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Conflicted Union: Culture, Economics and European Union Media Policy

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CONFLICTED UNION: CULTURE, ECONOMICS AND EUROPEAN UNION MEDIA
POLICY

by

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DEDICATION

I dedicate this work to all current and future doctoral candidates.

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Thank you to everyone in the School of Journalism and Mass Communications who has been a part of my doctoral journey these past seven and a half years. I especially thank my Dissertation Committee members, Drs. August E. Grant, Kenneth Campbell, Erik L. Collins, and Jerel Rosati. I particularly thank Dr. Grant for always believing without a doubt in the relevance of my research and in my ability to complete it. I thank Dr. Rosati for always supporting me as if I was his own doctoral student and for continuing on my committee through retirement. I very much appreciate the wisdom and guidance of Dr. Campbell throughout this dissertation process along with Dr. Collins for his willingness to serve on my committee so that I could in fact complete my dissertation and graduate. I also thank Dr. Kathy Roberts Forde in her service on my committee. I especially thank Sandra M. Hughes, our Graduate Student Services Director, for all her support efforts. You all are the personification of support.

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ABSTRACT

The constant tension between internal market development and cultural preservation remain within European Union audiovisual media services regulatory policy. While market harmonization and liberalization are key to developing a formidable European media market, the preservation of and promotion of ‘European-ness’ depends upon the protection of cultural diversity, a necessity for a confederation of 27 sovereign nation-states with distinct cultures and languages. It may not currently be possible to reconcile the intrinsic duality of audiovisual media through EU regulatory policy mechanisms. However, a regulatory policy clearly that addresses the potential of cultural harmonization/economic liberalization conflict, that explicitly connects the EU’s audiovisual media cultural considerations to the cultural aspects of the European project may enable policy makers to abandon notions of “balancing” the cultural and economic, and accept the reality of the inevitable trade-off between culture and economics. This policy research study examines relevant EU policy directives to help policymakers achieve this goal.

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CHAPTER 1

INTRODUCTION

Audiovisual media are carriers and representations of culture, as well as economic commodities to be traded. As such, they are of special importance among policy makers and communication scholars, continually subject to a wide range of regulations. Over time, the scope of media regulation has expanded as governments recognize and seek to address the impact of audiovisual media services on society. The European Union (EU), a confederation of sovereign nation states, serves as a unique example of government regulation of audiovisual media.

This dissertation research, a policy study of the European Union's audiovisual media regulatory policy, aims to understand the EU's approach to audiovisual media services regulatory policy through investigating the normative underpinnings informing its regulations and policies concerning cultural diversity. Unlike previous research concerning EU audiovisual media regulatory policy, this research begins the analysis from the original point of contention surrounding media policy—the dual nature of media goods. This dissertation analyzes the EU's official audiovisual media policy directives. Moreover, this dissertation research attempts to connect the critical communication theories concerning audiovisual media to the current policy debate concerning cultural diversity promotion and protection with respect to those goods.

Critical/cultural theory examines the duality of media goods using the perspectives of the Frankfurt School, the relationship between ideology and media via a

cultural studies approach pioneered by the Birmingham School, the political and economic implications of media (political-economy of media), and the technological implications of differing mediums on communication explicated by medium theorists Innis and McLuhan. In differing ways, all of these theoretical perspectives play a role in explaining the European Union's perspective concerning audiovisual media regulation. Medium theory especially provides perspective concerning the symbiotic phenomena of globalization and convergence, both of which are increasingly relevant to European Union audiovisual media regulatory and trade policy. For these reasons, this policy research study attempts to place the inherent conflicting nature of EU audiovisual media regulatory policy within the context of the inherently conflicting nature of audiovisual media services, and also in relation to globalization and convergence.

Consequently, this dissertation research is not an analysis of EU audiovisual media regulatory policy focusing solely on the audiovisual media regulatory policies of the EU, the shortcomings of its various directives with respect to cultural diversity, the issue of cultural diversity itself, or the EU's cultural diversity policy stance on the world stage. To the contrary, this policy study applies critical/cultural theory to develop an understanding of the ideological underpinnings of European Union audiovisual media regulatory policy, to understand how these policies have come into being, and to link the cultural-economic conflict of EU policy with the cultural-economic duality of media goods.

The ultimate purpose of this policy study is to provide a multidimensional perspective for policymakers to help them reconcile this cultural-economic conflict in a converging and globalizing audiovisual media environment. But before outlining how

this dissertation research moves from an examination of theory to the development of policy recommendations, this introductory chapter provides an overview of audiovisual media's relation to and importance within society, the dual characteristics of audiovisual media and how this duality affects the European Union's perspective—especially in relation to that of the United States (US)—regarding audiovisual media and its role in society. In closing, this chapter discusses the current state of research regarding EU audiovisual media regulatory policy and provides an outline of this dissertation research, which attempts to provide a new way of understanding and analyzing EU audiovisual media regulatory policy as well as providing policy recommendations based on this unique understanding.

Humans have the distinct capability of developing many different systems of communication. The media comprise one such system of communication, and the development of media systems within nations reflects the role communication plays in the development of nation-states and national culture (Anderson, 1991). Serving as both a reflection and carrier of culture, audiovisual media, e.g. television and film, are cultural artifacts of sorts (Middleton, 2003). The ubiquitous nature of audiovisual media makes them an essential transporter of cultural expression (Bishop, 1997: 187 in Middleton, 2003: 614). The wide dissemination of television programs and films that link people (via actors) to places (via locales) further imparts a special importance onto audiovisual mass media, linking it to cultural reception (Collins, 1990) and cultural identity. Yet, audiovisual media are also economic commodities, services and goods for sale, trade and consumption. The dual identity of audiovisual media—cultural artifact and economic commodity—complicates regulatory policymaking for audiovisual media in general,

especially concerning issues pertaining to cultural identity and cultural diversity. Furthermore, technological advances in communication and the current globalization trend challenges the notion of having and preserving a distinct national cultural identity.

The phenomenon of convergence plays a key role in the globalization process, further complicating the cultural role of audiovisual media with its economic functions. Understood as “the blending of the media, telecommunications and computer industries, and the coming together of all forms of mediated communication in digital form” (Burnett & Marshall, 2003: 1 cited in Grant, 2009: 5), convergence enables the dissemination of audiovisual media to people in locations around the world across many different delivery platforms. Diffusion of broadband and mobile technology continues to increase, increasing the ability of visual cultural products to move beyond the nation of production. As a result, symbols previously associated with and linked to a specific national society can be transferred beyond national borders.

With the increasing interconnectedness of economic markets and the ability to communicate across time and space via the Internet and other information technologies, geographical borders become less important (Waters, 1996; Featherstone, Lash, and Robertson, 1995; Wriston, 1992). The circulation of cultural symbols beyond geographic borders via convergence helps produce and enhance the globalization process. As an enabler, driver and major component of globalization, the question is whether convergence exacerbates the conflicting cultural/economic characteristics of audiovisual media, helping create an increasingly a culturally void environment that enables the economic aspects of audiovisual media to dominate their cultural characteristics.

This dissertation research investigates if and how globalization and convergence factor into the EU's audiovisual media regulatory policy stance concerning the cultural aspects of audiovisual media. The research also ponders another issue concerning EU's audiovisual media regulatory policy: why the EU still attempts to maintain a cultural-economic regulatory policy balance, despite technological and political-economic ideological forces potentially eclipsing the cultural characteristics of audiovisual media goods in favor of their economic ones. Furthermore, this policy study examines if audiovisual media regulatory policies that do not adequately address this cultural-economic issue can truly promote and protect cultural diversity.

Historically speaking, European countries esteem the cultural aspects of audiovisual media to a greater degree than the United States. The 2013 trade talks between the EU and the US regarding audiovisual media services (AVMS) illustrate this difference in perspective. Trade negotiations for audiovisual media came to a standstill, with the French Culture Minister, Aurelie Filippetti, proclaiming "France defends and will defend the cultural exception to the end—that's a red line" (John & Sop, 2013). The statement evokes a sentiment for which France is known worldwide: a fierce defense of culture in all its aspects, all its forms, all its personifications.

While the two trade blocs had come to agreement concerning EU Member States' "[retaining] subsidies and quotas for traditional media," the French would not agree to allowing unfettered competition between the EU and the US "in the rapidly developing Internet and digital areas, including TV on demand. . ." (John & Sop, 2013). France maintained it was in its rights to refuse inclusion of a protected sector (in this instance, culture) as a good to be traded as any other commodity. In fact, the European Union

requires that any trade deals concerning “cultural issues [have] unanimous support,” further bolstering France’s position (Sop & Emmott, 2013). The French eventually agreed to a concession excluding audiovisual media goods/services from inclusion in trade talks, but giving the European Commission (Commission) authority to request Member States consider a “broader mandate at a later stage” (Sop & Emmott, 2013).

This trade spat is par for the course with respect to audiovisual media trade between the EU and the US. On one hand, one can attribute the conflict to the different perspectives each has concerning audiovisual media goods/services: the US treats audiovisual media as goods/services to be traded as any other commodity whereas the EU maintains audiovisual media goods/services are both cultural and economic in nature, making them more than mere commodities. Actually, the EU’s insistence of unanimous agreement between Member States concerning cultural issues indicates the level of importance it places on culture and matters concerning it. On the other hand, the EU/US conflict concerning audiovisual media trade might stem from the trade imbalance between the two: between 2004 and 2011, US trade surplus with the EU for audiovisual media industries averaged \$2B/€1.5B per year. As digital and Internet audiovisual media services, dominated by US companies, increase in popularity, the trade imbalance could widen ever further (Sop & Emmott, 2013). But perhaps there is a third consideration regarding this audiovisual media goods/services trade dispute, along with past disputes and future ones yet to occur: that the EU and the US have fundamentally different views concerning the cultural aspects of audiovisual media goods/services.

While the EU considers both the cultural and economic aspects of audiovisual media with respect to its regulatory and trade policy, its audiovisual media regulatory

policy reflects the complex and conflicting dual nature of audiovisual media. The roots of this dilemma are found within the dual nature audiovisual media themselves, being both cultural and economic entities. Nonetheless, the overwhelming amount of research concerning the EU's audiovisual media regulatory and trade policy focuses on issues pertaining to cultural diversity. Focusing on cultural diversity overlooks the fundamental issue of the duality of audiovisual media and how it complicates audiovisual media regulation. Submerging the root causes of the EU's regulatory and trade policy clashes concerning audiovisual media goods for simplistic, ahistorical arguments subverts developing policy that reconciles cultural diversity with globalization.

A great deal of policy research about EU audiovisual media regulatory policy focuses on its cultural diversity stance related to disagreements and conflicts with the United States via the World Trade Organization (WTO) regarding liberalization of audiovisual media trade, which is tied to the EU's audiovisual regulatory policy (Garrett, 1994; Karpe, 1994; Van Harpen, 1995; Wheeler, 2000; Herold, 2005; Pauwels, De Vinck & Van Rompuy, 2007; Ward, 2008). Ward (2008) questions the ability of the EU to justify its monetary aid schemes to public broadcasters amidst complaints from Member States' commercial broadcasting entities. Ward highlights the conflicting role of EU audiovisual media regulatory policy to bring about market harmonization while at the same time "balancing [the right of] Member States allocating state aid to sectors to achieve certain social, cultural and economic and non-economic objectives and the possibility of distortions to the internal market" (Ward, 2004 in Ward, 2008: 61). Pauwels, et al. (2007) also interrogate policies providing aid to film sectors (in line with state aid to public broadcasting, Member States also receive funding from the EU for the

purposes of promoting cultural diversity and European works) in the face of both EU and WTO liberalization efforts.

Pauwels, et al., point out the conflict between the histories of individual Member States' providing support to the audiovisual sector based upon their own individual regulations as opposed to supranational EU regulations placing stipulations on such aid (2007: 25). This conflict reflects the Commission's desire to "isolate [the] cultural from [the] industrial aspects of film production" (Pauwels, et al., 2007: 30). In other words, the dichotomy of the Commission's stance regarding regulation of film reflects an inability to reconcile the economic and cultural characteristics of this particular audiovisual media good. Pauwels, et al., assert that the main question is how far the EU will be able to drift from the "liberalist approach [that] lies at the base of [their policy] approach," or rather, if EU is at a point where such precarious balancing of cultural diversity and market liberalization aspirations is close to a tipping point toward the latter (2007: 23).

Research about EU regulatory policy also focuses on the shortcomings of its official directives concerning audiovisual media goods/services (McDonald, 1999; de Smaele, 2004; Middleton, 2003; Wheeler, 2004; Nenova, 2007; Herold, 2008; Nenova, 2007), especially with respect to convergence (Arino & Llorens, 2008; Burri-Nenova, 2007; Doyle, 2007; Wheeler, 2007). These directives include the 1989 and 1997 Television without Frontiers Directives (TVWFD), the 2007 Audiovisual Media Services without Frontiers Directive (AVMSD), and 2010 Audiovisual Media Services Directive (AVMSD). Arion and Llorens (2008) and Burri-Nenova (2007) question the ability of the 2007 AVMSD to effectively deal with the issue of convergence. Arion and Llorens point out that convergence makes it that much more difficult for regulators to deal with the

complexity of content regulation. As content becomes available through non-linear delivery systems (on-demand services), the question becomes how to incorporate content regulation initially developed for linear television viewing, and whether such regulation should be incorporated at all. This question especially concerns the 2010 AVMSD's ability to preserve public service goals with respect to content. Arion and Llorens argue the latest AVMSD (2010) remains inadequately equipped to effectively address challenges regulators now face in a convergence environment (Arion & Llorens, 2008: 142). Burri-Nenova (2007) also points out the shortcomings of the first AVMSD in effectively dealing with the issue of convergence.

Burri-Nenova (2007) asserts that the first AVMSD fails to truly deliver cultural diversity, despite its being a consistent goal of EU audiovisual media policy. Burri-Nenova addresses the inherent duality of audiovisual media services, pointing out the inability of current EU institutions to resolve these "conflicting values" (Burri-Nenova, 2007: 1698). Moreover, Burri-Nenova argues that as long as what qualifies as a European work "is neither based upon originality and quality criteria nor [requires the] particular expression of national and European themes," using such criteria to also determine cultural diversity for non-linear programming remains flawed (Burri-Nenova, 2007: 1707). That is to say, until the EU can clearly define what it means by the promotion and protection of cultural diversity, the way in which these goals manifest themselves in audiovisual media policy will continue to be problematic, especially as it concerns convergence. Wheeler (2007) also echoes this concern of the 2007 AVMSD's ability to effectively promote cultural diversity in a converging media environment.

In line with Burri-Nenova, Wheeler asserts that failure to clearly define what constitutes European works further limits the ability of the 2007 AVMSD to be useful in using quota mechanisms as a cultural diversity yardstick for non-linear audiovisual programming. Furthermore, the failure of this AVMSD to deal with issues of ownership, which relate to media pluralism and cultural diversity, also limits its effectiveness to truly promote and preserve cultural diversity in a converging media environment (Wheeler, 2007). This again reiterates the conflicting nature of EU audiovisual media policy, attempting to balance the development of a “strong European communications economy by opening up multimedia opportunities, boosting competition and consumer choice, while protecting minors, cultural diversity and the plurality of provision” (Wheeler, 2007: 245). The issue is how long this tenuous balance between economic and cultural objectives can be maintained in a technologically converging age.

Current research in European Union audiovisual media policy does not deeply delve into the originations of the normative and ideological underpinnings forming the complexity its policy. Additionally, previous research into EU media policy neglects holistically addressing the contributions of critical/cultural media and communications theory to the ongoing cultural diversity debate. Taking these points into consideration, research should not merely concentrate on whether or not the EU uses cultural diversity arguments as a shield for trade protectionism, nor should it focus on the validity of the EU’s regulatory policy stance concerning the cultural diversity/promotion of audiovisual media goods. Perhaps approaching the issue from a different perspective is more useful. One option is for research to focus on how the EU addresses the intrinsic conflicting nature audiovisual media goods/services within its corresponding regulatory policies.

This dissertation begins with an examination of the development of European Union audiovisual regulatory and trade policy from the first 1989 Directive regarding television programming to the present directives concerning audiovisual media services and electronic communication networks. Chapter two, *Background: EU-level Policymaking & AVMS Regulatory Policy Development* provides background on the development of EU audiovisual media services regulatory policy, covering the evolution of supranational policy creation within the EU, especially audiovisual media regulatory policy.

Chapters three and four then apply critical cultural media theory to explore the duality of audiovisual media and the potential implications of this duality and convergence on EU audiovisual media regulatory policy formation. Chapter three, *Media Duality: Culture, Economics & EU AVMS Regulatory Policy*, looks at the concept of culture and its relation to European identity and cultural diversity. This chapter also examines the dual nature of audiovisual media goods, exploring the origins of the cultural diversity perspective through examining cultural studies, communication and ideology, the Frankfurt School with respect to commodification of cultural products, and political economy of media. The chapter analyzes the perspectives of each in order to draw parallels with the current cultural diversity—economic debate concerning access to and dissemination of audiovisual media. Chapter four, *Convergence, Globalization, Cultural Identity & EU AVMS Regulatory Policy*, through examination of Innis' and McLuhan's medium theories, investigates the complementary role technological convergence and globalization have with each other and how the two increasingly bring into question the

relevance of audiovisual media policy aimed at protecting cultural diversity. The study then employs document analysis methodology for the last three chapters.

Chapter five, *Dissertation Research Methodology & Method*, explicitly details the document analysis approach undertaken in this dissertation policy research. This includes detailing the process of selecting the specific documents used in the document analysis. The methodology section also specifies the coding and categorization process employed in document analysis. Chapter six then uses this methodology to carry out the policy research study, analyzing the relevant directives. Chapter six, *Cultural Diversity, Cultural Identity & Convergence: EU AVMS Regulatory Policy Findings*, is a culmination of the analysis of various documents pertaining to EU audiovisual regulatory policy, i.e., results from document analysis. The chapter evaluates the EU's twin goals of protecting cultural diversity and developing a single harmonized internal market, how its desire to attain European identity solidarity may factor into its audiovisual media regulatory policies, and how EU audiovisual media regulatory policy deals with convergence in relation to cultural diversity.

Lastly, chapter seven, *Where The EU Stands: Blueprint for a Culturally Diverse Converging, Globalizing World*, reviews the findings from chapter six, discussing EU audiovisual media regulatory policy with respect to convergence and exploring the potential ability of convergence to help create a European identity and/or exacerbate commodification of the cultural aspects of audiovisual media goods. The chapter assesses the impact of convergence and globalization, and interconnected relationship between the two concerning audiovisual media along with implications for future EU media regulatory and trade policy, the rest of the world, and media and communications theory.

After addressing study limitations and future research suggestions, the chapter concludes with a discussion of how this new approach can be put into practice through the current EU policy mechanisms in place.

CHAPTER 2

BACKGROUND — EU-LEVEL POLICYMAKING & AVMS REGULATORY POLICY DEVELOPMENT

This dissertation research focuses on EU-level audiovisual media policy developed at the supranational level. A historical understanding of the development of European audiovisual media markets, from its public broadcasting roots to the EU's desire to achieve market harmonization while preserving cultural diversity, is necessary to provide a foundation for the developments that will be discussed in later chapters. Knowledge of EU institutions and their role in developing audiovisual media policy aids in understanding how supranational policymaking came into effect within the European Union. This chapter gives a brief history of the European Union's origins, discusses the four primary institutions of the EU, and details the development of EU-level policymaking, EU audiovisual media regulatory policy, and the twin drivers—economics and culture—of EU audiovisual media regulatory policy.

2.1 The EU: A Brief History

Emerging from WWII, Europe's economy, infrastructure and political systems were in shambles. Europe's main concern was preventing another continental war, ending the history of conflict between France and Germany (Jenkins, 2008). Achieving harmony between the historically belligerent nations was key to WWII peace (Wood & Quaisser,

2008; Dinan, 2005). Long lasting peace for the region centered upon the “reconciliation among these hereditary enemies” (Wood & Quaisser, 2008: 5). From this concern arose the European Coal and Steel Community (ECSC). Thus, a spirit of pragmatism was the basis of a union of Europe: economic integration seemed the primary means through which future conflict could be prevented (Dinan, 2005: 13). Established in 1951 via the Treaty of Paris, the ECSC integrated the coal and steel industries of Belgium, the Netherlands, Luxembourg, France, West Germany, and Italy (European Union, 2011b). From these six countries, the 1957 Treaty of Rome established the EEC (European Economic Community) and EURATOM (European Atomic Energy Community) (European Union, 2011b; Dinan, 2005).

Not until 1967 were these three institutions “formally merged into the single European Community (EC), creating a single Commission, Council of Ministers, and the European Parliament” (European Union, 2011b; Dinan, 2005). Between 1973 and 1981, the European Community underwent three expansions with Denmark, Ireland and the United Kingdom entering in 1973, Greece entering in 1981, and Spain and Portugal entering in 1986. The Maastricht Treaty on European Union saw the formal creation of the European Union in 1993, further integrating the EC. The Maastricht Treaty formed the foundation for foreign and defense policy cooperation, judicial and internal affairs, and created economic and monetary union (European Union, 2011b). After its 1995 expansion to Austria, Finland, and Sweden, the EU began moving toward a single currency—the Euro—in 1999, with full transactional use beginning in 2002. The EU underwent further expansion in 2004 and 2007 by including the former communist

TABLE 2.1: Key dates in the European Union

YEAR		
SIGNED	IN EFFECT	EVENT
18-Apr-1951	23-Jul-1952	Treaty of Paris establishes the European Coal and Steel Community [ECSC] consisting of Belgium, the Netherlands, Luxembourg, France, West Germany and Italy
25-Mar-1957	1-Jan-1958	Treaty of Rome establishes European Economic Community [EEC] and European Atomic Energy Community [EURATOM]
8-Apr-1965	1-Jul-1967	Merger Treaty [Brussels Treaty] creates single Commission and Council to serve the EEC, EURATOM and ECSC. Repealed by Treaty of Amsterdam.
22-Jan-1972	1-Jan-1973	Denmark, Ireland and the United Kingdom enter the European Community [EC]
	1-Jan-1981	Greece joins the EC
	1-Jan-1986	Spain and Portugal join the EC
17; 28 Feb 1986	1-Jul-1987	Single European Act signed, streamlining decision making process and institutions within the EC
7-Feb-1992	1-Jan-1993	Treaty on European Union / Maastricht Treaty establishes the European Union, forming foundation for foreign & defense policy cooperation, judicial and internal affairs. Single market created along with economic and monetary union.
	1-Jan-1995	Austria, Finland and Sweden join the EU
	1-Jan-1999	Launching of the Euro, single monetary currency of the European Union.
	1-Jan-2002	Full transactional use of Euro begins
	1-May-2004	Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia join the EU
	1-Jan-2007	Bulgaria and Romania join the EU

Central and Eastern European countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia in 2004; Bulgaria and Romania in 2007.¹

2.2 EU Institutions

Decision making in the EU involves four primary institutional bodies. These include the European Commission, European Council, Council of Ministers (also known as the Council of the European Union), and the European Parliament (EP). The legislative process formally involves the Commission, Council of Ministers and Parliament (European Union, 2011a). The institutional offices of the European Union are located in Brussels, Luxembourg and Strasbourg, with Brussels serving as the main headquarters. The primary responsibility of the Commission is proposing policy initiatives within the European Union (Dinan, 2005: 210; European Union, 2011a). Before recommending new initiatives, the Commission develops “impact assessments” of the proposed policies, analyzing their possible benefits and disadvantages (European Union, 2011a).

Through working with non-governmental organizations (NGOs), industry and local governments, the Commission tries to craft policies useful to those who will be affected by them. The Commission originates policy research, which is then taken up by the Council of Ministers. There are a total of 27 commissioners (one from each EU country) in the Commission. Each commissioner is appointed to a specific policy area of the Commission. After agreement is reached among the European Council, legislative

¹ Croatia joined the EU in 2013.

activity commences in the EP. This effectively means the Commission is the primary generator of policy in the different policy areas defined as being under the purview of the European Union (Dinan, 2005: 210–213; European Union, 2011a).

Politically speaking, the next most powerful institution in the European Union is the European Council. This entity consists of heads of state of each member country, which typically meets four times each year. Gaining formal institutional status in 2004, the Council's primary purpose is providing "strategic direction by considering the EU's and the Member States' policies and priorities as an organic whole rather than as separate and competing ingredients" (Dinan, 2005: 239). In short, the European Council determines the political direction of the EU, meeting to "adopt laws and coordinate policies" on behalf each statespersons member state (European Union, 2011a).

The Council of Ministers has "supreme decisionmaking authority" within the EU (Dinan, 2005: 247). The Council of Ministers consists of representatives from each Member State appointed to different ministerial committees "authorized to commit the government of that member state" to EU policies (Dinan, 2005: 245). The Council of Ministers passes EU laws and coordinates the overarching economic policies of Member States among other duties (Wallace, 2000a; Europa.eu). Both the Council of Ministers and the EP have the final authority on legislation proposed by the Commission. However, the Council of Ministers can block legislation from parliamentary consideration.

Lastly, there is the European Parliament, which is directly elected by citizens via European Union-wide elections every five years (Dinan, 2005: 259; Europa.eu). Parliament debates legislation submitted by the Commission and works with the Council of Ministers to pass laws. While the EP is cannot initiate legislation, it does have the right

to submit amendments to legislation and have the Commission and Council of Ministers recognize those amendments (Dinan, 2005: 278). The EP also works with the Council of Ministers in determining the EU budget and in supervising both the Commission and the Council of Ministers (Dinan, 2005; European Union, 2011a).

Complementing the European Union's legislative institutions are its judicial ones, namely the European Court of Justice (ECJ) (Dinan, 2005: 289; Wallace, 2000a; European Union, 2011a). The ECJ settles legal disputes between the governments of Member States and institutions of the EU, ensures the equitable application of EU laws within all Member States and considers cases brought before it by citizens, businesses or organizations in the EU (European Union, 2011a). The ECJ played a pivotal role in deepening European integration. While having been accused by some of judicial activism, the ECJ's decisions concerning a wide variety of legal issues pertaining to integration have had and continue to have a great impact on the EU's political development (Dinan, 2005: 289). During the period of "Eurosclerosis," where little political, economic or institutional change occurred within the EU (Dinan, 2005: 69), the ECJ began laying the foundations for integration by developing case law from various cases appearing before it.

Alter (2001) attributes the establishment of supranational regulatory authority to the Court's legal decisions, as both private interests and national judiciaries both used it to promote their own agendas. Private interests sought to reopen legal matters at the highest judicial level; judges in Member States sought to "escape national hierarchies and the constraints of national law" (Alter, 2001: 3). Through private litigants raising legal cases and national courts referring them to it, the ECJ advanced integration by expanding

the reach and scope of European law (Alter, 2001:3). This developed a constant tension between those seeking higher authority to change law through supranational means and those wishing to use national mechanisms (Alter, 2001). Each case brought to the court by individuals, organizations and national governments further established the importance and relevance of European law and strengthened its integration through the establishment of supranational legal precedent. This process of institutionalization was key in the development of the EU, especially as it concerns supranational policy development (Wallace, 2000a: 23).

2.3 Development of EU Supranational Policy Mechanisms

The development of supranational policy mechanisms in the European Union is predicated upon institutionalization. Institutionalization in the EU occurs when rules, supranational organizations and transnational society work to move the EC from an intergovernmental to supranational institution (Sandholtz, 1998: 135; Wallace, 2000a; Alter, 2001). As national governments begin forming policy around these variables, the intertwining nature of these variables can create “path dependence effects or gaps in principal controls over agents,” which can effectively block national governments’ abilities to “pull policymaking back toward an intergovernmental or national mode” (Sandholtz, 1998: 136).

While the Commission, Council of Ministers and EP develop and enact legislation, there is no impediment to citizens and governments challenging the encroachment of the European Union upon their own interests via the ECJ. And there is no impediment to citizens and member state government’s using the ECJ to promote their

own interest when national governments fail to do so (Alter, 2001). The ECJ also works to mandate state compliance with European regulations. Thus, movement within the intergovernmental—supranational continuum moves toward the supranational end.

This process is not an automatic occurrence within the EU. Additionally, not all variables are present and accounted for in different policy areas (Wallace, 2000b). Yet, in some cases, all three variables work to effectively overtake policymaking attempts of national governments. Furthermore, there are certain definitive conditions under which supranational authority expands. According to Sandholtz (1998), there are generally four conditions under which supranational authority expands: 1) Member States are willing to more fully submit to supranational expansion in matters dealing with and/or affecting commerce; 2) interests within Member States outside of national governments must also desire more cohesive policies, which predisposes them to desire supranational authority; 3) no threat to state sovereignty—perceived or real—can occur, otherwise attempts at supranational authority will be thwarted; 4) supranational authority must be perceived to be in the best interests of those involved to support a supranational entity and cede authority to it (Michalis, 2007). An example of this supranational authority process was the development of EU-level regulation of European air transport.²

In the case of European air transport, liberalization and reregulation of the sector at the supranational level was achieved through decisions made by the Council of Ministers, lobbyists pushing for economic liberalization across national boundaries at the supranational European level, the ECJ handing down key decisions concerning air

² While most policy areas (social, environmental, agricultural, economic, etc.) are covered by/regulated at the EU level, the Common Foreign and Security policy—European Security and Defense Policy—is an intergovernmental affair where Member States act on their own behalf in cooperation with other Member States (Dinan, 2005).

transport policy and the eventual relinquishing of transport policy directives to the Commission (O'Reilly & Sweet, 1998). The end result of this process was the regulation of air transport falling under the authority of the European Union (O'Reilly & Sweet, 1998: 164). The ECJ played a special role in this process through its interpretation of competition rules outlined in the Treaty of Rome and its interpretations of the Council of Ministers' role in air transport policy (O'Reilly & Sweet, 1998: 173). This example demonstrates that European Union policy is a culmination of institutionalization stemming from the degree of latitude in interpretation of Treaty law, which enables supranational regulation of a policy area. This process is evident in the evolution of both European Union telecommunications policy and audiovisual media policy.

2.4 EU Supranational Regulatory Policy Mechanisms: Telecommunications & Audiovisual Media

2.4.1 Telecommunications

The development of telecommunications regulation in the EC provides another historical example of how rules, supranational organizations and transnational society coalesce to stimulate the formation of a supranational policy in conjunction with the four definitive principles outlined (Sandholtz, 1998). This historical case also provides context and background for the development of EU regulatory and trade policy concerning audiovisual media. Sandholtz puts forth the theory that:

Rising levels of exchange across national borders (trade, finance, production, mergers, and acquisitions) increases the demand for state-of-the-art, pan-European telecommunications services, which in turn leads to demands by transactors for policy integration. We would expect

transactors to exploit whatever opportunities European institutions afforded. We would further expect European organizations like the Commission and the Court to use existing rules in creative ways so as to advance integration. Member-states will frequently oppose or obstruct telecommunications policy integration, but they can be outflanked. The result should be movement toward supranational policymaking: new European rules, European organizations, and an expanding transnational society in telecommunication. (1998: 137)

In effect, this is how a European telecommunications policy came to be in the EC.

The progression of integration brought with it an increase in the need for intra-European communication. The development of the integrated circuit and digitization of communications helped spur the technological revolution in information and data services by allowing the sending and receiving of more and varied information over telecommunications channels. This transformation brought forth new equipment and service capabilities, an increase in demand for network access and customers by new telecommunications market entrants and existing firms' realization that their own "competitiveness depended on access to those new devices and services" (Sandholtz, 1998: 140). Thus, the regulation of telecommunications was effectively linked with commerce.

Transnational societal actors affected by telecommunications policy—or lack thereof— begin coalescing around the issue of harmonization and innovation, pressuring national governments for progress. These actions carried out by those actors effectively

joined them with European Community institutions in Brussels in the push toward EC oversight and regulation of telecommunications policy. With the clamoring of transnational societal actors in favor of a European policy, any unwillingness by member-states to conform to telecommunications policy integration placed them in the role of prosperity obstructionists. Therefore, the EC utilized the lack of a cohesive telecommunications policy to its advantage.

In exploiting the commerce directives of the Treaty of Rome, the Commission effectively tied telecommunications harmonization and standardization to EC economic development. With the help of the ECJ, member states could no longer defend “inefficient” state-owned PTTs (Post, Telegraph, and Telephone) that threatened to deprive the Community of participation in the fruits of technological innovation and weaken the EC’s ability to compete with other developed nations. Consequently, the way in which the Commission and the ECJ interpreted articles in the Treaty of Rome formed the basis of the Community’s supranational authority (Sandholtz, 1998; O’Reilly & Sweet, 1998; Sbragia, 1998). A pattern for the expansion of supranational authority seemed to occur through the development of norms, internal and external pressure regarding norms and the codification of established and/or desired norms (Sandholtz, 1998; O’Reilly & Sweet, 1998; Sbragia, 1998).

Thus, between 1970s and 1980s, the utilization of rules (Commission via the Treaty and the ECJ), transnational societal actors (businesses, consumers, telecommunications producer and service providers market entrants) and formation of supranational organizations pushed the integration agenda forward, transforming telecommunications policy from a failed intergovernmental excursion into a consolidated

European policy (Michalis, 2007; Sandholtz, 1998). Harmonization and standardization of telecommunications reduced barriers to development and trade between European countries. The removal of barriers aided in the development of European telecommunications entities, capable of operating across national borders. The same logic can be seen in the development of audiovisual media policies within the European Union.

Individual countries are responsible for implementing the regulatory directives of the European Union. However, it is the EU that sets the guidelines and rules in matters concerning common interests, reflecting previous telecommunications policy development. One overarching theme in the Treaty concerns the elimination of barriers to trade within the European Economic Community. Articles 59 through 66 deal with the free movement of services (Treaty, 1957: 24-26). The Treaty establishing the EEC contains commerce directives but not explicit guidelines pertaining to specific industries. However, the alignment of interests between Member States and interested parties within them (Alter, 2001; Wallace, 2000a) provided motivation for the development of cohesive policies for elements that could in some way connect to commerce issues. It is from these articles that the EC increased its regulatory powers of telecommunications.

Throughout the chapter dealing with services in Title III, *Free Movement of Persons, Services and Capital*, the Treaty of Rome only names three specific industries under direct purview of EEC regulatory domain: transport, banking and insurance services (1957: Article 61). Otherwise, the treaty is vague on regulation of services. However, Article 64 of the Treaty provides the impetus for increased EU supranational regulatory powers in other areas of commerce, entreating Member States to enact the “liberalisation of services beyond the extent required . . . if their general economic

situation and the situation of the economic sector concerned so permit” (Treaty, 1957: Article 64). The open nature of this Article provides an opening for increased regulation of industries and/or matters of commerce tied to the economic prosperity of Member States. Such interpretation of Article 64 also serves as the basis of audiovisual media regulation within the EU. As with telecommunications before it, development of audiovisual media regulatory policy at the supranational EU level is also based on the assertion that supranational regulation is more efficient.

2.4.2 *Audiovisual Media*

Policy at the supranational EU level is undertaken when it is believed to be more effective than national action (De Burca, 1998; Gonzalez, 1995 in Huijgh, 2007: 209). Cultural industries, which include audiovisual media, having been effectively linked to the future economic prosperity of the EU, make it a policy area more effectively handled at the supranational level (Huijgh, 2007). A key 1974 ruling by the ECJ paved the way for EU expansion into audiovisual media policy matters by declaring broadcasting as a service (de Smaele, 2004: 165). Furthermore, the convergence of audiovisual media and telecommunications (Katz, 2005) makes solely nationally enacted legislation “structurally and substantially inadequate” (Huijgh, 2007: 210).

Media policy within the European Union principally deals with audiovisual or even more specifically audiovisual broadcasting policy (de Smaele, 2004: 164; de Smaele, 2007: 118). This scope is both the result of lobbying by transnational actors comprising the European Broadcasting Union (Goldberg, Prosser and Verhulst, 1998: 8 cited in de Smaele, 2007: 118) and the “strategic economic, cultural and social role of

television and video [that] dominate the entertainment scene in Europe” (de Samele, 2007: 118). Individual Member States are the principle regulators of their audiovisual media sectors. For many Member States, fostering cultural diversity and protecting national character serves as the main focus of public policy (Luff, 2004: 1071). Member States indeed differ in how they feel about European integration and liberalization policies, wary of potential impositions to individual liberties and freedom of expression by supranational regulation (Middleton, 2003: 616). Nonetheless, it is EU institutions that set forth regulatory policy directives; Member States must then legislate these regulations and enact them accordingly.

