CHALLENGES

Challenges for media policies and regulation

Introduction

A convergence of telecommunications, computers and content has resulted in the fastest growing communication medium ever: the Internet. It is currently doubling in size every six months and its users have become the new citizens of 'planet Cyberspace' - in years to come they will outnumber all but the largest national populations.

This virtually unregulated medium allows information to flow freely and instantaneously (traffic jams aside) to all its citizens. Should all this information - some private, some public; some involving purely commercial transactions, some involving public broadcasting - be permitted to speed through Cyberspace without the visible hand of government? Or should government be directly involved in new communication media so as to ensure that certain essential social and economic principles are maintained? Who should govern Cyberspace, and who should decide its rules, norms, morality? Is the invisible hand of self regulation a better option, giving the Internet the time and freedom it may very well need to grow up?

The Internet differs from traditional communication channels in that it permits a variety of communication modes to exist simultaneously. Users can publish and communicate back and forth from one-to-one, one-to-many, many-to-many. This feature allows the Internet to offer a variety of new opportunities - to inform, communicate, educate, entertain and do business on a global scale. The Internet is a vehicle for empowering citizens, and for connecting them to various sources of digital information. It allows individuals to communicate with government and government to communicate with individuals. In other words, it allows for greater public participation in, and awareness of, the political process. There are already examples of on-line government in which the transparency of government procedures and accessibility to government officials are increased. ICTs (Information Communication Technologies) offer groups, associations and political organisations new ways to deliver information about their objectives and accomplishments and the opportunity to promote their ideas to a wide audience at a
low cost. The new technologies have the potential to widen the democratic decision-making process. However, due to the myriad of opportunities associated with ICTs, new regulatory initiatives may well be required.

The traditional policy stance has been to try to balance the positive features of the new ICTs while regulating the more negative aspects of new information and communication technologies. However, such a view is becoming less and less feasible as the unpredictable nature of the new technologies is causing unexpected opportunities, applications and growth areas to emerge. At the same time, policy makers are becoming increasingly prudent - even sceptical - about regulating the new ICTs too quickly. Nevertheless, despite the intrinsic difficulties in designing appropriate policy prescriptions in this dynamic field, we will try and focus on a set of issues which might be particularly relevant from a European perspective. Obviously, the challenges associated with regulating the media and especially the newest communication medium - the Internet - are diverse and numerous. Our analysis certainly does not claim to be complete.

This chapter will first address the issue of access to the European Information Society in a deregulated telecommunications environment. Access remains an issue of central concern to an equitable and broadly diffused Information Society. Next, the changing role of users and producers of content is considered, with particular emphasis given to the on-line, interactive environment. Following this, we take a look at the current dichotomy in the Information Society: on the one hand, virtually anyone can provide content via the Internet, on the other, the power to control content is centralised amongst a few powerful organisations. The potential conflict that may emerge between public and private media organisations in their fight for advertising revenues is also briefly discussed. Before concluding, we look at some issues associated with the ability to continually access information and its effects on democracy in the Information Society.

Access to the Information Society

In order to benefit from the emerging Information Society, individuals must first have access to the backbone of the Information Society, the various information and communication technologies, such as a computer, a telephone line, a modem, relevant software and an Internet Service Provider (ISP). At the same time, and perhaps more importantly, access requires potential users to be computer-literate and able to navigate their way around the World Wide Web. In order to exercise one's right to communicate in the Information Society, a number of prerequisites need thus to be in place, the most obvious being access to information infrastructure. The particular importance of access has led to suggestions for an updated version of the notion of universal service, allowing affordable access for all for advanced telecommunication services. The simple extension of universal service to include the new technological opportunities afforded by the Information Society - such as a broadband connection to all premises - would not only be extremely costly, it would also be quickly outdated. Thus some alternative, less technical and more functional approaches to universal service have been put forth.

One of these suggests that the existing concept of universal service could be shifted towards a concept of universal community service. This extended universal service would incorporate a basic level of access to new information servi-
ces with a limited obligation of universality to the educational, cultural, medical, social and economic institutions of local communities. This community-based concept of universal service provision is similar to the concept of universality introduced in the US last century with the advent of the telegraph. It is the approach most explicitly followed in Finland and underpins the rapid diffusion of Internet use there (the highest per capita Internet connections in the world in a country which until a decade ago was still very much dominated by state monopolies and controls).

