Do you speak European ?
Media Economics, Multilingualism and the Digital Single Market

Olivier BOMSEL
ParisTech Chair of Media and Brand Economics, Cerna, MINES ParisTech

Abstract: The economic specificity of media is that their competitiveness relies on the efficiency of their price discrimination schemes. However the discrimination schemes set up in each EU member state result from the path of regulations that have framed the domestic rollout of the media, from the start to the digital age. Besides, multilingualism adds specific costs to all media distribution schemes and inhibits economies of scale in producing or marketing the media across Europe. In order to resist competition from the monolingual United States, the challenge of Europe is to build up coordinated media distribution systems aiming at lowering the discrimination costs of each media while increasing the revenues of their industries. This challenge should be part of the digital single market agenda.
Key words: media economics, price discrimination, versioning, bundling, multilingualism.

■ Introduction: bits *versus* meaning

Digitisation not only generates new means of communication, but also transforms the very definition of "information" itself. In the analogue world, "information" meant meaningful material, which was *formatted* for specific media. In other words, information was associated with the existence of physical supports on which meaningful expressions were packaged for being conveyed to specific markets. Key activities of the media industry included creating, editing, selecting, adjusting, copying and signalling this meaningful material to target markets. As a consequence, information was quite often a synonym of knowledge.

Since the rise of the computer and increasingly with digitisation, "information" has become anything that can be encoded as a stream of bits, whatever the format (VARIAN & SHAPIRO, 1999). A private conversation, a signal transmitted between two machines, a piece of software, an opera or a painting can be equally called information. Digital information systems such as mobile networks or the Internet carry unformatted information. This situation is confusing as it is often forgotten that the valuable utility of the media does not consist in the support by itself, but in the operations of creating, selecting, formatting and signalling meaningful material. If those operations are not explicitly considered and internalised into the economy, then any bit emitter can be called a media producer.

Such confusion exists in the very expression "Information Society" which, according to the digital definition of information, means Society of the Bit. However, an Information Society does not yet make a Knowledge Society. The wording "Digital single market" also carries this confusion: the bit as the elementary piece of a code cannot be considered as a product or service designating a market. It is not the atom of a commodity comparable to coal, iron or oil.

This is particularly true for media if we use this term to designate meaningful expressions addressing anonymous audiences. Meaningful expressions are not a commodity, because the way in which their meaning is created, signalled and valued is not comparable with the economics of physical commodities, the value of which is proportional to the mass or to the fuel content. This is even more obvious when the meaning issued from one semantic context, one *culture*, must address 23 different languages.

In 2008, the European media market was valued at € 333 billion (€ 347 billion projected in 2013) among which € 49 billion for newspapers publishing, € 51 billion for television subscriptions and license fees, € 33 billion for television advertising, € 35 billion for consumer & educational book publishing, € 41 billion for B to B publishing, etc. [1] Media which include scientific, legal and educational book publishing, newspapers, TV and radio entertainment are a highly strategic sector for the coordination of societies and economic agents.

This sector is distinctive in several ways. Firstly, it depends on the institution of copyright to reward expressive creation and to allow transactions between authors and other players of the media chain. Secondly, it is facing high-risk markets in which the meaningful experience of media are valued differently by each individual consumer. Creating accurate signals, e.g. trademarks and brands reassuring the consumer about the value of the products is therefore a critical exercise in the industry. Thirdly, rights holders depend on a complex process of product versioning and bundling to maximise returns on investment, which should be considered as sunk costs.

[1] PWC, 2009, pp. 193, 255 and 318. The exchange rate used is 1 U.S. $ = 0.72 €.

Finally, the European media industry is highly fragmented along linguistic and cultural borders. The single market for media is – so far – a distant dream. The patchwork of different media markets in Europe is a result of diverging consumer preferences and varying technological, economic and regulatory circumstances across the EU.

