EUROPEAN PARLIAMENT

WORKING PAPER

THE FUTURE
OF THE AUDIOVISUAL SECTOR
IN THE EUROPEAN UNION

Education and Culture series

EDUC 103 EN

02 - 1999
The future of the audiovisual sector in the European Union
This publication is available in the following languages:

FR (original)
EN

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L-2929 Luxembourg

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Manuscript completed in September 1998.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Preface</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>7</td>
</tr>
</tbody>
</table>

## PART ONE: THE TRADITIONAL MEDIA IN THE EUROPEAN UNION  

1.1. The position of the audiovisual sector in a competitive environment  

1.1.1. A rapidly expanding European market  

1.1.2. The ubiquitous American audiovisual industry  

1.1.3. Defending the exception culturelle within the international organisations  

1.2. The absence of a real European audiovisual policy  

1.2.1. Community instruments designed to overcome the fragmentation of the European audiovisual market  

1.2.2. The legal obstacles to the creation of a European audiovisual policy  

1.2.3. The strengthening of audiovisual policy in the Amsterdam Treaty  

## PART TWO: THE TRADITIONAL MEDIA IN THE AGE OF INFORMATION AND COMMUNICATIONS TECHNOLOGY  

11.1. Objectives for the creation of a coherent European policy on programme content  

11.1.1. Safeguarding and encouraging cultural and linguistic diversity  

11.1.2. Avoiding cultural hegemony in any form  

11.1.3. Safeguarding and encouraging pluralism in the media  

11.1.4. Promoting the extension to the new services of the values of public broadcasting  

---
The future of the audiovisual sector in the European Union

11.1.5. Democratising access and educating the population about new technology .......................................................... 28
11.1.6. The challenge of protecting copyright in online services .................. 29
11.1.7. Creating jobs in Europe .................................................. 30

11.2. The resources required to safeguard the European model .................. 31
11.2.1. Technical convergence of the audiovisual and telecommunications sectors: choosing a regulatory framework for the future .................. 31
11.2.2. The creation of a European multimedia policy ......................... 35

Conclusion .............................................................................. 41
Bibliography ............................................................................. 42
Preface

This report presents the principal findings of the study commissioned by the Directorate-General for Studies of the European Parliament on the future of European audiovisual policy.

At the outset of the process of European construction, its primary aim was economic integration. Culture, as a matter of fact, is not mentioned in the Treaty of Rome, because it was to remain entirely the responsibility of the Member States. The defining feature of today's European Union is a common economic and monetary market, and our societies have become aware that culture possesses an economic dimension, a realisation that is reflected in the concept of the 'cultural economy'.

This is what prompted the European institutions to reassess the importance of culture, to which they devoted Article 128 of the EC Treaty, laying down that 'the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore'.

The aim of the present study is to show that the European audiovisual sector, including the cinema industry, has some organisational leeway to make up, having only belatedly come to be regarded as 'industrially exploitable'. Moreover, it is subject to severe pressure from the United States in the markets of the EU Member States. But rather than dwelling on the past and present, we must consider the future of the sector, because the environment in which it operates is developing rapidly under the influence of technological innovations. Elements such as the clash of cultures, the dichotomy between the public and private sectors and American competition are undoubtedly important, but they must be thought out again in the context of a constantly changing environment in which they can no longer mark the confines of reflection on the audiovisual sector.

In fact, the arrival of the Internet, a global information network that is able to transmit images, sound, text and data at the same time, heralds a profound revolution which has yet to show its true face but which is already spreading across the entire fabric of modern society. The first consequence of technological convergence, a spin-off from the development of digital technology, is that the cultural competition between the United States and Europe is now being compounded by sectoral rivalry between the traditional media and the telecommunications operators. The professionals of the audiovisual media are no longer the sole producers of audiovisual works; telecommunications operators are moving into the field, an area in which they have no experience in terms of the production of material. In this situation, how can the quality of programme content be preserved? Quality must not be sacrificed on the altar of profitability. Yet what can be done to promote the infusion of the values of public broadcasting into the programmes offered to viewers, values such as variety of content, freedom of expression and consideration of the diverse backgrounds and interests of audiences? The present changes in the audiovisual sector raise the question of the rules to adopt as a framework for the activities resulting from technological convergence.
The future of the audiovisual sector in the European Union

These developments, however, will have many repercussions on our societies, especially in the social, cultural and economic spheres. In this period of transition, it is vital that the European institutions do not hesitate to arm themselves with the political and industrial resources they require to control and guide these new forms of information technology. This paramount goal necessitates the creation of a European multimedia policy if the aims of a universal service and massive job-creation are to be achieved.
Introduction

Today, the audiovisual sector is a strategic domain of international relations, because the quest for control of it gives rise to economic and political confrontation between countries in different continents. The sector has an undeniable geo-economic dimension, with the various economic operators striving to extend their geographical and economic spheres of influence in search of profitability. In practice, their mutual relations alternate between competition and cooperation. The cooperation option stems from the volume of investment required by the audiovisual sector. Strategic alliances have the advantage of pooling operators’ resources in terms of capital, know-how and influence in order to enhance their prospects of controlling the audiovisual sector. At the same time, however, they tend to make it more difficult for new operators to gain access to the sector.

The interest shown in the audiovisual sector derives from the impact of the medium of television on our societies. It is a very powerful means of intrusion into people’s homes, for by providing all sorts of programmes to inform and entertain, they help to a certain extent to form public opinion. In addition, the amount of time spent in front of television sets has sharply increased in recent years, revealing a potential market for new types of television service that technological developments have made possible. Europe is subject to fierce competition from the United States in the marketplace, a situation that is clearly reflected in Europe’s trade deficit in the field of audiovisual products.

With a view to reversing this trend that was adversely affecting its Member States, the European Union defined Community financial and regulatory instruments designed to create a framework on which the structure of a European audiovisual industry could be built. Encouraging results have been registered, and these will now have to be rethought within the context of a changing technological scenario so that the future of European audiovisual policy can be envisaged.

Our analysis is divided into two parts, the first dealing with the traditional media in the European Union and the second with the response of the traditional media to the advent of new information and communications technology. The first part tries to situate these media in a competitive environment while emphasising the difficulty involved in establishing a proper European audiovisual policy. The second part presents the technological changes that are taking place in the audiovisual sector and demonstrates the need to make the transition from a European audiovisual policy to a European multimedia policy.
The future of the audiovisual sector in the European Union
PART ONE
THE TRADITIONAL MEDIA IN THE EUROPEAN UNION

1.1. The position of the audiovisual sector in a competitive environment

1.1.1. A rapidly expanding European market

I.1.1.1 The economic context

The European authorities have belatedly decided to establish support measures for the audiovisual sector, the reason for their delay being the application of the subsidiarity principle, since audiovisual policy is primarily in the hands of the Member States. We cannot therefore speak of the European audiovisual industry or of a European programme-production industry but rather of a system of Community support, the role of which is to supplement national initiatives and policies.

The supply of European products and public demand

Film production in the European Union fell by 14% between 1993 and 1994. The year 1995, however, saw a resurgence of national production in certain EU Member States (the United Kingdom produced 76 films, Denmark 63, Spain 59 and the Netherlands 18). France remains the only country where more than a hundred films are produced every year. In 1995, it contributed 25% of total European production with 141 films. The annual volume of feature-film production in the European Union was in the order of 550 films in 1995, costing a total of about 1.4bn ecus. One-third of these films were co-productions. This volume compares with an annual production of 450 feature films in the United States at a cost of four billion ecus, while production in Japan runs at about 250 films.

Although European production has long been declining, investments and receipts (cinema takings as well as video sales and hire charges) have been increasing, thereby improving the general economic health of the sector and testifying to continuous growth in European consumer expenditure on audiovisual products. And the number of people watching films, through whatever medium, has never been higher than it is today. Nevertheless, the statistics show that European film audiences prefer to watch American films through American media.

I.1.1.2 The interconnection between the audiovisual sector and the cinema industry

The Member States have come to recognise that the survival of the cinema industry depends on cooperation with television, and vice versa. This interdependence is manifest; it is clearly demonstrated by the average audience figures for films in Europe by distribution channel (cinema, television).

The future of the audiovisual sector in the European Union

The year 1992 saw the stabilisation of the cinemas' share of total feature-film viewing at 35%, while between 1992 and 1995 the pay-TV channels increased their share from 25% to 32%. Over the past ten years, the average number of feature films available through pay TV in the European Union has almost tripled from 30 to 85 per day.

The rapid growth of pay TV and the development of the market in videos (from 14% to 20% between 1992 and 1995) have brought about a reduction in video hiring. It is evident that a shift is taking place in favour of pay TV. This is leading to changes in the audiovisual sector and in the cinema industry.

The unprecedented number of films available on television has contributed to a great extent to an increase in the demand for feature films in the European Union. The average European watches more than a hundred films a year on television, compared with two in cinemas. Television is gradually establishing itself as the foremost medium for the mass distribution of audiovisual products. There is, however, a need to refine the very frequently advanced objection that such marketing power may trivialise the output of the film industry.

