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MEDIA PLURALISM AND HUMAN RIGHTS

Issue Discussion Paper

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FOREWORD

Media pluralism is a necessary condition for freedom of speech and contributes to the development of informed societies where different voices can be heard. A major threat to media freedom today is the monopoly tendencies we see among traditional media across Europe.

In some countries, there is little genuine media freedom and therefore limited space for pluralism and genuine competition. State authorities attempt to dominate the media market, independent television and radio channels are denied licences and critical newspapers are prevented from buying newsprint or distributing their papers.

Other state controls are more discrete. By buying advertising space solely in "loyal" media, governments can signal to businesses to follow their lead, which means that independent media are effectively boycotted. The increase in bureaucratic harassment and administrative discrimination is also of concern.

The concentration of media ownership in the private sector is yet another problem. If the mass media are dominated by a few corporations, the risk for bias and interference with editorial independence increases.

Ownership transparency is a key administrative tool for breaking up monopolies. If it is known who are the ultimate owners of the broadcasting firms, it is of course possible to break up monopolies and regain trust in media freedom.

This Issue Discussion Paper argues that pluralism of the media means a structure that is comprised of competing, diversified, independent media outlets, covering all corners of society, and conveying a great variety of information and opinion.

Technological development has created new possibilities for the emergence of such a media landscape. In the digital and Internet era, with the number of accessible channels and audiovisual platforms quickly multiplying, the urgency for detailed regulation – aimed at avoiding political domination – will fade. However, this development may be seen by power holders as justification for more regulatory intrusion.

The principal positions my Office has tried to promote in this area are the following:

–   There is a need for a concrete policy to ensure plurality of media, including among the traditional media;
–   Monopoly tendencies need to be systematically countered;
–   There must be transparency of media ownership;
–   The independence of regulators is fundamental and should be secured.

This Issue Discussion Paper offers a more extensive analysis of the importance of protecting media plurality. It is written by a genuine expert in this field, Professor Miklós Haraszti who has served as OSCE Representative on Freedom of the Media. The views and conclusions in the paper are his own and based on his unique personal experience.

Thomas Hammarberg

SUMMARY

Media pluralism is the key that unlocks the door of freedom of information and freedom of speech. It advances the ends of freedom of speech by facilitating a robust marketplace of ideas and placing additional checks on the power of states. And it contributes to the development of informed and diverse societies. But because the goal of achieving pluralism places obligations on governments, the notion remains hotly debated both intellectually and politically. What exactly is meant by the term "media pluralism"? How successfully is media pluralism protected in Europe today? And in what ways can media pluralism be advanced in the future in the context of changing technology and changing views about the role of governments? This chapter sets out to answer these questions, and more.

The chapter is split into five sections. Section one offers a theoretical, legal and historical background to the idea of media pluralism. Having sketched a definition of media pluralism, the relationship between freedom of speech and media pluralism is explored. It is observed that media pluralism (or a lack thereof) is a real problem in Europe today, and that it is imperative for governments to work towards achieving media pluralism. That imperative is supported by legal standards that protect media pluralism, which are outlined in this section. An attempt is also made to trace the history of media pluralism, and to explain why it has taken so long for media pluralism's relationship with freedom of speech to be properly understood. Section one helps to place media pluralism in a broader context.

Section two examines media pluralism trends in the Council of Europe member states. It observes encouraging patterns, for instance, in the move towards diversified media ownership and the rise of public service broadcasting in some places. However, it also highlights causes for concern – such as monopolisation of broadcasting, a lack of ownership transparency, and the rise of bureaucratic harassment and administrative discrimination. Exactly what measures are required by human rights standards are reiterated here. It is pointed out that governments have a duty to foster media pluralism, and that this extends to many different dimensions of pluralism. Section two focuses on media pluralism "on the ground", and how standards on paper are being translated into practice.

In section three the central obstacle to pluralism of the media – its monopolisation – is probed more deeply. The case is made for regulation of media ownership, and some of the harms of media monopolies are discussed with reference to the post-Soviet democracies and Italy. This section underscores the need for policy change and action by governments on media pluralism.

Section four turns to further challenges and solutions for the future to guarantee media pluralism. These include rethinking the media as more than just a market, securing the independence of regulators, developing robust media organisations, building public service broadcasting, and engaging with challenges emerging with the rise of the Internet. This section makes clear that media pluralism can be achieved with careful thinking and responsible governance. Conclusions are presented in section five.

Introduction

In today's societies, the basic human right to freedom of expression and information cannot be properly exercised without the presence of a large number of rival media outlets which are free from the domination of political or commercial interests. Free speech, even if constitutionally granted, becomes a mockery if reduced to the information flow available through a few "authorised" or "winning" outlets. Access to a great variety of media is not just necessary for free speech; it is also crucial to make democracy work. Only a sufficiently diverse media environment can keep the public aware of facts, views and debates which hold governments to account.

Defining media pluralism

The media are pluralistic if they are multi-centred and diverse enough to host an informed, uninhibited and inclusive discussion of matters of public interest at all times.

Pluralism of the media means a media structure that is:
- comprised of competing media outlets which are independent from each other, a central owner, or other influence;
- diversified on separate but overlapping planes of ownership, political views, cultural outlooks and regional interests;
- able to communicate to all corners of society;
- capable of conveying a great variety of information and opinion;
- designed to draw information from a wealth of different sources.

The relationship between free expression, freedom of information and pluralism of the media

Pluralism is an effect of freedom of speech but it is also a value associated with free speech itself. A multi-centred diversity of media outlets is an important prerequisite for free speech.

Freedom of expression and freedom of information – the freedoms "to hold opinions without interference and to seek, receive and impart information and ideas" are basic human rights as set out in 1948 by the Universal Declaration of Human Rights (see Article 19). Since then, international and local human rights standards have acknowledged that freedom of speech must be accompanied by media freedom and media pluralism.

Free speech and information do not occur naturally. They are values that are achieved with the assistance of the free media. If media diversity fades, even constitutionally granted speech freedoms can become meaningless and disappear. The pyramid of free expression, free flow of information and pluralism of the media comprises a crucial pre-requisite for achieving and maintaining democracy.

Whereas freedom of expression might be thought of as "the right to speak", and freedom of information can be characterised as "the right to know", pluralism of the media could be considered "the right to choose".