The purpose of this article is to analyse these characteristics in the perspective of expanding digital markets, and to highlight some structural handicaps of the European media industries that deserve specific regulation policies. We will first review some basic features of media economics notably as regards the discrimination strategies associated with media distribution and pricing. We will then show that the discriminating distribution schemes set up in each EU member state result from the path of regulations that have framed the domestic rollout of the media from the start to the digital age. We will finally address multilingualism by showing that not only it adds specific costs to all media distribution systems, but that it prevents economies of scale in producing or marketing the media across Europe. Such fundamentals explain why multi-territory licensing – supported by Google, some *telcos*, and promoted by EU officials [2] – is counter-productive for media creation. We will then conclude on the structural nature of the handicap of the EU media industry and on the necessity to compensate it through adapted industrial policies.

■ Media economics [3]

The economic principles of copyright

First of all, media create strong externalities, which often cause idiosyncratic regulations. These regulations might include anything from incentives for producing valuable media works, to censorship rules to

[2] Within the framework of the Digital Single Market, the Commission suggests that multi-territory licensing would decrease media transaction costs and stimulate cross-border trade. The analysis of the various groups of interest on this issue is surveyed in "Video on demand and catch up TV in Europe", EOA, 2009

[3] The two following sections are frequently referring to the "Study on Muliti-territory licensing for the online distribution of audiovisual works in the European Union", 2010. This study carried by KEA and Cerna was the first economic and legal analysis exploring the reasons of the segmentation of the European audiovisual industry. Further quoting will refer to MTL study.

prevent disinformation and social disorder. These regulations are a result of the historical rollout of different media in each country, and are deeply rooted into every national institutional framework. National and international regulations are, in turn, very important in shaping media's industrial organisation and local media markets. While the United States have built up their political institutions alongside the development of a widespread printed media industry, the old European monarchies – countries in which political institutions pre-existed the outbreak of mass media – had to adjust their media regulation to their existing political institutions. [4] In the context of global media competition, Europe is disadvantaged by the existence of its twenty-three separate linguistic markets and by the wide diversity of national regulations applying to each territory.

In particular, rules governing intellectual property play an essential role in media economics. This historical dimension to copyright and *droit d'auteur* regulations has led to particular economic approaches in looking at the rationale behind these institutions. While the *droit d'auteur* always carried the scope of an individual right comparable to the Anglo-Saxon right to free speech, copyright laws have been created as a means of controlling the right to copy original works for the purpose of public dispersal.

All these approaches now converge towards what economists call intellectual property (IP), which covers a broad range of instruments aiming at coordinating the production and the exploitation of information. IP is an economic category that dates from the 1980s and embraces the legal institutions of patents, trademarks and copyright (BLAUG, 2005).

The development of the media over several hundred years has continuously increased the range of copyrighted material and services. However this development has speeded up during the past fifty years. At its outset, the copyright regime offered monopoly rights to authors (writers), composers and publishers of artistic and literary works. The same kind of protection (although on a different scale) was then provided to performers and to those investing in creation: producers of phonograms and films as well as broadcasting organisations. Printing and not media economics is the

[4] In the second chapter of *The Creation of the Media*, STARR (2004, pp. 30-45) offers a comparison of the emergence of a public sphere in France and in Britain that illustrates the nature of negative externalities and each country's choice of specific means of internalization. BIRN, 2007, analyses the operation, logic and impact of censorship by the crown in Enlightenment France. DARNTON, 2009, provides a lively description of the surreal efforts of the moribund French monarchy to eradicate flourishing pamphleteers, totally incompatible with the sacred legitimacy of the power.

basis of the copyright regime, even though some marked differences exist between the Anglo-Saxon copyright tradition and the continental *droit d'auteur* regime. This explains why some categories of valuable media goods, such as sports events, do not enjoy copyright protection per se, but only when associated to their transmission through broadcast do they adopt that value.

Copyright regulations differ from one country to another, but they all share a property rule granting the rights holder a temporary exploitation monopoly (DEMSETZ, 1967). This property right operates both as an incentive to create expressions with a market value, and as a tool to enable transactions between the rights holder and agents operating in other parts of the value chain, such as publishers adding a brand to the expression [5] or distribution networks conveying it to the consumer. The basic economic rule is that the copyright holder gets an exclusive right to licence his/her product to various industrial agents who will repay him/her according to a specific contractual agreement. In some cases where copyright exploitation would generate high transaction costs, a derogatory licence may be set up. Such licences take the form of levies based upon the turnover of specific markets.