At the same time, the current multiplex revolution is at the root of a renaissance in cinema-going. In 1997, 23 new multiplex cinemas were opened in the United Kingdom, providing a total of 235 new cinema screens.

And this is precisely the point where the question of funding comes in.

\textbf{I.I.1.3 Funding: sources and volume}

It should be pointed out on the one hand that there is a growing involvement of television companies, and especially the pay-TV channels, in funding products and making them profitable and on the other hand that the average European film costs one-third as much to produce as its American counterpart.

European investments in production

In Europe, a new trend is emerging in the domain of film production, with fewer but better-financed films. In 1994, the average budget for a European film was 2.8 million ecus. In France, however, where 33.2% of European investments in film production are made, average budgets more than doubled in the course of ten years, rising from FF 13m (2m ecus) in 1985 to FF 28m (4.3m ecus) in 1995.

\footnote{European Audiovisual Conference, Working Group 2 - European support to the audiovisual sector, Papers and Documents, Final Report, Birmingham, 6-8 April 1998.}
The future of the audiovisual sector in the European Union

European productions seem to enjoy better funding today. However, promotion costs are not covered in a separate budget as they are in the United States but are included in the general production budget.

The need for a constant flow of European productions is all the more striking when we consider that in 1994 of all world investments in the production of feature films, which amounted to about 5.2bn ecus, a total of 3.8bn ecus, i.e. 74%, was invested by U.S. corporations. The United Kingdom and Ireland register the highest levels of American investment in Europe. It is interesting to note that the average cost of a film produced in the United Kingdom is 6.7m ecus/$8.3m, whereas the average cost of a purely British film is in the region of 2m ecus/$2.5m3.

The main sources of funding

The finance for a film is made up of the producers', co-producers' and investors' funds, grants and repayable advances, returns on prior sales to distributors or television companies and bank discounts or loans.

Before the advent of television, distributors were one of the main sources of funding for cinema in Europe. The situation changed when the television companies, and especially the pay-TV operators with 'movie' channels, became involved. They have been increasing their share of investments in cinematographic productions so as to have access to a large number of films and enhance their programme schedules. Feature films have long been one of the driving forces of pay TV as well as of new high-tech television services (high-definition widescreen TV, video on demand, etc.).

This situation is tending to bipolarise the market into big-budget films designed for the cinema/television/video circuit and low-budget films made exclusively for television. This new trend is beneficial, because it provides a better means of gauging the potential of a film and hence the financial consequences of a project.

The role of the banks in the funding of films is important. There are actually few banks which engage in this specialised activity. The cinema is a high-risk sector, in which banks require maximum guarantees. This explains why the main banks involved in the audiovisual sector, particularly in the United Kingdom and Germany, focus their attention on the United States. In fact, more than three-quarters of all loans are granted to the main independent American producers. Every year, ten such loans are granted, each amounting to 7.7m ecus ($10m). To obtain one of these loans, filmmakers have to offer solid guarantees. These conditions therefore limit the number of people with the financial capacity to produce a film, and U.S. film producers are the main beneficiaries of this system, which might be regarded as a form of 'discrimination' against European producers. Nevertheless, it would be impossible to impose quotas on these banks, requiring them to grant loans to European producers. Their involvement serves two purposes: firstly, to discount advance sales contracts and guaranteed-minimum contracts or forthcoming grants, thereby keeping the producer afloat, and secondly, to provide the money required to complete the funding of the financial plan4.

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The commercial approach to production seems to be the surest way of transcending the fragility of European cinema. The various phases in the development of a film must therefore be mapped out more precisely (screenplay, financial package, marketing plan). This is the aim of the programme MEDIA II (1996-2000) and its components Development and distribution and Training, which we shall examine below.

I. 1.4 Comparison between the public and private sectors

The public television stations are faced with the loss of their status as the sole operators in the audiovisual sector with the appearance of private television companies which possess a certain degree of know-how and considerable financial resources.

Public broadcasters must face up to the competition from the private sector in order to keep their audiences, to uphold the quality of their programmes and to fulfil the threefold mission assigned to them to inform, educate and entertain; this is the categorical imperative of the public sector, just as profitability is the guiding principle in the private sector. The present time continues to be characterised by the struggle between the public and private services for control of the audiovisual sector in Europe.

This power struggle is having an effect on the European audiovisual landscape. Costs are rising everywhere, especially advertising budgets, licence fees and pay-TV subscriptions. Fixed overheads (wage bills) have risen considerably at the expense of programme budgets. Apart from a redistribution of jobs from the public to the private sector, there has been no real change in the employment situation (about 200 000 jobs).

The competition between broadcasters and the proliferation of broadcasters and transmission time (about a million hours of programmes are now transmitted in a year) have caused an explosion in the cost of programmes and television rights; the number of imported American TV programmes, for example, rose by 49.3% between 1990 and 1995, representing an average annual increase of 9.8%.

From the consumer's point of view, competition has widened the choice of programmes, but the price per hour of viewing time has risen.


Screen Digest, April 1997.
1.1.2. The ubiquitous American audiovisual industry

1.1.2.1 A tale of two cultures

The present audiovisual situation in Europe, including the cinema industry, should not be regarded as a straightforward matter of fact. The gulf that has developed in the course of time between Europe and the United States is primarily the result of diametrically opposed conceptions in which culture means two completely different things.

American audiovisual groups were very quick to assess the commercial potential of the European audiovisual market and determine their strategies, while the Europeans immediately adopted a defensive posture to preserve their culture, hence the idea of the exception culturelle – the exemption of cinema and television from the General Agreement on Tariffs and Trade.

The contrast between the two conceptions may be defined as follows: on the one hand, the 'European argument' sees culture as part of a people's identity, whereas the United States considers the question in terms of the market (the industrial perspective). Do people not speak of the 'Hollywood industry'? The European market represents an outlet for American television and cinema products and, more especially, an opportunity to boost the profits from products that have already been making money in the domestic market.

The contrast is accentuated by the fact that the American studios and television networks have access to a unified market of 270 million potential viewers, whereas the European entertainment industry is confronted with various obstacles, particularly the limited size of their national markets and the diversity of the European cultural identity'.

1.1.2.2 European companies with a minority share of their home markets

The American production corporations are well aware of the role of television as an outlet for cinematographic productions.

The production of films in the United States (the world's third-largest filmmaking country after India and China) is dominated by the eight major members of the MPAA (Motion Pictures Association of America), which also control the market for the distribution of films in cinemas and video distribution. We are effectively in a situation here in which a dominant market position is being abused, since the major studios, which have cornered the cinema market, are deciding what should and should not be distributed.

The 1970s saw the entry into force in the United States of regulations barring broadcasting network operators from production and distribution activities. This enabled the U.S. 'majors' to develop a powerful worldwide sales network.

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The future of the audiovisual sector in the European Union

Be that as it may, the acquisition of new outlets is still essential, which explains the interest in the European continent. The strategy that has been developed consists in direct distribution on video or through the pay-TV channels, combined with international cinema distribution.

Audiovisual products are the United States' second-largest net export earner. Export revenue accounts for 41% of the total receipts of the major U.S. studios.

While fewer films are produced in the United States than in Europe (450 U.S. films in 1995, as against 550 in the European Union and 650 throughout Europe), the number of cinema tickets sold for American films in the European Union rose from 397m to 516m between 1985 and 1994. The American share of the European cinema market in terms of audience figures thus rose from 56% to 76% over ten years, which represents an increase of almost 50%. On the other hand, the market share for national films in the Community as a whole fell from about 25% in 1985 (177m tickets) to 13% in 1984 (89m tickets), which amounts to a 50% drop within ten years ". Moreover, trade in European films among the countries of the Community has become very slack, especially when compared with the volume of imports from the United States.

Sales of American audiovisual programmes to the European Union rose from $330m (264m ecus) in 1984 to $4.3bn (3.4bn ecus) in 1994 (almost 60% of all American programme exports). Sales of European programmes to the United States, however, only amounted to $371.5 (297.2 ecus) in 1994, which meant that the European Union was running a trade deficit of $4bn (3.2bn ecus) in relation to the United States. This is more than double the deficit recorded ten years previously.

Some recent estimates suggest an even greater trade deficit; one of these puts the deficit at $6.3bn (5.04bn ecus) in 1995. This increase, it seems, was essentially due to the growth in American revenue from the pay-TV market in Europe (+56%). In short, with its net expenditure of 4.7bn ecus in 1996, the European Union accounted for 22.4% of the global turnover of the American audiovisual industry.

Meanwhile, the share of the American market captured by European films has steadily diminished since the sixties and now stands at about one per cent. American intervention in the distribution of foreign films may go some way to explaining this result. Foreign films have been the first victims of the American film-classification system applied by the Classification and Ratings Association (CARA). The Association views each film prior to distribution and penalises independent producers, in particular for scenes of violence. According to the President of CARA, 85% of cinema managers would refuse to show a film that had not been 'cleaned up'. Many cinema managers as well as the main distribution chain refuse to take films with a '17' certificate, a rating that is widely applied to foreign films.

