

The key role of public service broadcasting in European society in the 21st century

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EBU contribution

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Key messages	5
Introduction	6
1 The Lisbon strategy and the specific role of public service broadcasting	8
2 The European model of dual public-private broadcasting	11
3 Funding and competition law	14
4 Production of quality domestic content	16
5 Public service broadcasters and new media	19
Conclusion	24
Focus on broadcasting policy issues in the EU (May 2004)	29
Current review of the Television without Frontiers Directive	31
"Telecommunications Package"	33
Funding of public service broadcasting and State aid rules	35
Copyright and neighbouring rights	37
Digital rights management	39
Applicable Law – Draft Rome II Regulation	41

Key messages

(1) Public service broadcasters' role in regard to the Lisbon strategy

Public service broadcasters are, both as major producers and providers of European content and as driving-forces for digital switch-over, a key asset for fostering and promoting the information and knowledge-based society and for bridging the digital divide. They thus help achieve the goals of the Lisbon strategy, which means that digital technology should be used to ensure the widest possible access to a broad range of quality content for all, as well as to underpin pluralism and freedom of information and expression, the growth and diversity of creative industries across Europe, and European competitiveness.

(2) The European model of dual public-private broadcasting

The European model of dual public-private broadcasting systems has produced a balance, and this has resulted in increased choice for European viewers, listeners and other users of communications services, sustained production bases within all European countries and technological innovation. This balance must be preserved and carried forward into the digital and new media world.

(3) Public service broadcasters as providers of quality domestic content

Public service broadcasters are a very important and effective channel for successful investment in original domestic (i.e. local, national and European) content of quality. Sufficient and secure funding for public service broadcasting is therefore crucial for the vitality of the creative industry in every Member State and for the success of the European audiovisual production sector as a whole.

(4) Public service broadcasters' contribution to the knowledge society

Public service broadcasters will play a key role in meeting the new challenges of the knowledge-based society by developing distinctive, universally accessible services which should function as a benchmark for quality and act as trusted guides in an increasingly diversified and fragmented digital media environment, and by helping all European citizens to acquire media competence. Public service broadcasters must be able to adapt to and anticipate new ways for consumers and citizens to access and use content of high quality and value.

(5) Public service broadcasting as a medium for democratic debate

Public service broadcasters can help achieve democratic, cultural and social priorities which are central to the future European Constitution by, *inter alia*, facilitating access for all European citizens to a comprehensive range of content for all age groups, providing reliable quality information, supporting active citizenship and enhancing participation in democratic life.

(6) New media services in the light of the Amsterdam Protocol

The Amsterdam Protocol recognizes the competence of Member States to define the public service remit according to the democratic, cultural and social needs of their respective societies and to provide for adequate funding in line with EU competition law. The Amsterdam Protocol thus encompasses the competence to include new media services in the remit so that public service broadcasters can offer quality content programmes and services and respond adequately to the changing media environment and needs of the public.

Introduct

“ The system of public broadcasting in the Member States [of the European Union] is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. ”

So reads the first paragraph of the Protocol on the system of public broadcasting in the Member States, which was adopted in Amsterdam on 2 October 1997 and became an integral part of the EC Treaty.

Since its adoption, the Amsterdam Protocol has lost none of its relevance. On the contrary, recent developments – such as the deepening of European integration, enlargement, globalization, technological changes and the emergence of the information society – have confirmed, and given additional meaning to, its provisions. The rapid development of communications technology has confirmed the importance of public service broadcasters as *the* providers of diverse quality content for European citizens. It is therefore most welcome that the Intergovernmental Conference decided to annex the entire Protocol to the new European Constitution due to be signed later this year.

The Protocol leaves it to the Member States to organize public service broadcasting, define its remit and provide for its funding. This has allowed a certain variety in the national broadcasting systems throughout Europe to continue and to develop. In practice, Member States have all opted for dual systems,

unctionion

in which public service and private broadcasters co-exist. And although it is for the Member States alone to define the remit of public service broadcasters, there are numerous strong links between the broadcasting remits defined at the national or regional levels and the objectives and values of the European Union, which are also central to the future European Constitution. Among the common priorities are democracy, freedom of expression, pluralism, cultural diversity, social and territorial cohesion, and the fight against social exclusion and discrimination.

Dual systems, featuring private and public service broadcasters flourishing alongside each other, are among Europe's greatest cultural, social and economic achievements. There is a broad consensus that these systems need to be cherished and that the balance between the two parts should be preserved. This means that public service broadcasting must not be restricted to niche markets.

Public service broadcasting is the basic pillar of the dual systems and constitutes – as do other public services – an integral part of the European model of society, as noted in the Commission's recent White Paper on services of general interest. At the same time, public service

broadcasting occupies a unique position among these services. Its specificity is recognized by the Amsterdam Protocol.

The present Amsterdam Conference provides the EBU with an ideal opportunity to highlight the contribution of public service broadcasters to the emergence of the information and knowledge-based society, and to demonstrate their determination to stride forward in the 21st century by developing further new services and applying new technology for the benefit of all citizens.

In the five chapters that follow we examine in more detail:

- (1) the specific role of public service broadcasting, particularly in the light of the Lisbon strategy and the objective of bridging the digital divide;
- (2) the vitality of the dual public-private broadcasting systems in Europe;
- (3) the compatibility of the funding systems with competition rules;
- (4) the commitment of public service broadcasters to providing quality content;

- (5) action by public service broadcasters with respect to new services and new technology.



The Lisbon strategy and the specific role of public service broadcasting

The specific role of public service broadcasters as recognized and encouraged by the European institutions also supports the European Union's Lisbon strategy.

At its March 2000 meeting in Lisbon the European Council adopted a new strategy for the Union. The objectives fixed were the creation of the most competitive economy and the development of employment and social cohesion through an economy based on knowledge. In Barcelona in March 2002 the Council emphasized that digital television would be playing a key role in providing widespread access to interactive services which, in turn, would offer access to the information and knowledge-based society.

Moreover, the future European Constitution defines values and lays down goals such as democracy, cultural diversity, pluralism, social and territorial cohesion, the prevention of social exclusion and discrimination, and the promotion of solidarity.

Public service broadcasting plays, and will continue to play in the years ahead, a specific, key role in achieving the European Union's objectives in the Lisbon strategy and the Constitution.

This specific role has been dealt with in numerous European texts, within the European Union as well as the Council of Europe.

In 1994 the Council of Europe set out the major principles of public service broadcasters' mission.

The major principles of public service broadcasters' mission are:

- to provide a reference point for all members of the public and a factor for social cohesion and integration of all individuals, groups and communities;
- to provide a forum for discussion in which as broad a spectrum as possible of views and opinions can be expressed;
- to provide a programme for all with the development of pluralistic, innovative and varied programming with high ethical and quality standards as well as impartial and independent news, information and comment;
- to contribute to a greater appreciation and dissemination of the diversity of national and European cultural heritage;
- to provide original productions (especially feature films, drama and other creative works);
- to reflect the different philosophical ideas and religious beliefs in society, with the aim of strengthening mutual understanding and tolerance;
- to extend choice by offering programme services which are not normally provided by private broadcasters;
- to be independent from political and economic interference and directly accountable to the public.

Moreover, public service broadcasters should be able to exploit new technologies necessary for the fulfilment of their missions.

Council of Europe, 4th European Ministerial Conference on Mass Media Policy, Prague, 7–8 December 1994, Resolution No. 1: The Future of Public Service Broadcasting.

These principles have been largely implemented, and it may be noted that public service broadcasting obligations include universal coverage, restricted advertising and, above all, programming obligations – all of which derive from nationally determined remits. Although these remits differ, research comparing mission statements has found the following common characteristics:

- a service to all parts of society on equal terms;
- a broad range of genres;
- diversity in programming;
- a striving for quality;
- provision of education, promotion of national and regional cultures, as well as support for democratic debate and decision-making.

To ensure that these “traditional” missions continue to contribute to the Lisbon strategy, it is vital for new radio and television technologies to be used to ensure the widest possible access to a broad range of quality content for all, as well as to underpin pluralism and freedom of information and expression, the growth and diversity of creative industries across Europe and the worldwide com-

petitiveness of such industries. Acting both as major producers and providers of European content and as driving-forces for digital switch-over, public service broadcasters are a key asset in bridging the digital divide, i.e. bringing the benefits of the information society to all. Through their traditional activities they also contribute to life-long learning and the acquisition of new media skills.

Digital (interactive) television and radio have been identified as a means to bridge the digital divide and thus to contribute to social cohesion and inclusion. For example, eEurope 2002 requests Member States “to facilitate the introduction of digital television services with Internet capabilities and promote interoperability”.¹ eEurope 2005 also highlights the importance of multi-platform access to the Internet, “i.e. the possibility to connect the Internet via other means than the PC, such as digital TV and 3G”. This is seen as “crucial to ensuring the inclusion of all citizens”.² The Lisbon strategy advocating social cohesion as part of the knowledge-based economy set the agenda for this approach when it declared that “every citizen must be equipped with the skills needed to live and work in this new information society. Different means must prevent info-exclusion.”³ When assessing the progress of the

Lisbon strategy the European Council of Barcelona (March 2002) called upon the Commission and the Member States “to foster the use of open platforms to provide freedom of choice to citizens for access to applications and services of the information society, notably through digital television, 3G mobile and other platforms that technological convergence may provide in the future”.

The important role that public service broadcasters play in the information and knowledge-based society by developing new services and technologies has been recognized by all the European institutions on numerous occasions.

