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General Editor Angharad N. Valdivia

Volume Editor Vicki Mayer

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The Governance of Communication and Culture

Regularizing the Regimes of Production and Consumption

Katharine Sarikakis

ABSTRACT

This chapter explores the role of communication and cultural policy in regularizing changes in the regime of accumulation and in the processes of production and consumption of cultural goods. It explores the emergence of new geographies of power in decision-making and the people in production and consumption who define the ways in which the circulation and accumulation of cultural goods and profits is developing. Working with definitions of cultural policy and the European experience as a geography of political and political-economic power for decision-making, the chapter places Europe in the continuum of global production/consumption in the digital age.

Introduction: The Changing Landscape of Media and Culture

A careful look at everyday life in the twenty-first century reveals the centrality of media and communication as forces facilitating democratic processes and participation, cultural expression and exchange, or economic activity – at local and national levels as well as globally. The governance of these institutions has increasingly

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become a matter of interest not only for policymakers in the field of culture and media, but also for various industries that, until recently, were only very loosely associated with this field – such as electronics, or even transportation. Behind today's world of multiplatform media usage and attention to cultural–civic experience stands a complex web of industrial and political interdependencies organized around the understanding – and conscious position – that media and culture industries constitute the source of new market activity and profit.

In particular, “culture” has gained ground as a legitimate area of political activity and decision-making in the past 20 years, invariably echoing economic arguments about lifting the economies of postindustrial, service-based Western societies. The European Union (EU), arguably a micrography of globalization processes on a specific, territorial terrain, accepted “culture” as a legitimate area of the polity's jurisdiction, largely because the economic–financial potential of cultural activity could be incorporated in the agenda of market liberalization on the continent. Within this framework, media and communications are inextricably linked to the broader culture industries, with media technologies occupying a central place in the governance of culture. This should perhaps come as no surprise, as media technologies are not only the drivers of many forms of popular culture, but they are increasingly integrated and embedded in practices of high culture and the arts, often making the boundaries between “popular” and “high” culture less visible, as the arts are being reconstituted as economic forces and as avenues for the regeneration of cities (Massey, 2010; Sarikakis, 2012; Sassen, 2002). Therefore populism and high art – historical rivals – have become more interlocked through the use of media technologies to the purpose of enhancing the audience experience (theaters and opera) or of producing works of art that incorporate the media themselves or art that is the medium, such as self-made nonprofessional anime videos – especially in the era of “remix” culture (Lessig, 2008).

Moreover, in the new millennium, culture becomes part of the information sector in all major economies, which are led by the US and by the EU. Certainly, the renewed interest in cultural products does not mean that cultural policy did not exist before the days of neoliberal governance – the so-called “information age.” But the discourses and the public presence of policy debates attained a different emphasis, one that is ideologically based on the function of culture as a generator of capital accumulation. Beyond economic aims, however, parallel debates on cultural governance seek to highlight culture's pivotal role in knowledge creation and sharing, in democratic participation, and in human emancipation. This global-level international policy debate developed among civil society organizations and international organizations such as UNESCO (Frau-Meigs, 2011). The debate has aimed to bring back the role of culture in the lives of communities, societies, and individuals – namely its role in promoting social cohesion and integration, well-being, and expression; indeed it has aimed to revisit culture-related rights as human rights. Consequently (or subsequently), cultural policy has become a distinct area of interest for policymakers as well as for culture industries themselves – a phrase that, in the context of this discussion, refers predominantly to the media industries in their established and

newer technologies. The discussion that follows explores the ways in which culture, cultural production, and cultural consumption have become subjects of intense regulatory change, and it maps these changes.

Global Regulatory Shifts: Priorities and Tensions

The governance of media and of culture has known an unprecedented shift, in particular in relation to the technological means of information and expression. The landscape of global media and that of communication have changed dramatically in the past two decades, having impacted upon and having been in return stabilized by the disintegration of market and financial borders, by the integration of markets, by global regulatory steering mechanisms, and finally by often unexpected or unintended uses of media technologies. These changes are both structural and systemic – in that they determine the shape and organization of media, communication, and culture industries. They are also changes at a symbolic and formative level – such as can be found in the character of governance of media and culture, and even in the ideological, normative *raison d'être* of their forms, as in the case of public service media. Consequently, the current environment of media and culture production is determined by changes in regulatory priorities, philosophies, and practices that took place across the world in the past two decades.

