From Public Service Broadcasting to Public Service Media
RIPE@2007

Gregory Ferrell Lowe & Jo Bardoel (eds.)

Commercial Services, Enclosure and Legitimacy

Comparing Contexts and Strategies for PSM Funding and Development

Hallvard Moe

European public broadcasters have long since ceased to be solely publicly financed. But the inherently controversial licence fee on television sets has remained a key source of funding. Facing an increasingly complex digital media environment, public service providers have expanded beyond traditional broadcast radio and television to embrace digital technologies and correlated fields of activity. Because the legitimacy of public funding is closely connected to specific characteristics of broadcasting, this development encourages the search for alternative sources of income. The potential transformation from public service broadcasting [PSB] to public service media [PSM] thus compels a thorough discussion of institutional funding schemas.

This chapter concentrates on elements of, and attitudes towards, commercial funding and arrangements that promote enclosure within and across media platforms. In some states commercial funding has traditionally served to demarcate between public service and private commercial broadcasting. In other states this division has not applied. To what extent, and how, have attitudes and regulations about funding changed in the face of new media platforms?

Enclosure is significant here and the term, as I use it, covers a range of ways to restrict media content which involve issues of control. Familiar enclosure methods today include subscription and pay-per-view services, encrypting broadcasting channels that require registration and decoders, and the constraints of proprietary software on the Internet. Each schema is about erecting walls around content via technical or economic means, or some combination of the two. Such enclosure is in opposition to the core PSB values of open access and universality wherein content ought to be available for everyone without geographic, economic, social, or technical impediment. How are attitudes towards such arrangements playing out in comparative contexts? What are the potential implications for the legitimacy of public service media? Answers to these questions are of keenest importance today and speak to the kind of future we may anticipate.

Relying on a comparative approach, I analyse how the strategies of public service broadcasters in three Western European nations correspond to their dif-

fering social and political contexts. The selected cases are Germany's ARD and ZDF, the BBC in the UK and Norway's NRK. These companies are all primarily funded by licence fees and are institutions with domestic PSB remits. All four companies face common challenges represented by a globalized broadcasting industry combined with the European Union as a powerful media policy actor (c.f. Holtz-Bacha, 2006; Jakubowicz, 2004; Lowe & Hujanen, 2003; Ward, 2003).[1] Yet they are different in relation to relevant analysis variables: They have diverging formal founding and organisational forms, exist within quite different political systems and cultures, and have been subject to dissimilar regulatory arrangements. In addition, their primary and secondary markets – and the competitors they face – also differ.[2]

The approach taken here is based on the observation that public broadcasters and media policy still *primarily* relate to national frameworks. Actual strategies, public debates, the role of competing actors, and regulatory regimes have developed over time and continue to vary significantly across states. The first part of what follows concentrates on how shared challenges related to commercial funding and enclosure have been applied in different national settings from the preparations for the digital era until 2007. Mapping the findings across contexts facilitates a discussion of the second main issue raised in this chapter: What do different strategies imply for the legitimacy of PSM funding schemas?

Strategies and regulatory frameworks

We begin by scrutinising the development of case strategies and corresponding regulatory frameworks in relation to commercial funding activities and enclosure arrangements. This discussion is based on analysis of guidelines, strategy and policy documents, letters to the editor, and news articles. This produces a needful comparison of differences and similarities that help us understand the cases with keen reference to the contextual features that define each case.

Commercial sources of funding

The NRK launched a forceful argument for a more efficient organisation in response to its first serious national competitors which commenced in the early 1990s.[3] The PSB company quickly found that the licence fee, even in combination with cutbacks could not provide sufficient income to finance its ambitious aims; this difficulty has become ever more obvious in the emerging digital era (Moe, 2003: 114; NRK, 1995: 7).

NRK took a proactive approach that 'paid off' as Parliament changed the organisation from a foundation status to a state-owned limited company in 1996. This change of status facilitated subsidiaries to exploit commercial potential while keeping a level of political control. NRK Aktivum was established the following year to take care of all business activities connected to PSB.[4] After later liberalisations, the current statutes approve of all "commercial activities the

objective of which is to create revenue for public service broadcasting activities"
(MCCA, 2004: §3-2). On this basis, the broadcaster has actively sought commer-
cial partnerships and revenue in programme production, and for teletext and
Internet service development (Moe, 2003: 115); engaged in a failed initiative
to commercialise the entire department for educational programmes (Gram
2001); acquired and launched magazines; and planned a theme park based on
a children's programme series (Wekre, 2006). Although the percentage of total
commercial income remains small (see Table 1), the pretensions and scope of
activity does not lag behind larger sister-institutions, as we shall see.

Table 1.   2006 sources of PSB funding in 4 cases

	NRK	BBC	ARD	ZDF
Licence fee per month (€)(2007)	21,6	16,6	11,9	4,2
Licence fee income (mill. €) (2005)	426,0	4 570,8	5 119,0	1 620,5
Other income (mill. €) (2005)	23,0[i]	949,0[ii]	682,3[iii]	266,7[iv]
Percent of income from licence fee	95	78	83	86
Percent of income from commercial sources	5	16[v]	17	14

[i] Approx. €12 directly from NRK Aktivum.