Granted, the EU has no explicit mandate to shape audiovisual media policy. But the commerce implications of such policies allow for its role as policymaker. According to Reding (2002), “the legal bases [of media policymaking] are horizontal . . . designed to achieve general objectives of the Community, especially the completion of the internal market” (Reding, 2002: 7 cited in Jakubowicz, 2007: 210). The linking of media with EU economic development is also reflected in the relocation of the Directorate for audiovisual policy being moved to the Information Society and Media Directorate-General within the Commission from its previous Education and Culture Directorate-General (Jakubowicz, 2007: 211). This reflects the necessity for a regulatory framework at the supranational European level that acknowledges the role modern day communications play in current and future economic development of the EU (Jakubowicz, 2007; Huijgh, 2007).

Institutionalization of audiovisual media regulatory policy at the supranational EU level indeed originally stems from an economic purpose. Technological convergence led

to convergence in policymaking concerning audiovisual media goods and telecommunications. European policymaking regarding audiovisual media goods has taken the “policy objectives of free market approach and a central supervisory authority for all media and telecommunications services” (Katz, 2005: 42). Yet, pursuit of supranational regulation did not spring forth from a policy vacuum nor is it entirely based upon economic concerns. Audiovisual media regulation at the European Union level is the culmination of the legacy of the public service broadcasting roots of Europe, the cultural foundations of Member States concerning audiovisual media goods, and the economic aspirations of both Member States and the European Union.

In contrast to the United States, European countries primarily developed public broadcasting systems during the postwar period. Almost all European countries broadcasting industries were completely state funded, with the directive of serving the public interest (McChesney, 2001). In postwar Western Europe, broadcasting was a public service “to be produced and distributed by institutions and by mechanisms guaranteed by the state and other than that of a market economy” (Brants & de Bens, 2000:8 in Michalis, 2007: 34). Based upon serving the needs of citizens, the intent of public broadcasting was both the education and entertainment of citizens through culturally diverse programming available through universal service (Katz, 2005: 27). Public service broadcasting traditions have varied between individual Member States. For instance, France has maintained a rigorous regulatory approach; until very recently the United Kingdom public service broadcaster operated under a loosely defined public service remit; German public broadcasting was given a clearly defined role via the

Federal Constitutional Court “laying a very special emphasis on broadcasting’s democratic purposes” (Humphreys, 2007: 96).

The democratic impetus of public service broadcasting, treating citizens as individuals to educate and entertain while offering diverse programming have carried over into European audiovisual media regulatory policy. The rise of new communications technologies continually raises tensions between maintaining the public service tradition (Sarikakis, 2007: 74-75) and a “cultural programming policy” representing cultural, regional, and language diversity (Katz, 2005: 26-27). But these cultural vestiges still remain evident in European media policy initiatives. Liberalization of audiovisual media policies is predicated upon convergence and the desire to develop a harmonized European media market as well as maintain the cultural legacy of public service broadcasting are evident in EU audiovisual media policies. This dual goal for EU audiovisual media policymaking is evident in how it describes the economic and cultural importance of audiovisual media services to the EU:

Content industries are not only crucial to cultural diversity; they are also of paramount importance for the economy of the European Union. With the internet, media content, be it made of images, sound or written words can be distributed and accessed in a variety of ways and EU policy is evolving to reflect this new situation. In the audiovisual field, the role of the European Union is to create a single European market for audiovisual media services. It is also required to take cultural aspects into account in all its policies. (Digital Agenda for Europe, 2014)

The EU has embarked on a dual policy of trade liberalization and cultural preservation in its efforts to create a formidable media market. These two objectives are arguably contentious and conflicting (Bruner, 2008; de Smaele, 2004; Wheeler 2004; Middleton, 2003; Galperin, 1999). However, the goals are rooted in two things: the original desire of the EEC to liberalize trade among Member States, and the desire to protect and promote the flowering of European cultures espoused in the Maastricht Treaty. These conflicting goals manifest themselves in both the economic and cultural focus evident in EU audiovisual media policy. However, the perceived economic benefits of cultural goods also factors into the conflicting nature of EU audiovisual media regulatory policy.

2.5 EU Audiovisual Media Regulatory Policy Duality: Economic Focus

The significant role communication plays in the economic development of nation-states and national culture is reflected in the development of media systems within nations. This significant and increasingly important role that services play in the economic security of mature, developed economies are of vital importance in understanding the motivations of the European Union with respect to its stance on cultural diversity. Indeed, telecommunications and media, i.e. creative industries, are identified as engines of economic growth, especially for post-industrial societies (Flew & Cunningham, 2010; Banks & O'Connor, 2009; Cunningham, 2009; Urey, 1995). This linkage of creative enterprise—including audiovisual media goods—to economic prosperity is indicative of the overall push toward neoliberalist ideals to further extend commodity terms to goods that also serve as conveyors of culture.

Beginning in the 1980s, an “ideology of decontrol and deregulation” (McNamara, 1998: 52) took hold of mature, industrialized countries, including those of Western Europe. Neoliberalist ideals were evidenced in the breaking up of PTT monopolies as well as through challenges to public service broadcasters within the European Union. By the 1990s, neoliberalism became synonymous with globalization. Even the use of the term creative industries is attributed to further encroachment of neoliberalist ideals in media policy. According to Freedman, focusing on the economic potentialities of audiovisual media goods is part of a “neo-liberalization of media policy designed to . . . assist the expansion of private accumulation and to undermine the legitimacy and existence of non-profit and public service media provision” (Freedman, 2008: 224). Indeed, critics of neoliberalism link it to the process of globalization via the term ‘neoliberal globalization’, an economic process principally concerned with “private property and uninhibited market forces [wary of regulations that] undermine market efficiency” (Scholte, 2005: 1 in Flew & Cunningham, 2010: 118).

The evolution of European Union media policy reflects market liberalization goals which are tied to neoliberalism. Herold (2008: 5) argues that audiovisual media goods’ production and distribution are chiefly viewed as economic enterprises within the EU. Indeed, the EU identified fragmentation of its televisual media market for audiovisual media goods as a primary handicap preventing the growth of European television enterprises and their abilities to compete in a global market (Wheeler, 2004: 366). The current regulatory framework of EU audiovisual and media policy consists mainly of the AVMSDs, which is for the purposes of creating “an effective single European market for audiovisual media” (European Commission, 2011b). From the mid-

1980s, also the time period where neoliberalist market ideology took hold, audiovisual media policy became a priority within the European Union (De Bens & de Smaele, 2001: 67). It was within this ideological climate that stirrings of a coherent audiovisual media policy began to form within the EU.

In 1984, the Commission put forth a Green Paper titled *Television Without Frontiers: Green Paper on the Establishment of the Common Market for Broadcasting, Especially by Satellite and Cable* (Commission of the European Communities, 1984). This resulted in the development of the Television without Frontiers Directive, which was implemented in 1989, updated in 1997, and revamped as the Audiovisual Media Services Directive in 2007, which was subsequently updated in 2010 (see Table 2.2). The 1989 Directive served as the “the liberalizing centerpiece of the EU’s legal framework for the audiovisual sector” (Wheeler, 2004: 354; Burri-Nenova, 2007: 1695). Within the 1989 TVWFD itself, the economic intents of regulations are clearly defined in the first two articles of the Directive:

Whereas the objectives of the Community as laid down in the Treaty include establishing an even closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, ensuring the economic and social progress of its countries by common action to eliminate the barriers which divide Europe, encouraging the constant improvement of the living conditions of its peoples as well as ensuring the preservation and strengthening of peace and liberty; Whereas the Treaty provides for the establishment of a common market, including the abolition, as between Member States, of obstacles

TABLE 2.2: Key EU Audiovisual Media Regulatory Policy Developments

YEAR	POLICY
1984	Television Without Frontiers: Green Paper on the Establishment of the Common Market for Broadcasting, Especially by Satellite and Cable
1989	Television without Frontiers Directive (TVWFD)
1997	Green Paper on the Convergence of the Telecommunications, Media and Information Technology, and the Implications for Regulations, towards an Information Society Approach Television without Frontiers Directive (updated)
2007	Audiovisual Media Services without Frontiers Directive (AVMSD) (amendment of TVWFD)
2010	Audiovisual Media Services Directive (2010): codification of AVMSD; repeal of TVWFD.

to freedom of movement for services and the institution of a system ensuring that competition in the common market is not distorted. (TVWFD, 1989: 23)

The 1989 Directive's most important contributions were encouraging production of audiovisual media in countries lacking large scale production capacity and providing regulations to promote the growth of a European televisual media marketplace (Wheeler, 2004: 355).

The 1989 TVWFD provided an impetus toward market harmonization and liberalization, signaling a push toward marketization and private interests where the public was increasingly addressed as consumers and not as citizens, which was the case under public service broadcasting (Sarikakis, 2007: 72). This change represented a conflict within the EU's dual policy goals of market harmonization and promotion of

cultural diversity. The 2010 AVMSD is evidence of the evolution of EU policy, as its opening articles contain several specific references to the cultural purposes of audiovisual media regulation (Audiovisual Media Services Directive, 2010). Specifically, Article five states:

Audiovisual media services are as much cultural services as they are economic services; Their growing importance for societies, democracy — in particular by ensuring freedom of information, diversity of opinion and media pluralism — education and culture justifies the application of specific rules to these services” (AVMSD, 2010: 1, recital 5).

Thus, the EU’s desire to recognize the cultural aspects of audiovisual media and reconcile economic considerations with cultural diversity reflects how differences in perspective influence EU regulatory policy. This desire stems from how media systems developed in the Member States of the European Union, with an emphasis on public service broadcasting. It reflects the ever present cultural aspirations of EU audiovisual media policy.

2.6 EU Audiovisual Media Regulatory Policy Duality: Cultural Focus

European Union audiovisual media policy is not completely devoid of cultural considerations. The Commission itself asserts that audiovisual media serve as important vehicles of transmission for the EU’s “cultural, social and democratic values” (Commission of the European Communities, 2007: 14). The Commission goes on to link EU audiovisual media policy with providing both a “framework favourable to the

development of the audiovisual sector and to support the trans-national dimension of this essentially cultural industry” (Commission of the European Communities, 2007: 14-15). However, AVMS cultural considerations are a source of constant tension within EU regulatory and trade policy (de Smaele, 2007; Nenova, 2007; de Smaele, 2004). As more countries enter the EU, more concerns with cultural diversity arise as individual Member States with strong national identities “fear the loss of national identity” (Jasiewicz, 2002; & Merje, 2002, cited in de Smaele, 2004: 172). These concerns demonstrate a political-economic ideology conflict among EU policy makers concerning neoliberalism and cultural diversity.

EU audiovisual media regulatory policy began with an economic purpose in mind: harmonizing the European market and enabling cross-border flows of television programming. However, the increasing impact of convergence and globalization makes regulatory efforts for protection and promotion of cultural diversity increasingly difficult (Middleton, 2003; Nenova, 2007). Nonetheless, the EU stresses the importance of promotion and protection of cultural diversity as policy goals both within its internal market and without:

In its resolutions of 1 December 2005 and 4 April 2006 on the Doha Round and on the WTO Ministerial Conferences, the European Parliament called for basic public services, such as audiovisual services, to be excluded from liberalisation under the General Agreement on Trade in Services (GATS) negotiations. (AVMSD, 2007: 27, recital 5)

The EU recognizes audiovisual media goods as cultural artifacts worthy of protection.

The EU reflects this perspective in the importance it places on preserving, protecting and promoting cultural diversity in its audiovisual media regulatory policy directives.

Both the EP and the Council of Ministers explicitly recognize the specialness of audiovisual media, with regulatory policy “undertaken in pursuit of . . . freedom of expression, media pluralism, impartiality, cultural and linguistic diversity” among other objectives (European Parliament and Council, 2002: 5 – 6 in Humphreys, 2007: 100). The institutionalization of media policy at the EU as it concerns culture is also tied to European Union treaty law. The AVMSD further articulates EU authority to consider cultural diversity in constructing media policy:

Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action under other provisions of that Treaty, in particular in order to respect and to promote the diversity of its cultures. (AVMSD, 2010: 1, recital 6).

Within the 2010 AVMSD, the 2005 United Nations’ Education, Scientific and Cultural Organization (UNESCO) *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (Convention) is also used to support the EU’s cultural considerations in audiovisual media regulatory policy.

The Convention was adopted by a European Parliament resolution on 27 April 2006. The Convention, adopted on 20 October 2005 by 148 members of the United Nations, represents an effort to encourage the development of regulations that “proactively support the survival and promulgation of cultural expressions” (Brouder,

2005: 5). The preamble of the Convention espouses the special dualistic nature of cultural goods due to their ability to “convey identities, values and meanings,” which preclude them from being treated solely as commercial entities (UNESCO, 2005: 2). The AVMSD makes clear its support of the UNESCO Convention, clearly stating within article seven that the Directive itself “respects the principles of that Convention” (AVMSD, 2010: 2, recital 7).

Nevertheless, the constant tension between liberalization and cultural preservation remain within EU audiovisual media policy. On one hand, market harmonization and liberalization are key to developing a formidable European media market, yet preservation of and promotion of ‘European-ness’ depends upon cultural protectionism. The economic value of cultural goods, specifically audiovisual media, along with increasing technological convergence places even greater scrutiny and difficulty on media policies respecting cultural aspects of these same goods and using regulations to do so (Pauwels, et al., 2007). However, it can also be argued that this “intrinsic duality” of audiovisual media cannot be reconciled through European level regulations (Nenova, 2007: 175) as there are no clear provisions of how cultural considerations should be dealt with if they conflict with harmonization and liberalization efforts (Herold, 2005: 98). Analyzing the evolution of the EU’s audiovisual media regulatory and trade policy from a duality of media perspective can provide context to the current debate, help understand the internal conflict within EU regulatory policy concerning audiovisual media and understand how convergence and globalization further complicate the issue.

CHAPTER 3

CULTURE, ECONOMICS AND EU AUDIOVISUAL MEDIA POLICY

Audiovisual media has almost always been associated with cultural expression. It is this implicit association that drives EU audiovisual media regulatory policymakers to take matters of cultural diversity into account. And perhaps it is this implicitness of culture within audiovisual media goods that obscures its inherent cultural characteristics, unnecessarily casting suspicion on efforts to make culture a consideration in audiovisual media regulatory policy. The EU's inability to more clearly and explicitly link the goals of cultural diversity to the European integration project—as audiovisual media regulatory policy does concerning economic aspirations—may prevent policymakers from addressing cultural diversity from a more credible position. A less ambiguous linking of culture to the European integration project may provide a clearer understanding—especially for policymakers outside the EU—of its legitimate place within EU audiovisual media regulatory policy. Enabling such understanding is the purpose of this chapter.

This chapter traces the origins of the cultural diversity perspective, examining the cultural/economic duality of audiovisual media through the lens of cultural studies and critical theory/political economy of media. Fully comprehending the relationship between culture, audiovisual media, cultural diversity and the European integration project first

requires defining culture and how it is expressed through audiovisual media.

Consequently, the chapter begins by exploring the cultural side of audiovisual media, using a cultural studies approach to examine the connection between audiovisual media, culture and identity. After exploring the cultural characteristics of audiovisual media, an examination of the economic aspects of audiovisual media using political economy of media and critical theory follows. Culture studies and critical theory is also employed to lay the foundation for the examination of how technological convergence and globalization factor into cultural diversity presented that occurs in Chapter 5.

3.1 Audiovisual Media Duality: Examining Cultural Characteristics through Cultural Studies

Audiovisual media are generally accepted as cultural artifacts (Middleton, 2003). Audiovisual media is closely associated with cultural expression with television and film [content] acting as ubiquitous essential transporters that convey a country's culture (Bishop, 1997: 187 in Middleton, 2003: 614). But the phenomenon of convergence exploits the economic characteristics of audiovisual media, further complicating its economic/cultural balance. Audiovisual media regulation policy within the EU reflects this conflict. The television and audiovisual media regulatory directives include provisions that support cultural diversity. Recital 69 of the 2010 AVMSD makes certain that these regulations include both traditionally televised broadcast and "on-demand audiovisual media services" (AVMSD, 2010: 8, recital 69), demonstrating the EU's desire to preserve and promote cultural diversity across all media through which audiovisual media goods are available.

Burri-Nenova asserts that because of the limitations of the “chosen legal model” along with the divided objectives of market liberalizers and cultural protectionists, the “intrinsic duality of audiovisual [media]” cannot be reflected at the supranational regulatory level (Burri-Nenova, 2007: 1698). Nevertheless, the cultural diversity argument has gained increasing attention as governments, policymakers and citizens increasingly fret over the encroachment of capital and economic concerns into cultural matters—including audiovisual media. But with all the referencing of “cultural diversity,” uncertainty remains as to what the term actually means and embodies.

The term in and of itself has myriad definitions, all simultaneously applied throughout various EU documents concerning audiovisual media regulatory policy documents this research analyzes. One must wonder how a true stance regarding cultural diversity and audiovisual media can be made when there is no consensus as to what cultural diversity entails. How can the significance of cultural diversity in regulatory policy formation be truly grasped, understood and applauded when there is no clear understanding of what it means? Without this comprehension, how can cultural diversity be truly championed as a valid purpose of EU audiovisual media regulatory policy? Determining answers to these questions requires fully understanding what culture is and the relationship between culture and media, especially pertaining to the EU.

3.1.1 Culture

Culture is a term—or rather a phenomenon—that has many definitions that often depend on the perspective from which it is being analyzed. The Oxford English Dictionary defines culture as “the arts and other manifestations of human intellectual

achievement regarded collectively [or] the ideas, customs, and social behaviour of a particular people or society” (Oxford English Dictionary, 2012). According to Raymond Williams, a founder of [British] cultural studies, “culture is one of the two or three most complicated words in the English language” (Williams, 1983: 87 in Tosh, 2010: 246). Wang (2009) defines culture “as the way people conduct their lives, including the visible and observable artifact, ritual and place, and non-visible memory, value, and meaning structure” (129). Matthews (2000) puts forth the notion that globalization makes certain notions of what constitutes culture problematic. According to Matthews (2000), Herskovits approach— considering culture as a “shared way of life . . . of a people” (Herskovits, 1948: 29 in Matthews, 2000: 2)—ignores the “diversity and interrelation of [people] within each different society” (Matthews, 2000: 2). However, considering culture as “information and identities available from the global cultural supermarket” ignores the ways in which our social world forms us as human beings” (Matthews, 2000:4–5). This belief falls in line with social cognition theory.

While not considered part of critical/cultural theory, social cognition theory is useful in understanding the connection between culture and identity. Social cognition theory posits that an individual becomes part of society through primary and secondary internalization. These two socialization processes allow “for an understanding of one’s fellowmen and . . . for the apprehension of the world as a meaningful and social reality” (Berger & Luckman, 1967: 130). A person learns about the world and society through those involved in her/his socialization—one’s family being a source of primary socialization—through their actions, through language, through observation (Bandura, 1986; Berger & Luckman, 1967). Specifically, Berger & Luckman (1967) contended that

Primary socialization is the first socialization an individual undergoes in childhood, through which [s]he becomes a member of society. Secondary socialization is any subsequent process that inducts an already socialized individual into new sectors of the objective world of [her]/his society.

(130)

A narrow view of Berger and Luckman's social cognition theory constrains socialization to the interpersonal communication realm. However, social cognition theory is applicable to mass communication, particularly audiovisual media.

Matthews (2000) contends that viewing one's identity as something one can obtain from a globalized culture super-store largely ignores how humans form their identities. Wang defines culture as a living organism breathed into life by the rituals people undertake, the places in which they live and how they live, which in turn form their value systems. Berger and Luckman asserted that actions, language and observation are all factors of socialization and that [cultural] identity develops through socialization. Given the strong role socialization plays on identity formation, notions of identity shopping via a global culture supermarket ignore how individual and cultural identity are formed. Culture manifests itself out of shared meanings developed through primary and secondary socialization, which is the "internalization of institutional or institution based 'subworlds,'" (Berger & Luckman, 1967: 138), representing a manifestation of culture. Thus, Matthew's (2000) assertion that culture cannot simply be picked off the "global cultural supermarket shelf" holds.

Williams, pioneer of [British] cultural studies and co-founder of the Centre for Contemporary Cultural Studies (CCCS) at Birmingham, considered culture "a global

process through which meanings are socially and historically constructed” (Mattleart & Mattleart 1998: 86). Williams related culture to the “sum of the available descriptions through which societies make sense of and reflect their common experiences” (Hall, 1980: 59). Williams felt that culture was part of everyday life, not something reified and held up as the best of society. Culture was something constructed from the everyday life of people (Scannell, 2007). The following passage personifies Williams’ (1961) view:

Since our way of seeing things is literally our way of living, the process of communication is in fact the process of community: the sharing of common meanings, and thence common activities and purposes; the offering, reception and comparison of new meanings, leading to tensions and achievements of growth and change. (55)

Hoggart (1957), also a pioneer of cultural studies and co-founder of the CCCS, along with Williams considered culture to be a living, breathing thing where the false dichotomies of “high” and “low” culture had no place.

Tosh (2010) refers to culture as the “web of meanings that characterize a society and hold its members together” (Tosh, 2010: 247) and Geertz (2006) espouses a Weberian notion of culture also being one of the “webs of significance” humankind has spun for itself (Geertz, 2006: 319). Adorno (2009) put forth the idea of an American and a European (particularly German) culture: Europeans conceive culture as something “[split] off from reality as a special sphere” whereas Americans conceive of culture as a “specific relationship between people on the one hand and between people and reality on the other” (Adorno, 2009: 148). These differing notions of what culture actually is sheds

light on what is perceived as culture by Europeans and the role it may play in EU audiovisual regulatory policy. These different perspectives on what constitutes culture are also important because of the role media plays in disseminating culture.

3.1.2 Culture, Media & Ideology

While there are different ways of understanding what culture is, it becomes clear that many things can be considered part of culture, part of cultural expression. It also becomes clear that communication itself is a fundamental aspect of culture. Carey (1992) asserted “communication is a symbolic process whereby reality is produced, maintained, repaired and transformed” (23). In fact, Carey likened the study of communication to the examination of authentic societal processes that produce “significant symbolic forms” to be captured and used (1992: 23). He conceived of two modes of communication—a transmission and ritual view of communication, with the former serving “as a process of transmitting messages at a distance for the purpose of control” and the latter “a process through which a shared culture is created, modified and transformed” (Carey, 1992: 42 – 43).

Geertz (1972) wrote that “the culture of a people is an ensemble of texts [which] themselves are ensembles” (29). These texts can be actual texts consisting of writing, music, art. They can also consist of spoken language and texts that combine both visuals and sound, better known as audiovisual media. Language is an important part of culture and cultural maintenance. According to Berger and Luckman, language is a key factor of primary socialization. The internalization of language allows “various motivational and interpretive schemes [to be] internalized as institutionally defined” (Berger & Luckman,

1967: 135). In other words, knowing and understanding the language and its contexts helps an individual learn how to navigate society. This function of language also supports Bandura's (1986) notion of observational learning, where an individual comes to understand the environment, her/his place within it, and how to navigate it.

Language is a facilitator in helping individuals learn about society. It enables the transmission of information and culture. Language has also been closely associated with national identity. Barker (as cited in Crowley) asserts that one cannot "enter the heart and know the heart of the nation unless you know its speech" (Barker, 1927: 13, in Crowley, 1996: 51). In this sense, it can be surmised that language serves as a gateway cultural understanding and discourse. Language is encountered and experienced through both interpersonal and mass communication.

Bandura theorized that television introduced a significant change in behavior modeling because it enables individuals to "transcend the bounds of their immediate social life [and] learn the values and styles of behavior of different segments of their own society and those of other cultures" (Bandura, 1986: 55). In other words, the medium of television provides opportunities for internalization of symbols and signs from a person's own culture and from other cultures. Thus, television—mass media—is also a part of culture, a cultural text. This is not to say people are necessarily consumed by television. People have "their own structure of beliefs and ideas within which the consumption of the products of mass media takes place" (Sparks, 1989: 82). But people come into contact with mass media and understand mass media through their own cultural lens. Indeed, this perspective is a focus of cultural/critical studies, which among other things, attempts to understand how meaning is conveyed through "popular" culture (formerly referred to as

“low” culture) and the significance attached to meaning within the everyday life of people (Scannell, 2005d; Carey, 1992).

Culture is not a monolithic singular structure from which meaning is derived. To the contrary, “culture is the site of the struggle to define how life is lived and experienced, a struggle carried out in the discursive forms available to us” (Grossberg, 1986: 66). Culture is complex and dynamic, comprised of “people, things, worldviews, activities, and settings . . . that fundamentally endures but also changes in routine communication and social interaction” (Pérez, 2005: 408). And ideology serves as a “function of [the] symbolic process,” placing it firmly in the communication process (Brown, 1978: 124). As the following passage indicates, Hall (1986) asserted that ideology is what people use to make sense of their world:

By ideology I mean the mental frameworks—the languages, the concepts, categories, imagery of thought, and the systems of representation—which different classes and social groups deploy in order to make sense of, define, figure out and render intelligible the way society works. (29)

It is through cultural practices that meaning is given to societal rituals, events, texts, and it is through internalization via primary and secondary socialization that people learn to make sense of these practices. But while ideology is a part of the communication process, “articulated (constructed) in and through language” (Grossberg, 1986: 66), Hall believed that meaning given to a practice or a text is not fixed or permanently linked to its original form (Hall, 1986: 29). In other words, how something is defined can change and how one person views the same text object can be different from another person

dependent on her/his ideology. Regarding audiovisual media, this perspective is important because it allows for multiple interpretations of programming despite its [cultural] origins. Nonetheless, when it comes to European Union audiovisual media policy, it almost seems that ideology takes on a more politicized perspective focusing on “[analyzing] how a particular set of ideas comes to dominate the social thinking of a historical block” (Hall, 1986: 29), which may stem from and/or fuel a desire to utilize media in promulgating a sense of “European culture.”

3.1.3 *Media & “European” Culture*

Cultural identity is linked to a particular place embodied by languages, rituals, events—all those practices and ways of being one associates with her/his culture and sense of self. Language and the nation state have been inextricably linked to cultural identity. Fichte (as cited in Crowley) asserted that language is the key to nationality: “wherever a separate language is found, there a separate nation exists” (Fichte, 1968: 184, in Crowley, 1996: 48). Humboldt went even further linking language and identity, stating that “*national character* is indeed sustained, strengthened, and to some extent engendered by community of habit and action” (Humboldt, 1988: 152, in Crowley, 1996: 48) (emphasis mine). Culture and expressions of culture are the basis of cultural identity. Cultural products are central in creating a “symbolic membership” (Porto, 2011: 55) within the “imagined political community” of the nation state (Anderson, 1991: 35). However, tying cultural identity directly to a specific place may be problematic in an age where people and ideas easily and frequently pass over borders (Scriven & Roberts, 2001; Wagstaff, 1999). Nonetheless, as the EU continually moves toward integration, the

issue of national and cultural identity, especially as it relates to language and cultural expression remains an issue.

For starters, there are forty languages and variants are spoken by citizens of the European Union (Laver & Roukens, 1996: 7). And the EU remains committed to linguistic pluralism in its administration and legislation. Nonetheless, differences in a variety of cultural identifiers—language, food, music, etc.—indicate cultural differences among groups. In fact, Young (as cited in Swanson) asserts that differentiation of “cultural groups” occurs through the “[perception of] similarity and dissimilarity in language, everyday practices, conventions of spirituality, sociability, production, and the aesthetics and objects associated with food, music, buildings, the organization of residential and public space, visual images, and so on” (Young, 2000: 91, in Swanson, 2005: 98). And if cultural identity derives from all these similarities and from shared experiences that help form and strengthen cultural bonds, then one can say that no true “European culture” exists. Nonetheless, there is a “sense of shared values and conditions of life” within European society (Berglund, Duvold, Ekman, & Schymik, 2009: 112). This shared culture allows for the existence of a European society where the various cultural identities of EU citizens can be displayed. However, while there may be a coalescing European society and the beginnings of a European “identity,” cultural identity remains most closely associated with individual nation states. In fact, Berglund, et al., contend that Europeans identify themselves foremost by their individual nationality or country (2009: 3).

Europe defines itself by its inherent diversity (linguistic and cultural), its identity “stemming from a de facto diversity that seeks to assert itself in opposition to a diversity

perceived as external” (Kastoryano, 2009: xiii). Diversity can possibly serve as a basis of European identity, where EU institutions help bring forth and encourage cultural and political interactions (Kastoryano, 2009: 3). However, when considering the previously discussed meanings of culture and the relationship ideology has with culture, unity in diversity may not be enough to support the development of a distinct “European” culture. Wolton (2009) argues “communication only plays its integrating role within nation-states or communities that are sufficiently constituted” (51). Media exchanges cannot solely constitute full and meaningful cultural exchanges (Wolton, 2009), and shared fundamental values and uniform institutional platform [EU institutions] do not constitute a fully developed European society (Berglund, et al., 2009: 138). However, Hersant (2009) contends that it is Europe’s diversity “shot through with otherness” that gives it its identity, which makes resisting “any simplification of a culture whose complexity constitutes its value” imperative (Hersant, 2009: 65). Instead of trying to view Europe as multi-linguistic/ethnic/cultural *or* as one, think of it as both (Hersant, 2009; Kumar, 2003; Scriven & Roberts, 2001).

The debate on European identity is ongoing: Miller (1995) rejects the mere idea of a supranationalistic “European” identity due to mistrust between citizens of different nation states; Smith (1993) argues that the preoccupation with European identity stems from the belief of weakened, increasingly irrelevant nation-states, which in turn challenges the notion of collective identity via the nation state (Wagstaff, 1999; Woodward, 1997); Papke (1992) even questions the notion that such an identity can even be located given the obstacles preventing it from forming. Nonetheless, as put forth in the Maastricht Treaty, there is a desire for the EU to develop a sense of European identity

and culture based on the fundamental values Europeans share. In order to help a collective identity form, it must also hold onto one of its fundamental values—respect for linguistic diversity. If European identity is conceived as “the development of a sense of belonging to Europe” (Medrano & Gutiérrez, 2001: 754), then embracing and celebrating Europe’s linguistic and cultural diversity is necessary so that no matter what language or ethnicity, all feel they belong to Europe and are indeed European . Therefore, conceptualizing European identity as a hybrid identity—nation state and European Union citizen—where multiple identities are nested one within the other (Medrano & Gutiérrez, 2001), and where “depending on the salience of the situation, individuals can change their identity levels” (Westley, 2007, in Karolewski, 2010), enables Europeans to identify with their individual nation-state or the EU, depending on the context of the situation.

While this perspective enables EU citizens to exchange identities, it does not see a European identity eclipsing people’s national identities. The lack of a coalescing European identity forming can be attributed to, 1) Europeans’ allegiances still remaining with their individual countries, which prevents identifying with “Europe,” or 2) the fact that Europeans have differing notions of what Europe actually is in contrast to political elites’ vision of Europe (Jones & Subotic, 2011: 544; Hellstrom, 2009: 163 – 169). This failure to identify as European may be the result of the European integration project being driven from the top downwards instead of from the bottom up where all parties are invested in solidarity and communication occurs within a collective European public sphere (Delanty & Rumford, 2004; Habermas, 2001). It may also be that a “deep diversity [characterized by] the fluidity, plurality, and multiplicity of collective identities of the EU” (Karoleswski, 2010: 62 – 63) makes it very difficult for a definitive European

identity to develop. Yet, the process of “Europeanization” where the EU “works simultaneously to solidify and subsidize processes of discrete nation-making and to enforce pan-European standards on disparate parts” (Borneman & Fowler, 1997: 488) via EU level decision making through EU institutions continues. And attempts at developing a European identity and culture are evident through the EU’s use of signs and symbols—from Euro coins and bills to the European Union flag and inclusion of its image on every automobile license plate tag on every vehicle in each Member State to the development of a European constitution (despite its not being ratified).

Malksoo (2009) argues that Eastern European countries attempt to give voice to their “distinctive historical experiences” of World War II, “resisting the totalization of the ‘European majority memory of World War II,’” but nonetheless presuming that a “unified and coherent common European remembrance of the war” is actually possible (Malksoo, 2009: 657). Such an attempt to define an experience through different perspectives while striving to maintain a unified memory personifies the overall European project’s attempt to define a distinctly European space and create European solidarity out of diverse nationalities, languages, cultures, historical and present experience—hence the phrase, unity through diversity. The way in which the EU does this is through institutions and symbols. In fact, McLennan (2001), building on Bhabha’s (1994) postcolonialist theory, puts forth the idea that “Western [European] thought is oppressive in its universalizing aspirations, its habitual search for a *totality*, for a rational summary of the *common* structures which govern all social thought and action” (text emphasis) (McLennan, 2001: 75). In other words, the West—Europe—searches for “totality and universality through the creation of common structures” (Malksoo, 2009:

657), e.g., the European Union and all the uniform institutions comprising the EU. Yet, institutionalism is not enough to change the idea of Europe or to develop a common idea of Europe or European identity or sense of European culture. For this, symbols are needed.

Carey (1992) (in reference to Cassirer) wrote that “man lives in a new dimension of reality, symbolic reality, and it is through the agency of this capacity that existence is produced” (26). Jones & Subotic (2011) assert that “everyday cultural practices [can be] used as hidden transcripts” to project cultural messages through “public ceremonies [that can] have a double meaning” (546). These cultural messages can mean one thing for those outside the group and something completely different for those within the group. In line with the flexibility of cultural messages, Porto (2011) and Pérez (2005) use the example of telenovelas enabling dissimilar audiences to “share in a communicative experience and certain patterns of symbolic representation” (Porto, 2011: 55) while also “developing a sense of cultural differentiation” (Pérez, 2005: 407). Bruter’s (2007) research on European identity finds that Europeans formulate European identity through “*symbolic* campaigns and the development of *official symbols* of European integration formalised by the elite, and *secondly from the media*” (36) (emphasis mine). The role symbols play in developing collective identities is affirmed by Karolewski who asserts that “symbols apparently have more impact on the cultural component of collective identities rather than on the civic one” (2010: 67).

Mass communications—broadcast and audiovisual media in this instance—are conveyors of the symbolic reality of culture. This articulated role for mass communications stems from the belief “that language and culture play a crucial role in

the formation of national identity, [which] has constituted the mass media as central agencies in the production and reproduction of social relations” (Collins, 1992: 327). Whether or not a somewhat limited and increasingly outdated view of identity being tied to language and culture is applicable in an age of increasing globalization is still unknown. However, it is known that humans create culture within their everyday lives. It is known that diverse, disparate audiences can—not always and not definitely, but can—share in a communication experience containing an array of symbolic representations, which helps shape a common identity (Porto, 2011; Vidmar-Horvat, 2010; Pérez, 2005; Strelitz, 2002; Kellner, 1995; Thompson, 1995). Identity formation through media consumption can be thought of in two ways.

Kellner (1995) posits that identity formation is achieved through the emergence of a “media culture [that] helps shape the prevalent view of the world. . . [where] media stories and images provide the symbols, myths, and resources [that] help constitute a common culture for the majority of individuals by [providing] the materials to create identities” (Kellner, 1995: 1). Strelitz (2002) counters this summarization, claiming this view puts media in a place of power over audiences (461). Media may have a role in identity formation but it is not the dominant and sole source of cultural formation; instead, there is a “subtle interplay of mediations” (Tomlinson, 1991: 61) between media and culture since “media messages are themselves mediated by other modes of cultural experience” (Strelitz, 2002: 461). These perspectives regarding media’s role in identity and cultural formation represent two sides of one coin. This duality is poignantly yet simply articulated by Carey who identifies “the dual capacity of symbolic forms” presenting realities, i.e., “*symbols of,*” and creating the actual realities they present, i.e.,

“*symbols for*” (Carey, 1992: 29) (emphasis mine). However, this dual nature of media is not limited to what it does; it also applies to what makes media goods/services themselves unique, what makes them a thing of culture and a thing of economics.

The European perspective concerning media and culture is heavily influenced by critical theory and cultural studies, which “tends to consider the whole process of communication as a cultural process” (Rantanen, 2005: 3). This difference in European perspective reflects the historically different routes the European and American scholarly communities took with respect to the field of communication. American mass communications research embraced empiricism, pushing “historical, cultural, and critical studies to the periphery” (Delia, 1987: 71), whereas European communication researchers came to embrace a cultural studies approach to understand “the functions of cultural communication within the total process of society” (Lowenthal, 1950: 331).

Understanding the European perspective regarding culture, communication and media in conjunction with media’s ability to be *symbols of* and *symbols for* culture, identity, and reality helps shed light on the EU’s continually recognizing and referring to the special, unique characteristics of audiovisual media, especially the cultural characteristics. But before investigating if and how this perspective is reflected in EU audiovisual media regulatory policies, a clear understanding of the dual nature of media goods is necessary.