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Likewise, the major U.S. studios have stated that the American public have little interest in dubbed and subtitled films. It is worth emphasising that CARA was created by the MPAA in order to avoid federal intervention in the domain of motion pictures. This means that the member studios of the MPAA control production and distribution as well as having the power to restrict access to their market by excluding foreign films on the basis of various criteria (violence, etc.) which are present in their own productions (Terminator, Basic Instinct, etc.).

I.1.3. Defending the exception culturelle within the international organisations

I.1.3.1 GATT

Because of the pressure exerted in the postwar years by the U.S. Administration and the major studios, including the Hollywood studios, the cinema industry was unable to escape the application of the GATT rules. The only obtainable concession was a clause authorising governments to reserve 49% of their television transmission time for national productions.

In the 'Us against the rest' strategy, the exemption of television and cinema constituted the breaking point that triggered the crisis, according to the model presented by Brecher14. The catalyst was the EEC, which became the European Union in 1993, because it has steadfastly refused to negotiate on this subject, basing its position on the principle that European culture is not a tradable commodity.

Since the second half of the eighties, the more technical bodies, especially the General Agreement on Tariffs and Trade (GATT), which subsequently became the World Trade Organization (WTO), became the central debating forums on the new order in the entertainment industry.

The GATT negotiations brought two conflicting ideological camps face to face, the advocates of free trade and the defenders of cultural identity. The contrast between these two philosophies was most clearly highlighted in the statements made by François Mitterrand and Jack Valenti, when the former President of the French Republic said that it would be disastrous to assist in the generalisation of a unique cultural model. Would the dictates of money, allied with the forces of technology, he asked, finally succeed in doing what totalitarian regimes had ultimately failed to do? Mr Valenti, head of the Motion Picture Association of America, defending the interests of Hollywood, replied that Brussels' final offer was really lamentable, insulting and crammed with words that meant nothing. These negotiations, he said, had nothing to do with culture. The sad truth was that Europe was turning its back on the future15. It should, of course, be borne in mind that these two men belonged to two different worlds – the world of politics and the world of business – which inevitably gave each of them a totally different perspective on the issue.

Classed as a 'service', the entertainment sector was the cause of a stand-off between the United States and the European Union, which ended on 15 December 1993 with the inclusion of the *exception culturelle* in the final declaration.

Although it has to be said that the exemption of cinema and television which was achieved at the eleventh hour in the GATT negotiations did give the European audiovisual industry some temporary respite, it only represents one victorious battle in a long war. The exemption will be challenged at the next round of WTO negotiations or in another international forum (the OECD in connection with the multilateral agreement on investments (MAI) project), and the United States will be all out to have it abrogated. For the time being, there is no agreement, but Hollywood, Congress and the authorities in Washington intend to bring all their weight to bear.

### I.1.3.2 The OECD multilateral agreement on investments

At the ministerial meeting of the OECD Council in May 1994, the Secretariat was requested to prepare negotiations with a view to the conclusion of a multilateral agreement on investments (MAI). The European Union is negotiating on behalf of its Member States through the European Commission, and the work is being carried out by an ad hoc Council working party comprising representatives of the member countries. The European Parliament submits recommendations to the European Commission on these negotiations.

One of the aims of this project is to establish 'unconditional liberalisation of the cultural sector', which is liable to jeopardise the objectives and instruments of European cultural policy by applying the principles of 'national treatment' and 'most-favoured-nation treatment', a measure that will make it easier for the large multinationals in the audiovisual sector to corner the European market”.

There is no provision for the exemption of audiovisual products, which is tantamount to challenging the *exception culturelle*. This would constitute a circumvention of the GATT rules in another international forum.

These negotiations are marked by a lack of transparency within most of the member countries of the OECD. In fact, the few scraps of information at the disposal of national parliaments and the absence of public debate on the subject reflect a certain negligence of the interests of civil society to the benefit of economic interests.

In particular, this situation has led to the mobilisation of the professionals from the world of the arts, who are anxious to preserve their forms of expression, while voices are being raised in the Community forums to remind us all that business must not be allowed to prevail over politics when it comes to establishing basic rules, because economic operators have no democratic legitimacy. The

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project is still under discussion and, no compromise has yet been negotiated among the nations concerned.

1.2. The absence of a real European audiovisual policy

To the United States, the audiovisual landscape in the European Union looks far from uniform, with Member States pursuing their own particular agendas. Homogeneous America is contrasted with heterogeneous Europe. Nevertheless, our objective is to root out the causes of the substantial and increasing European trade deficit.

1.2.1. Community instruments designed to overcome the fragmentation of the European audiovisual market

The European authorities are formulating measures at two levels with a view to constructing a legal and a financial framework.


The Television Without Frontiers Directive is an important instrument in terms of developing a European audiovisual industry and protecting the European audiovisual market by setting quotas and by harmonising the rules of the various Member States. The purpose of quotas would be to encourage the distribution and transmission of European productions, while the harmonisation of rules would serve to establish a common regulatory framework.

The Directive remains the keystone of the European regulatory edifice in the audiovisual sector. The negotiations to formulate its provisions were difficult and highlighted the growing complexity of the Community decision-making process. The same applied to its revision.

The Directive tends to promote the distribution and broadcasting in each Member State of radio and television programmes produced in other Member States. It also aims to encourage the production of programmes in Europe by establishing a system of programme control in the country of origin. It has harmonised the rules relating to a number of problems inherent in broadcasting, such as the criteria for certification as a 'European work'. Finally, one of the most important points in the Directive is the decision to create transmission quotas for Community programmes in the Member States.

The European system of production quotas

The purpose of quotas is to help strengthen European audiovisual companies in order to make them competitive. The transmission quotas were intended to promote the production and distribution of Community programmes. The Directive requires television broadcasting services to reserve for European works 'a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services'. Although the imposition of quotas is

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left to the discretion of the Member States by virtue of the qualification 'where practicable', the mechanism was highly controversial\textsuperscript{19}. Likewise, it was decided that, subject to the same exclusions, broadcasters would have to reserve either 10% of their transmission time or 10% of their programming budget 'for European works created by producers who are independent of broadcasters\textsuperscript{20}. These provisions are the subject of a monitoring procedure\textsuperscript{21}.

In spite of the first general report on the application of Directive 89/552/EEC, which was presented to the Commission in 1994, the impact of quotas on the promotion of European culture remains difficult to evaluate. The quotas are still primarily national in character, for the transmission of programmes from other Member States remains limited. Quotas are not perhaps the ideal means of reversing this trend. Be that as it may, they can serve as temporary stop-gaps in the process of constructing an industry that will produce European programmes.

The revision of the Television Without Frontiers Directive showed up divergences between positions within the Council and the European Parliament as well as the cumbersome nature of interinstitutional procedures. The amendments adopted by Parliament at the first reading with a view to making the quotas compulsory and bringing certain new services into the purview of the Directive were not adopted at the second reading in plenary session\textsuperscript{22}.

1.2.1.2 The MEDIA I and II programmes

The European institutions are developing a financial framework within which the European audiovisual industry can be constructed. This framework will take the form of the MEDIA programmes. In 1995, the Council decided (Council Decision 95/563/EC) to renew the MEDIA programme. MEDIA II will take up the torch and will concentrate its action on three main priorities: training, development and distribution, with 45m ecus earmarked for the training of professionals in the audiovisual industry and 265m ecus for the development of production projects and the distribution of European material. Priority has been given to the 'sharp end' of the programme, with less support for training, which is closer to the cultural dimension of audiovisual activity.

The MEDIA II budget is 55% higher than that of MEDIA I (310m ecus, as against 200m ecus). Following the encouraging results of the first programme, its activities have been continued in MEDIA II, with a rationalisation of the programme objectives to combat the dispersal of funds into an excessive number of projects and a simplification of the structure through the definition of guidelines. This reorientation of European audiovisual policy is designed to be adapted to new developments in the audiovisual market.

\textsuperscript{19} Directive 89/552/EEC (OJ L 298 of 17 October 1989) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, Article 4(1), (2) and (3).

\textsuperscript{20} Directive 89/552/EEC (OJ L 298 of 17 October 1989) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, Article 6.

\textsuperscript{21} Directive 89/552/EEC (OJ L 298 of 17 October 1989) on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, Article 6, Article 4(2).

MEDIA I owes its organisation in part to the 1994 revision, a link which is visible in three interdependent measures designed to promote the screening of European films in cinemas. The first two measures are designed to induce distributors to invest in order to cover promotion and distribution costs, while the third provides for a support mechanism for distributors, based on box-office returns for European films shown outside their country of origin. These provisions are complementary but do not take account of the difficulties involved in exporting films to other countries. What happens to the mechanism if an audiovisual work attracts small audiences or no audiences at all? In most cases, the distributor would receive less assistance and is therefore liable to be deterred from footing part of the promotion and distribution bill. One need only look, for example, at the ratings of the top forty European films distributed in Europe in 1996. The coexistence of films that achieved great success throughout Europe (Trainspotting and Golden Eye) alongside films with very limited geographical distribution (such as the German comic animation Werner, das muß kesseln!) is striking and illustrates the limits on the free circulation of comedies beyond their national borders.