[ii] Approx. €270 directly from BBC Worldwide. The two remaining commercial subsidiaries are BBC World (internatio-
nal television news channel) and BBC Resources (events, programme production etc).

[iii] Approx. €132 from advertising, and the rest stemming from co-productions, co-financing, marketing of program-
mes (including for auxiliary joint channels 3sat, KI.KA, Phoenix and ARTE).

[iv] Approx. €99 from advertising, and the rest stemming from co-productions, co-financing, marketing of program-
mes (including for auxiliary joint channels 3sat, KI.KA, Phoenix and ARTE)

[v] The remaining percents largely stem from a government grant for BBC Worldservice.

Sources: NRK 2006; BBC 2006c; BBC Worldwide 2006b; ARD 2006; ZDF 2006.

Actually the BBC has undertaken commercial activities since its inception.[5] That
isn't really new. But until the 1980s the scope of such activities remained mod-
est and was concentrated on programme sales (Briggs, 1995: 712). Beginning
in the late 1980s the BBC commercial arm expanded robustly, absorbing busi-
nesses and launching new initiatives (Born, 2004: 59). Formal permission was
in order and the Conservative Government's 1994 White Paper on the future of
the institution was tellingly subtitled *Serving the Nation, Competing Worldwide.*
It encouraged the BBC's development "into an international multi-media en-
terprise" (quoted in Steemers, 2005: 233). Not only would commercial revenue
supplement the licence fee, the BBC should thereby bring "a distinctively United
Kingdom voice, outlook and culture into the world market" (ibid).

That same year, the BBC presented its dual approach for the digital era: To
add new free services to its publicly funded portfolio while the wholly owned
subsidiary, BBC Worldwide, introduced subscription-based thematic channels.
Since the BBC lacked resources to implement its own digital strategy, several
commercial joint ventures were established during the 1990s, both for broadcast-
ing and online (Steemers, 1998: 114). The strategy coincided with an internal
public management-inspired reorganisation aimed at gaining additional savings
to help fund the digital transition (Born, 2004). In the new millennium the BBC

operates and co-operates over ten subscription television channels, publishes well over 30 magazine titles, and has large income streams from international programme sales (BBC Worldwide, 2006a). The monies generated by such activities are quite large and reflect the global market potential enjoyed by the BBC (see Table 1).

Contrasting with the Norwegian and British cases, Germany's ARD and ZDF have been dually funded by advertising and licence fees since their establishment.[6] The deregulation of German broadcasting in 1984 brought competition for viewers and a race for advertising money. A few turbulent years of highly polarized debate over the balance between public and private actors followed (Humphreys, 1994: 239). When a balance was struck after 1986, the public side was granted little room for extensive reorganisations or grand commercial initiatives.[7] On the threshold of the digital era, then, these German PSB institutions' prospects were quite different in comparative terms. Their plans were therefore necessarily "more modest" due to "political hostility" to their ambitions for digital expansion (Steemers, 1998: 112).

Still, some commercial initiatives were undertaken by these German PSB companies, and principally by ZDF which has acted as a "catalyst for discussion and change" (Steemers, 2001: 78). Deutsche Telekom was, for instance, invited to co-operate in promoting a web-based news service. A more peculiar and unrealized project was the ZDF Medienparks initiative that envisioned an amusement park based on popular television formats (Gounalakis, 2000).[8] The ZDF still operates programme sales services and a merchandise shop, as does the ARD. Their scope is modest but, interestingly, accounts have not made the clear separation between commercial and public income as is required in the British case.

These differences in strategic scope and regulatory frameworks are also evident in the role of advertising. Apart from a limited amount of sponsoring in television, mainly of large sports events, the NRK has had to keep its radio and television channels advertising-free. On the other hand, adverts appear throughout teletext services and across websites, including on front pages and inside news sections. This quite liberal arrangement is formally grounded in Norway's *Broadcasting Act*. The BBC has also been constrained from carrying advertising on its main television and radio channels, but in contrast with the Norwegian case the UK ban also covers BBC Internet sites and teletext services. A potentially significant break with this policy came as a proposal to start exposing overseas users of bbc.co.uk to limited amounts of advertising. The proposal reaped both external and in-house protests (Sweney, 2006a). In February 2007, the new BBC Trust moved to defer its decision to either deny or endorse the proposal (Conlan, 2007).

Following competition, the amounts collected from advertising by the ARD and the ZDF in Germany remains relatively modest. Regulations prevent these public service broadcasters from taking advantage of increases in advertising expenditure, e.g. by prohibiting ads after 20.00 (Holtz-Bacha, 2003: 112; Steemers, 1998: 104). Advertising rules are also restricted in terms of platforms. In

1997 a ZDF-initiated co-operative arrangement with Microsoft on the Internet triggered a political process resulting in a ban on advertising and sponsorship on new media platforms and teletext services, effectively ending the collaboration before it could fairly begin (Eberle, 2003: 7; Steemers, 2001: 79).[9] Thus, despite a long tradition for mixed funding and even facing a digital media environment, the ARD and the ZDF have been intentionally hindered from developing commercial sources much further. Although the level of non-licence fee income is rather large for both these organisations, most of that stems from programme production-related activities and traditional advertising rather than the innovative initiatives both have sought on new platforms (see Table 1).