The most recent example from the European Parliament is a Resolution on Freedom of expression and information in April 2004. Therein the European Parliament:

- “notes that to promote cultural diversity in the digital age, it is important that public service broadcasting content reaches audiences through as many distribution networks and systems as possible.”
- “stresses therefore that the concept of public service broadcasting is

evolving in the converging information society; in addition to traditional television and radio broadcasting the development of new media services is becoming increasingly important in order to fulfil their remit to provide pluralistic content.”⁴

The most recent example from the Council of Europe is the Recommendation of its Parliamentary Assembly, adopted in January 2004, which calls on the governments of Member States to:

- *“reaffirm their commitment to maintaining a strong and vibrant independent public broadcasting service whilst adapting it to the requirements of the digital age;”*
- *“define an appropriate legal, institutional and financial framework for the functioning of public service broadcasting as well as its adaptation and modernisation to suit the needs of the audience and the requirements of the digital era.”⁵*

“Public service broadcasting has an important role in bringing to the public the benefits of the new audiovisual and information services and the new technologies.”

“The ability of the public service broadcasting to offer quality programming and services to the public must be maintained and enhanced, including the development and diversification of activities in the digital age.”()*

*“The Council stresses the importance of public broadcasting and encourages it to continue making its significant contribution to promoting the audiovisual sector, amongst other things by taking an active part in the development of new digital services which afford all citizens easier access to the information society.”(**)*

*“The public service remit might include certain services that are not ‘programmes’ in the traditional sense, such as on-line information services, to the extent that while taking into account the development and diversification of activities in the digital age they are addressing the same democratic, social and cultural needs of the society in question.”(***)*

(*) Council Resolution concerning public service broadcasting, 25 January 1999.

(**) Council Resolution on the development of the audiovisual sector, 21 January 2002.

(***) Communication on the application of State aid rules to public service broadcasting, 15 November 2001.



The European model of dual public-private broadcasting

The co-existence of public service broadcasters and private broadcasters is economically viable.

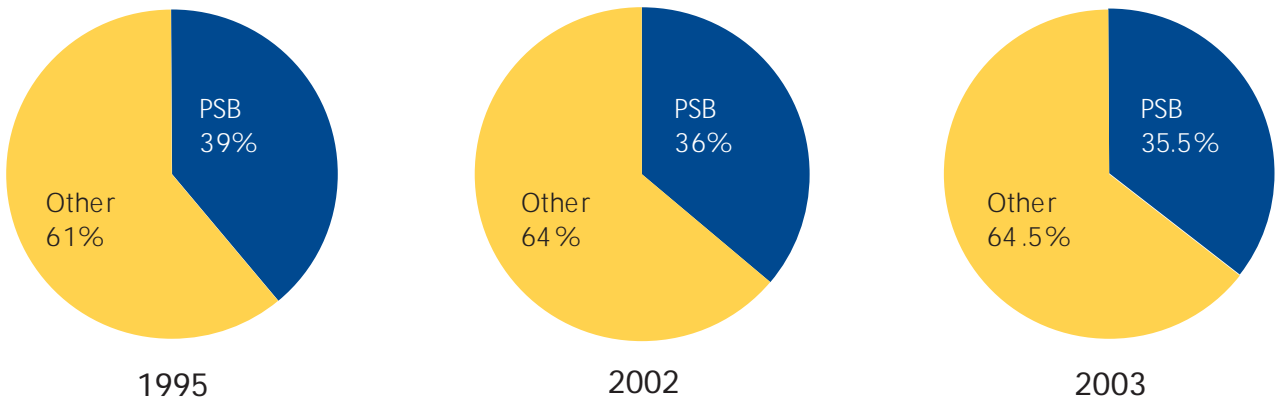
Europe is straightforward. Public service broadcasters have obligations and restrictions that can be translated into economic costs. Public funding, including the licence fee as the primary source, is intended to balance these costs and obligations, which in the end provide a necessary social benefit. In addition to public funding, individual Member States determine to what degree, if any, advertising is permitted, and in the majority of countries such a mixed system has been deemed to be the most appropriate. In the final analysis, a working balance has been struck between the public and private sectors, providing each with an important share of the market.

By creating an environment where public and private broadcasters can co-exist and thrive, the European broadcasting model has supported both sectors, thus fostering diversity and media pluralism. To be economically viable this co-existence depends on mechanisms which provide public service broadcasters with fair compensation for the fulfilment of their public service obligations.

The financial mechanism underpinning public service broadcasting in

Owing to the development of the private sector the audience share of European public service television has dropped from roughly half to less than a third since the early 1990s. Although a further decline would seem inevitable, because of the continuing proliferation of commercial channels, there has been considerable stabilization in the more recent past: the audience share has dropped only 0.5%, from 36% in 2002 to 35.5% in 2003 for public service broadcasters in the EU-15. With the new Member States included, the average audience was 32% in both 2002 and 2003.

Public service broadcasters' shares in the EU: 1995–2003 (all homes)



Source: GEAR/Médiamétrie

Public service broadcasters have continued to achieve a high audience reach, thus serving all elements of society in accordance with their remits; audience reach has remained relatively stable and has even increased in several markets despite some decline in audience share.

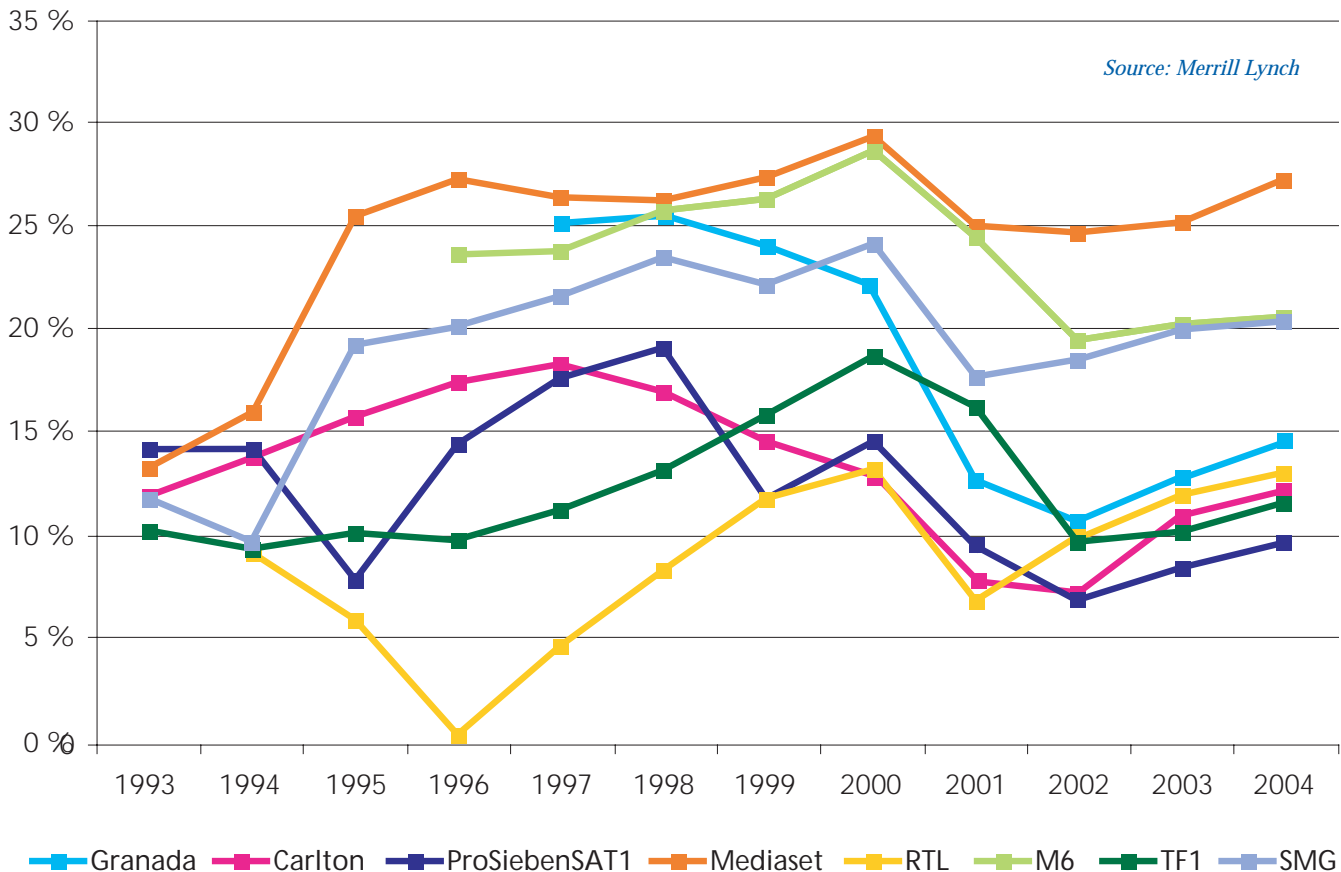
Compensation for public service broadcasting obligations through the licence fee (the most important source of public funding) is a unique funding mechanism.

Beyond providing the economic compensation for public service obligations,

public funding also helps to ensure financial viability, stable programming and long-range planning.

Over the past decade private channels have maintained double-digit operating profit margins, and this trend is likely to continue.

Margin trends of European private broadcasters: 1993–2004 (forecast)



In 2001 Europe experienced, arguably (depending on the country), the worst advertising recession in the history of television. Yet even during this time private broadcasters maintained healthy operating profits.