CO-productions compensate to some extent for the absence of pan-European distribution companies. They point to a possibility of overcoming the compartmentalisation of the European market while encouraging the formation of production/distribution groups and networks, especially since the number of cinematographic co-productions has been rising steadily over the past 20 years. In 1994, they accounted for one-third of total European production, while the top 40 films for 1996 included 18 co-productions, six of which included an American input. Although details of box-office returns per country are not available, it may be assumed that The Adventures of Pinocchio, which was a British-American-French co-production and was watched by 2.59 million cinemagoers in 1996, was at least distributed in the three countries involved in its production. If that is the case, the two aims referred to above have been achieved.

As well as being supported by the MEDIA programmes, this production system also receives assistance from the Council of Europe's Eurimages Fund. The Council of Europe and the European Commission have similar views on the cinema industry and complement each other's efforts. MEDIA is active at the preproduction and postproduction stages, financing up to 12.5% of the cost of co-producing television series to facilitate their distribution in several Member States of the Union or by providing direct grants to cover certain dubbing and subtitling costs.

Co-productions help to improve the funding of cinema productions, but the system tends to add considerable legal and transactional costs to the actual production budget and to make it more complicated to produce films with pan-European appeal, all of which reduces the competitiveness of such films.

There are certainly grounds for wondering whether MEDIA is capable of making a lasting structural impact, given the modest volume of its budget.

I.2.1.3 The project to create a European guarantee fund

Finally, the last element of the financial framework currently under discussion is the European guarantee fund. In 1995, the Commission presented a draft decision on the establishment of the fund. Its aim is to guarantee some of the credits and loans granted by banks and financial institutions for the production of programmes in the fiction category only. The credits covering the guarantee would be included in the European Investment Fund and would add up to 200m euros, 90m euros of which would have to be found by the European Union, while the public and private sectors would finance the remainder.

Even though the financial mechanism in the MEDIA II programme has now been simplified, the guarantee-fund mechanism is more flexible. Estimates indicate that the guarantee fund will have several advantages:

- A capital outlay of 90m euros would help to finance about 1000 cinema and television productions (one-third of them being European co-productions).
- It would complement the MEDIA programme in pursuit of the common goals of the two instruments and in supporting works of fiction suitable for distribution in Europe as well as for export.
- Countries with limited production capacities (Belgium, Greece, Ireland, etc.) would receive preferential treatment in the framework of co-productions.

Although the project is currently in abeyance, the European Investment Bank has branched out into the cinema sector by granting a 71m-ecu (£50m) loan to PolyGram to co-finance films produced by PolyGram Filmed Entertainment. This marks the first EIB investment in the cinema industry. This change testifies to the increasing contribution of the performing arts to the economic activity of the European Union and to their dynamic impact in terms of job-creation. The aim of the bank is to play a part in strengthening the international competitiveness of the European film industry. The films were selected on the basis of a two-year programme drawn up by PolyGram.

It is a great pity that the project to create a guarantee fund has not been encouraged by all the Member States, since it has the advantage of relieving the European Union of any financial commitment at the end of ten years and has been welcomed by the professionals in the audiovisual sector, who would otherwise be forced to depend on extra-institutional initiatives.

In response to this blockage, two proposals have been put forward, one by the industry itself at the Audiovisual Conference in Birmingham (6–8 April 1998) and the other more recently by the European Parliament (21 July 1998).

The proposal put forward by the industry, or PolyGram, to be precise, received particularly strong support from the European Commission. It consists in the establishment of senior loans designed to enable large European media enterprises to compete financially and technologically with American productions. This system would be supplemented by the beneficiaries at the distribution and marketing stages of the films, thereby providing the basis for the creation of a fund.

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Agence Europe, La BEI se lance dans le cinéma par un prêt de 71 Mio ECU à PolyGram. Brussels, 12 May 1996.
1.2.2. The legal obstacles to the creation of a European audiovisual policy

1.2.2.1 The Council unanimity rule (Article 128 of the EC Treaty)

The unanimity rule sometimes causes certain difficulties. The Member States do not hesitate to invoke their special national interests when discussing sensitive matters such as audiovisual activities, which makes the quest for unanimity in the Council a dicey business.

While certain Member States, anxious to preserve their own audiovisual and cinema industries, regard quotas as an effective temporary barrier, others call for an immediate confrontation with the rules of free trade. This reflects the different national situations that obtain within this one sector and explains the divergences between national positions. And these divergences are very clearly highlighted when the Council is required to act unanimously.

1.2.2.2 Codecision procedure in the European Parliament (Rule 72(3) of the EP Rules of Procedure)

Before the Maastricht Treaty extended the powers of the European Parliament in 1992 (the Treaty entered into force on 1 November 1993), an opinion delivered by Parliament was primarily advisory in character, the real legislative arm of the European Community being the Council of Ministers of the Twelve. With the Maastricht Treaty and the institution of codecision procedure, the situation changed. Since then, in certain precisely specified domains (culture, education, regulation of the internal market, freedom of movement, consumer protection, research, etc., the European Parliament has been fully exercising its legislative rights. At the first reading, the House decides by a simple majority of the votes cast. In the case of the revised Television Without Frontiers Directive, the majority in Parliament was in favour of establishing compulsory quotas and including certain new services in the scope of the Directive.

At the second reading, however, the amendments to the Council’s common position required 3 14 votes (half of the 626 Members of Parliament plus one constitute an absolute majority) for their adoption. That rule perverted the parliamentary process, for it meant in practice that the majority could not make its voice heard, while the minority view carried the day.

In fact, at the negotiations during the conciliation procedure with the Council, the parliamentary delegation had to defend the position supported by a minority of the Members who voted at the first and second readings. The blocking minority may be said to have benefited from the system.

It is clearly difficult for parliamentarians to make their voices heard when they are subject to such strict rules. In this case, it was very difficult to obtain 3 14 votes for various reasons (votes against, absences, etc.). On such an important matter as the audiovisual sector, the second vote was crucial, because the decisions taken would be the subject of negotiations with the Council during the conciliation procedure.

In the Rules of Procedure of the European Parliament, Rule 72 (Amendments to the Council’s common position), paragraph 3, states that an amendment shall be adopted only if it secures the votes of a majority of the component Members of Parliament. (Rules of Procedure, 12th edition, Luxembourg, November 1996).
The future of the audiovisual sector in the European Union

The system is too rigid and gives rise to a problem in terms of the relationship between the absolute-majority rule governing the second reading and the Council unanimity rule. It is enough for one State, any State at all, to exercise its veto, and the entire procedure grinds to a halt. This power of veto is all the more destructive when the subjects under discussion are important and when there is widespread pressure for change. For that reason, the introduction of greater flexibility would be welcome as a means of guaranteeing the coherent functioning of the European institutions.

1.2.2.3 The relationship between European law and international law

As an agreement governed by the rules of international law to which the Community is a party, GATT is binding on the institutions of the Community and on Member States, as prescribed in Article 228(7) of the EC Treaty.

Within the Community, international law is situated between primary Community law (the Treaties and additional protocols) and secondary Community legislation (directives, etc.). And since the Treaties do not establish relations between international law and Community law, they do not offer the sort of 'sovereignty valve' that national constitutional law provides”. There is therefore no provision in European law for adapting the norms of international law.

GATT was created in 1947. It is binding on the Community, as the jurisprudence of the European Court of Justice in Luxembourg has reaffirmed27.

It is worth reiterating one point here. The absence of a reference in the Treaty clarifying the relationship between Community and international law means that international agreements are directly applicable. The Community does not possess a 'breastplate of sovereignty' (implementing or transforming provisions), and so the provisions of GATT are automatically incorporated without verification of their conformity with Community law.

1.2.3 The strengthening of audiovisual policy in the Amsterdam Treaty

1.2.3.1 The protocol annexed to the Amsterdam Treaty on the public broadcasting system in the Member States

This instrument expresses the will of the Member States to uphold the functions of the public broadcasting service. The protocol recalls and recognises that the public broadcasting service has a duty to guarantee the satisfaction of democratic, social and cultural needs and to preserve pluralism in the media. This affirmative action on behalf of the public service is backed by two accompanying provisions, stipulating that the Member States are to retain their sovereign right to choose the manner in which the public television service is financed and are to remain responsible for defining its role.


27 European Court of Justice, Luxembourg, Opinion 3/94 of 13 December 1995 – European Court Reports I – 4577. The Court ruled that it need not respond to the request for an opinion in the case of an international treaty which had already been concluded, since an adverse opinion could not have the legal consequences laid down in Article 28(6) of the EC Treaty (point 13 of the opinion).
on condition that the exercise of these rights and responsibilities does not infringe the rules governing trade and competition.

The Member States have demonstrated their desire to maintain and support the public service while respecting the rules of the market to which the private sector is subject. They need to strike the right balance.