Free expression and the free imparting of information are, first and foremost, individual rights. But media pluralism is the institutional guarantee of their fulfilment. Pluralism is a quality of democratic societies, as well as an individual human right that can be enforced through juridical, constitutional and international mechanisms.

I. Media pluralism: theoretical, legal and historical context

Nobody can guarantee that every media outlet can be "free" in the sense that each outlet is independent from any extra-journalistic, political or economic influences. Only dictatorships dare to claim they can "guarantee" an information flow that serves the common good; that promise has always turned into suppression of what people really think, know and would like to say.

But there are very real threats, even in open societies, to the development of a free and pluralistic media. The natural tendency in any political and commercial competition for the more powerful

competitors to seek to own, dominate or at least influence social communication can harm media competition. Domination of the media by a small number of bodies – what might be called "media monopolisation" – can also have the effect of suppressing what people can think, know or say.

Because of these trends, it is not enough for governments to exercise self-restraint in the hope that the media will be able to do their job. Governments have an obligation to secure freedom of the media without interfering, that is, with the help of laws and policies that sustainably uphold multi-centred diversity.

Media pluralism is society's next best alternative to what is impossible to achieve perfectly: absolute freedom and independence of individual media outlets. Imagine a country where all media outlets are turned by their owners into propaganda mouthpieces or just careless, unethical money-making machines. In that hypothetical country, it is not the government's enforcement of community standards that will rescue the possibility of ethical, professional journalism. It is the encouragement of competition and diversification.

This hypothetical situation is not far from the reality in many places. In societies recovering from periods of dictatorship, pluralism has assumed a special strategic importance. In such places, the apparent end of "big", governmental censorship has disappointingly only led to "small", private mini-censorships, maintained this time by media-owning entrepreneurs and parties. Audiences who previously hated the monotony of a directed press have found the cacophony of freedom startling. They may have become irritated by the swift spread of commercialism and the slow increase in ethical journalism. In new democracies, it has been hard for audiences to acknowledge that press freedom may make quality journalism possible – but does not guarantee it.

In these places, with faith in democracy at stake, it is imperative for governments to react not by promising "proper" and "honest" journalism enforced by law, but by ensuring that no parts of the spectrum are allowed to dominate the others, and by simultaneously employing positive measures, such as the establishment of well-funded, independent public service broadcasters that serve as positive examples of diverse and fair journalism.

Because of the ongoing dangers of media monopolisation, upholding diversity is not just society's next best alternative to absolute freedom; pluralism is in fact the ultimate guarantee of any freedom of speech. As a structural condition for the whole of the press, it lays down the main rule of the game: diversity. It is then up to the different media enterprises and audiences to build diversity in terms of political, cultural and other outlooks.

1.1   Legal standards relating to media pluralism

Freedom of expression, the free flow of information, and freedom and pluralism of the media have internationally been acknowledged as human rights in the post-Second World War intergovernmental instruments: the Universal Declaration of Human Rights (UDHR, 1948) and the International Covenant on Civil and Political Rights (ICCPR, 1966). In both the UDHR and the ICCPR, Article 19 makes this commitment.

In Europe, the specific provision serving as the binding guarantee of those rights is Article 10 of the European Convention on Human Rights (ECHR, 1950). The European Union (EU) has also included free speech rights in its Charter of Fundamental Rights (2000). The specific references to these rights are reproduced in Figure 1.

Figure 1: Media pluralism in international law

Article 19 UDHR 1948
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas *through any media* and regardless of frontiers.

> **Article 19 (2) ICCPR 1966**
> Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, *either orally, in writing or in print, in the form of art, or through any other media of his choice.*
>
> **Article 10 (1) ECHR 1950-53**
> Freedom of expression
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. *This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
>
> **Article 11 Charter of Fundamental Rights of the European Union 2000-09**
> Freedom of expression and information
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
> 2. *The freedom and pluralism of the media shall be respected.*[1] (Emphases added)

1.2   A short history of media pluralism

Media pluralism has had an interesting journey in achieving its status today as an indispensable human right. Both Article 19 of the UDHR and Article 19 of the ICCPR stress that the right to free expression and the free flow of information is only possible if society has free access to a multitude of media, and if society has a free choice between different media outlets (see relevant emphases in Figure 1).

However, it was only in the television era that the notion of media pluralism was given greater prominence in the standard-setting documents of the United States of America and Europe. During this period media pluralism was cast as a basic social precondition and constituting element of the human right to free expression and freedom of information.

In Europe, Article 10 of the ECHR was originally sparse in its references to media freedom and pluralism. It even found it necessary to stress the member states' right to restrict (license) broadcasting (see relevant emphasis in Figure 1).

Nevertheless, the notion of media freedom and pluralism has been, since the 1950s, developed in the constitutional law of several countries, with France, Germany and the United Kingdom leading the way. Over time, the various mechanisms of the Council of Europe have provided powerful and detailed elaboration of pluralism as a right corollary to, and inseparable from, the right to freedom of expression promulgated by Article 10 of the ECHR.

This standard-setting work has made it clear that the silence on media diversity in Article 10 was not because of any disdain for the idea of media diversity, but was instead because media diversity was simply not seen as a problem in the period preceding the authorisation of privately owned television in Europe.

Three of the Council of Europe institutions improved the situation over the years: the case law of the European Court of Human Rights, several seminal recommendations by the Committee of Ministers, and resolutions by the Parliamentary Assembly. The 27 members of the EU secured a separate entry for media pluralism in the Charter of Fundamental Rights of the European Union (conceived in 2000), putting it on an equal footing with the other two basic free speech human

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[1] "Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media."
See the European Parliament's explanation of the Charter:
www.europarl.europa.eu/charter/pdf/04473_en.pdf.

rights, free expression and the free flow of information (Article 11, "The freedom and pluralism of the media shall be respected.") This came into force through the Treaty of Lisbon in 2009.

Why did media diversity become protected as an explicit human right some time after the recognition of free expression and the free flow of information? The answer lies in the fact that, starting from the era of broadcasting (in a departure from the era of the printing press), the monopolisation of the flow of information has become a genuine danger even in democracies.

