

# THE EURALVA NEWSLETTER

News from the European Alliance of Listeners' and Viewers' Associations

April 2009

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## From the Editor

*Dear Readers,*

*This is the first edition of the EURALVA newsletter, and all the members of our Alliance hope, that you will find the content of the newsletter interesting and useful.*

*Our main aim is to provide information about the development of Public Service Broadcasting at national and international levels, as seen from the point of view of listeners and viewers. We shall also try to analyse the legislative developments at the European level for public service and other audio-visual media.*

*We expect to send out a new edition between three and four times per year. The next issue will be around 1<sup>st</sup> September.*

*If you have any comments or wishes for forthcoming newsletters, please contact us by e-mail: [prebensorensen@bbsyd.dk](mailto:prebensorensen@bbsyd.dk)*

***Preben Sørensen***  
***President of EURALVA***

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## **European Court of Human Rights Outlaws Blanket Ban on Political Advertising on Television**

On 11 December 2008, the European Court of Human Rights unanimously outlawed a blanket ban by Norway on political advertising on television. This, it ruled, was a breach of Article 10 of the European Convention of Human Rights. The case against the Norwegian Government had been brought by the Rogaland Pensioners Party (*Rogaland Pensjonistparti*) and the Stavanger television company, (*TV West SA*).

In confirming the fine, which the Norwegian State Media Administration (*Statens medieforvaltning*) imposed on *TV Vest SA* for broadcasting the adverts of the Pensioners' Party, the Norwegian Supreme Court (*Høyesterett*) justified the ban on the grounds that, *inter alia*, if political parties were allowed to advertise on television, richer political parties and groups would have more scope to market their opinions than their poorer counterparts. The Pensioners Party, on the other hand, argued that it seldom got any editorial coverage in Norway's television broadcasting, and that it therefore had a real need to communicate directly with the Norwegian electorate.

The European Court explicitly rejected the Norwegian Government's claim that there was no viable alternative to a blanket ban. In the Court's view, there was no reasonable relationship of proportionality between the legitimate aim of equal restrictions on all, which allegedly justified the prohibition on political advertising on television, and the applicants' exercise of their freedom of

expression.

The European Court's judgement raises profound issues concerning political communication in Europe, as a ban on paid political advertisements on TV already exists in several other European countries, such as Belgium, Denmark, France, Sweden and the United Kingdom. It will be interesting for television viewers living in the European Union to see what happens during the elections to the European Parliament later this year, since they will obviously want to know what every political party stands for.

Will those countries which already have statutory prohibitions on political advertising rescind their respective bans before the European elections take place? Or shall we see a succession of appeals to the European Court of Human Rights by minor political parties which fail to get their candidates elected to the European Parliament?

*Vincent Porter*

### **Online Parent Power: The Protection of Minors in an Online World**

The advent of the credit crunch has resulted in two contradictory outcomes for Europe's media policy. On the one hand, major Member States, like France and the UK, have announced plans to improve and expand their domestic broadband networks. On the other, advertising and programme sponsorship revenues for both private and public broadcasters are starting to collapse. Corporate mergers have been mooted, and it is only subscription-funded broadcasters, and those public service broadcasters who are wholly state-funded, which seem likely to be able weather the financial storms.

Although television remains the most popular mass medium, the wholesale attempts by governments to switch from broadcasting to broadband transmission means that Europe's policy makers now need to develop policies for a single online market, rather than for a solely television market. According to the European Commission's staff working paper, the rationale for establishing common European rules for an on-line marketplace is that they will allow the new services to enjoy "the dual advantages of the economies of scale and cultural diversity that the EU internal market provides". Even so, in a public consultation which was held in 2006, consumer groups heavily criticised the use of Digital Rights Management Systems (DRMs) which, they argued, prevented consumers from exercising their statutory rights of fair use, posed hidden dangers to the protection of their personal data, and were frequently confusing and lacking in transparency.