Following the Coase theorem [6], it is generally agreed that if property rights are clearly defined and the agents in a position to freely negotiate, exclusive rights prove to be more efficient than levies or compulsory licence mechanisms (LANDES & POSNER, 2003, p. 14).

Media economics are therefore based on a monopolistic competition between intellectual property (IP) rights holders. The organisation of this competition is specific to the national regulation of each EU Member State, but is now being challenged by the rollout of new media markets.

As a matter fact, the European media landscape is characterised by a set of national regulations resulting from five centuries of public information internalisation policies. The disparities in copyright rules or in the vertical relations between rights holders and distributors, resulting from the liberalisation of the television sector, illustrate this phenomenon. While the

[5] A publishing brand which is a name connoting the expression, adds value not only by signalling it to the public, but also by shaping a context adding some specific meaning. See BOMSEL, 2011.

[6] The "Coase theorem" refers to the famous paper "The problem of social cost" (1960) in which COASE demonstrates that, under certain conditions, the decentralised bargaining between right holders is socially more efficient that centralised regulation.

number and the regulations of private television channels differ in each country, the obligations imposed on television operators to purchase programmes from domestic independent producers have introduced specific rules in production financing and in the remuneration of IP rights. These rules (which are supplemented by various subsidy mechanisms) shape the competition among audio-visual media.

Experience and diversity

Media deliver "meaning", which addresses the widest possible range of individual preferences. In other words, they deliver unpredictable and very heterogeneous utilities generating a high failure rate. Furthermore, they are experience goods whose value is known only after they have been consumed, giving them a significant production and distribution risk. Transaction costs in media distribution are strongly impacted by adverse selection, e.g. by the strong asymmetry of information between the seller and the buyer resulting from the unknown consumer utility for the good.

Signalling of the experience to be expected from a particular media product – in other words, its branding, advertising and marketing – requires heavy investment, which for music works, bestselling books or international movies can surpass production expenses. Without this investment, however, the works will remain unknown and unconsumed. Advertising and marketing investments are usually calibrated and target specific cultural audiences to reflect local sensitivities and peculiarities.

A paradox of the digital economy is that communication systems and media content share neither the same economic patterns nor the same externality profiles. While on the one hand everyone should have cheap access to digital communication networks, media goods should, on the other, be maximally valued so that re-investment in new product can be made to serve the widest range of preferences. The internalisation mechanisms therefore cannot be the same in the two industries. While communication systems are commonly priced on a cost basis with non-discriminatory rules, media are usually driven by better price discrimination. Because each product addresses unknown preferences, media markets rely on sophisticated pricing mechanisms aimed at extracting the maximum willingness-to-pay from the consumer.

Price discrimination: versioning and bundling

Conversely to many functional goods, media pricing mechanisms are aimed at discriminating consumers' preferences[7]. This means that the same product can be sold to different consumers at different prices under different access and quality conditions. Such pricing mechanisms – quite common in airline or train transportation services – are based on the principle that a consumer cannot resale the good or service he has bought. In this case, pricing for each individual product is set with the aim of maximising the revenue associated with the product and, if proper incentives exist, to reinvest that revenue in new creation and signalling. In other words, communication systems are usually priced at cost, but media works (whose marginal reproduction costs are nil) are priced on the marginal value they bring.

Price discrimination of media is achieved through versioning and bundling. These practices that we will briefly describe below, allow self-selection mechanisms through which the consumer is offered to pick the product the most fitted to his expected utility.

Versioning

Versioning is a core concept of media marketing. It consists of offering different qualities of the product at different times and different prices, encouraging consumers themselves to select from among these versions according to their differing degrees of willingness to pay. Rights holders can therefore take advantage of these various demand segments and maximise overall profit. The high quality or the first-released versions will be picked by consumers with a high willingness to pay, while the cheaper versions will be chosen by consumers expecting a lower marginal utility. However versioning covers not only the quality differentiation, but also the means of access and the level of liberalities [8] (of use) granted to the consumer.