In the 1950s, when the American invention of television broadcasting – operated there as a business scheme – was imported to Europe, it was initially placed under government control everywhere. That was due to the high investment costs of entry into the market, costs which were especially large in European states that had a much smaller market than the USA. It was also because of the acknowledged power of the audiovisual media to persuade and influence. The spectre of the totalitarian past and the dangers of irresponsible propagandising (arising from uncontrolled broadcasting) were undoubtedly in the minds of some of governments.

For a long time, up until the 1980s, state-sponsored broadcasting was the norm in Europe, and privately owned television the exception. Across the two sides of the Iron Curtain, the only – but crucial – difference in the understanding of state monopoly of broadcasting was that in the West, following the example of the British Broadcasting Corporation (BBC), broadcasting was expected to be an autonomous public service, a provider of "internally pluralistic" (pluralism within a single medium) information for the satisfaction of all sides of the political spectrum; while in the Soviet-dominated parts of Europe, it openly and even proudly served as a propaganda tool of one-party governments. However, in Western Europe in the early 1980s, and after the democratic upheavals of the late 1980s across the rest of the continent, state domination of broadcasting became untenable, and privately owned stations had to be allowed – if not for other reasons, then simply because audiences demanded variety.

By 1993, when the Strasbourg Court delivered its judgment *on Informationsverein Lentia and Others v. Austria*[2] holding that Austria's prohibition on privately owned licences was in breach of Article 10 of the ECHR, it remained virtually the only western European country left with a state monopoly of broadcasting. (This point is taken up in greater detail below.) The argument, once invoked in good faith to allow only one broadcaster per country – that it is imperative to keep television protected from any type of domination – had now been turned against all governmental, ownership, market-share or other types of information monopolies.

1.3   The political context: the role of government in media pluralism

The development of media technology played a role in the transition to media pluralism; licensing became inevitable as the number of available frequencies and channels grew. But the need for strict governmental enforcement of pluralism via licensing did not disappear. In stark contrast to the unruly, editorially partisan media outlets mushrooming on today's global networks, satellite television and the Internet, the requirement of internal pluralism for nation-based broadcasting channels remained intact. This was because of the transmitting medium of "pre-digital" broadcasting. Only a small number of analogous frequencies could be allocated, limited by the size of European countries, while broadcasting's political influence stayed constant. There emerged a need for regulators to monitor whether the allocation of licences was efficiently serving the goals of ownership, political, cultural and regional diversity.

The further development of technology, especially after the Europe-wide digital switchover is complete in 2012, may lead to another surprising change in pluralism governance. It will put an end to a world of scarce frequencies. It will no longer be impossible to achieve the near-perfect "external pluralism" (pluralism across multiple outlets) which has hitherto justified regulatory control over not only the public service but also licensed television. In the digital and Internet era, with the number of accessible channels and audiovisual platforms multiplying by the year, urgency for detailed regulation – the bulk of which is aimed at avoiding political domination – will fade. At the same time, the danger of regulatory intrusion may loom larger.

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[2] *Informationsverein Lentia v. Austria*, Commission Report of 9 September 1992, Appl. Nos. 13914/88, 15041/89.

Pluralism governance remains as important as it used to be, but its focus may shift towards securing external pluralism of the media, and a fuller access to all media platforms for all kinds of content providers (social and cultural) and for minorities. This would support the fulfilment of another set of human rights related to pluralism: the free expression of cultural, religious, minority or local content providers, which may be able to gain a better foothold than in the "analogue frequency era".

Surprisingly, however, the need for public service broadcasting could make a comeback, even as the Internet portal and aggregator sites become suppliers of a new style of internal pluralism, which so far has been expected from television channels. Excessive fragmentation of information can pose a threat to the quality of democracy's public sphere, as can the monopolisation of that information. Hence a taxpayer-funded – and preferably advertisement-free – universally accessible safe haven for fair and inclusive audiovisual information, coupled with an online equivalent, may become imperative again, especially during election periods.

The role of governments in television may, therefore, return to its European origins, providing for a national infrastructure of seasoned, independent editorial work, based on the best of journalistic ethics. A platform for guaranteed pluralistic information is as important today, when public service broadcasting may be but an island in the ocean of content providers, as it was in the 1950s, when the public service broadcasters were the Europeans' only audiovisual outlets.

II. Media pluralism trends in the Council of Europe region

Soon after the Soviet Union broke up, almost all of territorial Europe had united under the banner of democracy. In the 1990s, freedoms such as the right to free elections, free civil society and free speech were acknowledged by all Council of Europe nations. Symbolising the end of the "poles apart" systemic divisions, these nations voluntarily accepted the Council of Europe's intergovernmental scrutiny of their human rights record.

2.1   The state of play on media pluralism

By and large, Europe today is a continent of freedom of expression and media pluralism, especially compared to its past. There is no nation in the Council of Europe territory where the laws deny outright the right of independent outlets to operate. Nor is there any nation in the Council of Europe region without the presence of at least a few independent print press outlets. However, Belarus (though not itself a member state of the Council of Europe), Russia and the South Caucasus are some areas in the Council of Europe region where, despite the allowances for advertisement-fuelled private licences, there exist no television broadcasters with an editorial line independent of the government position.

But Europe's apparent unity masks serious discrepancies in how the shared standards are actually applied on the ground. In fact, in many new democracies in Europe, media diversity is in poor shape, due to a lack of regulatory policy focused on boosting pluralism. These deficiencies are not just signs of developmental delay. Unfortunately, they are reflections of the governments' desire to continue monopolising ownership or just to control the press, and thereby exclude critical voices from accessing the media.

In Western Europe "consolidation" into ever larger ownership blocks is the greatest threat, but this threat is for the most part handled quite well by regulators. Thanks to the EU, issues of media ownership and market share have become supranational on one level while remaining political issues at home. This system provides fairly good protection against monopolies, although there is still room for outliers like Italy – a case study that is explored later in this chapter.