1.2.3.2 Consideration of cultural factors in Community policies (new version of Article 128(4) of the Treaty)

It is intended that the development of European audiovisual policy should fulfil two principal aims: to establish a genuine European audiovisual area and to implement a strategy of strengthening the European industries which produce audiovisual material.

These two aims are pursued in due consideration of the cultural dimension of the audiovisual sector, a fundamental principle that has been reinforced by the new wording of Article 128(4) of the EC Treaty, as amended by the Amsterdam Treaty.

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PART II

THE TRADITIONAL MEDIA IN THE AGE

OF INFORMATION AND COMMUNICATIONS TECHNOLOGY

The rapid spread of digital technology, combined with its ever-decreasing cost, will enable operators to supply individuals with an almost unlimited range of information, entertainment and interactive services. It is not impossible that the balance of power in the audiovisual sector will eventually shift from the airwave broadcasters to the owners of the various audiovisual networks that will enable consumers to choose from a myriad of products and services.

It must be said that, while some players in the European audiovisual industry are very competitive internationally, most of the European production and distribution sector, fragmented and underfunded, is in a vulnerable position as it ventures into this technological revolution. It is already apparent, in point of fact, that the American share of research, development, production and marketing of online products is already far higher than that of the EU Member States in the traditional audiovisual sector. Now that the audiovisual industry is turning its attention to worldwide electronic commerce, it may be pertinent to ask to what extent this creation of wealth will benefit European suppliers too.

11.1 Objectives for the creation of a coherent European policy on programme content

II.1.1 Safeguarding and encouraging cultural and linguistic diversity

Protection of the diversity that exists within the European Union has always been regarded as one of the primary objectives of public intervention. Given that the continent of Europe is such a linguistic and cultural mosaic, it is likely that measures developed at the national and regional levels with a view to promoting the cultural and linguistic heritage will have to be reinforced.

In its action plan of 19 July 1994, *Europe's way to the information society*, the Commission reaffirmed that cultural products, and particularly cinema films and television programmes, could not be treated like other programmes because they were special means of identification, pluralism and integration.

The stakes are high; the European Union needs to offer its citizens a variety of information and opinions. At the same time, its cultural diversity raises the question whether countries with low

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30 European Audiovisual Conference, working group 2 - European support for the audiovisual sector. Papers and documents: Final report Birmingham, 6-8 April 1998. By the year 2005 online multimedia products will account for 15% of the European market in audiovisual material.
The future of the audiovisual sector in the European Union

levels of audiovisual production can continue to make and distribute television programmes and films. In this respect, the situation in the applicant countries of Central and Eastern Europe gives cause for concern, as was illustrated by the difficulty in sealing the agreement on Hungary's participation in the European Union's MEDIA II programme.31

Since the territory of Europe is characterised by wide cultural diversity, the concept of 'European culture' may be defined as the sum of the various cultures of the Member States. Heterogeneity is the distinguishing mark of European culture, even though there are common bonds, such as historical and religious ties, between national cultures.

Some will argue that this cultural and linguistic diversity is partly responsible for the fragmentation of audiences for audiovisual productions in Europe.

Others will argue that, while the traditional divisions into different sectors and media are tending to disappear, the new services resulting from developments in the fields of information and communicationstechology can help to turn cultural diversity into a recipe for success in the Europe of tomorrow.

The new services and the proliferation of satellite and cable channels certainly offer the technical means of satisfying the whole spectrum of tastes and interests by providing customised programmes. While the various media are very important as programme platforms, the content of the programmes must constitute the key element of European audiovisual policy if it is to satisfy all the people of Europe.

11.1.2. Avoiding cultural hegemony in any form

Above all, it is essential to avoid cultural hegemony of any type by ensuring that television viewers have access to a wide range of programmes. This aim can be achieved if a 'European' dimension is given to the audiovisual sector through the provision of European programmes as alternatives to other scheduled programmes, particularly American programmes. Better pan-European distribution of audiovisual works would be a helpful step in that direction.

For all that, it is not a matter of indulging in elementary 'anti-Americanism'. It is up to the viewer to make the ultimate choice. This concept of choice is the important thing, but is not effective unless the programmes on offer come from different sources. Any European viewer choosing to watch a television programme should be able to select from the widest possible range of options. Production and innovation remain the only way for the European cultures to preserve their creativity.

II.1.3. Safeguarding and encouraging pluralism in the media

Freedom of expression is a fundamental right enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and is regarded as one of the foundations

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31 Report, PE 225.154, on the proposal for a Council Decision concerning the Community position within the Association Council on the participation of Hungary in Community programmes within the framework of Community audiovisual policy, COM (97) 0562, Brussels, 1997. The process leading to the delivery of Parliament's opinion is currently blocked in the Committee on Culture, Youth, Education and the Media because of the non-conformity of Hungarian legislation with the provisions of the revised Television Without Frontiers Directive.
The future of the audiovisual sector in the European Union

of any democratic society. Freedom of expression means 'freedom to express opinions and freedom to receive or communicate information or ideas without interference from the public authorities'\(^{32}\). This is the basis of the law governing the media. It is the context in which pluralism can flourish through diversity of information and diversity in its interpretation.

Pluralism is made all the more important by the fact that audiences are currently being fragmented as a result of the proliferation of television channels, especially commercial channels, and the launching of digital programme packages (television channels based on digital technology).

The instruments of international law, however, do not define pluralism. For that reason, the committee of experts on media concentrations and pluralism appointed by the Council of Europe has proposed that pluralism might be defined as the opportunity for a wide range of social, political and cultural values, information and interests to be expressed through the media of mass communication\(^{33}\).

Elsewhere, in its Green Paper on pluralism and media concentration in the single market, the European Commission defined pluralism as 'diversity of information' in general\(^{34}\).

The European Union has been particularly active on the question of pluralism, even though it is has no competence to legislate in the domain of the media, which is a matter for the Member States. The recognition of public broadcasting in the protocol annexed to the Amsterdam Treaty testifies to the consensus within the EU on the need to preserve and strengthen pluralism.

Nevertheless, there is a question to be asked about the consequences of the confrontation between the economic interests of private operators and Community action on issues such as the televising of major sporting events (e.g. the football World Cup in 2002 and the Olympic Games in the year 2000). How can universal accessibility be guaranteed when the private sector buys the rights to televise most sporting events? The European Broadcasting Union has asked European governments to guarantee that all the matches during the next World Cup will be accessible on free television channels. Until this year, FIFA had granted the television rights for the World Cup to the EBU, which then distributed them among the European broadcasters. But the rights for the World Cups in 2002 and 2006 have been sold by FIFA to ISL/Kirch for a total of almost $2bn. The German group intends to resell these rights to the highest bidder in each country, which in most cases will be commercial pay-TV channels. This principle of access to major events for all Europeans is a far more important issue than the events the Member States choose to include in the national-interest lists\(^{35}\).


\(^{33}\) Report by the committee of experts on media concentration and pluralism (MM - CM), doc. MCM (94) 5, p. 8.


\(^{35}\) European Parliament, Doc. B4-0326/96 (PE 198.225). Motion for a Resolution tabled at the end of the debate on oral question B4-0135/96 in accordance with Rule 40(5) by Mrs Castellina, on behalf of the Committee on Culture, Youth, Education and the Media, concerning the televising of sporting events. Brussels, 8 March 1996.
11.1.4. Promoting the extension to the new services of the values of public broadcasting

Some people believe that modern technological developments present the opportunity for a renaissance of the public broadcasting service in that they will enable it to fulfil its mandate (information, education, culture and entertainment) to the full, particularly in terms of programme content.

Programmes must be accessible to the largest possible number and must encourage democratic debate. Back in 1994, the Council of Europe called for the provision of a similar service, without referring directly to public broadcasters36. The European institutions do take account of the public broadcasters, as is demonstrated by a resolution adopted by the European Parliament in 1996 which stated that public broadcasters must be able to offer special-interest services where required and recommended that Member States encourage public broadcasters to play a full part in technological developments to ensure that they are able to satisfy viewers’ needs. The objective set out in the resolution was to enable public broadcasters to have access to new forms of technology and to use the new services based on such technology to perform their assigned functions37.

This addresses a real problem, for the fragmentation of audiences and the desire of operators to design their services for target audiences that are numerous enough to make the services profitable are liable to marginalise the services that are least viable in economic terms. Public broadcasters could guarantee this accessibility and cater for viewers whose interests were not reflected in the private broadcasters’ schedules. The American PEGs (‘access channels on cable for public, education and Government use’) may be cited in this context.

11.1.5. Democratising access and educating the population about new technology

In theory, the profusion of services and programmes will be accessible to everyone. In practice, the user will have to possess sufficient financial resources and be familiar with the new dialectics of image and interactivity. Two dangers loom on the horizon for the European citizen: besides the risk of the marginalisation of cultural and linguistic minorities, and hence the erosion of the diversity that was examined above, the danger of widening inequalities must be averted by the Member States. In one of its resolutions, incidentally, the European Parliament has asked the Commission to prepare a draft recommendation with a view to guaranteeing general access to these new services; the draft was to deal in particular with access and financing arrangements and was to provide for an easily accessible free gateway to the Internet for people to consult information material relating to the institutions or the public broadcasting service38.