In summary, these cases clearly indicate the role of commercial revenue as a viable stream to support otherwise insufficient funding derived from licence fees. This is needed for the development of non-linear, digital services and platforms. Although the scope of possibilities for such development and the scale of potential revenues vary considerably, the trend is clearly associated with the transition from PSB to PSM.

Arrangements promoting enclosure

NRK broadcast services are at the outset freely available. The institution has protested against a peculiar regulatory exception allowing satellite distributors to encrypt and sell expensive subscriptions for the NRK's publicly funded channels (Eckblad & Seljord, 2005). But the NRK strategy is inconsistent because its fee funded television channels will remain openly accessible on the digital terrestrial network despite an earlier NRK plan to encrypt and require viewers to register to see public service television (Bernander, 2006).[10] The plan, vetoed by the Government, would clearly have facilitated future commercial utilization and entailed greater enclosure in direct contradiction with their core public service values of open access and universality.

On new media platforms, however, the institution has had greater success with its strategy. While extensive web-TV content is freely available on the web at nrk.no, NRK Aktivum sells downloadable audio books over the Internet and plans to do the same with television content soon (Kibar, 2006). Further, commercial mobile phone services are used to market the potential of public service, according to former Director General John Bernander who said, "if we cannot provide telecos with extra revenue because we simply hand out free services to all, then they will turn to commercial partners who will give them something back" (Bernander, 2005: 4). Not allowing the NRK to "apply commercial logic practices" would marginalize and possibly even exclude it from media markets (Bernander, 2005: 4; also Sivertsen, 2007).[11] The NRK's attitude to arrangements that promote enclosure seems quite explicit. Presenting the strategy for 2006-12, Bernander maintained that "...on new platforms, users must pay both for distribution and for copyright clearance" (quoted in Selsjord, 2006a). Importantly, the owner signalled support right away (Selsjord, 2006b).

In parallel to its extensive subscription-based services, the BBC portrays itself as promoting unconstrained access across platforms. From 2002 and after the collapse of the subscription-based ITVDigital terrestrial television provider, the BBC (along with BSkyB) backed Freeview as its successor. It offers a bouquet of over 30 channels free to air. Further, an unencrypted satellite television service – designed to counter BSkyB's enclosed offers – was approved in early 2007 (Tryhorn, 2007). Audiovisual clips have been released online under a "creative archive licence" to "provide access to public service audio and video archives" and give "fuel" for the public's "creative endeavours" (BBC, 2006a; Sheppard, 2006).[12] A software platform for playing audiovisual content (iPlayer) is a recently approved component of this. The BBC does advance open access for licence fee payers on a universal basis and counters arrangements that promote enclosure.

Nevertheless, there are exceptions. News in mobile services, for instance, began as a commercial venture and only later was introduced as a licence fee funded service, and without public debate (Cave et al., 2004: 262). Another move was made in 2006 when a non-exclusive deal was struck with Microsoft. The IT giant's proprietary software and enclosed game consol hardware were deemed a key to reaching audiences without them always "having to come to bbc.co.uk" (quoted in Kelly, 2006). It seems that future access to BBC content will also feature enclosures.

Preparation for digital television in Germany was marked by several attempts to join public and commercial actors in a co-operative venture for a common satellite platform (Brockmeyer & Eichholz, 1999). When this failed, public service broadcasters concentrated on developing content for both cable and satellite, independent of network providers and commercial interests. From the first pilots in 1997 the ARD Digital and ZDF Vision units have built robust bouquets combining main channels with new and auxiliary ones, and experimenting in interactive services (Zervos, 2003: 20). These services are provided free and are not encrypted.

Questions about the encryption of television signals and arrangements for enclosure have been heavily debated in Germany. An extraordinarily high number of free to air public and commercial channels have constituted the unencrypted provision over the last decade. But facing digitalization, commercial providers now seek new revenue streams by way of enclosure. The ARD and the ZDF have, both individually and together, argued fiercely against this development, claiming it will fundamentally change the German market and create a digital divide in the population. The trend threatens to slow digital development in Germany (ARD & ZDF, 2006a: 337).

This attitude applies across platforms: After some controversy, the broadcasters secured that all publicly funded channels will enjoy free availability as IPTV from all providers and via non-proprietary standards (Digital Fernsehen, 2006a; Salmen, 2006). Correspondingly, audiovisual content for mobile phones are claimed as a timely accommodation to technological developments and also remain openly accessible (ARD & ZDF, 2006b: 3; Golem Forum, 2005).

German PSB is presented as the antidote to enclosure because it is available to all without extra costs or technical complexities. Thus, the public service values of universality and open access remain front and centre in Germany.