In principle and under the form of directions to be followed and applied according to local, national, and other regional contexts, a media and communication policy shift has taken place globally. Regulation came to establish – in a normative and legislative, hence in a legal way – changes in the practice of media operations, a continuous process that started in the late 1970s and early 1980s. In particular, the shift cemented new business models and transnational operations organized around the introduction of satellite technology and around the development of the electronics industry; it also cemented the first steps toward the popularization of Internet technology, by allowing flexible connections across time/space.

These shifts belong in the broader context of neoliberal governance. As cultural geographer David Harvey argues:

The corporatization and privatization of hitherto public assets (such as universities), to say nothing of the wave of privatization (of water and public utilities of all kinds) that has swept the world, indicate a new wave of “enclosing the commons” [. . .] The reversion of common property rights won through years of hard class struggle [. . .] to the private domain has been one of the most egregious of all policies of dispossession pursued in the name of neoliberal orthodoxy. (Harvey, 2003, p. 148)

Neoliberalism as a political philosophy for the organization of social life on the principles of the free market was revived in the US and in the UK around the same time,

in the early 1980s, influencing the politics of international organizations such as the World Trade Organization (WTO) and the General Agreement on Trade and Tariffs (GATT), but also the political steering of many countries. In the process of furthering the possibilities for capital accumulation, the media and culture sector offered a great terrain, only partly exploited. Supported, among others, by large transnational corporations of communication technology – which were active not only in the arena of public communication, but also in that of military communication – neoliberal economists and politicians pursued the structural alteration of the organization of the market. For that process to take place, it was required that the state change from its Keynesian role in economy to one of minimum intervention in the market, and that this change be implemented by administratively removing the mechanisms of control over the daily operations of transnational capital. Overall, systems of self-regulation and co-regulation that are largely dependent on industries' own terms of reference replace central regulatory frameworks.¹ Harvey (2010, p. 54) writes, characteristically, that the "state-finance nexus" has long functioned as the "central nervous system" for capital accumulation.

The major paradigm shift consisted of the following changes:

(a) The media landscape was transformed structurally so as to limit the reach of public service broadcasters (PSB) in the audience "market" – and not only for countries where PSB were a monopoly, but also for countries with a dual system of media that included private broadcasters, such as the ITV in the UK. The media landscape became a volatile market whose major actors were the ones who could derive financial resources from other operations, as the case of the UK has shown (Freedman, 2008). It was during this period that Europe's symbolic and cultural centers were shifting; this was due to the development of the London media hub, where the seat of media corporations spiralled with the attachment of media-related businesses. The development of new markets was achieved.

(b) The airwaves – which were part of the "commons" and hence a vital communication resource, until then considered public property – were privatized with the introduction of commercial broadcasting channels. Telecommunications followed the same pattern, with the "auctioning" of the spectrum to the highest bidders (Crow, Longford, & Sawchuk, 2008; Streeter, 1996).

(c) The citizens, who formed the public, were referred to as consumers and audiences of media products. This way the relation between the public on the one hand, the media and culture on the other is treated differently in policy decisions about access, universality, or other related rights to cultural goods. The predominant logic is one that defines this relation as a commercial, transactional one.

(d) Furthermore, processes of technological convergence have been dealt with as largely technological ones. Sociocultural concerns are limited to certain "moments" of end-use of media technology (such as access to computer terminals and the Internet) as well as literacy in the basic usage of communications. These are "instances" that are not always contextualized within the broader conditions of

cultural values and capital, economic resources, or other social disparities. It is argued that the policies of the information society treat citizens according to their purchasing power, in other words they regard the public as customers in the purchase of electronic items. Hence citizens are categorized according to their ability to participate in the digital market (Chakravartty & Sarikakis, 2006; Murdock & Golding, 2004).

These profound changes have taken place not only in the immediate environments where we experience media and cultural products – which are in rather localized and specific contexts even when we are on the move, for instance at home, at our computer, or in the street, on our mobile phone, in an Internet café, or in a media art installation exhibition. They have also taken place in ways that reveal the construction of new political and economic geographies that transcend our localities and that are global in reach, as cultural and media artifacts are to distant and multiple publics. Media and communications have transnational dimensions in relation to their users and audiences, as the latter form bonds across borders in the form of diasporic connections or other sociopolitical networks. Finally, while the cultural and political-economic dynamics of the media are located in global, transnational, and local dimensions, their governance has increasingly shifted toward supranational terrains – such as the EU, which is one of the most developed multi-actor policy regime – and has become integral to international policy regimes – for example summits and trade agreements.