But is ‘free’ community access enough? At least it allows individuals, regardless of their wealth or income, to exercise their right to communicate. However, if the right to communicate begins with the right to information, it also encompasses the right to be involved in creating and distributing information and, what is more crucial, the right to knowledge. What this means is the ability to select information based on the democratic needs and aspirations of individuals and communities. For this reason, access to the Information Society is probably not enough – individuals and groups must also have the means to create content.

The issue of access in the emerging Information Society highlights the importance of the individual’s rights to education. It is that recognition which has led to the particular importance policy makers in the US, Canada, Europe and Japan have placed on linking up schools. It has also inspired the active introduction and use of electronic communication equipment and teaching software in classes and specific courses on Internet use and content development. While countries differ in the amounts of public funds invested, and the involvement of the private sector, all recognise the crucial role they must play in developing access.

Europe, with its multitude of cultures, languages and political persuasions requires a more complex approach to providing content in the information society. The MTV network has already recognised this. In contrast to its homogeneous programming in the US, MTV Europe has many programme formats tailored to suit the different languages, preferences and needs of its viewers. But supplying such a variety of content is costly. This is why the fundamental challenge of the European Information Society will be the search for competitiveness based on cultural, educational and social variety. The Information Society points to the need for a new process of economic integration, where the emphasis is no longer solely on the standardisation and harmonisation of products and services, access to ‘open’ infrastructure and improved Europe-wide market transparency, but on recognising and nurturing the great variety of taste, culture and talent. The difficult question facing policymakers is how to avoid a ‘mono-culture’ Europe within a de-regulated environment.

The changing role of the content makers and content takers

Need to confirm a meeting? Telephone communication is a thing of the past, just send an e-mail instead. Is it time to sell your stocks? Check the Internet for the latest quote. What’s the political situation in your home town? Simply consult the regional on-line newspaper or broadcasting Website. The efficiency gains associated with the tools of the Information Society, and in particular the Internet, are significant. And there are clear benefits to having all this information available. However, the costs of selecting relevant information have also risen rapidly. It is the well-known information paradox: as information becomes cheaper and
more becomes available, the cost of selecting relevant information rises rapidly.

The abundance of information available via the networks is also causing the roles of journalists and users to change. The journalist no longer dictates what information the user is exposed to. The user will now be selecting much more what he or she wishes to read or view. With traditional news media, all content is filtered and edited as the journalist decides exactly which information will reach the final consumer. In the world of the Internet, with streams of information coming at the user from all different directions, this is no longer happening. The journalist has been to some extent cut out of the equation as (s)he is no longer essential in packaging information for the final consumer. Users can click away and find all the details they want on any given subject. Although there are benefits to such a directed approach, there are also drawbacks: for one, readers no longer accidentally access information and viewpoints as they do when zapping through TV stations or scanning newspaper headlines.

In an extreme case, content could actually end up being dictated by the reader. As individuals increasingly interact with publishers, through e-mail opinion polls for example, a bottom-up approach to news reporting could emerge. Even those who do not consciously interact with publishers may end up contributing. Search engines can gather information by observation an individual's surfing habits. Information is often 'free' for users but in exchange, they hand over information about their interests, information needs, preferred entertainment, and so forth. This bottom-up approach also emerges as a result of the structure of the Internet itself. Internet users quickly discover that they can easily avoid opposing views or stories about subjects that are of lesser personal interest.

Are there problems associated with these developments? Will readers ignore all information that they perceive as irrelevant and be left with a 'daily me' – an online newspaper where users are never confronted with information that is contrary to their beliefs? Will on-line news sources replace traditional newspapers? Newspapers are deemed essential to the democratic functioning of our societies as they form an important domain for public discussion and information exchange. The investigative journalism they offer is considered by many as a critical supplement to the time, image and sound-based audiovisual media and the unedited, information-rich Internet platform.

In the Information Society, the journalist's role will be to fish out the most important topics in the vast sea of information. It may become less about selecting information for dissemination and more about increasing the value of what they disseminate. In this sense the journalist can be considered the ultimate codifier. His or her knowledge and views become fully embodied in the story he tells. In this way, the journalist gains a reputation, as does the media organisation that he represents. Such reputations capture an often loyal audience – something that is less likely to happen when an individual provides content. Although the individual content provider may supply information, he does not have the reputation (and perhaps the skill) for transforming it into useful and thought-provoking knowledge. As such, his audience is likely to be small.