The situation in central and southern Europe reminds us that mere variety is not sufficient if the media is to play a robust role in helping to maintain democracy. Here, anti-monopoly legislation works, and the full spectrum of opinions is accessible. Privatisation is complete and state ownership of the media is over; public service television exists, though it is far from autonomous. However, the press, and increasingly television as well, are partisan or even party-

owned; a growing number of media outlets are offshoot investments and status symbols of personal power. The Italian model has followers, in that media magnates aim at political influence, the actual creation of political parties, or both. This seems to be appealing especially in smaller nations where an overcrowded, pre-consolidation market is the current norm (while many states, especially in the Balkans, represent so tiny a market that they would have trouble sustaining a media industry even after its de-politicisation and healthy collapse into fewer units). Journalism, therefore, when not utterly commercial, is utterly partisan, judgmental and contrarian – a constant competition of blistering adjectives, slanted invective and spin wars. Put simply, central Europe has a type of media pluralism that is reminiscent of the famously confrontational mentality of the pre-1933 German democracy.

After the transition to liberal democracy, central European media embraced freedom and provided a common ground for debate and discussion. Twenty years later this openness and understanding has been eclipsed by a spirit of confrontation and polarisation. In such circumstances, foreign ownership of the local media, provided it is properly diversified – and it mostly is – can be a blessing. Central Europe's media have been rescued from landing in the hands of local, parochial, non-media investors only by the presence of foreign owners. Foreign-owned media also provides a safe haven amongst the media from fragmentation into antagonistic political camps, a fragmentation that was once so typical of eastern Europe. The foreign-owned outlets have never engaged in racist, extremist or even tendentiously biased journalism. This is probably so, not out of an innate idealism but out of the necessity to make money: foreign owners, unlike local oligarchs, have to earn media money too, and not just spend it.

This is where EU membership counts, with its facilitation of both foreign ownership and its commitment to breaking up monopolies. The EU has empowered commissioners and special mechanisms to react to complaints of monopolisation of media and related markets, such as content production, transmission technology or communications platforms. The boundaries to be maintained are of course under constant public examination and are often redefined. At the time of writing, for example, there is much criticism that the British and international media empire of Rupert Murdoch has been under less scrutiny from the European Commission than the efforts by Spain and France to de-commercialise their national public service broadcasters by collecting a modest fee from commercial media ventures. Paradoxically, these pioneering measures have been seen by the Commission as thwarting competition, even though they could also be interpreted as improving competition and enhancing pluralism. In fact, in exchange for the small fee, commercial media rid themselves of a major competitor in advertising. Guaranteeing at least one channel of advertisement-free quality television is an important element of cultural diversity.

In the former Soviet nations, however, except for the Baltic states which are today members of the EU, it seems that there is a trend that the more significant role a media type plays in providing citizens with political information, the less pluralistic it is allowed to be.

This tendency is particularly obvious in television. In most post-Soviet nations, the attempt to break up broadcasting monopolies has failed. Except for Ukraine and Georgia, nowhere in the former Soviet Union is a degree of pluralism in television tolerated. Even in those two countries, the situation is quite similar to the polarised central European media scene.

Both in terms of ownership and content, television in the post-Soviet states is firmly in the hands of the administration or friends and family members of government leaders. This is so regardless of whether television is outright state-owned or under partly private ownership; it is regardless, too, of whether or not (so-called) public service television exists.

Furthermore, the privately owned press and television are in the hands of local non-media investors. The media oligarchs are, as a rule, those who also invest in the media. The very idea of foreign media ownership is treated by the governments of most of these states as anti-patriotic. Russia, which due to its large territory could have allowed for a variety of television channels even via classic analogue transmission, now has effectively only a few nationwide channels. All of these channels are state-owned or state dominated. What is more, the state energy monopoly has devoured the small amount of television variety that did exist in the first decade after the political changes. Gazprom-Media has, in effect, re-nationalised television.

Public service television is practically non-existent outside the EU. Moldova and the South Caucasus countries are the only post-Soviet nations that have decided to establish such taxpayer-funded yet autonomous broadcasting channels. But with governments reluctant to allow them to do their job, of providing guaranteed internal pluralism of news and opinions for all sides of the political spectrum, there has been manipulation that has ensured that members of boards, CEOs and editors toe the line. These moves have in effect turned public service broadcasters into state-run institutions from the outset.

Those regulatory agencies that supervise and license privately owned broadcast media are also not independent in this region. All boards are dominated by the government. Regulators are not mandated to license specifically for the establishment of pluralism in the airwaves. Licensing is an exercise in thinly veiled arbitrariness and nepotism. Ownership transparency, the most important administrative tool for breaking up monopolies, is either not mentioned in law or not enforced by regulators. Nominal owners do not even pretend that their position is anything more than nominal. In many post-Soviet countries, a key component of the pre-democracy media structure still exists: the state-owned print press. As a rule, the privatisation of the print press is not only far from complete, a huge amount of taxpayer money is poured into the state and municipality-owned print press.

Many post-Soviet states have a "grants for content" system set up by presidential decrees, which is designed to be a tool of (print) media support. But, in defiance of the requirement of a platform- and content-neutral media support system, the payouts hardly benefit pluralistic production; in most cases, the grants are used to reward content that the government approves of. Moreover, advertisement revenue from state-owned companies is channelled to the state-owned papers, or to the private domain, in exchange for favourable editorial policies.

Still, thanks to the changes that took place two decades ago, a degree of media pluralism does exist in the post-Soviet countries as well. At this point, however, pluralism is confined to the financially fragile independent print press. Overshadowed by the broadcast media and in many places by the state-owned print press, such press outlets reach very limited audiences. This is partly due to the general crisis of the newspaper industry, but also because of government-induced action.

The independent print media (and generally, the laws and institutions facilitating start-up media enterprise and market entry) face administrative discrimination. Distribution and subscription operations, including news and magazine kiosks, are run as monopolies in many states. "Information ministries" and equivalent agencies, equipped with arbitrary decision-making powers, are firmly in control of registration procedures and all other processes necessary for the birth and survival of independent media outlets.

Belarus is the chief inventor of the system of bureaucratic harassment that, over the course of the last decade, has decimated politically independent media outlets in many countries in the post-Soviet region. The calculating methods employed in this system include official registration of outlets, which transforms registration into official permission to publish; mandatory re-registration when the government calls for it; and the government's right to warn and close down papers for "misuse of freedom of the press" – that is, for unwanted content.

