
From Isolation to Consensus: The UK's Role in the Revision Process of the *Television Without Frontiers* Directive

Granville Williams

Department of Media and Journalism
University of Huddersfield

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Abstract

This paper analyses the processes by which a UK-based coalition of the government, the media regulator Ofcom, and industry groups organised a sustained lobbying campaign to challenge the proposal to extend the scope of the revised *Television Without Frontiers* (TVWF) directive to cover 'non linear' services (audiovisual services delivered over the internet or mobile phone.). It describes how the coalition mobilised support at national, European and international levels to secure changes in the draft *Audiovisual Media Services* (AMS) and analyses the reasons why the UK-based coalition was successful in achieving its objectives. The study also integrates material on the role of interest groups which were concerned about the proposed changes in the TVWF directive and works on the EU policy making process.

Introduction

Changes in the European media industry and the lobbying system are increasingly located at the level of supranational governance within the European Union (EU). The main focus of the paper is on the process by which the *Television Without Frontiers* (TVWF) directive has morphed into a new draft *Audiovisual Media Services* (AMS) directive. In July 2005 the European Commission's (EC) Information Society and Media Directorate (ISMD) presented six position papers (EC 2005a) in preparation for a discussion at a major European Audiovisual Conference, organised jointly by the United Kingdom's (UK) Department of Culture, Media and Sport (DCMS) and the ISMD, and held in Liverpool in September 2005. The first, and most controversial, of the papers, 'Rules applicable to Audiovisual Content Services', proposed extending the scope of the directive to cover 'non linear' services ('on demand' digitalised audiovisual material delivered over the internet and mobile phone networks). The DCMS response was strongly opposed to any extension of the scope of the directive, a position also shared by a broader alliance encompassing the UK's converged audiovisual regulatory authority

Ofcom, the high-tech industry trade association Intellect, and the Broadband Stakeholder Group (BSG) which advises the government on broadband policy.

As a result of an energetic and high-profile campaign by the UK alliance, which mobilised a broader range of support for its position in the UK, across Europe and amongst US media and internet companies active in Europe, the UK government was able to support the (nearly) final version of the *AMS* directive at the Council of Ministers meeting held in Brussels on 13 November 2006. The determined lobbying by the UK government and its allies transformed the draft policy proposals into ones which received the broad support of the UK government and industry groups. The dynamics of this process present a case study which is relevant to current debates on relationships between national and supranational regulation and media policy-making.

The paper also seeks to integrate traditionally disparate concerns. The literature on media policy is usually divorced from that on lobbying and interest representation, which is part of a wider literature on policy processes and networks in political science. Media policy research has tended not to examine the means by which policy is made and consequently has largely ignored until recently (Freedman 2006) lobbying and public relations activities in the policy process. Political science has also often neglected the communicative dynamics of such processes, treating lobbying and PR activities as a subsection of interest representation rather than the substance of it.

Interest Groups and EU Policy-Making

Studies of the 1989 *TVWF* directive, and its subsequent revision in 1997, have largely focused on the policy aims, discussions and outcomes (Collins 1994; Levy 1999; Krebber 2002). Bill Grantham (2000) analysed the 'culture wars' between the USA and France, and considered the effectiveness of the quotas introduced in the 1989 directive. Jeremy Tunstall and Michael Palmer (1991, 93-101) analysed the roles of the Brussels newspaper and advertising lobbies (including Anglo-American advertising agencies) in shaping the 1989 *TVWF* directive. With the exception of the case studies into interest group participation in the EU consultations on convergence and media pluralism in the 1990s (Harcourt 2005), media policy concerns in relation to lobbying processes remain under-researched. We still know extraordinarily little about the shape, scope and impact of lobbying by the rapidly converging audiovisual industry on EU policy-making.

It has been argued that, for US lobbyists, the politics of Brussels are easy to understand since they have more features in common with 'freewheeling Washington politics than with the more orderly European national patterns' (Andersen and Eliassen 1991, 179). In the USA a number of studies have

identified the important role of media groups and trade associations in influencing media policy (Cockburn and Silverstein 1996; Croteau and Hoynes 2001; McChesney 1999). Advocacy groups also draw attention to the links between political donations and lobbying for favourable corporate policy outcomes in the media field (Centre for Public Integrity 2006).

Belén Balanyá *et al.* (2000, 4) point out the EC

began to engage industry in strategic alliances in the 1980s and has since actively encouraged the involvement of large corporations and pan-European industry associations in the Brussels political apparatus...Corporations and their lobby groups also often provide useful information for the understaffed and disconnected Commission bureaucracy.

