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DISCUSSION

Television in an uneasy place between culture and industry

Vibeke Petersen

Before the EC Directive on 'Television without Frontiers' was adopted on 3 October 1989, a great deal of statistics and forecasts about the sorry state of the European television industry had pointed to the necessity for action. There was - and is - the fear that foreign, mainly American, programmes would increasingly dominate European screens, resulting in a loss of European culture and the demise of our audio-visual industry. To mention a few of the factors behind this gloomy view:

- American fiction films have over 40 per cent of the European market share.
- American-controlled companies have 60 per cent of the film distribution market in Europe.
- In 1988 Europe bought $700 million worth of television programmes, mainly fiction, from the US, and the number is expected to rise.
- About 90 per cent of audio-visual products made in Europe never leave their country of origin.
- European television channels will require 16,000 hours of prime time fiction over the next five years, but are capable of producing only 2,500 hours (Wasko, 1990:2).

The list could go on. The single most important reason cited for the unfortunate state of affairs is the divided market which because of its borders is unable to meet the demands of a rapidly expanding television market. Hence the priority given to opening up the borders by way of the Television Directive. In this way the Directive falls within the overall effort of the EC to create a single market for the benefit of Europeans.

It is clear, however, that a strictly industrial policy will not do alone. Television programming has cultural as well as economic value and is as such seen as an important contributor to a common European consciousness. The 'cultural' Community is referred to in much more cautious terms than the economic Community, often given only passing attention as a by-product of the single market. One reason for this is, of course, that culture does not fall within the sphere of the Rome Treaty and therefore cannot be tackled directly. Another is that some member states, particularly the smaller ones, are afraid of losing their identity in the European melting pot and therefore become protective of their cultural individuality.

It should be noted here that a homogeneous European culture is the declared goal of no-one. On the contrary, the heterogeneity of European culture is perceived as its biggest asset, to be preserved if not at all cost, then at some point.

Industry or culture

The Directive on Television without Frontiers reflects the ambiguity of the industrial/cultural distinction, particularly concerning the issue of programming quotas. By requesting broadcasters to reserve half their transmission time (of fiction primarily) for European works the Directive clearly does more than remove barriers to cross-border television through regulation of programming content. This has caused problems on several fronts, including the EC's own policies in related areas.

The most sensational protest came from the USA whose trade representative Carla Hills went on a tour of the European capitals trying to dissuade governments from adopting the Directive's quota clause. Inspired by the American film industry, US authorities claim that protectionist measures like quotas will create a 'fortress Europe', and they have pointed out that this could be an impediment to the current negotiations under GATT on trade in services. In these negotiations the EC maintains that whereas they are all for a liberalization of the transmission signals, the content of signals shall remain subject to the rules recognizing the specific cultural role of television - i.e. the quotas stay. So, if the Directive itself is short on references to cultural policy, the strategy in the trade negotiations reveals the Commission's awareness of issues other than industrial ones in broadcasting.

The Directive was adopted against the votes of Belgium and Denmark. The Belgians felt they had not been allowed sufficient right to protect their own cultural goals, and Denmark objected on the grounds that the Rome Treaty does not encompass cultural policy such as broadcasting regulation. The Danish attitude can be
said to reflect the considerable hesitancy towards the Common Market among Danes ever since Denmark joined the EC in 1973. The removal of the Iron Curtain has, however, had a major impact on this hesitancy, as has the 'rapprochement' to the EC of Denmark's close neighbours, Norway and Sweden. Lately, the government has suggested that the Rome Treaty be amended to include culture, and it seems to have broad political backing in Denmark for such a step.

Also in the Federal Republic of Germany the Directive met with resistance. Because cultural policy, including broadcasting regulation, is the prerogative of the Länder, the federal government's right to accept the quota clause was disputed by the Länder governments who have presented the case to the Constitutional Court in Karlsruhe. It was in consequence of the Länder opposition that the formulation of Article 4 (the quota clause) became 'soft' (... where practicable and by appropriate means...) and that a declaration was issued in connection with the adoption of the Directive to the effect that this particular article was a political goal rather than judicially binding. The Commission has later interpreted the declaration in a slightly different way, saying that the quota clause is as binding as the rest of the Directive, but that it is hard to see how the European Court could make a clear decision on a quota issue, given the formulation of Article 4 ([Official Journal, C 97/22, 17.A.90].

