ON THE REGULATOR'S PLATE: EXPOSURE DIVERSITY IN A CHANGING MEDIA ENVIRONMENT

WORKSHOP REPORT AND HIGHLIGHTS OF AN EXPERT DISCUSSION

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The articles in this special issue of *Journal of Information Policy* were presented at the occasion of an invitation-only, roundtable expert workshop that was held at the Institute for Information Law (IViR), University of Amsterdam, Netherlands, in December 2010 under the title "Media Diversity from the User Perspective." The goal of the workshop was to develop a user-centric understanding of media diversity, and to reflect upon the adequate regulatory responses. It brought together selected experts from different disciplines (law, communications, social sciences, philosophy) who all share an interest in the audience perspective on diversity, and whose research has approached the subject from different angles. The combination of different areas of expertise and research provided a unique opportunity to discuss the future directions that media policy, regulation, and research will need to take. During the workshop, the participants reflected upon the papers that were presented and further elaborated their thoughts. The discussion was so inspiring and insightful that it seemed worthy and important to offer it, or at least some highlights, as a complementary section to this special issue.

The following pages attempt to summarize some of the main arguments that were made during the discussions, the different views that were expressed by the experts, and the questions for which the experts felt that additional research was needed. In presenting the arguments, the authors of this report took the liberty of summarizing and regrouping them, as well as complementing the presentation with some additional background information and references in order to improve readability. The authors would like to thank the participants of the workshop for their participation and their inspiring discussions.

CONCEPTIONS OF THE USER

One topic that is intrinsically linked to the issue of exposure diversity, and that has raised quite some discussion, is the proper conceptualization of the media user. It was observed that there is a trend of media users exercising more user (or "consumer") sovereignty, and that such emancipation can go

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along with a higher level of user-orientation in media markets, and also in media policy. Having said that, and as the discussion demonstrated once again, there exists considerable uncertainty about how to define or conceptualize the user.

In particular, the experts critically discussed the commonly-used distinction between *passive audience* and *active user* or *consumer*. The experts concluded that while there is much emphasis on the *active user* there is still the need to learn more about the user's activity. What is the "typical" media user behavior with regard to her choice from diverse program offerings? What is the real scope of audience participation, particularly in relation to new media (such as online media, on-demand media, social networks, and user-created content)? And to what extent are users interested in, and willing to defend, choices or values that they consider good not only for themselves, but for society in general? These are questions that, according to the participants, should not be missed in a future research agenda.[1]

The distinction between active and passive users is particularly important for the phenomenon of *user empowerment*. This is the question of whether users should be encouraged to play a more "active" role, and what the possible role is for regulators and governments in making users more active. Traditional media policies primarily target the "passive" user first, which can be explained by the low level of interactivity and factual possibilities of users in exercising influence in conventional media content and media markets.[2] This policy of the passive user has only recently begun to make way for a policy of more user empowerment and user responsibility for their choices (the European Commission's Audiovisual Media Service Directive is a good example thereof). In this context, some experts observed that the "creation" or "making possible" of the active user is not only a matter of internal factors within each person (such as preferences, beliefs, values, or education), but also of external factors. Uwe Hasebrink discussed in his paper the possible role of government in this – for example, creating appropriate accountability mechanisms. However, the experts observed that private players, such as the media themselves, can also encourage the active user. Taking this idea further, one might feel tempted to ask whether the present focus of (especially) European policies on making the user media literate, which focus exclusively on the user, would need to be complemented by initiatives that also inform and urge suppliers to actually support and make room for the active user.

Another issue of discussion was the present role-based approach to the conceptualization of the user. Often, in academic as well as political discussion a distinction is made between the various roles of the user.[3] Each user "role" is linked to a certain set of values, assumptions about the behavior of users, regulatory frameworks, and (fundamental) rights. In the academic and legal policy discussion, the different roles of the user are often regarded separately, and only relevant or valuable

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[1] See also the research questions framed in the various contributions to this special issue.

[2] Natali Helberger, "The Media-Literate Viewer," in *Dommering-bundel: Opstellen over informatierecht aangeboden aan prof. mr. E.J. Dommering*, ed. N.A.N.M. van Eijk and P.B. Hugenholtz (Amsterdam: Otto Cramwinckel Uitgever 2008), 135-148.