The creation of the single market involved drafting around 300 single market directives. It was in this period that corporations began to focus their energies on Brussels, as part of their efforts to shape the creation of a business-friendly single market.

The US has also concentrated lobbying efforts on the EU, through a broad coalition comprising the US government, global corporations, and lobby groups such as the Brussels-based Association of American Chambers of Commerce (AMCHAM). (Anthony Walker, Director of Strategy at Intellect, the trade association for UK high-tech companies worked for six years with AMCHAM). An enormous amount of energy has gone into shifting the terms of policy debates and intervening in the drafting of legislation by the EU and resolutions in the European Parliament (EP). As Pierre Bourdieu pointed out, the shift towards deregulatory, neo-liberal policies is not a 'product of spontaneous generation' but 'the result of prolonged and continual work by an immense intellectual workforce, concentrated and organized in what are effectively enterprises of production, dissemination, and intervention' (Bourdieu 2004, 12). He cites how in the course of 1998 the AACC 'published ten books and over sixty reports and took part in some 350 meetings with the European Commission and Parliament' (Ibid).

When Balanyá *et al.* published *Europe Inc* in 2000 more than two hundred large corporations had European government affairs offices in Brussels and five hundred corporate lobby groups of varying size and influence were based there (Ibid, 3). The Brussels 'lobbyocracy' has grown since then, with the expansion of the EU from 15 to 27 member states, but also because, as Sonia Mazey and Jeremy Richardson (2006, 250) point out, national governments have 'ceded sovereignty over large areas of public policy-making to the EU level. Once public policy started to be made at the supranational level, groups were bound to allocate

increasing amounts of lobbying resources to that level'. The EC Vice President and Commissioner for Administrative Affairs, Audit and Anti-Fraud, Siim Kallas, indicated his concerns about the unregulated growth of lobbying when he launched the proposals for a European Transparency Initiative:

At the moment there are about 15,000 lobbyists established in Brussels, while around 2,600 interest groups have a permanent office in the capital of Europe. Lobbying activities are estimated to produce 60 to 90 million euro in annual revenue. But transparency is lacking. (Kallas 2005)

Barbara Gunnell (2005) cites the Amsterdam-based Corporate Europe Observatory which believes

around 25,000 or even 30,000 earn their living from wheeling and dealing in the corridors and dining rooms of Brussels. There are probably already as many lobbyists as there are Brussels bureaucrats and they could soon form the city's biggest industry as well as its fastest growing.

The article also refers to a EP estimate which suggests 70 per cent of the lobbyists represent corporate interests, 20 per cent non-governmental organisations, including trade unions and health and environment groups, with the remaining 10 per cent lobbying for individual countries and regions.

Michael Moran identifies the importance of lobbying in Brussels, and also a serious imbalance: 'there is a premium on success in monitoring, and contributing to, the details of policy initiatives from their very earliest stages' (2003, 166). He reaches the stark conclusion from his survey of the body of research on lobbying and the European policy making process:

As is the case in Washington, EU regulatory politics mobilizes its own distinctive biases and empowers its own distinctive oligarchies. The premium put on close monitoring of the process of policy creation, combined with the Commission's own heavy reliance on outside specialist expertise, creates powerful biases similar to those in US regulatory politics, in favour of interests with the resources to make the investments in policy monitoring and the hiring of expertise – in short, in favour of business, especially big business. (Ibid, 167)

Interest Groups and the Draft *AMS* Directive

The draft *AMS* directive, published in December 2005, is an attempt to modernise the European legal and regulatory framework for the rapidly changing environment where the previously disparate sectors of information technology, telecommunications and the audiovisual industries are now converging, and broadband internet and mobile phone networks make it possible to broadcast,

stream or download digitalised content from a variety of platforms to a variety of devices. A range of Brussels-based interest groups representing these new areas, and interest groups representing traditional media with common interests in the scope and content of the revised directive, played an active, interventionist role in shaping the directive's revision.