Operating profit margins – 2001

OP Margin (%)	2001
Telecinco	c.30.0
Mediaset	25.0
M6	24.4
TF1 Broadcasting	24.0
Antena 3	23.0
SMG	17.6
TF1 Group	16.2
Granada	12.5
ProSiebenSAT1	9.5
Carlton	7.7
RTL Group	6.7

Source: Merrill Lynch estimates

Moreover, private broadcasters enjoy far greater flexibility in exploiting opportunities for revenue diversification. Many have succeeded in increasing income and reducing their susceptibility to cyclical advertising markets.

3

Funding and competition law

The funding of public service broadcasters respects European competition law, and not least concerning the provision of new services.

In recent years legal principles for applying State aid rules to the funding of public service broadcasting have been established in the European Union, based on the 1997 Amsterdam Protocol, the 1999 Council Resolution on public service broadcasting⁶ and the 2001 Commission Communication on public service broadcasting and State aid.⁷ These specific principles, complemented by a series of decisions of the European Court of Justice regarding services of general economic interest,⁸ ultimately allow the Commission to deal properly with complaints in this area.

Within these principles it is for the Member States to define and organize public service broadcasting. Given the specific role and nature of broad-

casting, the public service mandate can, as recognized by the Commission in its recent decisions on public service broadcasting, encompass a wide range of programming and services. In other words, the public service remit should not be limited to programmes and services which commercial operators do not provide; it has to cover the whole range of programming, so that the entire public is reached.

In accordance with the Resolution of the Council of Europe No. R (96) on the guarantee of the independence of public service broadcasting, public service broadcasting organizations need to be able to exploit new communications technology and to develop new services based on such

technology in order to fulfil in an independent manner their missions as defined by law. This has also been reaffirmed by the 1999 Council Resolution concerning public service broadcasting (see chapter 1). Consequently, the 2001 Commission Communication on public service broadcasting and State aid recognizes that, in principle, public service broadcasters' publicly-funded new media services fall within the scope of the Amsterdam Protocol and are in compliance with the EU competition rules.

The current funding systems of public service broadcasters in Europe are characterized by, on the one hand, a strong, indispensable element of public funding and, on the other, a plurality of sources. As recently repeated by the Commission in its White Paper on services of general interest,⁹ the Member States have the freedom to choose the system which is the best suited to evolving national circumstances.

Consequently, in implementing these principles the Commission has adopted ten decisions on the financing of public service broadcasting, all but one of which confirm that there has been no evidence of over-compensation of public service broadcasting.

These decisions confirmed that:

- it is for the Member States to define the public service remit and to organize public service broadcasting and its funding;
- Member States have wide discretion in defining the scope of the public service broadcasting remit;

- there has been no over-compensation of public service costs. On the contrary, in some cases the Commission has acknowledged the under-financing of public service broadcasting;
- there has been no adverse side-effect by public service funding such as anti-competitive practices by public service broadcasters in the advertising market.

The sole exception concerns the Danish public service broadcaster TV2, for which the Commission found that there was over-compensation within an eight-year period (1995–2002). However, it did not result in any distortion of the market, as the funds had been set aside for a later date to finance structural adjustments deemed necessary after the Government's planned privatization of TV2/Danmark.

Commission cases on the funding of public service broadcasting

Case	Date of decision	Result
ARD/ZDF Phoenix/ Kinderkanal (NN 70/1998)	24 February 1999	Licence fee funding of dedicated television channels complies with Article 86(2) of the Treaty.
BBC/News 24 (NN 88/1998)	14 December 1999	Licence fee funding of the news channel complies with Article 86(2) of the Treaty.
ZDF Medienpark (NN 2/2002)	3 April 2002	Commercial investment in entertainment park does not constitute State aid.
BBC licence fee (NN 631/2001)	22 May 2002	Licence fee funding of nine digital television channels does not constitute State aid.
RAI SpA (NN 140/1998)	15 October 2003	Measures in favour of RAI for 1992–1995 comply with Article 86(2) of the Treaty. There has been no distortion of the advertising market.
RTP (C(85/2001))	15 October 2003 (*)	Measures in favour of RTP for 1992–1998 comply with Article 86(2) of the Treaty. There has been no distortion of the advertising market.
RTVE (NN 166/1995)	Letter of 15 October 2003	Funding in favour of RTVE constitutes existing State aid. There has been no evidence of market distortion.
France 2 and France 3 (C(2003)4497fin)	10 December 2003 (*)	Measures in favour of France 2 and France 3 for 1988–1994 comply with Article 86(2) of the Treaty. There has been no distortion of the advertising market.
BBC Digital Curriculum (NN 37/2003)	14 December 2003	Licence fee funding of on-line service on teaching and learning complies with Article 86(2) of the Treaty.
TV2/Danmark (NN 22/2002)	19 May 2004 (*)	Over-compensation occurred, but there has been no market distortion.

(*) *Appeals have been filed.*

4

Production of quality domestic content

In the new information society public service broadcasters are fulfilling their role by producing quality content which serves as a benchmark for the entire sector.

Through the missions entrusted to it by the Member States and on the basis of the funding, largely public, which is accorded to it, public service broadcasting has the ability and the will to remain the leader for quality programming.

Public service broadcasters will continue to:

- ensure that European citizens have access to a wide range of programmes of the highest quality;
- contribute to maintaining cultural diversity and pluralism of information;

- contribute to the democratic process;
- participate in life-long education;
- reflect European values, cultures and traditions;
- offer a platform to minorities and majorities;
- make a key contribution to the funding of the culture industry (cinema, television, music productions, etc.).

Public service broadcasters are fulfilling their role by producing

quality content which sets a benchmark for the entire industry. The production of quality domestic content can be demonstrated by the following examples on programming output and on public service broadcasters' investment in domestic programming.

Anecdotal information and subjective judgements on the quality of individual programmes are of limited analytical value: one can always find a bad show transmitted by a public service broadcaster and a good programme shown by a private broadcaster.

In the absence of objective quality measures, a comparison of output by genre can help reveal the marked differences between public and private broadcasters. Most television programmes classified as factual, information, education, culture, etc. can be considered as high-social-value genres. In mixed funding systems, like France and Germany, the percentage of output comprising these genres by public service broadcasters is more than double that of private competitors; in pure licence-fee funded markets like the UK, where this output is particularly high, owing to the public service obligations of some of the private channels, their combined output of high-social-value

genres is higher than elsewhere; and, for example, in Spain, where the national public service broadcaster is more dependent on advertising, the output of these genres is 60% higher for the public service broadcasting channels.

In the EU-15, high-social-value programming in television (genres like education, factual, arts, news and information) represents on average 51% of the total broadcast hours for the main television channels of public service broadcasters. If thematic channels were added, the figure would rise significantly. In public service radio, more than 100 music and culture channels reach a potential audience of 300 million with high-quality programming making a particular contribution to cultural diversity.

It is also important to note that public service broadcasters have generated direct and substantial investment in cultural and creative industries across the Member States. This investment is good value for money. Indeed, public service broadcasting is the

backbone of film and television production, script-writing, music composition and orchestral performances, sound productions such as audio and radio plays, and other cultural endeavours throughout Europe. In Germany, for example, the public service broadcasters constituting ARD finance about 100 new classical music productions each year. In the United Kingdom, the BBC accounts for 40% of all spending on the production of domestic content.

Another measurable parameter of interest is commitment to domestic (i.e. local, national and European) programming.

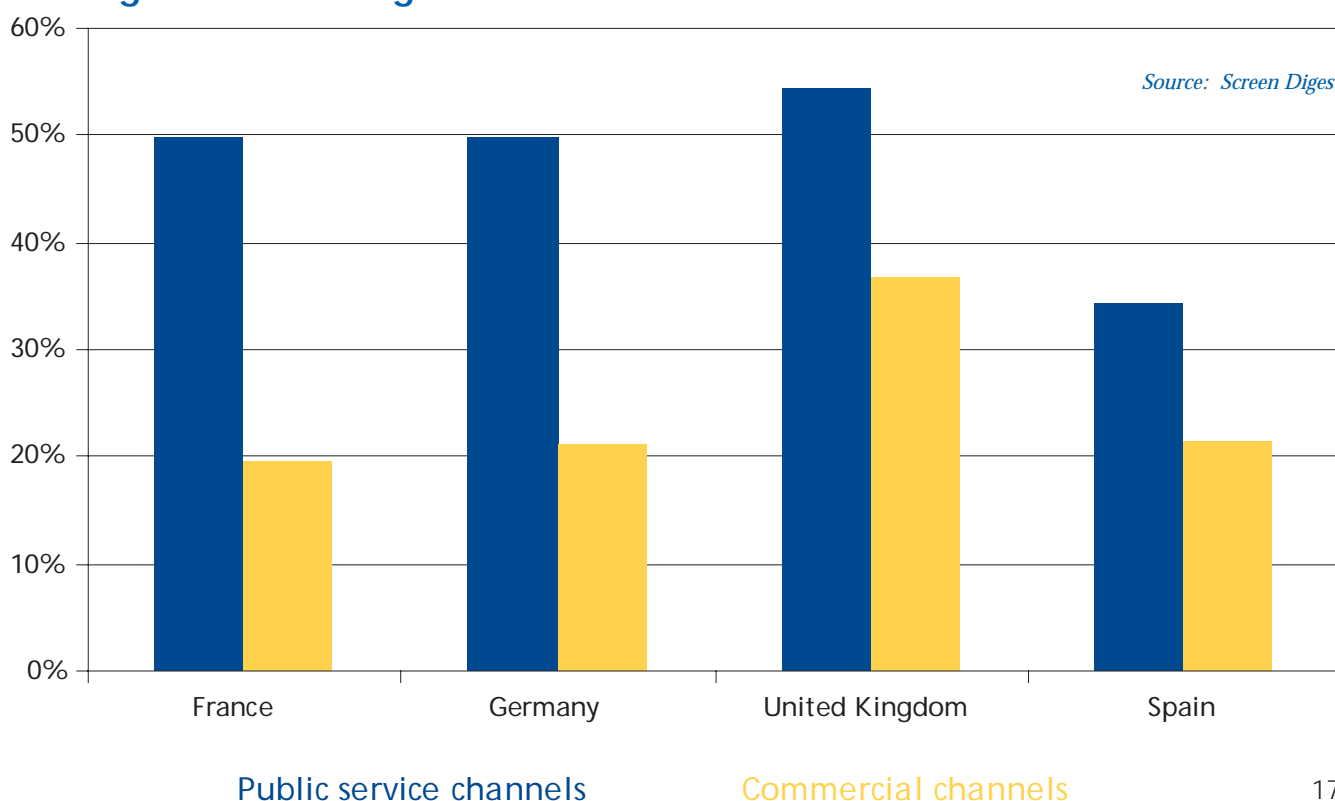
The 2004 Communication from the European Commission on the implementation of the quota system of the Television without Frontiers Directive¹⁰ has once again confirmed that the proportion of European productions by public service channels is consistently higher than that of private channels. (See table with figures for 2002 reported by the principal broadcasters in the largest

