The European Interest in the American
Experience in Self-Regulation

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Precisely why it is that the European media professionals and media policy makers are now interested in the American experience with the social responsibility of TV is a justifiable question. In 1993, when the Bertelsmann Foundation and the European Institute for the Media first discussed a joint project on this particular area one of the main reasons for it was a certain feeling of uneasiness or dissatisfaction among the German public over certain trends in the private and public broadcasters' television programmes. With due respect to our American colleagues who are present, it is fair to say that this feeling of unease also partly arose from programmes imported from the USA or made in Europe based on the American model of programming. So what do we expect here in New York from a discussion over self-regulation and control of concentration?

In order to clarify this I would first of all like to return to the situation in European television and particularly that in Germany. Commercial television in Germany is about 10 years old. It has established itself relatively quickly and amongst viewers is favoured equally alongside the established public broadcasters. Following the pioneer phase of private television and with the setting up of strong private television companies like RTL and SAT 1, a radical change has come about in the programmes on offer and in the structure of the television market. As a result, at the beginning of the 90s in Germany a public debate on two aspects of this change developed:

1. criticism of the alleged decline in the standard of programmes, for example unsuitable for minors and sensationalist presentation of news and information;

2. trend towards concentration (of ownership) in private broadcasting.

The general question was whether the so-called dual system, that is the juxtaposition of private and public broadcasters, is in a position to ensure that socially responsible

programming is on offer. We are assuming here that social responsibility has two aspects: firstly to avoid "negative trends" and secondly to provide a "positive" environment in which socially responsible programming can be promoted, (for example, the requirement for diversity in programming, and the provision of well-researched and reliable information). In Germany we have the interesting situation, confirmed on numerous occasions by the Federal Constitutional Court, that the private broadcasters actually have to fulfil lower requirements with regard to the variety in their programmes, than do their public counterparts. Therefore private broadcasting is only permissible if public broadcasting fulfils its extensive task. Nevertheless, both parts of the dual system have a responsibility to the general public, and the state, through laws and control mechanisms, is bound to ensure that this responsibility is met. This understanding of broadcasting as being a public service for which legislators are responsible, which has to be guaranteed by the state and in which suppliers can only operate under certain conditions, is not unique to Germany - it is also true of European tradition of broadcasting regulation.

Over the last 10 years in Germany and many other European countries it has been shown that public broadcasting has been weakened by the competition from private television channels. It has many grave financial problems, which in some countries are due to the loss of advertising revenue and the rapidly increasing programming costs. It is often accused of trying to adapt to be like private programmes, mainly to rely on entertainment programmes, and at the same time a loss of identification and image in the public system is lamented. The arrival of new technologies also gives impetus to the discussion of the future prospects for, and responsibilities of, public broadcasting.

Private television has won its place in the market but there is criticism of the way this was achieved. Specific complaints include: too much violence in television programmes, cheap sex films, down market entertainment and a decrease in the amount of serious information given. In addition there is the worry that a few large media concerns are splitting the market amongst themselves and that state regulation does not prevent this and may even have helped it.

Above all the international study jointly organised by the European Institute for the Media and the Bertelsmann Foundation tried to identify those factors in regulation, in the market and in the management of broadcasting companies which create, or help to ensure, favourable conditions for the social responsibility of television. Our comparison of the research results from ten countries (7 from Europe, the USA, Canada and Australia) showed that social responsibility in television basically results from a combination of four main factors:

1.   the legal framework: i.e. the constitution, general legislation and specific broadcasting legislation

2.   licensing, supervision and control

3. market forces

4. editorial responsibility in management and in the journalistic profession.

Although in our investigation we had knowingly selected countries which were culturally alike and which shared a similar stage of development in the broadcasting sphere, marked differences were found in the weighting of the four factors. Structures and experiences can not simply be carried over from one country to another. However - and this brings me back to the original theme - the comparison nevertheless produced very interesting results and ideas in many areas which are worth following up.

In the case of the USA what leads us to want to enquire further is the very different course taken by the development of broadcasting from that followed in Europe, as well as the altogether different "philosophy" which forms the basis of the American television system. Also, the extremely informative report by Eli Noam, Everett Parker and Alfred Schneider contained many pointers which we would now like to take up and expand on, in order to make them of benefit possibly to the European but definitely to the German debate.

In the following I would like to deal in more detail with some of the areas which appear to us to be particularly interesting in relation to the problems outlined above. First of all we will deal with the experiences of self-regulation in the television industry - also in relation to other factors concerning social responsibility. In the second part the question of ownership regulation will be dealt with.