[3] See for example Uwe Hasebrink, "Giving the Audience a Voice: The Role of Research in Making Media Regulation More Responsive to the Needs of the Audience," *Journal of Information Policy* 1 (2011): 321-336 (in this special issue of *Journal of Information Policy*).

in their respective legal media ecology. In practice, however, when choosing media content (and when choosing diverse content) users can act as both consumers and citizens. Of course this is also the result of the increasing commercialization of the media. The question that arises, and that was also pointed out by the experts at the workshop, is whether media law and policy can and should uphold the somewhat artificial though functional distinction between consumer and citizen, or move to a more holistic approach that acknowledges the user not only as citizen but also as a consumer of media products – as opposed to consumers in general. The view was expressed that the existing categories of "consumer," "citizen," "audience," etc. seem to be based on traditional paradigms of media law, and are not necessarily transferable or adequate for describing what is happening over the internet or new media. In other words, the traditional definition of and sharp distinction between the different roles of the user is possibly outdated and not a particularly useful benchmark to guide modern law and policymaking, an observation that confirms the approach of Hasebrink in his paper.

EXPOSURE DIVERSITY AS A MEDIA POLICY GOAL

So far, issues of exposure diversity have been discussed first and foremost in the academic realm. As Philip Napoli and Peggy Valcke demonstrate in both their papers, in media law and policy exposure diversity is still widely considered unapproachable. Leaving the question aside, if this is indeed true, this regulatory reluctance does explain why for the time being there is little experience answering the question of what exposure diversity could possibly entail had it become a policy goal. Why do we (governments, academics, policymakers, user representatives) want people to diversify their media consumption? And once that is established, what do we need them to consume in order to reach that goal? What is a diverse choice? Arguably, finding answers to these questions is rendered even more difficult because of the vagueness of the notion of diversity itself.[4]

These were other questions that the workshop participants tackled, fearlessly one might add. When discussing the possible goals of exposure diversity, the question was raised of whether exposure diversity is a goal in itself, or if it should be considered as an instrument to achieve other goals. Of course, it is conceivable that diversity is valued as an end in itself, and as such deserves our recognition and arguably even protection – for the sake of variety, because it is part of our society and culture and because it is an element of individual self-fulfillment.[5] Still, there was some agreement among the experts that exposure diversity as a policy goal is rather a means to an end, even if it is not immediately clear what "end" this would be. Consequently, the participants pinpointed the need for more research.

The participants made a number of suggestions. One participant argued that exposure diversity could serve at least two possibly diametrically-opposed goals, namely the realization of personal

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[4] Kari Karppinen, *Rethinking Media Pluralism: A Critique of Theories and Policy Discourses* (Dissertation: University of Helsinki, Department of Social Research, 2010).

[5] For an excellent overview of these arguments, see Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge: Cambridge University Press, 1982).

autonomy and/or the facilitation of public communication and deliberation in the Habermasian public sphere. Another participant argued that the aim could be to trigger users to consume as much public value content as possible. Media offerings would vary with regard to their potential public value. This qualitative approach towards a conception of the goals behind exposure diversity assumes that users are able to make informed choices only as long as they are aware that they are exposed to content of differing public value. This obviously raises the follow-up question of what public value content is. This inspired another participant to suggest that at least for the purpose of educating the user, it might be better that users are exposed to different pre-selected messages than that they have a variety to choose from.

Another interesting question was whether there is a need to distinguish between professional and amateur media. This question was raised, in particular, in the context of community media. The objectives behind professional and community media differ, which of course also affects the ends that exposure to such media can serve. For community media, according to the argument of one of the participants, the question was not so much how much media is consumed but rather who has the opportunity to participate and communicate their views to the audience. In other words, while the focus of (advertising or fee-financed) professional media is on finding an audience, with community media it is the process of expression and the ability to communicate one's ideas that matters at least as much as the process of reception.