In the transition from PSB to PSM, public service providers are in general still principled supporters of non-enclosure. The ethos of universalism and open access are foundational to legitimacy. Such a stand is clearly a service to the public (that pays the bills) and therefore deserves access to PSM services. At the same time, however, it is also clear that maintaining a total non-enclosure and non-commercial stance is difficult in the digital era as licence fee revenue is inadequate to fund the mandates entailed in the expanding PSB remit. This is further complicated by the need for co-operative alliances and partnerships with private commercial firms that in part premise their business strategies on proprietary standards and enclosure arrangements. This is an area of considerable struggle, serious conflict, and long-term importance to the public interest in media in the digitized environment. Deeper, more critical analysis is useful here, and that is what we pursue next.

Mapping similarities and differences

The basis for what has come to be in terms of commercial expansion was already established by the early 1990s. The fundamental frameworks in which the public broadcasters have had to manoeuvre were well in place by then. In fact, the first wave of commercial activities had nothing to do with preparation for digitalization. Rather, the deregulation of analogue broadcasting markets in the 1980s compelled that initial search for alternative revenue sources. When digitalization was firmly on the agenda, a second wave of initiatives focused on possibilities for exploitation of new forms of content through new channels and platforms. This insight underlines the importance of keeping a certain historical perspective when scrutinising ongoing processes.

These four cases can be construed to represent a continuum of the elements, and attitudes about them, characterising commercial funding and arrangements that promote enclosure. In a relatively forthcoming political climate with generous leeway for launching commercial initiatives, the NRK's commercially and publicly funded services do not always appear to be as clearly separated. Several provisions are made that actually promote enclosure, especially on new media platforms. The BBC seeks to balance a far-reaching commercial arm with a clear focus on public service core tasks. Despite recent deviations that might pave the way for future problems with enclosure, the BBC has a relatively strict and uniform strategy detaching publicly funded domestic services from commercial activities, primarily directed abroad. Facing a digital media system, the ARD and the ZDF have found themselves in a stable regulatory situation that also enforces comparatively strict limitations on the latitude for commercial initiatives, although these are limitations the ZDF has been noticeably more willing to test than the ARD. But both actually have little flexibility to initiate new services that would produce alternative income. While advertising remains

an integrated part of their funding schemas overall and historically, it has not been expanded to include new platforms. Thus and despite a less clear separation of commercial and public income streams, as noted earlier, disallowing arrangements that promote enclosure ironically means that the ARD and the ZDF have the most "clean" or "pure" PSB value-based strategies.

The clearest correspondence in strategy is between the BBC and the NRK, with the former providing inspiration for the latter. Both have developed, and stuck to, explicitly proactive strategies embracing the commercial potential of PSM. But this is not to ignore keen differences. The NRK appears more willing to apply arrangements of enclosure on a pragmatic basis, as illustrated in the issue of encryption of digital terrestrial television. Moreover, the NRK seems less focused on stressing a rigid division between its commercial and publicly funded parts – a separation the BBC finds crucial. Overall, the British institution comes across as holding a more principled stand, securing a basic level of openness.

Further, the arguments mobilized in support of these two strategies differ significantly. For the BBC it was largely a matter of leveraging commercial potential in international markets to subsidise public services at home (see Birt's text in BBC, 1998: 4).[13] In the Norwegian case, argumentation was instead keyed to stakes in national language and culture. In that scenario the ends justify the means. So if commercial funding makes the public institution stronger, it must be utilised because such is perceived to be in Norway's best interests (NRK, 2000: 7; and also Moe, 2003). Thus, while the BBC attacks foreign markets for the benefit of Britain the NRK defends its home land for the benefit of Norway.

To some extent these disparities boil down to differences in markets and economic potential. The BBC operates under more advantageous conditions. Not only is the domestic market ten times bigger and with a much wider range of potential customers, the possibilities for export are exceptional given that English is the language of international advantage. This applies both to the market for programme and content sales, and in consumer goods. The NRK lacks both a large home market and any serious potential for international sales outside the Nordic region. In this light similarities in strategies are all the more striking and the Norwegian broadcaster's attitude towards commercial potential appears quite optimistic.

In contrast, the German organisations operate in a much larger language area. Not only does Germany have about fifteen times the population of Norway, there is also a substantial market in neighbouring countries. To a certain degree, the ARD and the ZDF leverage the size of these markets. The actual amount of licence fee income is high, profits from programme sales and co-productions are stable and substantial, and their share of the advertising market is also worth noting. Yet compared to the BBC and the NRK, their arguments and strategies are clearly less expansive and exploratory – which is not to say that this has always or even mostly been their preference. The development identified by Steemers (1998 and 2001) in the late 1990s has continued through 2007: The BBC has taken its commercial expansion further while the ARD and

the ZDF have stayed on their path of moderation. In all these cases, each PSB company has taken the path it was permitted to take, if not also encouraged to accept. As we will discuss later, the latitude of possibility is largely a product of domestic political culture. Thus, the gap between the German and British cases has grown.