markets.) The data provided in the Annex to the Communication also show that public service broadcasters have consistently surpassed the quota for European works produced by independent producers.

% European television production of top broadcasters in the largest five markets, 2002

Germany	
ARD	88.1
ZDF	87.2
Sat1	72.2
RTL	72.0
Spain	
TVE1	75.4
TVE2	58.5
Tele5	57.3
Antena 3	55.6
France	
France 2	79.8
France 3	74.6
TF1	65.1
M6	63.6

Comparison of overall television output of high-social-value genres: 2002



Italy	
RAI 1	75.5
RAI 3	64.7
RAI 2	61.0
Canale 5	59.7
Rete 4	58.1
Italia 1	45.3
United Kingdom	
BBC1	81.0
BBC2	81.0
ITV	80.0
Channel 4	72.0
ITV2	59.0
Channel 5	55.0

Source: European Commission

Over the past few years, public service broadcasters have constantly increased their total broadcast output and depended less on foreign acquired content. Own production increased in percentage terms as well as in absolute value against acquired programmes, and still remains high. Figures for the EU-25 are similar. This constitutes a high stimulus for national production.

In many countries, without a public service broadcasting commitment to own production national production would be virtually non-existent.

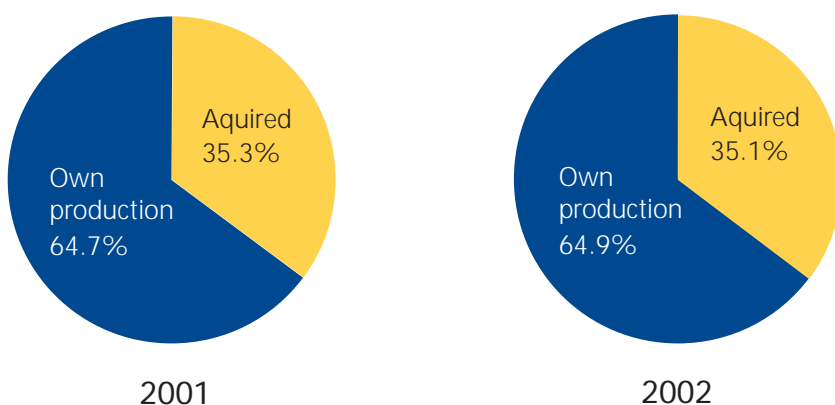
This high level of non-acquired programming creates strong levels of investment in domestic production and supports national audiovisual industries across Europe.

In addition, public service broadcasters continue to set high-quality benchmarks in their countries. The influence of higher-quality public service broadcasting output has an effect on the overall television marketplace to the benefit of all viewers. In a 1999 study McKinsey & Co. explored the link between the distinctiveness of public service broadcasters and the distinctiveness of entire national markets. The study concluded that *“public service broadcasters have maintained their influence on the overall development of television by inducing their commercial competitors to offer equally distinctive programmes”*.

The study went on to note that a well-funded public service broadcaster is critical in achieving this effect: *“If the public service broadcaster is healthy . . . it can be a strong shaper of the broadcasting ecology. If the public service broadcaster is weak, the commercial players will tend to dominate the ecology, to the benefit of their shareholders, but often to the detriment of the overall range and quality of programming.”*

It should also be noted that public service radio in Europe is overwhelmingly home-produced, plays a central role in informing citizens, involves listeners in the lives of their communities and is a mainstay of varied and thriving musical culture. Indeed, 70% of EBU Members’ radio stations are local or regional in nature. Radio listening is on the increase throughout Europe, and on most of the continent it rivals television as the major information and entertainment medium. Europeans listen to the radio for an average of about three hours per day.

Public television broadcasters' shares of own production vs. acquired* in the EU: 2001–2002



Source: EBU-ISN

* Acquired includes purchased and pre-purchased, defined as follows. Purchased: made by an external service and the broadcaster then buys the rights to broadcast it (e.g. feature films). Pre-purchased: the rights are bought before the production is made. Exchange: a production exchanged either live, deferred or in material form between broadcasting organizations (including Eurovision, etc.). Re-versioned: an acquired programme which has been altered in some way to make it more suitable for the local market (includes dubbing, editing, subtitling, etc.).

5 Public service broadcasters and new media

Public service broadcasters fulfil their role by using new technology and by developing new services which are accessible to all.

We live in a society of continuous technological change, and media technology is no exception. Societies need to improve the quality of life for their citizens by exploiting technical developments to use new tools and develop new content wisely and well.

Broadcasting in general is in the middle of a sea change from analogue to digital technology which will allow broadcasters to choose the picture and/or sound quality that they broadcast, and to offer more choice. But digital does not just mean more of what already exists. It brings the opportunity and the need to create new forms of communication and media delivery as the age of new media begins.

Public service broadcasting is one of the pillars on which the information society is being built. A particular

strength of public service broadcasters is their capacity to make use of new media technology – and to make its benefits quickly available to the public. Public service broadcasters perform a key role, within the limits of their funds and regulation, creating synergies with civil society and industry for the public good.

New media tools are essentially new ways for media content to be conveyed to – and accessed by – the public, which is entitled to expect its public service broadcaster to adjust and adapt the way it delivers media. Where the public goes, the public service broadcaster must follow.

Convergence is the way different means of delivering media overlap, in appearance and content, to an ever greater extent as the years pass.

Different media are able to work alone or in combination with “siblings”. The members of the media family can work together and, like any family, sometimes against each other. Public service broadcasters show by example what the family and its members can do on their own, and what can be achieved by synergy.

The core objectives of public service broadcasting do not, and will not, change. Their job is to provide key media services in the public interest. What must change is the mix of mechanisms for delivering media. Furthermore, the exploitation of new media and convergence happens more quickly and more effectively if public service broadcasters give a lead.

Since their inception, public service broadcasters have been a central pillar offering a steadying and supportive hand to the development of new technology for the media in Europe. To catalogue this in full would require

a large volume, but some examples may be noted:

- the teletext system used for decades across Europe and throughout the world to bring instant information to the public was developed by Europe’s public service broadcasters;
- where funds and regulation allow, public service broadcasters can be “pathfinders” for culturally important new media. For example, wherever possible public service broadcasters have gone where no private radio company would or could tread. Though a bumpy ride, DAB and digital radio will succeed in Europe. Public service broadcasters know that this is in the long-term public interest – and it is their job. Part of their role is to help the market economy work better;
- public service broadcasters responded to the challenge of

digital broadcasting by fostering and nurturing the process of reaching a consensus on new standards. The DVB project, the world’s most successful digital broadcasting standards venture, is managed by staff of the EBU. It has a proven record of success, impartiality and fairness across all sectors of European (and world) industry. The DVB project continues today to look at the frontiers of media delivery and at how different means, broadcast and wired, can be made to work together;

- European public service broadcasters have a policy of supporting “open standards” to encourage competition and allow unrestricted access by viewers and listeners to all broadcasters. Their policy is to act in the interests of their stakeholders, i.e. the general public. This is natural, given that they have a public service mission.

Different delivery systems for PSB

Linear

Traditional radio and television

Non-linear

Interactive and enhanced television and radio

Transmission via narrowband Internet

Internet connections with the quality of an electronic magazine

Transmission via broadband Internet

Internet connections with the capacity to include good quality continuous video

Transmission to handhelds

Using digital phone or broadcasting connections to reach handheld receivers

They are able to deliver ever more complex media – video, audio, multimedia, interactivity, with a range of different standards, e.g. from small screen to high-definition (HD) television.