International policy regimes are those interrelations between states, private actors, and third-sector actors that can include any kind of combination among these actors. The theory of hegemonic international regimes derives from the discipline of international relations. Among international relations scholars, critical realists like Grieco (2002) believe that international regimes are based on the hegemonic power of certain actors and rely on it for their establishment and continuation. So far as our discussion of media and cultural policy is concerned, the US would be a hegemonic power in a position to steer policy within regimes of international cooperation. The US is followed closely in certain domains by the EU and by certain transnational corporations. According to this theory, media giants like Microsoft, General Electric, or News Corporation would be central in maintaining specific policy priorities at a global level. International policy regimes also refer to the constellation of policy-designing powers like the G7/8 or of organizations like the International Telecommunications Union and the World Intellectual Property Organization.²

Initially, international regimes consisted predominantly of states; but this, too, has changed in the era of multi-stakeholder organization of policymaking. The World Summit on Information Society (WSIS) (2002–2004) – the only summit on media after the New World Information and Communication Order (NWICO) initiative taken by the United Nations Educational, Scientific and Cultural Organization (UNESCO) – was part of such a policy regime (Chakravartty & Sarikakis, 2006). Despite the fact that the summit was not designed to make policy but to

debate priorities for the development of the information society,³ it did result in the establishment of another global policy debate forum. The Internet Governance Forum, which derived from the WSIS, was an international forum aimed to debate contemporary policy questions about the Internet – but, again, “not to make policy” (see Internet Governance Forum, 2012). The trajectory of the governance of the information society therefore seems to be based on the combination of actions (not always or necessarily in a consistent or permanent formation) and principles set in a series of meetings of a selections of states. This starts with the Brussels meeting of 1995, which set the policy principles for the information society and its US counterpart, information superhighway; the series of meeting continued with the G8 meeting in Okinawa in 1998 and with the WSIS process. It is interesting to note that the global alliance for electronic commerce, a powerful private-sector global lobby actor, has been systematically present across these series of meetings and liaised with participating governments over the kinds of policy directions that an international Internet policy regime would be expected to follow. Therefore the process of policymaking, until then largely a national state-led affair, was reformed to include various “multi-stakeholders,” as decision-making expanded gradually to international levels.

Furthermore, the changes emerging at the global level concern the *types* of regulatory models promoted with regard to media and culture, as these are not simply the sum or amalgamation of national policies, but rather (and to a great extent) models valid on the international scene beyond the nation-state. These models set the principles of regulatory directions and the background against which media and culture are governed in national or regional settings. Moreover, these changes reveal that the reconfiguration of the role and function of media – and of culture overall – constitutes a core element in a large-scale reorganization of the form of capitalism.

To scholars of international regulatory change, the political economy of the markets is a determining factor in the development of policies in two major ways. First, markets regularize and normalize in a normative manner the changes that have already taken place prior to law. Second, markets determine future policy – not necessarily as a matter of prescribing it exactly, but by limiting the range of options that it can derive from. For example, through the involvement of private global corporations in policy design, priority has been given to policy choices that favor a neoliberal, privatized form of media ownership, while community and public service media have effectively been treated as “add-ons” to a predominantly private media system.

In communications, culture, and the media the transformation of governance has three identifiable phases:

(a) A phase of *devaluation* of previous paradigms through economy-framed and political discourses, accompanied by the formulation of a set of “principles” and guidelines for policy direction in international forums like the G8, as well as in subject-specific summits and other international constellations. These principles are adapted according to geopolitical, historical, and other dimensions of localized regulatory systems. For example, European and American jurisprudence are different,

and so are historically set ways of politics. It is important to note that only certain countries and their states are in a position to lead this process.

(b) A phase of *de- and re-regulation* follows (not in strict chronological order) the set principles that are supported normatively, on the one hand on the grounds of the crisis of the welfare state and of Keynesian economics, and, on the other hand, through a discourse of technological inevitability. Both phases are considered phases of change and crisis for the existing regulatory framework.

(c) *The stabilization and normalization* of the new status quo in its regulatory cementing achieves an ideological/normative justification that lends legitimacy to these changes and confers predictability to the political and legal situation, which is necessary for capitalization on previously not owned assets. This is the longest of the three phases, because it functions not only as a reevaluation process for the new commodities (media and culture products), whose financial beneficiaries exclude the public. It also functions as the new regulatory (and regularizing) establishment, which leads to further processes of commercialization and marketization of the emergent media and cultural phenomena.