The Internet remains the only source of truly pluralistic information; but even Internet freedom may only be enjoying a short grace period in the eyes of many governments. Already, Internet Service Provider (ISP) pluralism is in danger: one central state-controlled ISP per country is the norm. With the help of a state monopoly of ISPs, in the absence of the legally secured competitive private ownership of ISPs, the global network can be fragmented into nationally controlled spaces. An ISP monopoly opens the way towards state control of content, typically resulting in an arbitrary reduction in the Internet's innate pluralism. State filtering and blocking is increasingly the fashion, as is the creation of arbitrary legal backing for it. Still, the Internet is the hottest battlefield. And higher penetration, digitalisation and the ensuing abundance of communication channels may eventually end up being the transformation that renders futile the current efforts to achieve media monopolisation.

In all these battles for true pluralism, international standards, and especially those specified by the different mechanisms of the Council of Europe, play a crucial role.

2.2   *The need for human rights law, standards and policy in Europe today*

Both the Council of Europe and the EU are clear in underscoring the role that pluralism plays in ensuring basic human rights to free expression and the free flow of information.

The Committee of Ministers of the Council of Europe has stated that "media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information".[3] The Charter of Fundamental Rights of the European Union indicates that "the freedom and pluralism of the media shall be respected".[4] Both proceed to point out that core freedoms (of speech, of information, and, indeed, even of the media) can be best protected by boosting a pluralism that is able to serve society's actual diversity. The Council of Europe in particular, tasked by its member states to set the standards of what human rights and democracy require from European governments, has developed over the last 30 years a quite vast array of case law, guidelines and recommendations that help governments to deal with the different aspects of media pluralism in a fast-changing world.

As early as 1977, the European Court and Commission of Human Rights[5] stated that Article 10 of the ECHR imposes positive obligations on member states to take action and not merely to refrain from interference.[6] The Committee of Ministers specified in 1982 the nature of that obligation, by calling on nations to "adopt policies designed to foster as much as possible a variety of media and a plurality of information sources, thereby allowing a plurality of ideas and opinions".[7] The European Court of Human Rights has also referred to "the principle of pluralism, of which the State is the ultimate guarantor".[8]

Proactive care for pluralism requires governments to implement regulations relevant to the different media spheres, as well as targeted policies aimed at upholding media choice and access. An example is how the aforementioned, pathbreaking 1993 *Lentia* judgment of the Strasbourg Court also embarked on the exploration of the specific policies to be implemented for the sake of pluralism. It added that the observation about the duty of governments "is especially valid in relation to audiovisual media, whose programmes are often broadcast very widely."

An even more specific obligation, to ensure pluralism within the broadcast media during election periods, has been addressed in a Council of Europe recommendation: "During election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via the broadcast media".[9] It is especially crucial to maintain the diversity of information regarding facts and opinions about government, that is, in the "market" of political discourse.

An equally important "positive" goal is to make the media accessible not only for the news and views of the ready-made political blocs of the day, or for the social, ethnic, religious or other constant majorities, but also for all sorts of minorities.

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[3] Committee of Ministers Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, 31 January 2007. See also the similar Committee of Ministers Recommendation No. R (99) 1 on measures to promote media pluralism, adopted on 19 January 1999.
[4] Article 11, paragraph 2, freedom of expression and information, (2000/C 364/1). See: www.europarl.europa.eu/charter/pdf/text_en.pdf.
[5] This institution was abolished in 1998. Its role was to act as an intermediary between claimants and the Strasbourg Court: if it thought a claim was well-founded, it could launch a claim on a claimant's behalf.
[6] *de Geillustreerde Pers v. the Netherlands*, Committee of Ministers DH (77) 1, 17 February 1977.
[7] Declaration on the freedom of expression and information (Adopted by the Committee of Ministers on 29 April 1982 at its 70th Session).
[8] *Informationsverein Lentia v. Austria*, Appl. Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, judgment of 24 November 1993, paragraph 38.
[9] Committee of Ministers Recommendation No. R (99) 15, Appendix, II(1).

2.3   The different kinds of media pluralism today

The shorthand term "media pluralism" encompasses everything from media types, interests such as ownership and control over the media, political and cultural viewpoints, and regional concerns, all of which have to be communicated or accessed through the media. The various documents of the Council of Europe and the EU refer to several dimensions of media pluralism, such as: internal and external pluralism; cultural and political pluralism; open and representative pluralism; and structural and content pluralism.[10]

Access can be both active and passive. External diversity could occur across media sectors or just a specific segment, such as print or television. Internal pluralism concerns diversity within a single media outlet.

In countries where media pluralism is pursued in earnest, one can see evidence of two basic approaches. There is the "marketplace of ideas" model. Then there is "public sphere" media model, in which democracy requires the unifying, rational public discourse of the citizens.[11] Both are meant to serve the public good, the former with the competition and freedom of choice, the latter in its aim to provide the whole of society with political views and cultural values.

Regulatory approaches, regardless of theories, must combine the two, just as the standards of the Council of Europe do, since in a democracy both external and internal pluralisms have to be functional. Diversity sometimes is best achieved when people can freely enter the "marketplace of ideas" without any governmental constraints; at other times and in other places, the survival of various political views and cultural values necessitates state intervention.

The standards also stress, of course, that more regulation is not better regulation. Governmental self-restraint remains the default rule, as with everything that concerns free speech. Excessive regulation may be harmful for media pluralism, as it may suppress legitimate choices and stifle innovation.

III. Challenge of monopolies: regulation of media ownership

Freedom of expression is only possible under a media market that is not marred by a monopoly. Ownership control is the starting point of pluralism governance; it ensures that free speech is not diminished by the over-bearing control of too few media entrepreneurs or too few actual media outlets. Attempts to break down media monopolies have to be directed towards all significant information markets, and focused on ownership, media types, political viewpoints, cultural outlooks and regions.

It is especially crucial to establish limits for the participants in markets where, for technical reasons, only a few players can be licensed. The best-known example is the medium with the greatest impact, television, the supremacy of which is continuing even as its transmission technology is changing. Until recently, it had to be transmitted via analogous surface frequencies that were available in a limited range, meaning only a few stations could operate in a region, as well as nationwide.

European standards adopt methods of assessment of undue concentration of ownership that include audience or market share, rather than just numerical limitations on how many channels an individual or company can own. The Committee of Ministers has urged "the adoption of rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets".[12] Most EU

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[10] See for instance the Committee of Ministers Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, adopted on 31 January 2007; and Committee of Ministers Recommendation No. R (99) 1 on measures to promote media pluralism, adopted on 19 January 1999.

