

BOOK REVIEWS

A Review of:

Oliver Castendyk, Egbert Dommering and Alexander Scheuer, *European Media Law* (Wolters Kluwer/Kluwer Law International, 2008) 1426 pp HB, £236, ISBN-13: 9789041123473.

Jackie Harrison and Lorna Woods, *European Broadcasting Law and Policy*, Cambridge Studies in European Law and Policy (Cambridge University Press, 2007) 367 pp HB, £68, ISBN-13: 9780521848978; PB, £29.99, ISBN-13: 9780521613309.

Each of these books makes a major contribution to our understanding of European media law and policy: the first as a comprehensive survey of media law in Europe, and the second as a more analytical, reflexive account of the development of broadcasting law and also the policy debates that underlie it. Between them these two books provide useful guidance for law and policy practitioners as well as useful materials for the developing academic and public debate about the future of European media policy and law.

Castendyk *et al*'s survey consists of 1400-plus pages of detailed and exhaustive legal scholarship. It includes, by way of background, a description of the history of media law in European countries; a commentary on all the key treaties, directives, regulations and relevant case law; and some key legal reference texts. The legal analysis takes a top-down approach to the main media relevant European laws and includes texts and commentaries on Article 10 of the European Convention on Human Rights. With regard to the European Community Treaty provisions, the book focuses, firstly, on those articles that relate to the free movement of persons, services and capital (Articles 46–51). There is then a detailed analysis of the competition and state aid provisions (Articles 81, 82, 86, 87). Both of the main directives relating to broadcasting and audiovisual content—the Television Without Frontiers (TVWF) Directive and the recent Audiovisual Media Services (AVMS) Directive—are covered, as are the 2002 Communications Framework Directives and related directives such as the Copyright, Commercial Communications, Information Society (E-Commerce) and Misleading and Comparative Advertising Directives. In terms of overall balance, the bulk of the book, over 700 pages, is devoted to a discussion of the TVWF and AVMS Directives. This focus on the TVWF Directive and its successor is

justified in terms of the focus on European media law, rather than telecommunications, which also explains why the full legal texts of the AVMS and TVWF Directives are included (in French, German and English) whilst the other legal instruments are not.

Particularly useful for students will be the fact that each of the areas discussed receives a full introduction, explaining the background. These introductions could not be described as major contributions to the field, as each of the areas has been the subject of detailed studies elsewhere, but the summaries and backgrounds are useful and competently covered in this book. For example, the European Framework Directives of 2002 are outlined and analysed, and the reader is provided with a detailed and readable narrative introduction both to them and to the AVMS Directive. The book does not escape some of the problems of such a huge project: whilst the cover-credited editors are the main contributors, the list of authors is much longer, and, as a result, there are some inconsistencies of style and opinion. This does not detract from the general usefulness of the book, however, and the overall standard is high. Castendyk *et al* will now be a key reference text for students of European Community media law, and deservedly so.

Harrison and Woods do not set out to write an exhaustive reference for practitioners in their *European Broadcasting Law and Policy*. Instead, they set out a clear critique of the direction of development of European Community broadcasting policy, which structures their descriptive and analytical account of European Community directives in this area. Their charge is that European Community broadcasting policy is oriented to consumers rather than citizens in its increasing reliance on markets to serve consumer needs and expectations and betrays a bias towards the active rather than the passive viewer. Their argument is that European Community policy in this area has drifted in this direction by accident rather than by design and that the fundamentals of policy need to be re-evaluated in order to reverse this trend.

In developing their argument, Harrison and Woods cover the background issues in the first half of the book: theories of the value of broadcasting that are implied in policy; the impact of commercialisation and technical development; and the extent of European Union competence, its Treaty basis and the influence of European law on the relationships between the Member States. The second half of the book is dedicated to an overview of European Community broadcasting policy and includes an in-depth discussion of the TVWF Directive and the draft proposals for its reform, which were current when the book was published. A new edition of the book is shortly to be published and it is anticipated that this will provide a more detailed discussion of the AVMS Directive, which is now at implementation stage. Overall, this reader is convinced by Harrison and Woods' argument but I wonder if another reader, one with less general sympathy to the position adopted, will be convinced: might the authors be criticised for focusing their analysis on those areas of European broadcasting law and policy that serve their case and neglecting others that don't?

If the books have a common disadvantage it is that they present a somewhat simplified and unproblematic portrait of the process of policy and law-making itself. For Harrison and Woods, the unproblematic notion of 'policymakers, who seek to harness the potential of new technology to provide a regulatory environment that is for the good of everyone' (p 1) should surely be problematised in terms of questioning who makes policy, and who this homogeneous 'everyone' that policymakers seek to serve might be. The authors, after all, are arguing for a clearer differentiation between active and passive users of broadcasting. And the summaries and descriptions outlined by Castendyk *et al* have a low degree of analytical or critical distance: where commentaries on the general trends of legislation are offered these do not amount to a contribution to a debate about the overall development, ethics and regulation of the media sector in Europe. The policy process is discussed only as a background to the description of, and commentary on, the rules themselves.

An easy point to make about both books is that the basic concepts they use to define the object of study, 'media' in one case, 'broadcasting' in the other, are under considerable strain due to technological change and convergence. Both books might have given a little more attention to some of the issues around carriage, and one might say that the AVMS Directive, which applies to broadcasting-like services, is an attempt to escape the notion of 'broadcasting' as a basis for regulation. But the Harrison and Woods book is arguing precisely that law should not rush into a non-linear world before consumers do; and that the new policy environment over-estimates the ability of consumers to actively and rationally choose, and the likelihood that the sum of their isolated choices will constitute the public interest. In short, Harrison and Woods are arguing to retain a notion of 'broadcasting' in European approaches to media law and policy. The revision of the TVWF Directive by the AVMS Directive breaks down that distinction through its notion of non-linear content. But there are many ways, as described in more detail in the Castendyk book, in which broadcasting remains an important category in European law and policy. To take an example, the AVMS Directive does retain certain privileges, such as the right to short reporting, which apply only to television broadcasting. The broader and more fundamental question is whether regulation should lead or predict technological change or respond to it. This is an extremely difficult balancing act and raises a number of more fundamental issues relating to whether media policy should be based on consumer expectations or media literacy and whether information technology policy should be based on principles of justice that prioritise the most competent or the least competent users.

Alongside such works as Maria Michalis' recent book *Governing European Communications* (Lexington Books, 2007), these two books provide crucial materials on which to found a genuine debate on the future of the peculiar European 'dual system' of broadcasting and media regulation: a system that combines a positive and increasingly

robust set of free expression rights with a broadcasting medium that has been regulated specifically to permit the combination of commercial and public service motivations. Harrison and Woods are right to point out that the guiding framework for development of European Community broadcasting policy—which derives from competition, single market and industrial policy competencies—may serve to undermine many of the fundamental values of European broadcasting and media policy as they have emerged at the nation state level. This trend is borne out by Castendyk *et al's* wider survey.

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