The Council of Europe's new notion of media

A coherent pan-European approach to the fast changing media ecosystem

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the role of media in modern democratic societies

- *Purpose of media:*
  - **produce, aggregate or disseminate media content**
  - **operate applications or platforms designed to facilitate interactive mass communication or mass communication in aggregate** (e.g. social networks) **and/or to provide content-based large-scale interactive experiences** (e.g. online games)

- *with underlying objective(s)*
  - animate and provide a space for public debate and political dialogue, shape and influence public opinion, promote values, facilitate scrutiny and increase transparency and accountability, provide education, entertainment, cultural and artistic expression, create jobs, generate income – or most frequently, a combination of the above

-> media act as a fourth power and a public watchdog

-> media are our societies' most important tool for freedom of expression

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traditional media regulation

Main goal of the *traditional* Council of Europe media regulation:

- guarantee the fundamental right to freedom of expression and information, in accordance with Article 10 ECHR

- Freedom of expression is not absolute; it carries with it duties and responsibilities and can be subject to limitations in accordance with Article 10, paragraph 2, EHCR

Article 10, European Convention on Human Rights:

- Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

- The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

traditional media regulation

- *Case law* of the European Court of Human Rights:
  - Public watchdog function of the media
  - requirement of proportionality when restricting media freedom (in acc. with Art.10, §2)
- *Historically*, media regulation has been *justified by and graduated* having regard to *its potential high impact on society and on individual rights*; regulation has also been a means of *managing scarce resources* in the public interest.

Principles of traditional Council of Europe media regulation:

- *to ensure the highest protection of media freedom* and to provide *guidance on duties and responsibilities of media actors*
- *regulation, as a form of interference, should only be applied where necessary*

significant changes in the media ecosystem

Developments in ICT and their application to mass communication

- <u>new ways of disseminating content</u> on a large scale and often at considerably lower cost and with fewer technical and professional requirements.
- <u>New features</u>:
  unprecedented levels of <u>interaction</u> & <u>engagement by users in creating and disseminating content</u> ,
- <u>blurring</u> the boundaries between <u>public and private</u> communication
- <u>further diversification</u> of media ecosystem

significant changes in the media ecosystem

- *New actors* assume functions in the production and distribution process of media services
  (e.g. content aggregators, application designers and "prosumers")

- *"intermediaries" or "auxiliaries"*, have become essential for digital media's outreach and people's access. (pathfinders to information, gatekeepers, but also active roles in editorial processes).

- *traditional media actors'* business models and professional standards, their functioning and existence are challenged, they are being complemented or replaced by new actors (incl. mergers & acquisitions)

-> The roles of each actor can easily change or evolve fluidly and seamlessly.

-> services or applications may gain a dominant (market) position

significant changes in the media ecosystem

Developments in user behaviour:

- where and how do I get information?

- who do I trust?

- how do I deal with private information?

- am I responsible for the content I upload on the internet and/or what other do to this?

-> All in all: media landscape has developed into a fluid and multi-dimensional media ecosystem

a new notion of media

A graduated and differentiated approach to media and their regulation

- Media-related policy must be based on a notion of media which is *appropriate for the fluid and multi-dimensional reality* of the media ecosystem.

- All actors – whether new or traditional – operating in the media ecosystem should benefit from an *appropriate form (differentiated) and an appropriate level (graduated) of protection* and their *duties and responsibilities* should be *delineated accordingly* in line with Council of Europe standards.

- This graduated and differentiated response should be *based on the part/role that a particular media service plays* in the process of production and dissemination of a particular kind of content or information.

- Attention should also be paid to *potential forms of interference in the proper functioning of media or its ecosystem*, including through indirect action against the media's economic or operational infrastructure.

a new notion of media

What does that mean?

- Apply the principles *behind* traditional media regulation to *all* media (old & new): protection of freedom of expression and enabling media to fulfill their functions in democratic societies.

- Paradigm shift in media policy: It is not the *nature of the producer* of a service that should classify a service but the *nature of the service itself*, taking into account its function(s) in society.

