

BOOK REVIEW

Michael Holoubek, Dragana Damjanovic and Matthias Traimer (eds.), *Regulating Content – European Regulatory Framework for the Media and Related Creative Sectors*, Kluwer Law International, 273 pages, ISBN 90-4111-2597-3, EUR 100.

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Content industries have been particularly dynamic during the last couple of decades. Rapid technological advances, based upon the processes of digitisation and convergence, have led to substantial transformations of the media landscape. These transformation processes, which are still under way and whose directions have not yet been definitively identified, have posed serious challenges to the existing models for media regulation. At the European Community (EC) level, the legislator has been faced with the particularly difficult conundrum of addressing the complexity of new and old media, while safeguarding the cultural values intrinsic to content and consistently applying the basic principles of EC law.

Regulating content is indeed a daunting task that requires well-coordinated policy objectives in diverse fields and a multi-faceted toolbox. Writing on content regulation is an equally daunting endeavour, considering first, the variety and complexity of issues covered and second, the amazing pace of change, in terms of both the changing media environment and changing regulation.

The work under review has taken up this burdensome task within the framework of a project commissioned by the Austrian Federal Chancellery and in connection with the i2010 strategy and Austria's Council Presidency in the first half of 2006. Under the ambitiously comprehensive title "*Regulating Content – European Regulatory Framework for the Media and Related Creative Sectors*", the contributions under the editorship of Michael Holoubek, Dragana Damjanovic and Matthias Traimer set about "reviewing and systematically presenting all [the] different interventions under Community law in the content industry" (p. 4). The latter is narrowly construed for the purpose of the book as comprising the media and the related creative sectors covering published content, games, audio/music, video/cinema and broadcast content (TV and radio programmes) (p. 7).

The enquiry is pursued horizontally focusing on the entire content industry rather than on its individual branches. Acknowledging that there is no uniform EC regulatory framework for content, the contributions examine the various building blocks of the EC *acquis* of relevance to content. These are structured in six parts and encompass: (i) the primary EC law; (ii) the competition law and practice of the Community; (iii) sector-specific rules at infrastructural level; (iv) sector-specific rules at content level; (v) intellectual property rights; and (vi) tax measures.

The substantive analysis begins with Michaela Seifert's contribution on "Fundamentals of Community Law and Policies (Including Funding

Programmes) Governing the Content Industry". It casts light upon the freedoms to provide goods and services, and related case law, as well as upon the role of Article 151 EC and the Amsterdam Protocol on Public Broadcasting. The enquiry is however somewhat sketchy; the direct relation to content is sometimes missing and there is little critical assessment of the rules. The international context of the European cultural policy receives only a mention and its relationship to EC law is not clarified. The following part, which focuses on the EC strategies to promote content, including funding programmes, such as Media and eContent, provides a helpful overview of these initiatives but is confined to merely offering information, which one could also find on the EC website.

In contrast, the subsequent contribution on "The Content Industry and General Competition Law" by Peter Thyri stands out as a well-structured critical analysis of the EC competition rules of particular relevance to the media sector. In a succinct manner, it gives an excellent overview of the complex system of EC generic competition norms, taking into account the latest developments in the case law with regard to content.

Chapter 3 by Dragana Damjanovic explores the Community sector-specific regulation at the infrastructure level, which although separated from the regulation of content, is of undoubted relevance to it. Subsequently, the current EC rules for access to communications networks and services, the universal service regime and the must-carry provisions, as well as access to major events and some standardisation activities are looked into. While such a broad horizontal view is interesting and useful, it remains rather fuzzy. One is unable to discern the intricate workings, for instance, of the significant market power regime of the EC electronic communications framework, which is meant to lead to a withdrawal of sector-specific regulation as markets become effectively competitive, or the controversies behind standard-setting processes. In addition, some rules, such as those of the Television without Frontiers Directive (TVWF), relate to content *per se* and not to infrastructure, so their inclusion within this Chapter appears awkward.

