The aim of this publication is to bring cinema into the classroom by means of viable teaching proposals that take advantage of the 'seventh art' for educational purposes. The chapters of the book are divided into two different parts (one on the theory of the content of cinema and the other with pedagogical proposals for primary and secondary education), in order to facilitate as much as possible the work of teaching in learning about cinematographic and communication education.
This second part is probably the most interesting as it makes proposals for analysing films at two educational levels (primary and secondary). At the end, the book also includes a list of films as a suggestion for classwork.

FRANQUET, R. [et al.]. *Assalt a la xarxa. La batalla decisiva dels mitjans de comunicació on-line en català*
Barcelona: Col·legi de Periodistes de Catalunya, Col·lecció Ones i Bits, 2006
ISBN: 84-933434-5-5

This book won the 26th CAC Award for research into audiovisual communication in 2004, and it analyses the ten years of history, at the time the research was carried out, of news on the Internet. As explained in the introduction, the study limits itself "to organisations that produce news on their website in order to know in-depth the characteristics of news production of online editors."
In the prologue by Joan Manuel Tresserras, at that time member of the Consell de l'Audiovisual de Catalunya, he notes the transformation of the press, a sector that cannot do without some professional precepts which journalistic tradition has taken more than two centuries to consecrate: truth, thoroughness, respect, contrast, checking sources and data, etc.

GARCÍA JIMÉNEZ, L. *Las teorías de la comunicación en España: un mapa sobre el territorio de nuestra investigación (1980- 2006)*
Madrid: Tecnos, 2007
ISBN: 978-84-309-4654-9

This doctoral format book by Leonora García Jiménez is made up of two large blocks. The first part provides the theoretical foundation, going over the epistemological and contextual keys of communication theory as a scientific discipline. In this respect, it is based on the study of communication theories, the main characteristics and theoretical traditions, to then contextualise contemporary society from the perspective of communication theory. In the second part, the author analyses and classifies the theoretical trends and developments of research in Spain.
In the prologue, the professor from Pompeu Fabra University, Miquel Rodrigo Alsina, highlights the importance of communication studies precisely in the year of the foundation of the Spanish Association of Communication Research (AEIC in Spanish).

GUTIÉRREZ DAVID, M. E. *Justicia y medios de comunicación. Claves para una buena praxis de los derechos informativos*
Madrid: Fragua, 2007
ISBN: 978-84-7074-213-2

The author of this book, the lecturer in information law M. Estrella Gutiérrez David, presents us with a treatise that challenges the deficiencies of the activity of informing (manipulation, gaps in information, lack of thoroughness and diligence in contrasting sources, mixing information and opinion, attacking people's honour, privacy and image, morbid curiosity and sensationalism, violence, etc.).
The book is presented in two parts: the first methodological and the second tackling the problems and proposing solutions. The author's aim is to resolve the methodological problems inherent in any legal discipline but applied to the law of information. In order to do this, regulatory, doctrinal and jurisprudence guidelines are given, presented deductively so that the reader constructs for him or herself "universal laws or theories to resolve the controversy provoked or others of a similar nature".

CARRILLO, M (ed.). *L'Estatut d'autonomia de Catalunya de 2006. Textos jurídics*
Barcelona: Institut d'Estudis Autonòmics (IEA), 2006
ISBN: 978-84-393-7363-6

The professor of constitutional law at Pompeu Fabra University, Marc Carrillo, in collaboration with lecturers Hèctor López Bofill and Aïda Torres, goes over the most relevant texts, ordered chronologically, in the legal debate of the new 2006 Statute. The book is available in two formats: printed (in two volumes, almost 1,500 pages in total) and on CD, covering a wider range of documents.
The first volume starts with the initial proposals made by the political parties (CiU, PSC, ERC and ICV; the PP didn't present any proposal). There are then the working documents produced by the Institut d'Estudis Autonòmics (the book's publisher) and the decision given the Organisation and Administration Committee of the Generalitat and the local government from 1 August 2005. The second volume contains the decision by the Advisory Council of 6 September 2005; the proposed Statute approved by the parliament on 30 September 2005; the decision of the Constitutional Committee of the Spanish parliament on 21 March 2006, and Decree 306/2006 of 20 July, publishing the new Statute of the Autonomy.

Journals review

Anàlisi

Bellaterra: Universitat Autònoma de Barcelona
No. 35, 2007
ISSN: 0211-2175

The latest edition of the journal *Anàlisi* offers a mix of articles, of particular note being the one by José Alberto García Avilés, lecturer at the Miguel Hernández University in Elche and entitled "El *infoentretenimiento* en los informativos líderes de audiencia en la Unión Europea" (Infotainment in audience leader news in the European Union). Infotain-ment is defined as news on popular culture (cinema, music, video games, etc.), as well as the "events and people" sections. This article studies a sample of news programmes from public and private television channels that lead the field in terms of audience ratings in the European Union during 2003 and 2004. Unlike the analysis of traditional news, Santiago Tejedor, from the Autonomous University of Barcelona, reflects on the new forms of cyber-journalism in his work "Periodismo *mashup*. Combinación de recursos de la web social con una finalidad ciberperiodística" (Mashup journalism. Combining social web resources with a cyber-journalistic purpose).