- Use a set of criteria that help identify whether a service should be regarded as media (or auxiliary) or not.

- Regard regulation as interference and limit regulation to where absolutely necessary.

- Engage in dialogue with all (media) actors.

- Promote self-regulation (not self-censorship) and professional standards.

- Promote suitable levels of public service delivery.

criteria for identifying media

- Six criteria should allow policy makers to identify and specify media, media activities and auxiliaries/intermediaries in the new ecosystem

- A set of indicators established for every criterion

- Not all indicators need to be met to fulfill a particular criterion.

- Not all criteria carry equal weight:
  while not meeting some criteria (purpose, editorial control, outreach and dissemination) tend to disqualify a service as media, other criteria (e.g. intent or public expectation) do not automatically do so.

- Continuous reassessment is necessary due to the the rapid changes and development of services and actors.

criteria for identifying media

Criterion 1 - Intent to act as media

Indicators

- **self-labelling** as media
- **working methods** which are typical for media
- commitment to **professional media standards**
- **practical arrangements for mass communication**

Relevance of criterion

- Intent is an important criterion, but **not sufficient** for treating an actor or any of its services as media

criteria for identifying media

Criterion 2 – Purpose and underlying objectives of media

Indicators

- **produce, aggregate or disseminate media content**
- **operate applications or platforms designed to facilitate interactive mass communication or mass communication in aggregate** (e.g. social networks) **and/or to provide content-based large-scale interactive experiences** (e.g. online games)
- **with underlying media objective(s)** (animate and provide a space for public debate and political dialogue, shape and influence public opinion, promote values, facilitate scrutiny and increase transparency and accountability, provide education, entertainment, cultural and artistic expression, create jobs, generate income – or a combination of the above)
- **periodic renewal and update of content**

Relevance of criterion

- Purpose and underlying objectives (i.e. its role in and impact on society) are relevant for a differentiated approach to media services and actors

criteria for identifying media

Criterion 3 - Editorial control

Indicators

- editorial **policy**
- editorial **process**
- **moderation**
- editorial **staff**

Relevance of criterion

- If there is no editorial control, a service should not be considered a medium
- Different forms and levels of editorial control (e.g. ex post vs. ex ante) call for differentiated responses to media services and actors

criteria for identifying media

Criterion 4 - Professional standards

Indicators

- **commitment**
- **compliance procedures**
- **complaints procedures**
- **asserting prerogatives, rights or privileges**

Relevance of criterion

- Professional (media) standards and accountability systems are strong indicators. The absence of such does not nessecarily disqualify a service as not being media.

criteria for identifying media

Criterion 5 - Outreach and dissemination

Indicators

- **actual dissemination**
- **mass-communication in aggregate**
- **resources for outreach**

Relevance of criterion

- The absence of outreach (i.e. having no significant public) does not preclude something from being media, but will have a bearing on differentiation and gruaduation of the response (i.e. no regulation).

criteria for identifying media

Criterion 6 – Public expectation

Indicators

- **availability**
- **pluralism and diversity**
- **reliability**
- **respect of professional and ethical standards**
- **accountability and transparency**

Relevance of criterion

- The level and kind of public expection is also not a necessary critierion,
- public expectation can change rapidly

applying the new notion of media

A. Rights, privileges and prerogatives

- media freedom and editorial independence
- freedom from censorship
- protection against misuse of defamation laws and risk of chilling effect
- right to investigate
- protection of journalists and journalistic sources
- fair access to distribution channels
- protection of intermediaries and auxiliaries from undue interference

applying the new notion of media

B. Media pluralism and diversity of content

- management of scarce resources
- transparency of ownership
- public service media

applying the new notion of media

C. Media responsibilities

- editorial responsibility
- respect of dignity and privacy
- respect for the presumption of innocence and fair trial
- respect of the right to property
- remedies for third parties
- hate speech
- rights of children
- rights of women
- rights of minorities
- advertising

Thank you for your attention!

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