Nevertheless, the Commission is pressing ahead with discussions to establish an EU-wide interoperable DRM system, although they are unlikely to be able to establish a genuine EU-wide market, until they abolish the 27 separate national copyright laws, each of which allows rights holders to restrict the release of their works to individual national territories, until they judge it to be in their commercial interest to make them more widely available throughout the whole of the European Union. Moreover, the optimistic economic projections, which underpinned the Commission's original initiative, have now been blown out of the water by the financial crisis.

Perhaps the two most challenging aspects of establishing an online regime, however, will be to ensure both the protection of minors and the promotion of cultural diversity. To this end, the European Commission has been holding a series of seminars with interested parties. Happily, the financial uncertainty which Europe is now facing gives EURALVA, and other consumer groups working in the field of audiovisual media, the opportunity to think both about how genuine cultural diversity can be achieved, and how minors can be genuinely protected in an online world. What is at stake is how to replace the paternalistic model of regulation, which Member States developed for last century's television age.

To date, Europe has pursued its steadfast belief that self-regulation allows listeners and viewers to enjoy the benefits of the hidden hand of a free European market, the latest example of which has been the conversion of the EU Television Without Frontiers Directive into the Audiovisual Media Services Directive. The new Directive encourages Member States to introduce self- and co-regulation, and markedly relaxes the previous prohibition on product placement, although it does insist that (except in certain circumstances) viewers must be informed when product placement is present.

So far, so free market. But in addition, the AVMS Directive also changes the rules on the protection of minors. Whereas a Member State may still take measures to ensure that unencrypted television programmes, in particular those that involve pornography or violence, are not likely to impair the physical mental or moral development of minors, the rules for on-demand video services are more relaxed. For the latter, any derogation from the principle of free trade has to be necessary for public policy reasons, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors.

Thus the ground for any derogation from the principle of free trade has been changed from one which was directly designed to protect minors, to a narrower and less child-focussed one, that of eliminating any criminal activity which might threaten minors. This means that, when a Member State is concerned about the development of its minors, it can take into account the views of a range of social and other cultural bodies before it decides whether to ban the contents of a foreign television service. In the case of a video-on-demand service, however, it is not allowed to take any action to prevent that from being received within its territory, unless its police force and the judicial authorities consider that such action will prevent or abolish criminal activity which could endanger minors. Thus, in the case of video-on-demand services, the paternalist state regulation of television, which was designed to ensure the healthy development of minors, has been transformed into state regulation which is designed to pursue criminals.

In contrast, a mixture of self-regulation and co-regulation has led to the establishment across Europe of a series of national systems for *classifying* cinema films and DVD. Indeed, in some Member States, such as the Netherlands, these classification systems also extend to television programmes.

The purpose of these classification systems is generally the same. It is to advise parents, and on occasion local authorities, of the suitability of each film or programme for children from different age groups, sometimes depending on whether or not they are accompanied by their parents. In addition, these classification systems often indicate whether or not the programme concerned includes scenes of violence, nudity, drug taking, swearing, or sexual activity.

Different national cultural and educational traditions have meant that there is no common European standard for classifying cinema films and DVDs, although there are common, self-regulated, European standards for video games, both off- and on-line: namely PEGI and PEGI-online. On the other hand, these national classification systems do empower parents to decide for themselves about the suitability of individual films and DVDs for their own children.

As paternalistic state regulation gives way to self and co-regulation, Europe's viewers, users and parents will therefore expect the European authorities to establish a regulatory regime for online services which will empower them both as consumers and as parents. Although online services may well develop in a variety of ways, if the European authorities are genuinely concerned to protect minors, parents – and their children - will need to be provided both with information about programme content and about protection from on-line criminal activity. The principal occasion on

which to ensure that parents are provided with this information will be when they sign a contract with the telecommunication company to receive, and pay for, a broadband delivery service. The parents in each household would then be able to take their own decisions about how far they wish to restrict or to allow their children to use those services which can be accessed online.