**Competition policy**

It is part of the overall Community policy in the audio-visual area ([EC (1990)]) to encourage competition. This involves among other things promotion of independent production and of new second-run channels that can contribute to the creation of a secondary market for audio-visual products. The Commission is thinking here particularly of cable and satellite channels. The secondary market is seen as one of the strong advantages the US industry has over the European because of its potential as an additional source of income.

The reality of the television market in Europe shows that such new channels require substantial capital. It may therefore be necessary for their development to let them operate without the content restrictions of the Directive, according to the policy plan. Given that several of the 'primary market' channels that have emerged within the past few years have financial difficulties, it may prove difficult to enforce strict quota rules on some channels, while others are exempted. Even without a protected new tier of 'secondary market' channels, quotas are causing administrative headaches, for instance in France where some of the new channels have been fined for breaking the domestic quota rules.

The goal of strengthening competition in the audio-visual area involves providing better conditions for independent producers in Europe. The Directive's quota clause contains rules to this end - that 10 per cent of either transmission time or programming budget (again for fiction primarily) be reserved for independent productions. In addition, the Commission's policy is to tackle the disadvantage faced by independent producers vis-à-vis the powerful television broadcasters who dominate distribution and thus make the rules. In most cases these broadcasters own the copyright to the programmes they air, with the effect of depriving the independent producers of the right to further exploitation and keeping the market under-supplied.

Seen from a cultural policy point of view, the wish to promote competition in production is arguably a two-sided issue. The independent production sector consists mainly of small and medium sized companies that have a long way to go before being able to offer a stable, high quality supply of programmes with mass appeal. If the traditional big broadcasting organisations, i.e. Europe's public service institutions, are to have their existing economic conditions curtailed in the process of enhancing those of the independent producers, the loser may well be the viewer. This is not to say that independent producers cannot make good programmes, merely to point out that big productions require big money and ample production facilities - such as those commanded by the programme producers in the US.

This argument should not be taken too far, of course. No-one denies that the European audio-visual industry has a structural problem and that European culture will suffer, if nothing is done. It is the plan of the Commission to follow up the Television Directive up with rules on copyright and measures to help the independent producers, as mentioned. In addition, initiatives are taken to avoid concentration of ownership of the media industry, to strengthen the European cooperation in developing HDTV, and to move the Media 92 programme from its pilot phase into full-scale operation with a substantial increase in funding.

**Media and Eureka**

The Media 92 programme was launched by the Commission in 1987. It is made up of several different projects, all of which concentrate on pre- and post-production
efforts such as training, research and development, script-writing, distribution of cinema films and video cassettes, multilingualism, and cartoon production. Besides continuing these efforts the future Media programme will seek co-operation with Central and Eastern European countries, and there are plans for an increased attention to regions with a low audio-visual production.

The Media programme was set up primarily with small- and medium-sized producers as the target group. In recognition of the fact that the European industry must have the benefits of economies of scale in order to be able to compete with American production, the EC Commission has, in conjunction with the French President Mitterand, launched the Audio-Visual Eureka project. This happened at the Rhodes-meeting of the European Council in December 1988, and it was followed up in the beginning of October 1989 with a large-scale conference in Paris, 'les Assises de l'audiovisuel'.

The Audio-Visual Eureka has borrowed part of its name from the European technological cooperation and, like it, aims to mobilize industry, professionals, and governments in an effort to create a competitive production for the big European market. The market, as well as the Eureka scheme itself, includes non-EC Europe. A joint declaration by ministers from 26 countries participating in 'les Assises' lists measures to be taken within the Eureka framework, among them the setting up of a secretariat (now in place in Brussels), the establishment of a Coordinators Committee with representatives from governments in the role of a board of governors, and the creation of an Observatory which can function as a databank for the industry.

The Eureka plan operates under three main headings: the rules of the game, the programme industries, and new technologies (primarily HDTV). This 'trio', as it has been baptized by the EC Commission, is also the backbone of the Commission's design for future initiatives in the audio-visual area, and it is clear that Eureka has played a major role as inspiration. The interplay between existing and proposed directives (on, e.g., copyright and satellite-TV), Media, and Eureka projects of cooperation in production and distribution is supposed to create a synergy to boost the audio-visual arena all around.