Snapshot of some PSBs on digital terrestrial television

Countries	PSB analogue terrestrial channels	Extra channels on cable /DTH (*)	PSB channels on DTT					
			No.	Name of TV channels	FTA (**)/pay (***)	Simulc. of terrest. ch.	Simulc. of DTH/ cable	DTT only
Finland	2 (YLE)	3	5	TV1; TV2; YLE 24; YLE Teema; FST	FTA	2	3	
Germany (Berlin)	11 (ZDF+ARD) (***)	10	14	ARD; MDR, NDR; RBB Berlin; RBB Brandenburg; Südwestfernsehen; WDR; ZDF; ZDF Dokukanal; ZDF Infokanal; ARTE; Phoenix; KIKA; 3Sat	FTA	8	6	
Sweden	2 (SVT)	2	4+2 planned	SVT1; SVT2; barnkanalen; SVT 24; 2 channels yet to be developed	FTA	2	2	
United Kingdom	2 (BBC)	6	8	BBC1; BBC2; BBC3; BBC4; CBBC; Cbeebies; BBC News 24; BBC Parliament	FTA	2	6	
Netherlands	3	0	3+2 planned	Nederland 1; Nederland 2; Nederland 3; 1– 2 channels planned	As part of pay package	3	0	
Italy	3 (RAI)	5 FTA + 5 pay channels	8	RAI 1; RAI 2; RAI 3; RAI Sport; RAI News 24; RAI Edu; RAI Doc; RAI Utile	FTA	3	3	2
Spain	2 (TVE)	2 + thematic channels operated by PSB of autonomous region	2 (national) 2 (local)	TVE; La 2 2 local PSB channels for each autonomous region	FTA	2		

(*) DTH – Direct-to-Home, i.e. satellite.

(**) FTA – Free-to-Air.

(***) Germany completed analogue shut-off in Berlin and Brandenburg area in August 2003.

Source: EPRA DTT report, June 2004

Distribution of public national radio channels by platform

Number of public national channels	Terrestrial			Analogue TV		Digital TV			Digital Radio		Internet	
	MW	LW	FM	Satellite	Cable	Terrestrial	Satellite	Cable	DAB	DRM	Streaming	On-demand
Austria	4	1	3		3		3				1	3
Belgium (Fl)	5	1	6		6						6	
Belgium (Fr)	6											
Bulgaria	2	2	1	2							2	1
Czech Republic	4	2	1	3							4	
Denmark	5			4	4	4			14		4	1
Finland	6			3		3			6		2	4
France	6	1	3	6	3		5	5	5		6	6
Germany	2	2	2	2					2		2	
Hungary	3	1		3							3	
Ireland	4	2		4		4	4	1			3	4
Italy	4	4	4	4					3		3	
Lithuania	2	1		2							2	
Netherlands	5	2		4							5	2
Norway	6			4					3		4	
Poland	4		1	4		4		4			4	
Slovenia	3	1		3	1	1					3	
Spain	4	2		4			3				1	
Sweden	5			4		1			3		3	
Switzerland (Ge)	5	2		3					5		5	5
Switzerland (Fr)	4	1		4	4	4		4	4		4	2
Switzerland (It)	3	1		3					3		3	3
UK	10	1	1	4			5	10	10	10	9	9

Source: EBU 2002

For public service broadcasters, the task is to help the whole industry move forward, and to encourage the public to examine challenging and thought-provoking new content.

Public service broadcasters exist to fulfil their remit in the interests of all, and they do not endeavour to drive competitors out of the market. This is their strength, and one of the factors that makes public service broadcasters a vital part of the information society. Their technical staff and knowledge base are used not for commercial ends but to advise on technical strategy and to work with others on common standards.

Public service broadcasters have also been pathfinders in interactive and enhanced television. Digital broad-

casting takes the teletext concept to new heights, and complex multimedia can be available with either digital television or digital radio.

“Drop down” multimedia – text, sophisticated animated graphics, films, stills and a “return channel” – can create a rich experience for viewers or listeners. Enhanced broadcasting can be used for both entertainment and serious content. Eventually, a broadcast will be a combined media experience, with moving pictures or sounds and multimedia connected seamlessly. It is public service broadcasters today who are leading the way, experimenting with new content which will challenge and lead the viewers and listeners to enjoy more, to understand more and to be more involved.

Public service broadcasters have also recognized the need to deliver content over the Internet and the web, and all the EBU's radio and television broadcasters have a website. Their on-line services provide important basic information in an attractive form and thus make it possible to single out difficult themes from current affairs reporting and convert them into comprehensible topics. Here the selection criterion is not mass appeal but relevance. Public service broadcasting presents these themes in multimedia and interactive form and makes complex factual material transparent. Internet users can familiarize themselves with a subject and – depending on their interest – explore it further. This is a service that would not exist in such a way in Europe without the commitment of

public service broadcasters to on-line services. The Internet offer can, in particular, address new and younger target groups and interest them in conventional programmes. The web has long been a natural and often essential ingredient of daily media use, and especially in the 14–29 age-group.

There is no doubt that the web expands spectacularly the boundaries of freedom of expression and knowledge. The availability of public service broadcasters' websites and of open access by the world at large to the web will combine to create the most well-informed and questioning generations in the history of the world. However, the more websites that become available, the more important it is to know who, and how trustworthy, the creators of the sites are. It must be ensured that we can






read, hear and see all opinions, views, and insights. At the same time, society is entitled to websites which are founded on principles of truth and fairness, and which society knows are not influenced by governments or by commercial pressures. As part of this process, public service broadcasters have become essential "islands of trust" in a huge sea of information. In accordance with their programme remit they offer reliable information that is free from economic and political influence, and EBU Members' websites are among the most popular and trusted in Europe, and the world.

One of the most exciting new tools becoming available today is "broadband Internet", which allows content-providers to offer the public individual programmes, programme

channels or new kinds of broadband interactive content. The possibilities are so numerous that only the surface has been scratched so far. Coupled with this, we are at the dawn of the age of high-definition (HD) television, and it may be wondered what impact this will have on our perception of the world and on the film industry. There is much more to come in new media: broadcasting to handheld receivers, cooperative content, cooperative networks and virtual reality broadcasting.

Although it is not possible to see beyond the horizon, much will be there. Public service broadcasters have proved themselves able to help society and the market economy to achieve the public good. They must be allowed and, indeed, encouraged to continue to do so.

Convergence and new media: some examples

Public service task	Television and radio		Extending with new media
Inform public of events of significance to their lives	Broadcast extra news programmes		<ul style="list-style-type: none"> • Alert services on mobile phones (text, image) • Providing extra information (on-demand)
Encourage participation in public debate (discussion forums)	Invite listeners to take part in television and radio programmes		<ul style="list-style-type: none"> • SMS services as an integral part of television programmes (e.g. voting and comments) • Provide forums and "communities" on websites
Provide value for money – towards a world of "anything, anytime, anywhere"	Repeat radio and television programmes		<ul style="list-style-type: none"> • EPG and metadata to make time-shifting easier on PVRs • Provide archive material on-demand via the Internet • Streaming radio (and later television) • Television and radio on mobile phones, e.g. news and sport
Provide high-quality entertainment	Entertainment shows		<ul style="list-style-type: none"> • On-line games on the web • Interaction with entertainment shows
Educate	Educational broadcasts		<ul style="list-style-type: none"> • Offer interactive applications (with individual options)

Conclusion

To enable public service broadcasting to play its key role in European society in the 21st century, the EBU calls on the Member States, which are primarily competent in this area, and on the European Union, within the areas for which it has responsibility, to:

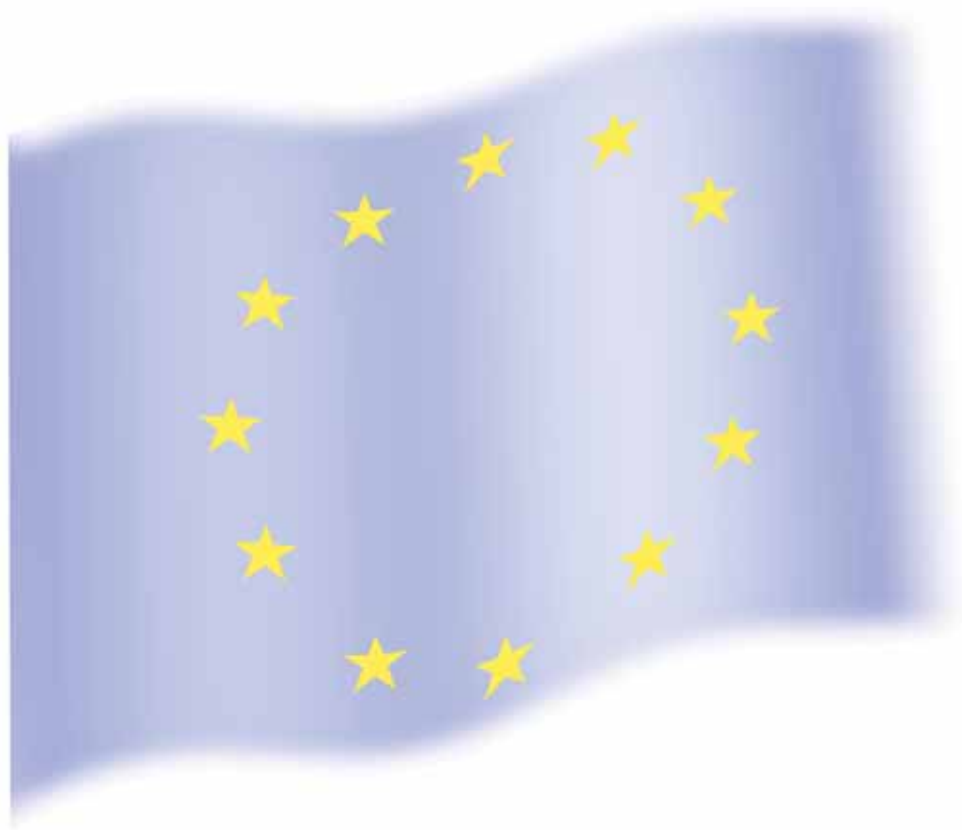
- ensure that public service broadcasting services remain accessible to everyone on all communications networks and platforms;
- in particular, ensure that the emergence of digital gateways does not hinder universal access to a common, shared sphere of media services;
- enable public service broadcasters to develop high-quality programming, in line with Europe's rich multilingual and cultural heritage, as well as new technologies and services;
- ensure that the remit of public broadcasting, as referred to in the Amsterdam Protocol, is dynamic and evolutionary, particularly in view of new digital platforms which provide additional means for distributing electronic media content;
- provide an adequate and secure legal, organizational and financial framework so that public service broadcasters can:
 - present a balanced view of society in their programming, reflecting the various interests and view-points at the local, national and European levels;
 - contribute to media plurality and diversity within their area of distribution;
 - cater for all sections of society and all age groups, and help all citizens to acquire media competence;
 - fulfil their remit in a transparent, accountable and cost-effective way.