The desire of the Member States to encourage the use of the Internet in schools is a first step towards the creation of a policy of democratizing access to new technology. This policy must become reality.

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The future of the audiovisual sector in the European Union

in public and private establishments, in rural areas and in the most remote regions as well as in urban areas. Indeed, if schools still intend to pursue their mission of democratising knowledge, they cannot ignore these new information media, the role of which is to complement traditional educational facilities. If children from disadvantaged backgrounds are not given the opportunity to use these new forms of technology, they will stand little chance of ever becoming familiar with them. Learning how to handle these new services effectively should be part of the teacher-training process as well as an integral component of vocational training in general.

As European Commissioner Edith Cresson wrote in an editorial, multimedia is not a magic wand. It can be a means of revitalising teacher training or an educational aid, but however useful it may be, it is only an instrument? . This brings us to the Commission White Paper on teaching and learning, which has generated a debate on the new horizons offered by the advent of the information society and the necessary adaptations in the Member States, especially in terms of education and vocational training".

In these domains, the White Paper put forward proposals such as closer links between schools and enterprises with a view to developing the apprenticeship system in Europe and giving young people a command of three Community languages in order to promote mobility between countries. The implementation of these measures would certainly serve to develop the employability of European students and trainees.

Nevertheless, while easier access to knowledge is the first step, there is evidently a need for a second step, which would consist in imbuing the young people of Europe with the desire for knowledge".

II.1.6. The challenge of protecting copyright in online services

Although the Internet is not yet able to compete as a real alternative to the traditional media, its expansion has been so meteoric that it would be no surprise if the Internet became a direct competitor of all the media within the next decade.

This raises the problem of the commercial protection of literary and artistic property on the net, because products with a high added value, such as books, music or videos, are being successfully distributed through the Internet and can easily be pirated. The only effective means of protecting authors and other copyright holders would seem to be self-regulation, which implies that the supervisory function of access or content providers would have to extend to the protection of copyright. In fact, fundamentally similar services provided on different platforms would have to be subject to a similar control regime.

The cinema industry is directly affected by questions of copyright by virtue of its creative and distributive activities. A film is protected, because it is viewed prior to release by the board of film

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41 "Real or symbolic barriers persist between the desire for culture and access to culture, and the cost of overcoming them, in other words the price to be paid, is not the one and only such obstacle." Tr. from J.-M. Djian, Le Monde Poche, Lapolitique culturelle, Le Monde Editions, Paris, 1996, p.23.
The future of the audiovisual sector in the European Union

censors and is officially certified as a work of original intellectual creation. In terms of the copyright of a film, the following elements are taken into consideration: the mix of industrial and artistic input, the number of parties exercising supplementary property rights in connection with the film (author of the original book, screenplay writers, authors of musical compositions, photographers and graphic artists, actors playing in the film, etc.), the need to reconcile the protection of rights with commercial exploitation and the importance of the role of the producer, who is ultimately responsible for the success of the venture.

11.1.7. Creating jobs in Europe

Since the appearance in 1993 of its White Paper on growth, competitiveness and employment – the challenges and ways forward into the 21st century, the European Commission has frequently cited the audiovisual sector as a potential source of new jobs.

At the Birmingham conference, Working Group I dealt with the question of job creation in the digital audiovisual industry. The experts identified a great deal of employment potential in the sector. This potential has also been confirmed in the United States in a study dating from 1998 on the economic impact of the entertainment industry in California. It derives primarily from the prospects for sustained growth of the audiovisual industry in the coming years, from the increase in consumer demand and the proliferation of pay-TV services and special-interest channels.

The experts also emphasised that, according to studies commissioned by Directorates-General V and X of the European Commission, employment in the audiovisual sector was increasing and had grown by 40% between 1982 and 1992. Over the same period, the working group established that the job-growth potential had not been fully realised. This translated into a $6bn trade deficit in relation to the United States or the equivalent of 250,000 jobs.

There are, however, grounds for regretting that these same experts had no means of breaking down the figures provided by these studies. There is nothing, in fact, that would enable us to identify the various categories of new job generated directly by digital technology and to distinguish them from indirect and spin-off employment. We might also wonder about the lack of thought given to the jobs that are destined to disappear once these new technological developments are in common use.

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43 Motion Picture Association of America (MPAA), State of the Industry: the Economic Impact of the Entertainment Industry in California, April 1998. This study showed that the number of jobs in the entertainment industry had risen by 38% between 1992 and 1996 – seven times the growth rate for the entire Californian economy. The sector provided more than 450,000 jobs (including 226,000 direct jobs). The study concludes by saying that the question now is whether the future economic activity that such growth can generate will take place in California or elsewhere. Continuing efforts by the public authorities to promote the expansion of the entertainment industry, are essential to ensure that the sector continues to generate jobs, wages, taxes and other crucial economic advantages for California. The study has been endorsed by the Governor of California.
11.2. The resources required to safeguard the European cultural model

Preservation of the European cultural model depends on its adaptation and its involvement in current technological developments. It must not remain a rigid concept; on the contrary, it must become the springboard for the creation of a European multimedia industry by developing such activities as special-effects design, software design, etc. Economic operators in Europe will not be able to benefit from multimedia products unless they are based on an initial creative input.

If that is not the case, television viewers will be disposed to restrict their viewing to audiovisual products designed outside Europe. The creation of new activities implies the creation of new jobs. This aspect cannot be ignored in the present European situation. The development of a European multimedia industry is one of the ways in which the employment situation in Europe can be improved.

11.2.1. Technical convergence of the audiovisual and telecommunications sectors: choosing a regulatory framework for the future

There is no standard definition of convergence, whether in the OECD, the European Commission or the various committees of the European Parliament, etc. The absence of a common basis complicates any discussion of the subject. Nevertheless, let us sidestep the issue of a definition in order to address the real question, namely what convergence means in practice.

Changes have certainly taken place, such as the digitisation of networks and the introduction of advanced compression and transmission techniques, but these changes have not led to network uniformity or to the integration of the networks into a single platform. For technical reasons, the advanced services are not available at present throughout the territory of the EU. On the other hand, it is noticeable that the performance of established networks has improved in terms of frequency responses and the development of new carriers (digital radio broadcasting, terrestrial or by satellite) without any significant change in the nature of the networks, which remain either audiovisual or telecommunications networks. The Internet is actually the only example of convergence between the telecommunications and audiovisual sectors (combination of sound, text, images and data) and belongs as much to one sector as it does to the other.

1.2.1.1 The European Commission Green Paper

The main purpose of the Commission Green Paper is to determine whether or not present and future developments will necessitate changes in the current regulations governing the audiovisual and telecommunications sectors, whether those developments will be more or less dependent on the rules of competition and whether they will be subject to market forces to a greater or lesser extent.

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The future of the audiovisual sector in the European Union

The Green Paper defines convergence as 'the ability of different network platforms to carry essentially similar kinds of services'. Although it neither defines the scope of convergence nor specifies the way in which it will affect the audiovisual sector, it does signal the decisive role that digital technology will play in the development of new audiovisual markets, for example in the marketing of programme packages and special-interest channels, pick-and-mix channels and 'pay-per-view' systems.

Consequently, the Green Paper, the purpose of which is to elicit responses from the professionals in the relevant sectors as well as from the European institutions (the European Parliament, the Telecommunications Council, the Committee of the Regions and the Economic and Social Committee) on the right regulatory framework for the age of digital convergence, sets out three options:

- Option 1: leave the regulations as they are and extend them to the new services (building on existing structures).
- Option 2: develop a separate regulatory model for the new services, letting it coexist with the rules governing telecommunications and those relating to broadcasting.
- Option 3: gradually introduce a new regulatory model covering the entire range of new and traditional media.

While the Green Paper remains the standard reference document on the subject, and while its chief success has been to focus the attention of the operators in the relevant sectors and of the European Parliament, it has nevertheless attracted numerous criticisms.

11.2.1.2 The European Audiovisual Conference in Birmingham, 6-8 April 1998

The aim of the Birmingham conference was to find means of improving the competitiveness of European companies in a rapidly changing audiovisual industry.

Working Group III at the Birmingham conference, the task of which was to study the Commission Green Paper, came up with a good many points:

- Convergence of carriers and convergence of contents:

The experts invited to the conference by the Government of the United Kingdom, which was presiding over the Council at that time, considered that, whereas the technical convergence of infrastructures and networks had become a reality, there was far less real convergence in terms of the equipment used by the public at large, and it was rare to observe any significant convergence in the provision of services and the creation of programmes.

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The future of the audiovisual sector in the European Union

- Social mastery of new technology:

The experts also examined the significant impact of technological convergence, not only on the audiovisual sector but also on society as a whole in terms of job creation, education and training courses. They took the view that the people of Europe should be at the heart of the European concept of the information society, which implied an approach integrating cultural and social values.