A selective list of such groups includes the World Federation of Advertisers (WFA) and the Association of Commercial Television in Europe (ACT) which was formed in 1989 after the European Broadcasting Union decided to exclude commercial broadcasters from membership. It has 25 member companies in 21 countries, including two American-owned groups operating in Central and Eastern Europe, Central European Media and SBS Broadcasting, which joined ACT after the accession to the EU of a number of countries in which they had media interests. The European Publishers' Council (EPC), formed in the early 1990s to promote a more robust challenge to European Union media policy initiatives, has also been actively involved, lobbying to ensure that internet initiatives by publishers do not fall under the directive's scope. Trade associations representing Information and Communication Technologies (ICTs) active in this process include the European Cable Communications Association (ECCA); European Competitive Telecommunication Association (ECTA); European Internet Service Providers Association (EuroISPA); European Telecommunications Network Operators' Association (ETNO); and Cable Europe. One interest group which played a particularly active role was the European Digital and Media Association (EDiMA) which, its website states, is

an alliance of digital media and technology companies who distribute audio and audio visual content on line. The main business of EDiMA revolves around two different areas, one being the formation of EU legislation and the other being the licensing regime in the EU for the distribution of content online. (EDiMA 2007)

EDiMA is the European offshoot of the US Washington-based trade association, DiMa. EDiMA's director, Wes Himes, with two other colleagues from Policy Action, run the interest group. He worked previously for the American Legislative Exchange Council which promotes free-market and deregulatory policies to keep 'the communications and technology industries free from burdensome regulation' (<http://www.alec.org/task-forces/5.html>).

The UK-based Satellite and Cable Broadcasters' Group (SCBG) represents many of the US media groups which established their European operation bases in the UK, but under the *TVWF* 'country of origin principle', broadcast into Europe via satellite. Members include: Discovery Networks Europe, MTV Networks Europe, Turner Broadcasting System Europe and Disney Channel UK. Their operations

caused some concerns amongst other member states, and indeed in the debates on the draft AMS directive the country of origin principle was one of the controversial issues. For example, Swedish politicians and regulators are concerned about Viasat, the UK-based Swedish satellite broadcaster, which is able to carry ads targeted at the under-12s (banned in Sweden) because it operates under looser UK rules. As Alison Harcourt points out (2005, 28), the lax restrictions on advertising caused conflict with other member states:

Channels with a UK non-domestic licence were advertising alcohol and tobacco products in France, ignoring advertising rules in Germany and inserting commercials into children's programmes in Norway and Sweden – which went against these Member States' national media laws...The UK's lax regulatory regime for satellite broadcasters has created a situation of regulatory arbitrage in Europe. A significant number of broadcasting companies have relocated to the UK, away from their original location.

The International Communications Round Table (ICRT), established in 1994, represents 25 leading media, computer and communications companies, including Time Warner, Walt Disney, News International/News Corporation, Reed Elsevier, Sony Entertainment, Bertelsmann, Philips, Siemens and Microsoft. Since March 1996 when the ICRT strongly opposed the move by the European Parliament, during the first *TVWF* revision, to extend the directive to cover new electronic services, such as the internet, electronic publishing, and online services, through to November 2005 when it alerted the EC to its concerns about proposed new directive, it has put considerable energies into presenting its position papers to the European Parliament and EC on issues concerning the *TVWF* directive. After that date the website (<http://www.icrt.org>) does not have any position papers on these issues. However, the ICRT was one of the signatories of the influential December 2006 EPC Industry Declaration discussed below.

US Government Policy

US companies are members of Brussels-based interest groups like ICTR, or other groups like SCBG, but the key role of US audiovisual exports also means that the US government and specific US-based interest groups play an independent active role in seeking to influence the development of European audiovisual policy. For example, in the final stages of the draft discussions around the 1989 *TVWF* directive the controversial issue of quotas for European works mobilised strong US opposition. Jack Valenti, President of the Motion Picture Association of America (MPAA), lobbied President Ronald Reagan over the proposed quotas. Reagan in turn contacted Margaret Thatcher and the two words 'where practicable' were added to the directive as a result of the intervention of the then Foreign Secretary, John Major, at a Council of Ministers meeting (Cole 1995, 347). During negotiations on the draft directive the MPAA also used the services of a Dutch

lobbyist, who influenced the decisions of Denmark, the Netherlands and Germany to vote against the French position for strengthening the Directive (Jacek 1995, 205).

After the directive was agreed in October 1989 US efforts to challenge quotas moved to another forum - negotiations in the Uruguay round on the General Agreement on Trade and Tariffs (GATT). Jack Valenti between 1990 and 1993 sought to mobilise opposition to the EU negotiators who were mandated to seek an explicit cultural exception for the audiovisual sector in the GATT negotiations but in order to conclude the GATT negotiations the US conceded (Grantham 2000, 110-131). As Victoria de Grazia (2005, 465) points out, American trade negotiators in the GATT negotiations grudgingly capitulated to the EU position that audio visual products be treated as the 'cultural exception' to free trade principles:

Time was on their side, the U.S. negotiators told themselves: time and the new satellite and digital technologies that American businesses were expected to dominate and which would render local media quotas meaningless.