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[7] For a convenient depiction of price discrimination schemes, see CABRAL, 2000, Chapter 10, pp. 166-187.

[8] The expression "liberalities of use" designates the scope of the usages granted to the consumer by a given version of the media. See BELLEFLAMME, 2006: "[…] using DRM, the producer of a digital music file has the possibility to create different versions by attaching different liberalities of use to the file (in terms of, for example, number of access, number of copies on different devices, number of people one can share the file with, rights to modify or excerpt, or even time of possession)."

Two-sided markets [9] are a common versioning practice. This consists of inserting commercial messages (advertisements) within a media in order to make the advertiser subsidise the edited content. In many cases, notably when the media is broadcast, the ad subsidy is such that the copyrighted works can be offered for free. Those works are then paid for by the advertiser in proportion to the audiences reached. The model also provides powerful incentives to purchase receiving equipment. Free media have supported the rollout of radio, television and Internet services.

However, advertisement can often undermine the quality of the experience. This is why fully ad-subsidised versions commonly appear as the lowest quality of a media whose premium versions are sold through other models. Free versions remove the consumer's risk of buying a product that would not match his expected utility. Therefore they can be used either to advertise higher-quality versions, or to reach the less willing consumers after the premium versions have been exploited.

In fact much will depend on the nature of the externality caused by the release of a free version. If the free version can be used as a teaser for a premium one – like music on radio or a newspaper homepage teasing for subscription services – then it will be released before it. The release will have a positive external effect on the sales of the premium version. If, on the contrary, the free version can be used as a substitute – a free-to-air film broadcast competing with a theatrical version – it will then be released after all the others.

Therefore, versioning depends on the utility patterns of each type of media. Media which are usually only consumed once – a newspaper, a book, a film, a soccer match – will not be versioned in the same way as music or video games, which often lead to repeat consumption. As a consequence, each media has its own versioning scheme leading to specific marketing rules and sometimes, to exclusive release windows.

Bundling

In addition to versioning, the most efficient way to accommodate consumers' preferences is bundled sales. A CD is a bundle of music tracks,

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9 Two-sided markets are economic platforms having two distinct user groups that provide each other with benefits. The advertisers and the readers of a newspaper are one among many examples.

a newspaper a bundle of news articles, a TV-channel a bundle of audio-visual programmes. The buyer of a newspaper will make his own selection of the columns or articles he might find interesting. By bundling together products addressing multiple preferences with no additional distribution costs, a media provider can maximise the value of each individual piece of works.

As a consequence, media can be analysed as a platform bundling together various pieces of edited content. Bundles may concern the number of pieces aggregated, the condition of access to the platform (by the unit, on subscription), or even the number of versions a consumer can access. A newspaper, for instance, can be purchased by the unit, on subscription or through packages bundling together the paper copy and various digital versions accessible from a PC, a mobile phone or digital tablets.

Bundled sales of premium content such as subscriptions to newspapers, pay-models for online news, unlimited packages in movie theatres or pay-TV packages, combine versioning and bundling techniques. These models are subject to economies of scale and economies of scope which may deter competition: subscribers to a wide-content bundle will have little interest in subscribing to a narrower bundle, or in purchasing by the unit (NALEBUFF, 1999). The distributor addressing the largest subscriber base will aim to invest in the widest range of content to be resold in packages.

For example, a powerful TV operator will have interest in purchasing VOD rights to be added to its bundle, thereby gaining a competitive advantage on pure VOD players. Symmetrically, a powerful DVD rental service will have interest to offer VOD to its regular subscribers. [10]

The impact of digital technologies

Digital technologies allow the continuous surge of new media and new versions. These versions are usually dematerialized and can be distributed at quasi-nil marginal cost. They are highly suited to new bundling formulas. From an economic standpoint, digital technologies bring new discrimination means that get inserted into the marketing scheme of each type of media.

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[10] In the U.S., the DVD market accounts for more than 50% of film net revenues. DVD rental services such as Netflix are then powerful VOD players.