[11] Habermas J. (1962), Struktuwandel der Öffentlichkeit, Hermann Luchterhand Verlag, Darmstadt.

[12] Committee of Ministers Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, adopted on 31 January 2007, I (2.1).

member states have adopted media ownership regulations according to this recommendation.[13] The limitations apply to ownership within print, broadcasting or other sectors; cross-ownership in two or more sectors; and media integration with other industries such as phone networks or advertising.[14]

The Council of Europe encourages the use of "thresholds based on objective and realistic criteria, such as the audience share, circulation, turnover/revenue, the share capital or voting rights".[15] It is interesting to note what amounts to a dominant position for such thresholds. The European Commission guidelines draw that line at 40%, despite the fact that the everyday notion of such a position is more than 50% of market share.[16]

Developments in media technology and economy suggest that ownership control remains even more relevant in the digital era. It is in broadcasting that monopolies have their gravest effect on freedom of expression, as television remains the main source of information in all nations. A look at the negative impact of broadcast monopolies on democracies suggests that they are potentially as dangerous as the erstwhile perils of outright state censorship.

3.1   Negative impact of media monopolies in new democracies

In the new democracies of the post-Soviet region, one finds government-owned networks which are not public service networks. Private licensees of commercial televisions often turn out to be government-friendly oligarchic groups in various disguises. Quite a few of these owners also play a major role in politics.

Across the region, lingering state ownership of the media produces the bulk of available information, making the media a matter of command line in terms of its content, and a matter of the subsidy in terms of its funding – both controlled from the top. Privatisation, licensing and digital switchover procedures are not required or even allowed to aim at achieving diversity. The activity of the boards and offices mandated to undertake these crucial transformations are often overtly nepotistic.

Specifically, tacit re-nationalisation of broadcasting has taken place in Russia, where the state energy body Gazprom was allowed to found a powerful "private" media arm, Gazprom-Media. It has purchased many formerly privatised print titles, radio channels and even nationwide television channels. The South Caucasus republics of Armenia, Azerbaijan and Georgia have suffered from a lack of ownership transparency. Only in 2011 did Georgia finally pass clear and more enforceable rules.[17]

3.2   The case of Italy

The history of the so-called "Italian anomaly" is illustrative of how broadcast monopolisation (through over-consolidation and super-mergers) can pose an acute danger even in older democracies.[18]

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[13] K.U. Leuven/ICRI/Jönköping International Business School/MMTC/Central European University/CMCS/Ernst & Young Consultancy Belgium (2009), Independent study on indicators for media pluralism in the member states – Towards a risk-based approach, Leuven, p. 31, see: http://ec.europa.eu/information_society/ media_taskforce/pluralism/study/index_en.htm.
[14] Ibid., Annex III: Country inventories of legal and policy measures promoting/ supporting media pluralism, p. 784, see: http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/study/part_3.pdf.
[15] Committee of Ministers Recommendation CM/Rec(2007)2, adopted on 31 January 2007, I (2.3).
[16] "Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services" (2002/C 165/03), paragraph 75, see: http://eur-lex.europa. eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:165:0006:0031:EN:PDF.
[17] The legislation requires broadcasting companies to make public informa-tion about their owners and sources of finance and prohibits the offshore owner-ship of television stations: see, for instance, www.dc4mf.org/en/content/georgia-passes-law-make-media-ownership-more-transparent.
[18] See Miklós Haraszti's 2005 report, see: www.osce.org/fom/46497. See also the chapter on Italy in Open Society Foundations (2005), "Television across Europe: Regulation, policy and independence", as updated by 2008's "Television across Europe: Follow-up reports", Italy chapter. Both are available at www.mediapolicy.org. Further, see written comments by the Open Society Justice Initiative (March 2010) in

Freedom of expression and press freedoms are in a healthy state in Italy. However, the television broadcasting market is regularly referred to as the "Italian anomaly".

In the last two decades, no third force has been able to constrain the so-called duopoly: domination of the nationwide television channel market by the private owner, Mediaset, and the public owner Radiotelevisione Italiana, RAI. The duopoly was accompanied by a practical monopoly by Mediaset in the commercial television sector and the advertisement market. Before digitalisation, the duopoly's audience share was around 90% (both owned three channels). Combined revenues and the adver-tisement market also provided evidence of the duopoly.
Italy also has an ongoing record of control over public service television by political parties and governments. As its Prime Minister Silvio Berlusconi co-owns Mediaset, the usual fears of governmental control of RAI are aggravated by worries of widespread governmental control of the nation's most important source of information, television.

The so-called Gasparri and Frattini Laws of 2004 were supposed to provide guarantees for future pluralism of the media, and outlaw "two-hat" situations, respectively. However, neither universal digitalisation nor equal competition rules alone can guarantee cultural diversity and political pluralism in the media, especially if the already existing media concentration is practically maintained or even enhanced by the law. The Gasparri Law's rules of transition from analogue to digital, despite their innovative force, allow the duopoly to use its acquired economic might to expand into new digital markets.

European standards prohibit undue political or partisan ownership or control of private broadcasters in order to avoid government or political interference. Germany and the UK impose restrictions on direct ownership or control of broadcast media by political actors; EU countries also require broadcasters to maintain independence from political parties and politicians. Italy, despite its Frattini Law, does neither.[19]

IV. Further challenges: media more than just a market

Notwithstanding the importance of anti-competition legislation, the media should not be viewed as just another market; its pluralism must be about content and access, decisive values for democracy's public discourse. General competition policy, even a fair market share arrangement, is not conceived for, and is rarely able to, fulfil the function of protecting the diversity which human rights standards demand.

The objective is to move beyond "freedom from" ownership monopolies to a "freedom to" society's right to access a diverse information flow, multi-centred enough to sustain unfettered public debate on all important issues. At issue is freedom of political expression and an informed citizenry.[20]

This is why human rights standards highlight the responsibility of governments to focus on information monopolies in the media, not just ownership monopolies. In too many countries, even those in which a seemingly diversely owned media exists, the content falls into two categories: it is either pro-government or purely entertainment. Different mechanisms and institutions in addition to anti-competitive policies are needed so that a variety of media is able to serve society.