It is important for media production scholars to concern themselves with policy relations and with the processes and outputs of media production. In particular, attention should be focused on the core characteristics of communication and media policies as sites for struggle among competing and conflicting interests, but also as processes that themselves constitute cultural products inasmuch they express dominant ideas, values, and understandings.

Hegemonies of Cultural Policy

The shifted frame of culture and media governance entails all those processes and actors involved in the shaping of the conditions under which the production and consumption of culture takes place. These include dominant understandings about a legitimate agenda for debate, the definition of the policy problem, structural arrangements that impede or encourage pluralistic expressions in cultural production, and decision-making processes. Cultural and communication governance can be mapped across three axes that capture its relation to citizens, and their relationship with the state and communication organizations.

The following factors are catalysts of transformation for the relationship between the act of public speech – as something that cultural production may be understood in its broader sense – and the citizens:

- 1 Intensified globalization is directly dependent on speedy, internationally integrated communication systems and on media systems that are firmly operational in required localities.

- 2 Globalization accelerates the transformation of the state, through the emergence of a world political order, albeit in problematic terms with regards to access to and participation in the processes of decision-making.
- 3 Information and knowledge in postindustrial societies are increasingly treated as commodities and subject to proprietary legal frameworks – in particular that of intellectual property and copyright.

As policies represent the dominance of hegemonic discourse and ideas in particular historical moments and contexts, they also reflect tensions – they express conflicts and visions, political histories and styles of governance, democratization, and commercialization.

“Culture” as a distinct policy object of the neoliberal agenda gained prominence in Europe in the 1980s, as part of the efforts for urban regeneration, and at an EU level with the establishment of the European City of Culture in Athens in 1985 (Sassatelli, 2009). For the US, cultural products have always been part and parcel of its foreign policy, not always in a systematic manner, but certainly as means to persistently open barriers for its products, especially where the US government had influence in the domestic politics of other countries. Katya Johanson (2008), discussing Australia’s cultural policy experience, argues that it existed well before the rise in interest in culture as industry. Hence there was continuity in bringing cultural industry discourses in line with industry policy discourse in the 1990s, which included support for the arts as an industry and for the rejuvenation of depressed urban centers. Characteristically, as Johanson states, in the postwar era the tertiary sector had increasingly occupied 40% of the labor force. As early in the life of the EU as the 1960s, culture was considered part of its international diplomacy – among its member states and in its relations to the outside world. US production policies were directed toward re-establishing and maintaining a dominant position in capturing European audience shares through international negotiations to open their markets, lower production costs (taxes, operational, and administrative costs), and to standardize regulatory frameworks.

At the same time culture has been a point of contestation and struggle for hegemony vis-à-vis the “American influence” and its role in the making of postwar nations. Not dissimilarly, Europe’s nemesis placed a lot of attention on the economic and diplomatic significance of European culture industries. American cultural exports of film and of popular culture were understood to represent favorable aspects of US politics. In a discussion of the historical role of the American film industry in Europe, Ian Jarvie (1992) shows the pressures the US industry put on its government to promote free-trade zones, fewer barriers, and wider distribution through its negotiations with foreign nations. The European nations were a particularly important market – as they are today. They, too, were designing cultural policies that included various systems of quotas, tariffs, and import taxes on foreign films. For example, France, Britain, and the Dutch governments were in favor of protectionist measures, even of systems of state monopoly purchase to control the outflow of exchange

currency, which at the time was an important resource in cash-stripped Europe. In response, the American movie industry lobby employed a new rhetoric to re-establish its legitimacy and therefore to recover lost profits and the dominance it enjoyed in prewar Europe (*ibid.*).

Culture was the cornerstone for cultural understanding among the continents as well as the vehicle for the development of cultural affiliation with American ideologies (and hence the dominance over communism). The issue of quotas appears in the negotiations for the International Trade Organization (ITO) and for the General Agreement of Tariffs and Trade (GATT) very early on, as an integral part of Europe’s cultural policy and international relations. However, culture operates within the context of capitalist economy. To pursue favorable conditions for entry into the European market, the American movie industry lobby, in one pre-emptive strike, raised the issues of contingents, visas, exchange controls, and bilateral agreements in the negotiations over the ITO and the GATT throughout 1946 and 1947 (*ibid.*). The industry was opposed to such measures, favoring borderless arrangements that would allow it easier entry to European markets. Quotas as a policy measure for the protection of European film production became points of reference for conflicting interests, even among European countries, France being the strongest advocate and Britain the weakest. But this was not always the case. The British Cinematograph Films Act abandoned the policy of protectionism for their film industry in exchange for the US’ commitment to purchase British products (*ibid.*, p. 281).