Notes

- 1 *COM(2001) 140: eEurope 2002: Impact and Priorities, page 12.*
- 2 *COM(2002) 263: eEurope 2005: An information society for all, page 3.*
- 3 *Lisbon Council Conclusions, March 2000.*
- 4 *European Parliament Resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information, 22 April 2004.*
- 5 *Council of Europe, Parliamentary Assembly, Recommendation 1641, 27 January 2004.*
- 6 *Council Resolution of 25 January 1999 concerning public service broadcasting (1999/C 30/01).*
- 7 *COM(2001) 320.*
- 8 *E.g. Case C-379/98, Judgment of 13 March 2001, Preussen Elektra [2001] ECR I-2099; Case C53/00, Judgment of 22 November 2001, Ferring [2001] ECR I-9067; Case C-280/00, Judgment of 24 July 2003, Altmark Trans and Regierungspräsidium Magdeburg [2003] ECR I-7747.*
- 9 *COM(2004) 374.*
- 10 *Sixth Communication of 28 July 2004 (COM(2004) 524 final).*

Focus on broadcasting policy issues in the EU

May 2004



Focus on broadcasting policy issues in the EU

A new Europe is emerging in 2004, and policy-makers will have to deal with many issues which are relevant to broadcasting activities.

The EBU would like to introduce itself and set out its objectives regarding European audiovisual policy.

The EBU – The largest association of national broadcasters in the world

Under its Statutes, the EBU *“contributes to the reinforcement of the identity of the peoples of active Members' states, in accordance with human rights and in particular freedom of conscience, opinion and expression, while safeguarding fundamental values such as tolerance and solidarity”*.

The EBU was founded in 1950 by the pioneers of radio and television in Western Europe. When, in 1992, it merged with OIRT – its counterpart in Eastern Europe – cooperation with broadcasters in that region had already existed for many years. The EBU supports such Members' efforts to transform themselves into genuine public service broadcasters.

The EBU is the world's largest association of national broadcasters,

with 71 Members operating in 52 countries, including all the public service broadcasters of the existing and new Member States of the EU. It also has active Members in North Africa and the Middle East, and 46 associate Members in 29 countries in other parts of the world.

The EBU operates the Eurovision and Euroradio networks, organizes programme exchanges, promotes and coordinates coproductions, and provides whatever operational, technical, legal and strategic services its Members need. The EBU Brussels Office represents the interests of public service broadcasters vis-à-vis the European institutions.

The permanent Eurovision network (up to 50 digital channels on satellite) carries daily exchanges of programmes and news features. Eurovision is the world's largest television relay network, and one of the most reliable communications networks of its kind. Whether the content is news, sport or special events, Eurovision is the strongest link in the distribution chain.

Eurovision in figures

- More than 100,000 relays in 2002.
- 15,000 hours of sporting and cultural events relayed each year.
- 30,000 individual items of news exchanged.
- 50 channels on five satellites.
- 70 satellite links worldwide.
- More than 700 digital decoders in service.
- More than 300 television channels equipped for direct reception.

As regards television, the EBU facilitates cooperation in many fields, such as the coproduction of animated cartoon series, educational programmes and documentaries, as well as awarding prizes for script writers and young musicians and dancers and, of course, running the time-honoured Eurovision Song Contest.

Cooperation in the field of radio also has many different facets: music, news, sport, programmes for young people, and local and regional radio broadcasting. Each year, the Euroradio network is responsible for relaying 2,500 concerts and operas, and the Radio Department coordinates the transmission of 440 sporting fixtures and 120 major news events.

Technical cooperation includes research and development in new broadcasting media. The Technical Department has led or contributed to the development of many new radio and television systems, and particularly digital audio broadcasting (DAB), digital video broadcasting (DVB), high-definition television (HDTV) and the radio data system (RDS).

Cooperation among legal experts, with support from public affairs experts and the EBU's Strategic Information Service, enables the EBU to keep a close watch on the development of European legislation and the work of international organizations active in areas of relevance to broadcasting. The EBU can therefore offer informed opinions and valuable assistance to policy-makers and fulfil its statutory role as a professional interlocutor with European institutions and international organizations.

Public service broadcasting in Europe

The EBU represents the interests of the national broadcasters in general, but is especially concerned with defending public service broadcasters at the European level.

The European audiovisual landscape is characterized by a dual system of public service broadcasting and commercial broadcasting.

Each Member State of the European Union has competence for defining the mission of its public service broadcasting services, taking account of the particular national situation. The aim is to ensure pluralism of information, cultural diversity, universal access to major public events, a healthy democratic debate, and quality entertainment.

Public service broadcasters make a vital contribution to the audiovisual sector:

Production activity of PSBs*

- 5,000 hours of fiction programmes
- 30,000 hours of news
- 25,000 hours of factual and information programmes
- 3,600 hours of children's and youth programmes
- 4,200 hours of educational programmes
- 4,000 hours of documentaries

** Source: EBU data for the year 2001*

As this sector undergoes rapid change with the advent of the information society, PSBs are – thanks to investment in new technology – contributing to the emergence of new digital services and are providing some of the most frequently visited websites.

European policy

Public service broadcasters fall within the Member States' field of competence. The application of European law to their activities is therefore a very complex matter and has to respect the specificity of the sector, which is recognized by, in particular, the Amsterdam Protocol on the system of public broadcasting in the Member States (Protocol No. 32 to the EC Treaty).

The EBU supports and actively contributes to European policies which aim to:

- o safeguard freedom of expression, the independence and pluralism of the media, and cultural diversity;
- o ensure that everyone has access

to impartial news and information and to major public events, as well as to programme content which is diversified, pluralistic and comprehensive;

- o guarantee that public service broadcasters are funded on a legally secure basis, thereby allowing them to fulfil their public service mission;
- o enable all audience categories to have access to a wide range of programmes and services on all distribution platforms;
- o promote a competitive digital television market, with open, interoperable standards;
- o ensure that consumers and citizens benefit as much as possible from technological progress;
- o guarantee the protection of minors in the new digital environment;
- o ensure balanced protection of copyright and related rights, so as to reconcile the interests of rights-holders, users and the public.

A number of current European issues are concerned, directly or indirectly, with these objectives. They are the subject of specific sheets presented here.

If European citizens are to continue to benefit from the services provided by public service broadcasters, it is vital for Europe and its Member States to retain the freedom to implement ambitious audiovisual policies. In the areas of cultural diversity (UNESCO), trade (WTO) and frequency allocation (ITU), Europe and its Member States must be vigilant to ensure that the European audiovisual model continues to thrive.

Current review of the Television without Frontiers Directive

European audiovisual policy requires clear, coherent regulation so that there is an effective guarantee of such general interests for society as access to information, cultural diversity and the protection of minors.

The Television without Frontiers Directive is the cornerstone of European audiovisual policy and the regulation of audiovisual content. In the new digital environment the key issue is whether a new approach to regulating audiovisual content is necessary. It is a major challenge to adopt a regulatory framework for television broadcasting and new interactive audiovisual services which is as coherent as possible, and a graduated approach may be required.

Technological developments make no change to the general interest objectives which have to be respected by all audiovisual services. The scope of the Directive, or a future instrument which replaces it, should not be limited to removing obstacles to the internal market for audiovisual services but should take clear account of such other general interest objectives as access to information, media pluralism and cultural diversity.

Advertising

The principles of clearly identifying advertising and separating advertising from editorial content, as well as respect for the broadcaster's editorial independence, belong to a set of fundamental principles which, in the public interest, have to be applied to all forms of traditional and new advertising.

Advertising plays a vital role in sustaining free-to-air broadcasting in Europe including – in most countries – public service broadcasting. Broadcasters should continue to be able to use this source of funding, with due respect for the interests of viewers/consumers.

The Directive lays down a set of key qualitative rules which need to be maintained and applied to all new advertising techniques. The introduction of any new form of advertising must respect the interests of viewers/consumers, the editorial independence of the broadcaster and the integrity of the signal broadcast, as well as the integrity of audiovisual works. Consequently, no commercial communication must be inserted at

any level (programme production, transmission or on screen presentation) without the prior consent of the broadcaster, not least to avoid spoiling the viewing comfort of the audience. It is for these reasons that in May 2000 the EBU adopted a Memorandum on virtual advertising, to guarantee that the technique was used in a balanced way which was satisfactory for the viewer and that it was not inserted without the broadcasters' knowledge.