3.2 Audiovisual media duality: Examining economic characteristics through political economy of media & communication

3.2.1 Distinct Economic Characteristics

To fully ascertain the complexity of audiovisual media goods/services, one must identify the distinct economic characteristics comprising the media and their effects on the

structure and operation of the industry. The one major aspect that looms above all others is the highly risky nature of media industries (Doyle, 2002a; Doyle, 2002b; Storey, 1996). Media goods/services are risky investments because they are cultural commodities. Two traits operate in formulating this riskiness, magnifying economic features common to other industries: the abstract and concrete labor associated with media goods and the semi-public nature of those goods. In other industries, labor can effectively be separated from the surplus value they create in a product that reaches the market, as breaking down tasks within capitalist production allows for concrete labor to be separated from abstract labor (Ryan, 1992; Miége, 1989). However, this fragmentation of labor is not completely possible as it relates to audiovisual media.

Cultural products of any kind are the result of the labor of the artist, yet they are also produced to be exchanged as a commodity. According to Ryan, art “is centered upon the expressive, individual artist” (Ryan, 1992: 41). Ryan’s assertion most easily conforms to artistic works produced by individuals—paintings, sculptures, etc. However, the fundamental point of his assertion that art is an embodiment of *and* the creation of the artist is also applicable to audiovisual media (including those produced by media organizations, on which this chapter focuses). In expanding Ryan’s notion to include audiovisual media, one cannot totally separate the finished “product” of audiovisual media from those who create them: audiovisual media goods “must appear as the product of recognizable persons [as] the concrete and named labour of the artist [producers, directors, etc.] is always paramount and must be preserved” (Ryan, 1992: 41 – 42).³

Therefore, media organizations must adopt strategies to deal with the tension between the

³ Connecting a new audiovisual media program with a former executive producer/producer/director/star of illustrates the importance of recognizability; use of this connection is also a strategy to minimize risk.

need for laborers to be recognized and its desire to minimize risk of inherently risky enterprises.

Another reason the media industry differs from other industries stems from the fact that it operates in more than one market. According to Flew (2007), media industries operate in three markets:

First, there is the market for creative content, or the ability to produce and/or distribute material which is sufficiently compelling to audiences, readers or users for them to exchange money and/or time for access to such content. Second, there is the market for financial resources, or the ability to finance their ongoing operations as well as new investments in technology, distribution platforms, or territorial expansion of their operations. Third, there is the market for audiences/readers/users, or the competition for both the expenditure of consumers and time and attention devoted to accessing the content of the media organization. (8 – 9)

The creative content market displays the complicated nature of media duality: from the start, media goods/services are risky because their cultural value depends on consumer tastes, which are unpredictable (Caves, 2000). Additionally, media companies compete for both audience time and advertising revenue, which entails “selling access to audiences for the producers of other goods and services” (Flew, 2007: 9). Media organizations also compete “for talent and specialist labour” (Flew, 2007: 9).

Similarly, Croteau and Hoynes (2006) also cite three key reasons media industries differ from other industries, which in their opinion nullifies the claim of treating media

like any other commodity. One of these three differences is advertising through which media companies perform a dual role producing and marketing programming to secure audiences while selling advertisers access to potential consumers, i.e., audiences (Croteau & Hoynes, 2006: 27). The other two special characteristics stem from media's cultural aspects: media goods "produce cultural and political goods, which make treating it as a typical commodity difficult" (Croteau & Hoynes, 2006: 29), and media goods have a special role in society especially democracies primarily because of principles such as freedom of expression (Croteau & Hoynes, 2006: 30).

Flew maintains that the highly risky nature of media industries stems from how media companies must finance current operations and future investments in an industry that primarily deals in intangible products. Media goods/services are "experience goods" (Flew, 2007: 11) where satisfaction cannot be determined until after a media organization has invested in its production. Media organizations try combating this riskiness through standardization, where having "a steady and predictable production slate [serves as] an important advantage for programme-makers" (Doyle, 2002b: 36). Consequently, attempts to minimize risk while maximizing profit results in the standardization of what is offered. This strategy of minimizing risk is born from market pressure that lends toward "[promoting] homogenous media products, as firms attempt to reach mainstream audiences" (Croteau & Hoynes, 2006: 35)

Another tactic used to decrease risk is creating audience demand by developing original programming or a putting a new twist on something old that bestows a sense of newness, e.g., movie sequels, series' spin-offs, etc. Related to the originality/novelty tactic is media organizations desire to continue deriving economic rents from media

goods by producing false scarcity (limited releases of DVDs for popular movies), producing DVD sets for television series no longer airing and/or making them available via the Internet, syndicating television series, etc. (Caves, 2000; Ryan, 1992). All of these tactics are used to obtain as much profitability as possible from the shortened life-cycle of audiovisual media especially (Ryan, 1992).

Media goods/services are also semi-public goods. This means their value is not affected by more than one person using them (Baker, 2002: 8) and does not diminish over multiple uses via multiple persons (Doyle, 2002a; Doyle, 2002b). As a result, it is difficult to use price-competition to distinguish between consumers, further exacerbating the conflict between labor and capital (Ryan, 1992; Miége, 1989). Miége asserts that “the important question is under what conditions the transformation of cultural use values into exchange values will take place or, how the concrete labor . . . of the ‘creator’ is going to be integrated into a process of collective labor which can never entirely efface it” (Miége, 1989: 25-26).

To reduce risk, media companies engage in horizontal and vertical integration (Doyle, 2002b; Flew, 2007), and in diagonal expansion that involves media firms expanding into complementary media activities (Flew, 2007; Croteau & Hoynes, 2006) and diversification (expanding into a different industry) (Flew, 2007; Owers, Carveth & Alexander, 1998). But it is the special dual-nature of media—being both cultural products and economic commodities—that poses the highest risk for media organizations within the industry. The economic value of media goods depends on how its cultural value is incorporated, especially as the cultural value can never be completely divorced from the exchange value, i.e., the commoditized product (Caves, 2000). And it is the consumer

who determines how much value to place on media goods/services. This phenomenon is referred to as an externality: the value of audiovisual media goods/services is determined by the value people unrelated to the production process—consumers— place on it (Baker, 2002: 10).

The economic theory of utility posits that people act as rational actors who make purchasing decisions based on the degree of utility s/he can gain from it. However, this same logic is not easily applied to audiovisual media goods/services where people seek out media for a variety of different reasons and make decisions on what media to consume and what platform from which to access it based on their idiosyncratic needs and wants. Externalities, along with abstract/concrete labor and semi-public goods status of audiovisual media goods/services work to make media industries highly risky enterprises. These characteristics also work to propel media industries toward concentrated ownership, vertical integration and horizontal integration. Understanding the process that creates and distributes media goods/services—the media value chain—sheds light on the role integration plays within the media industry and individual media organizations.

3.2.2 Media Value Chain

The media value chain refers to the different steps involved in creating and distributing media products. Content creation, content production and content distribution defines the traditional media value chain (Daidj & Jung, 2011: 43). Norcontrol (1997) identifies four stages within the media value chain: 1) content creation via TV/film producer; 2) service provision (broadcaster/multiplexer); 3) transmission/distribution

(terrestrial/cable/satellite); 4) consumer premises equipment (TV, set-top box) (9).

Andersen (2002) groups eight functions of the media value chain into three categories: content production and distribution, which consists of rights holders, content producers [production companies] and rights dealers trading content rights; 2) content packaging, which consists of program packagers that select and schedule programs and aggregators such as cable, satellite companies; 3) content diffusion, which consists of networks “transmitting data across their infrastructure using broadcast or point-to-point way,” access providers that “operate physical media platforms and manage end-user equipment,” and customer premises equipment vendors that manufacture, sell and market end-user equipment (60 – 61). Welinski & Labarthe-Pol (2003 cited in Daidj & Jung, 2011) identified four primary activities in the media value chain:

Production, including creation; publishing, [where] the broadcasting company combines different elements in a specific programs schedule according to its brand by integrating its own programs, as well as those acquired outside the channel, and by creating an original package which distinguishes it from its main rivals; aggregation of content, [which] exists in subscription-based (pay) television and satellite broadcasting networks [with] [i]ntegration of new services/functions: invoicing, interactivity; technical broadcasting [including] terrestrial, cable, satellite. (Welinski & Labarthe-Piol, 2003 in Daidj & Jung, 2011: 44)

David Graham & Associates (2005) also group the media value chain into three functional categories—1) programme making and rights trading, 2) channel creation, 3)

retailing, distribution and reception—but places channel aggregators in the retailing, distribution and reception category (30), whereas Andersen (2002) views aggregation as part of content packaging [channel creation]. Attentional, Gide Loyrette Nouel, Headway International, & Oliver & Ohlbaum (2011) defines the European value chain by the four following functions: 1) rights holders “who license or sell the rights to create content;” 2) content creation; 3) channel management, which includes obtaining new programs or “existing libraries of ready-made TV programmes,” and films; 4) distribution [of content] via delivery systems (74).

Generally speaking, there are main two types of television programming—stock programs and flow programs. Stock programs are those either directly commissioned for a particular channel and/or specific time-slot within the schedule, are typically costly to create, and usually have higher production values (Attentional et al., 2011: 74; Attentional, Rambøll Management, Oliver & Ohlbaum Associates, & Headway International, 2009: 114; David Grahame & Assoc., 2005: 15). Stock programs have “greater economic and cultural value, longer shelf life and greater potential for circulation” (David Graham & Assoc., 2005: 19). There is a higher cost and a higher level of risk associated with stock programs, especially for content producers, because of the sunk cost invested up-front and without knowing how audiences will receive the program (Attentional et al., 2009: 114). On the other hand, flow programs are “made as part of long-running slots in the [programming] schedule,” are generally cheaper to produce but have “limited repeat value” compared to stock programs (Attentional et al., 2011: 75). But the fact that European broadcasters serve as primary producers of content in the EU means the financial burden of commissioning new programming falls on them.

Historically, European television broadcasters served as chief programme makers, i.e. producers. As Hujanen (2004) puts it, Europe’s public broadcasting tradition “has been dominated by programme making. . . the aesthetics of programme making, programmes as individual works of art [reflecting this] broadcasting tradition”(234). This tradition made public broadcasters the main source of program production and programming the main focus of broadcasters. This view separated production from scheduling flow, with scheduling of programs considered less important than crafting television art. This tradition also closely aligned the channel’s programming with what the broadcaster produced; in other words, a channel’s identity was based on the type of programming associated with the broadcaster. The traditional media value chain (in the European case) saw broadcasters serving as both content creators and content packagers. Now, technological changes have led to access providers—cable and satellite becoming both program packagers and aggregators (Andersen, 2002; IDATE, 2000). While content creation and aggregation by one entity in the media value chain still exists, roles have changed: broadcasters are now more involved in channel management and traditional aggregators more involved in packaging.

As a result, the European Broadcasting Union has defined the new media value chain as such: Content→Channel Controlling→Gatekeeping→Distribution→Consumption (Nissen, 2002 & EBU Digital Strategy Group, 2001, in Hujanen, 2004: 252). This new broadcaster-focused media value chain casts “broadcasters as content providers . . . in which their relationship with audiences is mediated by several gatekeepers such as owners of distribution networks and manufacturers of technology (EBU Digital Strategy Group, 2001 & Kung-Shankleman, 2000: 41– 42 in Hujanen, 2004: 249).

Daidj and Jung also assert that a new media value chain that is a truer representation of today's converging media environment would include

different sorts of content (audiovisual, films, etc.) and their copyrights; a wide range of distribution channels (cinemas, TV, on-line video) and supports; various sources of revenue (advertising, license fees, subscriptions) linked to different kinds of support as well as the distribution and to the management of audiovisual rights; new entrants (ISPs, telecom operators, IPTV operators) who are the direct rivals of the traditional institutions (especially the broadcasting companies). (Daidj & Jung, 2011: 45)

Taking these new elements into consideration yields a new media value chain: Production of content → Aggregation of content → Distribution → Terminals → End consumer (Daidj & Jung, 2011: 46). Yet, the changing nature of the media value chain does not diminish the complexity of the television programming process nor does it change the reality that “availability of content does not guarantee its visibility and consumption” (David Graham & Assoc., 2005: 19). There is a significant amount of vertical integration within the media value chain as media firms attempt reducing risk (Attentional, et al., 2009; David Graham & Assoc., 2005). It is the risky nature of the media industry, specifically television programming, which serves as a catalyst for horizontal and vertical integration.

3.2.3 *Horizontal Integration / Vertical Integration*

Horizontal and vertical integration also play a role in the media value chain. Croteau and Hoynes identify four structural changes occurring in the media industry, including horizontal and vertical integration, ownership concentration, globalization and overall growth (Croteau & Hoynes, 2006: 77). Van Cuilenburg (2007) defines vertical media integration as “concentration of control over two or more different chains (creation, production, packaging, distribution) in the media value chain” and horizontal integration as “media concentration that is ownership and/or editorial concentration of control within one particular media market or media industry” (35). After investing initial sunk costs into a media product, there are minimal reproduction costs. As firms produce more content, they obtain increasing returns to scale (Croteau & Hoynes, 2006; Doyle, 2002b). This process entices firms to acquire more firms, increasing their market size, i.e., to horizontally integrate.

Horizontal integration can occur at any point throughout the media value chain. Through horizontal integration, firms can further increase their returns to scale and obtain greater efficiency as they are able to cross promote their product across many different channels (Flew, 2007; Croteau & Hoynes, 2006). This also leads to greater concentration within the market, as “substantial economies of scale in any industry will act as a natural barrier to entry in that any new firms will usually be smaller than established firms and so they will be at a cost disadvantage” (Doyle, 2002b: 9). Moreover, as firms continue to reap the benefits of greater efficiencies obtained through horizontal integration, the probability of an oligopoly forming increases unless intervention of some sort occurs

(Doyle, 2002b). However, increased efficiency can also occur through firms' pursuit of economies of scope, which can lead to vertical integration.

Through vertical integration, firms can control the creative aspect (material) and technical aspect of the product (dissemination) (Croteau & Hoynes, 2006) and increase efficiency by eliminating bottlenecks (Daidj & Jung, 2011). In other words, vertical integration allows for control over content creation, production and distribution (Daidj & Jung, 2011). Copyrights protecting intellectual property also contribute towards the establishment of artificial scarcity. But through vertical integration, firms can create artificial scarcity for a good via control of distribution and/or retail channels (Hesmondhalgh, 2002). Through consolidating vertically, a firm is able to create “additional possibilities and incentives to re-package or to ‘repurpose’ media content into as many different formats as is technically and commercially feasible and to sell that product through as many distribution channels or windows in as many geographic markets and to as many paying consumers as possible” (Doyle, 2002b: 22).⁴ Through vertical integration, media organizations can better “segment media markets and provide particular kinds of cultural content to distinct communities” (Howard, 2011: 59).

Vertical integration can also decrease risk involved in making programming. For example, a media organization partnering/owning/affiliating with a production company

⁴ Distribution *channels* refer to the different ways in which audiovisual media can be distributed. For instance, television flow programs can be distributed via subscription/cable/terrestrial broadcast television network, video on demand, Internet streaming via multiple electronic devices, DVD (series compilation), and/or syndication via cable/satellite/terrestrial broadcast network, domestically and/or internationally. Distribution *windows* refer to the time period in which each distribution method is applied. Distribution windows were originally conceived as a means to control distribution and maximize profit at each distribution stage with each stage representing a different price point (Park, 2005), but the simultaneous use of distribution channels technological convergence allows is changing the distribution window concept (Kim & Park, 2008).

can help “ensure regular access to new ideas and a better fit between the channel’s positioning and style and the programmes produced for it” (Attentional, et al., 2009: 147; David Graham & Assoc., 2005: 52). Increased vertical integration can lead to greater efficiencies and abilities to capitalize on opportunities, with added security and overall enhanced capability in exploiting the market. However, increased vertical integration can also lead to domination of the market by a few firms with control over the media value chain (Howard, 2011; Doyle, 2002b). In short, it is the high level of risk associated with media industries that propels firms towards consolidation.

3.2.4 *Audiovisual Media: A Complex Commodity*

The principal argument of liberalization is that competition leads to increased choices. Yet, the preceding sections demonstrate the many ways media firms do not operate as other typical industries. The 1997 *Green Paper on the Convergence of the Telecommunications, Media and Information Technology, and the Implications for Regulations, towards an Information Society Approach* openly acknowledges vertical integration, spurred by ownership concentration, as being an “inevitable consequence of convergence” (Wheeler, 2004: 360). Media firms’ tendency toward vertical integration, horizontal integration and consolidation also leads to increased homogeneity of audiovisual media content offered (Burri-Nenova, 2007: 1697; De Bens & de Smaele, 2001: 70), which speaks to firms’ desire to decrease risk (Van Cuilenburg, 2007: 43). Technological convergence increases the media available to people for consuming content. However, the explosion of choice fragments audiences, creating a “false

diversity” that hides “the fact that people are actually only communicating with those who share the same cultural frames of reference” (UNESCO, 2009: 138).

This observation is important in that it again demonstrates how standard economic rules cannot be applied to media industries. Again, the special characteristics of audiovisual media goods make overreliance on a market-based policy approach dubious. Baker (2002: 223 – 224) outlines two consequences with respect to the externalities associated with semi-public audiovisual media goods/services: 1) due to value being largely determined by media consumers, production of these semi-public goods are either not produced or under-produced, a personification of the riskiness of the audiovisual media industry, and 2) competition among these semi-public goods may actually prevent production of audiovisual media goods/services that might yield greater value, i.e. people may end up paying less than they would have for the audiovisual media good/service, which results in loss profit for the producer.

While audiovisual media goods/services embody certain economic characteristics, their inherently semi-public nature prohibits them from behaving as ‘ordinary’ commodity goods. Therefore, although media industries are not distinct in the structures used to ensure greater efficiencies and market control, it is the distinctive characteristics of the media that drive them towards those structures. The push-pull force of the primary tensions within media industry—a semi-public good that cannot be totally disassociated from its labor to more easily exploit its value, a good that can be commoditized but lacks the ability to differentiate itself via price, a good that involves a high degree of sunk cost but also increasing returns to scale—invariably impels the media industry towards structuring itself in such a way to maximize efficiency yet minimize risk.

It is these same forces that compel media industries toward program standardization, the creation of artificial scarcity, engagement in horizontal integration that increases market size and efficiencies, and with vertical integration to obtain supply chain control. Yet, the economic characteristics of audiovisual media still remain bound to its cultural characteristics. This ‘bond’ originates from the very fact that audiovisual media goods/services are commoditized entities. Commoditization imparts economic complexity onto these conveyors of culture, a complexity the Frankfurt School addressed in its critical assessment of the ‘culture industry’.

3.2.5 The Frankfurt School and Commoditization

The Frankfurt School of thought consisted of German scholars (of Jewish descent) who formed Institute of Social research at the University of Frankfurt in 1923. Its most notable members included Max Horkheimer, Theodor Adorno and Walter Benjamin. Grounded in Marxist theory (Scannell, 2005b; Witkin, 2003; Brunkhorst, 1999), the Frankfurt School used a critical approach in understanding communication and media systems. Different from ‘administrative research’ done “in the service of external public or private agencies” (Scannell, 2005a: 5) to help these organizations use media more effectively (Babe, 2009: 17), critical research “[requires] that, prior and in addition to whatever special purpose is to be served, the general role of our media of communication in the present social system should be studied” (Lazarsfeld, 2004: 169 in Scannell, 2005a: 6).

Critical research differs from administrative research by providing historical context, addressing the role media plays within society, developing theory within the

context of present social trends, and lastly using human values and ideals in evaluating “actual circumstances and practices” (Babe, 2009: 17). Critical research takes a more qualitative, holistic approach in studying media systems, placing research within the context of society, of history, and of the human experience. In turn, critical theory seeks to provide an understanding of media and society within “their particular historical situation and circumstances” (Scannell, 2005b: 2). Critical theory “recognizes that both the inquiring human subject and the object of inquiry are social and cultural entities, and as such change over history” (Edgar & Sedgwick, 2002: 101).

In taking a critical theory approach in studying media, the Frankfurt School rejected viewing society as a unified, coherent, ‘mass’ group of people. Horkheimer asserted that

the proper meaning of ‘masses’ cannot be derived through an essentially quantitative analysis [. . .] Proper methodological usage must recognize that the masses are basically different at different stages of the socio-historical process and that their function in society is essentially determined by that of other social strata as well as by the peculiar social and economic mechanisms that produce and perpetuate the masses.

(Horkheimer, 1941: 121 – 122, in Scannell, 2005b: 2–3).

Approaching the study of media in this *ahistorical* way divorces media from its historical context and takes human individuality for granted by focusing on the unidentified masses. For Horkheimer and Adorno, the notion of the mass audience contradicted the message mass media attempts to convey. In fact, Adorno devised and

used the term ‘culture industry’ instead of ‘mass culture’ as the “latter suggest a type of culture spontaneously chosen by the masses as suiting their needs” (O’Connor, 2000). To use Adorno’s own words,

[Horkheimer and I] replaced [mass culture] with ‘culture industry’ in order to exclude from the outset the interpretation agreeable to its advocates: that is a matter of something like a culture that arises spontaneously from the masses themselves, the contemporary form of popular art. In all [the culture industries’] branches, products which are tailored for consumption by masses, and which to a great extent determine the nature of consumption, are manufactured more or less according to plan. (Adorno, 1990: 85).

While Adorno developed this term in the 1947 publication *Dialectic of Enlightenment* with Horkheimer as a co-author, Horkheimer himself drew attention to the schism of mass media’s message in 1941. Horkheimer took mass media of his era (radio, print and cinema film) to task over its proclaiming “adherence to the individual’s ultimate value and his inalienable freedom but [operating] in such a way that they tend to forswear such values by fettering the individual to prescribed attitudes, thoughts and buying habits” (Horkheimer, 1941: 122 in Scannell, 2005b: 3). Consequently, the term ‘culture industry’ reflects a view of mass media that reduces culture into a commodity for packaging and selling to the consumer. The ‘culture industry’ term personifies the “commercial character of culture [that] causes the difference between culture and practical life to disappear” (Adorno, 1990: 53). For Adorno, the deterioration of *true*

‘Culture’ (Kultur), e.g., art, symphony performances of music, reduces “it to the condition of all culture produced by the culture industry [into] ‘bits’ of information or manufactured ‘effects’ that are the elements of modern mass culture—appropriated, exchanged and communicated” (Witkin, 2003: 22).

The decomposition of ‘high culture’ gives rise to a highly commodified pseudo-culture. This decomposition destroys the “seriousness of high art” while forcibly integrating “the spheres of high and low art” (Adorno, 1990: 85). Whereas commodification strips high art of its ‘aura’, it also diminishes ‘low art’ or ‘low culture’, making it no longer the “authentic voice of working people” (Babe, 2009: 25). Through commodification, the culture industry “[cheapens] art. . . [trivializing] daily life [while simultaneously declaring] are to be an important part of our lives” (Márton-Barbero, 1993: 42). Adorno (1978) argued that the commoditization and consumerization of art serves to standardize it at its own expense, i.e., imitation in order to assure marketability (275).

Adorno, in line with Marxist thinking, believed the integration of high and low culture resulting in the commodification of culture “destroys [the] human social character” of labor (Scannell, 2005b: 5). This commodification process “[turns] use values into exchange values, transforming products whose value is determined by their ability to meet individual and social needs into products whose value is set by what they can bring in the marketplace” (Mosco, 1996: 143–144). In reducing cultural items to their exchange value, the true cost of labor is hidden and any surplus value (profit) the now commodified item gains remains as profit for person/organization owning the labor (Scannell, 2005b; Mosco, 1996). In this respect, the culture industry consists of societal

institutions using the modes of production and organization characteristic of “industrial corporations to produce and disseminate symbols in the form of cultural goods and services, generally, although not exclusively, as commodities” (Garnham, 1990: 156). Through this process of commoditization, the culture industry—now more commonly known as the cultural industries—operates nearly as any other economic entity within society. And these industries “[package] culture as a commodity for narcissistic consumption” (Cook, 1996: 3), “[transferring] the profit motive naked onto cultural forms” (Adorno, 1990: 86). In other words, commoditization strips cultural goods of any sense of culture, which makes them purely economic entities.

Adorno believed the culture industry destroys art’s emancipatory potential through focusing people on the need to purchase and acquire it, referring to this as the fetishization of culture (Scannell, 2005b; Peters, 2003; Adorno, 1990). On the other hand, his colleague Benjamin maintained that the reproduction of art and its mass dissemination provided the average person with the opportunity for discovery and to experience that was once held only by those with the means to encounter art. Benjamin contended that the advent of mechanical reproduction of the arts serves to emancipate people from being captivated by art by separating it from its ritualistic nature (Benjamin, 1970: 225). This reproduction destroys art’s aura allowing for the representation of its universal aspects to be seen in its copy. This destruction of aura offers limitless opportunities for changes in thinking and perception as “the adjustment of reality to the masses and of the masses to reality” takes place (Benjamin, 1970: 225). Art becomes free, with people experiencing it within their sphere of existence, within the realm of their understanding.

Benjamin was aware of the ever present risk irresponsible use of media poses to those whose intent it is to emancipate, i.e., the masses. Benjamin (2008) asserted it is the producers of art who determine its authenticity. Using the example of photography, he contended that

if it is an economic function of photography to restore to mass consumption, by fashionable adaptation, subjects that had earlier withdrawn themselves from it . . . it is one of its political functions to renew from within—that is fashionably—the world as it is . . . [becoming] a flagrant example of what it means to supply a productive apparatus without changing it. (Benjamin, 2008: 87)

Only when producers recognize the potential to initiate change their chosen medium possesses are emancipatory effects [of the medium] are possible. Consequently, Benjamin viewed the transformation of the “scale of cultural production and distribution” as a great democratizer that shatters the notion of culture “as something for the ‘happy few’” (cited in Scannell, 2005b: 15) whereas Adorno mourned the standardization and industrialization of culture, which he viewed as unacceptable consequences of mass cultural production—the culture industry. While Benjamin’s perspective on mass culture and mass cultural production provides a more illuminating view of modern mass media’s emancipatory potential, the economic issues commoditization places on cultural goods still remain.

Adorno, Horkheimer and Benjamin demonstrated how mass media can deceive people in its ability to “[transform] even abject poverty—by apprehending it in a

fashionably perfected manner—into an object of enjoyment” (Benjamin, 2008: 87). The commoditization of culture imparts a great deal of complexity onto cultural goods. In fact, commodification of culture is arguably the root of the culture/economic dilemma with respect to audiovisual media goods. The Frankfurt School of thought heavily focused on the dangers of mass cultural production, the ills of industrialization and standardization of culture that represents a ‘culture industry’ that devalues and cheapens culture. This commodification of culture makes culture and media industries no different from other economic entities operating within a society’s economic system. Cultural industries aspire to profit maximization the same as any other industry (Garnham, 1990: 156–157).

Mosco (1996) maintains that the relationship between commodification and communication is a significant one:

First, communication processes and technologies contribute to the general process of commodification in the economy as a whole. Second, commodification processes at work in the society as a whole penetrate communication processes and institutions, so that improvements and contradictions in the societal commodification process influence communication as a social practice. (142). (emphasis in original)

In other words, commodification encompasses all facets of communication within society. Through advertising media, mass media play a key role in the commodification process found throughout society, serving as an “immediate site of commodity production” (Mosco, 1996: 147). While the idea of mass culture as a singular unit

“connecting industry, text, and audience is defunct,” Horkheimer and Adorno’s “sense of interlocking of culture industries with others” (Peters, 2003: 70) does reveal a connection between cultural industries and other economic entities within society. Taking this commodification connection into account, Calabrese’s (2004) assertion that any “conception of culture in the modern world is [incomplete] if it fails to account for the space occupied by “the media”—the institutional and technological means of communication and information” (3) rings true.

Horkheimer and Adorno stressed that “culture is key to understanding power relations in society” (Babe, 2009: 16). This belief in the important role culture plays in forming societies emerges from the “cultural turn in social thought [that is] a product of the second half of the [20th] century” (Scannell, 2005b:3). Yet, Horkheimer and Adorno also interrogated the concept of ‘the masses’, mass culture, and mass media, wary of the false diversity [of choice] and the false sense of individuality the commodification of culture presents that effectively ‘dupes’ the masses and prevents them from critically examining the very institutions that undermine their individuality (Scannell, 2005b; Witkin, 2003; Adorno, 1990). The political economy of media continues with the Frankfurt School tradition of critical research, analyzing the structure of media systems and examining the role ownership, political and economic power play in maintaining them.

3.2.6 *Political Economy of Communication & Media*

Mosco holds that “political economy is the study of control and survival in social life. . . [with] control referring specifically to the internal organization of individual and

group members, while survival takes up the means by which they produce what is needed to reproduce themselves” (1996: 26). Mosco goes on to state that “control processes are broadly political in that they involve the social organization of relationships within a community. . . [and] survival processes are fundamentally economic because they concern production and reproduction” (1996: 26). In short, social relationships and the perpetuation of social communities, i.e., society, revolve around issues of control and survival. These two parallel functions are not opposing forces. To the contrary, they are symbiotic in nature. Mosco contends that “the strength of this definition is that it gives political economy the breadth to encompass at least all of human activity and arguably all organic processes” (1996: 26). This view of the inherent political economic nature of all things dealing with society forms the basis of political economy.

The way in which persons define property, ownership, i.e., the way in which they perceive economics, plays a role in how they define their environment and the things within it. For example, the economic system of capitalism “constitutes a way of making sense of the world—not only as a mode of evaluation and interpretation of things, people, places, and so on, but also as a condition of social intercourse, that is, as a reason to be social” (Maxwell, 2001: 5). Indeed, “this critical look at the institution of private property . . . can show us how the contemporary political economy shapes cultural experience . . . offer[ing] one way to begin to see culture in the political economy, in this case the stories, places, identities, friendships, enmities, even the kinds of bodies that flow from the institution of private property and its sense-making narratives” (Maxwell, 2001: 6). It is from this inherent interpretation of the intertwining nature of these two factors that the political economy of media and communication arises.

The political economy of media “addresses the nature of the relationship between media and communication systems on the one hand and the broader social structure of society on the other [and] specifically [looks] at how ownership, support mechanisms (e.g. advertising), and government policies establish media systems and communication technologies and (directly and/or indirectly) influence media behavior and content” (McChesney, 2004: 43). It “involves a complex interaction between the economy, state, social movements, and popular participation in social and cultural processes” (Durham & Kellner, 2001: 222). Moreover, political economy of media “encompasses analysis of production and consumption of media, goods, and services . . . in . . . modern consumer and media societies [that] are historically specific, [considering] differences between countries . . . in terms of ownership patterns of the media” (Durham & Kellner, 2001: 222). It “examines how media and communication systems and content reinforce, challenge, or influence existing class and social relations” (McChesney, 2004: 43).

The political economy of media takes a critical approach in studying the “historical and institutional organization of production, power, and ideology . . . [primarily concerning itself] with revealing the constitution of power and its hegemonic practices in such areas as communicative control and ideological legitimacy” (Sussman, 1999: 85 – 86). Political economy “sees culture as the production and circulation of symbolic meaning, as a material process of production and exchange, part of, and in significant ways determined by, the wider economic processes of society with which it shares many common features” (Sinclair, 1996: 32). Consequently, if culture is something produced and exchanged as a commodity for sale or purchase, then understanding how issues such as media ownership, institutional control and the

production information work together in supporting and reinforcing a society's ideology is important.

Institutions and organizations participating in selling symbolic cultural commodities—such as audiovisual media goods/services—possess the power to control what symbols circulate throughout a society. Or, as Garnham puts it:

A delimited social group, pursuing economic or political ends, determines which meanings circulate and which do not, which stories are told and about what, which arguments are given prominence and what cultural resources are made available and to whom. The analysis of this process is vital to an understanding of the power relationships involved in culture and their relationship to wider structures of domination. (1995: 65).

Understanding the role institutions and organizations play in shaping and molding the cultural symbols circulated in society is a key focus of political economy of media. This follows from the belief that what a society values is part of its cultural system, and that those values display themselves in how goods/services are produced and exchanged along with the economic system in which these transactions occur (McChesney, 2004; Durham & Kellner, 2001; Maxwell, 2001).

Fraser (1998) contends that “culture and economy are thoroughly imbricated with one another, our core economic practices [having] a constitutive, irreducible cultural dimension, shot through to the core with significations and norms” (40, in Swanson, 2005: 94). This is not to mean that the political economy of communication and media engages in institutional or economic determinism. What the political economy approach

does do is argue that people/institutions engaging in the modes of production established within a society will “coordinate human actions so as to ensure their maintenance” as it is within people/institutions “general interest” to do so (Garnham, 1995: 66).

3.2.6 *Audiovisual Media: Culture/Economics Dilemma*

The connection between the economic and cultural aspects of audiovisual media goods and issues of cultural diversity is apparent in Iwabuchi’s (2002; 2005) observation:

As multinational media corporations press ahead with global tie-ups and partnerships, they are also trying to raise their profits by tailoring this axis to every corner of the world while promoting cultural diversity in every market. The world is becoming more diverse through standardization and more standardized through diversification. (Iwabuchi, 2002; 2005 cited in UNESCO, 2009: 142)

This phenomenon is referred to as “glocalization,” where global media firms tailor media goods to fit local media markets (UNESCO, 2009: 142). It reflects media industries attempts to exploit the commercial value of cultural products in order to secure profitability. The use of standardized television formats for genres of television (UNESCO, 2009: 142) facilitates a homogeneity of content, with similar themes, characters and settings present in the programs (De bens & de Smaele, 2001: 70). Technological convergence and media ownership magnify this trend. However, the desire to—in some way, shape or form—localize content reflects the awareness that audiovisual

media goods are also conveyors of culture, giving credence to their being cultural products.

Baker addresses the consequences of displacing or marginalizing local material through the use of economically attractive audiovisual media imports. Specifically, Baker argues that “cultural materials provide the discursive means and medium for individuals and groups to address issues of identity, values, and motivation” (Baker, 2002: 237). Therefore, it is important that societies see their own history and issues reflected via cultural materials so that context is provided to their media experience. This perspective ties into the political economy of media in which critical theory communications scholars believe the excessive “commercialization of cultural production. . .[negates] rationality, [erodes] freedom, autonomy, and the sense of history” (Swingewood, 1998, in Wang, 2009: 130).

The cultural diversity argument has gained increasing attention as governments, policymakers and citizens increasingly fret over the encroachment of capital and economic concerns into cultural matters—including audiovisual media goods. This concern over cultural diversity is linked to the economic aspects of these goods. The European Union and individual European governments identify creative industries as engines of growth for post-industrial economies (Flew & Cunningham, 2010; Holden, 2007). Entire governmental departments have been created to explore and exploit these opportunities. In fact, the British New Labour government under Tony Blair established a Creative Industries Task Force (Department for Culture, Media and Sport’s Creative Industries Taskforce), which coined the ‘creative industries’ concept in 1998 (Holden, 2007: 1; Flew & Cunningham, 2010). Moreover, the EU specifically speaks to the

economic potential of the creative industries—of which audiovisual media goods are a part—as justification for its regulatory and trade policy stance (Commission of the European Communities, 2007).

The advent of the creative industries term has brought with it increased recognition of the economic value of audiovisual media goods, lauded by governments wishing to exploit its potential. Scholars are more familiar with the Frankfurt School’s “cultural industries” term. As defined by the Frankfurt School, the cultural industries refers to commercial entertainment, which includes television programming, film, the publishing and music industries (Horkheimer & Adorno, 2002 cited in Galloway & Dunlop, 2007: 18). However, there is unease among scholars whom assert this new creative industries approach risks the cultural aspects of media goods becoming totally dominated by their economic aspects (Jeffcutt, Pick & Protherough, 2000; Huijgh, 2007; Banks & O’Connor, 2009). Moreover, just what exactly comprises ‘creative industries’ is also a matter of debate. In this regard, the term itself is somewhat nebulous.

The United Nations Committee on Trade, Aid, and Development (UNCTAD) broadly define the creative industries as:

The cycles of creation, production, and distribution of goods and services that use creativity and intellectual capital as primary inputs; a set of knowledge based activities, focused on but not limited to the arts, potentially generating revenues from trade and intellectual property rights; tangible products and intangible intellectual or artistic services with creative content, economic value, and market objectives; at the cross-roads among the artisan, services, and industrial sectors; and comprising a new

dynamic sector in world trade. (UNCTAD, 2008: 13 in Flew & Cunningham, 2010: 115).

Under this definition, creative industries includes publishing and literature, the performing arts; music; audiovisual media; photography; visual art; design and fashion design; museums, galleries and libraries; advertising; and interactive media (UNESCO Framework for Cultural Statistics, 2007 in Flew & Cunningham, 2010: 114-115). Thus, video games or cinematography or art galleries or advertisements for commercial products are considered creative output.