- In favour of maintaining the present regulatory framework:

The group believed that, during this transitional phase, many uncertainties remained, such as the time it would take for digital technology to spread, the market saturation point and the technological limits on the growth of the Internet, as well as the difficulty involved in establishing definitive standards for the interconnection and interoperability of networks. The main conclusion drawn by Working Group III was therefore that it would be better to fall back on the current system of specific rules governing the audiovisual sector and to adapt and amend them as necessary to take account of the development of the new media. The group therefore proposed that the future regulatory framework be based on a combination of Options 1 and 2 from the Green Paper.

II.2.1.3 The position of the broadcasters and national regulatory authorities

The convergence of sectors such as information technology, telecommunications and audiovisual services becomes apparent when operators in one domain, such as telecommunications, begin to move into another, such as the audiovisual industry. This technical convergence of sectors has the effect of motivating the public and private general-interest broadcasters to fight for the preservation of the existing broadcasting regulations, because the new entrants, while possessing little or no experience of the audiovisual industry, are financially powerful. But their fundamental divergence persists, as the response of the Association of Commercial Television in Europe (ACT) to the Commission Green Paper shows. The private broadcasters are satisfied with the approach taken in the Green Paper, which states that market solutions are often the most appropriate means of overcoming barriers to convergence. This view is not shared by the European Broadcasting Union (EBU). ACT believes it is necessary to preserve the current regulatory framework during the transition phase, but says that in the long run the sectoral approach to legislation will have to give way to a system based on the development of the market (Option 3 of the Green Paper). This amounts to proposing a common regulatory framework for television broadcasting and communications in which a distinction is made between content and infrastructure.

The position of the national regulatory authorities is that they wish to preserve their present powers in the audiovisual or broadcasting sector and even to extend them to the new services if the Member States select Option 1 of the Green Paper as the basis of the future regulatory system. So these authorities are naturally opposed to the European Commission proposal for the creation of a one-stop shop, in other words a European supervisory authority that would regulate the development of the entire multimedia sector.

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48 The telecommunications monopolies are entering the broadcasting sector, as illustrated by Telefónica's attempt to take over the broadcaster Antena 3 in Spain, as well as becoming involved in the new services, as for example in Italy, where STET has created a digital platform.
The future of the audiovisual sector in the European Union

The French telecommunications regulator, for example, believes that the separation of the sectors is still the only way to respond to the needs of telecommunications users. The regulator adds that in almost all homes the television set and computer are specific items of hardware which are not interchangeable and that the technical difficulties encountered in the operation of integrated terminals are evidence of this. The regulator justifies the preservation of the existing regulatory framework by citing the need to avoid confusion between the appearance of new services (multimedia computers and CD Rom, television with Internet access via satellite and cable, etc.) and a convergence which remains theoretical at the present time.

II.2.1.4 The debate within the European Parliament

Technical convergence and its impact on the transmission paths of different types of service and the effects of the latter on the presentation of content do not mean that a system for regulating content on the basis of terminal type would be pointless. The Green Paper raises many questions about democracy and pluralism, access to information and protection of the public interest. In his draft opinion to the Committee on Culture, Youth, Education and the Media, the MEP Helmut Kuhne expressed the view that, in European democracies, television as defined in Television Without Frontiers would, in the long run, remain the foremost instrument for supplying and processing raw information and that it therefore had a crucially important role to play in the formation of opinions and in decision-making within our pluralist societies, as well as in the preservation of cultural diversity and the transmission of social values: this principle, he said, remained valid irrespective of the funding (licensing, advertising, subscriptions, pay-per-view) and transmission methods that were adopted.

The committees that were consulted in the European Parliament wondered about the lack of objectivity of the Green Paper, especially the absence of definitions of the new multimedia services and network platforms, the lack of clearly defined boundaries between carrier and content and the belief that regulation was 'simply a tool, alongside the use of market forces, for achieving wider social, economic and general policy objectives'.

Without wishing to anticipate the vote on the Commission Green Paper, which is scheduled for the parliamentary part-session in October 1998, we might suggest that two conceptions seem to predominate in the European Parliament. There are Members who believe that we are seeing a gradual removal of the barriers between the telecommunications and audiovisual sectors, which will eventually lead to their convergence, and there are those who do not believe in challenging the existence of two separate sectors because of the level of specialisation involved in each of them. The

latter recognise that the audiovisual and telecommunications sectors are converging but argue that the same convergence is not happening in the realm of content, because the regulation of telecommunications services guarantees privacy of the content of communications, whereas the focus in the audiovisual sector is on the regulation of content with a view to safeguarding the public interest.

If the latter school of thought were to win the day, we might ask what influence Parliament could exert on the European Commission now and in the future. While parliamentary discussion of the Green Paper is actually part of a consultation procedure under which the European Parliament has no legislative power, this first general document on the information society would appear to foreshadow the political line that the European Commission will follow in this matter.

11.2.2. The creation of a European multimedia policy

II.2.2.1 Promoting a European multimedia industry

Despite undoubted European expertise in audiovisual production, in the new information services and in microcomputing, most of the growth in the multimedia sector is benefiting providers of platforms and content outside Europe, mainly in the United States. Nevertheless, there are high-quality European products on the market at competitive prices. But the European Union, which is more interested at the present time at suppressing telephone monopolies than in the emergence of new multimedia services, has yet to initiate coordinated action in the 15 Member States with a view to making the most of Europe’s strengths in these domains by creating a European multimedia policy. Nobody should be surprised if the European Union falls behind to an alarming extent in the supply and use of new information technology as long as no action is taken to match the supply of European products with the demands of European consumers.

While it will be difficult, in the domains of microcomputers and software for mass distribution, to surmount the obstacle of the Intel/Microsoft monopoly, there is actually no reason why a European policy should not be established to promote multimedia production (educational software, distance learning, encyclopaedias and games). Nor should there be any impediment to the establishment of a European multimedia site encouraging the various players in the multimedia sector to join a consortium with a view to developing innovative projects and stemming the exodus of European researchers to other parts of the world.

Only such industrial strategies initiated by the European Union will allow European products to penetrate the world market, to transform the Europe of the Fifteen into an exporter of multimedia content, to facilitate access by the general public to new technology and to justify the decision to make the development of new forms of information and communications technology a political priority. The fact is that massive job creation in Europe will not become a reality in the information


53 If Thomson Multimédia had been able to participate successfully in the American digital-TV programme, it would have gained a valuable industrial edge on its competitors and would have been well placed in relation to its Japanese and American rivals for the subsequent introduction of digital television in Europe.
society of the 21st century because European films having penetrated the American market but because European users – individuals, companies and administrative authorities – will have begun to buy European.

II.2.2 Making digital television a prize European asset

The year 1996 marked the launch of digital television in Europe. Several packages such as Telepiu, CanalSatellite and DF-1 came on-stream in the course of the year; others, such as BSkyB, AB-Sat and the services of some public broadcasters (RAI, BBC, ARD) will be doing likewise. The proliferation of digital packages poses the problem of content. Putting together an attractive schedule presupposes the acquisition of television rights for major sporting events and cinema blockbusters. This growing need for programmes has consequences for the film market; in the long run, it should provide a source of revenue for the production industry.

The main concern for all the communications groups is to build up a portfolio of films so as to acquire operating licences. The European television groups invest huge amounts in ‘output deals’ concluded with the major for the purchase of rights to cinema productions. The German group Kirch has secured digital-transmission rights to the films produced by MCA, Time Warner, Viacom, Disney-ABC and Columbia. In France, Canal Plus has signed a large contract with MCA.

Most revenue transfers arising from the purchase of television rights are made to the benefit of the United States. This is partly due to the catalogues of films available in Europe, a situation that derives from the fragmentation of production and distribution. In 1995, sales of American television productions had already increased by 15%. This trend is likely to accelerate with the development of American television channels in the countries of Eastern Europe.

It should therefore be emphasised that digital television is a few years ahead of the Internet as a means of delivering audiovisual material. Controlling the platforms of digital television will consequently be the most effective way to distribute content in Europe. The adoption of digital television in all its forms (satellite and cable carriers, digital-transmission technology, digital video disc (DVD) and video on demand, etc.)” in Europe is essential if the European audiovisual industry is to benefit from the opportunity presented by the inability of the Internet at the present time to match the quality of broadcast and televised material. It must be recognised that European companies are far more competitive in the realm of television than they could ever hope to be in the Internet environment.

At the same time, the European Union will have to settle the question of digital access, which could threaten the pluralism of the media and jeopardise healthy competition. To do this, it will have to

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control the development of conditional access rights and find a way of dealing with the enormous financial power of those who distribute television rights for sporting events and films.

II.2.2.3 What should be the role of public broadcasting?

The role of the traditional audiovisual industry in promoting the cultural fabric of society is crucial, especially with regard to the services catering for the general public interest, which must be able to provide balanced, pluralist, high-quality programme schedules with diversity of content and variety of form.

For that reason, the European Union must be extremely vigilant with regard to the appearance of new special-interest services which are designed for limited audiences or even a single end-user, since such programmes entail a quite considerable risk in terms of eroding diversity by marginalisation and widening inequalities.