Is there a need to make a distinction between exposure to forms of internal diversity and forms of external diversity? In traditional media diversity policies, initiatives to safeguard media diversity can be roughly distinguished as measures with the goal of promoting external diversity via the existence of a diverse choice of outlets (for example, through rules on media concentration), and internal diversity in the sense of the diversity of the output of one particular channel (for example, through measures aimed at guaranteeing a diverse internal composition of public service media, independence of the editorial staff, or must-carry rules). As Valcke explains in her paper, most Member States in the European Union have adopted a mix of structural and content diversity-enhancing measures. One participant observed that most of the modern trends that were discussed in the presentations and in the ensuing discussions supported the view that exposure diversity entails first and foremost exposure to external diversity, in the form of a choice between differentiated products from different providers. However, the same participant stated that from the public policy point of view, exposure to internal diversity in the form of a confrontation of the user with diverse viewpoints within a few quality outlets is possibly even more important. This observation led another participant to suggest that one could also discuss exposure diversity in a more contextual manner, for example in the form of concentric circles. The inner circle would refer to internal diversity and common exposure to a few quality outlets, while the outer circle would refer to external diversity, freedom of choice, and personal autonomy. Put differently, exposure diversity can serve different goals, depending upon the medium in question. Exposure to a diverse choice from commercial channels could serve different goals than exposure to a few quality outlets, probably in the form of public broadcasting or similar "principled" outlets.

WHAT MAKES A MEDIA CHOICE DIVERSE, AND HOW CAN IT BE MEASURED?

What is a diverse media choice? Can we speak of exposure diversity if people are exposed to a variety of content? Or is there more to the concept? Is exposure diversity about a particular optimal "number of voices among which the consumer can choose"[6] or does the mix of content and sources need to exhibit a certain quality as well?[7] If it is the latter, what would this mix need to look like to be "sufficiently" diverse, and who is competent enough to be entitled to decide when a choice is diverse? The answers to these questions are certainly closely linked to the (functional) conception of exposure diversity as a policy goal.

In this context, the participants provided a number of considerations even if the question could not be answered in the end. One aspect that was mentioned was that it is only possible to speak of a diverse choice if users have the chance to consider possible alternatives. In other words, how diverse a users' choice is depends on the process of making choices. Making choices transparent, as suggested in Natali Helberger's paper, could be an important step in this context, though much would depend on the reliability and trustworthiness of transparency-enhancing solutions. This led to the observation that more knowledge is needed on how people gather information about their media choices, and what influence that information has on their choices.

An interesting question that was raised was whether there are also wrong choices, and if there is a need to protect users against such wrong choices. The importance of an accessible complaint system, along the lines of the solutions described by Hasebrink in his article in this issue, was emphasized as a means of making choice "a matter of control." Having said that, the participants concluded that any definition of "wrong" choices, as well as any definition of "right" choices, is dangerous. Such statements might touch upon people's fundamentally protected freedoms.

In response to a presentation of Europe's Media Pluralism Monitor (further explained by Valcke in her article in this issue), the discussion then turned to the question of how to measure exposure diversity, and if it should be measured at all. For example, in a recent special edition of its publication on the state of media pluralism in the Netherlands (*Mediamonitor*), the Dutch Media Authority referred to exposure diversity as "a new monitoring model."[8] Generally, the participants felt that it will be necessary to gather more evidence of the conditions media users face when they consume media products, whether their media consumption is diverse, and if so, how it contributes to the realization of the diverse communications functions the media serve. There was also broad agreement, however, that measuring the actual diversity of individual choices must not amount to interference with the private sphere. It might be inappropriate at least for policymakers to engage in interrogating people's media usage at such a level of detail. This probably does not take away the fact that independent researchers or institutions can and should monitor media usage.

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[6] Bruce M. Owen and Kenneth C. Baseman, "A Framework for Economic Analysis of Electronic Media Concentration Issues," Economists Incorporated Research Report, 1982.

[7] Philip M. Napoli, "Deconstructing the Diversity Principle," *Journal of Communication* 49, no. 4 (1999): 7-34.

[8] Miriam van der Burg, Edmund Lauf, and Rini Negenborn, *Mediamonitor: The Dutch Media in 2010* (Hilversum: Commisssariaat voor de Media, 2010).