In the future, when online services will be available “anywhere, anytime”, parents will want to be informed in advance, both about the arrangements for classifying, and if necessary filtering, any pre-recorded programmes that are available online, and in addition about the presence of any product placement. In order to protect themselves and their children from on-line criminality, such as identification theft, cyber-bullying and cyber-grooming, parents will need to be reassured that both the telecommunication company and the internet service provider have established adequate protocols, both to defend their consumers’ interests, and, should it be necessary, to enable the authorities in the consumer’s receiving state to take swift anti-criminal action against cyber-grooming, cyber-bullying, or identity theft. These concerns will, I suggest, require the authorities to establish *minimum contractual standards* for users of online services.

The world of audiovisual electronic communication has moved a long way since 1989, when the EU agreed the first Television without Frontiers Directive. In order to protect both their children and themselves, Europe’s consumers and parents now need a regulatory regime for online services that will both empower them, and be fit for purpose, for the next twenty years. The question is: Will the European authorities be able to deliver this, at a time when the global financial crisis has called into question Europe’s dream of a self-regulating free market in audiovisual media services? Although online services have the potential to stimulate economic growth and enhance consumer choice, there are, as yet, no Europe-wide arrangements to guide parents as to the suitability for their children of the wealth of audiovisual material that can now be accessed online, or to assist them in protecting their children from cyber-bullying, grooming, or the theft of their identity.

*Vincent Porter*

### **Danish Debate about TV-Advertising**

Since 2002, the big Danish TV channel TV2 which has public service obligations, has been financed solely by advertising, as have its major Danish commercial competitors TV3 and SBS TV. The programmes on these latter two channels are (partly) produced and transmitted from London, and they are therefore exploiting the British rules which allow TV-advertising breaks in the middle of programmes, including films, which is not allowed by the Danish rules. This gives the two channels extra income to compete with TV2.

With the advent of the latest version of the EU Directive on Television without Frontiers, there is public debate in Denmark as to whether it will now be possible for the Danish Government to require TV3 and SBS TV to observe the Danish advertising rules. The new Danish Public Service Council has therefore asked the official Danish Radio- and Television Council to examine these possibilities. If the answer is yes, there will probably be a majority in the Danish Parliament which demands Danish legislation to extend to TV-channels of this nature, which produce and broadcast programmes from outside the country.

TV2 is already in a difficult economic situation because of the decline in its advertising income, and the Danish Parliament has agreed that, from 2012, the channel can ask for part-payment from the viewers, as it will still have public service obligations for its programmes.

*Preben Sørensen*

## The Regulatory Conundrum :PSB Pluralism under Pressure

“Let me make it clear that Channel 4 is here to stay”, says Andy Burnham the UK Secretary of State for Culture, Media and Sport. That is good. Channel 4 is special. Apart from its authoritative hour-long daily news and its incisive current affairs reportage, it has other assets including its Film and Drama department, a prime mover (through Film 4) in spotting and bringing to the screen *Slum Dog Millionaire* which swept the board at the recent Hollywood Oscars. Yet, despite recognition of its programme record, its statutory status, firm government backing, and the crucial role it plays as the main PSB element in the non-BBC UK media ecology, the outlook for Channel 4 is worrying. With audiences under pressure (down from around 10%+ a decade ago to between 7% and 8% now) and its revenues (because it sits economically in the commercial sector) exposed to the harsh winds of the free market, there is agreement that Channel 4 needs a partner or partners.

But there is no consensus as to whom that partner should be. BBC Worldwide – the corporation’s commercial sales arm? What would be in that for the BBC? Could, or would, the Government push the BBC into a partnership? The other discussed potential partner is the Bertelsmann/RTL majority owned Five (the UK’s fifth national channel) – which seems keen on the idea and with whom Channel 4 had, under its previous management, contemplated a merger?

How bad is the financial position of ITV, the UK’s main home-based commercial broadcaster? “*ITV at record low as advertising fears grow*” ran a recent business news headline. From how many more of its PSB obligations should the regulator release ITV? To save the situation, could even a triple alliance be brought into being, comprising ITV, Channel 4 and Five? What about the future of a genre like children’s programming when there is no home-grown alternative to BBC production?