It is the reason why there was strong support for the oppositional stance of the UK government and trade associations towards the revision of the directive, in particular the proposal to include new media, the internet and mobile phone services within its scope. Promoting and extending its audio-visual industry was (and remains) an important priority for the US government – film and television are among the top dollar export earners. Massive trade deficits makes it imperative for the USA, 'to sustain a leading role in a sphere of activities that range from bio-technology to computer software to telecommunications to the production and delivery of culture-goods such as TV programmes, movies and popular music' (Nowell-Smith and Ricci 1998, 1).

New Labour, Audiovisual Policy and Europe

After a brief flurry of support for Europe by the first Blair government in 1997 policy priorities began to shift from a position of 'constructive engagement' to 'defensive engagement'. This marked a reversal from the policy shift in the 1980s towards a genuine pro-European stance when Labour began to build a closer relationship with its sister social democratic parties across the EC. Labour became a strongly pro-integrationist European party, firmly based within the Party of European Socialists (PES) social democratic mainstream,

seeking to curb the powers of transnational companies, fostering environmental solutions to growth, end exploitation of the workforce, redistribute wealth from the wealthy to the poor and end the power of

commercial pressures alone to dictate the pace and direction of Europe.
(Baker 2005, 25)

The first UK Presidency of the EU under New Labour was from January-June 1998, and an audio-visual conference, 'Challenges and Opportunities of the Digital Age', held in Birmingham between 6-8 April was publicised as the highlight of the UK Presidency. Tony Blair had already indicated by the time of the audiovisual conference a clear shift away from the policy concerns of traditional European social democracy. In his speech to the 1997 Labour Party conference he challenged the idea of 'the bureaucrat's Europe: the Europe of thwarting open trade, unnecessary rules and regulations, the Europe of the CAP and the endless committees leading nowhere'. Against this Blair posited a preference for a deregulatory economic model, and in contrast to the perceived rigidities of the European social model, promoted the need for greater market flexibility. The trajectory of New Labour was now decisively away from European social democracy. As Baker (2005, 28) comments, 'New Labour increasingly reflected the needs and requirements of traditional UK structural interests, in particular the City and global business, as exemplified by the Murdoch communications and media empire'.

In terms of audiovisual policy the most dramatic example of this trajectory was the 2003 Communications Act and the creation of a new converged regulatory body, Ofcom. The Act itself was framed by a core group within the Number 10 Policy Directorate, including Media Adviser Ed Richards who went on to become a senior partner within Ofcom and, in October 2006, Chief Executive. Sylvia Harvey (2006, 93) points out:

Ofcom has appointed few senior staff with experience of making or regulating television programmes. Its leading figures – drawn largely from the worlds of advertising, cable, consultancy and politics – appear to have little interest in the qualitative dimensions of an audiovisual culture. Its ethos is predominantly neoliberal, and its language and organizing concepts are suitable for an analysis of markets and of competition, but not of social significance and cultural value.

Ofcom's mission is to reduce the scale of regulation and develop self-regulation through an approach which involves working with stakeholders within the industries over which it has regulatory oversight. A seminar organised in July 2005 by the Westminster eForum, *Television Without Frontiers: the UK stakeholder perspective*, to discuss UK responses to the six position papers drawn up by the ISMD strikingly demonstrated how closely linked the positions of government, the regulator and industry were in opposing any extension of the scope to non linear audiovisual services. Chris Bone, Head of the International Branch of the Broadcasting Policy Division of the DCMS, in his opening comments at the

eForum seminar indicated that there were ‘a lot of important issues buried’ in the position papers but the most important was

a suggestion that all audiovisual network commercial services – the net, mobile etc, all the new media, all the e-media – should be covered by a wholly new tier of EU regulation. Now this is a pretty radical proposal. It’s one we have concerns about. (Westminster eForum 2005, 6)

A series of speakers from government, Ofcom and industry all opposed the proposal to extend the scope of the directive. The importance of influencing debate at the forthcoming Liverpool audiovisual conference was stressed continually at the Westminster seminar.