The aim of GATT has been free trade, approached as a phased process of tariff reductions. Its European project was to create an integrated market for American cultural products. To do this, one of its priorities was to “internationalize” Hollywood business by contracting local employees – indigenous talent and émigrés – and by shooting in foreign production locations. Another priority was to push distribution and exhibition agreements. It became easier to push toward specific policies that facilitated the distribution and consumption of US films in the countries that “owed” to the US due to the Marshall Plan. This was particularly vital for the US economy, as 40% of the US movie industry revenue depended on overseas sales (*ibid.*). In terms of theater ownership, US production companies had already solidified their connections before the war, changing little even 50 years later. These dual-policy aims show that production goes hand in hand with distribution and ownership of the theaters. These economic and social interests continue even today in international negotiations with the audiovisual culture industries and with the EU. Quotas, as a primary policy tool, extended to include television and other audiovisual media. Although large media corporations have solidified their control over these markets today (McChesney, 2004), there is a wider diffusion of production networks. This may give the appearance of political flexibility, pluralism, and a diversity of interests in the negotiations.

Still, the policies presume ownership concentration as a dominant form of the organization of media and culture industries. This presumption has specific effects on the quality of media programming and content in terms of their quality of

production, their reliance on "tested" format and storylines, the ways in which the stories change in order to appeal to mass audiences, and so on (Baltruchat, 2010). Ownership concentration in the media not only leads to the homogenization of content and to production of content of the lowest common denominator, but also contributes to the marginalization of unprofitable styles, languages, themes, ideas. In the EU, the problem of ownership concentration is an unresolved policy issue. For over a quarter of a century, attempts to formulate policy at a European level have failed, despite repeated initiatives from the European Parliament as well as from professional and civil society organizations (Doyle, 2007). The subject is not closed yet, but there does not seem to be any substantive change of course. Instead "monitoring" committees and "special" mentions are offered as symbolic gestures toward pluralism in the media. The resulting media economic landscape is, clearly, an oligopoly, the most dramatic examples being present in Italy and in Eastern Europe.

In connection with media ownership discussions, the EU has turned its attention to deeper dimensions of culture in policy, including linguistic pluralism, cultural citizenship and cultural expression, media diversity, and the relation of ethnic minorities to the media (Doyle, 2007; Sassatelli, 2002, 2007; Tsaliki, 2007; Zabaleta, Xamardo, Urrutia, Gutierrez, & Mendizabal Etxabe, 2004). These policy areas are important in that they raise questions about the strength and degree of commitment and political will, in contemporary Europe, to protect alternative forms of cultural expression. They also reveal assumptions about what constitutes Europe. Cultural policy in the EU became certainly more sophisticated in these respects through funding provisions for the development of production, training, collaborations, and recently distribution of "European works" through the programme MEDIA (see European Commission, 2012). This programme was established together with the introduction of the Television Without Frontiers, the main audiovisual common policy of the EU, which applied the single-market principles in the cross-border movement of cultural services and products. Now in its third reincarnation, the EU Audiovisual Services Directive reflects the tensions in supporting the mediation of cultural expression on the one hand, and the corporatization and privatization of cultural products as trade goods on the other (Sarikakis, 2004).

Despite its neoliberal and predominantly market-focused direction, cultural policy has also played another role in contemporary Europe. It is seen as the vehicle to reconstruct the new Europe. Its importance in political thinking and political integration has been identified early on, in parliamentary debates in which culture is viewed not only as a profit-making machine, but as a unique form for an "industry." This duality is one of the major sources of conflict, in the media and in cultural policy in the EU, between those who think that cultural products require special measures and provisions and those who prefer a strictly market-based approach (Sarikakis, 2004; 2007a, 2007b). "Culture," and hence cultural policy, gained legitimacy and legality as an EU jurisdiction with the Maastricht Treaty. There is, to a great extent, a common understanding that neoliberal approaches to the construction of Europe are detri-

mental to its cultural identities and to their survival. In these terms, the protection of cultural goods and services that derive from diverse national and cultural contexts becomes politically important, as cultural expression becomes inextricably connected to citizenship (Germann, 2005, 2006). For any society, cultural goods produced under neoliberal conditions are not conducive to an autonomous and genuine negotiation in the construction of identity. This question is in turn related to sociocultural dimensions of citizenship along cultural mediations of difference and sameness. The EU's cultural policy has failed in many ways to fulfil the need for an anthropological understanding of culture that would also include a proactive pursuit of social cohesion and recognition (Sarikakis, 2005, 2007a, 2007b). Article 151 of the Maastricht Treaty of the EU recognized culture not only as factor of diversity as *experienced* among "legitimate" European publics, but also as a critical junction for migratory populations and for populations of a minority status. Cultural policy as such has fostered particular visions of "a" European identity (Sassatelli, 2009).