The pressing question at this point, especially for PSB managers, is what such differences in strategies imply for the legitimacy of public service media.

Implications for public service legitimacy

To defend their privileges – funding schemas included – public service broadcasters must balance their need for legitimacy with respect to three different sets of actors. The first and foremost actor is the public. They are first and foremost because they use and pay for these services and must see the institution and its output as distinctive, independent and reliable – and therefore worthy of public funding. Secondly, and increasingly important, public service broadcasters need to secure legitimacy among their commercial competitors and partners. The industry must perceive the public institutions' activities as stable, predictable and reasonably regulated. Thirdly, legitimacy has a political dimension which depends on the extent to which the broadcasters' plans resonate in and for political policy.

Building on the four case companies in their respective contexts, we can now concentrate on the implications of different strategies for these three dimensions of legitimacy. I choose the character of debates about the licence fee to illustrate public broadcasters' public legitimacy. The role of the industry is scrutinised by looking at the level, form and force of protests against public service broadcasters' commercial activities. The third dimension is approached via discussion about the importance of political cultures for our understanding of the dynamics between strategies for funding and public media policy.

Licence fee debates: The legitimacy of PSM

Consensus remains strong to keep the NRK as a primarily publicly funded institution with the licence fee as the preferred arrangement. Other solutions have not been thoroughly debated despite the fact that two of the parties represented in Parliament have set abolishment of the licence fee as an aim: The Progress Party (*FrP*) favours commercial funding while the smaller Liberal party (*Venstre*) wants to turn the NRK into a post on the annual state budget. In principle current regulations do not rule out collecting licence fees from PC and mobile-phone owners. In 2005, the NRK even suggested this opening should be employed, partly building its argumentation on a newly passed decision in Denmark where a "media licence fee" was introduced (Mossin, 2006). Two subsequent coalition Governments have since rejected the idea without much debate or any formal treatment.

In fact, public debates on NRK funding have only emerged sporadically and have seldom touched on anything fundamental. At the time of writing, the latest debate originated in a 2006 plan to change the deadlines for collection of the licence fee to comply with accounting regulations. Depending on which side one chooses to believe, the quite complicated schema would either entail no burden for the public or result in several months of double payment (Alstad 2007; Gabrielsen & Vagstad, 2007). The debate largely involved economists and remained focused on practices of accountancy.

Given their limited possibilities for commercial expansion, a continuance of the licence fee is crucial for the ARD and the ZDF. On this basis a more fundamental debate has taken place: The issue of collecting licence fees from Internet-ready PCs and mobile phones. The question gave rise to substantial protests (Roth, 2006; Digital Fernsehen, 2006b), and a correspondingly lengthy political process. Despite opponents' claims that this is equivalent to "forcing deaf people to throw money in the street musician's hat" (Digital Fernsehen, 2006c), the licence fee on PC terminals was introduced in January 2007 at a third of the fee amount for television sets. The schema entails the potential risk of harming the legitimacy of licence fee funding, however the introduction led to an upsurge in publicity for "refuseniks" and also resulted in protests at the EU level (Bebenburg, 2007). Still, these public service broadcasters took an at least symbolically important step to validate the traditional licence fee system for new digital platforms.

In even starker contrast to Norway, public debates about alternatives to – and alternative uses of – the licence fee have been numerous and vigorous in the UK. The fact that the BBC itself has commissioned essays to debate the future funding of public service is illustrative. A recent example is a published collection titled *Can the Market Deliver?* (Helm et al., 2005). Ofcom (2007) is considering plans to establish a Public Service Publisher through which companies obliged to produce required programmes could direct their bids to what could amount to an expediter (cf. Peacock, 2004 and Graham, 2005 for the opposing arguments on this issue). Despite such initiatives, and a below-inflation fee agreement set in 2007, the licence fee remains the dominant source of income for the BBC. It will be so until 2016, according to the new 2007 Charter, but with an evalua-tion required after five years (BBC, 2006b). Initiatives to introduce a PC licence fee have been left stranded. The BBC holds television sets as "a valid basis on which to raise the licence fee" for another 15 years (BBC, 2004: 113).

For the NRK, the rare public debates about their funding schema have not dealt with essential issues. In the UK, on the other hand, much more is at risk; there have been massive public debates questioning the very legitimacy of the licence fee, and the BBC as its beneficiary. The German cases seem to find themselves in a middle position: Recent controversial developments have led to some public scrutiny of the licence fee, but the public funding schema has in the end been expanded and seems far from realistically threatened.

The Norwegian situation fits with the findings so far – the legitimacy of the NRK's licence fee funding seems to reflect the institution's generous leeway.

On the other hand, it is not equally easy to draw parallels regarding the other cases' situation: The BBC's tradition for emphasising separation of public and commercial parts has not insulated its funding scheme from public criticism. Despite a more moderate strategy, the German broadcasters meet stronger public protests than the NRK. To what extent is this mirrored by the industry?