The Liverpool audiovisual conference, *Between Culture and Commerce*, held in Liverpool, 20-22 September 2005 under the UK Presidency of the EU demonstrated a sharply polarised position between the UK alliance and the rest of the conference, which drew together industry representatives, regulators and government officials from the EU and EU candidate countries. The structure of the conference involved working groups discussing the specific issue papers and a series of keynote speeches, where UK viewpoints were featured prominently.

Ofcom’s robust intervention took two forms. Ofcom chair, Lord David Currie, took the opportunity as chair of one conference session on the issue paper dealing with ‘Rules applicable to audio-visual content services’ to make a distinctly agnostic contribution:

...we have real concern as to whether it is feasible to adopt a traditional, broadcast-type regulatory model for content delivered on new media platforms’ and ‘we are not confident that the proposed split between linear and non-linear will prove sufficiently durable or future-proofed. (Currie 2005)

The regulatory body’s response to the EU’s six issue papers on the directive’s revision was also published to coincide with the conference. Ofcom in essence wanted minimal changes to the directive, promoted the merits of self-regulation, and opposed ‘any attempts to impose inappropriate and disproportionate regulation’ on the non-linear sector (Ofcom 2005).

On the day the Liverpool conference opened, Intellect and the BSG issued a joint plea to the EU Commission – ‘go back to the drawing board’. In uncompromising language the press statement considered ‘the proposed approach to policy regulation to be totally unworkable, and an attempt by the EU to regulate the internet via the backdoor’. The proposals were ‘premature’, ‘unjustified’, ‘inappropriate’ and ‘unworkable’ and

what the EU must do now is stop the process in its tracks and begin the consultation process again. This time we ask that the EU engage with all of the industry stakeholders who will be affected by the proposed Directive... (Intellect 2005)

Two keynote speakers presented unequivocally critical assessments of the issue papers. Francisco Pinto Balsemão, chairman of the EPC, thought 'many of the current assumptions about new regulation are not founded on a sound basis by which to plan the future' and 'we need the space and time to allow these markets to evolve without the inhibition of premature intervention and regulation' (Balsemão 2005). James Murdoch, Chief Executive of BSkyB, attacked the role of public service broadcasters, and particularly the BBC and raised questions about the role of regulation, suggesting a 'totally new approach which recognises the new on-demand world we live in'. (Murdoch 2005)

With the important exception of interest groups, the UK position did not appear to win significant support amongst other European participants at the Liverpool conference. However the positions and arguments presented at Liverpool by the various UK political, regulatory and industry interests were integrated into a determined lobbying campaign at a national and European level. On November 8 the UK government response to the six issue papers was published, and on the key issue of extending the scope of the directive to non-linear areas suggested 'a "do-nothing" option might be the best position. We are in particular unconvinced that there is a need to extend specific regulation, rather than using robust national laws and international co-operation on enforcement – for example in relation to the protection of minors – to "non-linear" areas, or about the practicality and utility of doing so' (UK government 2006, 2).

In January 2006 at the Oxford Media Conference, an important annual gathering of UK media representatives, the Secretary of State for Culture Media and Sport, Tessa Jowell, said bluntly that the draft Directive would threaten wealth creation 'by imposing a highly bureaucratic regulatory framework'. European law makers had to 'ensure that the regulatory environment sponsors and favours growth'. She also signalled the need for 'industry to be doing more, to be in there making the argument too, with your European colleagues, and not just to the Commission but also to member state governments' (Jowell 2006).

The theme of excessive regulation was picked up again by James Purnell, Minister for the Creative Industries at the DCMS, speaking at a seminar at the Foreign Policy Centre on 26 January 2006. His key point was that the EU 'should not force member states to regulate in a way that will in practice be unenforceable or would discourage the growth of e-services in the EU'. The Directive should be 'light

touch', reduce administrative burdens and place emphasis on self-regulation. He said:

I think it will be very important to get European industry engaging with their own governments and with MEPs. We now have to try and influence the Council and the Parliament to produce a Directive which will work in practice. (Purnell 2006)

On 25 April *EurActiv*, the EU news and policy website, announced a new Industry Alliance, whose members included ITV, Channels 4 and 5, Cisco, BT, Vodafone and Wanadoo. Ofcom, the report stated, backed the alliance, and quoted Tim Suter, in charge of content regulation at Ofcom, warning 'that new media broadcasters would base themselves outside the EU to avoid the regulations' (*Euractiv* 2006). The Industry Alliance produced its own response to the draft directive in April 2006 and its main recommendations continued to emphasise opposition to the extension of the scope of the directive. Whilst supporting liberalisation of advertising rules and the proposal to allow product placement, it also called for further liberalisation in advertising provision. UK industry responses to the draft directive promoted the UK practice of self-regulatory schemes, in the form of Codes of Practice run by agreed industry bodies, as the alternative to EU regulation. The initiative also marked an intensification of lobbying with the aim of winning wider support so that a European version could be distributed to have a much wider impact. Lobbying efforts included press coverage for their views, sending the document to MEPs and seeking 'meetings with the most influential ones over the coming months' and circulating the document to trade associations and companies across the EU to encourage them to lobby their own member state governments' (Digital Content Forum 2006).