The concern with the term ‘creative industries’ is with the broadness of the definition as well as the push it represents toward economic imperatives for creative goods. As the economic significance of the cultural and creative goods rises, the association of culture and creative with the economic also increases that much more (Flew & Cunningham, 2010: 118). There is concern that abandoning the word ‘cultural’ and replacing it with ‘creative’ subsumes culture under a creative industries agenda focused on economic policy (Galloway & Dunlop, 2007: 19). The term ‘cultural industries’ (publishing, music, film, radio, and television industries) denoted and connoted the need for cultural policy development with respect to these cultural commodities. The term ‘creative industries’, which focuses on the “knowledge economy context,” places more emphasis on the economic and what the cultural can do for the economic (Galloway & Dunlop, 2007: 19; Flew, 2005). There is concern that its overly generic definition makes even more possible the separation of the cultural from the creative industries: “it represents an unacceptable shift from cultural to economic priorities” (Banks & O’Connor, 2009: 367).

There is also doubt that the evolution of this term in any way resolves the inherent contradictions between the duality of media goods (Banks & O'Connor, 2009: 366). The term 'cultural industries' emphasized the dualistic nature of cultural goods; both the economic and cultural were recognized as important in developing policy for cultural goods (O'Connor, 2007 in Banks & O'Connor, 2009: 367). This acknowledged cultural industries as unique, worthy of special consideration (Ryan, 1992 in Banks & O'Connor, 2009: 367). Creative industries "promotes a contradiction-free marriage of culture and economics" while failing to proactively engage with these contradictions embedded in the very nature of audiovisual media (Banks, & O'Connor, 2009: 366).

Another concern with the term 'creative industries' is that removing the word "cultural" and subsuming industries formerly associated with the 'cultural industries' under 'creative industries' diminishes the inherently complex nature of media goods, which is necessary in developing comprehensive policy concerning them (Galloway & Dunlop, 2007: 26). The worry is that by so forcefully tying the economic opportunities and potential economic gains the creative industries offer, the creative becomes wholly commoditized. Culture becomes "just one more knowledge economy asset" (Galloway & Dunlop, 2007: 25), not the complex conveyor of culture and identity. This causes scholars to be concerned that the special nature of media goods may be lost in the push toward further exploiting their economic qualities (Galloway & Dunlop, 2007; Banks & O'Connor, 2009).

One crucially beneficial aspect of current scholarship regarding the creative industries is its rousing awareness over the potential permanent severing of culture and cultural considerations from cultural goods, including audiovisual media. However, the

current linking of culture to economic prosperity still does not adequately deal with the dualistic complications cultural goods—in this case audiovisual media—embody. In that sense, harnessing the economic potential of cultural goods under the moniker of ‘creative industries’ does not erase the same policy issues that stem from the dual cultural and economic nature of audiovisual media. Indeed, it threatens to further undermine the cultural aspects of these goods through further magnifying their economic aspects. However, the question still remains as to why the European Union, in matters concerning one aspect of the creative industries—audiovisual media goods/services, remains fixated on cultural diversity while at the same time highlighting the economic reasons for developing an audiovisual media regulatory policy.

CHAPTER 4

CONVERGENCE, CULTURAL DIVERSITY, AND THE EU

Technology challenges the notion of having and preserving a distinct national cultural identity, with the current trend toward globalization challenging the concept of national identity and cultural specificity. It is only very recently in human history that the cultural artifacts of different cultural groups have been able to pass so effortlessly across geographic boundaries (Gershon, 2005; Arjun, 1996). The first major exchanges of culture occurred when the Old World “discovered” the New World. As transportation and technology developed, cultural exchanges also developed. The first communication technology revolution involving the telegraph linked countries around the globe. As goods and ideas became less geographically bound, culture was also able to circulate beyond its points of origin. True, inequities in communications technology existed then as they do now, i.e., the digital divide. Nonetheless, during this most recent communications technology revolution, the phenomenon of convergence plays a key role in the globalization process.

This chapter explores the relationship between convergence and globalization, examining possible implications of each as they relate to the inherent economic/culture tensions of audiovisual media goods/services. The chapter begins by defining convergence, its relationship with globalization and the possible implications for culture. The chapter goes on to explore the various definitions of and perspectives on

globalization, its relationship with convergence and possible implications for culture as well. Next, the chapter uses critical medium theory to understand the relationship between convergence, globalization and cultural identity. Finally, the chapter puts forth the research questions guiding the policy research study.

4.1 Convergence & Globalization: Symbiotic Relationship

4.1.1 Convergence

Convergence is a catchall phrase meaning different things depending on the context in which it is used. The term is generally used to describe the coming together of different technologies. Kung et al. (1999) state convergence is “a ubiquitous but loosely defined term commonly understood to denote the blurring of boundaries” (Kung, et al., 1999: 29 in Dailey, Demo, & Spillman, 2005: 157). The diffuse nature of the term “convergence” reflects how persons and organizations involved in different roles within the media and communications industry perceive it. The resulting multidimensionality of the term reflects convergence being both a process of how information is delivered and obtained and a technological phenomenon that deals with products and content.

For example, journalists focus on convergence’s role in disseminating news information while telecommunications industries view convergence as involving “technological integration and marketing of a host of technologies ranging from wired to wireless and from telephone to television” (Grant, 2009: 4). Journalists focus on how [technological] convergence changes the journalism process while the telecommunications industry emphasizes the actual technologies that erase the boundaries among content and distribution systems. Dailey, et al. also focus more on the

convergence process as it relates to organizational factors in news and information gathering, referring to a “convergence continuum” ranging from “cross-promotion, cloning, competition, content sharing and full convergence” (2005: 2). Gordon (2003) identifies five aspects of convergence – ownership, tactical, structural, information-gathering and storytelling – but still focuses more on the process aspect of convergence as it relates to news organizations and [the dissemination of] content.

Appelgren (2004) asserts that in academia and the media industry, convergence refers to the structural changes in the media companies as well as technological changes affecting media content and the distribution and consumption of content (237). In this statement, Appelgren includes the different aspects of convergence into one definition. Appelgren also discusses the different ways in which scholars conceive the concept of convergence. These range from Negroponte’s (1979) three-intersecting circle convergence model of the broadcast/film media, print media, and the computing industry, to the European Union’s (1997) definition dealing with distribution of services over networks and the development of multi-function electronic devices, to the media content production aspect of convergence symbolized by IFRA/WAN Newsplex at the University of South Carolina (Appelgren, 2004: 240). That being said, it appears there is no one agreed upon definition of convergence. But this can be due to the fact that convergence encompasses many different dimensions of the media value chain.

McPhillips and Merlo (2008) define convergence as simply “the ability to deliver different media channels via one digital platform” (237). Lawson-Border (2006) also characterizes media convergence as a combination of traditional and new media, highlighting that convergence can involve content or actual product (ix). But she also

focuses on the information dissemination aspect of convergence, defining it as “the realm of possibilities when cooperation occurs between print and broadcast for the delivery of multimedia content through the use of computers and the Internet” (Lawson-Border, 2006: 4). Iosifidis (2011) defines convergence as simply “the delivery of similar, existing or new media, telephony and Internet services via the same transmission platform” (172). Burnett & Marshall define convergence as, “the blending of the media, telecommunications and computer industries, and the coming together of all forms of mediated communication in digital form” (Burnett & Marshall, 2003: 1 cited in Grant, 2009: 5). However, technological convergence is just one aspect of media convergence.

Convergence is a not something that just occurs because of technology. It is a process that evolves through the interaction of technology and people resulting in increased interconnectedness. Convergence is not only a combination of electronic devices into one super-communicative device. Technological change is only one aspect of media convergence. As Jenkins (2004) puts it, media convergence is an ongoing development that changes the existing relationships between “technologies, industries, markets, genres and audiences” (34). Therefore, media convergence includes both technological innovations—technological convergence—and convergence of media ownership. In fact, it is media convergence—or rather media ownership—that enables technological convergence to change the nature of global communication.

As Iosifidis puts it, it is “convergence at a *structural* level (or *business organizational* or *corporate* convergence) [that] causes a transformation of the global communication and information markets” (2011: 174). Media ownership convergence involves the horizontal and vertical integration of media companies. Horizontal

integration involves companies making lateral market moves to acquire similar business for market growth whereas vertical integration involves companies acquiring control over the supply chain of a product, from creation to distribution (Lawson-Border, 2006: 30; Doyle, 2002b: 22). McPhillips and Merlo (2008) argue that vertical *disintegration* (emphasis mine) is occurring because of advances in technology that decrease the cost of production while horizontal integration across industries occurs (McPhillips & Merlo, 2008: 244). Whatever the effects, convergence enables the dissemination of audiovisual media goods to people located all around the world across many different delivery platforms.

Broadband and mobile technology continues to increase and intensify the ability of visual cultural products to move beyond the nation of production. Convergence of ownership enables media companies to circulate images, establish brand presence and “glocalize” media markets. As a result, symbols previously associated and linked to/with a specific national society can be transferred beyond national borders. With the increasing interconnectedness of economic markets and the ability to communicate across time and space via the Internet and other information technologies, the importance of geographical borders diminishes (Wriston, 1992; Featherstone, et al., 1995; Waters, 1996 cited in Waisbord & Morris, 2001: vii). Jenkins (2001) identifies five areas of convergence: technological, economic, social or organic, cultural and global. The last two types— cultural and global convergence – speak to the role convergence plays in propelling globalization. Cultural convergence represents the creativity fostered by “the intersections of various media technologies, industries and consumers” with global

convergence as the “cultural hybridity [resulting] from the international circulation of media content” (Jenkins, 2001: 93; Applegren, 2004: 242).

Technological convergence and other aspects of convergence such as media ownership and collaboration (Grant, 2009) work to both produce and enhance globalization (Jenkins, 2001; Jenkins, 2004). The knowledge economy has spawned a “new knowledge culture [that] has arisen as our ties to older forms of social community are breaking down, our rooting in physical geography is diminishing” (Jenkins, 2004: 35). Globalization and media convergence—especially technological convergence—are complementary phenomena (Castells, 2006; Kellner, 2002; Scholte, 2008). Castells illustrates the relationship between information and communications technologies and globalization, stating that “globalisation rests on a technological infrastructure” (Castells, 2006: 60). In fact, Iosifidis asserts the “globalization of information and communications technologies” in conjunction with their commercialization and liberalization are “driving forces for convergence” (Iosifidis, 2011: 171). Scholte (2008) defines globalization as

the spread of transplanetary—and in recent times also more particularly supraterritorial—connections between people. From this perspective, globalisation involves reductions in barriers to transworld social contacts. People become more able—physically, legally, linguistically, culturally and psychologically—to engage with each other wherever on earth they might be. (1478)

In short, globalization represents “a shift in the nature of social space” (Scholte, 2008: 1478), with the advent and expansion of new media diminishing the significance of geographical distance (Ampuja, 2004: 67).

Yet, despite the positive aspects of cultural and global convergence, such as developing a *Star Trek-esque* sense of global community, these same processes may threaten the maintenance of unique cultural identities. And globalization, along with convergence, may have the potential to create an increasingly *a-cultural* environment that enables the economic aspects of media goods to totally dominate their cultural characteristics. These are pertinent issues with which European Union media regulatory policy, specifically audiovisual media regulatory policy, continues to deal. But tackling this issue requires a clear definition of globalization and understanding its relationship with convergence.

4.1.2 *Globalization*

Globalization is a multifaceted term that means different things depending on what it describes or the context in which it is used. Scholars have different perspectives on what globalization actually means and/or entails (Ampuja, 2004; Brown, 2008; Christopherson, Garretsen, Martin, 2008; Isosifidis, 2011; Kuppens, 2013; Scholte, 2000; Scholte, 2008). Globalization can refer to “a bewildering array of economic, (geo)political, social, environmental, cultural, and technological process and practices” (Ampuja, 2004: 64). Globalization also leads people to associate it with “progress, prosperity, and peace [or conjure] up deprivation, disaster and doom” (Scholte, 2000: 14). Globalization sometimes stands for internationalization (Scholte, 2000), as a precursor

for acculturation (Berry 2008), or as a driver of modernization, cultural domination and/or cultural hybridization (Kuppens, 2013; Iosifidis, 2011; Straubhaar, 2008; Scholte, 2000). Such varying perspectives and views of globalization make it difficult to develop one precise, comprehensive definition for the term. Nevertheless, there are different definitional perspectives concerning globalization.

Castells believes that globalization “is not an ideology but rather an objective process of structuring economy, societies, institutions, cultures, etc.” (Castells, 2006: 57). Scholte also follows along with this conception of globalization, contending that of the four elements under which globalization came into fruition—the spread of rationalism as a dominant knowledge framework, certain turns in capitalist development, technological innovations in communications and data processing, and the construction of enabling regulatory frameworks—none are more important than the other in bringing globalization about (Scholte, 2000: 90). This reiterates the complex process that globalization is. Using McGrew’s (1992) definition of globalization as a springboard, Berry (2008) stresses the notion of globalization as a

complex process, rather than to the kinds of outcomes, which take place when societies engage in international contact. This process involves a flow of cultural elements (ideas, goods etc.), and the establishing of relationships and networks. It does not specify what societies and their individual members do in response to this process, nor identify the changes that take place among them. (329)

Ampuja echoes Berry’s wariness in narrowly defining globalization in either/or terms, pointing out that the term describes changes currently happening in the world

while also serving as “a theory or explanation of the changing character of the modern world” (2004: 64). Giddens defines globalization as “the intensification of world-wide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa” (Giddens, 1997: 19). More explicitly, Giddens argues that:

In the modern era, the level of time-space distancing is much higher than in any previous period, and the relations between local and distance social forms and events become correspondingly ‘stretched.’ Globalization refers essentially to that stretching process, in so far as the modes of connection between different social contexts or regions become networked across the earth’s surface as a whole. (1997: 19).

In line with Giddens time-space distancing conceptualization, Waters (1995) defines globalization as “*a social process in which the constraints of geography on social and cultural arrangements recede and in which people become increasingly aware that they are receding*” (3) (emphasis in original). Scholte (2000) builds upon this notion of receding geographic constraints, identifying deterritorialization as the most accurate conceptualization of globalization. Specifically, Scholte contends that deterritorialization best captures the

growth of ‘supraterritorial’ relations between people. In this usage, ‘globalization’ refers to a far-reaching change in the nature of social space. The proliferation and spread of supraterritorial or what we can alternatively term ‘transworld’ or ‘transborder’ connections brings an end to what could be called ‘territorialism’, that is, a situation where social

geography is entirely territorial. Although, as already stressed, territory still matters very much in our globalizing world, it no longer constitutes the whole of our geography.(2000: 46)

In line with Falk (1993), Karim (2006) identifies two types of globalization:

‘globalisation-from-above’ and ‘below’ (Falk, 1993, in Karim, 2006: 272). According to Karim, non-governmental organizations or those without “strong links to governments or large corporations” carry out “globalisation-from-below” (Karim, 2006: 272), whereas “collaboration between leading states and the main agents of capital formation” comprise globalisation-from-above (Falk, 1993: 39, in Karim, 2006: 272). Multinational corporations, including global communications and media companies, are “major participants in the globalisation of communication” (Karim, 2006: 272).

Globalization may affect the way in which people define themselves (Collet & Inoguchi, 2012; Shome & Hedge, 2002). Geographic location no longer solely determines one’s identity or the ability for people or organizations to connect across time and space with each other. In fact, globalization increases the role and ability of organizations, citizens, agencies, institutions, etc., to transcend geo-political boundaries and “make previously isolated societies, states [and] nations more interconnected and interdependent” (Koltsova, 2008). Castells (1996) contends that “there is a new spatial form characteristic of social practices that dominate and shape the network society: the space of flows” (Castells, 1996: 412 in Ampuga, 2004: 66). And it is convergence of communications that carves out this ‘space of flows’, which enables connections between people, organizations and finances to be made on a global level.

Giddens asserts that the age of new media technologies necessitates abandoning traditional sociological concepts that link social systems to geographical boundaries (1990 cited in Ampuja, 2004: 65). According to Giddens, it is through the “intrusion of distance into local activities [in combination] with the centrality of mediated experience” that globalization changes the world: “although everyone lives a local life, phenomenal worlds for the most part are truly global” (Giddens, 1991: 187 in Ampuja, 2004:66). Castells (2007) also asserts that “the twin processes of globalization and the rise of communal identities have challenged the boundaries of the nation state as the relevant unit to define a public space” (Castells, 2007: 258). Escobar (2001) contends that the “transnational flows of people, media, and commodities characteristic of global capitalism mean that culture and place become increasingly deterritorialized (Appadurai, 1996, 1991 & Hannerz, 1989, cited in Escobar, 2001: 146). Globalization is continuously changing notions of place while also providing individuals and non-governmental organizations with the ability to organize and bring pressure upon governments (and multinational corporations). Yet, it is a mistake to think that globalization effectively marginalizes nation-states and pulverizes national and regional identities.

Contrary to popular belief, globalization does not make the nation-state obsolete, but it changes and redefines the nation-state’s role and how it operates (Castells, 1999: 5). In that same vein, local cultures do not become obsolete in the face of globalizing media. Despite global flows in television, people still prefer their own cultural entertainment fare. Before the latest information technology explosion, Schramm (1964) emphasized the importance of localness in using mass communications and media for social development:

Therefore, an efficient use of the mass media for economic and social development implies that they should be as local as possible. Their programmes should originate no farther than necessary from their audiences, the programmes should be prepared by persons who understand the cultures to which they are speaking, and means should be available for the audiences to report back to the media. (18)

It seems that in 1964, Schramm planted the seeds for the concept of “glocalization.” Despite de-territorialization, people still feel the need to construct a sense of place (Escobar, 2001). Massey (1997) asserts that the need for people to maintain “local specificity [within] global constructedness” stems from the “experience of place [continuing] to be important” for humans, despite globalization and globalized communications capabilities (Escobar, 2001: 147). Thus, people “practice the local in the global” (Friedman, 1997: 276 in Escobar, 2001: 147) in order to construct a ‘sense of place’. The adaptation of global television formats for local markets is an example of cultural localization of the global, i.e., glocalization (Ariely, 2012; Moran, 2009; Straubhaar, 2008; Appadurai, 2004; Curran, 2002; Escobar, 2001).

According to Curran (2002), it is the “global system [that] recognizes local ability, and secures it for a world audience (173). Crane (2002) and Hefez (2007) stress that cultural globalization does not necessarily yield cultural homogenization. To the contrary, people care from where their cultural symbols come and the values these symbols express, even if these symbols are as “insubstantial as those labeled popular culture” (Crothers, 2006: 4). Tunstall claims that

Most people around the world prefer to be entertained by people who look the same, talk the same, joke the same, behave the same, play the same games, and have same believes (and worldview) as themselves. They also overwhelmingly prefer their own national news, politics, weather, and football and other sports. (Tunstall, 2008: xiv, in Moran, 2009: 157).

This challenges the notion of cultural global flows equaling cultural homogenization. Appadurai (2004) contends that the main weakness of the cultural homogenization argument is its failure to acknowledge the ways in which cultural groups indigenize transplanted cultural artifacts, symbols, trends, etc.

As communications technologies continue developing and as media corporations continue operating across borders, globalization will continue. How it affects culture remains to be seen. Of course, this age of globalization is not the first one the world has seen—pre-World War I was an age of globalization with the telegraph serving as the precursor to the first modern communications revolution. Yet, never before has communication across time and space been so convenient, with people [virtually], capital and cultural symbols crisscrossing the globe at the touch of a keyboard.

Appadurai refers to the present as the age of “imagined worlds:”

[T]hat is, the multiple worlds that are constituted by the historically situated imaginations of persons and groups spread around the globe. An important fact of the world we live in today is that many persons on the globe live in such imagined worlds (and not just in imagined communities) and thus are able to contest and sometimes even subvert the

imagined worlds of the official mind and of the entrepreneurial mentality that surround them. (Appadurai, 2004: 103)

There is little doubt that this process of “regional integration and economic globalization” will continue as technology continues reducing the cost of conducting business transactions internationally (Eichengreen, 2007: 431). Castells (2000: 693) opines that “understand[ing] technology as [...] a socially embedded process” is key to understanding how this process of globalization in conjunction with technological convergence can bring about the “material transformation of our social fabric.” In a sense, Castells is speaking against technological determinism, a viewpoint that sees technology acting on society, causing the transformation of societies (Hirst, 2012; Kellner, 2002).

Technological progress—in this case technological convergence of information and communications technologies—is a major factor in the globalization process. Yet, while information communication technologies are “indispensable means” for the changes occurring in a globalizing world, they “are not causal factors of this social change” (Castells, 2000: 694). In other words, technology alone is not solely responsible for globalization. Technological determinism ignores the human element. According to Hirst, scholars often misconstrue what Marx meant by the phrase, “The hand-mill gives you society with the feudal lord; the steam-mill, society with the industrial capitalist” (Marx, 1847: 49 in Hirst, 2012: 5) mainly due to their disconnecting that one specific sentence from the four preceding it and the one following it:

M. Proudhon the economist understands very well that men make cloth, linen, or silk materials in definite relations of production. But what he has

not understood is that these definite social relations are just as much produced by men as linen, flax, etc. Social relations are closely bound up with productive forces. In acquiring new productive forces men change their mode of production; and in changing their mode of production, in changing the way of earning their living, they change all their social relations. [. . .] *The same men who establish their social relations in conformity with the material productivity, produce also principles, ideas, and categories, in conformity with their social relations.* (Marx, 1847: 49 in Hirst, 2012: 5) (emphasis mine).

In short, it is the creators of technology and the “acquisition of new technology” (Hirst, 2012: 5) that brings about change in how society operates economically, socially and culturally. Technology is not an “autonomous force” (Kellner, 2002: 288); it is not a leveler of the capitalist economic system or harbinger of democracy (Ferguson, 1992). Technology comes out of society, is part of society and cannot be “cut out of the social context in which it exists” (Hirst, 2012: 5). This is especially true of media, which is often the victim of much technological determinism.

It is not about what media does to people, but what people do with media and how they use media. How humans use media and communications technology within their societies can (not will) in turn through human agency, bring about structural change within societies. Harold Innis and Marshall McLuhan, two Canadian media and communications scholars, focused on the relationship between technology, human society and culture long before Castells. Accusations of technological determinism have

been and are continually leveled against Innis and McLuhan (Hirst, 2012; Tremblay, 2012; Rogers, 2000; Ferguson, 1992; Carey, 1967). Yet, the essence of these two communication and media scholars' medium theories illustrate how the system of communication a society chooses and uses reflects the society's culture while also influencing it.

4.2 Convergence, EU AVMS Regulatory Policy & Medium Theory

The previous sections of this chapter explore convergence and globalization, and the relationship between the two especially as it pertains to culture. Beniger (1986) contends that “each new technological innovation extends the processes that sustain life, thereby increasing the need for control and hence for improved control technology” (59). Considering the influence of technological convergence on globalization and the rapidity of structural changes occurring within media industries, change is almost a certainty. Yet, globalization theories and explanations of convergence do not fully explain the importance of information and media technologies and their fundamental relationship to notions of power—and powerlessness—as it relates to culture. The perspectives of Harold Innis and Marshall McLuhan, also known as “medium theory” help fill this gap in understanding.

4.2.1 Innis: Medium Theory & Socio-Cultural Identity

According to Mosco, it is Innis that stands out among political-economists in his continuous efforts to “establish the connections among forms of media, time and space, and structures of power” (1996: 173). Trained as an economic historian, in mass

communications and media studies, Harold Innis was a communications pioneer, connecting communication, distance and culture well before terms such as globalization and convergence became synonymous with mass media. Of Canadian nationality, Innis' research on the Canadian fur trade led him to developing communication theories centering around time and space. In *The Fur Trade in Canada* (1930), Innis argued that the development of the Canadian economy during the 1700s and 1800s centered on its serving as a frontier economy providing raw materials (beaver pelts) for European fashion (Babe, 2009; Scannell, 2005c; Blondheim, 2003). In short, Innis argued that it was the "back-tier" of westward expanding frontiers that determined the frontier products' usefulness to the economy (Carey, 1992: 151). This thesis directly contradicted the prevailing "'frontier hypothesis' of Frederick Jackson Turner" who argued it was the western frontier and not the eastern United States or Europe that was responsible for the US's economic development (Scannell, 2005c).

In further research, Innis went on to discover that Canada not only served as the "back-tier" of the United States by providing it raw printing materials (timber), but also imported the finished products in the form of mass communications products, cultural commodities that transported American ideals and values to Canada. Innis' view of Canadian – US cultural trade relations is reminiscent of the cultural imperialism view of globalization.⁵ Carey contended that

⁵ Imperialism enables nations to move their capital from overdeveloped markets to underdeveloped markets. Schiller holds that "the sum of processes by which a society is brought into the modern world system and how its dominating stratum is attracted, pressured, forced, and sometimes bribed into shaping social institutions to correspond to, or even promote, the values and structures of the dominant center of the system" best illustrates the concept of cultural imperialism (Schiller, 1976 cited in Mattelart & Mattelart, 1998: 94).

imperial powers seem to create not only economic and political clients but intellectual clients as well [and] client states adopt, often for reasons of status and power, the perspectives on economics, politics, communication, even on human nature promulgated by the dominant power. (1992: 149)

Through his historical economic research, Innis came to view information as a commodity, powerful commodity. In the early 20th century, Innis began linking the economic importance of information and human need to control it. Beniger (1996) links this need for informational control to the basic characteristics of economic activity.

Economic activity is undertaken with a purpose, requiring control to sustain its wide-ranging processes in order to accomplish its goals, and “because control depends on information and informational activities . . . these will enter the market—as both goods and services—in direct relationship to an economy’s demand for control” (Beniger, 1996: 53). In fact, Schiller (1988) contends that information is no different from any other commodity. According to Schiller, studying the production of information and its use as a resource throughout history shows that information has undergone the “same series of changes in social organization as other resources claimed by capitalism and transformed into commodities” (33). Information is fundamental to all economic transactions (Bell, 1981: 511). Therefore, in an age when information is the lifeblood of economies and globalization, control over information becomes that much more important.

Innis connected the need for control of information to the development of different modes of communication throughout human civilization. In *Bias of Communication*, Innis postulated that the medium of communication humans use “tends

to create a bias in civilization favourable to an over-emphasis on the time concept or the space concept and only at rare intervals are the biases offset by the influence of another medium and stability achieved” (Innis, 1951: 64). A casual reading of this statement can lead one to believe that Innis engages in technological determinism (Blondheim, 2003: 165–166), but this is not the case. Just as Castells (2000) views information technologies as “indispensable means for the actual manifestation of many current processes of social change,” not the absolute “causal factors” of this change (Castells, 2000: 694), Innis believed that how a civilization orders its communication serves as an extension of its itself, of its values and identity. The way in which a medium influences a society with regards to space or time can only be comprehended “within the social-economic context of [its] use (Comor, 1994: 112 in Babe, 2009: 96). Political and economic sensibilities guide the ways in which civilizations organize their communications, transport their cultural symbols and language, but the medium of communication a society uses indicates how it manages distance and time (Scannell, 2005c). And each type of modern media—radio, television, newspapers, magazines—all have the ability and “increased capacity for controlling space” (Carey 1992: 136), especially due to the Internet.

Innis asserted that our separation of sight and touch produces “subjective disunity and external disunity” (1951: 90). He goes on to state that print as a medium and industry supports the “development of monopolies of space in nationalism and the state” due to its slowing the speed at which ideas move yet driving the development of vernaculars, which help to develop a sense of nationalism among common language speakers (Innis, 1951: 128–129). Innis credited the end of the Holy Roman Empire’s grip over the West as the impetus for “growth in the name of science of new monopolies to exploit faith and

incredibility” (1951: 131). Innis entreated modern civilization, steeped in literacy and obsessed with the speed of communication, to “free [itself] from time and [attempt] a balance between the demands of time and space [to] develop conditions favourable to an interest in cultural activity” (Innis, 1951: 90).

Applying Innis’ medium theory to the present, is it possible that the global dissemination of cultural goods/services and the United States’ global dominance of cultural exports delivered within a technologically and structurally converging media system promotes European Union fears of cultural domination and an inability to break out of its “peripheral cultural commodity” status in the globalized media market place? Innis’ medium theory, which theorized that how a society communicates and exchanges information reflects its cultural values, may identify another point of conflict with European Union audiovisual media goods/services regulatory policy. Innis’ medium theory may also suggest that the EU’s internal economic liberalization/cultural diversity is a source of conflict within EU audiovisual media regulatory media policy. Perhaps McLuhan’s brand of medium theory can provide another perspective concerning EU AVMS regulatory policy and convergence.

4.2.2 *McLuhan: Medium Theory & Convergence*

It is Marshal McLuhan who gave us the term “the media” and is known as the first *media* analyst (Scannell, 2005c). More popular with “the people” as opposed to scholarly colleagues (Babe, 2009; Scannell, 2005c), McLuhan is synonymous with “McLuhanism” such as “the medium is the message,” “the global village,” and “cool media versus hot media,” to name a few (Sparks, 2013; Scannell, 2005c; Meyorwitz,

2003). Describing himself as a “prober or an explorer” of knowledge (Sparks, 2013: 281), McLuhan can be “understood as filling a gap in Innis’ work” (Babe, 2009: 169). He goes one step further than Innis with respect to communication biases.

Innis linked the way in which societies communicate to their values. McLuhan went one step further, contending that the actual medium one uses in transmitting information affects the way in which a person interprets the message. As such, McLuhan (1964) asserted that media are extensions of humans. He specifically attributed the preponderance of “linear logic or analogic reasoning” to the predominance in a culture of “media extending (or amplifying the power of) the eye or ear respectively” (Babe, 2009: 169), i.e. print media and radio. In line with Innis’ progression of societal communication development—from oral tradition to the predominance of oral communication in conjunction with writing, the fading of oral communication and domination of written communication—McLuhan asserted that the electronic communication age reconnects us to our “tribal age” of communication lost during the print age that Guttenberg’s printing press began (Sparks, 2013: 283). Where speech and oral tradition dominate the tribal age of communication, the eye and sight dominate the print age, which makes the eye the central information processor above all other senses (Sparks, 2013; Scannell, 2005c).

McLuhan himself wrote:

During the mechanical ages, we had extended our bodies in space. Today, after more than a century of electric technology, we have extended our central nervous system itself in a global embrace, *abolishing both space and time* as far as our planet is concerned. Rapidly we approach the final phase of the extensions of man—the technological simulation of

consciousness, when the creative process of knowing will be collectively and corporately extended to the whole of human society. . . In the electric age, when our whole nervous system is technologically extended to involve us in the whole of mankind and to incorporate the whole of mankind in us, we necessarily participate, in depth, in the consequences of our every action. (McLuhan 1964: 3– 4)

Furthermore, McLuhan contended that the “cultural patterns” society acquired through the domination of print culture would give way to different cultural patterns that would take shape through the use of electronic media (Meyrowitz, 2003: 203).

Nonetheless, McLuhan believed that humans transpose old ways of communicating onto new forms of communication , or rather humans transfer old content onto a new medium, making “one form of communication [...] the content of another” (Meyrowitz, 2003: 199). Additionally, people to take a “rear-view mirror approach” toward new media, using “old frameworks” in their perception of “new media and other phenomena” (Meyrowitz, 2003: 199). According to McLuhan, capitalizing on the great capacity of new media—at this time television—to connect people across space and time “in a world where action and reaction occur almost simultaneously” (Meyrowitz, 2003: 199) required divorcing ourselves from thinking in “old, fragmented space and time patterns of the pre-electronic age” (McLuhan, 1994: 4, in Meyrowitz, 2003: 199).

McLuhan christened the term “global village,” proclaiming that electronic media through the “power of instantaneous communication [can] unify the world into a massive, modern-day, tribal community . . . allowing people to experience one big group emotion” (Sparks, 2013: 285). Scholars have railed against McLuhan’s “global village” idea, taking

it to mean the coming of a new era of global peace in which harmony would ensue (Meyrowitz, 2003: 202). This is not what McLuhan meant. McLuhan's global village saw the "dissolution of boundaries, not a change in degree of harmony" (Meyrowitz, 2003: 203). McLuhan believed that electronic media could potentially bring about a global village where "emphatic responses [extended] beyond local geography" (Meyrowitz, 2003: 196), giving people physically separated by geography the ability to "become psychologically and emotionally closer than anyone could conceive possible" (Sparks, 2013: 285) before the electronic media age. McLuhan's assertion of the "medium being the message" went in hand with his global village.

For McLuhan, the ability of electronic media to usher in a re-tribalization of human communication stemmed from his belief that the medium of communication (Meyrowitz, 2003: 196) "shapes and controls the scale and form of human association and action" (McLuhan, 1962: 9). While this seems dangerously close to technological determinism, a passage preceding this quotation shows that McLuhan did not view electronic media or any new medium as the sole variable in altering how humans communicated with each other:

What we are considering here, however, are the psychic and social consequences of the designs or patterns *as they amplify or accelerate existing processes* (emphasis mine). For the "message" of any medium or technology is the change of scale or pace or pattern that it introduces into human affairs. The railway did not introduce movement or transportation or wheel or road into human society, but it accelerated and enlarged the

scale of previous human functions, creating totally new kinds of cities and new kinds of work and leisure. (McLuhan, 1962: 8)

Therefore, when referring to the medium as being the message, McLuhan's perspective was in line with Innis'.

New media changes notions of place. Meyrowitz (1985) speaks of the then new medium of television as having "no sense of place" (6). The previous discussion of convergence and globalization also discusses this notion of placelessness that current "new" media technologies can engender. The Internet is to today's "global village" what television was to McLuhan's "global village:" Humans are not only privy to information and events taking place around the world but can literally simultaneously share in experiences together, witness events and tragedies as well as enjoy entertainment beyond their geographical locations.

Considering McLuhan's and Innis' medium theories with respect to audiovisual media in conjunction with arguments claiming globalization stimulates cultural heterogeneity via glocalization brings forth a question concerning EU audiovisual media services regulatory policy. Namely, if the EU's regulatory policy truly deals with all the aforementioned aspects of convergence and globalization, especially as they relate to the economic and cultural characteristics of these services. This is one of the issues on which this policy study focuses and addresses within its last two chapters. The remainder of this chapter outlines the specific research questions to which this and the preceding chapter alludes.

4.3 Research questions

Obtaining a true understanding of the origins of the cultural diversity argument is essential to fully comprehending of the cultural diversity/free trade conflict with respect to European Union audiovisual media regulatory and trade policy. Obtaining a true understanding entails the following three things: (1) recognizing and acknowledging the basic intrinsic cultural and economic tensions of audiovisual media goods, which precedes the current cultural diversity/free trade debate; (2) considering the historical implications of European audiovisual media market development with respect to its public service broadcasting roots and post WWII market effects; (3) fully comprehending the EU's policy motives.

With respect to the European Union—and to other nations and regional trading blocs—all three of these objectives hinge on policy analysts, policymakers and all those invested in the cultural industries seeing the big picture. And this picture reveals a union of independent nation states invested in developing one “single European market” while at the same time respecting the diversity of its many countries (Maastricht Treaty, 1992: Article 128; AVMSD, 2010; Herold, 2005; Galperin, 1999). From these three objectives, the following questions guide the research in an attempt to gain a true understanding of the EU's policy stance, the robustness of its policy in its ability to meet the challenges of technological convergence and globalization, and policy implications for the rest of the world in an age of increasing globalization and convergence.

The dual cultural and economic nature of audiovisual media goods inevitably complicates developing regulatory and trade policy capable of respecting both of these characteristics. That being said, embarking upon a policy approach that attempts to

balance each is challenging. The following question addresses the European Union's policy stance concerning the compatibility of its dual policy stance of cultural diversity protection and European audiovisual market development:

RQ1: Are the twin European Union audiovisual media regulatory policy goals of protecting cultural diversity and developing a single European audiovisual market mutually compatible?

Creating solidarity among Europeans is one of the chief goals the Treaty of Rome expresses. EU audiovisual media policy also reflects this goal through referencing the importance of maintaining and promoting cultural diversity. EU audiovisual media regulatory policy may play a role in creating European solidarity. The second research question flows from this possibility:

RQ2: How does the EU's desire to achieve these twin goals of solidarity and cultural diversity factor into the development of its audiovisual media regulatory policies?

Citizens within the EU have access to domestic and EU Member States' audiovisual media goods/services as well as international fare through technological and structural convergence. As both convergence and globalization continue, the following research question arises:

RQ3: In what ways does the EU address AVMS duality and convergence within its audiovisual media regulatory policy?

As a confederation of independent nation-states, the European Union serves a microcosm of globalization. Countries within the EU are becoming increasingly connected while simultaneously maintaining national identities. As globalization and technological convergence continue, the research ultimately attempts to determine

realistic audiovisual media regulatory policy goals EU regulators can develop that effectively contend with media and technological convergence.