Does UK broadcasting need a new body to pull together, and provide a critical mass for, PSB capabilities outside the BBC? If so, should money for this or for any other PSB-targeted initiatives, come from the BBC itself? If not, where from? Are there hints about the preferences of *Ofcom*, the media regulator, in its latest (January 2009) Review of Public Service Television? Or can anything be gleaned from *Delivering Digital Britain* the technology-focused master plan which has just been published by Lord Carter, (a government minister in a different Ministry from Mr. Burnham) and himself a former *Ofcom* CEO?

EURALVA readers across the English Channel who would give their eye-teeth for a national broadcaster like the BBC, might well be perplexed at the preoccupation of UK broadcasting players, media pundits and indeed civil society groupings like VLV, with speculations about competitors and alternatives to “Auntie”. Spoiled for choice? Well maybe. But then in every national community, each set of audiences needs to find the level of discourse appropriate to its traditions, standards and expectations.

*Andrew Taussig*

### **Light-touch Regulation and Its Interventionist Antecedents**

The affordability of PSB obligations in a multi-channel digital world has been ratcheted up by the present recession. It has played into the longer-running debate in UK about *Ofcom*’s regulatory approach since the combined regulator started work four years ago. *Ofcom* took its cue from the 2003 Communications Act and the intentions of the Act’s authors in the New Labour administration.

Critics of light-touch regulation – from the civil society end of public opinion – say *Ofcom* has been insufficiently insistent on adherence to public service obligations and excessively indulgent towards

the arguments of commercial players. They say also that the emphasis has been on consumer protection rather than citizen empowerment – an argument which particularly irks Ofcom's current Chief Executive who feels he was instrumental in building a citizen emphasis into the Communications Act. Ofcom defends its approach as one which recognizes harsh economic realities and also encourages choice and innovation in the industry. Light-touch, it says, is not a weasel phrase; it does not mean weak-touch or soft-touch; it means being wisely selective about when, and with which mechanisms, to intervene.

The debate takes place against the background of a long interventionist tradition. Historically, in the pre-digital era, each new player admitted to the UK broadcasting arena was constrained by content requirements which were a good deal more specific than those of earlier BBC Charters; all enforced by a combination of statute, licence, organizational structure and programme-making code. That applied to the start (in 1955) of Independent Television – the once cash-rich network of commercially-run regional franchise-holders of which ITV plc is, after many mergers, the almost sole survivor. As a senior regulator said recently, "it was a time when broadcasters were almost told what they should be broadcasting at 8.30 on a Monday evening"..

When Channel Four was launched in 1982 – a second independent network coming a full sixteen years after the BBC had started BBC-2 – innovation, diversity, and satisfying audience interests not served by existing channels, were central aspects of the remit. Channel 4 was constituted as a statutory body, making it alongside the Welsh language S4C the only broadcaster, apart from the BBC, beyond the reach of Ofcom's licence-revoking powers.

A decade later specific, although fewer, PSB obligations were placed on the Channel Five Broadcasting Corporation plc, later rebranded Five. That channel received its programme licence in 1994 from the Independent Television Commission (Ofcom's predecessor in the television sphere), to operate the fifth and last UK terrestrial analogue network (although spectrum shortage rather spoiled its claim to be national). The Bertelsmann subsidiary, RTL, holds a majority stake in Five. So, in summary, national analogue spectrum has been split 3:2 (if Five is counted) between the commercial sector and the publicly funded BBC.

Three to two does not however reflect the power reality of the situation. Today's is not the first set of policy-makers, legislators and regulators to face the dual problem of simultaneously supervising the obligations of multiple players and finessing the critical balance of "BBC versus the rest". The difference is that digitalization, channel proliferation, the rise of the Internet and a deteriorating economic climate have eaten deep into the economic model which used to sustain non-publicly funded broadcasters; whilst, by contrast, the BBC's licence fee income, fed by household growth and underpinned by government, has stayed resilient.