This stimulates competition between media distribution channels, with each one trying to increase the utilities associated with its versions. Thanks to IP rights granting them an exploitation monopoly, copyright holders (especially those controlling large catalogues), can wield real power by effectively deciding which utilities enabled by new technologies will be rolled out.

For example, the film industry has continuously expanded the exploitation of its products on multiple distribution channels – theatrical, DVD, VOD (various pricing models), pay-per-view, pay-TV, free-TV – with the goal of maximising the global exploitation revenue of each product. The insertion of each new technical version in the exploitation schedule has been decided according to the benefits it would bring to the consolidated revenue of the media.

Not only does the competition between free-to-air (FTA) and pay-TV versions rely on quality, but additionally on the pricing mechanism of each version market [11]. While FTA relies on spontaneous audiences corresponding to separate programmes, the pay-TV operators sell bundles. In economic theory, bundling is a better discrimination tool than separate retail. This means that if pay-TV operators reach a critical mass of audience, they should be in a position to extract better value from their programmes and will increase their competitive advantage in purchasing them. The fragmentation of the FTA audiences due to the surge of new digitally broadcast channels amplifies this phenomenon. The high concentration in each national pay-TV market illustrates this fundamental advantage.

As regards non-linear systems, digital technologies allow the development of on-demand versions which can be priced according to different models: FTA, rental, download to burn, subscription, catch-up, bundled with television packages, etc. These models have various means of access and terminal equipment. The more technical means of access exist, the more combinations of offers can be created to improve discrimination efficiency in distribution. As a consequence, rights holders can select from a number of distribution options in order to identify those that provide the best discrimination – the best consolidated returns – for their products.

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[11] Pay-content versions then have to be designed so as to bring maximum differentiation from free-to-air versions. The economics of pay-TV rely on its differentiation with all other media, but primarily with FTA.

This economic rationale underlies the competitive environment for VOD. As we have mentioned before, it explains why large audio-visual rights purchasers, such as television operators, have been so eager to develop catch-up and other VOD offers. In other words, the development of VOD markets is not driven by technology, but by the economic value to be extracted from content.

Only the privilege to licence IP rights allows such a monitoring of media versioning. The ability to exercise such control is critical in order to share financing commitments, as well as risks, in relation to any kind of media production and discriminated distribution. On the contrary, the circumvention of IP rights can locally boost the rollout of new digital systems by providing free media to their users, but with the consequence of spoiling the whole media distribution scheme. In other words, if IP rights are not properly enforced, then the social benefits resulting from the new digital versions cannot be reinvested in media creation (BOMSEL & RANAIVOSON, 2009).

Path-dependency

IP rights enable the creation of different media markets and distribution systems. Media are marketed across distinct territories through different versions addressing specific market segments with adapted pricing models. The media owners' goal is to maximise the value corresponding to the utility of their products for each type of consumer. This utility is attached to the technical parameters associated with the delivery mechanism, as well as to the "meaning" of the product for the consumer. The latter strongly varies with linguistic and cultural patterns within and across countries. We will come back to this point in the next section. However the media market also depends on the historical and institutional path of the technical rollout, which shapes the media discrimination scheme applying in each country. The case of the European audio-visual sector is quite illustrative of this process.

The audio-visual industry and markets started in the early 20th century with the rollout of cinema theatres where large audiences could access motion pictures and news documentaries. Until the 1950s, these theatres were the only market for audio-visual products. With the deployment of television, however, a new route to market had appeared resulting in local regulations in each EU country to encourage the establishment of new television operators, as well as the new technical content versions, in the domestic media landscape.

The surge of television networks established a market for new formats as well as a new version market for films. The free-to-air (FTA) model has provided the consumer with an incentive to invest in a television set. In all European countries, television was initiated as a public service financed through a special tax. Since the first generation of television sets, more channels and colour services were progressively offered. Television then became a commercial service based on a two-sided market platform able to resell audiences to advertisers. In the late 1970's, complementary facilities such as video recorders have been established. The video recorder installed base was the ground for the expansion of a packaged content market using the VHS standard. In the end of the 1990's, these products were upgraded to DVDs allowing the creation of an additional video version market.