CHAPTER 5

METHODOLOGY & METHOD

The original goal of European Union audiovisual media regulatory policy concerned harmonizing its internal market by removing internal market barriers to broadcast transmission and trade. But since its inception, the EU has also been concerned with the protection and preservation of linguistic and cultural diversity. European Union audiovisual media regulatory policy also mirrors this unresolved conflict between its economic and cultural aspirations, reflecting the intrinsically conflicting nature audiovisual media themselves embody as carriers of culture with economic value. Solely focusing on the resulting outcomes this economic/culture tension engenders provides at best a superficial understanding of the EU's policy stance and motivations. Instead, a historical understanding of how cultural diversity came to be of particular importance to European Union audiovisual media regulatory policy is fundamental to understanding its policy position.

In order to understand how something has come to be, one must understand the circumstances surrounding its development. With respect to EU audiovisual media regulatory policy, Chapter Two provided this understanding by detailing why and how the EU came to regulate this sector at the supranational level. Chapter Three identified the ideological foundations behind the EU's normative values of cultural diversity,

cultural protection, market harmonisation, and how the inherent economic/culture tension of audiovisual media is reflected in EU regulatory policy concerning it. Chapter Four explored the relationship between convergence and globalization, and possible implications on cultural identity. The remainder of this dissertation research focuses on analyzing EU audiovisual media regulatory policy from a duality of audiovisual media perspective, taking into account the ideological foundations and norms associated with its regulatory policy, i.e., a policy research study.

This chapter details the methodological approach undertaken and the method used in conducting this dissertation research. The chapter begins by giving an overview of policy research, defining what it is, why and how it is undertaken. The chapter then outlines the methodological approach taken in conducting this policy research study and discusses previous policy research studies that used a similar methodological approach. Next, the chapter discusses the document analysis method, why and how it is conducted. Finally, the chapter details the document analysis and coding process used in this policy research study.

5.1 Policy Research as Normative Critique

5.1.1 Policy Research: Foundations and New Approaches

Majchrzak (1984) defines policy research as “the process of conducting research on, or analysis of, a fundamental social problem in order to provide policy makers with pragmatic, action-oriented recommendations for alleviating the problem” (12). With respect to this study, the fundamental social problem is the unresolved conflict between notions of cultural diversity protection and audiovisual media services regulatory policy. The purpose of this research is to explore the conflicting nature of EU audiovisual media

regulatory policy via the inherent duality of audiovisual media, and relate the internal tension of these to the tension EU regulatory policies display concerning them. The research examines the official EU directives that deal with the content and transmission of audiovisual media, taking into consideration EU ideological foundations and norms concerning audiovisual media, and how these possibly influence audiovisual media regulation especially concerning convergence.

Policy research differs from other forms of research in distinct ways. It has a multidimensional focus, takes both an empirical and inductive research approach, takes both the past and the future into account, is responsive to those utilizing the research and “explicitly incorporates values” (Majchrak, 1984: 18). In addition to differing from each other, policy research and policy analysis differ from other methodological approaches in social science research. Policy *analysis* examines the policymaking process while policy *research* “begins with a social problem, evolves through a research process whereby alternative policy actions are developed and communicates alternatives to policymakers” (Majchrzak, 1984: 12-13). The policy researcher does not approach the research armed with hypotheses to test predetermined causes and effects. Instead, the researcher engages in an “iterative process whereby information and model building are constantly interchanged” (Majchrak, 1984: 19).

Policy research is “less to do with quantitative/qualitative factual results” than with understanding how policy comes into being (Colombo, 2010: 620). In preparing for policy research, the researcher should understand the policymaking context of the issue, the scope of definitions and values concerning the issue and feasible recommendations regarding the issue at hand (Majchrzak, 1984: 13). Kaschuba (2002) also builds upon this

process, outlining five steps in conducting the research. These include defining the problem, the actors, the policy objectives of the actors, and alternate policy options, and discussion of current policy and recommendations for future policy (93). Traditionally, policy research and analysis focuses on measuring policy outcomes, analyzing the behavior of stakeholders involved in the policymaking process and providing clear solutions to policy problems (Karppinen, 2010: 25; Fischer, 2007; Fischer, 1998; Dryzek, 1993). Indeed, traditional policy analysis has focused on empiricism, under the influence of positivism (Fischer, 2007; Dryzek, 1993).

The tools of the average policy analyst previously consisted of and heavily relied upon quantitative methods and data (Durning, 1999; Lin, 1998; Fischer, 2007).

Qualitative approaches were used as well to help understand underlying context (Durning, 1999: 393). However, from its beginnings in the 1960s policy analysis has emphasized “rigorous quantitative analysis, the objective separation of facts and values, and the search for generalizable findings whose validity would be independent of the particular social context from which they were drawn” (Fischer, 2007: 223). But the ability of policy researchers to offer solutions and effectively measure outcomes through traditional empirical methods has and continues to be challenged. In fact, despite the social scientific, positivistic empirical approach, policy research has not generated solutions to many of the problems it has analyzed (Fischer, 2007).

The technocratic focus of policy studies often ignores “normative and ideological questions” in favor of dealing “with causal and empirical models” that focus on explaining policy-making in relation to “rational behavior and material interests” (Karppinen, 2010: 26). Policy analysis has focused on identifying variables that can be

tested and analyzed, with the goal of determining causal relationships (Lin, 1998: 163). This positivist focus can ascertain the presence of causal relationships through analysis of the data, but it cannot “explain how the mechanism implied by a particular causal relationship works” (Lin, 1998: 163). Causal relationships do not explain why something occurs or how the occurrence has developed. Causal mechanisms on the other hand make the connection between what phenomenon is occurring and how that phenomenon came to be.

These issues have led to the questioning of positivism in policy research and the development of a new approach. Fischer (1993; 1998; 2006; Karpinnen, 2010) refers to this as the “argumentative turn” in policy research. Involving the integration of empirical and normative analysis, the argumentative turn in policy research recognizes the involvement of multiple perspectives in interpreting and understanding the “social and political reality and competing definitions of policy problems to which they give rise” (Fischer, 2007: 224). Instead of focusing on value-neutrality, deliberative policy analysis is geared toward a more interpretive mode. In this newer approach to policy research and analysis, interpretivism allows for “detailed examinations of causal mechanisms in the specific case, explaining how particular variables interact” (Lin, 1998: 163).

A purely social scientific approach based on objectivity and value-neutrality seeks to identify variables that can be tested in other cases through replication. An interpretive post-positivist approach attempts to collect those variables “into systems of belief whose manifestations are specific to a case” (Lin, 1998: 163). Theoretical ideas and concepts frame the debate and define what issues are important (Karpinnen, 2010: 29). Embracing these issues and concepts generates a more comprehensive policy research study, better

equipped to provide possible solutions. With respect to the dissertation research being undertaken, embracing theoretical ideas and concepts, which frame the debate and define what issues are important and solutions that are possible (Karpinnen, 2010: 29) enables a more comprehensive policy research study.

5.1.2 Norms & Normative Critique

Policies themselves are the products of political debates, a mix of interpretation of opinions and facts. Only in recognizing the many factors involved in policy development can one truly begin analyzing the policy. As previously stated, empirically focused policy analysis often ignores the norms and values forming the foundation of the policy. By focusing on rigorous quantification and data analysis, policy analysts have separated the empirical from the normative (Fischer, 2003; Karpinnen, 2010). Fischer (1998) argues that a post-positivist orientation in policy analysis includes “historical, comparative, philosophical and phenomenological perspectives” (136). It is not a matter of rejecting the quantitative analysis of policy analysts. Instead, it is a matter of situating the empirical within the normative to give greater meaning to policy analysis conclusions (Fischer, 1998: 139). That being said, fully understanding what constitutes norms is essential to conducting postpositivist policy research.

One main question regarding the cultural diversity perspective is why it is important—regardless of how much effort is made toward truly realizing it in practice—to European Union audiovisual media regulatory policymaking. How has the notion become so embedded that it is taken as a valid endeavor on the world stage? Norms offer a way of uncovering the prevalence of the cultural diversity endeavor. Finnemore (1994: 2, fn. 2 in Florini, 1996: 364) asserts that norms are “a set of intersubjective

understandings readily apparent to actors that makes behavioral claims on those actors.” More simply put, these “understandings” among those involved work to influence how they behave and make decisions, based upon those shared understandings. But before these understandings can assume the mantle of a “norm,” they must first and foremost be considered legitimate (Florini, 1996: 365). Otherwise, no valid claim can be made on an actors’ behavior.

Finnemore and Sikkink (1998) question just how many actors must share these common understandings—or as they term them, assessments—before they can become a norm. Or rather, “how agreement among a critical mass of actors on some emergent norm can create a tipping point after which agreement becomes widespread” (Finnemore & Sikkink, 1998: 892-893). Norms are also useful in gaining compliance among actors (Checkel, 2001: 558), especially when combined with powerful rhetoric (Schimmelfennig, 2001: 48). Schimmelfennig defines such rhetorical action as the “strategic use of norm-based arguments” (2001: 48). When actors in favor of a particular course of action—justified by standards associated with legitimate behavior [norms]—apply this approach, it makes contrary behavior by others that much more difficult to carry out.

The normative critique approach to policy analysis follows in the new post-positivist interpretive policy research vein. Policy analysis that focuses on measuring and quantifying policy outcomes does not fully account for the fundamentally political and social processes that help develop policies. Understanding the underlying ideologies, norms and values leading to the creation of policy can provide a better understanding of the resulting policy. Post-positivists hold that disputes concerning politics are “seldom

over data per se but rather over the underlying assumptions that organize them” (Fischer, 1998: 136). Likewise, the outcome or effectiveness of the pursuit of cultural diversity promotion and protection in EU audiovisual media regulatory policy is not what is of crucial importance in policy research.

With respect to EU AVMS regulatory policy, the prevalence of cultural diversity as a norm is apparent. It is reflected in its various treaties, in its audiovisual media directives, in studies commissioned concerning audiovisual media regulatory policy. However, the ability to maintain and increase the level of this commitment in its policymaking, especially as convergence may further exacerbate the economic and cultural schism of audiovisual media goods, is less apparent. Furthermore, the evolution of EU audiovisual media regulatory policy may be reaching a tipping point. Finnemore and Sikkink (1998: 902) assert that while scarce normative change occurs prior to reaching a tipping point, much change occurs after it is reached.

5.2 Dissertation Policy Research Study

5.2.1 Methodological Approach

Cultural diversity has not yet been truly defined by those developing audiovisual media policy. In fact, it is a porous, yet multiply defined, concept driving the development of audiovisual media regulatory policy in the European Union. The exact nature of audiovisual media duality is a concept that in many ways remains abstract and unclear, making it that much more difficult to develop audiovisual media regulation able to reconcile the economic with the cultural. Additionally, the desire of the EU to reflect the diversity of its cultures through audiovisual media works while also striving to develop a consolidated “European” audiovisual media market involves fundamental

issues of identity as well as political-economic ideologies. These factors all serve as part of the foundation that gives rise to current and developing EU audiovisual media regulatory policy.

In addition to understanding the role of ideas in the development of EU audiovisual media regulatory policy, this dissertation research also applies critical/cultural media and communications theories that serves as the foundation for the concepts found within EU audiovisual media regulatory policy. Couldry (2008: 161 in Karppinen, 2010: 30) asserts that “theory is useful only if through its relative generality it enables us to engage better with the particular, that is, for better tools with which to practise our suspicion towards totalising claims.” Applying critical/cultural media and communications theoretical perspectives in this particular dissertation research provides an opportunity to explore connections between what is theorized concerning the duality of audiovisual media. It also provides the opportunity to re-examine European Union audiovisual media regulatory policy through a theoretical lens. This application of media and communications theory to communications policy research can identify any linkages to the norms that shape the formation of EU audiovisual media regulatory policy.

This dissertation research is based upon the premise that EU audiovisual media regulatory policy is on the precipice of such a tipping point, experiencing a continual contemplation and collision of competing norms—adherence to cultural diversity and seeming inevitability of near complete commoditization of audiovisual media goods via convergence. The research focuses on the underlying ideology and concepts regarding audiovisual media and how this is reflected in EU audiovisual media regulatory policy Directives developed by the Commission beginning with the 1989 *Television without*

Frontiers Directive. The primary aim is to analyze the tensions between the EU's desire to protect and promote culture and exploit economic potential of the cultural/creative industries through the lens of audiovisual media goods duality. Another objective is to understand not only why the EU has embarked on its particular regulatory path but also whether it has failed to recognize and reconcile the conflicting nature of audiovisual media goods/services.

Through undertaking a normative critique of EU audiovisual media regulatory policy, this dissertation research hopes to gain a fuller understanding of how it has evolved, the factors involved in its evolution and ultimately how it is attempting to deal with the convergence phenomenon potentially exacerbating of the economic side of the media duality coin. The research applies critical/cultural media and communications theory to explore the duality of media goods and the resulting regulatory policy implications of this duality. In applying critical/cultural theory, the research draws parallels between the duality and cultural significance of audiovisual media goods/services, and convergence and globalization with respect to the protection and promotion of cultural diversity. Chapter Six undertakes a more traditional policy research approach analyzing key EU audiovisual media regulatory policy documents as detailed in section 5.4.1. Kaschuba (2002) and Karppinen (2010) undertake similar approaches in their policy studies concerning European Union audiovisual media issues.

5.2.2 *Previous Research*

Kaschuba's research used political communication theory in conjunction with broadcast policy and regulation literature to conduct a policy analysis of virtual advertising regulations in four EU countries and the United States. Regarding virtual

advertising regulation, Kaschuba makes reference to Gomery's (1993 in Kaschuba, 2002) assertion that both traditional media economic analysis as well as normative analysis should be utilized in addressing public policy issues surrounding mass media (Kaschuba, 2002: 18). With that in mind, Kaschuba's analysis of virtual advertising regulation policy occurs in a "broader framework of legal norms and statutes, economic principles and objectives, and political processes" (2002: 18).

This approach reflects the wider range and more inclusive focus of current policy research, especially as it pertains to media policy.^{6,7,8} Using the concept of "public interest" associated with media, Kaschuba analyzes the regulations, laws and statutes concerning virtual advertising in the EU, compares and contrasts the outcomes with the US regulations, and proposes a more updated approach for the regulation of virtual advertising in the digital age (Kaschuba, 2002: 19). The research is based upon both document analysis and interviews with policy actors.

Karppinen (2010) investigates the theorization of media pluralism and its use in current debates concerning media policy in the European Union. Karppinen examines this phenomenon through deconstructing the normative roots of media pluralism from a democratic theory perspective, analyzing the differing uses, definitions and the logics underpinning present media policy debates in Europe (Karppinen, 2010: 3). Karpinnen

⁶ See Napoli, P. M. (2005). *The broadening of the media policy research agenda*. Donald McGannon Communication Research Center, Fordham University; Napoli, P. M. (2008). Bridging cultural policy and media policy. *The Journal of Arts Management, Law, and Society*, 37(4), 311-330. Napoli discusses the new approach in media policymaking, which is attempting to bridge the economic and cultural divide present in current media policy.

⁷ See Van Cuilenburg, J. & McQuail, D. (2003). Media policy paradigm shifts: Towards a new communications policy paradigm. *European Journal of Communication*, 18(2), 181-207. Van Cuilenburg and McQuail detail the changing focus of media policy and how notions of public interest and cultural diversity are under redefinition in current media policy due to increasing convergence.

⁸ See Rolland, A. (2008). Norwegian media policy objectives and the theory of a paradigm shift. *Journal of Communication*, 58, 126-148. Rolland's article serves as a rebuttal to Van Cuilenburg and McQuail's (2003) assertion of a new media policy paradigm, using Norwegian media policy to reaffirm adherence to cultural diversity, media pluralism and other policy issues.

asserts ideas and ideologies play foundational roles in forming media policy. In this regard, the first part of Karppinen's research heavily focuses on theories concerning media pluralism, drawing upon scholarly literature, and the second part uses a variety of policy documents, consisting of papers, studies and reports (2010: 33). The majority of Karppinen's empirical analysis comes from data collected through examination of written documents, i.e. document analysis.

Carey asserts that the investigation of communication consists of analyzing the "actual social process wherein significant symbolic forms are created, apprehended and used" (1992: 30). The EU audiovisual media policies detailed are themselves significant symbols, the production of an evolution of different perspectives concerning culture, technology and political-economic ideology. It is appropriate to analyze the documents that are the culmination of policy narratives developed by those involved in the policymaking process concerning audiovisual media goods regulation and trade.

5.3 Method: Document Analysis

5.3.1 Purpose

It is possible through the analysis of documents to uncover the foundations of policy narratives, how these narratives are framed by groups and how they reflect the fundamental beliefs of those involved in creating them. The issue of cultural diversity with respect to audiovisual media policy reflects a policy narrative under negotiation by EU institutions as well as global institutions and trade regimes. And the increasingly technologically convergent and globalized audiovisual media environment represents a particular point in time where audiovisual media regulatory and trade policy narratives are in flux.

The documents this research analyzed arose from a particular place during a particular time in a particular political and ideological environment. The resulting policies reflect these particulars. Understanding the historical context of EU audiovisual media policy is crucial to understanding its current state. Document analysis is “a method, procedure, and technique for identifying, retrieving, and analyzing documents for their relevance, significance and meaning” (Altheide, 1996: 2). Documents can fall into three categories that include primary, secondary and auxiliary documents. Primary documents are the main objects of study in document analysis (Altheide, 1996). Secondary documents refer to records referring to primary documents (Altheide, 1996).

Researchers are interested in two key aspects of documents. These are the process, context and significance of the documents and how the document helps define the situation (Altheide, 1996; Bowen, 2009). Key advantages of using this specific method of inquiry include its efficiency, open access to many documents and the broad spectrum of time, occurrences and places they may cover (Bowen, 2009: 31). Document analysis is also advantageous due to its “relatively naturalistic and unobtrusive nature” (Jensen, 2002: 243 in Karppinen, 2010: 33).

It is true that much policymaking and policy decisions are the products of actions not recorded on the written record. As such, interviews often accompany document analysis in policy research. But it is because of ‘closed door activities’ that solely relying upon the written record can help “assess the credibility of documents and reflect on the intentions of their authors” (Karppinen, 2010: 33). Thus, the sole use of documents does not prevent one from undertaking a robust policy research study. Therefore, especially concerning the focus of this dissertation policy research, interrogating the written record

that officially represents the intentions of the European Union's motives concerning audiovisual media regulatory policy is more advantageous.

5.3.2 *Process*

The ultimate goal of this dissertation research is providing a different perspective for policymakers that will enable them to reconcile issues of cultural diversity in a converging and globalizing audiovisual media environment. To achieve this, this policy study uses document analysis as the means to evaluate the current policies as evidenced through the [primary] documents identified. The research analyzes the documents using the constant comparative analytic technique. This qualitative data analysis technique includes comparatively assigning occurrences to categories; elaborating and refining categories; investigating possible relationships and themes between categories (Glaser & Strauss, 1967; Strauss & Corbin, 1998; Corbin & Strauss, 2008; Thompson, 2008). It enables the researcher to continuously reflect upon, expand, contract, and/or refine coding categories, which themselves emerge from the data (Glaser & Strauss, 1967; Charmaz, 2006; Park & Qin, 2007).

Open coding of the data is the first step in utilizing the constant comparative method. Glaser & Strauss (1967) assert that open coding enables a broader reading of data. The researcher is not restricted by preconceived notions of what to code. Instead, the researcher codes the data and constantly refines the categories resulting from the codes through notes taken throughout the coding process. This “sets up an ongoing dialogue between data and the emerging theory” (Wagenaar, 2011: 73). Thus, the many different messages and meanings of documents can emerge through the wealth of qualitative data generated.

Also, there is no one fixed data collection point in using the constant comparative technique. Materials for coding can be added at the discretion of the researcher throughout the constant comparative process (Glaser & Strauss, 1967; Charmaz, 2006; Corbin & Strauss, 2008). Data from one source may lead to other sources, which in turn may provide an even greater understanding of the phenomenon under investigation. Thus, continuous data collection prevents the researcher from becoming restricted during the analysis process (Glaser & Strauss, 1967). Additionally, data collection (in this research, documents) and analysis are not separate undertakings in using the constant comparative technique.

The researcher continuously analyzes the data, being keen to recognize themes and patterns in the data (Glaser & Strauss, 1967). The researcher must determine when to cease collecting data and focus solely on constructing categories that will lead to the development of an explanation concerning the questions the researcher has posed. The constructing of categories follows a process: open, axial and selective coding (Strauss & Corbin, 1998; Corbin & Strauss, 2008; Johnson & Holmes, 2009; Thompson, 2008; Park & Qin, 2007).

In open coding, the research takes a first pass of interviews, field notes, documents, etc. in order to identify any patterns present (Glaser & Strauss, 1967; Charmaz, 2006; Glaser, 1992). This enables the researcher to “compare and contrast initial codes & categories in order to develop preliminary categories” (Thompson, 2008: 128). Axial coding follows open coding, a process which helps the researcher re-assess the initial open categories created (Corbin & Strauss, 2008; Johnson & Holmes, 2009: 357). This reassessment involves further examining the categories in order to discover

themes in the data that can be organized into more abstract and all-encompassing categories (Charmaz, 2006; Strauss & Corbin, 1998; Corbin & Strauss, 2008; Johnson & Holmes, 2009). Finally, selective coding is employed.

Through selective coding, the core categories emerge from those developed during axial coding (Strauss & Corbin, 1998; Corbin & Strauss, 2008). Selective coding increases categorical abstraction, integrating the data around core categories created (Park & Qin, 2007: 63). At this stage of coding the researcher integrates the categories into a theoretical framework summarizing the study findings (Strauss & Corbin, 1998; Corbin & Strauss, 2008; Johnson, & Holmes, 2009).

5.4 Dissertation Document Analysis

5.4.1 Process

With respect to this dissertation policy research, primary documents consisted of all relevant directives pertaining to broadcast television and audiovisual media services. Preliminary analysis of both the content Directives revealed the relevance of directives also pertaining to the transmission of audiovisual media services across electronic networks (as discussed in the section 5.3.2, additional data [documents] can be collected at any time during the coding process). These directives were subsequently included. As a result, the primary documents were grouped into two general categories based on their overall orientation: content Directives, which focused on television and audiovisual media services programming content; technical Directives, which focused on the transmission of and access to television/audiovisual media services programming content.

TABLE 5.1: Documents analyzed by category

CONTENT DIRECTIVES	TECHNICAL DIRECTIVES
Television w/out Frontiers Directive (1989)	Transparency Directive (Jun 1998)
Television w/out Frontiers Directive (1997)	Transparency Directive (Jul 1998)
Audiovisual Media Services w/out Frontiers Directive (2007)	E-Commerce Directive (2000)
Audiovisual Media Services Directive (2010)	Framework Directive (2002)
	Access Directive (2002)
	Authorisation Directive (2002)

Initially, the research intended on analyzing all relevant EU Treaties and international agreements related to trade in audiovisual media services as primary documents. However, it was shown that the directives consistently and continuously referenced a few specific passages from the Treaty of Rome and other relevant EU treaties. Therefore, it was determined that in-depth analysis of EU treaties was not necessary as it would not add significant value to the research. The research study also initially included analyzing EU international trade agreements. However, as the research focused on EU regulatory policy, it was determined that international agreements was beyond the scope of this dissertation research.^{9,10}

⁹ The research initially intended on analyzing secondary documents, which included preliminary research for EU audiovisual media policy directives, Commission tendered studies, Commission reports on application of the content Directives and documents relating to international agreement disputes concerning audiovisual media services. However, after first round analysis of all primary documents and close readings of all secondary documents, it was determined that analysis of the secondary documents would not yield additional information beyond what could be gleaned from the primary documents. Instead, secondary documents were used as reference documents, especially within the last chapter of the dissertation research synthesizing research study findings.

¹⁰ Auxiliary documents were not a substantial part of this dissertation research.

5.4.2 Coding

This policy research study used document analysis and the above outlined data analysis technique. The study implemented all phases of coding. Open coding of all initial primary documents (content Directives) consisted of first pass close reading of each individual content directive in chronological order in its entirety in paper form. Upon reading each passage, notations were made on the pages about the information in the passages, the focus of the passage, the content of the passage—in short, generating codes from the material. This served as the open round of coding.

As previously detailed, open round coding of the initially identified primary documents (content Directives) revealed the existence of other documents related to the transmission of audiovisual media services. Realizing the relevance of these documents to the research, these documents were added to the research study as primary documents and labeled as technical Directives. Due to the evolution of regulatory policy, it was important to work with the documents in chronological order to gain an understanding of how the directives developed and responded to technological changes that affected both content and transmission of audiovisual media. Open coding was first conducted on all content Directives and then on the technical Directives in chronological order. A total of 696 codes were generated from the open coding round of the documents. Open coding began on the secondary documents upon completing open coding on primary documents.¹¹

¹¹ Due to page length, all secondary documents were read in electronic form using an e-reader purchased specifically for the task. Open coding was conducted electronically for these secondary documents: passages were highlighted and coding notes were made using the e-reader. Coding notes were downloaded and saved as text files. As open coding of secondary documents progressed, three-fourths of the way through, two things became apparent: 1) that further analyses of these documents would not add more utility to the research study, and 2) full analysis of the 30 documents was beyond the scope of the research. As such, it was determined the research would solely focus on the primary documents.

After completing the first round coding on all primary documents, generated codes were electronically uploaded into Atlas.ti 7, a qualitative data analysis software program. Also, a list of all codes, codes with corresponding passages (referred to as quotations within Atlas.ti 7) and all quotations were saved as Word documents for record keeping purposes. After this, the axial phase of coding began; the axial phase occurred in two stages. In the first stage, codes were refined as they were entered into Atlas.ti 7. Entering the coding information consisted of highlighting the coded passages and connecting each passage with its corresponding codes within the software program. Redundant codes were merged, passages without codes were coded, notes and memos (other capabilities of Atlas.ti 7) were developed. In the second stage of axial coding, a report for each code and all passages connected to that code was generated from the software program and printed on paper. Further systematic refinement of the codes began.

Any code with a frequency of 20 or greater was reassessed in order to move from overly detailed codes to encompassing categories that captured the overall themes and patterns in the data. This required going through each passage associated with the code and reassessing it in an attempt to find a higher level meaning of the text. Code categories/families were created from this reassessment. Once reassessment of all codes and their corresponding passages was completed offline (on paper), the work was mirrored within Atlas.ti 7. The code categories/families were created within the software program's code family manager, placing the refined codes into the developed corresponding code categories/families. Completion of the axial coding round yielded 33 code categories/ families, with each code category/family containing each related code.

Constructing categories provided a higher level view of the data, which uncovered broader themes within the directives. Specifically, after completing the axial coding round, three central, core themes began emerging from the data. Nonetheless, methodological adherence required continuing with the selective coding round despite the clear emergence of these core thematic all-encompassing categories. For selective coding, any remaining orphan codes (codes without code categories/families) were reassessed and either merged with existing codes that were part of code categories/families or matched with an appropriate code category/family, or eliminated if further inspection deemed it was a redundant or inconsequential code (in relation to the research purpose). This consolidation yielded a total of 36 code categories/families: 33 from axial coding round and three generated from orphan codes between axial and selective coding. Further inspection revealed that two of these orphan codes were related to each other (thematically speaking). Therefore, a singular code category/family was developed for them, yielding a total of 35 code categories/families.

Upon the completion of selective coding, fundamental core themes were identified. These core themes were the same three previously recognized after completing the axial coding round. Key sub-themes were also identified. It was possible within the Atlas.ti 7 code family manager to develop thematic groupings of code categories/families in addition to code categories/families. This was done by combining thematically related codes into a specially developed code category/family specifically for data analysis purposes. A total of five sub-themes were identified; the corresponding codes were placed within the appropriate sub-theme code category/family grouping developed.

The research sought to understand how EU norms regarding culture and market harmonisation inform its audiovisual media regulatory policies, and analyze those policies through the lens of critical/cultural media and communications theoretical perspectives. Therefore, data analysis focused on the overarching thematic elements displayed within the directives, concentrating on how these norms were reflected by primary document group—content Directives vs. technical Directives. Document queries (code frequency occurrences) by code, code category/family grouping and thematic grouping were the primary analyses undertaken within Atlas.ti 7.

The rhetoric of audiovisual media cultural diversity within the EU, in conjunction with the normative value the EU places on cultural diversity, is also in conflict with another set of norms influencing policymaker: economic competition and market harmonisation. These competing norms, based upon neoliberal free market ideals influencing international trading regimes and trade policies, are more prevalent outside the EU but they are also part of its audiovisual media regulatory policy.¹² One question to consider is whether or not other norms have reached the tipping point among actors involved in EU audiovisual media policymaking, enough to move policy even more toward the economic end of the policy spectrum. This policy research study, which takes into account EU norms regarding culture and economics was undertaken in effort to answer this and other related questions. The following chapter (six) details the results of this policy research study, answering the three primary research questions outlined in the previous chapter (five) and providing other useful information gleaned from data analysis.

¹² “Regimes are principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue—are that serve to constrain immediate, short-term power maximization” (Krasner, 1983: 1,4 in Florini, 1996: 364).

CHAPTER 6

RESULTS AND ANALYSIS: EUROPEAN UNION AUDIOVISUAL MEDIA SERVICES REGULATORY POLICY

As Chapter Five (Dissertation Research Methodology) outlined, this research focuses on documents most relevant to European Union audiovisual media regulatory policy. This chapter details the results of this document analysis with respect to the research questions listed below:

RQ1: Are the twin European Union audiovisual media regulatory policy goals of protecting cultural diversity and developing a single European audiovisual market mutually compatible?

RQ2: How does the EU's desire to achieve these twin goals of solidarity and cultural diversity factor into the development of its audiovisual media regulatory policies?

RQ3: In what ways does the EU address AVMS duality and convergence within its audiovisual media regulatory policy?

A qualitative method of research, this document analysis involved a highly contextual reading of the documents on which this research focused.

The analysis began from the ground up, moving from highly specific codes, to higher level coding categories/families categories that captured commonalities among codes. Finally, these code categories/families were analyzed to identify core themes of EU audiovisual media regulatory policy. This document analysis

policy research is akin to quantitative content analysis in reverse: codes and code categories/families were meticulously built from the ground up. A quantitative content analysis study could use these codes and code categories/families to systematically analyze these regulatory policy texts and provide generalizable findings through the use of statistical analysis. With respect to this qualitative policy research study, numerical representations of data do not represent statistical significance of any kind. However, frequency counts do demonstrate the relative degree of importance for a particular theme, code family/category or code.

This chapter first provides an overview of the document analysis results, outlining the three regulatory policy themes discovered and their significance as determined by frequency counts. Next, the chapter addresses each research question successively, organizing the data based on thematic grouping and/or code category/family and according to directive grouping (content vs. technical) as warranted.

6.1 Overview of Results

This section provides an overview of document analysis data by thematic grouping. As was indicated in Table 5.1 in the previous chapter, document analysis was performed on several content and technical Directives. The first stage of the coding process—open coding—yielded nearly 700 highly specific codes identifying a wide array of items, issues, definitions, etc.. Through the axial [second] round of coding, these highly specified codes were refined by combining individual codes into more generalized codes. This process enabled the development of code categories/families, enabling further

code refinement and a higher level of abstraction. For example, in the axial round of coding, the open round code “ancillary products” was joined with the open round code “announcements (broadcaster) rules/conditions” under the code category/family “advertising” yielding the axial category_code “advertising_announcements/ancillary products”. Each individual code dealt with special advertising aspects that technically are not advertisements in the traditional sense but are considered advertisement-like communication.

Codes within their newly defined code category/family groupings were further analyzed and streamlined, allowing for a broader thematic view emerge. The selective round of coding involved further streamlining of code categories/families, further combining codes based on their thematic similarities. This process resulted in the combination of similar codes from different axial defined code categories/families into the same category/family grouping, which enabled higher level themes to emerge. These themes included **EU ideals**, meaning the upholding EU ideals that include cultural issues and public interests protections; **EU/MS role** outlining the authority and obligations of EU and Member States’ institutions concerning regulation/ regulatory policy; **Market Issues**, specifically economic and regulatory issues. An example of this process is the thematic category of “Market Issues.”

As Table 6.1 indicates, the “Market Issues” thematic category is an aggregation of 15 code categories/families (including specifically selected codes from one code category/family). The code categories/families included all manifest some aspect of market issues as expressed in the EU’s directives or Treaties. Take the code

TABLE 6.1: Thematic groupings with corresponding code categories

EU IDEALS	CONSUMER PROTECTION; CULTURE; EU IDEALS; EURO/COMMUNITY CITIZENS; GEN/PUB INTERESTS; PLURALISM; PROTECT MINORS; INFO SOCIETY SERVICES*; TREATY [Directive LEGAL BASIS]*; TV/AVMS*
EU/MS ROLE	COMMISSION AUTHORITY; COMMISSION OBLIGATIONS COMMITTEE; COMPLY/COMPATIBLE; DIRECTIVE AMENDING DIRECTIVE; DIRECTIVE IMPLEMENTATION; DIRECTIVE OBJECTIVES; DIRECTIVE SCOPE; DIRECTIVE SELF-REF; EU INSTITUTIONS; MEMBER ST AUTHORITY; MEMBER ST OBLIGATIONS; NATIONAL REGULATOR; NATIONAL REGULATOR OBLIGATIONS; PREVIOUS DIRECTIVE/COMMUNICATION/LAW; TREATY [Dir LEGL BASE]*; UPDATE DIRECTIVE
MARKET ISSUES	ACCESS; ADVERTISING/COMMERCIAL COMMUNICATIONS; COMPETITION; COMPETITIVENESS; CONVERGENCE; E-COMMUNICATIONS NETWORKS/SERVICES; ECONOMICS; GENERAL AUTHORISATION; HARMONISATION; INFO; SOCIETY SERVICES; INTERNAL/SINGLE (EURO) MARKET; MARKETS; REGULATION/POLICY; RIGHTS OF USE; SUBSIDIARITY; TREATY [Dir LEGL BASE]*; TV/AVMS*

category/family of advertising. Both of the Television without Frontiers Directives refer to advertising as “advertising.” However, both of the Audiovisual Media Services

* codes/code categories solely pertain to thematic grouping

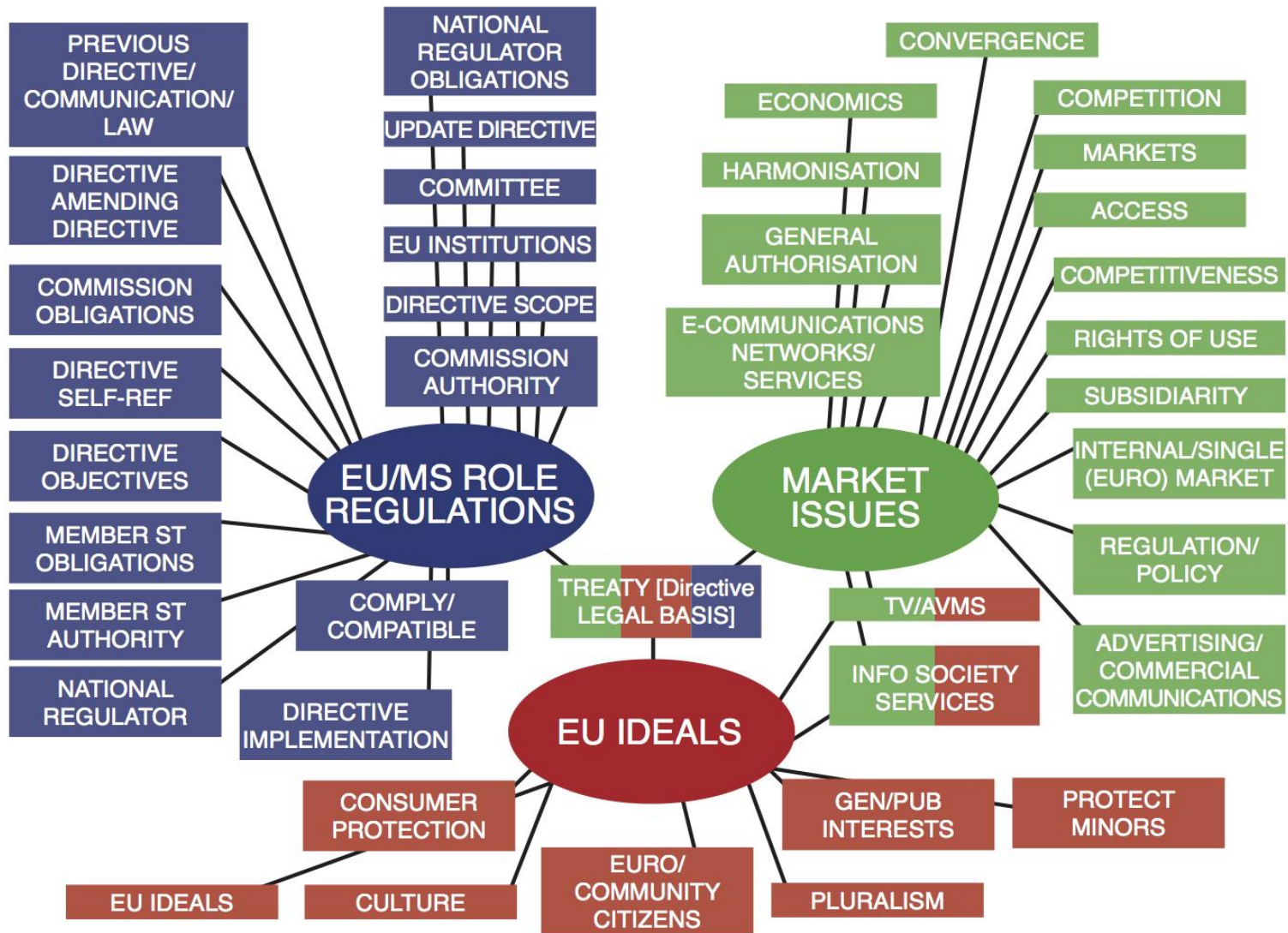


Figure 6.1: Visualization of thematic groupings with corresponding code categories

Directives refer to advertising elements as “advertising” when discussing it in the context of broadcasting and as “audiovisual commercial communications” when discussing advertising across different media platforms. Despite the difference in term use, the code categories/families pertaining to “advertising” and “audiovisual commercial communications” deal with advertising.