Industry protests: Opposition to PSM commercial activities

For the NRK, liberal advertising rules on teletext and websites became a prime focus of attacks from competitors beginning in the late 1990s (Moe, 2003; also see Selsjord, 2006b). The commercial broadcaster TVNorge claimed it suffered a 750,000 loss of income. Similarly, when TV2 warned against a liberalisation of NRK regulations, teletext and Internet services were singled out as particularly damaging: They must therefore be free of advertising and fulfil the requirements of PSB. These protests prompted an examination of the schema by European Commission state aid authorities (Moe, forthcoming).

In the eyes of the British media industry, the BBC's legitimacy was dealt several blows in the course of preparations for the digital era. Early moves were particularly controversial. They were also, arguably, a bit shaky – even peripheral services like pub games and credit card authorisation were introduced in the early 1990s, services which clearly had little to do with broadcasting (Born, 2004: 59). Commercial competitors repeatedly objected to such, and later to new services (e.g. Sweney, 2006b; Cave et al., 2004; Gibson, 2004). They especially argue for a strong and visible link between each commercial service and the core PSB remit (Tryhorn, 2005). To help settle disputes and strengthen legitimacy, the draft for the new Charter proposed four criteria to guide the commercial activities of BBC Worldwide: 1) they must support or relate to the public service mission; 2) not jeopardise the good reputation of the BBC or its brand values; 3) exhibit commercial efficiency; and 4) comply with Fair Trading guidelines (BBC Worldwide, 2006b: 5).

In Germany, the industry's level of tolerance for commercial initiatives seems to correspond to the lowest level of formal freedom: The ARD and the ZDF have, for instance, been criticized for operating expensive call-in services connected to broadcast programmes (Hamann, 2004). A perceived lack of separation between commercial and public activity income streams have been another issue for objections. The lobby for national commercial broadcasters (VPRT) has been particularly active, both in public debates and in lodging formal complaints with regulatory authorities. Thus, a "pure" strategy has not meant an absence of industry opposition: The forms of protests and the arguments put forward by competing actors in Germany resemble those in the other cases.

PSM legitimacy among both competitors and partners concerns the actual character, scope and regulation of commercial activities. At the outset, the link between what the broadcasters do and are allowed to do, and the attitude of the industry, could be thought self evident. And yet the present cases indicate

how industrial legitimacy transcends national differences. A prominent similarity emerges across all three contexts: The cases have met corresponding criticism from the industry using nearly identical arguments and advancing clearly shared common interests. It is hard not to see the strong hand of globalization and commercial media lobbies at work here. This illustrates a general transnational front against any commercial expansion of public service operators (Mortensen, 2006: 76). However, the force of industry arguments, and their success in turning concerns into actual regulatory arrangements, has differed. These differences compel us to look at the issue of legitimacy in relation to the foundational dimension of political culture.

The importance of political cultures: PSM policy and strategy

As the analysis has shown, all four cases are perceived as legitimate in their respective political settings. They have each so far tackled the turmoil of digitalization without losing their fundamental status, or indeed their strong market positions. The interesting question, then, is not whether they are seen as legitimate by political actors but rather *how* they have so far kept their legitimacy despite markedly different strategies. Answering that requires examining political culture contexts.

Commercial expansion undertaken by the BBC from the late 1980s can be understood as an answer to political pressure to make the broadcaster more efficient. As part of the legacy of Thatcherism, the institution was explicitly given an industrial role and a leadership character (Born, 2004). The Blair government, it has been argued, followed a similar path (McGuigan, 2004). The NRK is also mandated to take a pioneering role in exploring new technologies and driving universal uptake. Yet it is regarded as an instrument for social and cultural policy and not, to the same extent, for industrial policy motives. Protection of language and culture has remained at the core of the Norwegian debate. The same policy field, but with different aims, marks the German debate where the role of public opinion formation necessary for a robust democratic process is the keen focus. So the source of policy legitimising PSB, and the policy objectives inscribing the parameters for PSM, vary as a function of more general aims characteristic of political culture and policy ambitions in the three respective states where these companies are located.

Liberal political systems as in Britain have traditionally championed political neutrality in broadcasting. The BBC's model of governance sets out to protect the public service broadcaster from political control by having the professionals run the operation instead of politicians having management control (Hallin & Mancini, 2004: 31). Guided by an ideal freedom, media policy in general is advancing self-regulation, and so all state intervention must be thoroughly, even painstakingly, legitimised (Vowe, 1999: 405). Compared to other liberal systems, especially American and Australian, the UK stands out with a legacy of conservative statism combined with a historically very strong labour movement. Both these factors modify the liberal tradition's imprint on the political culture.

As noted by the BBC (2004: 16), both Conservative and Labour governments have encouraged the corporation to pursue global commercial interests while remaining a strong public service provider at home. As long as this division remains potent, and the market impact of publicly funded interference is transparently accounted for, the BBC has been able to keep its dual strategy and maintain legitimacy in the eyes of its political governors.