The rollout of VHS and the development of conditional access technology allowed the marketing of new versions based on pay-services. Thanks to the equipment available in the consumer's home, broadcasters have been able to offer new ways to consume audio-visual products with restricted access [12]. However, being sold at a higher price, these versions had to be inserted in time windows preceding FTA. Depending on its audio-visual industrial organisation, each country has had to find a way – regulated or not – to facilitate this process.

Each country then acted according to its own traditions in evaluating media externalities and setting up internal regulatory tools. France, for instance, has been the only country in Europe to introduce pay-TV services on terrestrial broadcast even before the launch of commercial FTA services. In this context, the differentiation between public FTA television and the pay-TV service (Canal Plus) was maximal. The full coverage of terrestrial broadcasting allowed the pay-TV operator to cherry pick more than two million customers between 1984 and 1988. Many other EU countries had to wait for satellite services (1990's) prior to launch pay-TV. At that time, the domestic FTA offer was much broader than in the early 1980's while the satellite broadcast market was open to Americans.

Countries wanting to protect their domestic media sector have established specific rules regarding ownership concentration, diffusion quotas, incentives for local production and vertical relationships. Such rules promote diversity at the expense of economies of scale. Newspapers, for

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12 Premium content - exclusives, first broadcasts - and thematic bundles (including adult material) gathering specific programmes are better valued by the consumer than the FTA channels.

instance, are widely subsidized all over Europe. The vertical restraints attached to its exclusive release window makes the French pay-TV operator accountable for more than 60% of the sale revenues of the majority of French films, which remain largely subsidised (BOMSEL & CHAMARET, 2007). Besides, many EU countries apply resale price maintenance in book distribution so to smoothen price competition in their publishing industry.

Such rules have led to a territorial monitoring of media competition through a versioning regulation including the advertising sales market, ad density in FTA TV programmes or the release windows for motion pictures. According to an NPA study (NPA Conseil, 2007), the modalities and the schedule of the theatrical release windows are quite different among the – then – 25 EU Member States. The relative position of the window release granted to pay-TV determines its differentiation with the other media and then its ability to discriminate subscribers. This example shows how the rollout of national audio-visual markets have been associated with specific discrimination schemes – which conditions the revenues of each domestic audio-visual industry and the valuation of its respective assets. This point is very critical in the perspective of the "Digital Single Market" agenda. Simply because:

- Digital networks do not capture all the value of the media, but have to get inserted in their complex and path-dependent multi-version discrimination schemes,
- Every member state of the EU has built up specific media regulations aiming at shaping discrimination schemes compatible with its national goals of media creation and diversity.

In other words, the headache of a digital media single market in Europe is that it has to combine all the discrimination strategies that are vital for the sustainability of each national media industry. Yet, such rules would be possible to harmonize if there were a mutual benefit in creating a single discriminated distribution scheme all across Europe. The problem is that there cannot be one single market for media as long as the continent remains multilingual. As we will see in the following, multilingualism creates an irreducible fragmentation of the media European markets.

■ Multilingualism

Why are they linguistic markets?

Media goods provide a meaningful experience that can be socially shared. As a result they generate cultural paths that affect their relative value within the different cultural communities. The utility of a new product depends on a "context" which means, notably, on the experiences that have previously shaped the tastes of the targeted audiences. Therefore, both creation and distribution are highly sensitive to linguistic and cultural parameters.

This is obvious, of course, in the case of text media such as newspapers or books where the copyrighted expression is worded in a specific idiom. Provided the expression may have some utility in another language – the Polish market for Spanish politics is small – its translation would generate costs comparable to its creation. To which should be added the specific marketing costs associated with the signalling of the works in a new cultural context. Therefore, from an economic standpoint, even if the meaning stems from the same expression, an original version is not substitutable to a translation in the native language of a foreign reader.

This is also true for audio-visual media. The example of Luchino Visconti's *La Caduta degli Dei* illustrates how subtle the differences are for marketing media in different territories [13]. It shows that a film that is subtitled or dubbed and promoted by a local marketing campaign to appeal to a specific linguistic or cultural audience can be given a new dimension. Every linguistic version therefore carries an added value as a result of adaptation and marketing. In economic terms, each linguistic version is specific and cannot be simply substituted [14]: relevant media markets are monolingual.

