Book Review

Harrison, Jackie & Woods, Lorna

European Broadcasting Law and Policy Cambridge University Press (2007)

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Push a button and the screen lights up. For the average viewer, the television is a simple device, one that provides entertaining, enjoyable and often enlightening content without much thought or effort. If, however, we peel back this veneer of calm simplicity and ask how or why certain content appears on the screen, or why some content is free to air when other content must be purchased, we quickly find ourselves in a world of complex and vague laws, vested interests and murky political compromises.

Harrison and Woods' recent publication "European Broadcasting Law and Policy", seeks to probe this world from the perspective of the average viewer and to determine if the current regime adequately protects his or her interest. The verdict is not positive.

The authors' central contention is that current European policy is premised on a conception of the viewers as consumers of commoditised information. It follows from this understanding that broadcasting is an industry like every other, whose relevance should be judged by its economic importance. Consumers are rational agents able to make purchasing decisions in their own best interest.

This understanding, the authors argue, is fundamentally misguided and incomplete. Broadcasting has an influence and role beyond the merely commercial. Its influence plays a key role in fostering norms, promoting belonging, encouraging civic participation and promoting the cultural fabric of the society. Thus, they suggest, viewers should be understood as *citizens* rather than merely consumers.

This book can be best understood as attempt to evaluate the current regulatory regime from the position of the "citizen viewer".

Part I seeks to introduce overarching themes that influence policy generally in this field. It begins by considering this distinction between "citizens" and "consumers" (Chapter 1). Attention is then turned to the broader importance of broadcasting. It is suggested that the broadcast media's ability to cause and prevent harm, to set the national agenda and to influence social change make it a unique asset worthy of special regulation (Chapter II). Chapters 3 to 5 consider how the current regime came to focus on the "consumer" at the expense of the "citizen". Chapter 3 provides an illuminating history of the development of broadcasting. Two trends, the increased commercialisation of the broadcasting sector and the development of new technologies, are highlighted as having encouraged a consumer-centric approach. Chapters 4 and 5, arguably the highlights of the book, seek to place broadcasting policy within the overall constitutional framework of the EU. Attention is drawn to the fact that the Treaties do not give the Union any direct power (or competency) to regulate broadcasting, thus this issue has traditionally fallen "across a number of fault lines within the terrain of the Union relating to its purposes and powers". This, the authors suggest, has had two key consequences. First, because the constitutional arrangement of the Treaties requires that broadcasting policy be based on market building provisions of the Treaty (such as the four freedoms or competition policy), economic considerations necessarily come to the fore of such a regulatory regime, to the expense of social objectives. Second, the lack of certain legal base for aspects of the regime renders EU legislators fearful that these rules will be challenged in litigation by broadcasting operators. This in turn leads to such regimes being favorable to industry and often being introduced through "soft law" rather than traditional binding rules.

Having described the key factors underpinning policy making in this area, the authors, in Part Two of the book, turn their attention to certain aspects of the current regime. Restrictions, both financial and technological, to consumer access to broadcasts are highlighted and criticised (Chapter 6). The area of media mergers, which has the potential to reduce the amount of choice available to viewers by eliminating media operators is carefully scrutinised. Particular attention is drawn to the fact that the EU has conflicting objectives in this area; it seeks to promote diversity of content at the same time as encouraging the development of European media conglomerates capable of tackling American media giants.

Chapters 8 to 11 carefully analyze the Television Without Frontiers Directive ("TWFD") and will be of considerable interest to both policy experts and practicing lawyers seeking to apply this somewhat ambiguous document. Questions of jurisdiction (Chapter 8), advertising (Chapter 9), censorship (Chapter 10) and mandatory broadcasting quotas (Chapter 11) are all addressed. The numerous difficulties highlighted in the application of this directive are such as to call into question its continuing utility as a harmonisation measure.

Chapter 12 addresses the controversial area of the privatisation of sporting events. The authors stress that popular sports have a particular significance to the citizen-viewer. The communal nature of watching such events, and their inherently social character, means that they encourage a sense of national identity and culture. However, these very same attributes make such events an immensely valuable commodity for a private broadcaster. Chapter 13 considers the nature of public service broadcasting and how European state aids rules force member states to justify their support of such services.

Harrison and Woods' book is an excellent resource for all policy makers or lawyers who need to peer into complex nature of broadcasting regulation. By focusing the spotlight on the needs of viewer they have successfully highlighted a number of key weakness in the current regulatory regime. Apparently abstract legal problems such as uncertain community competence and vagueness in the TWFD are not merely the concern of the academic or practicing lawyer, rather they impinge directly on how millions of Europeans enjoy broadcast media. Although this reviewer would strongly caution against a rash departure from the market based approach which has encouraged the rapid development of the European broadcasting sector, Harrison and Woods are to be commended for starting a new debate about the proper scope of broadcasting law and policy, based upon the needs of the viewer.