In Norway, the politicians who hail the NRK as a mainly non-commercial broadcaster simultaneously approve an expansive strategy, thus far without much emphasis on any rigid division between the two aims. This somewhat contradictory situation can be understood with reference to a social democratic political culture. Geared towards equality as a social priority, its media policy should involve as many actors as possible in the decision processes to secure consensus and equal opportunities for all (Vowe, 1999). The system has a markedly more elaborate legislative process compared with Britain. Further, there is by tradition high tolerance for state subsidies of a strong national actor because the small language area corresponds to a market deemed too limited for robust commercial initiatives (Moe, forthcoming). This partly explains the NRK's status and has lent force to the company's optimistic plans. Since the introduction of commercial broadcasting some fifteen years ago, the overall regulatory process has favoured a liberalised NRK (Moe, 2003).

German media policy, in contrast, generally provides greater liberties for private ownership and is geared towards securing a blooming private sector (Hallin & Mancini, 2004: 71). On the other hand, the German Constitutional Court's decisions have been fundamental for the development of the nation's broadcasting sector. The Court has repeatedly stressed the importance of publicly funded broadcasting's functions for democratic government and public opinion formation (see Humphreys, 1994 and also Lucht, 2006; Porter & Hasselbach, 1991). As illustrated, such was also the case when the foundation was laid for strategies to handle digitalization. This role further implies a defence of the ARD and the ZDF as traditional public institutions, but without expansion into commercial areas. Here legitimacy is clearly tied to counterbalancing marketization. In a sense, then, industrial policy arguments work against PSB efforts in Germany to achieve PSM success, and this is in stark contrast with the BBC. German public service providers are restricted from pursuing an expansive strategy and commercial revenues because all of that is so far reserved for private sector companies.

The leitmotif of security is deeply rooted in Germany's political culture. Media policy is expected to provide clear rules with specific possibilities for sanctions. It is in effect a conservative policy (Vowe, 1999). In the specific governance of public broadcasting, authority is assigned beyond the political party system and divided among diverse social or political groups (Hallin & Mancini, 2004: 31). The broadcasting system's federal structure means, moreover, that every regional ARD member organization must deal with often differing political conditions coloured by local politics. The states (*Länder*) have a long history of competing among themselves to attract industry, including private broad-

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casters. They typically do this on the basis of offering favourable economic conditions. Since the 1980s this has taken the form of "a pattern of competitive deregulations" by the states (Humphreys, 1994: 242). Despite operating a nationwide service, the ZDF is also subject to this regulatory schema. As a result, both organizations have had to do without the strong, unified support from a national government enjoyed by the other case countries.

Striving to retain legitimacy, public service broadcasters thus remain reliant on the specific national political culture at home. The case of ZDF clearly shows how national variables can create crippling constraints. Many of this German institution's commercial initiatives have been left stranded following regulatory processes initiated by public criticism or industry protests (more often the latter than the former). In contrast, the BBC's strategy is perceived as quite legitimate because of, and not despite, its commercial explorations (and exploitations). Similarly, the legitimacy of the NRK seems based on the institution's ability to utilise commercial potential, and to make use of new technology without emphasis on dissociation from arrangements that promote enclosure.

Though the link between funding strategies and public service policy is still to a large degree shaped by national characteristics, two generalizable points should be noted. First, a "pure" strategy that clearly advances traditional public service values of open access and universality does strengthen the legitimacy of public broadcasting on a general level even if it limits certain development potential. This makes it rather easy to see how publicly funded offers stand out, and that is important. But while industry protests seem to be independent of a broadcaster's actual strategy, the impact of protest is by no means independent of that: A "pure" strategy does diminish the political force of industry complaints.

Second, following the EU's ongoing assessment of Norwegian policy which originated in industry complaints, a 2007 white paper is set to define more clearly the do's and don'ts of the NRK. Consequently, while the Norwegian case has stood out following several years of relatively generous leeway, this may change. A parallel process in Germany led the EU to demand clearer separation between commercial and public funds, i.e. greater transparency (EC, 2007). This is an increasingly evident trend. These two points should be taken in counterweight against any perspective too focused on purely national explanatory factors.

Conclusion

As public service design and operation move beyond broadcasting to also include new media platforms, dimensions related to concrete historical developments, market characteristics, and political cultures will define similarities and uniqueness in different institutional developments. I have argued that the analysed cases presented here represent a continuum. On the one end we have the NRK's optimistically expansive strategy wherein commercially and publicly

funded services are not always clearly separated. Also, the institution has made several provisions that promote enclosure, especially on new media platforms – and all of this with political consent. On the other hand, the ARD and the ZDF find themselves in a relatively stable regulatory situation albeit with strict constraints on commercial initiatives. In response to the restrictive situation the German PSB operators have portrayed themselves as clearly opposed to *any* form of enclosure. Located between these comparative extremes is the BBC. Despite recent deviations that might entail future problems with enclosure, the institution seeks to balance a far-reaching international commercial arm with domestic public service tasks – and is encouraged to do so. It will be important to situate other European contexts and public service providers along this continuum in order to find more similarities and differences, and also especially to more deeply excavate the reasons explaining both.