Consequently, it was possible to merge the individual codes within the two individual code categories/families into one single code within one category/family. For example, the original [open] code “audiovisual commercial communication prohibitions” became part of the “advertising” code group/family during the axial round of coding, merging with the following open codes— “codes of conduct audiovisual commercial communications;” “surreptitious advertising;” surreptitious advertising defined;” “surreptitious audiovisual commercial communication”—with all becoming part of the axial code group/family “advertising commercial communication prohibitions.”

Table 6.2 provides an overview of frequency of occurrence by content and technical Directives for the three thematic groupings.

As Table 6.2 indicates, both the content and technical Directives deal more with institutional roles (EU/MS/ROLE) and market concerns (Market Issues) than EU ideals. This is especially apparent in the technical Directives that overwhelmingly deal with institutional roles and market issues. But as the technical Directives deal with a rapidly developing and changing technological sector, this distribution is not surprising. Furthermore, the content Directives also cover institutional roles and market issues more than EU ideals. However, EU ideals feature more prominently in the content Directives than the technical Directives.

TABLE 6.2: Frequency of occurrence of codes in thematic groupings

Thematic Groupings	Content Directives	Technical Directives	Totals
EU IDEALS	179	117	296
EU/MS/ROLE	334	537	871
MARKET ISSUES	364	494	858
TOTALS	877	1148	2025

6.1.1 *EU/MS Role Thematic Grouping*

As Table 6.2 illustrates, one of the Directives’ main priorities concern the role of institutions—the EU and its institutions, Member States and their institutional bodies, and the directive itself including its scope and objectives as well as implementing it. The prevalence of the EU/MS Role theme is not surprising: the Directives serve as guidelines for measures themselves and implementing said measures; informing the Commission and Member States of their authority and obligations concerning measures and how to implement them; detail the role and obligations national regulatory, competition and legal bodies within Member States have in relation to implementing the directive. As indicated by Table 6.2, this thematic grouping represents the most dominant theme of the all the directives, with a frequency of occurrence totaling 871, with 334 occurrences in the content Directives and 537 occurrences in the technical Directives. Table 6.3 provides a frequency breakdown of the EU/MS Role by code category/family.

TABLE 6.3: Frequency breakdown of the EU/MS Role theme by code category/family

EU/MS Role Thematic Grouping	Content Directives	Technical Directives	Totals
COMMISSION AUTHORITY	0	34	34
COMMISSION OBLIGATIONS	15	39	54
COMMITTEE	4	21	25
COMPLIANCE/COMPATABILITY	29	31	60
DIR AMENDING DIR	36	0	36
DIR IMPLEMENTATION	22	14	36
DIR OBJECTIVES	9	19	28
DIR SCOPE	24	46	70
DIR SELF-REFERENCING	16	144	160
EU INSTITUTIONS	15	23	38
MEMBER STATE AUTHORITY	77	59	136
MEMBER STATE OBLIGATIONS	70	153	223
NAT'L REG BODIES	11	92	103
NAT'L REG BODY OBLIGATIONS	0	61	61
PREVIOUS DIR/COMM/LAW	69	149	218
TREATY*	21	25	46
UPDATE DIR	24	3	27
TOTALS:	442	913	1355

6.1.2 Market Issues Thematic Grouping

The second most dominant theme of all directives is market issues. Frequency of occurrence for the thematic grouping of Market Issues is 364 in the content Directives and 494 in the technical Directives, totaling 858 (see Table 6.2). As the Directives are the personification of the subsidiarity principle, it is not unsurprising the directives take care to address several market issues pertaining to audiovisual media and information

* codes/code categories solely pertain to thematic grouping

TABLE 6.4: Frequency breakdown of Market Issues theme by code category/family

Market Issues Thematic Grouping	Content Directives	Technical Directives	Totals
ACCESS	0	42	42
ADVERTISING/COMMERCIAL COMMUNICATIONS	148	2	150
COMPETITION	15	30	45
COMPETITIVENESS	11	14	25
E-COMMUNICATIONS NETWORKS/SERVICES	1	263	264
ECONOMICS	9	6	15
EURO/COMMUNITY CITIZENS	0	4	4
GENERAL AUTHORISATION	0	42	42
HARMONISATION	7	29	36
INFO SOCIETY SERVICES	6	98	104
INTERNAL/SINGLE (EU) MARKET	23	42	65
MARKETS	8	58	66
REGULATION/POLICY	24	39	63
RIGHTS OF USE	0	48	48
SUBSIDIARITY PRINCIPLE	10	12	22
TREATY*	5	5	10
TV/AVMS*	235	25	260
TOTALS	502	759	1261

technology services. The general authorization and rights of use code category/family deals with the establishment, authorization and transmission rights with respect to electronic communications networks; the electronic communications networks and services code family is related to the information society services code family.

These code categories/families as well as [specific codes within] the TV/AVMS code family represent the market concerns these directives addressed. Access, competition, competitiveness, convergence, internal/single (European) market, and subsidiarity code

* codes/code categories solely pertain to thematic grouping

* *ibid*

families represent the market characteristics the EU applies. Economics, markets, and regulation/policy code families reflect the EU's awareness of the economic potential of the aforementioned market areas, concern with the development and maintenance of fair markets, and an acceptance of the need for regulatory policy. Table 6.4 provides a frequency breakdown of "Market Issues" theme by code category/family.

6.1.3 EU Ideals Thematic Grouping

The thematic category of EU ideals consists of code families that personify EU norms. Both content and transmission directives speak to these normative ideals. Of the eight code families grouped as EU Ideals, three deal with societal protections (protection of consumers, minors, and public interests [public security, environmental, health protections]); two deal with cultural considerations (culture and pluralism). The remaining three, Info Soc Servs (information society services), TV/AVMS (television/audiovisual media services) and Treaty [Directive legal base] (Treaty as basis for directive), include individual codes within their code families that also pertain to the EU norms of free movement (of services) and cultural considerations. The specific code family "EU ideals" includes norms as found in the Charter of Fundamental Rights of the European Union (2007). The EU Ideals thematic grouping features most prominently in the content Directives, as Table 6.5 illustrates.

This is a noteworthy difference, considering six technical Directives and four content Directives are analyzed. This difference in thematic coverage demonstrates the cultural aspects that television broadcast and audiovisual media services possess in addition to their economic aspects. Nonetheless, the technical Directives focus more on consumer protections than the content Directives. And the technical Directives focus

TABLE 6.5: Frequency breakdown of EU Ideals theme by code category/family

EU Ideals Thematic Grouping	Content Directives	Technical Directives	Totals
CONSUMER PROTECTIONS	14	21	35
CULTURE	23	13	36
EU IDEALS	14	41	55
EURO/COMMUNITY CITIZENS	0	4	4
GENERAL/PUBLIC INTERESTS	37	26	63
PLURALISM	13	7	20
PROTECTION OF MINORS	37	3	40
TREATY CULTURAL/IDENTITY CONSIDERATIONS	10	2	12
TV/AVMS CULTURAL CONSIDERATIONS	81	1	77
TOTALS	229	118	342

most on general/public interests than any other code family that is part of the overall EU ideals thematic grouping.

Interestingly, the technical Directives do speak to culture and pluralism, mainly emphasizing that Member States' ability to undertake cultural policy measures will not be affected by any technical regulations. In fact, the E-Commerce Directive (2000) states "the development of the information society is to ensure that Community citizens can have access to the cultural European heritage provided in the digital environment" (ECD, 2000: 8, recital 63). The Framework Directive (2002) also states that regulation separation of content from transmission does not mean the "links existing between them" should not be taken into account "in particular in order to guarantee media pluralism, cultural diversity and consumer protection" (FD, 2002: recital 5). Although EU Ideals is not the most prominent theme of the directives, it sheds the most light on research question one (*RQ1*).

6.1.4 Overview Summary

As the above results show, three major themes are prevalent in the directives analyzed: EU/MS roles, Market Issues, EU Ideals. EU/MS roles dominate the themes. This finding is not surprising as the directives primarily deal with the role institutions play in carrying out audiovisual media regulatory policy. Regulatory policy must be carried out by Member States and their own regulatory authorities. The directives serve as high-level guidelines outlining the minimum requirements to which Member States must adhere. Market Issues is the second most prevalent theme displayed in the directives. Again, the directives serve as the baseline for EU-level regulation. Coordination of the single market is an imperative handed down by the Treaty; a key reason for EU-level regulation is developing an internal, single market that allows services to easily flow across Member State borders.

While the thematic grouping EU Ideals is not as dominant as the other two thematic groupings (EU/MS role; Market Issues), it is a very important one. The EU ideals thematic grouping contains code categories/families pertaining to EU norms and ideals. This thematic grouping is also most prevalent in the content Directives. There is also a marked difference in the frequency occurrence of other two prevalent themes—EU/MS Role and Market Issues—by directive type. However, as the technical Directives mainly focus on institutional roles and single market development issues, this difference in frequency occurrence is not very surprising. The next section focuses on results for *RQI*, which evaluates the EU's capability in upholding cultural and economic aims through its audiovisual media regulatory policy.

6.2 RQ1: EU ideals vs. EU goals

RQ1: Are the twin European Union audiovisual media regulatory policy goals of protecting cultural diversity and developing a single European audiovisual market mutually compatible?

There are differences between the content and technical Directives with respect to EU ideals. Thematically, EU ideals are featured more prominently in the content Directives than the technical ones (see Table 6.3). This EU ideals thematic grouping also contains an EU ideals code category/family. The code category/family EU ideals consists of fundamental rights the EU holds dear and norms that direct and guide the EU. These fundamental rights include freedom of movement/establishment, freedom of the press/expression, freedom of information, and transparency and non-discriminatory processes among others (Charter of Fundamental Rights, 2007). The norms of freedom of movement and establishment are also found in the directives as they relate to television and audiovisual media services as well as the information society and its services. The fundamental rights norm is often directly referenced in the directives:

This Directive enhances compliance with fundamental rights and is fully in line with the principles recognized by the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof. In this regard, this Directive should not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media. (AVMSD, 2010: 3, recital 16)

The directives also refer to the Treaty when referencing fundamental rights and societal protections (protecting general interests and public health) norms. The EU draws its authority to develop community level acts from the Treaty of Rome and all resulting treaties thereafter. Therefore, it is not surprising that the directives include many references to the Treaty as justification for pursuing EU level regulatory policy. The Treaty also espouses ideals to which it desires Europe to aspire. These ideals act as both guidelines and goals, and union is sought with the purpose of achieving those goals as indicated by the following passage:

Whereas the objectives of the Community as laid down in the Treaty include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, ensuring the economic and social progress of its countries by common action to eliminate the barriers which divide Europe, encouraging the constant improvement of the living conditions of its people as well as ensuring the preservation and strengthening of peace and liberty;

(TVWFD, 1989: 23)

As a result, the desire for the EU to forge an “ever closer union” makes culture a part of policy considerations.

6.2.1 Culture

Culture features more prominently in the content Directives than in the technical ones. Of the total 43 code categories/families, six primarily deal with cultural and market issues: culture, economics, harmonisation, internal/single (EU) market, markets, and

regulation/policy while the category TV/AVMS also includes codes dealing with cultural considerations as they pertain to TV/AVMS programs. The code category/family culture consists of the following codes: cultural aspects/development, cultural diversity, cultural objectives, cultural policy, language protect[ions], and linguistic diversity. Cultural diversity factored most prominently in the content Directives. The content Directives include all culture codes except cultural policy, whereas the technical Directives include all culture codes except cultural objectives and language protect[ions].

Table 6.6 provides the frequency of occurrence for culture code category/family across each directive grouping.

In the Framework Directive, cultural policy refers to “contribut[ing] to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning” (FD, 2002: 35, recital 17). The Transparency Directive states that information society services “should not affect cultural policy measures, particularly in the audiovisual field,” asserting that development of the information society can help ensure “European citizens” access “to the European cultural heritage supplied in a digital environment” (TD(b), 1998:18, recital 4). Cultural objectives and language protections are referenced only in the content Directives (see Table 6.6).

The first TVWFD and most recent AVMSD refer to cultural objectives in the context of program production within an internal market: “Coordination is needed to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities” (AVMSD, 2010: 8, recital 63; TVWFD, 1989: 24). Language protections are also referenced in both of the aforementioned

TABLE 6.6: Frequency of occurrence for culture code across groupings

CULTURE	Content Directives	Technical Directives	Totals
culture_cultural aspects/develop	7	5	12
culture_cultural diversity	12	6	18
culture_cultural objectives	2	0	2
culture_cultural policy	0	2	2
culture_language protect	4	0	4
culture_linguistic diversity	3	6	9
TOTALS	28	19	47

directives. The original TVWFD granted Member States authority to enact language policies “in favour of a specific language” and “lay down more detailed or stricter rules [concerning language protection] in particular on the basis of language criteria” (TVWFD, 1989: 25). The second TVWFD states that “promoting the production of European works” through the use of independent [of major broadcast organizations] producers should also take into account “protecting lesser used languages of the European Union” (TVWFD, 1997: 62, recital 31). In other words, the goal of increasing European works developed by independent producers must also protect minority languages.

The second AVMSD also affirms Member State prerogative to develop policies favoring specific languages and/or requiring programming to use a specific language (AVMSD, 2010: 9, recital 78). However, developing a European market for the broad circulation of European works, which depends on language commonalities in order to develop programming for a wide audience, while allowing Member States to require the use of certain languages, is a contradiction that remains unaddressed by the content Directives.

The content and technical Directives both refer to linguistic diversity but for different purposes. The most recent AVMSD explicitly states that “respect for . . . linguistic diversity” should also be part of any “regulatory framework concerning the pursuit of broadcasting activities” (AVMSD, 2010: 1, recital 4). The first AVMSD also calls for “respect for . . . linguistic diversity” (AVMSD, 2007: 27, recital 1). Both AVMSDs make declarations for cultural diversity and language diversity while making the case that, “new technologies in the transmission of audiovisual media services call for adaptation of the regulatory framework to take account of the structural change [convergence], the spread of information and communication technologies (ICT) and technological developments on business models” (AVMSD, 2007: 7, recital 1). Again, this declaration demonstrates the EU’s desire to hold onto its ideals while at the same time understanding that convergence creates both opportunities and challenges in the audiovisual media field (section iv of this chapter specifically addresses convergence issues). The technical Directives refer to linguistic diversity but only in assuring that no measures affecting Member States’ policies concerning language diversity will be made.

6.2.2 Pluralism

The EU reflects a desire to reconcile the seemingly conflicting goals of cultural protection and economic progress through its references to pluralism—also an EU ideal—and through its acknowledgment of cultural considerations with respect to television/audiovisual media services. Pluralism is referenced in both content (frequency = 13) and technical (frequency = 7) Directives, but different aspects are stressed by each directive type. The technical Directives ensure that pluralism as an ideal will be upheld; its inclusion in technical Directives displays a desire to keep this norm and

acknowledgement of its importance as it relates to the convergence of information communication technologies, which include audiovisual media services. The content Directives most prominently focus on protecting pluralism, which is not surprising as pluralism is an EU ideal closely associated with freedom of information and expression.

The content Directives stress the need to “reconcile demand for televised advertising with the public interest, taking into account” the special role television plays within society, “providing information, education, culture, and entertainment [and] the protection of pluralism of information and of the media” (TVWFD, 1989: 29, Article 19). The last TVWFD and most recent AVMSD also point out the need to “safeguard certain public interests” (AVMSD, 2010: 2, recital 12) by making reference to “television’s role as a provider of information, education, culture and entertainment” (TVWFD, 1997: 64, recital 44). The content Directives reference the cultural characteristics of television/audiovisual media services’ programming, making their “cultural” protection necessary.

The TVWFD (1997) and AVMSD (2010) both reference the need to prevent acts that may hinder the free movement and trade of television broadcasts/programs and “lead to restrictions on pluralism and freedom of televised information” (TVWFD, 1997: 64, recital 44; AVMSD, 2010: 10, recital 92). The technical Directives’ references to pluralism, cultural diversity, and free movement discuss how the “interoperability of digital interactive television services” is necessary in order to “promote (or ensure) the free flow of information, media pluralism and cultural diversity” (FD, 2002: 37, recital 31; 46, Article 18(1)). This illustrates the EU’s awareness of television/audiovisual media programs’ cultural role and a determination to encourage this characteristic in the digital

realm. That the content and technical Directives take cultural considerations into account is in many ways based on the cultural considerations found in the Treaty.

6.2.3 Treaty [Directive legal basis]

The Treaty is referenced many times throughout the directives. The Treaty provides a legal basis for EU institutions to act, making it a likely reference found in the directives. References to the Treaty range from outlining the subsidiarity principle, Community objectives and Member State duties to defining services, to authorizing the adoption of directives, and outlining fundamental rights of the union. The directives also refer to the Treaty with respect to culture and the essential EU principles. Only the content Directives reference the Treaty regarding cultural considerations.

The last TVWFD and both AVMSDs directly reference articles within the Treaty that require the EU “to take cultural aspects into account in its action under other provisions of the Treaty. . . in order to respect and promote the diversity of its cultures” (TVWFD, 1997: 62, recital 25; AVMSD, 2007: 27, recital 4; AVMSD 2010: 1, recital 6). The Treaty is also referenced regarding the consideration of cultural aspects, especially the promotion of cultural diversity: “Article 151(4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures (AVMSD, 2007: 27, recital 4), and

Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action under other provisions of that Treaty, in particular in order to respect and to promote the diversity of its cultures. (AVMSD, 2010: 1, recital 6)

Nonetheless, these cultural considerations represent few of the directives' Treaty references.

Furthermore, with a frequency occurrence of 12, the directives' references to the Treaty regarding European solidarity (promoting Community objectives of closer union among Member States and European citizens, respecting European fundamental rights, protecting general public interests) are outnumbered by those concerning cultural aspects (frequency occurrence of 36) (see Table 6.4). And such references again mostly occur within the content Directives (23 vs. 13). While the TD(a) and ECD include specific references to the Treaty regarding general public interests and Community objectives. On the whole, the directives most often reference the Treaty regarding the 1) authority of EU institutions and/or Member States to act, issue, or adopt directives or regulations, 2) defining services as they relate to a directive's authority to act concerning them, 3) procedural matters as they relate to implementing directive measures, 4) determining jurisdictional issues, 5) adopting measures in line with the subsidiarity principle, and 6) Member State duties. However, cultural considerations factor prominently in the content Directives as they relate to television programs and/or audiovisual media services.

6.2.4 *TV/AVMS (television/audiovisual media services)*

As indicated by Table 6.1, the code family TV/AVMS (television/audiovisual media services) is part of the EU Ideals and Market Issues thematic groupings (see Table 6.1 and accompanying footnote). In line with EU ideals, the code family TV/AVMS focuses on several cultural considerations that primarily center on encouraging European works in some fashion. However, the TV/AVMS code family also reflects an

acknowledgment of the special characteristics of television and audiovisual media services programming and the EU's public service interest norm with respect to audiovisual media services. Table 6.7 lists the TV/AVMS codes generated from analysis of the [primarily content] directives concerning cultural considerations along with frequency of occurrence by content and technical Directives. This subset of the TV/AVMS code category/family reflects the EU's desire to create a single European audiovisual media market while protecting cultural diversity. It is the content Directives that almost exclusively reference this desire.

The promotion of European works appears a key objective in developing a European audiovisual media market. All four content Directives contain passages condoning and/or encouraging "adopting suitable measures to encourage the activity and development of European audio-visual production and distribution, particularly in countries with a low production capacity or restricted language area" (TVWFD, 1989: 25). The last TVWFD references a 1994 Green Paper, *Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union, which detailed measures the Commission could undertake in promoting European works "in order to further the development of the sector* (TVWFD, 1997: 62, recital 26). This TVWFD also refers to the Media II programme whose purpose is "to promote training, development and distribution in the audiovisual sector, is also designed to enable the production of European works to be developed" (TVWFD, 1997: 62, recital 26).

TABLE 6.7: TV/AVMS codes generated from directives

TV/AVMS Codes Single Market/Cultural Diversity	Content Directives	Technical Directives	Total
TV/AVMS_co-productions/producers	10	0	10
TV/AVMS_duality/special characteristics	10	1	11
TV/AVMS_Euro works	15	0	15
TV/AVMS_Exceptions showing European works	3	0	3
TV/AVMS_program quota report/assess	8	0	8
TV/AVMS_program quotas	10	0	10
TV/AVMS_promotion Euro works	22	0	22
TV/AVMS_public serv intrsts (AVMS)	14	0	14
TV/AVMS_societal role	9	0	9
TV/AVMS_societally important media events	20	0	20
TOTALS	121	1	122

The TVWFD goes on to discuss the necessity of improving the competitiveness of European programming as an industry (TVWFD, 1997: 62, recital 28), and the need to “be encouraged to develop more detailed concepts and strategies aimed at developing European audiovisual fiction films that are addressed to an international audience” (TVWFD, 1997: 62, recital 27). The TVWFD (1997) concludes that measures promoting European works must account for “developments in the field of television broadcasting, i.e., the many ways in which programming can be distributed and accessed due to technological convergence, an aspect that *RQ3* discusses. The final Television without Frontiers Directive again demonstrates an awareness of the inherent conflicting nature of promoting *European* works—promoting the production and distribution of cultural works

aimed at displaying “European-ness” in some way, shape or form—and promoting European *works*—promoting the production and distribution of works for an economic benefit. The following passage illustrates this conflict: “Whereas the proportions of European works must be achieved taking economic realities into account; whereas, therefore, a progressive system for achieving this objective is required” (TVWFD, 1997: 62, recital 30).

This TVWFD also illustrates the tension between preserving linguistic diversity and developing a European market via promoting the production and distribution of European works:

Whereas, with a view to promoting the production of European works, it is essential that the Community, taking into account the audiovisual capacity of each Member State and the need to protect lesser used languages of the European Union, should promote independent producers; whereas Member States, in defining the notion of ‘independent producer’, should take appropriate account of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights. (TVWFD, 1997: 62, recital 31)

This passage reflects the desire to preserve diversity via protective measures. But from an economic point of view, encouraging the production of European works capable of consumption for a pan-European audience while being keen on protecting “lesser used languages” is an oxymoron of sorts. The Audiovisual Media Services Directives (2007;

2010) also reflect a desire to protect/preserve/promote cultural diversity while simultaneously developing a single European audiovisual market.

The first AVMSD reflects an acknowledgment of the changing nature of program consumption. Stating the ability of audiovisual media services to “partially replace television broadcasting” and as such “they should, where practicable, promote the production and distribution of European works and thus contribute actively to the promotion of cultural diversity” (AVMSD, 2007: 34, recital 48). In the TVWFDs, the main vehicles for the promotion of European works were program quota requirements and Member State production support schemes. In the first AVMSD, promotion of European works also entails financial support schemes as well as

attractive presentation of European works in electronic programme guides.

. . also [taking] into account notably the financial contribution by [audiovisual media] services to the production and rights acquisition of European works, the share of European works in the catalogue of audiovisual media services, and in the actual 332/34, recital 48)

The above passage refers to non-linear audiovisual media services promoting European works. Traditional broadcasters are also encouraged to “include an adequate share of co-produced European works or of European works of non-domestic origin” (AVMSD, 2007: 34, recital 50). Member States are responsible for ensuring that media service providers under their jurisdiction comply in promoting the production and distribution of European works. The most recent AVMSD (2010) also contains passages concerning the promotion of European works.

One passage from the AVMSD (2010) demonstrates how the cultural intersects with the economic goals of the EU regarding European works. Specifically, it cites how a common legal and regulatory framework, i.e., internal market, where European works make-up “a majority proportion of television broadcasts of all Member States” can help develop a market sufficiently sizeable for European television works to recoup investments necessary for producing such works (AVMSD, 2010: 8, recital 65). In other words, promoting European productions for EU citizens is viable only if a market exists for them. And an actual European market cannot exist without an internal market—removing legal and trade barriers that may prevent the free-flow of broadcasts—or without the majority of broadcasts consisting of European productions—on which Member States must report to the Commission—so that producers recoup their investments.

This strategy demonstrates the EU’s economic motive for the promotion of European works: the economic viability and market potential of European produced works, and potential repercussions of these works are promoted without a market capable of received them. In short, the economic aspect of television/audiovisual media programming is emphasized over the cultural aspect. Yet, cultural reasoning, or rather the European norm of public service broadcasting, is used in the 2010 Directive concerning the promotion of European works.

The last TVWFD and both AVMSDs allow for national support schemes that comply with EU law are acceptable for Member States to use. The most recent AVMSD provides justification for Member States’ development and use of national support schemes to encourage the production of European works. The AVMSD states that

Member States undertake support programs for European productions under the aegis of the “definition of a public interest mission for certain media service providers [that includes] the obligation to contribute substantially to investment in European production” (AVMSD, 2010: 9, recital 74). This excerpt indicates that the motive for national support schemes is steeped in normative cultural terms, not the economic lens of market development. Here, the “public interest” norm is used as a means to an economic end—justifying obligating television broadcasters/media service providers to financially support European productions. This can be seen as the EU attempting to achieve economic goals under the guise of cultural norms. Or, it can also be seen as an illustration of the EU understanding that audiovisual media indeed represent two sides of one coin and that undertaking economic goals while recognizing cultural characteristics enables it to achieve the goal of developing an internal market respectful of its normative values.

6.2.5 Regulation/Policy

Both content and technical Directives reference regulation/policy issues. Content Directives reference regulation/policy issues 24 times with technical Directives referencing them 39 times. Table 6.8 lists the codes that make-up the regulatory/policy code family.

Both content and technical Directives include references to regulatory policy issues. However, there are distinct differences between the regulatory policy concerns of the content and technical Directives. With respect to regulation and policy, the technical Directives mainly focus on imposing regulations or regulatory obligations, international

TABLE 6.8: Frequency of codes in regulation/policy family

Regulation/Policy	Content Directives	Technical Directives	Totals
reg/pol_co-regulation	5	0	5
reg/pol_global implications	0	2	2
reg/pol_imposing regulations/obligations	0	8	8
reg/pol_inability regulation to keep up with change	3	0	3
reg/pol_industry role regulations/procedures	0	2	2
reg/pol_internat' l trade pol/exepts	3	2	5
reg/pol_international agreements	0	7	7
reg/pol_limited/minimum regulation	1	1	2
reg/pol_over/inconsistent regulation	0	2	2
reg/pol_regulation appropriateness	1	6	7
reg/pol_regulatory framework	0	14	14
reg/pol_regulatory policy/objvs	14	1	15
reg/pol_removing regulations	0	2	2
reg/pol_self-regulation	6	0	6
Totals	33	47	80

agreements concerning the information society, constructing a regulatory framework for information society related issues. The content Directives contain no references to these issues.

The technical Directives also address global implications of EU regulation, the industry's role in developing regulations and regulatory procedures, the perils of over and inconsistent regulations as well as removing regulations once their usefulness is outlived. The content Directives do not reference these issues. Both the technical and content Directives refer to having limited/minimum regulation and regulating only when it is

appropriate but the technical Directives stress these issues more than the content Directives. Both content and technical Directives address regulatory policy and its objectives in general, but the content Directives overwhelmingly reference it more than the technical Directives.

The content Directives discuss the need for audiovisual regulatory policy to “safeguard certain public interests, such as cultural diversity, the right to information, media pluralism, the protection of minors and consumer protection and to enhance public awareness and media literacy, now and in the future” (AVMSD, 2007: 28, recital 8). The first AVMSD also addresses the need for regulatory policy in light of technology changing how audiovisual media services transmitted:

to take account of the impact of structural change, the spread of information and communication technologies (ICT) and technological developments on business models, especially the financing of commercial broadcasting, and to ensure optimal conditions of competitiveness and legal certainty for Europe’s information technologies and its media industries and services, as well as respect for cultural and linguistic diversity. (AVMSD, 2007: 27, recital 1)

The 2010 AVMSD also includes this same (duplicate) passage.

Both content and technical Directives discuss international trade policy and exceptions to it, but for differing reasons. The technical Directives discuss EU level regulatory framework in market terms. The ECD (2000) calls for EU level regulation coordination in order to establish a “common and strong negotiating position in international forums”

(ECD, 2000: 7, recital 59), and for a “clear and simple legal framework” consistent with international rules to ensure it does not “adversely affect the competitiveness of European industry or impede innovation in [the electronic communications sector]” (ECD, 2000: 7, recital 60). Both AVMSDs reference international policy in terms of providing precedence for the cultural exception of audiovisual media services.

6.2.6 *Audiovisual media duality/EU Regulatory Policy Duality*

The content Directives recognize the dual cultural and economic characteristics of audiovisual media programming. Article 19 of the first TVWFD permits Member States to enact stricter rules regarding daily time permitted for advertising spots and procedures for broadcasters under their jurisdiction

so as to reconcile demand for televised advertising with the public interest, taking account in particular of: (a) the role of television in providing information, education, culture and entertainment; (b) the protection of pluralism of information and of the media. (TVWFD, 1989: 29, Article 19).

The last TVWFD speaks to the need in preserving the free movement of audiovisual services within the internal market and taking advantage of growth opportunities technology affords in the sector “while at the same time taking into account the specific nature, in particular the cultural and sociological impact, of audiovisual programmes, whatever their mode of transmission” (TVWFD, 1997: 60, recital 4). The final TVWFD also espouses

television's role as a provider of information, education, culture and entertainment, the need to safeguard pluralism in the information industry and the media, and [protecting] competition with a view to avoiding the abuse of dominant positions and/or the establishment or strengthening of dominant positions by mergers, agreements, acquisitions or similar initiatives[.]

(TVWFD, 1997: 64, recital 44).

This passage again shows the EU's desire to achieve economic goals with respect to audiovisual media while at the same time preserving its cultural characteristics. The passage also shows the EU addressing structural convergence (media ownership) as a key concern as it relates to the aforementioned cultural norms, indicating an understanding of the unique economic characteristics of audiovisual media, different from typical goods and services (as discussed in Chapter Three).

The first AVMSD explicitly recognizes the duality of audiovisual media services, stating they "are as much cultural services as they are economic services [with] their growing importance for societies, democracy, education and culture [justifying] the application of specific rules to these services" (AVMSD, 2007: 28: recital 3). This recital passage is immediately followed by a passage detailing the European Parliament's calling for the exclusion of audiovisual services from trade liberalization under the World Trade Organization's General Agreement on Trade in Services (GATS) in line with its 2007 adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNCCD) (2005): "cultural activities, goods and services have

both an economic and cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value” (UNCCD, 2005 cited in AVMSD, 2007: 28, recital 5). And the passage immediately following this one details the economic potential audiovisual media services provide in their ability to “stimulate economic growth and investment” (AVMS, 2007: L 332/28, recital 6).

The next passage following this one (recital six) also references EU norms of free competition, equal treatment—basic principles of the internal market—being “respected in order to ensure transparency and predictability in markets for audiovisual media services and to achieve low barriers to entry” (AVMSD, 2007: 28 , recital 6). This passage seems to acknowledge the unique economic factors of audiovisual media and its market tendency toward consolidation that often lead to high barriers of entry for smaller firms (see Chapter Three’s discussion of media economics). The 2010 Audiovisual Media Services Directive makes an even stronger connection between the dual cultural/economic characteristics of audiovisual media with respect to the internal market.

In line with the first AVMSD, recital five of the most recent AVMSD also identifies audiovisual media services having both cultural and economic characteristics and having an increasing importance within societies by them “ensuring freedom of information, diversity of opinion and media pluralism that justifies applying specific rules to them (AVMSD, 2010: 1, recital 5). Recital six also goes on to reference the EU’s resolving to exclude audiovisual media services from the previous AVMSD concerning this issue (AVMSD, 2010: 2, recital 7). However, unlike the first AVMSD, recital eight

of the most recent one stresses the cultural norms of “pluralism and freedom of televised information and of the information sector as a whole” as reasons for Member States to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in television programs or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole. (AVMSD, 2010: 2, recital 8).

From this passage, the EU’s cultural norm of freedom of movement [of ideas] intertwines with obtaining the economic ideal of free trade to prevent incursions on its cultural norms of pluralism and freedom of information and expression. Such a passage is not found in the previous AVMSD. And, this passage precedes recital 10, a duplicate of the 2007 AVMSD’s recital six that points out the economic potential of audiovisual media services. These passages indicate a European Union fully aware of the duality of audiovisual media services and attempting to preserve cultural norms while also developing an internal European audiovisual media market to reach economic goals. But is this dual desire compatible with the realities of a globalizing audiovisual media services market?

6.2.7 RQ1 Summary

As the above results show, EU audiovisual media regulatory policy does address the seemingly conflicting goals of cultural promotion and single market development. The norms to which the directives refer flow from the Treaty. The directives in turn reference these norms and use them as the basis for addressing cultural issues and developing EU level regulatory policy that takes cultural issues into consideration. While

cultural references and pluralism are featured more in the content Directives, both content and technical Directives make reference to the importance of upholding both.

The directives address the dual cultural/economic nature of television/audiovisual media as well as the EU's desire to develop a European audiovisual media market that protects cultural (and linguistic) diversity. The promotion of European programming is a key objective in developing a European programming market. Yet, the directives do not fully reconcile how the economic goal of creating an economically viable European audiovisual media market can co-exist with protecting minority languages (linguistic diversity). The directives do acknowledge the duality of audiovisual media and they reflect the EU's desire to reconcile the cultural with the economic. But the EU seems unable to fully resolve this conflict within the directives analyzed.

6.3 RQ2: Solidarity through diversity?

RQ2: How does the EU's desire to achieve these twin goals of solidarity and cultural diversity factor into the development of its audiovisual media regulatory policies?

Creating solidarity among Europeans is a chief goal expressed by the Treaty of Rome and continues as the impetus for deeper union. The first TVWFD states:

Whereas the objectives of the Community as laid down in the Treaty include establishing an even closer union among the people of Europe, fostering closer relations between the States belonging to the Community, ensuring the economic and social progress of its countries by common action to eliminate the barriers which divide Europe, encouraging the

constant improvement of the living conditions of its people as well as ensuring the preservation and strengthening of peace and liberty...

(TVWFD, 1989: 23).

The second TVWFD also discusses the Treaty's requiring the EU to consider cultural aspects when undertaking "action under other provisions of the Treaty (TVWFD, 1997: 62, recital 25). The first AVMSD also references the Treaty's requirement of the Community taking "cultural aspects into account. . . in particular in order to respect and to promote the diversity of its cultures" (AVMSD, 2007: 27, recital 4). EU audiovisual media regulatory policy reflects a desire to protect and promote cultural diversity as has been discussed with respect to *RQI*. However, analysis of the directives does not indicate a strong solidarity of European identity theme.

The first recital of the ECD does connect the EU's goal of solidarity with the creating the internal market, stating:

The European Union is seeking to forge ever closer links between the States and peoples of Europe, to ensure economic and social progress; in accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movements of goods, services and the freedom of establishment are ensured; the development of information society services within the area and the freedom of establishment are ensured; the development of information society services within the area without internal frontiers is vital to eliminating the barriers which divide the European peoples. (ECD, 2000: 1, recital 1).