A second Westminster Media Forum seminar, *From Television Without Frontiers to the Audiovisual Media Services Directive*, was held on July 29 2006. The DCMS minister Shaun Woodward urged industry representatives 'that you get your counterparts on the Continent engaging with their own governments and MEPs'. He made a comparison with the Common Agricultural Policy and argued:

We must be mindful of the lessons of the past and avoid creating (albeit with the best intentions) a sclerotic, anti-competitive structure that will restrict EU growth, hamper the development of the new media industries – both linear and non-linear – and do enormous harm in the process. (Westminster Media Forum 2006)

From a position of isolation at the first Council of Ministers meeting which discussed the draft directive on May 18 2006 (only Slovakia supported the UK position) a sustained multi-level lobbying campaign developed. It involved building support amongst pan-European and global interest groups and inundating the

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Commission with position papers expressing industry concerns. European conferences by the WFA, ACT and ECTA, for example, also gave space for the UK alliance's concerns to be presented. Ofcom played a prominent role at a European level at such conferences, and also through the European Regulator's Group, ERG, to build support for the UK position. An active media strategy ensured that critical articles appeared in *The Economist*, *The Times*, *The Guardian*, *Financial Times* and *European Voice*. Recurrent themes were the ill-thought out nature of the draft directive and the threat that excessive regulation which 'would drive any new generation of TV entrepreneurs out of Europe' (Warren 2006). *The Daily Telegraph* carried a piece by Stephen Carter, then chief executive of Ofcom, warning about the damaging impact of the proposed directive: 'New rules often have an immediate, and chilling, effect on innovation, even when well-intentioned' (Carter 2006). Blogs and video clips from the US also orchestrated concerns about the perceived EU threat to regulate the internet, and urged US bloggers to express their views to the Commission (Malkin 2006).

At the second Westminster seminar the UK Minister for Creative Industries, Shaun Woodward, said

Over the coming months, I plan to visit other Member States to look at the impact of this proposal. We believe that once industry Europe-wide has realised the limiting factors for economic growth and potential for jobs, it will support our position and influence its own governments to support our position too. (Westminster Media Forum 2006)

Interviewed in *Broadcast* in autumn 2006 he said that his lobbying over the past two months had been successful and named Germany, Spain and Denmark as countries which might support the UK view (Wooton 2006).

Whilst the UK government's role was influential in shifting the position of some key member states the success of the lobbying campaign was also due to a combination of mutually interlinked governmental, regulatory and industry organisations and lobby groups tenaciously pursuing their common objectives within Europe. The coalition adopted a multi-track strategy, working through pan-European trade associations, the Commission, the EP and the Council of Ministers to secure their goals over the *AMS* revision.

The EU's Shifting Policy Priorities

Changes in policy priorities within the EU also made it more receptive to determined lobbying. The European Union has embraced neoliberal economic strategies, involving deregulation, privatisation and the abandonment of public interest policy objectives. There has been a clear shift away from what were previously seen as important features of the EU – the European social model and

the exemption by member states from market competition of sectors such as education, radio and television, telecommunications and health care - what Fritz Scharpf describes as 'positive integration' - towards the strengthening of 'negative integration' which dismantles such exemptions and controls by national governments over their own economic boundaries and reduces 'the capacity of democratic politics to impose market-correcting regulations on increasingly mobile capital and economic interactions' (Scharpf 1999, 3). Ray Chari and Sylvia Kritzing (2006, 3) make a similar point in their analysis of a hierarchy with '1st order policies which have developed at the EU level over the last 25 years: single market policies, concerned with the development of an integrated capitalist market where economic actors can thrive; competition policies, which seek to ensure a level playing field in this free-trade area; economic and monetary policies, which serve as a basis for a common currency that facilitates trade...' In contrast they identify 2nd order policies, concerned with social policies, protecting EU citizen's rights, seeking to place limits on economic and corporate power. Such policies 'do not form a key part of EU policy making and that the EU remains weak and decentralized in these policy areas' (Ibid, 217). Whilst neither of these studies addresses media policy formation specifically, their approach is useful when applied to the way the revision process of the *AMS* directive has developed.