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13 The movie has been distributed in the UK and in Germany under titles equally referring to the Wagner Opera Götterdämmerung. The French title *Les Damnés* did not carry such a reference. However, another Visconti movie happened then to be issued in France under the title *Le Crépuscule des Dieux*, referring also to the Wagner Opera. Because of the confusion with the former movie in neighbouring countries, it had then to be renamed and re-advertised as *Ludwig ou Le Crépuscule des Dieux* (BOMSEL, 2010).

14 The assertion is exemplified by the strategies adopted by MTV or YouTube, which underline how critical idiosyncrasy is in audio-visual media distribution (MTL study, 2010).

In particular cases audio-visual media can successfully be broadcast in one form all over Europe, if suitably packaged. But even in these cases it is difficult to assert the existence of a pan-European internal market, since licences are rarely granted on a pan-European basis.

In effect, the investment associated with the linguistic versioning, and more generally with the marketing of each piece of works is specific for each territory. Consequently each licensing contract requires negotiation on the size of the investment and how the risks will be shared between distributor and rights holder. There are economies of scale in negotiating several versions of a works in one single territory, but there are not in negotiating such contracts for multiple territories. Moreover, the distributor's risk is better hedged by distributing several products in the same territory than by distributing the same one in different territories. Such issues can be seen in the sale of rights to the UEFA Champions League. These are sold by UEFA through multiple individual licences to national broadcasters, largely because viewers want to watch football matches commentated – contextualized – in their own language.

Some Hollywood, and even a few European, blockbusters may appear as an exception that proves the rule: designed for global audiences, the theatrical versions are sometimes released on a "day and date" basis, across multiple countries and languages (subtitled/dubbed), so as to minimise the impact of piracy. However, the marketing investments continue to vary from one country to the other and shape different distribution contracts. This is also the case for the later marketed versions such as home video and television broadcasts.

Economic consequences

The digital single market often refers to audio-visual media that can easily be IP broadcast on digital networks. It is then suggested that more fluidity in cross-border consumption would enhance the rollout of high-speed infrastructure. However, audio-visual content is amongst the most capital-intensive media both for producing and marketing. This means that large linguistic markets, such as the United States, have a huge competitive advantage in producing and exploiting them. The pre-financing of audio-visual media requires a strong involvement from the territory they are designed for, especially when the linguistic market is restricted. As a consequence, rights holders will always give priority to exploitation in their own financing territory, and will subordinate foreign distribution to the needs of these investors. As distribution in foreign territories requires specific investment (advertising, labelling, subtitling, dubbing, etc.) to make the product attractive to the local viewer, the selection of a distributor for each territory will rely on the efforts this distributor is ready to make to sell the product, as well as its willingness to pay the highest acquisition fees.

However, cross-border trade is more common when linguistic/cultural areas do not correspond to national boundaries. For instance, many German channels are broadcast to Austria, the Netherlands and Belgium (another example of this would be Scandinavia). The same can be said for British television channels, which are received in Ireland. Hosting three different linguistic communities, Belgium has established different channels addressing their segmented communities and has largely opened its boundaries to foreign channels. Belgium is therefore the only country in the EU with no public nation-wide broadcaster. These particular cases do not question the national organisation of audio-visual media distribution, since private contracts enable them to manage cross-border markets [15].

National or territorial versioning has a major impact on the industrial organisation and the transnational circulation of media in the EU. In fact, unlike the oil, steel, automobile or beverages industries, there is currently no trans-national media company in Europe that proposes to release and market content across Europe in the same way [16]. As shows the MTV broadcast strategy[17], distributing media across Europe requires customisation investments to adjust to every linguistic market. Consequently, although economies of scope can arise from wider copyright catalogues, there are few economies of scale to be expected from a geographic concentration of European media. [18]

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[15] As shown in the Conditional Access evaluation study (KEA, Cerna, December 2007), pay-TV 'grey markets' are associated with these versioning patterns. Grey markets occur when the cultural preferences of some viewers strongly differ from the dominant preferences of a territory. The opportunity is then informally offered to those viewers to buy access services from a neighbouring country, rather than content providers having to invest in a specific versioning for the whole territory.