Communication Theory

Malden (United States) / Oxford: International Communication Association
Volume 17, no. 4, November 2007
ISSN 1050 -3293

The latest issue of this journal analyses solely the concept of deliberative democracy developed by Jürgen Habermas. The German philosopher talks about deliberative democracy as a model different from the liberal and republican model and defines it as the cooperative search of citizens to solve political problems. This model is opposed to the liberal model, which sees democracy as an aggregation of private interests, or the republican model, in which a group self-determines a national identity via ethical arguments. A fundamental aspect of deliberative democracy is the communication process as a functional and legitimising mechanism for political decisions. In this way, democracy must guarantee, as a starting point, equal opportunity in access to and inclusion within the mechanisms of participation, transmission and generation of information and values.

Comunicar

Huelva: Grupo Comunicar
Vol. XV, no. 29, epoch II, October 2007
ISSN: 1134-3478

Comunicar, the Iberian-American scientific journal on communication and education, dedicated its last edition to "the teaching of cinema in the multi-screen era". This single theme is organised around two broad areas of reflection. Firstly, there is a series of articles analysing the different models for teaching cinema in the educational systems of various countries in the European Union (Spain, France, United Kingdom and Italy). And, in the second block, various specialists reflect, among other theoretical subjects, on the different metho-dologies for teaching cinema, on the importance of this pedagogy in the Internet era and on the context of post-television. Of note among these collaborators is Jean-Claude Séguin, lecturer at the Université Lumière Lyon 2, Peter William, from the University of London, and Pietsie Feenstra, from the Sorbonne.

European Journal of Communication
London: SAGE Publications
Vol. 22, no. 3, September 2007
ISSN: 0276-3231

Two articles from this edition look at the relationship between broadcasting and minors. On the one hand, Jan van den Bluck and Katleen Beullens are behind the research entitled "The Relationship between Docu Soap Exposure and Adolescents' Career Aspirations" and, on the other, Peter Nikken, Jeroen Jansz and Sanneke Schouwstra are the authors of the article "Parents' Interest in Videogame Ratings and Content Descriptors in Relation to Game Mediation". The first article provides the findings from a study carried out with 369 students in the last year of secondary education who were regular viewers of soap operas starring midwives, vets and paramilitary figures. In these cases, the perception of these professions was positively influenced by the series. The second article explains the survey carried out by Internet on 765 fathers and mothers measuring, among other aspects, their interest in being informed about the content of children's videogames.

Media, Culture & Society
London: SAGE Publications
Vol. 29, no. 1, March 2007
ISSN: 0163-4437

In this edition of *Media, Culture & Society*, there is a predominance of articles we might call "from the periphery of the West": Sean Jacobs, lecturer from the University of Michigan, analyses the reality TV phenomenon on the African continent in "*Big Brother*, Africa is watching"; T. T. Sreekumar, from the National University of Singapore, provides some judgements on access to the information society in India in his article "Cyber kiosks and dilemmas of social inclusion in rural India"; Amit M. Schejter, lecturer at Pennsylvania State University, studies the audiovisual media in Israel and their role in cons-tructing a Zionist discourse in "'The pillar of fire by night, to show them light': Israeli broadcasting, the Su-preme Court and the Zionist narrative". Finally, Michal Daliot-Bul, from Haifa University (Israel), talks about mobile telephone culture in Japan in "Japan's mobile technoculture: the production of a cellular playscape and its cultural implications"

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Zer. Revista de estudios de comunicación
Bilbao: Faculty of Social and Communication Sciences
Vol. 12, no. 23, May 2007
ISSN: 1137-1102

In this edition, the media journal from the University of the Basque Country presents a monograph on cultural industries and the media economy. In spite of the wide range of views and perspectives, we can establish three broad groups: one covering the most theoretical line (delimiting the concept, across the board aspects of the multimedia universe, etc.), another pole characterised by the analysis of the structure of the media and their relationship with growth and concentration (from a point of view of history, horizontal integration, case analysis, etc.) and, finally, the study of the sector in large economic regions, such as Latin America or Russia. We should note that this edition is dedicated to the memory of the recently departed Daniel E. Jones, lecturer at Ramon Llull University, who has posthumously published an article in this edition of *Zer*.

Websites review

Diari Oficial de la Generalitat de Catalunya

<www.gencat.net/dogc>

The *Diari Oficial de la Generalitat de Catalunya* (the DOGC or the Catalan government's official journal) is the official publication for the laws of the Generalitat de Catalunya, the general provisions dictated by the government and the administration of the Generalitat, as well as the acts, announcements and other documents of the Generalitat and of other entities or people when this is required in accordance with legal instructions.