Protection of minors

The principle of the protection of minors is a fundamental one which needs to be extended to all audiovisual services communicated to the public.

The protection of minors should be a priority in European audiovisual policy, especially regarding the development of electronic media, including the Internet. The protection of minors is a principle which has to be respected regardless of the nature of the medium or its form of transmission. It should not be considered only from a purely defensive standpoint (parental control techniques) but should also cover key positive measures such as quality programming for children and

improving media literacy. The idea of common pictograms at the European level, akin to road signs, needs to be examined in greater detail; however, there should be no obligation on broadcasters to insert visual symbols throughout television programmes.

Access to information

Access to information requires that all citizens should be able to enjoy major sports and cultural events on free television and that broadcasters have a right to

present to the public extracts regarding any event of high interest to the national society.

The basic human rights of freedom of expression and information gathering cannot be realized without guaranteeing access to such information. Such access should include the right to be informed of all events which, even if taking place abroad, are of particular interest to society. Consequently, Member States should ensure that virtually all their citizens can view major sports and

cultural events on free television, while for events taking place on their own territory, news access should be available also to broadcasters from other Member States.

For further information see the EBU Contribution of 15 July 2003 on the review of the Television without Frontiers Directive (available at the EBU website www.ebu.ch under "Position Papers").

State of procedure

<i>Television without Frontiers Directive 89/552/EEC</i>	<i>3 October 1989</i>
<i>revised by Directive 97/36/EC</i>	<i>30 June 1997</i>
<i>Council Recommendation on the protection of minors and human dignity</i>	<i>24 September 1998</i>
<i>Communication on the future of European regulatory audiovisual policy</i>	<i>15 December 2003</i>
<i>Commission interpretative communication on television advertising</i>	<i>28 April 2004</i>
<i>Proposal for updating the Council Recommendation of 1998</i>	<i>30 April 2004</i>

Next stages

<i>Experts' groups and independent studies</i>	<i>2004/2005</i>
<i>Revision of the Television without Frontiers Directive</i>	<i>2005?</i>

"Telecommunications Package"

Communications technology needs to allow everyone to have access to varied information and content of high quality. A key requirement is the presence of the programmes and services of public service broadcasters on all significant electronic communications platforms.

Given the technological convergence of the networks, in 2002 the European Union adopted a new regulatory framework for electronic communications, often referred to as the "telecommunications package". The main texts were due to be transposed by Member States into their national law by July 2003.

Overall, this new regulatory framework responds to the concerns of broadcasters by making available to the Member States a whole series of specific regulatory instruments alongside general competition law in order to remove, in particular, obstacles related to the development of digital television and to allow broadcasters to reach the public.

It is important now for the Commission and the Member States to make positive use of the room for manoeuvre provided by the various

Directives so as to guarantee such basic general interest objectives as the free circulation of information, media pluralism, cultural diversity and consumer protection.

Interoperability

Only open interoperable standards will allow consumers to have access to a broad range of content and service and permit a competitive market for receivers.

Currently the digital television market in Europe is dominated by certain operators (particularly pay-TV channels) which, because of different proprietary standards integrated into or linked to digital decoders or receivers, control the distribution platform. In the absence of the application of open and interoperable standards to some key features in the decoders, such as the interface for the conditional access system (CAS), the application programming interface (API) and electronic programme guides (EPG), these operators are able to restrict access by broadcasters, to viewers, and restrict viewers' access to services. Furthermore, it is not possible for an open competitive market in receivers (which would

increase viewers' choice of equipment and drive down consumer equipment prices) to develop.

Given the provisions of the Framework Directive (and in particular Article 18) every effort must be made to bring about, as swiftly as possible, a digital television market which is open and interoperable, in order to prevent new obstacles from arising, to ensure that viewers have access to a broad range of content and services, and to provide viewers with the lowest prices and highest quality for consumer equipment.

For further information see the EBU's comments of April 2004 on the interoperability of digital interactive television services (available at the EBU website www.ebu.ch under "Position Papers").

Must-carry

In the digital environment, must-carry rules will remain a fundamental means of ensuring that consumers have access to certain programme services which are of particular importance to society.

The must-carry rules laid down by Member States place an obligation upon a network operator, generally a cable operator, to convey certain radio and television programmes and services which are of particular importance to society, and which are provided for the benefit of all consumers. Without the adoption of such rules, which are recognized by Article 31 of the Universal Service Directive, certain network operators could abuse their dominant position by giving special treatment to particular programmes and services, thereby unjustifiably restricting consumers' choice.

It is vital for these rules, which ensure freedom of choice and pluralism of

information for viewers, to be adapted to the digital environment. Moreover, the rules should apply to all broadcasting channels and services which have a public service mission and are subject to universal coverage obligations.

For further information see the EBU's comments of 26 June 2003 on the Eurostrategies report about must-carry (available at the EBU website www.ebu.ch under "Position Papers").

Radio spectrum

The specific character of the audiovisual sector needs to be

taken into account in frequency spectrum management and the allocation of transmission capacity, and especially for the development of digital free-to-air television and radio.

With frequencies scarce and competition intense among spectrum users, the specificity of the audiovisual sector needs to be taken into account in frequency management. Certain methods of spectrum management, such as spectrum pricing, trading and auctioning, are inappropriate for free-to-air broadcasters, and particularly those with a public service mission, given the democratic, cultural and social roles that they play.

State of procedure

Adoption of "telecommunications package" comprising:	March/July 2002
– Access Directive 2002/19/EC	
– Authorization Directive 2002/20/EC	
– Framework Directive 2002/21/EC	
– Universal Service Directive 2002/22/EC	
– Radio Spectrum Decision 676/2002/EC	
– ePrivacy Directive 2002/58/EC	
Deadline of transposition:	July/October 2003
Follow-up by the Commission:	
– Communication on switch-over to digital	September 2003
– Communication on the interoperability of digital interactive television services	July 2004

Funding of public service broadcasting and State aid rules

The Amsterdam Protocol recognizes the specific role and character of public service broadcasting in the Member States of the European Union. Member States have exclusive competence for defining and organizing public service broadcasting and for deciding upon the funding system. When applying State aid rules on the funding of public service broadcasting, including new media services, this specificity needs to be respected.

In recent years a Community framework for applying State aid rules to the funding of public service broadcasting has been established, based on the 1997 Amsterdam Protocol, the 1999 Council Resolution on public service broadcasting and the 2001 Commission Communication on public service broadcasting and State aid. This specific framework, which has allowed the Commission to deal properly with complaints in this area, should not be called into question or put in danger of being undermined.

There is no contradiction between public service broadcasting and

Community policies. On the contrary, as recognized by the Amsterdam Protocol, public service broadcasting contributes to democratic, social and cultural values which are common to the Community; public service broadcasting is thus part of the Community's "common interest" as referred to in the Protocol.

It is the Member States' competence to define and organize public service broadcasting. Given the specific role and nature of broadcasting, the public service mandate can, as recognized by the Commission in its recent decisions on public service broadcasting, encompass a wide

range of programming. In other words, the public service remit should not be limited to programmes and services which commercial operators are not providing; it has to cover the whole range of programming so that the entire public is reached.

The broadcasting media face a rapidly changing and converging environment in which consumers' behaviour and needs are constantly evolving. Interactivity will be a key element. Member States are authorized and required to respond to these dynamic developments with a correspondingly dynamic interpretation of the public service mandate. As the Council recognized in its 1999 Resolution, public service broadcasting has an important role in bringing to the public the benefits of the new media services and technology. This role allows Member States to include the use of new media technology and the provision of new media services in the public service mandate.

The current funding systems of public service broadcasting in Europe are characterized by, on the one hand, a strong, indispensable

element of public funding and, on the other, a plurality of sources. Member States have the freedom to choose the system which is the best suited to evolving national circumstances, also with regard to new media services where they are part of the public service remit.

For further information see the EBU reply of 9 September 2003 to the Green Paper on Services of General Interest (available at the EBU website www.ebu.ch under "Position Papers").

The Amsterdam Protocol on the system on public broadcasting in the Member States states:

"THE HIGH CONTRACTING PARTIES, CONSIDERING that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism, HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty establishing the European Community: The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account."

State of procedure

<i>Amsterdam Protocol</i>	<i>October 1997</i>
<i>Resolution of the Council and of the representatives of the governments of the Member States concerning public service broadcasting</i>	<i>January 1999</i>
<i>Commission Communication on public service broadcasting and State aid</i>	<i>October 2001</i>
<i>Council Resolution on the development of the audiovisual sector</i>	<i>January 2002</i>
<i>Green Paper on Services of General Interest</i>	<i>June 2003</i>
<i>Community Framework on services of general interest</i>	<i>July 2004?</i>

Copyright and neighbouring rights

Need for balanced copyright framework

Harmonious copyright legislation entails reconciling the interests of rightsovers, users and the general public. Users (broadcasters, publishers, phonogram producers, etc.) need to be able to acquire and exploit rights in a simple and efficient manner, in the interests not least of the rightsovers themselves.

EBU radio and television Members are not merely broadcasters who disseminate content created by others. In the fields of culture, information, education and entertainment they are also the major force in audiovisual production in Europe today: together they invest roughly four times more in production than does the entire European cinematographic industry. In their dual capacity as producers and communicators they are major employers of authors and performers and offer young talent an attractive environment in which to embark upon an artistic career.