I have further argued in contrast with some opinions that traditional practices of media policy do not suddenly change in the digital era. Rather, conditions facing new platforms have to a large extent been defined within well-established historical frameworks and are dependent on the conditioned legacies of each state's political culture in quite broad terms. Consequently, as public broadcasters seek to keep their legitimacy in a digital era both strategies and arguments, and the level of political support, need be understood with due attention to national characteristics. There is little that could be more useful for PSB strategic managers today than deep assessment of the legacies, conditions, continuities and dynamics of domestic political culture. That really does establish and define the latitude of possibility.

The German situation is far from universally applicable and we should not expect institutions across Europe to mirror the strategies of the ARD and the ZDF. But the role ascribed to and taken by these broadcasters has important advantages that critics seem to often overlook. The situation there does clearly emphasise the traditional core public service values of universality and open access, and in doing so demonstrates trade-offs that are probably inherent in securing stability. At the same time, however, that stability very much depends on a shared affirmation (to date) of the crucial importance of PSB's basic value even in the digital environment. I have stressed how national characteristics impinge on the broadcasters' possibilities. But even so, as public broadcasters across Europe strive to renew their remits beyond broadcasting the core values and traditional ethos underlined by a "pure" strategy are keenly valuable and still worthy of protection and imitation.

Notes

1. Norway is bound by all relevant EU regulations and policy decisions pursuant to The European Economic Area (EEA) Agreement.
2. I have taken a cue from Arend Lijphart (1971) on how to avoid a basic difficulty with qualitative comparative research: the "many variables, small N" problem. One way around it is to select "comparable" cases – meaning cases that are "similar in a large number of important

characteristics (variables) which one wants to treat as constants, but dissimilar as far as those variables are concerned which the researcher wants to relate to each other" (Lijphart, 1971: 687). The anticipated result should allow the researcher to establish relationships among relatively few variables, while many others are being controlled.

3. The NRK is authorised to pursue broadcasting activities according to the Norwegian Broadcasting Act. Its main services comprise two television channels (with auxiliary ones being introduced late 2007) and three radio channels. The national market is made up of the country's population of about 4 million. TV2 and P4 were rewarded nationwide licences to broadcast advertising funded public service television and radio in 1992 and 1993, respectively.

4. Commercial activities existed also prior to this date, but on a much smaller scale. NRK Aktivum initiated several controversial projects before settling on four main areas: programme sales, interactive services, consumer goods (mainly via a web store on nrk.no) and events (Strømmen, 1999: 82; NRK Aktivum, 2006).

5. The BBC, which faced competition already in 1955 from advertising funded ITV, grounds its operation in a Charter with the state, and offers four main television and five main radio channels. The home market includes viewers in England, Scotland, Wales and Northern Ireland – together a population of around 60 millions.

6. After the Second World War, broadcasting policy in West Germany was delegated to the different states (*Länder*). The states now form nine public broadcasters, offering regional radio and television channels. Together they constitute the ARD, which provides altogether nearly 40 regional radio channels, one main nationwide and 5 auxiliary television channels. The ZDF, formed in 1961, offers one main national and several additional television channels. Both organizations find their formal grounding in the Constitutional Court's interpretation of the *Basic Law* of 1949. What has become Europe's most competitive television market is made up of the German population of over 80 millions.

7. A 1986 Constitutional Court intervention was decisive in setting the balance: the public organizations were to remain the foundation of German broadcasting, and continue to provide a so-called basic service (Humphreys, 1994: 255ff).

8. The ZDF felt it needed a new form of audience contact to make up for its lack of a radio service. This argument has also been used for their proactive online strategy (Eberle, 2003: 1), and been put forward more generally as an explanation for their willingness to push for alternative means of funding and partnerships (Steemers, 2001: 78).

9. The ban was implemented in the inter-state treaty (*Rundfunk-Staatsvertrag*) that regulates the public broadcasters' field of activities in 2000 (cf. Moe, forthcoming).

10. Digitalization of the terrestrial television network is undertaken by a commercial company – Norges Televisjon – jointly owned by the NRK, TV2 and privatized state telecom Telenor. A separate company (RiksTV) with the same owners will run a pay-tv service on the platform.

11. The argument does have some relevance, as illustrated by a recent case where a local internet service provider (ISP) set a max limit for transfers from NRK-servers to end-users, since the institution's popular web-tv-offer clogged the ISP's network (Lorentsen, 2006). The ISP demanded that the NRK should pay for the needed extra capacity. Though the dispute was settled, the result was a temporarily poorer service from the public broadcaster, and an illustrative test of emerging problems with network neutrality.

12. The pilot was closed down in October 2006 to await formal approval.

13. As the name signals, BBC Worldwide primarily directs its attention abroad. This also applied to its predecessor BBC Enterprises, which tellingly was suggested to be named BBC International (Briggs, 1995: 713). In 2007, domestic commercial services are sold under different brands (e.g. UKTV), while free services are either offered exclusively for UK audiences, or for foreign users with additional advertising exposure (e.g. planned internet services, including BBC-branded channels on YouTube) or as pay-services (e.g. IPTV for US customers).

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