Chapter 4, co-written by Christoph Bezemek and Gregor Ribarov, focuses on the EC sector-specific regulation pertinent specifically to content. At the core of the enquiry are the TVWF and the more generic e-Commerce Directive. Rules for the protection of human dignity, minors, health, consumers, and personal rights are examined within these categories. In addition, the possibilities for content promotion are outlined, but on the whole, the analysis lacks depth. The contribution offers a foretaste of the new Audiovisual Media Services Directive, which was still in the legislative pipeline at the time of the book's publication, but these predictions often differ from the provisions in the adopted text.

Margit Nemetz, Mathias Neubauer and Andreas Wiebe, in Chapter 5, investigate copyright and its related rights as key for the protection of creative works. The main provisions and certain problematic areas of the Database Directive, the Information Society Directive, the Enforcement Directive and the Resale Rights Directive are analysed. Although somewhat fragmented in its structure, the contribution offers a valuable overview of the EC secondary legislation on copyright and related rights, in particular with regard to digital content. The impact of the intellectual property rights models upon content, its creation and distribution, could have featured more prominently.

The final building block of the analytical framework is laid down in Chapter 6 by Matthias Hofstätter in his contribution on the regulation of the content industry through tax measures. Tax rules are hardly the first category of regulatory instruments in terms of their immediate relevance for the media, but they certainly play a role. As the analysis shows, although taxes remain within the regulatory domain of the Member States, especially as far as direct taxes are concerned, the Community framework does include rules of specific importance for the promotion of content.

Part 3 of the book attempts a systematisation and an evaluation of the miscellaneous rules explored, which form “a network of regulation systems that determines the framework under which the content industry has to act” (p. 235). While Chapter 1 is limited to a summary of the earlier findings, Chapter 2 involves a critical and dynamic analysis of the knotty issues and questions posed by the current Community regime(s) with regard to content. The Chapter positions for the first time the multifarious norms within a system and seeks to identify systemic flaws. Convergence and cultural diversity as key concepts in the regulatory environment for media are dwelt upon (albeit without any clarification of the terms and the processes behind them). Interesting and important questions concerning the balance between economic and cultural policy objectives and the complex relations between the Community and the Member States, and the need for coordination thereof, are put forward. However, the elaboration of this meta-level comes somewhat too late in the concluding Chapter of the book. The linkages between the diverse regulatory frameworks should have been sought and clarified better in the course of the previous Chapters.

While the horizontal approach of the book and the division into the different fields is certainly helpful in the interests of providing an overview, it entails the danger of lacking sufficient depth and misses some of the essential overlaps and cross-linkages. The balancing act between breadth and depth of analysis has been accomplished by some contributions more successfully than by others, the piece on general competition rules being an excellent example of such a success.

Interestingly, although the cultural value of content is repeatedly exposed as its salient feature and indeed, as a justification for a horizontal examination of all content industries, very little has been said about this cultural aspect. None of the relevant EC initiatives have been elaborated upon and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is mentioned only once. Such a contribution would have been far more significant to the discussion of media regulation than the clarification of the VAT Directive, for instance.

Two final remarks relate first to the scope of the book, which is somewhat misleading and does not in fact cover all the rules related to media and the related creative sectors, but focuses almost exclusively on audiovisual media services, with the occasional reference to printing. The second criticism concerns the form rather than the contents: the language of the book is not very reader-friendly and the sentences are sometimes complicated and rigid. The references cited are unexpectedly few for such a thoroughly explored field and often limited to German or Austrian sources of the handbook or commentary type and EC documents.

As mentioned at the outset, writing on content regulation presents multiple challenges. The book under review has failed to meet some of these but can be perceived in its entirety as an apposite contribution to the discussions of this complex area and as a basis for further enquiries acknowledging the role of the media as vital economic and cultural factors.

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