This issue of consumer loyalty has become more important in what some have termed the attention economy. In the age of the Internet, the problem is no longer getting the message out, but getting consumers' attention – and keeping it. When American Online first came out, it bought content and re-sold it to its mem-
bers. Today, it charges the content producers for access to subscribers. The scarce resource today is human attention – essential as a draw for advertising revenues. However, in the Information Society the whole structure for gaining revenues is changing. For example, the online bookstore Amazon, offers an Associate Programme where anyone who provides a link to a specific book on the Amazon site – and thus generates a sale – receives 5-10 per cent of the book price. The New York Times and the LA Times offer on-line readers book reviews and receive revenues through their participation in the Associate Programme.

The Information Society is bound to change the role of the traditional journalist and newspaper. Given its importance to our society, it seems critical to monitor the changes that will take place. As users become better at selecting "daily me" information, there is of course a danger of insufficient debate, of more populist and extreme views quickly capturing the attention of like-minded users. The result might well be fewer consensus-building views, and at the same time a trend towards 'effective exclusion' of views which are no longer tested, opposed or debated in public, but remain exclusively in the realm of groups of confirmed 'believers'.

**Striking the right balance... media decentralisation vs centralisation**

In the Information Society there are new economic questions to be worked out concerning the balance between economies of scale of production and distribution in the media industry. On the one hand, with relatively easy and low cost access to the Internet, anyone can be an international publisher. Traditional barriers to entry appear reduced. Consumers produce their own content – sidestepping to some extent the established media organisations.

On the other hand, the economic reality is that there is substantial and increasing concentration of ownership in the media. The costs of quality content-production remain high and savings can be made by spreading these costs across as many distribution channels as possible. One media conglomerate, for example, may control a variety of newspapers, television stations, news programmes, Internet sites, etc. Also, a monopoly over the rights to telese various events, shows and so on can result in very high prices being paid and charged for media access and viewing. In particular, it is possible to see a vertical integration of production and distribution emerging. Meanwhile horizontal integration applies across the different media; and geographical mergers also appear. The magnitude of this merger and acquisition activity is great. In 1995 more than 15 per cent of the total value of world-wide merger and acquisition activity (US$1 trillion) was generated by the information and communication technology industries. These takeovers, mergers and strategic alliances are resulting in the emergence of a few large and very powerful media empires. Perhaps one of the greatest concerns associated with such conglomerates is their potential to limit access to content. At present, anyone can gain free access to all online content. Should the digital television model be applied to the Web, then access to certain media groups that have established their vertically integrated gateways to information might be severely reduced. According to the director of media at Le Monde: 'The main factor that is a real concern for this industry is not the competition from other media players like television channels that go online, but the activities of those who control the gateways, who control access to the user. Telecom operators, and ventures like America.
Online and Microsoft can now control and charge for access to the consumer, rather than paying the producers of content to offer it to their readers. The lack of transparency in this field is dangerous.

As outlined in the Green Paper on Convergence, only a few of today's market players will have the skills or resources to straddle the whole value chain within a converged environment. The result will be the emergence of major players in the sectors affected by convergence, who will, to some extent, team up through partnering deals.

Public access to high-quality and neutral information is necessary for the proper functioning of democracy. Without unbiased news about affairs in the community, the country or the wider world, citizens cannot play an active part in the governance of society or make informed choices in elections. The information received, however, is not decided in a totally neutral and transparent manner. With only a few organisations deciding what information viewers are exposed to and the lack of transparency about who owns what in the media, there is understandable concern that media concentration could be detrimental to cultural and political pluralism. For this reason, the Commission highlights the importance of competition rules to assess new ventures as they emerge. However, this confuses the economic arguments for competitive markets, which are not likely to be the characteristic feature of the media industry, given the dominance of scale economies and vertical integration – not to mention cost cutting opportunities and political arguments for pluralism and democratic control.