Yet, as Table 6.5 indicates, there are few references to EU citizens in the context of developing a “European” identity (total frequency = 12: content Directives = 10, technical Directives = 2). However, Table 6.6 also indicates that it is the technical Directives that explicitly address “European citizens” (frequency = 4).

The Transparency Directive recounts the separation of information society services from cultural policy measures, stating that “development of the Information Society should ensure . . . proper access of European citizens to the European cultural heritage supplied in the digital environment” (TD(b), 1998:18, recital 4). The E-Commerce and Framework Directives also refer to “European” or “Community” citizens, but with respect to electronic commerce opportunities and public interest measures (ECD, 2000: 1, recital 3; 4, recital 22), and rights regarding universal service and consumer protections (FD, 2002: 42, Article 8.4). The objectives of the directives also do not refer to European solidarity outside of the cultural issues and the internal market.

6.3.1 Solidarity & the Internal Market

The primary objective for both AVMS directives is creating an audiovisual media services single market without barriers that protects general interest objectives:

Since the objectives of this Directive, namely the creation of an area without internal frontiers for audiovisual media services whilst ensuring at the same time a high level of protection of minors and human dignity as well as promoting the rights of persons with disabilities, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at the Union

level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

(AVMSD, 2007: 35, recital 67; AVMSD, 2010: 11, recital 104)

This passage also speaks to the subsidiarity principle, an important EU principle that ensures member state autonomy is only superseded by the EU when EU-level measures are more efficient and sufficient. Additionally, the passage refers to the EU public interest protection norm.

The ECD states the creation of the single market and harmonized regulatory framework as their main objectives. Specifically, recital 10 reads:

In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed *to achieve the objective of the proper functioning of the internal market*; where action at Community level is necessary, and in order to *guarantee an area which is truly without internal frontiers* as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest in particular the protection of minors and human dignity, consumer protection and the protection of public health; according to Article 152 of the Treaty [on European Union], the protection of public health is an essential component of other Community policies.

(ECD, 2000: 2, recital 10) (emphasis mine)

And the Authorisation Directive (2002) also reiterates the internal market being its primary objective, stating “the aim of this Directive is to implement an internal market in electronic communications networks and services through the harmonization and simplification of authorisation rules and conditions in order to facilitate their provision throughout the Community” (AD, 2002: 25, Article 1.1).

Other objectives of the directives include developing a common legal framework for content and transmission services, pursuing economic benefits associated with content and transmission services, achieving regulatory harmonization, along with preserving the character of European television with respect to audiovisual advertising insertions. Recital 41 of the FD clearly espouses the primary objective of regulatory harmonization, a necessity for an internal market without frontiers, while providing justification for the Directive in referencing the subsidiarity principle, stating

Since the objectives of the proposed action, namely *achieving a harmonised framework for the regulation* of electronic communication services, electronic communications networks, associated facilities and associated services cannot be sufficiently achieved by the Member States. . . the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. (FD, 2002: 38, recital 41) (emphasis mine)

Table 6.9 provides a code frequency breakdown for both harmonisation and internal/single (EU) market code categories/families. The technical Directives contain the

TABLE 6.9: Frequencies of harmonisation and internal/single (EU) market within technical Directives

Code/Family	Content Directives	Technical Directives	Totals
HARMONISATION	7	29	36
harmo_acts of/future acts	2	1	3
harmo_as goal	3	1	4
harmo_copyright/info-society	1	3	4
harmo_promote/encourage/support	0	5	5
harmo_provisions to	0	3	3
harmo_reasons/need for	1	7	8
harmo_unnecessary/not useful	0	3	3
harmo_via regulation	0	6	6
INTERNAL/SINGLE (EU) MARKET	23	42	65
Intrnl/singl mrkt_[legal] obstacles/barriers to	1	6	7
Intrnl/singl mrkt_basic/core principles of	4	0	4
Intrnl/singl mrkt_definition	0	3	3
Intrnl/singl mrkt_e-commerce/info society/telecomms	0	7	7
Intrnl/singl mrkt_ensuring transition/integration/benefits	1	3	4
Intrnl/singl mrkt_Euro AV/TV indus/mrkt	9	0	9
Intrnl/singl mrkt_functioning	0	10	10
Intrnl/singl mrkt_pan-Euro services	0	3	3
Intrnl/singl mrkt_promoting/developing	0	3	3
Intrnl/singl mrkt_purpose for creating/creation of	2	5	7
Intrnl/singl mrkt_via [legal] framework/coord rules/Dir amend	6	3	9
TOTALS	30	71	101

most references to harmonisation and the internal/single market (harmonisation: frequency = 29; internal/single (EU) market: frequency = 42). As Table 6.9 indicates, the most numerous references to harmonisation within the technical Directives concern the need/reasons for regulation (frequency = 7), achieving harmonisation through regulation

(frequency = 6) and the promotion, encouragement and/or support of harmonisation (frequency = 5).

6.3.2 *Harmonisation: Technical Directives*

The technical Directives encourage harmonisation via the interoperability of e-communications networks and services and common technical standards/specifications (AD, 2002), standardized provisions for allocation of e-communications networks and services that will help develop pan-European [e-communications] services (FD, 2002). The Transparency Directive's primary objective is "[promoting] the smooth functioning of the internal market," i.e. harmonisation as key factor in developing a functional internal/single EU market for electronic communications networks and services specifically and information society services in general (TD(b), 1998:18, recital 1). The first TD attempted allowing Member States to

ensure where necessary, *in order to avoid the risk of barriers to trade*, [. . .] decide amongst themselves on appropriate measures, take all appropriate measures, identify the areas where harmonisation appears necessary, and, should the case arise, undertake appropriate harmonisation in a given sector. (TD(a), 1998: 41, Article 6.3; emphasis mine)

And the latter TD cautioned against premature restrictive harmonisation measures via regulation of information society services,

given that enough is not yet known about the form the new services will take or their nature, that there is at national level no specific regulatory activity in this field, and that the need for, and content of, such

harmonisation in the light of the internal market cannot be defined at this stage. (TD(b), 1998:19, recital 11)

But by the year 2000, the need for harmonized regulation for information society service providers is recognized:

Both existing and emerging disparities in Member States' legislation and case-law concerning liability of service providers acting as intermediaries prevent the smooth functioning of the internal market, in particular by impairing the development of cross-border services and producing distortions of competition. (ECD, 2000: 6, recital 40).

The ECD also defends e-communications regulation at the EU level, stating that despite the global nature of electronic communications, *coordination of national regulatory measures at European Union level is necessary in order to avoid fragmentation of the internal market*, and for the establishment of an appropriate European regulatory framework; such coordination should also contribute to the establishment of a common and strong negotiating position in international forums (emphasis mine) (ECD, 2000: 7, recital 59).

The passage above references the need for EU-level measures for development of the internal market as well as potentially influencing international regulatory measures. The Framework and Authorisation Directives also echo the need for EU-level regulatory measures for the development and smooth functioning of the internal market. On the other hand, the content Directives mainly focus on achieving harmonisation.

6.3.3 *Harmonisation: Content Directives*

The three content directive references to harmonisation as a goal all occur in the 1989 Television without Frontiers Directive, the very first Directive concerning television broadcasting of audiovisual media. Specifically, the original TVWFD recommends attaining harmonisation through removing “obstacles to freedom of movement for services by establishing a “common market” (TVWFD, 1989: 23) and “restrictions on freedom to provide broadcasting services within the Community” in accordance with the Treaty , with the abolishment of restrictions going “hand in hand with coordination of applicable laws . . . aimed at facilitating the pursuit of. . .the free movement of information and ideas within the Community” (TVWFD, 1989: 24). While the code category/family harmonisation is related to the internal/single market (EU) market code category/family, their respective codes only co-occur with each other on four occasions. Yet, these co-occurrences reinforce the connection between the harmonisation and internal/single (EU) market code categories/families:

- removal of obstacles/barriers to the single market co-occurs with achieving harmonisation as a goal (TVWFD, 1989) along with. . .
- . . .promoting/developing the internal/single market (AD, 2002)
- functioning of the internal market co-occurs with promoting/encouraging/supporting harmonisation (TD(b), 1998), and also with reasons or need for harmonisation (ECD, 2000)
- creation of pan-European services co-occurs with reasons or need for harmonisation (FD, 2002)

6.3.4 *Internal/Single (EU) market: Technical Directives*

The internal/single (EU) market code category/family again occurs more often in the technical Directives (frequency = 71) than in the content Directives (frequency = 30) (see Table 6.9 for breakdown by individual code). The majority of references in the technical Directives concerning the internal market deal with its functioning (frequency = 10), e-commerce/info society/telecomm networks or services (frequency = 7), legal obstacles/barriers (frequency = 6) and the purpose for creating it (frequency = 5).

Regarding internal market functioning, the technical Directives focus on

- ensuring its smooth operation through transparent rules and regulations (TD(a), 1998; TD(b), 1998)
- establishing minimum electronic commerce regulatory measures while still protecting general interests, “especially the protection of minors and human dignity” (ECD, 2000: 2, recital 10)
- respecting and relying on previous measures dealing with information society services to avoid duplication of and/or unnecessary measures that may restrict internal market functions (ECD, 2000)
- encouraging the development of codes of conduct among information services providers in response to conflicting Member State law concerning information society service provider liabilities, which inhibits smooth functioning of the internal market (ECD, 2000).

The other internal market functioning references to which the technical Directives refer include any issues that may negatively affect it. The second highest most frequently occurring internal/single market code of e-commerce/information

society/telecommunications services addresses single market issues such as dispute settlement procedures (ECD, 2000), necessity for Community measures to ensure smooth internal market functioning (ECD, 2000), precedent setting telecommunications regulatory framework (FD, 2002), etc. And the third highest most frequently occurring internal/single market code of “[legal] obstacles/barriers to” refers to any obstructions that may negatively affect trade or development of the internal/single market (ECD, 2000; FD, 2002).

6.3.5 *Internal/Single (EU) Market: Content Directives*

The content Directives’ highest frequency count on internal market matters concerns the development of a European audiovisual media/television industry/market (frequency = 9). The original TVWFD encourages the adoption of measures “*to permit and ensure the transition from national markets to a common programme production and distribution market* and to establish conditions of fair competition without prejudice to the public interest role to be discharged by the television broadcasting services” (TVWFD, 1989: 23) (emphasis mine). It also references the transmission of television broadcasts “across frontiers by means of various technologies” (TVWFD, 1989: 23). Eight years later, the second (and last) TVWFD refers to a 1994 action plan that “stressed the need to improve the competitiveness of the European audiovisual industry” (TVWFD, 1997: 60, recital 5).

The first AVMSD continues addressing the development of a European audiovisual/industry market in both cultural (referencing EU ideals) and economic (referencing market issues) terms. The ninth recital ties internal market development to “the fulfillment of the *mission of public broadcasting* [that] requires that it continue to

benefit from technological progress” (AVMSD, 2007: 28, recital 9). Recital 28 asserts that developing “a strong, competitive and integrated European audiovisual industry [that enhances] media pluralism” rests on Member States having sole “jurisdiction over an audiovisual media service provider” (AVMSD, 2007: 30, recital 28); the most recent AVMSD repeats this assertion in recital 34 (AVMSD, 2010: 4, recital 34). In fact, four of the nine passages concerning development of an internal/single market for European audiovisual/television industry occur in the last AVMSD. And, all four references concerning European audiovisual/television single market development focus on obtaining cultural goals through economic means.

Recital 65 demonstrates the economic impetus behind cultural objectives:

It is therefore necessary to *promote markets of sufficient size for television productions* in the Member States to recover necessary investments *not only by establishing common rules opening up national markets but also by envisaging for European productions*, where practicable and by appropriate means, *a majority proportion in television broadcasts* of all Member States. (AVMSD, 2010: 8, recital 65)

The passage following the above one states the importance of achieving the Directive’s objectives to further development of a European audiovisual media market. Specifically, the passage reads:

It is important to seek appropriate instruments and procedures in accordance with Union law in order to promote the implementation of the objectives of this Directive with a view to adopting suitable measures to

encourage the activity and development of European audiovisual production and distribution, particularly in countries with a low production capacity or a restricted language area. (AVMSD, 2010: 8, recital 66)

Yet, from the outset of the very first Directive on television broadcasts, the transmission of broadcasts across national borders “by means of various technologies” was regarded as “one of the ways of pursuing the objectives of the Community” per the Treaty (TVWFD, 1989: 23).

These Community objectives included “the establishment of a common market, including the abolition, as between Member States, of obstacles to freedom of movement for services and the institution of a system ensuring that competition in the common market is not distorted” (TVWFD, 1989: 23). These two passages demonstrate the difficulty in truly separating the cultural from the economic, even regarding primarily economic and market matters. The following subsection further investigates if tension truly exists between achieving economic solidarity—internal/single market—and cultural solidarity—European identity.

6.3.6 *Solidarity & Culture*

Chapter three discussed audiovisual media’s cultural role, especially with respect to cultural identity. Earlier, this chapter discusses the directives’ references to culture. According to the AVMSDs, “the definition of an audiovisual media service should cover mass media in their *function to inform, entertain and educate the general public*, and should include audiovisual commercial communication [advertising and teleshopping]” (AVMSD, 2007: 30, recital 28; AVMSD, 2010: 3, recital 22; emphasis mine). The

content Directives affirm audiovisual media's cultural role, referring to the role television and audiovisual media have in society, particularly integrating people into society.

The original TVWFD refers to the “role of television in providing information, education, culture and entertainment” (TVWFD, 1989: 29, Article 19). The 2007 AVMSD references the “impact of [audiovisual media] services on the way people form their opinions” (AVMSD, 2007: 32, recital 43), asserting that integration for the disabled and elderly into “*the social and cultural life of the Community is inextricably linked to the provision of accessible audiovisual media services*” (AVMS, 2007: 35, recital 64; AVMSD, 2010: 6, recital 46) (emphasis mine). This passage directly references specific subsets of the population. Nevertheless, the passage unequivocally identifies audiovisual media services access as a gateway into society, both socially *and* culturally. This is a powerful statement that illustrates the EU's belief that audiovisual media services can and do act as conveyors of culture within society. Moreover, the content Directives develop measures guaranteeing access to programming deemed societally important.

The ability for Member States “to protect the right to information and to ensure wide access by the public to television coverage of national or non-national events of major importance to society such as the Olympic games, World Cup, and European football championship) [is considered] essential” (TVWFD, 1997: 61, recital 18). The Directive considers this society to be “the general public in the European Union or in a given Member State or in an important component part of a given Member State” (TVWFD, 1997: 62, recital 21).¹³ Access to societally important media events is also connected to the EU fundamental freedom to receive information:

¹³ All content Directives (except the 1989 TVWFD) outline qualifications that Member States should use in determining a societally important media event.

In order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive television broadcasting rights to an event of high interest to the public should grant other broadcasters the right to use short extracts for the purposes of general news programmes. . . (AVMSD, 2007: 32, recital 39).

The aforementioned passages clearly connect and credit access to television broadcasts/audiovisual media services with culturally and socially integrating people into society (and to the important EU ideal freedom of information), but how this access actually works at achieving this integration is not explained. Granted, such explanation is not the focus of the directives; the directives clearly specify that Member States can and must determine through their own laws how to implement the Directive. Nonetheless, providing a more detailed explanation could give more credence to the EU's using the cultural aspects of television broadcasts/audiovisual media as justification for the promotion of European works and having program quotas for European works, as well as protecting cultural diversity and serving the public interest with respect to television/audiovisual media programming.

6.3.7 RQ2 Summary

As this section indicates, the EU seeks two types of solidarity: cultural and economic. The directives show the EU seeks economic solidarity through the establishment of an internal market without frontiers [borders] with harmonized regulatory framework. Harmonization enables a smoothly functioning market that

removes barriers that can negatively affect its operation. The EU seeks economic solidarity as it pertains to both audiovisual media services and information society services. Respectively, the content Directives focus on economic solidarity through development of European audiovisual media market and the technical Directives through interoperability of information society services. The EU also wants to achieve solidarity without sacrificing its inherent cultural diversity.

Only the content Directives connect solidarity and cultural considerations. They specifically identify the special role television programming and audiovisual media services in developing society. Yet, there is little detail on how television/audiovisual media services bring about this development. Perhaps a more in-depth accounting of how television/audiovisual media programming brings about cultural and societal integration is implicitly understood, taken as a legitimate proven fact, i.e. an accepted norm, which precludes the need for further explanation.¹⁴ In spite of this possibility, the directives most often discuss solidarity in economic terms as it pertains to the internal/single market, *not* as it pertains to culture or cultural identity as sections iii.1 and ii.4 of this chapter indicate.

6.4 RQ3: Audiovisual Media Duality & Convergence

RQ3: In what ways does the EU address AVMS duality and convergence within its audiovisual regulatory media policy?

Both technical and content Directives address convergence. Recital seven of the first AVMSD provides the rationale for EU-level regulation of convergent audiovisual media services: the completion of the single market and development of a “single

¹⁴ Further analyze in following chapter

information area” where a “basic tier of coordinated rules apply” to both linear (traditional television broadcasting) and non-linear (on-demand) audiovisual media services (AVMSD, 2007: 28, recital 7). Yet, convergence as a topic does not frequently occur within the regulatory policy directives analyzed. In fact, the culture code category/family, with a total frequency occurrence of 36, dominates both the convergence and economics code categories/families combined. Table 6.10 provides the frequency counts for the convergence code, the culture code category/family and relevant [to convergence] code categories/families from the *Market Issues* thematic grouping.

As the table indicates, the frequency of occurrence for the convergence code totals 15, occurring more times in the content Directives (frequency = 10) than in the technical Directives (frequency = 5). However, market aspects relating to convergence—competition, competitiveness, harmonisation, internal/single (EU) market, markets — most frequently occur within the technical Directives. This reflects conclusions reached previously in this chapter, which shows that the technical Directives are more concerned with the actual functioning of the internal market and ensuring no obstacles arise that may negatively affect its development and operation. This also indicates that despite content Directives connecting the development of the single market and abolition of internal frontiers to increased circulation and access to audiovisual media services, these same directives do not do more to stress convergence, which plays a role in audiovisual media services market development and its transference across Member State borders.

TABLE 6.10: Frequencies of convergence and culture codes from Market Issues

Code/Family	Content Directives	Technical Directives	TOTALS
COMPETITION	15	30	45
COMPETITIVENESS	11	14	25
<i>CONVERGENCE</i>	<i>10</i>	<i>5</i>	<i>15</i>
<i>CULTURE</i>	<i>23</i>	<i>13</i>	<i>36</i>
E-COMMUNICATIONS NETWORKS/SERVICES	1	263	264
ECONOMICS	9	6	15
HARMONISATION	7	29	36
INFO SOCIETY SERVICES	6	98	104
INTERNAL/SINGLE (EU) MARKET	23	42	65
MARKETS	8	58	66
SUBSIDIARITY PRINCIPLE	10	12	22
TOTALS	123	570	693

6.4.1 Convergence & Culture

The technical Directives show that EU regulatory policymakers recognize the need to develop regulations enabling EU information companies to compete in the information age and provide EU citizens with increased access to electronic communication networks/services. These directives set the framework for the EU to capitalize on opportunities afforded by the information society. The technical Directives mainly discuss convergence in terms of

- developing regulation that encourages “the European development of new services” (TD(b), 1998:20, recital 27),
- separating “regulation of transmission from the regulation of content” (FD, 2002: 33, recital 5),
- encouraging “interoperability of digital interactive television services and . . . equipment, at the level of the consumer” (FD, 2002: 37, recital 31),
- putting necessary regulatory systems in place covering “all comparable services . . . regardless of the technologies used” (AD, 2002: 21, recital 2),
- affirming that firms acting as both providers and distributors of content must comply with both content and transmission regulations (AD, 2002: 23, recital 20).

The content Directives address convergence more than the technical Directives (see Table 6.10). References to convergence in the content Directives

- emphasize the importance in setting up a “regulatory framework. . . which would . . . be responsive to the opportunities for growth in this sector opened up by new technology” (TVWFD, 1997: 60, recital 4);
- implore Member States to take care regulating television broadcast-like services so as to not hinder competition or movement of services across borders (TVWFD, 1997: 60, recital 8);
- stress the need for regulation to take structural changes [convergence] in the communications landscape into consideration when developing regulation so as to not impede competition and competitiveness (AVMSD, 2007: 7, recital 1);
- call attention to the challenges the changing audiovisual media services landscape brings to protecting minors (AVMSD, 2007: 32, recital 44).

The content and technical Directives both hold fast to the desire to protect cultural measures. The Transparency Directive proclaims that

Information Society services should not affect cultural policy measures, particularly in the audiovisual field, which Member States might adopt in accordance with Community law, taking account of their linguistic diversity, their specific national and regional characteristics, and their cultural heritage. (TD(a), 1998: 28, recital 4).

This same sentiment is echoed in the E-Commerce Directive, which asserts that its adoption

will not prevent the Member States from taking into account the various social, societal, and cultural implications which are inherent in the advent of the information society. . .[nor] hinder measures which Member States might adopt in conformity with Community law to achieve social, cultural and democratic goals taking into account their linguistic diversity, national and regional specificities as well as their cultural heritage, and to ensure and maintain public access to the widest possible range of information society services. . . (ECD, 2000: 8, recital 63)

The Framework Directive affirms undertaking “audiovisual policy and content regulation in pursuit of general interest objectives” (FD, 2002: 34, recital 6), while the Access Directive acknowledges that “competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television” (ACD, 2002: 8, recital 10).

As discussed previously in this chapter (*RQ2*), the technical Directives mainly focus on network access, network authorizations, etc. However, they also make sure to acknowledge pluralism's importance and support cultural diversity, making sure to emphasize the complimentary role information society services will play in maintaining cultural diversity. Yet, the above passages show that the technical Directives provide scant specificity as to how this cultural balance is to be achieved beyond maintaining "electronic programme guides" or ensuring pluralism. The content Directives approach cultural measures from a different angle.

When discussing matters of culture with respect to convergence, the content Directives focus on the economic benefits of cultural promotion across different platforms, which non-linear audiovisual media programming enables. On-demand audiovisual media services are defined as

an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider. (AVMSD, 2007: 36, Article 1.2(g))

Ten years prior to the first AVMSD, the EU recognized it was necessary "to take account of developments in the field of television broadcasting" when considering measures to improve the competitiveness of and promote European works (TVWFD, 1997: 62, recital 28). Granted, Member States were also charged with "preventing any breach of the fundamental principles which must govern information and the emergence of wide disparities as regards free movement and competition [for any] services comparable to television broadcasting" (TVWFD, 1997: 60, recital 8). But again there is

little specificity as to how these breaches will be prevented regarding these television-*like* services, as evidenced in an earlier passage in the Directive:

Whereas the Commission . . . underlined the importance a regulatory framework applying to the content of audiovisual services which would help to safeguard the free movement of such services in the Community and be responsive to the opportunities for growth in this sector opened up by new technologies, while at the same time taking into account the specific nature, in particular the cultural and sociological impact, of audiovisual programmes, whatever their mode of transmission; (TVWFD, 1997: 60, recital 4)

The need for considering the cultural and societal role television/audiovisual media programming is emphasized, but the Directive does not outline *how* such considerations will manifest themselves.

The second TVWFD does encourage different entities involved in European television/audiovisual media programming industry (broadcasters, producers, production companies, writers, etc.) “to develop more detailed concepts and strategies aimed at developing European audiovisual fiction films that are addressed to an international audience” (TVWFD, 1997: 62, recital 27). The Directive also stresses a pragmatic approach to promoting European works, stating that such promotion “must be achieved taking economic realities into account” (TVWFD, 1997: 62, recital 30). Recital 31 continues this tone, addressing market issues involved concerning promoting European productions, stating that “it is essential that the Community, *taking into account the audiovisual capacity* [market size] of each Member State and *the need to protect lesser*

used languages of the European Union, should promote independent producers [unaffiliated with a broadcast organization]” (emphasis mine) (TVWFD, 1997: 62, recital 31). Yet, the Directive provides no specific guidelines as to how these competing and conflicting goals—protecting minority languages (linguistic diversity) while promoting more European productions and developing European programming aimed at international audiences—can be achieved.

Codified ten years after the second (and last) TVWFD, the 2007 AVMSD is the first content oriented directive directly addressing the development of non-linear audiovisual media programming; the 2010 version is the most recent update. The AVMSDs make their purpose known from the outset:

[New] technologies in the transmission of audiovisual media services call for adaptation of the regulatory framework to take account of *the impact of structural change, the spread of information and communication technologies (ICT) and technological developments* on business models, especially the financing of commercial broadcasting, *and to ensure optimal conditions of competitiveness* and legal certainty for Europe’s information technologies and its media industries and services, *as well as respect for cultural and linguistic diversity*. (emphasis mine) (AVMSD, 2010: 1, recital 4); AVMSD, 2007: 27, recital 1).

The above passage clearly acknowledges the impact of convergence—structural [media ownership] and technological—on audiovisual media services. The passage also demonstrates the primary priority regarding audiovisual media services: developing regulations that take convergence into account and remove any obstacles that hinder market competitiveness. There is mention—at the very end of the recital—of the need to

respect “cultural and linguistic diversity,” but without any details on *what* this respect entails and *how* it should manifest itself. This possibly indicates that EU audiovisual regulatory media policy is mainly focused on developing an internal market conducive to information technology and audiovisual media services industry development, with culture and language protections being seemingly minor (and vague) concerns.

In fact, the following AVMSD recitals further highlight the directives’ market focus regarding non-linear television, a phenomenon made partly possible through [technological] convergence. The passage more clearly links market issues—promoting the production and distribution of European programming—to culture:

On-demand audiovisual media services have the potential to partially replace television broadcasting. Accordingly, they should, where practicable, promote the production and distribution of European works and thus contribute actively to the promotion of cultural diversity. Such support for European works might, for example, take the form of financial contributions by such services to the production of and acquisition of rights in European works, a minimum share of European works in video-on-demand catalogues, or the attractive presentation of European works in electronic programming guides. (AVMSD, 2010: 8, recital 69; AVMD, 2007: 33, recital 48).

The passage illustrates a keen interest in holding onto the EU’s cultural diversity norm in the midst of convergence. And it stresses achieving cultural goals through economic means, i.e., the market promoting cultural diversity. Unlike recital one of the AVMSD (2007) (recital four of the AVMSD 2010), which mentions cultural diversity as

an afterthought, recital 69 (48) clearly identifies cultural diversity promotion as an important priority. But the two AVMSDs assert that cultural diversity is *to be obtained through economic measures*. This shows the EU using the economic aspect of audiovisual media to further its cultural aims.

The EU's ultimate goal regarding audiovisual media services is developing a robust single, internal market for those services capable of competing internationally, but this does not mean its cultural objectives are for window-dressing purposes. Recital 69/48 demonstrates the dual approach of the EU in dealing with audiovisual media services, which themselves have dual characteristics. The recital(s) reveals the use of economic measures as a means in promoting and obtaining cultural diversity; this cultural objective in turn can yield to greater production and circulation of European works which can help strengthen the European audiovisual media [internal] market. The following passage from both AVMSDs also sheds light on how the EU uses the dual nature of audiovisual media services in attaining its cultural and economic objectives.

The passage refers to a Commission initiative that focuses on economic development via job creation in the information society sector and media industry, which restates the intent of these two directives:

The Commission has adopted the initiative 'i2010: European Information Society' *to foster growth and jobs in the information society and media industries*. This is a comprehensive strategy designed *to encourage the production of European content*, the development of the digital economy and the uptake of ICT, against the background of the convergence of information society services and media services, networks and devices, by

modernising and deploying all EU policy instruments: regulatory instruments, research and partnerships with industry. The Commission has committed itself to *creating a consistent internal market framework for information society services and media services by modernising the legal framework for audiovisual services*. (AVMSD, 2010: 2, recital 14; AVMSD, 2007: 28, recital 10) (emphasis mine)

True, the above recital references an initiative specifically targeted at achieving economic growth through opportunities information and communication technologies make available. And the economic impetus behind the production of European content (programming) is clear. However, the desire to nurture economic growth and create employment opportunities in the media industry is *not* the ends. To the contrary, promoting the production of European programming—along with encouraging the development of an information society economy—is actually an *end* through which job creation is a means to achieving it. How the directives go about regulating content regardless of transmission mode is another matter entirely.

6.4.2 *Regulatory Anomalies: Content vs. Transmission*

Whereas the Commission . . . underlined the importance a regulatory framework applying to the content of audiovisual services which would help to safeguard the free movement of such services in the Community and be responsive to the opportunities for growth in this sector opened up by new technologies, while at the same time taking into account the specific nature, in particular the cultural and sociological impact, of

audiovisual programmes, *whatever their mode of transmission*;

(TVWFD, 1997: 60, recital 4) (emphasis mine)

The above passage states that regardless of how audiovisual media services are transmitted, the content will be regulated according to regulations put in place concerning content. The Framework Directive clearly states this intent:

The convergence of telecommunications, media and information technology means all transmission networks and services should be covered by a single regulatory framework [. . .] *It is necessary to separate the regulation of transmission from the regulation of content. This framework does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content . . .* (emphasis mine) (FD, 2002: 33, recital 5)

The recital continues, stressing:

The content of television programmes is covered by covered by [amended TVWFD] on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities. The separation between the regulation of transmission and the regulation of content does not prejudice the taking into account of the links existing between them [. . .] (emphasis mine) (FD, 2002: 34, recital 5)

The Authorisation Directive addresses regulation for entities providing both transmission and content services, stating that both content and transmission obligations can be

imposed on such an entity (AD, 2002: 23, recital 20). Yet, the EU demonstrated an inability to fully deal with convergence.

The two passages above show that despite converging technology, the regulation of transmission and content are meant to be separate. Meaning, firms providing access electronic communications networks cannot be held accountable for content transmitted across those networks, unless the firm acts as both the provider of network access and of content services. But what if the *exact* same program was available via traditional broadcasting means (linear viewing) or on-demand via on-demand cable/satellite service and/or via internet streaming (non-linear viewing)?

According to the directives analyzed the content Directives' transition from solely focusing on television broadcasts in the first TVWFD to including "services comparable to television broadcasting" (TVWFD, 1997: 60, recital 8). By the first AVMSD, these "comparable television broadcast services" become known as "audiovisual services," reflecting the Commission's "[modernising] the Television without Frontiers Directive and [transforming] it into a Directive on Audiovisual Media Services" (AVMSD, 2007: 28, recital 10). The first AVMSD took pains to distinguish between the impact of content transmitted linearly or non-linearly. Specifically, the first AVMSD rationalized that

On-demand audiovisual services are different from television broadcasting with regard to the choice and control the user can exercise, and with regard to the impact they have on society. This justifies imposing lighter regulation on on-demand audiovisual media services, which should comply only with the basic rules provided for in this Directive. (AVMSD, 2007: 32, recital 42) (emphasis mine)

In other words, because non-linear audiovisual media services give consumers more choice, little to no regulation is needed, as opposed to linear audiovisual media services. According to this logic, viewing a program non-linearly impacts the viewer less than watching the same exact content linearly. This rationalization went against the ground rules mandating the separation of content and transmission regulation established in both the last TVWFD and the FD.¹⁵ This rationale seems to have resurfaced during the time between these two directives, evidenced by its appearance in the E-Commerce Directive.

The E-Commerce Directive, the EU's first attempt at developing regulation specifically concerning information society services, displayed these same contradictions concerning transmission and content regulations. More fairly, the ECD demonstrates the difficulty faced by regulatory policymakers dealing with new technologies and increasing convergence. The following ECD recital reflects how this struggle resulted in conflicting regulation principles:

Information society services span a wide range of economic activities which take place on-line . . . information society services also include services consisting of the transmission of information via a communication network or in hosting information provided by a recipient of the service; *television broadcasting within the meaning of Directive EEC/89/552 [TVWFD] and radio broadcasting are not information society services because they are not provided at individual request; by contrast, services which are transmitted point to point, such as video-on-*

¹⁵ See first page of this section containing full referenced citation from these two Directives (TVWFD, 1997: 60, recital 4; FD, 2002: 33, recital 5)

demand . . . are information society services. (emphasis mine) (ECD, 2000: 3, recital 18)

This recital clearly identifies non-linear audiovisual media service—in this instance, video-on-demand—as an information society service. This means that despite possibly identical content, the way in which the content is transmitted determines how it is regulated. This begs the question as to why television broadcasts are regulated in the first place: is it regulated because of the *medium* it is or because of the *content* it broadcasts? At least according to the ECD, it is actually the medium that determines whether or not content should be regulated.

By the 2010 AVMSD, this position is seemingly reversed. The eleventh recital of the most recent AVMSD states that

It is necessary, in order to avoid distortions of competition, improve legal certainty, help complete the internal market and facilitate the emergence of a single information area, that ***at least a basic tier of coordinated rules apply to all audiovisual media services, both television broadcasting*** (i.e. linear audiovisual media services) ***and on-demand audiovisual media services*** (i.e. non-linear audiovisual media services). (emphasis mine) (AVMSD, 2010: 2, recital 11)

Recital 27 further clarifies the regulation of both linear and non-linear programming content, clearly defining television broadcasting and on-demand audiovisual media services and unmistakably stating that both will be regulated by the AVMSD:

Television broadcasting currently includes . . . analogue and digital television, live streaming, webcasting and near-video-on-demand, whereas

video-on-demand, for example, is an on-demand audiovisual media service. In general, for television broadcasting or television programmes which are also offered as on-demand audiovisual media services by the same service provider, the requirements of this Directive should be deemed to be met by the fulfillment of the requirements applicable to the television broadcast, i.e. linear transmission. However, where different kinds of services are offered in parallel, but are clearly separate services, this Directive should apply to each of the services concerned. (AVMSD, 2010: 4, recital 27)

By the passage of the 2010 AVMSD, it seems EU regulatory policy came to terms with content regulation and convergence. The Framework Directive is evidence of reconsideration in regulating content regardless of transmission. However, there was a *devolution* in thinking regarding content regulation between 1997 (last TVWFD) and 2000 (ECD), and again between 2002 (FD) and 2007 (AVMSD). As convergence continues, there is a strong possibility that content and transmission issues will again rise and that regulatory policy may again reconsider its stance regarding the separation of content and transmission regulation.

6.4.3 *RQ3 Summary*

The directives analyzed do address convergence as it relates to audiovisual media services. Both the content and technical Directives emphasize the importance of regulation taking convergence into account, distinguishing between content and transmission regulation, and ensuring regulation does not hinder economic opportunities convergence makes possible. Both directive types emphasize the importance of

protecting diversity initiatives in the midst of convergence. Yet, neither the content nor technical Directives specifically detail how cultural and linguistic diversity with respect to convergence. The directives analyzed do strongly indicate the EU views cultural (and linguistic) diversity measures as ends and economics as a means to obtain them. While the directives address convergence, they also show a regulatory policy in flux regarding content and transmission regulation.

The content Directives first address convergence in the final TVWFD in which the term audiovisual services is used. The last TVWFD marks the inclusion of television-like services in television broadcasting regulation policy, with the term audiovisual services first appearing in the 2007 AVMSD. The last TVWFD clearly states that all audiovisual services content is subject to regulation, regardless of how it's transmitted. But by 2000, the EU reverses its position, basing content regulation on how it is transmitted. The EU again flip-flops on this issue three more times, advocating transmission-neutral regulation of content in the 2002 Framework Directive, again reverses itself in 2007, and finally reverts back to transmission-neutral content regulation by 2010 in the most recent AVMSD. This change of position indicates EU audiovisual media regulatory policy is in flux, trying to determine exactly how to regulate media in a constantly changing technologically converging environment.

6.5 Research Findings' Summary

Through the directives analyzed, the EU expresses a clear desire to benefit and profit from convergence, but it does not abandon its cultural ideals; this is not its failure. And the EU is forthright in its belief in appropriately using regulatory policy as a means of creating a harmonized internal market; its willingness to create a legal framework (via

directives) that deals with the changing nature of audiovisual media. The EU's failure with respect to audiovisual media regulatory policy is not clearly addressing the potential conflicts in simultaneously fulfilling cultural imperatives (especially cultural and linguistic diversity stemming from EU ideals) and economic goals (of capitalizing on convergent technologies and new opportunities for market development).

The EU's failure is not clearly detailing the importance of cultural and linguistic diversity on their own merits and not specifically detailing the promotion of these in *non-economic* terms (see section ii.4). Yet, if the importance of each is inherently understood by policymakers, is non-specificity truly a failure of regulatory policy? The following chapter discusses the implications of these findings for EU audiovisual media regulatory policy, recommendations for future regulatory policy, and future research.