On account of their importance as both rightsovers and users of material in which rights are owned by

others, and in serving the general public, EBU Members are directly and immediately concerned by a large number of the issues under discussion in the copyright area. Indeed, the simultaneous rightsover/user perspective obliges the EBU to propose measured, practical legislative solutions.

In the 21st century, public service broadcasters must be able to continue to play their important cultural and democratic role, to the benefit of citizens and consumers alike. Consequently, the challenge for today's policy-makers is to ensure that legislation allows broadcasters to continue, develop and diversify their activities in the digital age, and not least to the benefit of those who have originated their programmes.

The just-published EC Communication on the Management of Copyright and Related Rights in the Internal Market sets out several options for improved development of cross-border licensing and proposes a framework Directive on the governance of collecting societies. The EBU will soon be providing detailed comments on these issues, which are of considerable importance for broadcasters.

Review of EC Satellite/Cable Directive

Genuine availability of audiovisual productions and broadcasts throughout the European Union requires a significant revision of the 1993 Satellite/Cable Directive.

The underlying spirit of the Television without Frontiers Directive is that television programme services should generally be available all over Europe. In parallel, the purpose of the 1993 Satellite/Cable Directive was to facilitate the lawful transmission of broadcasts across frontiers within the European Community, and particularly (at that time) by cable and satellite, further to the fundamental EU principle of freedom to provide services within the internal market. However, neither such facilitation of cable retransmission activities under the Satellite/Cable Directive nor any must-carry provisions under public media/communications law negates in any way the basic obligation imposed on cable operators under copyright law to clear the relevant rights, an obligation confirmed in a number of Supreme Court decisions

in EU countries, as well as by the EU Court of Justice itself.

There is now an even greater demand from EU citizens to have access to television broadcast services originating in a Member State other than the one in which they live. The current review of the Satellite/Cable Directive provides an opportunity to extend its provisions so that they cover today's circumstances, including, *inter alia*, the following aspects:

- o clarifying that the “country of origin of the transmission” rule applies to Internet streaming, as for satellite broadcasting; this rule confirms the application of one sole law, i.e. the law of the country where the transmission originates, rejecting the idea that the laws of all countries of reception worldwide should also apply;
- o extending the simplified system of rights clearance, which now facilitates simultaneous cable distribution on a country-by-country basis, to the equivalent rebroadcasting services offered by third-party digital satellite and digital terrestrial bouquet operators;
- o an option for transnational satellite-to-cable programme services to apply a simplified system of rights clearance when they choose to act on behalf of the cable distributors who have legal liability.

A summary of these and other specific points made by the EBU to the EC Commission in the context of a detailed review of the Satellite/Cable Directive can be found at the EBU website (www.ebu.ch).

State of procedure

<i>Satellite/Cable Directive</i>	27 September 1993
<i>Information Society Copyright Directive</i>	22 May 2001
<i>EC Communication on the Management of Copyright and Related Rights in the Internal Market</i>	16 April 2004

Next stages

<i>Revision of the Satellite/Cable Directive</i>	2005?
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Digital rights management

The future development of DRM systems for digital broadcasting must keep broadcast reception technology attractive for all viewers and listeners, via open and interoperable standards, and provide equal access for broadcasters to all digital delivery platforms.

Digital Rights Management (DRM) is a modern keyword which relates to many different aspects of digital communications. Most frequently, it encompasses not only (technical) anti-copying protection measures but also the electronic administration of contractual rights. DRM systems are being developed in order to facilitate the licensing and acquisition of rights through technical means, while also preventing by those means unlawful usage of content protected by such rights.

The objective of making the licensing process easier is generally shared by all stakeholders. However, it needs to be realized that certain mass use of protected matter, e.g. for the broadcasting of music, cannot, in practical terms, be authorized or remunerated otherwise than through collective management agreements.

Moreover, DRM is a complementary (technical) measure only and cannot and certainly should not be used to overrule the legal framework for copyright protection. It is of prime importance that any DRM system should include certain safeguards, such as for traditional exceptions or limitations under national copyright laws.

Actual piracy of premium content (feature films, music CDs) takes place long before such content is broadcast, e.g. immediately after or even before the official film or CD releases, so that free-to-air broadcasters, who are at the very end of the exploitation chain, cannot possibly be held responsible for such illegal activity. Consequently, DRM systems should not be imposed on free-to-air broadcasters, through either contractual or regulatory means.

DRM schemes should not have a negative impact on the transition from analogue to digital broadcasting. This means not only that DRM systems must be acceptable to all stakeholders, including consumers, but also that broadcasters' active implementation of such systems will depend on the openness and interoperability of DRM technology.

Moreover, any DRM scheme must respect the principle of the free flow of information and should not limit the possibilities for free-to-air broadcasting via satellite. Consequently, any technical solution should allow the broadcaster itself to decide whether or not it wishes to encrypt the broadcast signal at the source.

Given the complexity of the various issues involved in DRM schemes, and the fact that EBU broadcasters act not only as major producers but also as users and distributors of protected content, and have a special relationship with their audience, EBU Members have set out a number of basic principles and requirements which any DRM system would need to meet before such measures could be proposed for digital broadcasting.

They include:

- o any DRM system should respect the underlying principles of European Community law and policies, such as the free movement of broadcasting services, on the basis of the country of origin principle;
- o any DRM system for broadcasting must guarantee the integrity of the broadcast signal and the editorial freedom of broadcasters;
- o concerning private use for time-shifting purposes, DRM systems should not negatively affect the attractiveness of digital technology for viewers/listeners, thereby jeopardizing a rapid change over from analogue to digital broadcasting;
- o DRM systems should ensure the availability of broadcasting services to the public over all the various media platforms (e.g. terrestrial, cable, satellite, UMTS).

For further information see the EBU Memorandum on Digital Rights Management of 20 May 2003 (available at the EBU website www.ebu.ch under "Position Papers").

State of procedure

<i>Information Society Copyright Directive</i>	<i>22 May 2001</i>
<i>Commission DRM Workshops and Conferences</i>	<i>2002–2003</i>
<i>DRM High-Level Group meetings</i>	<i>2004</i>
<i>EC Communication on the Management of Copyright and Related Rights in the Internal Market</i>	<i>16 April 2004</i>

Applicable Law

Draft Rome II Regulation

In defamation and privacy cases, only the country of origin principle can guarantee freedom of expression and freedom of the media.

Clear identification of the applicable law, and particularly with respect to transfrontier cases of defamation, privacy and other content issues, is crucial for broadcasters, and the media in general, in their role as guarantors of freedom of expression.

Broadcasting has always had a transfrontier aspect because airwaves do not stop at frontiers. Today's reality is that cross-border reception of television and radio has greatly increased in Europe thanks to cable and satellite networks (and is now also starting on the Internet), and this has contributed to the free flow of information.

The application of the general rule of Rome II as proposed by the Commission, i.e. the application of the law of the country in which the damage arises, could lead to the simultaneous application of numerous foreign laws in transfrontier media cases. With regard to transmission via satellite,

for example, this could result in the application of the laws of all countries covered by the satellite footprint. Through Internet streaming, services can even be received worldwide. However, concerning the protection of privacy and personality rights, laws differ significantly from one EU Member State to another. Differences are even greater with regard to countries outside Europe, where there is no equivalent to the European Court of Human Rights to supervise respect for freedom of expression.

A situation may arise where a publication or broadcast would be blocked outright, or its further dissemination prevented, because the law of just one other country differs from the law of the country where the publisher or broadcaster is established. The application of a foreign law could also lead to claims for financial compensation even though the content of a particular publication or broadcast

is perfectly legal in the country where the publisher or broadcaster is established.

Whereas journalists and programme-makers naturally have to know and respect privacy and personality rights in the country in which they work, they cannot be expected to be aware of all the laws of all the countries where the programme can be received. They would constantly be working in a situation of legal uncertainty. This would have a chilling effect on them, reduce the scope for difficult and controversial information programmes and thus ultimately limit freedom of expression and the media.

In trying to avoid any possible problems, broadcasters might also seek ways of restricting the transfrontier reception of their (free-to-air) broadcasts, particularly through the use of encryption, thereby reducing citizens' access to information. Furthermore, such a situation would create obstacles for the functioning of the internal market, for which the Television without Frontiers Directive and the Satellite/Cable Copyright Directive lay the foundations with regard to broadcasting. Both Directives have

been established to facilitate trans-frontier broadcasting, an objective that has been achieved by applying the country-of-origin principle in the Directives' respective areas.

As regards transfrontier media cases, specific rules are necessary. Accordingly, the EBU's main proposal is to amend the provision of the draft Regulation dealing with violations of privacy and rights relating to the personality with a view to designating, in principle, the law of the country of origin, which normally coincides with the main

distribution area. With this solution, legal certainty, freedom of the media and the proper functioning of the internal market will be ensured.

In line with the general objective of the draft Regulation to provide legal clarity and certainty, a further amendment proposed by the EBU is aimed at clarifying the provision regarding infringements of intellectual property rights. It is important that this provision should specifically refer to the law of the country in which the act of infringement was committed.

For further information see the EBU Position Paper on Rome II of 23 January 2004 (available at the EBU website www.ebu.ch under "Position Papers").

State of procedure

<i>Commission</i>	
<i>Proposal for Regulation on the law applicable to non-contractual obligations ("Rome II") COM(2003)0427</i>	<i>22 July 2003</i>
<i>Parliament (co-decision)</i>	
<i>First reading</i>	<i>Autumn 2004</i>
<i>Council Common position</i>	<i>?</i>

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