Another issue likely to raise problems is the cross-subsidised services offered by public broadcasters. All radio and television broadcasters, with their access to constant streams of updated information, seem to be in the best positions to handle the Internet domain. CNN was voted the top on-line newspaper of the year, despite the fact that it is not an off-line newspaper. The company actually reaches more people on-line than it does over the airways. The power of such broadcasters, especially those that are publicly funded, may create tension in the future. Already, publishing companies in Germany, Switzerland and the UK have raised concerns about unfair competition from public television based Internet services. Microsoft and ZDF jointly offer a continually updated news service, while the BBC's new on-line site can draw upon the news gathering resources of one of the world's largest news organisations – 2,000 journalists, 250 foreign correspondents and 50 bureaux.

One question that will need to be addressed in the very near future is: what is the future role of public broadcasters in the emerging Information Society? This issue has already come to the forefront in a number of European countries. In the Netherlands for example, as more and more private television broadcasters have entered the market, the competition for advertising revenues has hotted up. Some broadcasters resent the fact that NOS, the publicly funded television station, is also able to battle for valuable advertising revenues. Similarly, on the Internet, such publicly funded services are in direct competition with commercial newspapers and other organisations. Many believe that this represents unfair competition to commercial ventures and that cross-promotion should be limited and regulated by strict guidelines. Such measures already exist for the promotion of the consumer magazines that the BBC produces, but these rules do not apply to on-line ventures. As the marketing director of the Electronic Telegraph recently put it: "There is no need at all
for public domain on the Internet, the medium is very well served by commercial ventures. The role of public service broadcasters that migrate to new media needs to be redefined.

On the other hand, and again in parallel with the previous EU argument, some believe that publicly funded broadcasters, including those on the Internet, are necessary in order to preserve cultural and artistic diversity and to address community issues. For the European Parliament the current tendency towards media concentration is considered a challenging area in which policy action is absolutely needed in order to ensure:

- the harmonisation of national restrictions on media concentration in the entire media sector
- the establishment of absolute transparency of ownership in the media industry
- the setting up of rules for national, public service media-institutions, (programming rules and positive measures to include the promotion of non-commercial radio and television stations or independent newspapers).

These are all initiatives which might be seen as important in order to secure and support pluralistic overall media supply on a national basis.

**Time for reflection and deliberation**

With the relatively low cost of Internet access, anyone can be a publisher. This can foster new possibilities for individual expression and allow groups of people to share the viewpoints of their organisations. At the same time, government or economic information can be put at the disposal of groups and individuals. This could contribute to the development of relevant knowledge about issues of public concern, particularly at the community level. As most users would agree, electronic communication brings about an information explosion.

Such an information explosion - which might at first sight appear to increase opinion formation and transparency - does not necessarily improve democracy. First (as mentioned above), not all social groups have access to the technologies. Second, most of the time, the increased use of ICTs involves neither debate nor confrontation of opinion, but rather an expression of any viewpoint but not necessarily contradictory argumentation. Finally (again as mentioned above), there is a risk of an information overload, which wears down the importance of any given question in a democratic debate and which favours undifferentiated information. In other words, the increase in the flow of information does not necessarily engender an amelioration of the democratic system. It could just as easily lead to a distancing of citizens with regard to real democratic stakes.

The anarchistic nature of the Internet is allowing greater public participation in and awareness of the political process. However, 'information transmission' should not be confused with 'public debate'. The abundance of information available could very well result in growing disinterest among large groups in society. Such disinterest could also stem from the 'never-ending' nature of on-line discussions.

The time required to sort through the vast amounts of information available on the Internet makes it not only a rather slow information highway on some occasions, but also one where the content varies considerably in quality. As the amount of information available continues to grow, the ability to select relevant, credible news will become more and more difficult. For precisely this reason, existing newspapers may play a key role in providing trusted
content on the Internet. This point illustrates the importance of accuracy, reliability and integrity in reporting – the fundamentals on which newspapers and magazines build their reputations.