[16] Bertelsmann's RTL Group is Europe's leading entertainment company and runs television and radio channels in 11 EU Member States. According to the MTL study, the Group sees little value in releasing its audio-visual content on an international basis.

[17] See the MTV case study in MTL study Appendix.

[18] The absence of economies of scale is clearly attested by the Hollywood studios. As systematically recalled by its representatives, the Motion Picture Association of America (MPAA) attaches great value to the principle of territorial rights, which allows the maximisation of specific marketing investment in each linguistic market.

Such economies would exist if there were no fixed costs and no financial risks attached to marketing to a wider territory. However, because of the linguistic segmentation of Europe's market, this is not the case. This implies that European media industries carry high discrimination costs: the investments required for shaping consumers' utility (or appetite) for a product or service are comparably higher and riskier than in larger linguistic markets. This factor directly affects the production side: the magnitude of the transaction costs to export a media in other linguistic markets creates incentives to design most products for domestic markets. And the small scale of these markets increases the risk attached to each product: while the rate of failure is the same as on a bigger market, the returns of a success will be lower. This, of course will penalise creation, diversity, and curtail potential economies of scope. So to compensate this handicap many countries have designed specific protection rules. Which, as we have seen, increase the discrimination costs across countries. In other words, the big specificity of media is that their competitiveness relies on discrimination costs. Low discrimination costs allow efficient media distribution, which increases returns on creation of new products and new brands.

The problem of the European media industry is that linguistic segmentation increases discrimination costs encouraging each member state to protect its media sector with idiosyncratic rules. These rules contribute to increase even more the discrimination costs across the continent.

■ In conclusion

Compared to monolingual markets such as the United States, and to some extent India or China [19], Europe therefore suffers a competitive handicap at the production, marketing and distribution level: the multiplicity of languages and cultures creates a wide distribution of individual preferences that requires expensive versioning that adds to the high discrimination costs created by the path-dependency of each individual member state.

[19] Although these subcontinents host many local dialects, they share at least a unified common language allowing domestic productions as well as movie stars to be acknowledged and celebrated continent-wide.

Each linguistic version adds some distribution costs while often addressing smaller markets. The work's cultural specificity (humour, local stories, historical figures or facts) contributes further to fragmentation. Moreover, as discussed above, the national regulations resulting from long-established local or national policies in the media sector amplify this segmentation.

All these factors challenge EU policy's single market objectives. In effect, there is a perception by the Commission of the heavy transaction costs resulting from the complexity of the discrimination process. But the economic fundamentals are seriously misunderstood. It is not by claiming that IP rights should be transacted on a multi-territory basis that the discrimination costs will suddenly vanish. On the contrary, the discrimination inefficiency of a multi-territory deal will mechanically increase the price of the corresponding license as compared to the cumulated price of multiple local ones. So no one will buy it. And if such a multi-territory license becomes compulsory, it is then the whole media marketing process that will be degraded.

On the American side, where English is the dominant language, digitization can be *much more* easily used to improve discrimination efficiency in media distribution. As a consequence digital distributors – Amazon, Apple, Google – arise benefitting from the economies scale of a large monolingual market on which the media discrimination systems are homogeneous. If the piracy issue is contained, the concentrated right holders will easily monitor the insertion of these new distributors into their discriminated sale system.

The problem faced by the European media industries is to resist the concentration of these American distributors whose market power may break the domestic discrimination schemes aimed at maximizing the value of each idiosyncratic creation. The objective of the digital single market should not be to open the route to these players who will have more interest in pushing global blockbusters than in protecting European diversity. Such a policy would durably alter the capacity of the media sector to reveal and brand talents.

The challenge of Europe is to build up harmonized media distribution systems aiming at lowering the discrimination costs of each media while increasing the revenues of their industries. Such a policy requires a better understanding of each European media discrimination scheme in order to find win-win coordination between them.

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