The DOGC has been published since 3 May 1931, although at that time it went under the name of the *Butlletí de la Generalitat de Catalunya*. As from 26 August 1936 it adopted its current name of the *Diari Oficial de la Generalitat de Catalunya*. The DOGC is published daily from Monday to Friday except for public holidays, in two editions in Catalan and Spanish. The new Act regulating the *Diari Oficial de la Generalitat de Catalunya* establishes the official and authentic nature of the digital DOGC.

Boletín Oficial del Estado

<www.boe.es>

The *Boletín Oficial del Estado* (BOE or the Spanish parliament's official journal) is the body that publishes the laws and regulations passed by the Spanish parliament, the government and the general provisions of the autonomous communities. By virtue of Royal Decree 489/1997 of 14 April, general provisions at the rank of law, royal decree or decree-law are published in Spanish in the BOE as well as in the official languages of the autonomous governments that have signed an agreement with the central government. The BOE currently publishes legislation in Spanish, Catalan, Galician and Valencian (*sic*).

Official Journal of the European Union

<http://eur-lex.europa.eu/JOIndex.do?ihmlang=en>

The *Official Journal of the European Union* provides all the legislation, international agreements, preparatory legal acts, parliamentary questions of the European Parliament, as well as the decisions of the European Community's Court of Justice and all the European Commission's documents (COM and SEC documents).

The database, accumulated since the European Coal and Steel Community was created (ECSC, 1951), exceeds 440,000 references and around 15,000 are added every year. The languages covered correspond to the official languages of the member states (in order of joining): German, French, Italian and Dutch; Danish and English; Greek; Spanish and Portuguese; Finnish and Swedish; Czech, Slovak, Slovenian, Estonian, Hungarian, Latvian, Lithuanian, Maltese and Polish, and Bulgarian, Romanian and Gaelic.

Audiovisual and Media Policies, European Commission

<http://ec.europa.eu/avpolicy/index_en.htm>

This website covers all the political and regulatory activity in the area of audiovisuals and the media of the European Commission, led by Commissioner Viviane Reding. The most notable information is that related to the new Audiovisual Media Services Directive, published on 18 December 2007 in the *Official Journal of the European Union*. There is also information on the MEDIA programme, the promotion of pluralism in the media, protection of minors, actions aimed at media literacy and issues related to international trade and the WTO, among others.

European Audiovisual Observatory

<www.obs.coe.int>

Created in 1992 under the auspices of Eureka Audiovisual, the European Audiovisual Observatory is the reference centre for information on the audiovisual industry in Europe, both from an economic point of view as well as particularly from a legal perspective. The Observatory works in collaboration with other international bodies, professional organisations in the industry and has a network of correspondents that provide regular information. It currently covers the 36 member states of the European Union, although it also has partial agreements with the Council of Europe.

European Forum of Official Gazettes

<circa.europa.eu/irc/opoce/ojf/info/data/prod/html/index.htm>

The European Forum of Official Gazettes was created in 2004 by the Office for Official Publications of the European Communities and the organisations responsible for publishing the official journals of each member State of the European Union. Since 2005, this Forum has been open to the participation of other countries outside the European Union. The aim of this centre is to exchange ideas and information on publication processes, technology and best practices between the official publishers.

Legislative Observatory, European Parliament

<www.europarl.europa.eu/oeil/index.jsp>

The Legislative Observatory is a service to manage, predict, inform and investigate the legislative and non-legislative processes of the European Union in which the European Parliament is involved. It works with a large number of procedures and dossiers containing documentation, events, actors and information. However, it does not aim to be an inventory of legislative documents nor to offer access to established texts, although this is often possible.

Culture and Education Committee, European Parliament

<www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=CULT>

The European Parliament is organised into 20 standing committees (temporary committees can be created *ad hoc* for specific subjects), whose number of members ranges from 28 to 56. The Culture and Education Committee of the European Parliament has powers over audiovisuals and has been one of the bodies responsible for the new European Audiovisual Media Services Directive.

Digital Video Broadcasting (DVB)

<www.dvb.org>

The Digital Broadcasting Video Project is an industry-led consortium of over 270 broadcasters, manufacturers, network operators, software developers, regulatory bodies and others in over 35 countries to promote open technical standards for the global delivery of digital television and data services. Services using DVB standards are available on every continent with more than 170 million DVB receivers deployed.

European Telecommunications Standards Institute

<www.etsi.org/website/homepage.aspx>

The European Telecommunications Standards Institute (ETSI) is the body recognised by the European Commission as the official European Standards organisation in telecommunications. It has around 700 members in 60 countries all over the world and approves globally applicable standards for Information & Communications Technologies (ICTs): fixed and mobile telephony, television, convergent services and the Internet. Its European perspective gives it strategic importance.

CONTENTS

29

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