In the Information Society, the continuous flow of information, and the speed at which it is transmitted to the public does question the tradition of fair reporting. As CNN’s numerous cuts to live events illustrate, there is often no gap between an event and the reporting of it. On the Internet, being first in reporting a news event can mean drawing the complete population of the Web to one’s site, as readers on-line are much more likely to use different sources of information for their different information needs. As discussed in a recent publication by the European Journalism Centre: ‘Journalistic codes of conduct do not necessarily apply to on-line publications. For on-line newspapers this is not a problem as these are largely based on printed versions and thus rely on established journalistic standards. For new news sources that only publish on-line this is quite different’. 4

The media trends discussed here may make it necessary to establish some general principals of democratic life in the emerging Information Society and of social responsibility governing the providers of media content. In particular, a balance should be established between access to the media by different political and social groups. Time to reflect on the implications of issues should be built into debates and decisions on policy.

By way of conclusion:
from Big Brother to Big Sister?

The generalised use of ICTs may lead to the mapping and monitoring of behaviour through the routine recording of every transaction that people make. Many examples of this continual surveillance of our lives already exist, from legitimate government records and the continual capture of data on purchases, to video surveillance in public and private spaces. This might create the impression of a ‘transparent’ society, where every individual’s behaviour or consumption profile is recorded. Privacy and data protection are, of course, complex areas; much effort is already going into formulating appropriate protection mechanisms through new legal initiatives. Such initiatives are controversial to say the least. Last year President Clinton signed into law the Communications Decency Act (CDA), a law that required ‘publishers’ on the Internet to verify the age and identity of all potential recipients of ‘indecent’ materials. It was argued, however, that much of this sensitive information, for instance on AIDS prevention, teenage pregnancy, and other social issues, would not be sought out if recipients had to identify themselves. As a result the CDA was unanimously overturned. 5

There is clearly a need for policies that avoid the risk of a gradual, long-term erosion of privacy. Information collected from on-line sources, the Internet, and supermarket checkouts is being sold to marketers. Actions is under way on both sides of the Atlantic to protect individuals and grant them the right to be left alone. In the Ministerial Declaration of the Global Information Networks Conference, the protection of personal privacy was affirmed.
"Personal data of users of global information networks should only be collected and processed where the user has given informed consent or where such collection or processing is permitted by law, and that appropriate legal safeguards and technical tools should be provided to protect the user's right to privacy." 9

The US Congress is presently reviewing the Consumer Internet Privacy Protection Act of 1997, which would require written consent before a computer service disclosed a subscriber's personal information to a third party and would allow consumers to access and correct information. Some practical means such as self-regulation must be encouraged and developed so as, for example, to ensure that illegal and harmful content is in the end removed from the Web. Yet concurrently, freedom of speech must be encouraged. The challenge is to decide where the border is between what is protected by free speech and what should be actively discouraged. This is what I call the shift from a Big Brother to a Big Sister attitude. Big Sister is supported by public and private monitoring groups that have emerged and continue to be encouraged by policy makers. These groups keep a close eye on many areas, including: codes of conduct on the Internet and 'Netiquette'; children's issues; consumer issues; civil liberties. Industry encourages self-regulation as in the off-line world in areas of advertising, marketing, general commerce and media. Big Sister, with her wisdom, experience and resources, guides the Internet without smothering it. Government involvement is limited, but is important in encouraging parents, associations and grass-roots organisations to become involved in Internet self-regulation. This would not be from the perspective of intolerant pressure groups who are trying to censure particular expressions of free opinion, but from the perspective of assisting the effective implementation of existing rules of law in an environment which offers little scope for governments to monitor compliance.

In doing so, government also helps to raise awareness of the Internet, the issues surrounding it and co-operates with authorities from other countries. However, active government regulation should only emerge when self-regulation breaks down. In general, it is the limited role of government which has allowed the Internet to flourish without being bogged down by over-regulation from various national regulators and policy makers in search of new fields of application.

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1 It is also this feature, the continual shift from 'publishing mode' to 'private communication mode' as pointed out in a recent EC communication, one of the main challenges to Internet regulation as the two modes are traditionally governed by very different legal regimes. See further, Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services at www2.echo.lu.

2 Green Paper

3 These points are based upon a resolution of the European Parliament (A3-043/93), which in turn was a response to the 1992 European Commission Green Paper on Pluralism and Media Concentration. In October 1994 the Commission made a follow-up paper on the Green Paper after a round of consultations.

4 The Future of the Printed Press, European Journalism Center, May 1998

5 Taylor, P. Personal privacy: a cause for concern, Financial Times, 4 February 1998

6 Global information network, Ministerial conference Bonn, 6-8 July 1997