In the meantime

The synergetic effects cannot be expected to manifest themselves quickly and all at once, even if everything is carried out according to schedule. In the meantime, some of the possible short-term consequences of the Television Directive and the proposed follow-ups may be less attractive. One such consequence concerns independent production and its potential role as provider of material for the increased programming hours. In a recent survey of broadcasting in the UK (Financial Times, 16 October 1990), it is predicted that the bonanza for independent producers, supposed to follow the Broadcasting Act's clause of 25 per cent independent production on BBC and the ITV/Channel 3 companies, may never happen. Part of the reason given is the broadcasters' insistence that they keep the right to the programmes they buy (as mentioned above, the EC wants to change the rules here). Another point is that a great deal of upheaval can be expected in the independent sector - new companies are being created, but many are too small or inexperienced to complete and mergers and take-overs will reduce their number and increase their size. In 1989 Channel 4 commissioned programmes from 526 companies, but only 28 of them made productions worth more than $1 million.

Contrary to commonly held beliefs, independent productions do not seem to reduce costs of programme making. Consultants Ernst & Young have found that overall production costs in the independent sector are 15 per cent higher than in the BBC, mainly because of high wages. As a result of the 25 per cent independent programming requirement the BBC will close down one quarter of its studio facilities and reduce staff by several thousand (ibid). In a similar vein a director of Thames Television has said that the 25 per cent quota will cost the ITV companies $251 million (Screen Finance, 18 October 1990: 19).

To this picture should be added, that American producers are likely to step up their efforts on the European market when faced with the Directive's quotas. Besides still having scope for expansion from the current 40 per cent of American fiction programmes on European screens to the permitted 50 per cent they will be able to co-produce with European companies to a greater extent than they do today. In many cases such co-operation is likely to involve the major established European broadcasters rather than the smaller and newer independent producers. Also on the distribution side of the business the Americans will remain a formidable competitor. The chairman of the American Film Marketing Association claims that the US majors are driving European independents out of business through monopolistic behaviour, and he warns that this will be at the cost of their own prosperity in Europe (Screen Finance, 4 October 1990).
The creation of an open market for audio-visual products is supposed to be beneficial not only to the large producer countries, but also to the smaller ones. It is, however, the experience of most small countries that their cultural goods have a more than hard time surviving in market place conditions. EC competition rules which form a strong ideological backdrop for all policies, including the audio-visual one, are not in favour of discriminatory national regulations and subsidies. And although the Directive as well as the Media programme talks about the need to give special consideration to 'the specific situation of countries with a low audio-visual production capacity or restricted language area', there do not seem to be plans for suspending the rules of the market place.

Small countries have a problem financing film and television productions. Income from licence fees is limited, and so is the advertising market. They are therefore susceptible to competition from neighbouring or other foreign channels taking away not only viewers, but also potential advertising earnings. National broadcasting policy that deviates from the mainstream of the larger nations' becomes difficult to sustain. This development is due to the spread of cable and the increase in satellite channels and not the Television Directive, of course. But the removal of frontiers and the establishment of a 'level playing field' is not likely to make it easier for small countries to maintain independent policies.

Concluding remarks

There has been no dearth of lobbying by the cultural establishments in connection with the preparation of the Television Directive. Up until the very last moment the French film industry put pressure on the government to insist on a 60 per cent quota of European programmes (instead of the 50 per cent agreed upon by the other member states). It was only after - the day after, in fact, - the successful conclusion of the Audio-Visual Eureka conference that France bowed to the majority and voted yes to the Directive. As mentioned, the German Länder fought hard, and are still fighting, for a watered down quota clause, because they are not prepared to relinquish their cultural independence to the federal government in Bonn. The Directive's Chapter III on the promotion of distribution and production of television programmes (the quota clauses) does not apply to local television broadcasts 'not forming part of a national network'. It is commonly known as the 'Berlusconi article' because its main aim was to exclude the Italian private television stations until they were given the right to form national networks - which has now happened with the recent adoption of a new broadcasting law in Italy. Also the Spanish regional channels are 'protected' by this exemption, whereas, e.g., ITV in the UK, FR3 in France and ARD in Germany are not, since they do form national networks (EBU Review, 1990).

Working from the outside we find the American film producers who, in support of their economic interests, have accused Europeans of cultural guardianship of the worst kind and tried to convince EC member states that the viewers, not their governments, should decide what (television) culture is.

In most cases, objections to the content of the Directive are predominantly motivated by economic and political considerations, hidden or overt, and perhaps less by a disinterested concern for the cultures of Europe. They are nonetheless, bringing the creation of audio-visual products into focus in the European policy debate, and they have contributed in no small measure to the diversity of the EC plans for future action.

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