The BBC's financial security was complemented by a tightening of editorial control when a new BBC Charter (September 2006) specified the BBC's six public purposes and gave it a dedicated "parent-regulator" in the shape of the BBC Trust, whose duties included the power to award and audit the content licences for each of the BBC's networks and channels.

More controversially, the BBC's financial security enables it to occupy new media platforms and to compete in new areas which can exclude or hurt commercial rivals (for example regional newspapers in the area of local video news). The BBC Trust is charged with controlling BBC aspirations in the overall interests of a balanced media market. But a commentator in the *Financial Times* wrote recently, in regard to BBC expansionism, with a touch of exaggeration "... one's reality becomes the test of the legality of the licence fee....the BBC has a mandate to provide anything and everything."

Apart from the five players already mentioned, Ofcom has licensed about two hundred and fifty satellite and digital players, to occupy UK media space (ranging from BSkyB through to the smallest niche channel) whose programming obligations are defined either by the terms of their own licence undertakings, or simple compliance with UK or European law. Many of these licences are relatively loosely written, putting them at the light end of a scale of obligations whose other extremity is occupied by Channel Four and, most prominently, the BBC.

In the BBC's case, however, the burden of its obligations is matched by the weight of popular expectation, to the extent that its general standing as a public service institution sometimes seems to over-ride its particular role as a PSB broadcaster. Some recent, much-publicized incidents have underlined this problem.

*Andrew Taussig*

### **DTT Comes of Age in Europe**

Recent data from the [MAVISE TV database](#), which has been developed for the [DG Communication of the European Commission](#) by the European Audiovisual Observatory, shows the continued expansion of television channels in the European (EU 27 + Croatia and Turkey) television market. More than 200 new TV channels were launched in 2008. There are now a total of 5587 channels (plus 412 non-European channels) available in the 29 countries.

Digital terrestrial television (DTT) has experienced significant changes during the last year. Six of the 29 countries included in the MAVISE database have already ceased analogue terrestrial transmission. France, Italy, Spain and the UK (four countries which are large users of terrestrial television) have reached very high levels of DTT penetration in households; and two of these have started regional switch-off of the analogue signals.

The third group includes smaller countries with established DTT services. These countries will see more rapid development this year with the expected launch of new services in Slovenia, Denmark, Portugal, Ireland, Poland, Greece, and Slovakia. In some of the remaining 16 countries, a number of DTT channels are also Pay-TV services. Currently, the services in Malta are Pay-TV only, with free-to-air services to be launched in 2009.

DTT as a free to air platform plays an important role in the provision of universal television services. The presence of the public service channels (and their important role in the development of DTT) can be seen in the breakdown between public and private channels on the DTT platforms. On average, approximately one quarter of the capacity on DTT platforms is used by public service channels, compared with 75% by private channels. In comparison, only 7% of the entire range of channels available on all platforms in the 29 countries are public channels, while 93% are private. In Belgium, there are currently only public service offers.

There are also some significant genre differences between the types of channels available on DTT platforms compared to the entire television market on all platforms. The DTT platforms have a significantly higher percentage of generalist, news, business and cultural channels, in comparison to that on satellite or cable. The lower channel capacity on DTT platforms seems to have led to a markedly higher focus on making available more public service, generalist and news and cultural content.

Specialist channels, such as sport, cinema and children's channels, are still significant, but other niche channels, such as home shopping, adult channels, weather, religious, and minority interest channels, are far less prominent on the DTT platforms. Adult channels are available on DTT

platforms in Finland, Netherlands, Estonia, Italy and Lithuania (where pay-DTT services are available). Home shopping channels are included in the line-ups of Germany, Luxembourg, Spain, Italy and the United Kingdom.

There is also a difference between smaller and larger markets regarding the number of national and international channels available. The larger countries such as France, Germany, Italy, Spain and the United Kingdom, have significantly more national and regional channels. In contrast smaller countries such as Estonia, Lithuania and Malta currently rely on international channels for almost half of their DTT content.

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