CHAPTER 7

WHERE THE EU STANDS — MEDIA DUALITY, CULTURE, AND CONVERGENCE

While a great deal of previous research on EU audiovisual media policy focuses on the European Union's cultural diversity/cultural exception stance with respect to audiovisual media services, there is a growing body of research questioning the EU's ability to balance the cultural and the economic, especially as convergence continues within the media environment. The EU's attempt at balancing economic and cultural objectives in the midst of convergence appears to be at a tipping point. And it is here at this point where this research began, taking a different approach to analyzing EU audiovisual media services regulatory policy. This approach involved investigating the economic/cultural balance of EU AVMS regulatory policy from the source of the economic and cultural conflict: the duality of audiovisual media.

By using the dual economic and cultural characteristics of audiovisual media as the basis for examining the seemingly conflicting priorities of EU AVMS regulatory policy, this research attempted to understand how EU norms—especially those concerning culture, pluralism, identity, cultural diversity and cultural protection—in conjunction with the duality of audiovisual media goods/services inform its AVMS regulatory policy. This research also attempted to understand how convergence and

globalization may further complicate EU AVMS regulatory policy and its ability to preserve its norms. The ultimate goal of this policy research study is helping determine realistic policy goals the European Union can develop to effectively incorporate convergence in its pursuit of market liberalization and cultural protection. Achieving this goal involved analyzing EU regulatory policy directives in order to understand where the EU currently stands on convergence and audiovisual media regulatory policy.

This chapter begins by providing analysis of the study findings as they relate to each research question, addressing key strengths and weaknesses in EU audiovisual media regulatory policy. Next, the chapter discusses the potential implications of these findings, especially relating to EU audiovisual media regulatory policy and trade policy, communication and media theory, and media practitioners. The chapter then addresses possible limitations of the study as well as suggestions for future research. Finally, the chapter concludes by proposing an approach to audiovisual media regulatory policy for the European Union.

7.1 In Summary: Review of Findings

Taking this approach, the research found that three major themes dominated the directives. These themes included: 1) EU ideals, meaning the upholding EU ideals that include cultural issues and public interests protections; 2) EU/MS role outlining the authority and obligations of EU and Member States' institutions concerning regulation/regulatory policy; 3) market issues, specifically economic and regulatory issues. The research also shows that current European Union audiovisual media regulatory policy continues wrestling with the additional challenges convergence places on its cultural aspirations. As discussed in Chapter Five, most normative change occurs after a tipping

point has been reached.¹⁶ The EU's changing response concerning content and transmission since 20xx?? is evidence of its audiovisual media regulatory policy reaching a "tipping point." Finally, the research demonstrates that the directives' manifest the same economic/culture tension—pursuit of an open, internal audiovisual media market without barriers along with the preserving, promoting, protecting cultural (and linguistic) diversity—that characterizes audiovisual media.

With respect to the research questions guiding the study, the findings indicate that

- The economic—culture schism of audiovisual media goods/services manifests itself in the directives through the somewhat conflicting goals of market harmonization and maintenance of the EU's cultural (and linguistic) diversity, but the directives do not address how these two competing goals will be actualized, much less if they can be reconciled. **(RQ1)**
- The directives address solidarity as it pertains to economic markets and culture: economic solidarity through creation and harmonization of the internal market for audiovisual media and information society services; and cultural solidarity in term of access to audiovisual media services. The directives discuss obtaining cultural goals via development of an internal, harmonized audiovisual media market, but do not detail *how* audiovisual media access can help achieve cultural integration. **(RQ2)**
- The directives do address convergence and the duality of audiovisual media by acknowledging the cultural aspects of linear and non-linear audiovisual media, but do not provide guidance on reconciling convergence with cultural protection measures. The directives also illuminate the EU's use of economic means to achieve cultural ends.

¹⁶ Chapter five, section i.2

Finally, the directives illustrate the EU's conflicting views concerning the regulation of content and transmission, demonstrating an in-flux policy issue that reflects the nature of convergence itself. (*RQ3*)

The following sections provide an in-depth discussion of the research's implications as they relate to EU audiovisual media regulatory policy, and then discuss the implications of the findings for theory and media practitioners.

7.2 What it Means: Significant Implications for EU Audiovisual Media Regulatory Policy

7.2.1 RQ1: EU ideals vs. EU goals

The economic—culture tension within EU audiovisual media regulatory policy is an outgrowth of the dual economic/culture characteristics of audiovisual media goods/services. The research shows that the directives not only refer audiovisual media's special characteristics (having both cultural and economic value) but use these special characteristics as the basis for protection, promotion and preservation of cultural diversity. The directives, specifically the content Directives, caution against solely treating audiovisual media as an economic entity. The directives address the importance of maintaining cultural considerations with respect to audiovisual media services. In fact, the research shows the [content] directives not only stress cultural reasons for protecting cultural diversity but also use economics as a means to promote cultural diversity, i.e. a dual culture/economic approach. In using this dual approach, the EU promotes the production and distribution of culturally European audiovisual media works while simultaneously proclaiming the economic benefits of promoting European works [audiovisual media texts], which helps develop the internal market.

The EU acknowledges its economic motivations, stressing that cultural promotion of audiovisual media requires taking economic considerations into account. The research shows the EU consistently links the desire for internal market regulatory and legal harmonization to the development of a European audiovisual media market in which European productions can recover market investments. The research also indicates that the technical Directives address the issue of cultural diversity preservation, protection, and promotion, assuring adherence to this norm despite non-linear viewing capabilities for audiovisual media. The directives show an EU defending its cultural stance with regards to audiovisual media. Nonetheless, the research shows that the EU does not provide an actual plan concerning how it will preserve cultural and linguistic diversity. Furthermore, the directives do not indicate how these priorities can remain relevant despite the structural changes occurring in the media environment.

As of 2010, Member States met required quotas for showing European works via linear platforms, and also for non-linear audiovisual media services although non-linear requirements had not been implemented everywhere (Attentional, et al., 2011: 211 – 212). But while these works met the criteria of being “European works,” most of them were “national works [with] very limited [non-domestic] circulation or joint development [with other Member States]” (Attentional, et al., 2011: 212). Demand for domestic works “reflects the cultural and linguistic preferences of the consumer which lead to a diversified market demand” (Attentional, et al., 2011: 213). After national fare, Member States favor United States programming over programming from other Member States (Attentional, et al., 2011: 213; David Graham & Assoc., 2005: 18).

The main factor behind the United States overwhelming dominance as an audiovisual media powerhouse stems from the resources it has to develop, produce, market, and distribute audiovisual media. As chapter three details, the media industry is a highly risky one dependent upon the unknown preferences of people. Having a unified market can increase market size, which can yield more funds that in turn can be invested in developing more content. The limited circulation of national works within the EU effectively means no unified European media market exists. Instead, the EU is a fragmented media market comprised of small to medium media markets susceptible to the high levels of risk associated with the media industry. This fragmentation inhibits the circulation of European works that could foster “higher levels of funding to invest in quality creation and to reduce strong European content for export, fostering the European audiovisual economy and cultural influence” (Attentional, et al., 2011: 214). The lack of resources makes acquiring United States programming cheaper than developing new content (David Graham & Assoc., 2005: 158).

As both theory and independent studies tendered by the EU indicate, national audiences prefer their own national audiovisual media programming. But it is the distinct cultural and linguistic features associated with domestic audiovisual media programming that seem to inhibit their circulation across borders. And lack of cross-border circulation detrimentally affects the economic potential of European audiovisual media works. Yet, the EU remains committed to maintaining and promoting cultural diversity and linguistic diversity. Putting these results into theoretical perspective, it is clear that the EU’s dual desire to develop a viable European audiovisual market while preserving, promoting and

protecting cultural and linguistic diversity mirrors the inherently conflicting and dualistic nature of audiovisual media goods.

Adorno asserted that commoditization of cultural goods, especially “popular culture” goods, forfeited their rights to receive cultural consideration: the standardization and commodification of audiovisual media goods/services reduces their value to what it can bring to the market place, i.e. exchange value (Scannell, 2005b; Mosco, 1996; Adorno, 1990). This makes cultural goods purely economic goods working toward maximizing profits as any other market sector (Adorno, 1990; Garnham, 1990). Nonetheless, despite their commodification, audiovisual media are not completely devoid of culture.

Benjamin (1970) viewed the de-reification of culture through mass cultural production to be a good thing. In destroying its aura, art becomes free for people to experience within their own environment. Reducing culture to an exchange value may fetishize it, making it something to own for the sake of ownership (Scannell, 2005b; Peters, 2003; Cook, 1996; Adorno, 1990). But the reproduction of cultural goods allows people to experience its universal qualities (Scannell, 2005b; Benjamin, 1970), providing an emancipatory effect. Thus, despite standardization and commodification, audiovisual media still have cultural value. The European Union is not exhibiting hypocrisy when it uses an economic approach to bolster its cultural initiatives, nor is it exhibiting hypocrisy when it calls for exceptions when considering audiovisual media services trade. What the EU should do is re-examine its adherence to its cultural norms, acknowledge the inevitability of a trade-off between culture and economics, and develop a plan that

enables the development of a true European audiovisual media internal market without sacrificing its economic ambitions or its cultural aspirations, whatever those entail.

7.2.2 *RQ2: Solidarity through Diversity*

Creating solidarity through fostering a closer union among Europeans is a chief goal of the European project. However, the research shows that *economic* solidarity through the development of an internally harmonized single market for audiovisual media (and information society services) is the EU's primary focus. When discussed in the directives, cultural solidarity focuses on the cultural role audiovisual media services play in developing society. The results show an EU clearly aware audiovisual media's special societal role, with the last TVWFD and both AVMSDs referring to the special role television/audiovisual media play in informing, educating as well as entertaining people. The directives also assert that access to audiovisual media helps integrate people into society.

All in all, the EU demonstrates a clear understanding and belief of audiovisual media's cultural and social role within a society. Moreover, the findings show an EU very much reluctant to sacrifice cultural and linguistic diversity for the attainment of a unified internal market. But the EU fails to actually explain how access to audiovisual media yields a socially integrated person. On the whole, the research shows that the directives limit developing a sense of "European-ness" to the cultural exchange of European media goods and services. And this limitation reveals one of the biggest holes in EU audiovisual media services regulatory policy and in its cultural exception argument.

The directives discuss the economic importance of developing a European audiovisual media market but do not delve into the cultural importance of and/or reasons

for developing such a market. Instead, the directives show an EU focusing on the economic importance of developing an internal audiovisual media market. This apparent economic focus is due to the directives neither discussing the importance of developing a European identity nor how audiovisual media truly figure into the development of a European cultural identity development.

As the research shows, there are few references within the directives to EU citizens with respect to the development of a European identity. Solidarity is an espoused goal of the Treaty. Nevertheless, the directives analyzed only refer to European solidarity in relation to cultural issues as they relate to developing an economically harmonized internal market. The research shows the EU uses economic measures as means to obtain cultural (and linguistic) diversity ends. But the findings also show the EU does not connect its cultural aspirations with the cultural aspects of its audiovisual media regulatory policy. This cultural disconnect results from the EU's failure to impart the cultural importance of developing a European audiovisual media market, which is due to the EU failing to discuss the importance of developing a European identity.

The cultural studies approach highlights the connection between a country's identity and audiovisual media. Language, music, art—audiovisual media—all are cultural products, with language playing a key part in transmitting information, developing and maintaining culture and cultural identity (Carey, 1992). Culture reflects these shared experiences, which are reflected through the written and spoken word, music, art, i.e., collection of human works (Geertz, 1972). And language plays a particularly key role in culture and cultural maintenance due to its role in socialization (Berger & Luckman, 1967).

Knowing a language and understanding its context helps people understand the society in which they live as well as how to navigate through it (Bandura, 1986). Expressed in and through language (Grossberg, 1986), people use the conceptual structure of ideology to make sense of society (Hall, 1986). Cultural practices provide meaning to the rituals, events and texts of society with socialization developing the ideological framework that helps people make sense of these practices. Cultural identity is the way in which a person connects the practices (language, rituals, events) of society with their individual sense of self, with cultural expressions forming the basis of cultural identity (Porto, 2011). This sense of cultural identity is an outgrowth of ideology and also plays a role in shaping ideology (Sparks, 1989; Hall, 1986; Hall, 1980; Brown, 1978; Williams, 1961). It is here that EU audiovisual media regulatory policy misses the mark concerning the cultural importance of developing a European audiovisual media market.

The EU appears to define itself by its inherent diversity. Unity through diversity enables all EU citizens to feel they belong to Europe, making them feel they indeed are European. However, these differences also highlight the “otherness” of cultural groups (Young, 200_ in Swanson, 2005). Furthermore, unity through diversity may not be enough to bring about a definitive “European” identity. The use of EU cultural symbols (EU flag, Euro currency, etc.) can impact the formation of a collective [European] identity (Bruter, 2007). Yet, the diversity of deeply imbedded cultural identities makes the development of a definitive European identity difficult (Karoleswski, 2010).

Media exchanges cannot serve as the sole form of cultural exchanges (Wolton, 2009) nor can EU institutions constitute a full-fledged European society (Berglund, et al., 2009). But cultural identity formation *can* be influenced by the media (Kelner, 1995) to

varying degrees (Strelitz, 2002). Taking all these things into account, theory clearly links the sharing of cultural expressions with the development of cultural identity. This perspective validates the EU's efforts of creating a European audiovisual media market because it supports its overarching goal of creating European solidarity, and solidarity can be better achieved through the development of a common cultural identity. Yet, the directives show a lack of discussion about European identity and how audiovisual media factor into European cultural identity development. This missing link—articulating the cultural reasons for developing an internal audiovisual media market by connecting its development to the cultural aspects of audiovisual media—leaves EU audiovisual media regulatory policy (and trade policy) vulnerable to charges of economic protectionism.

7.2.3 *RQ3: Audiovisual Media Duality & Convergence*

Convergence: Concerning convergence, this research shows that convergence is not a main issue of discussion in the directives. The research also reveals the EU's lack of providing specific guidelines on how to support its ideal of cultural diversity beyond its standard promotion and protection initiatives. Despite technological convergence, which allows the viewing of content across space—television, computing devices, and smart phones—and time—live, linear viewing and on-demand, streaming, non-linear viewing—the directives do not address how these options complicate enforcing cultural diversity initiatives.

The technical Directives, documents that set up a regulatory framework so that the EU can capitalize on information society opportunities, point to maintaining electronic programming guides and ensuring pluralism as the information society's way of supporting cultural diversity. Beyond that, the technical Directives offer no other

specifics as to how the information society will promote cultural diversity; they primarily refer to the desire to protect cultural diversity. The research also shows that the technical Directives do not address the potential conflicts of capitalizing on the information society opportunities technological convergence provides.

The research does show that the content Directives address convergence issues more than the technical Directives. Additionally, the research shows that the content Directives address the structural changes—media ownership convergence—occurring in the media landscape. However, the content Directives focus on the economic aspects of technological convergence, pointing to the importance of developing a harmonized regulatory framework to exploit the opportunities it affords, and the necessity of avoiding impediments to competition and competitiveness when developing regulations. In other words, the content Directives focus on market aspects of technological convergence without confronting how technological convergence complicates regulating audiovisual media content. Furthermore, the content Directives do not address issues concerning media ownership, another aspect of convergence.

When viewing these findings through the theoretical perspective of medium theory and the phenomenon of globalization, the directives demonstrate a lack of understanding concerning the possibility of convergence preventing the EU from developing European works for a European audience precisely due to the increased access to non-European content EU citizens now have. In failing to address this potential, the EU undermines its declarations of preserving cultural diversity as it focuses on the economic potential convergence provides in developing and fortifying the single, internal market for EU audiovisual media services. Furthermore, the directives fail to develop

actual guidelines Member States can use to fulfill cultural obligations while also taking advantage of opportunities available through convergence.

Although the directives champion taking advantage of structural convergence to advance new economic opportunities in the audiovisual media services market sector, they fail to address issues of ownership structural convergence poses especially with respect to cultural diversity. The principal argument of economic liberalization is that competition leads to increased choices. Yet, media industries do not operate as other typical industries (Doyle, 2002a; Doyle, 2002b). They instead tend toward vertical integration, horizontal integration and consolidation, which can also lead to an increasing homogenization of audiovisual media content media companies offer (Burri-Nenova, 2007; De Bens & de Smaele, 2001).

Political economy holds that institutions developing and circulating cultural commodities can exert power over what symbols circulate throughout society practices in such areas as communicative control and ideological legitimacy (Sussman, 1999; Sinclair, 1996; Garnham, 1995). From a political economy theoretical perspective, this indicates a failure to address the role media ownership plays in the structural development of the medium system and the role political and economic power plays in maintaining its structure (McChesney, 2004; Maxwell, 2001). Not addressing structural convergence issues also shows the EU's inability or unwillingness to connect the economic to the cultural. In failing to connect these two conflicting characteristics within the directives, the EU reflects a continual inability to integrate cultural and economic characteristics of audiovisual media goods/services.

Duality with Convergence: Cultural artifacts say something about a particular culture (Crothers, 2006; Geertz, 1972). The EU demonstrates that culture is such a normative underpinning of EU audiovisual media regulatory policy through its inclusion of it in the directives, both content and technical oriented directives. Through its inclusion of culture in the directives, the EU also displays its conceptualization of culture being something walled off and part of a different sphere (Adorno, 2009). This European conception of culture may also play a role in its pursuit of cultural diversity on the international stage, using the “cultural exception” argument to defend exclusion of audiovisual media goods/services from trade agreements.

The EU’s insistence on considering culture may also factor into its desire to form an internal market where European media goods overtake American television program exports. While the EU attempts to meet its desire for cultural diversity and promotion of European works through market measures, i.e. quotas and financial incentives for European productions, the fact that it feels audiovisual media warrant cultural consideration stems from its belief in the cultural symbolism of audiovisual media goods/services. And this attachment of the cultural to these commoditized products underlies the EU’s concerns regarding convergence.

As the study results indicate, EU audiovisual media regulatory policy speaks to the important cultural value of media goods and services, giving assurance that technical considerations will not impede or negatively affect ideals of cultural diversity, linguistic diversity, and pluralism. Yet, the directives do not go beyond this statement as it relates to convergence. But, the EU’s insistence on Member States sharing “European” cultural artifacts—media texts—across its borders, and in developing a European media market

indicate that it looks favorably upon intercultural communication flow, that is as long as it is European in origin, origins that financial reasoning largely dictates.

Theoretically speaking, it seems the European Union embraces McLuhan's notion of the "global village" that can enable Europe's regional integration project to cultivate European citizens that identify themselves as Europeans first and by their national identity second (Bergland, et al., 2009). In this sense, the EU seems to embrace this vision of transforming its "social fabric" (Castells, 2000), with the exchange of European audiovisual media goods/services—cultural symbols and artifacts—further integrating the region (Eichengreen, 2007) and creating a virtual European place (Appadurai, 2004). However, the EU demonstrates its fear of technical and structural convergence threatening the development of this European "place" through the circulation of non-European programming. Despite evidence of glocalization being a by-product of globalization (Ariely, 2012; Moran, 2009; Straubhaar, 2008; Appadurai, 2004; Curran, 2002; Escobar, 2001), the EU views convergence from without negatively.

In terms of theory, this fear of convergence from without ties into Innis' and the political economy of communication and media's perspective concerning power and control over information, specifically the possibility of those in control of information dominating those without it (McChesney, 2004; Sussman, 1999; Fraser, 1998 in Swanson, 2005; Mosco, 1996; Sinclair, 1996; Garnham, 1995; Carey, 1992; Innis, 1951). The way in which a society orders its communication and disseminates information is an extension of itself (Mosco, 1996; Innis, 1951) and one must view the degree to which it influences a society through the social and economic context it uses information (Comor, 1994 in Babe, 2009; Scannell, 2005c, Castells, 2000).

While globalization does not necessarily mean the homogenization of culture (Tunstall, 2008, in Moran, 2009; Hefez, 2007; Crane, 2002), fears of cultural homogenization may potentially explain the seemingly conflicting messages the EU gives regarding audiovisual media services. In an age when information is a prime economic good (Schiller, 1988), it appears the EU simultaneously fears being a permanent peripheral media market within its own region while at the same time attempting to capitalize on the opportunities that came along with convergence to help the EU while embracing the notion of convergence engendering a mini-globalization of its own market. This is another example of the tensions within EU audiovisual media regulatory media policy courtesy of the dual nature of convergence and the phenomenon of globalization.

Connecting Culture & Convergence: The findings suggest that EU audiovisual media regulatory policy could use the cultural diversity argument more convincingly if it linked this course of action directly into the cultural identity goals of the European Union. But the findings also imply that the current nature of European identity—one that defines itself by its inherent diversity—may prevent policymakers from taking the above mentioned course of action. If there is no clearly defined European identity beyond institutions and symbols associated with it, asserting cultural identity development goals as reasons for emphasizing the cultural characteristics of audiovisual media and resulting regulation is difficult. Despite this lack of cultural identity, the findings indicate the use of economic measures to develop a unified European audiovisual media market is used as a means to obtaining cultural goals with respect to audiovisual media regulatory policy.

As the research has chronicled, audiovisual media are considered cultural carriers as well as a means through which cultural identity is developed. The findings show a

disconnect between the EU's obtaining cultural and the cultural characteristics of audiovisual media goods/services. More specifically, the findings suggest that EU audiovisual media regulatory policy esteems cultural (and linguistic) diversity, openly acknowledges the dual cultural/economic characteristics of audiovisual media while also identifying audiovisual media's role in developing cultural identity. But in spite of these positive attributes, EU audiovisual media regulatory policy does not detail how its regulations can help audiovisual media bring about cultural solidarity or a European identity.

In contrast, the directives very clearly connect the economic goals of developing an internal, harmonized single market. This contrast discrepancy is alarming and leaves the EU's cultural exception stance open to criticism, despite the realness of their cultural regard for audiovisual media goods/services. Related to this potential for policy criticism is the EU's reluctance to plainly acknowledge the potential for conflict between its economic and cultural goals as both relate to the promotion and preservation of cultural (and linguistic) diversity.

The findings implicate that policymakers have not addressed exactly how the competing goals of market harmonization and cultural (and linguistic) diversity can be actualized without sacrificing one or the other, especially culture. This lack of actualization implies that policymakers have not determined a solution to this issue, or have not realized this major discrepancy within EU audiovisual media regulatory policy, or do not view the issue as a policy shortcoming. Whatever the reason regarding this issue, the research suggests that explicitly connecting the duality of audiovisual media goods/services with the dual policy goals—cultural and economic solidarity via an

internally harmonized single market—could lend more credibility to the EU’s cultural exception stance on the international policy stage.

In connecting the duality of audiovisual media to its dual internal harmonization goals, the EU could draw attention to an original schism and force policymakers to truly consider the inherent cultural aspects and economic complexity of audiovisual media. Connecting the intrinsic characteristics of audiovisual media goods/services to the current cultural exception/“free” trade debate can also bring a more nuanced perspective to the issue. Connecting audiovisual media duality to its dual harmonization goals can also help the EU develop actual strategies concerning convergence and cultural diversity regarding audiovisual media regulatory and international trade policy.

7.3 Why It Matters: Implications for the Rest of the World, Communication & Media Theory, and Media Organizations

Globalization and its relation to convergence has been discussed. As a union of nearly 30 countries, the EU is a microcosm of globalization. EU audiovisual media regulatory policy and international trade policy are both undergoing a period of transition as convergence, along with globalization, further complicates audiovisual media trade issues. The findings show an EU audiovisual media regulatory policy struggling with issues surrounding technical convergence, specifically relating to the regulation of content and transmission. This internal struggle parallels the EU’s struggle concerning international trade of audiovisual media goods/services. EU audiovisual media regulatory policy mirrors international trade policy in that Member States are responsible for its implementation and are granted a certain amount of autonomy in bringing about implementation just as individual nation states are responsible for implementing trade

agreements concerning audiovisual media policy into legislation. How the EU handles convergence and cultural issues surrounding audiovisual media can be an example for the rest of the world.

As with international trade policy, an internally harmonized market is one of the primary goals of EU regulatory policy. In better defining its cultural exception argument by tying it to the duality of audiovisual media, the EU can help usher in a different mindset concerning the trade of audiovisual media goods and services. It cannot be denied that convergence further muddies the waters concerning audiovisual media regulation, particularly the regulation of content. However, stressing the cultural aspects of audiovisual media, despite its transmission status, still enables a viable argument in favor of trade limitations for it. The EU successfully linking audiovisual media's cultural characteristics with its international trade policies can have implications especially for the United States'—the world's number one exporter of audiovisual media goods/services—audiovisual media trade policy endeavors. A clearly defined EU audiovisual media policy platform effectively demonstrating the inseparable cultural and economic duality of audiovisual media could bring forth a closer examination of US economic-leaning perspective concerning audiovisual media trade.

The availability of audiovisual media programming across different platforms that provides people the opportunity to more freely obtain access to content and the opportunities for developing and disseminating new content are by-products of convergence. These aspects of convergence may emphasize the economic characteristics of audiovisual media and tempt policymakers into completely ignoring or seriously undermining the cultural side of audiovisual media. Yet, in relation to globalization

theory, the availability of programming across different platforms across geographical borders does not remove people's desire to connect with their own cultural symbols that represent their geographical sense of place (Tunstal, 2008 in Moran, 2009; Escobar, 2001; Massey, 1997), which also leads to the indigenization of cultural symbols and artifacts (Appadurai, 2004).

The EU's seemingly conflicted desire to develop an internal audiovisual media market while also preserving cultural (and linguistic) diversity validates the globalization perspective that cultural specificity and identity are not diminished by the circulation of audiovisual media via convergence. The EU's aspirations concerning the preservation and promotion of cultural (and linguistic) diversity indicate a desire to continue developing and maintaining the cultural aspect of audiovisual communication (Innis, 1951). The EU's desire to develop its own audiovisual media market also corroborates the "information as power" perspective as well as critical/cultural theories concerning media: a consolidated European audiovisual media market with a majority of European audiovisual media works produced and circulated across its internal borders can help the EU transcend its status as a peripheral media market while also helping create, develop, and/or promote a sense of European cultural identity (Porto, 2011; Vidmar-Horvat, 2010; Bruter, 2007; Pérez, 2005; Strelitz, 2002; Kellner, 1995; Thompson, 1995; Carey, 1992; Tomlinson, 1991).

All that being said, the economic aspects of audiovisual media production and distribution still pose a challenge for a more culturally-based EU audiovisual media regulatory policy. However, the fact remains that audiovisual media is a cultural commodity with unique economic characteristics, one characteristic being the especially

high level of risk associated with producing audiovisual media primarily due to its value being determined by consumers whose tastes are highly variable and often unknown. This particular characteristic is magnified by the EU's fragmented media market. A collection of small to medium-sized audiovisual media markets, the current EU audiovisual media market is, 1) highly susceptible to already high levels of risk, 2) largely due to the inability to circulate European works, 3) which in turn could garner higher levels of funding, 4) which in turn could be used to create European content for distribution in the European media market. Consequently, the inability to reduce risk via non-domestic circulation of European programming detrimentally affects the ability to produce European works.

EU audiovisual media regulatory policy does encourage European co-productions as a way to produce more European works; Member States provide co-production funds according to their territorial stipulations. However, funding for co-productions is often subject to territorialization requirements that include using the language of the location in which the production is filmed. Such a requirement can result in the production of programming geared more toward a national audience that impedes pan-European circulation (Cambridge Econometrics, 2008). But by the same token, territorialization can help preserve cultural identity by using national languages, of special importance for smaller European countries. As a result, the development of a European audiovisual media market, especially one capable of competing with the audiovisual media juggernaut known as the United States, is hampered by the EU's linguistic segmentation.

As this chapter previously details, the fragmented nature of the European media market hinders the reception of audiovisual media by non-domestic audiences.

Convergence does enable the circulation of audiovisual media programming across borders. Nonetheless, language barriers and cultural specificity inhibit reception of European works by non-domestic audiences. Edging out United States' media programming as domestic markets' next audiovisual media choice to national programming requires greater funding of European audiovisual media and shared risk of productions.

Co-productions often occur between neighboring countries and are co-productions based on the inclusion of a producer and/or actor/actress from one of the participating co-production countries, which provides access to state co-production funds (Cambridge Econometrics, 2008). Co-productions provide access to state funding, distribute risk, and enable a greater circulation of the production at least within the co-producing countries (Cambridge Econometrics, 2008). Yet, revenues are overwhelmingly obtained from the domestic market that provides the majority of public funding (Cambridge Econometrics, 2008 ; David Graham & Assoc., 2005). Furthermore, stock programming, with higher production costs and production value makes the best audiovisual media export (David Graham & Assoc., 2005).

Taking these factors into consideration, co-productions may not be enough to help develop a European audiovisual media market if economics is the primary goal. Again, the question is, are media organizations, producers, etc., willing to risk short-term tangible economic benefits in exchange for a long term cultural payoff. The economic characteristics of audiovisual media demonstrate that relying solely on "market" factors cannot provide the cultural and economic aspirations of the EU with respect to internal market development. Media organizations operate under a high degree of risk and are

prone to horizontal and vertical integration that promotes concentration that creates barriers to entry. These factors will not change, even in the face of convergence.

What can change is EU audiovisual media regulatory policy deciding the type of cultural diversity they want to promote and how they want to protect it. This would entail setting stricter and more culturally meaningful parameters concerning co-productions instead of the current financially-based quotas used to define co-productions. Also, the growth of independent producers can help improve the circulation of European works. As previously detailed, broadcasters are the primary producers of audiovisual media content. This is a result of European countries PSB origins: PSBs financed content production, which in effect made them production companies and broadcasters (Attentional, et al., 2011: 205).

As primary producers, broadcasters have exclusive broadcast rights for programs. As such, broadcasters have little motivation to release content for other channels and/or on-line programming libraries, which further constricts circulation of European works (David Graham & Assoc., 2005). Media organizations and stakeholders in the media value chain are adaptable and while their main priority is financial success, helping create a more unified European audiovisual media market capable of competing with the United States as an audiovisual media exporter outside the EU or, at the least propel European productions as the second-choice to domestic audiovisual media could be very beneficial. However, as long as risk is concentrated more heavily on those taking the initial risk of production, premium content will continue being controlled by those entities so that they may capitalize the most from their endeavors.

7.4 Study Limitations

The limitations of this policy research study include focusing on highly negotiated policy documents without the addition of another method such as in-depth interviews to better understand the motivations of policy actors involved in developing these texts. Also, the document analysis focuses on the primary documents—the ten directives—without the inclusion of secondary documents. Secondary documents include various reports commissioned by the European Commission to help in determining policy to undertake (compiled by external contractors or by the EC, actual EC reports on implementation of directives, semi-official Green Paper policy documents, etc. Chapter five provides the rationale for the exclusion of these documents from document analysis. However, analysis of these documents may provide a deeper understanding of the negotiated Directive's despite tangentially contributing to the specific focus of this research study.

Another limitation of the study is the exclusion of EU international trade policy documents concerning audiovisual media services. While beyond the scope of this study, the inclusion of EU trade policy documents (including trade policy disputes) can provide a contrast between the EU's internal regulatory policy and international trade policy goals and how the EU's economic/cultural conflict manifests itself on the international stage. The study may also be limited by the absence of auxiliary documents. While not essential, their inclusion could have provided a different perspective on the regulatory policy documents. Including auxiliary documents could have also provided an understanding of other actors involved and/or affected by the directives.

Although technically not a study limitation, the qualitative method used in conducting this research brings forth questions concerning reliability and validity. Qualitative research focuses on what happened or occurred at a particular place in a particular moment in time where the researchers understanding of the data changes as more data is collected (Lindlof & Taylor, 2002: 239). Reliability, largely connected to replicability (Hansen, Cottle, Negrine , & Newbold, 1998: 18), is not a great consideration in qualitative research largely because of its interpretivist nature. The interpretivist nature of qualitative research prevents obtaining replicable results, but reliability in qualitative research *is* demonstrated through the consistency of observations. Evidence of engagement with the text and the scope of coding effort also mark the quality of the research undertaken, which in turn establishes reliability (Anderson, 2012: 291).

Validity measures “the truth value of observations [demonstrating] whether a research instrument is accurately reporting the nature of the object of study and variations in its behavior” (Lindlof & Taylor, 2002: 239). Consequently, validity is closely associated with reliability. Validity, especially external validity, is a precursor for generalizability. However, generalizability is neither a goal nor a possibility of qualitative research: there is no one single data point that can be generalized within qualitative research as all data is situated within a particular place and time, a product of its environment. Instead, qualitative researchers “seek to produce and demonstrate credible data [and] inspire confidence. . . that they have achieved *a* right interpretation, not *the* right interpretation” (Lindlof & Taylor, 2002: 240). Validity in qualitative research can

be achieved by gathering data from multiple sources, using multiple methods and/or multiple researchers, i.e. triangulation.

With respect to this policy research study, reliability was achieved by adhering to the methodology outlined in Chapter 6 when carrying out the document analysis method used in conducting this policy research study. All outlined document analysis steps—from open to axial to selective coding—were carried out. The coding iterations and final thematic categories are evidence of a high level of text engagement. Methodological adherence to coding process ensured process consistency, which also strengthened reliability. Triangulation through conducting document analysis on multiple documents helped achieve validity. A clearly defined methodology, methodological adherence, and data triangulation—each worked to provide reliability and validity within the scope of the present qualitative research.

7.5 Future Research Suggestions

While this study incorporates several theoretical perspectives relating cultural diversity, convergence and globalization, there is further opportunity to investigate more fully and more clearly explicate the concept of norms and how they factor into EU regulatory policy concerning audiovisual media regulatory policy. Another limitation of this study is its qualitative nature. As an inductive method of research, qualitative research does not lend itself to replication nor is it an expectation of qualitative studies. However, the high degree interpretation by the researcher that qualitative research in general and document analysis in particular requires is a limitation of this particular study. Nevertheless, this research study does extend the body of research concerning EU audiovisual media services regulatory policy and begins a new approach to understanding

the underpinnings of the EU's regulatory policy by focusing on the inherent duality of media goods and services.

Future research can take this approach and extend it to studies on trade disputes undertaken by the EU concerning the "special treatment" position it takes concerning trade in audiovisual media goods. Such an approach can expand the research beyond the typical trade protectionist argument to explain the EU's actions. Future research can also broaden this study by analyzing how the directives incorporate and/or stay "true" to the observations and recommendations reported in the tendered studies, reports, etc.

This dissertation research builds its theory from the ground up. As such, this study provides the foundation for a future quantitative research study of EU audiovisual media regulatory policy, especially a content analysis study as the qualitative coding categories this study develops can form the basis of a quantitative content analysis coding system. A quantitative content analysis can help determine the statistical significance of the textual contents as well as provide a more systematic and replicable way of categorizing and analyzing the data. The greatest contribution this dissertation research makes to future research is connecting the cultural diversity/economic liberalization debate on EU audiovisual media regulatory policy to its theoretical roots and providing historical context to the debate by returning to the source of the EU's regulatory policy conflict: the duality of audiovisual media goods/services.

7.6 In Conclusion: Reconciling EU AVMS Regulatory Policy with Convergence

The constant tension between internal market development and cultural preservation remain within EU audiovisual media services regulatory policy. On the one hand, market harmonization and liberalization are key to developing a formidable

European media market. On the other hand, preservation of and promotion of ‘European-ness’ depends upon the protection of cultural diversity, a necessity for a region containing 27 sovereign nation-states with distinct cultures and languages. The economic value of cultural goods, specifically audiovisual media, along with increasing technological and media ownership [structural] convergence places even greater scrutiny and difficulty on media policies respecting cultural aspects of these same goods and using regulations to do so (Pauwels, et al., 2007).

Under the current audiovisual media regulatory policy, it may not be possible to reconcile the intrinsic duality of audiovisual media services in European-level regulatory policy directives (Nenova, 2007), especially when there no clear provision on how to deal with cultural considerations if they conflict with harmonization and liberalization efforts exists (Herold, 2005). However, a regulatory policy that clearly addresses the potential of cultural harmonization/economic liberalization conflict, that explicitly connects the EU’s audiovisual media cultural considerations to the cultural aspects of the European project may enable policy makers to abandon notions of “balancing” the cultural and economic, and accept the reality of the inevitable trade-off between culture and economics.

EU regulatory policy makers would be well within their rights taking this approach precisely due to the fact that audiovisual media goods/services themselves embody both cultural and economic characteristics. There is no absolute rule that either characteristic should be considered more than the other. But the fact that audiovisual media have cultural aspects means that they can never totally be economic goods nor should they ever be treated solely as economic goods. Moreover, the complexity of audiovisual media’s economic characteristics precludes treating it as a typical economic

good/service. These are all facts that policymakers can use to their advantage when developing future European Union audiovisual media regulatory policy as well as international trade policy.

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