Self-Regulation

In principle, in the USA as in Europe the organisation of broadcasting is tied to the public interest. The Federal Communications Act of 1934 stated that a broadcaster is both station owner and trustee of a public resource. Positive demands on the broadcaster in terms of programming conditions or other obligations are less obvious. The firmly held right to the freedom of speech as stated in the First Amendment to the Constitution is very significant and creates a broad arena for the private broadcasters' activities. Essentially the organisation of broadcasting is based on the basic right of individuals and on the philosophy of competition between commercial companies.

Even though since the introduction of the dual system in most European countries a large private broadcasting sector has been created, there remains, in comparison to the USA, as already stated, a strong emphasis on state regulation, which sets a clear framework for competition. If one refers back to the four main factors contributing to the social responsibility of television mentioned above, the question that arises is whether the relatively minor role of the factor "state regulation" is evened out in the USA by the greater significance and respective tradition underlying the factors "self-regulation" and "responsible management".

The USA has the most significant commercial broadcasting system in the world. In addition the relative weakness of the public broadcasting system also means that the commercial logic in broadcasting is altogether far and away more dominant than has been the case in Europe with its still strong public system and its relatively young private sector. Has an awareness of the social responsibility of television developed in commercial broadcasting in the USA? What form has it taken? In how far is self regulation seen as an integral part of the system? How have these commercial foundations of broadcasting affected the balance between state regulation and control on the one hand and entrepreneurial responsibility on the other. For example, how do US commercial broadcasters themselves view the question of self-regulation and how does this affect their relationship with the regulatory body - the FCC? In which areas is the greatest consensus found? Where do the traditional points of conflict lie?

The relatively long history of commercial broadcasting in the USA also leads us to expect that with time a certain institutionalisation of self-regulation and self-control would have developed, for example within industrial associations a voluntary general commitment by broadcasters to responsible control or through the founding of special institutions for self-control. If such initiatives were undertaken what were/are their concrete goals? Who participates? What form of organisation was chosen? What are their areas of authority? Which instruments can be used? Last but not least what can be said about the effectiveness of this initiative?

Looking at the structure of the US television market the question arises of how self-regulation can work when the commercial competitors have different requirements, for example the big networks with their affiliates on the one hand and and on the other the cable television companies. Is the self-regulation of one part sensible and effective or can it only function when at least the great majority of all the companies involved on the market participate in a system of self-regulation? Which other conditions must be present for successful self-regulation?

Another problem which is also increasingly found in European countries is the cooperation of broadcasters with independent production companies. What experience does the US television industry have with the supervision of the criteria regarding social responsibility in programmes which are delivered by external producers? What rules and procedures have proved particularly worthwhile here?

The implementation of guidelines for social responsibility presupposes that structures are in existence within the broadcasting companies which create respective awareness of the problem among the parties involved at all different levels and that techniques are used which allow the implementation of such standards in the day-to-day practice of highly complex institutions. It was precisely this point which was recognised in our international research as being very important. Without a respective strategy from above, for example from the management of a broadcasting company, neither state obligations nor even less self commitment can be anchored on a long term basis in broadcasting organisations. Responsibility as a management task appears to be a fundamental element in effective self-

regulation. Here Europeans are keen to learn more about the experience of the commercial broadcasters in the USA. From our research we know that the large networks have traditionally set up their own Standards and Practices Departments with specific authority for the supervision and execution of the guidelines for programme practice. Different reports are heard about the actual significance and effectiveness of these institutions. Discussions about the decline in programme standards and the responsibility of commercial broadcasters are very topical in many European countries. It would be very informative for us to receive more information and evaluations:

-    about the status of social responsibility and self regulation in the top levels of the management hierarchy of the commercial broadcasters.

-    about the contents and practical relevance of codes and guidelines which are set by the management as part of company policy.

-    about the internal structures, for example Standards and Practices Departments, their position in the hierarchy, their qualification and authority along with their means of implementing guidelines in practice.

-    about experience of other methods and procedures used to ensure social responsibility in the day-to-day practice of the commercial broadcasters.

-    about the relationship of these internal mechanisms to the state regulatory body, to any self regulatory authorities of the private broadcasting industry and last but not least to the public and to the individual viewer.