4.1   Securing the independence of regulators

The regulators which authorise and supervise broadcasting must in all their rules and practices aim at the desired end-goal: pluralism.

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the case of *Centro Europa 7 v. Italy* in the European Court of Human Rights, Appl. No. 38433/09, see : www.mcreporter.info/documenti/osji_eu7.pdf.
[19] K.U. Leuven–ICRI, op. cit. (note 75), Annex III, p. 782.
[20] "Free political debate is at the very core of the concept of a democratic society." Lingens v. Austria, Appl. No. 9815/82, judgment of 8 July 1986, paragraph 42; Castells v. Spain, Appl. No. 11798/85, judgment of 23 April 1992, para. 43.

The arcane rules of licensing, from the composition of boards to the criteria for the evaluation of licensees, and the lack of public oversight of decisions, offer myriad possibilities for governments which are less than eager to cede control of television.

If boards are politically partisan, licensing criteria arbitrary or vague, and operation or judicial oversight weak, content pluralism might disappear, at least from television, despite diversified ownership.[21] The aim is to keep government or its associates from doing the job in a self-interested way. This aim can usually be achieved by setting up autonomous and inclusive licensing boards.

As the Committee of Ministers has noted, "the rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests".[22]

One of the many examples of government shortcomings is the lack of clear ownership transparency rules, or the lack of enforcement of such rules. It is impossible to break up monopolies or regain trust in media freedom if society is not allowed to know who the ultimate owners of the broadcasting firms are.[23]

4.2 Developing robust media organisations

Although the principle of pluralism disallows owners or outlets from becoming too powerful, it nevertheless requires strong media enterprises that can successfully compete and maintain their independence in the face of political or commercial pressures.

Crises of secure funding often hit the print press, which is the most eminent source of quality ethical journalism and is crucial for democracy's rational and informed debates. One wave of the crises came with the advent of television, and another is sweeping through the industry right now with the dawn of the digital era.

In addition to the worldwide crisis of the print press industry, the downward trends in media pluralism are often accompanied by parallel trends in the media business. In many countries, the independent print press is kept financially fragile by various means.

There are countries where the privately owned media have to endure administrative discrimination in every aspect of their operations. Some of these ill-conceived policies artificially delay the privatisation of state-owned press. Start-up activities may be made impossible due to discriminatory taxation, registration and licensing rules. It is not only in Italy that one finds oligarchic investment. Also hindering the strength of the media are non-media investments, made by banking, real estate or energy firms.

When journalists are criminalised under journalistic or non-journalist pretexts, it is usually the independent media that are targeted. The same is true of violence against journalists. The impunity that follows these acts also weakens the independent press.

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[21] For examples of these dangers in Hungary's media laws passed in 2010, see: "Notes on Hungary's media law package", at www.eurozine.com/articles/2011-03-01-haraszti-en.html.
[22] Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, adopted on 26 March 2008, see:
https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=Decl%2826.03.2008%29.
[23] For an excellent general discussion of the related issues, see: Mendel T. (2002) "Access to the airwaves: Principles on freedom of expression and broadcast regulation", International Standards Series, ARTICLE 19, London, at www.article19.org/pdfs/ standards/accessairwaves.pdf.

There are natural reasons, too, for this state of fragility. For example, the small-size markets of south-eastern European countries such as "the former Yugoslav Republic of Macedonia", Montenegro or Kosovo* are finding it hard to supply their media with advertisement revenues.

In order to prevent such fragility, regulation may draw on taxpayer-funded support. However, these subsidies must be content-neutral and pluralistic. The Parliamentary Assembly of the Council of Europe has encouraged governments to provide economic aid for the embattled print industry, while warning of the need to "avoid arbitrary exclusion from governmental aid programmes of periodicals published by opposition forces".[24] It has also recommended that any form of selective aid be administered only by an independent body.[25]

V. Public service broadcasting in the service of pluralism

The European standards for pluralism traditionally prescribe the founding of publicly funded broadcasting institutions tasked to provide internal pluralism of news and views. Both the formidable role of television in shaping public opinion, and the difficulties of achieving external pluralism in relatively small European markets, require every nation of Europe to set up at least one strong, easily accessible audiovisual infrastructure for objective news and reliably inclusive public journalism.

These broadcasters function as a "public service", catering to all citizens. They have received constitutional backing in most European nations, and have become a symbol of shared European cultural identity.

Public service broadcasters (PSB) operate autonomously but are regulated by detailed statutes. This is another complex part of television governance: the "science" and "politics" of establishing inclusive governing boards and funding schemes. These should keep broadcasters editorially independent of government, internally pluralistic and able to withstand the competition from their commercial counterparts.

Different standard-setting institutions of the Council of Europe have provided detailed and constantly upgraded guidelines on PSB, seeing it as an eminent tool of building trust in democracy; complementing external pluralism of the privately owned media; and supporting the positive, social goals of pluralism.

5.1   External and internal pluralism: a European-type "dual broadcasting system"

When the innovations of radio and TV were first imported from the United States, they were made a government monopoly even in democracies. Since the 1980s, the "dual" (or mixed) regime has been designed to guarantee both internal and external pluralism. The dual system institutionalises the coexistence of a publicly founded BBC-type PSB that is accessible to all, with US-type commercial, privately owned broadcasting.

American scepticism about the dilemma of government-regulated internal pluralism or public journalism regulated in law (which raises the question, "can the government really defend us from governmental influence?") is not unwarranted in the light of experience, and not only in the new democracies. Provided it works, PSB is an eminent tool to uphold democracy in smaller, fragile democracies.

The dual system is an ideal combination of external and internal pluralism. While the commercial, private media may work on the notion of "one man, one vote", highlighting the values of their own

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* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

[24] PACE Recommendation 747 (1975) on press concentrations, see : http://assembly.
coe.int/main.asp?Link=/documents/adoptedtext/ta75/erec747.htm.

[25] PACE Recommendation 834 (1978) on threats to the freedom of the press and television, see:
http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ ta78/erec834.htm.

viewers in their quest for revenues and newsworthiness, PSB can be a guaranteed infrastructure for detached, impartial newscasts both in times of and between elections, more reliable than governments, parties or the market.