The protocol on public broadcasting which was added to the Amsterdam Treaty by the governments of the 15 Member States is a clear manifestation of their political will to safeguard the values of public broadcasting. The Member States must clearly define the public interests that need to be protected in the digital environment so that the public television service can continue to counterbalance the concentration of power in the commercial sector.

It would also be useful if the distinction between public television broadcasting and private television broadcasting were finally enshrined in a piece of Community legislation so as to legitimise the coexistence of the two broadcasting systems while specifying the different aims and requirements that each of them has to fulfil.

Such legal recognition of the public television service by the European Union would make it easier to coordinate the programme schedules of the national public broadcasting stations in order to ensure consistency of programme quality in all Member States and to permit economies of scale.

The task of providing the entire population with a full range of high-quality programmes raises the problem of financing the public broadcasters. At the present time, funding methods vary enormously between Member States and sometimes attract severe criticism. Too often the viewer can no longer distinguish whether a documentary or work of fiction has been produced by a public or private general-interest channel. If they wish to avert the danger of a single television service which is looming on the horizon, the Member States must address the solvency problem that is plaguing the public broadcasting service. Public broadcasters will have to guarantee or even broaden the diversity of their funding basis with the aim of offering European viewers a range of services that the market could not provide. There is a second option, which would involve guiding the public broadcasters towards a certain degree of financial independence. At the Birmingham conference, some experts felt that public broadcasters could be empowered to create added value by commercial means.

57 This view was expressed by Professor Serge Regourd at the European Parliament’s public hearing on the role of public and private television broadcasting, organised by the Committee on Culture, Youth, Education and the Media. Brussels, 22 November 1995.
possibly through new pay-TV services, with a view to effectively preserving their financial independence and purchasing power but without exposing private operators to unfair competition. Does this option not open the door to a single television-broadcasting model?

II.2.2.4 The need to adapt and extend the Community instruments

Commissioner Oreja's proposals

At the Birmingham conference, Commissioner Marcelino Oreja stated that it would be necessary to replace the European broadcasting quotas with a promotion system that encouraged investments in European audiovisual productions. Quotas, he said, were inconsistent with present technological developments, which focused on personal choice. Even though there were no plans to revise the Television Without Frontiers Directive for the next three years, there was a need to devise an approach based on investments in European productions rather than on transmission time, since this was a more modern and effective solution. This approach, said Mr Oreja, would have the merit of allowing distribution receipts to be reinvested in production.

The European Commission also warmly welcomed the proposal made by the representatives of the audiovisual industry that a European institute of cinematographic and audiovisual training, the programme of which would include courses designed to develop the managerial, financial, legal and commercial skills that the European audiovisual industry needs in order to enhance the competitiveness of European enterprises. Training would also be given to screenwriters on the commercial aspects of cinematography, on special effects (equipment) and computer animation. These suggestions by the private sector could well make a significant contribution to the development of the European audiovisual programme industry and are consistent with the aims of training, production and distribution that are laid down in the MEDIA II programme. The creation of the funds will be examined at the halfway stage in the MEDIA programme.

The involvement of the private sector in the construction of the European audiovisual programme industry meets the concerns of the European institutions, and the proposals made at the Birmingham conference are also intended to demonstrate the importance of the large groups in this process.

The need to coordinate support systems

The European audiovisual industry has not really managed to create and market products that attract large numbers of viewers outside their countries of origin. This regrettable situation has to be remedied as a matter of priority, with due regard to the fact that the cumulative total of all funds available in 1997 to assist audiovisual production and distribution in the 15 Member States was estimated by the Commission at about $1 bn, with relatively little to show for it. So there is a need to reflect on the efficiency of this national aid and to consider whether it should not be used

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The future of the audiovisual sector in the European Union

differently in order to stimulate the development of a dynamic European market in audiovisual platforms and content.

It seems that the vast array of European, national and regional support systems, which largely operate in isolation, do not meet the needs of the European audiovisual sector and are entirely ineffective as a means of reducing the fragmentation of the market in the European Union. It would therefore be more effective to furnish the Community programme MEDIA, which has been well received by the audiovisual industry, with a far more substantial budget than the present 310m euros. Rechannelling some of the national aid into the European budget would certainly have lasting structural effects and would accord with the raison d’être of the MEDIA programme, which is to overcome the lack of integration from which the European audiovisual industry is suffering.

II.2.2.5 Distributing and broadcasting audiovisual material throughout Europe

With a view to improving the cohesion of the single market, it is important to solve the problem of the distribution and broadcasting of national audiovisual works within the European Union. Accordingly, the competitiveness of the audiovisual industry should be strengthened by the following means:

- persuasive measures designed to develop bilateral and multilateral European co-productions by limiting as far as possible the legal and transactional costs that come on top of the direct cost of producing films;
- developing a European production and independent distribution sector as a means of boosting the supply of programmes for rediffusion;
- providing incentives for national broadcasters to develop works that are suitable for distribution in other countries and not simply for national audiences;
- encouraging investment by broadcasters from the European Union in European audiovisual productions.59

The example of American success is interesting, because it is characterised by the ownership of production and distribution facilities by large, vertically integrated industrial conglomerates with the capacity to attract fresh injections of development capital and to return sizeable profits. To that may be added the capacity to produce ambitious big-budget films and television series as well as medium- and low-budget films and television material, more specialised and designed for a smaller target audience but still able on occasion to develop into commercial successes.

The selling power of these corporations lies in the combination of these two types of product. The sale of box-office hits works as a 'magnet' to promote the sale of second- or third-category programmes in packages. One objective for European distributors would be to succeed in combining volume and diversity so that they could offer this type of formula with the same results.

II.2.2.6 Increasing the number of pan-European special-interest channels on the Euronews model

The author of the report on the multimedia society notes that, for European viewers, 'choice' generally amounts to choosing between different Anglo-American programmes. The European dimension is still missing.

Television does not provide the essential information that people require in order to participate in the political, social and economic development of the European Union, because all but 5 to 8% of the EU-produced programmes transmitted in the EU are of national origin. To reverse this trend, Mrs Tongue's report proposes that national public broadcasters develop the transmission of European programmes and that pan-European channels such as Arte and Euronews be backed with private and public funds.

The transmission of European programmes could be achieved through the creation of pan-European special-interest channels. Such an option, however, is not very likely to arouse the interest of the private sector, because there are still many doubts as to whether the subject matter of these programmes can ever have the same sort of mass appeal as cinema and sport. Moreover, these channels will soon encounter competition from the private digital packages. And the private sector has the funds that are needed to acquire television rights for the most attractive programmes.

On the other hand, the creation of pan-European special-interest channels may offer an opportunity to develop new audiovisual products that can act as vehicles for the application of public-service values. They can be ideal platforms for young creative talent or groups who might have been disregarded by the private sector for reasons of commercial strategy. Be that as it may, these channels, just like the private channels, will be at the mercy of viewer choice.

By means of these pan-European special-interest channels, public broadcasters would have an opportunity to prove their ability to provide programmes that differ from those of the private sector, programmes that combine quality and diversity. That experiment has yet to be tried - inaugurating a new type of entity that is not based on the acquisition of television rights but rests four-square on the production of innovative works.

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Conclusion

As it steadily grows, the European audiovisual sector is still characterised by fragmentation and serves primarily to enrich the American audiovisual industry, which is already firmly implanted in Europe. In response to this situation, the European Union has developed regulatory and financial instruments which have proved satisfactory in general terms but have neither contributed to the convergence of national conceptions nor helped to structure the market. They will now have to be adapted to technological changes affecting the audiovisual sector. What we are seeing, in fact, is the technical and economic convergence of three sectors – the traditional media, information technology and telecommunications. It is therefore important to establish whether there is a genuine political will among the Member States to promote the development of a modern and competitive European audiovisual sector that takes account of the changes wrought by the advent of digital technology. In this context, greater institutional flexibility is desirable. In fact, the challenge of multimedia is incomparably greater than that presented by the dominance of American industry in the audiovisual sector.

A discretionary and innovative European multimedia policy is indispensable if cultural and linguistic diversity is to be safeguarded. A policy based on economic and legal protectionism seems to be totally incompatible with the information age. Above all, it is essential that the European Union should explore new avenues while bearing in mind that the principal goals are to create a fertile breeding ground for creative activity and to prevent a situation in which European talent is forced to seek its fortune across the Atlantic. Instruction in the principles and use of digital technology in schools, the production, distribution and transmission of works throughout the territory of the European Union, the necessary redefinition of the role of public broadcasters, the establishment of effective financial instruments and the direct creation of large numbers of jobs – these are the objectives that the European Union must achieve. Their achievement is indissolubly linked to the creation of a 'European model of the information society'. For today and tomorrow, it is no longer a matter of merely preserving the instruments of creation and production or even of absorbing the distribution and marketing practices that have made the American film industry so successful in Europe. What is vital is that the Europe of the Fifteen should promote an audiovisual and multimedia policy which will serve the best interests of the creative talent and the general public of the Union, which is able to rekindle their desire to create and to watch cinema and television productions that are the reflection of their own identity.
The future of the audiovisual sector in the European Union

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