At the beginning I also mentioned the market as being one of the main factors contributing to the social responsibility of broadcasting. In Europe over the last 10 years since the emergence of private broadcasters it has become increasingly clear to us what the implication of the heightened competition will be for financial resources and viewers - and also for the awareness of social responsibility. It has become clear that commercial (but also to a certain extent public) broadcasters must follow certain principles to survive in the market place. On the other hand it is also clear that inspite of all the constraints which are imposed on the competitors, a very broad range of options and strategies is still available for broadcasters: An entertainment programme can be innovative but it can also be deliberately shocking and use cheap sensationalist effects to attract viewers. An information programme can be dynamic and investigative but it can also deliberately invade people's private lives or try to attract attention with speculative half truths. The first (positive) alternative must also be available in a very tough competitive environment, if a broadcasting system feels under obligation to the public interest. It is a management task to make this alternative clear within the company and to pass on the respective guidelines.

The question to our American colleagues is how do you evaluate the present influence of the market and competition on the safeguarding of social responsibility and self-regulation in the

USA? What options and practical techniques have proved to be worthwhile in the USA in the maintenance of standards? Where does the hard fight for market share have the strongest effect in terms of a weakening of self regulation and self control? In this situation what can the broadcasting company management do - possibly in cooperation with state authorities or with competitors in the market - to ensure the safeguarding of social responsibility?

In the USA this aspect carries particular weight as it is here that the development to a multi-channel-broadcasting-system is furthest advanced. However, also in many European countries experience is showing that with the increasing number of offers the chances of thorough state supervision of television programmes being possible is becoming ever smaller. In this regard effective self regulation achieves extra significance - although I am convinced that they alone will not be sufficient to guarantee the social responsibility of the broadcasting system.

From a European perspective it would be exciting to know - and this is my last suggestion in this first section - how far discussion in the USA has already gone with regard to the prerequisites for regulation and self regulation in the forthcoming age of new technologies. With digitalization and compression the competitive situation will change dramatically and bring with it new challenges.

Ownership Regulation

The second important area of discussion in our meeting concerns experiences with regulation and control in media concentration. This theme is currently being discussed intensively in Europe, at the level of nation states and at the European Union in Brussels. Particularly, in Germany a public debate has arisen due to criticism of the lack of effective control of economic concentration in private broadcasting. It aims to find ways and means of ensuring the greatest possible diversity and plurality in the media and at the same time to avoid the possibility of overregulation limiting the competitive chances of private companies.

The USA has a long tradition of controlling economic concentration. In Europe particularly well known examples are the divestiture of the telecommunications industry (i.e. the Bell system), and also the "Fin-syn rules" which prevent vertical integration between television networks and programme production. However, on previous occasions reports about a number of mergers, for example between larger companies in the media industry and between telcos and film production companies, have become known, and as of the end of 1995 the "Fin-syn rules" will no longer be effective.

It is my impression that in Europe very little is known about the valid rules on ownership restrictions in the USA, particularly in the field of the media. Since the European discussion about the control of media concentration appears to be open at the moment to new concepts, ideas and suggestions - the opportunity is now available to analyse in more detail the American experience. Amongst others, it concerns the following problem areas:

1   Which criteria are used in the control of concentration in the field of the media? In

Europe, alongside the traditional criteria of restricting the number of outlets under the control of one enterpprise and the level of capital shares in a media company, there is also discussion about limiting the market share based on audience figures.

2   Which thresholds should be applied to the use of the criteria?

3   Which institutions ought to be targeted concerning the control in the media field? What instruments and areas of authority must be at their disposal? (for example for the obtaining of information about a media company?)

4   What is the significance of licensing or the renewal of licences in the control of media concentration?

5   To what extent should and can vertical integration and cross media ownership be incorporated into the control of media concentration?

The last point leads to a development, which will become even clearer with regard to new technologies: the diversification of many larger media organisations into previously well defined separate sectors of the industry and the associated integration of various stages of media production and distribution within the larger enterprises. Cross-border networking and strategic alliances are additional key words of the present re-organisation in the entire field of communication and information industries. As with many other social and economic developments, the USA is clearly ahead of Europe. In the context of "Multimedia" and the "Information Highway", we hear of the great interest of the telecommunication and computer industries in the area of media. Within the USA and on both sides of the Atlantic cooperation is taking place with the aim of achieving the best possible starting position in the battle for future markets. From the point of view of the "big players" in future the media and particularly broadcasting appear to only be one part of the whole production and distribution process.

How far has the discussion come in the USA about the necessity of state regulation of these new market structures? Are there any definite starting points for building these changes into the existing anti-concentration regulations or for introducing completely new regulations? What could the criteria and measures here look like? Is it only about the control of concentration in relation to the American market or are international alliances also included?

I hope I have made both the European situation and our interest in the way the American media system functions clear. It is precisely because the starting points are different that we can learn from one another. We will listen attentively.