PSB's inclusive remit[26] also provides a unique opportunity to strengthen all types of human rights, the rule of law, democracy and the protection of minorities. It is a unique platform for the achievement of societal goals such as civility, social cohesion, non-aggression and multicultural values.

The guidelines of the Council of Europe on PSB are among the most elaborate and detailed in existence. Their strong points are on PSB's legal framework;[27] independence in editorial matters, made possible by the independence and inclusivity of its governance (steering boards);[28] and its multiple-source funding.[29]

The importance of the institution is by no means fading in the digital era. In fact, PSB is transforming into "PSM": Public Service Media. Member states should ensure that existing public service media organisations occupy a visible place in the new media landscape. Social cohesion across all communities, social groups and generations can be supported through the careful use of PSB.[30]

5.2   Moving from state to public broadcasting in new democracies

The Council of Europe has also addressed the problems caused by the difficulties of transition from state to public broadcasting in new democracies. This transition has not been a success story.

Russia and Belarus have not even nominally founded PSBs yet. They have state channels that, in terms of political information offer choice, but only between sly propaganda and silly celebrities. PSB has been in the process of protracted legislative development in Ukraine. Moldova's PSB has struggled with political pressures.

The South Caucasus republics have created these institutions, but in practice, at least in Armenia and Azerbaijan, they are just a version of the old state TV concept, not really lending support to pluralism's cause. Opposition news is often news against the opposition. Georgia's PSB had a similar crisis period of political pressure between 2007 and 2010, but now seems to be recovering.

But the status of PSB is not much more robust in the post-1989 democracies that are members of the EU. A case in point is Hungary's PSB, which has been thoroughly re-nationalised following 2010 laws, and put under the command of a Media Council that consists solely of ruling party delegates.

The public and the political community of the new democracies, despite the difficulties caused by lack of consensus among rival parties, are convinced of the benefits of a real PSB, and cherish the creators of real public service programming. They accept the ideally human rights-centred political and cultural values of PSB. This makes it all the more necessary that the Council of Europe guidelines (and other international standards) are applied in these countries.

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[26] Committee of Ministers Recommendation CM/Rec(2007)3 Committee of Ministers on the remit of public service media in the information society, see: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1089759.

[27] According to the Committee of Ministers Recommendation No. R (96) 10, the legal framework governing public service broadcasting organisations should clearly stipulate their independence.

[28] Among others, see: Committee of Ministers Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting; Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states, adopted on 27 September 2006, see: https://wcd. coe.int/wcd/ViewDoc.jsp?Ref=Decl-27.09.2006.

[29] PACE Recommendation 1878 (2009) on funding of public service broadcasting, see: http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ EREC1878.htm.

[30] Committee of Ministers Recommendation CM/Rec(2007)3 on the remit of public service media in the information society, see: https://wcd.coe.int/wcd/ViewDoc. jsp?id=1089759.

5.3   *Pluralism in the age of the Internet*

What is needed to achieve pluralism has changed as different forms of media have been spawned. While the print press was still the main market for information, standards for breaking up monopolies were not as demanding. Regulation expanded with the advent of broadcasting and television in particular. With the development of new media, regulation has become vast, but is still easily circumvented.

The Europe-wide switch – "The Switchover" – from analogue terrestrial distribution of broadcasting signals to digitally transcribed or produced transmission signals is supposed to be completed by 31 December 2011, the date suggested by the EU Commission. This move will not only multiply the number of available channels but clearly enhance the chances of external pluralism as well.

In the era of digital convergence markets, the Internet will become the backbone of democracies' information systems. It is the carrier of an ever growing multitude of new media forms while it devours old printed and audiovisual media formats. Information flow can become (and is becoming) truly global, instantaneous and interactive. It is the audiences themselves – each and every citizen – that can become the producers of information. Editorial staff are being replaced by networks.

Democracy has been given new tools, although an unexpected danger for the public sphere has also emerged: excessive fragmentation of the information flow. Under such circumstances, the old formula of pluralism is not sufficient any more. Networking is a force of life in itself, with social media and journalistic media not quite clear yet about each other's role. Time may further detach or fuse them. Still, the rights to free expression, the free flow of information and the notion of pluralism may need to be supplemented with a new tenet, "the right to connect".

A number of governments react to the development of the Internet in much the same way as they reacted to broadcasting in the mid-20th century: with state control. But the human right to free expression today demands that the governments give the "right to connect" the same proactive protection that media diversity enjoyed in the pre-digital era. They must guarantee, as part of the right to free expression, the access of citizens to the global network.

One of the great changes under way is from scarcity to abundance. New media and communication technologies have the ability to spread content across multiple platforms, and have the capacity to support the emergence of many new content creators. The Internet-based media have become a safe haven for truly pluralistic news, but these changes also pose new potential threats to pluralism.

It might appear that nothing can stand in the way of pluralism. In reality, precluding monopolisation of ISPs is as important in the new era as television's diversification has been in the past. As noted, ISP plurality is hindered in many new democracies where deregulation is missing. Freedom from state filtering and blocking is dwindling, while mandatory blocking of content by the ISPs is a frequent legislative proposal.

The need for media providers on all platforms to have equal opportunities may become a seminal new issue. Mobile phones are today's cables – should their operators have the right to define what's downloadable? Economic interest notwithstanding, pluralism's answer is clear: there must be platform neutrality. And both the Council of Europe[31] and the EU[32] are deeply involved in the debate over new standards, which would give effect to these principles.

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[31] Declaration of the Committee of Ministers on network neutrality, adopted on 29 September 2010, see: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1678287.

[32] European Commission (2011), "The open internet and net neutrality in Europe", Communication from the Commission, COM(2011) 222 final, see: http://ec.europa.eu/information_society/policy/ecomm/doc/library/communications_reports/net neutrality/comm-19042011.pdf.

VI. Conclusions

What emerges from all of this is a sense that media pluralism is an issue that is both theoretically complex (in the way in which it is nested among other concepts about freedom of speech and the free flow of information) and practically relevant for Council of Europe member states (given the imminent dangers of media monopolisation).

However, the fact that this issue is so nuanced and so significant in the real world should not deter anyone from attempting a clear-headed examination of the current problems and the future solutions surrounding media pluralism. Indeed, it makes that lucid analysis even more necessary.