THE POSSIBLE CONTRIBUTION OF MEDIA LAW AND POLICY

In the event that exposure diversity is accepted as a viable media policy goal, what is then the proper place and role of the government? In this context, all workshop participants agreed that the audience cannot be forced to watch particular content or a particular program choice, however valuable and good for society this might be. They also agreed, however, with the authors in this issue and their contention that there is no role for media law and policy whatsoever in promoting and facilitating exposure diversity. As one participant pointed out, any measure to promote exposure diversity should be seen as complementary to, and not a substitute for, existing media diversity safeguards.

One participant suggested that even though people cannot be forced to receive particular media content, they can be made more aware of the options that they have. The argument of "soft paternalism"[9] was referred to repeatedly. While it is not appropriate or permissible for governments to force people to watch diverse content, there might be a role for government in making it more likely that people choose a particular media diet, or at least make sure that they have access to, and are aware of, the options for making a diverse choice.

In this context, the participants elaborated further on transparency-enhancing measures like the "diversity label" proposed in Helberger's contribution to this issue. One participant even argued that the whole system of media regulation is based on some kind of labeling system. It was also mentioned, however, that labeling could give rise to problems of certification and might result in some form of self-regulation. There might possibly be a role for a public authority in guarding over the accuracy of transparency-enhancing measures. On the other hand, transparency-enhancing measures such as labeling could also be seen as a tool for reaching other goals – for example, the prevention of media concentration.[10] In the context of possible transparency-enhancing measures the participants again referred to the possible need to distinguish between exposure to internal and external diversity. Transparency alone is not enough. The user must also have a right to hold a particular media outlet accountable. Otherwise, transparency only provides a false sense of security.

Regarding accountability issues, the workshop participants confirmed Hasebrink's assessment pertaining to the need for adequate accountability mechanisms. At present, there are only a few instances in national media laws that would allow users to hold media suppliers directly accountable for the quality, safety, or diversity of their programming.[11] To the extent that accountability

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[9] Cass R. Sunstein and Richard H. Thaler, "Libertarian Paternalism Is Not an Oxymoron," *University of Chicago Law Review* 70 (2003): 1159-1202; Colin Camerer, Samuel Issacharoff, George Loewenstein, Ted O'Donoghue, and Matthew Rabin, "Regulation for Conservatives: Behavioral Economics and the Case for 'Asymmetric Paternalism'," *University of Pennsylvania Law Review* 151, no. 3 (2003): 1211-1254.

[10] The Audiovisual Media Service Directive requires providers of audiovisual services to furnish users with certain information. European Commission, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive) (codified version), O.J. [2010] L95/1, Article 5.

[11] Uwe Hasebrink, Anja Herzog, and Christiane Eilders, "Media Users' Participation in Europe from a Civil Society Perspective," in *Broadcasters and Citizens in Europe: Trends in Media Accountability and Viewer Participation*, ed. Paolo Baldi and Uwe Hasebrink (Bristol: Intellect, 2006), 75-91; Richard Collins and Zoetanya Sujon, "UK Broadcasting Policy: The

mechanisms are already in place, the participants felt the need to re-evaluate those mechanisms and see if they are still appropriate and effective – for example, on the Internet or in the new media environment. The participants agreed that the questions regarding the division of responsibilities between the actors, and the level of self-responsibility and civic thinking that must be expected from users, are an important aspect in the design of any media accountability system. Conversely, research into the conditions under which media users make use of media products and the diversity of their consumption should inform the design of appropriate accountability systems.

The papers presented at the workshop and the discussions that they inspired demonstrate clearly that the issue of exposure diversity as a possible goal of media law and policy is as relevant as it is intriguing, and that the matter deserves more exploration – particularly in the context of new media. Doing so cannot be a solitary effort, but requires cooperation between researchers in different disciplines.

'Long Wave' Shift in Conceptions of Accountability," in *Broadcasters and Citizens in Europe: Trends in Media Accountability and Viewer Participation*, ed. Paolo Baldi and Uwe Hasebrink (Bristol: Intellect, 2006), 33-52.

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