When European leaders met at the Lisbon summit in March 2000 they set the EU the goal of becoming 'the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion' by 2010. In June 2005 the Commission adopted the initiative *i2010: European Information Society 2010* to foster growth and jobs in the information society and media industries and to encourage the development of the digital economy (CEC 2005). The priority given by the EU to the liberalising convergence initiative from 1995 onwards was epitomised under the Presidency of José Manuel Barroso by the reconfiguration of two former directorates (Information Society; Education, Media and Culture) as Information Society and Media under Commissioner Viviane Reding. The success of the convergence initiative was due to strong industry support, strong political backing and the Commission's commitment to the policy.

If we take the contested areas of the revised *TVWF* directive we can see how the UK government, corporate interest groups and the Commission intervened in policy debates to secure favourable outcomes for their policy agendas. Negative integration (1st order policies priorities) was actively promoted and attempts to present alternative policies associated with positive integration (2nd order policies) in the revised directive were unsuccessful. The fate of Media Pluralism, the sixth of the issues papers prepared for the Liverpool Audiovisual Conference, published in July 2005, illustrates this. The Paper was in response to the EP's concerns in the field of pluralism and media concentration. However, it was really a commentary

rather than a policy document, did not offer any positive policies, and concluded 'it is difficult to propose any kind of harmonisation of rules between the EU member states' (EC 2005c). Apart from one session on the Issues Paper at the Liverpool Audiovisual Conference, and a brief discussion during the EP hearings on June 1-2, 2006 on the draft directive, the topic received marginal attention in spite of concerns which have been frequently expressed about the issue by consumer and citizens' groups, media unions, public service broadcasters and smaller media groups.

In contrast, the Issue Paper on Commercial Communications with its proposals to liberalise limits on advertising and to end the ban on 'surreptitious advertising' or product placement played a central role in policy debates on the *AMS* directive, and dramatically revealed the sharp disparity between the power and influence of interest groups seeking to influence policy debates (EC 2005b). The Issues Paper also demonstrated again the hybrid nature of the directive, with sections on advertising concerned with extending public interest rules relating to human dignity and the protection on minors, and relating to public health considerations (advertising of tobacco, alcohol and medicines) to non-linear services being discussed alongside proposals to increase the exposure of citizens to advertising. One coalition, involving the Bureau Européen des Unions Consommateurs (BEUC), the Federation of Scriptwriters in Europe (FSE) and a number of other groupings within the EU opposed to product placement mounted a spirited lobby, with support from Patrick Verrone, President of the Screenwriters Guild of America (West). He visited the Commission to warn about the damage product placement inflicted on the creative output of US scriptwriters and made available a CD with some of the most absurd examples of product placement from US network reality shows which was distributed to MEPs. But interest groups like the ACT and the WFA worked in close liaison with Commissioner Reding. Indeed she even urged them to be more active in winning support for the liberalisation of advertising regulations. At an ACT event on April 27 in Brussels, she urged members to be more active:

However, your work will also be needed – and frankly speaking, I have the impression that your work, the political support by commercial broadcasters for a more flexible and modern framework, could be much more visible and effective if you want to meet your goals. Your help is needed if you want this directive to support growth in your sector. (Reding 2006)

Such activist appeals addressed to the BEUC coalition were noticeably absent. The disparity between industry lobby groups, able to deploy staff and resources to track and respond to the draft *AMS* directive as it moved through the different stages of the policy process, and those available to a range of consumer, media unions and NGOs concerned about the content of the *AMS* directive, was massively uneven. This is most strikingly demonstrated by a Media Declaration issued by the EPC in

advance of the first reading of the draft *AMS* directive in the EP, December 11-14, 2006, and signed by 53 European media companies and interest groups spanning advertising, print and broadcast media, telecommunications, satellite and cable (EPC 2006). It is a roll call of the most powerful European media and telecommunications groups, including Bertelsmann, BT, News International and Reuters. For MEPs it was a powerful piece of communication with a very simple message: do not vote for any amendments which undermine the ‘country of origin’ principle.

A Successful Outcome

At the Council of Ministers meeting on November 12, 2006 the results of the UK lobbying effort were evident. UK minister Shaun Woodward said that he was pleased the Council ‘has arrived at a consensus – a long way from the position months ago’ and ‘was extremely pleased on progress over the extension of scope which had ensured a position of a narrower definition of “TV-like” services’. He identified continuing concerns: Sweden’s attempt to challenge the country of origin principle and urged ‘it must not be compromised’; the impact of restrictive rules on advertising within programmes and creating an ‘over-prescriptive’ climate for the introduction of product placement. He concluded, ‘huge progress has been made and the UK supports the text’¹. The scope of the directive would only include TV-related programmes, including video-on-demand, but not new media content on web blogs or social networking sites involving video upload like YouTube and MySpace. Also fierce lobbying by the EPC meant that the directive would not apply to newspaper and magazines with online sites which might include audiovisual material.

The Council also decided that product placement would be banned in news, children’s programmes and documentaries, but each member state could decide whether to introduce product placement in other programmes. The country of origin principle was reaffirmed with one slight concession that member states unhappy with content beamed from abroad could complain directly to the regulator of the member state in question. This is likely to be the focus of continued lobbying by the SCBG and other interest groups, unhappy with the vague formulation.

At its December 2006 the EP meeting supported most of the provisions adopted by the November Council but went further on the relaxation of advertising rules and authorising product placement (with warnings to viewers about the presence of product placement). There are two more stages before the directive is finally adopted: the Council has to consider the changes made by the EP, and then it returns to the EP for a second reading. Once it is finally adopted member states will have two years to transpose it into national law.

Some Conclusions

The role of the UK in the *TVWF* revision process might appear to give powerful support to the view that the nation state can play a key role in mobilising support for its own distinctive communication policies within a supranational economic and regulatory structure. Nancy Morris and Silvio Waisbord (2001, ix) summarise arguments from the extensive social sciences and communication and media studies literature that ‘the forces of global media and commerce threaten the state in relation to communication and information’ but suggest that it is ‘premature to conclude that the state is withering away’. The resources of the state were clearly mobilised to build support for a broad-based UK coalition which wanted substantial changes to the draft *AMS* directive. But the nature of that coalition demonstrates that the UK was not driven by a distinct set of national policy concerns, but rather ones which represent the interests of powerful European and global groups like Bertelsmann, News Corporation and Google, as well as groups developing mobile broadband and other internet services. The arguments presented by the UK coalition and other interest groups challenging the draft directive tap into a body of ideas and positions which are hostile to the notion that governments, or supranational bodies like the EU, should regulate communications, particularly the rapidly growing use of broadband internet and mobile phone platforms. The coalition’s success in restricting the scope of the directive is part of a wider battle to determine what Jeff Chester calls our ‘digital destiny’. From a US perspective he argues, ‘The corporate media know where they wish to take us. If they are successful we are likely to live with a communications system that offers us dazzling entertainment and seeks to fulfil our every consumer desire.’ The intention is to ‘transform the Internet from what a federal court termed in a landmark decision “the most participatory form of mass speech yet developed” into a system of corporate controlled private “pipes” ’ (Chester 2007, xvi-xvii). The blocking of any serious regulatory oversight over new media as a result of the UK coalition’s efforts fits into this pattern, and coincides with US government and trade strategies to resist European regulatory encroachment over new communication technologies.

The EU has consistently defended its audiovisual space in international negotiations and adopted the *TVWF* directive to stimulate European works and create a European audiovisual market. But what we also see is that the EU policy priorities favour market strengthening measures which undermine national media and regulatory policies, as evidenced by Sweden’s unsuccessful attempt in the *AMS* revision process (with the support of six other smaller EU member states) to defend its audiovisual space and specific advertising regulation against the country of origin principle. The policy-making process was particularly porous and vulnerable to sophisticated and well-resourced lobbying. 1st order policy priorities gained support, whereas 2nd order policies were marginalised. EU audiovisual policy priorities reflect the need to respond to globalization, and in this respect

they boost the power and influence on interest groups which share this aim. As a corollary, this also highlights a serious democratic deficit in terms of the involvement and effectiveness of consumer and citizen's groups, even some governments, in the policy process. The inescapable conclusion is that whilst they were able to comment on aspects of the draft *AMS* directive, they were unable to win support for their policies or influence the directive's final shape in any substantive way. It gives added weight to Harcourt's blunt assessment on the role and impact of corporate lobbying: 'Democratic policy-making is not feasible within the EU as a regulatory state' (Harcourt 2005, 116).

Note

¹ These quotes are taken from my own notes of the presentations made by ministers at the Council of Ministers' meeting.

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