Furthermore, the role of cultural policy extends beyond the borders of the EU, as it affects nonmember states through policy adjustment for those countries that want to become members, and through indirect policy reform for those that are at the receiving end of development, collaborative, and other funds released by the policy (De Smaele, 2007). Expansion of the EU brings the expansion of regulatory regimes to accession countries that are shaped by neoliberal strategies for the exploitation of untapped markets, a process that makes visible its impact on the privatization of media and culture industries, structures, and technologies. An integral element in the strategy of privatization of public cultural assets has been the withdrawal of support from PSB systems and a systematic process of administrative scrutiny that is disproportionate to that enforced on private corporations. Through the application of competition mandates, unfavorable conditions for PSBs are mixed with rhetorical support of their importance for democracy and social cohesion (Humphreys, 2007; Munoz Saldana, 2008). Controls over media development plans derive largely from the expectation that states cease to support PSBs. In the EU, repeated attempts to interrogate and interpret the Treaty of Amsterdam, amending the establishing treaties of the EU as an economic Magna Carta for European media, have resulted in a system whereby PSBs are tested for their public service obligations against the competition market. PSBs are placed in disproportionate scrutiny in relation to commercial broadcasters for the quality of their programmes; but, most importantly, the costs of such tests are carried by the PSBs themselves, and ultimately by the public. These costs can be very prohibitive for small nations. Private media are not obliged to prove their corporate social responsibility or to provide transparency with regard to their accounts and chain of management.

Although accountability for the spending of public money should be integral to the operations of a public service corporation, it is important that this process does not hinder the development and future survival of this corporation. In the UK, the proposal to slice the license fee of the BBC gained momentum within the context of undermining the normative support for the BBC. As soon as the conservative-liberal

coalition took over in 2010, it was able to impose sudden and drastic cuts on the BBC as part of its “austerity package.”

The significance of PSBs around the world continues to reside in their role in bridging cultural differences and class divides by bringing access to information and education to the masses. Across all continents and for over 40 years, their role in supporting democracies and cultures despite the public broadcasting system’s shortcomings has been well documented. In areas of the world where the process of democratization continues, PSBs are cornerstones of culture in the production and distribution of universally accessible material. Today their innovative production approaches, their mission toward creating genuinely original, diverse, and domestic programming, and their support for independent culture-making can be seen in a series of declarations setting the international standards for PSBs (Sarikakis, 2010). Superlative expressions of neoliberal policy, which are based on the control of the media and culture markets through private ownership, are at odds with these aims.

Noncommercial, Nonprofessional Culture and New Policy Regimes

The private ownership of media and cultural production has new dimensions in the digital era, which transform the regulatory protection for certain kinds of ownership while raising important questions with regard to the impact of these changes. The postindustrial *qua* “informational” era of capitalism is characterized by a culture and media policy that is heavily oriented toward the control of copyright in digital environments. Both the internationalization of media and culture industries and the technological convergence of the media are posing further challenges to the regulation of the sector. In terms of intellectual property and control over copyright, new regimes are emerging whereby digital or digitized content is subject to different rules from those that govern the conventional (analogue) content. This is compounded with the technical capability to control the range and frequency of uses of digital content.

The configuration of copyright regimes in the digital marketplace is designed to derive profit from existing and new cultural activities/products through the management of the consumer and by changing the dynamics of the production and consumption of cultural goods. The importance of culture in creating a new market and in sustaining the information society cannot be overstated. In his book *Exploring the Sociology of Europe*, Maurice Roche refers to Europe’s “cultural capitalism”:

The continuing ICT revolution gives a massive new and dynamic role to what are essentially cultural phenomena, namely information and knowledge, and essentially cultural processes, namely communication, in all dimensions of society, including the economy [...] [cultural industries] represent major and growing sources of GDP and employment in contemporary advanced economies, both across Europe and around the world. (Roche, 2010, p. 175)

For early Internet adopters such as the members of academic and librarian communities and for those users who “grew up” with it, the Internet appears to be the domain of freedom: freedom to express oneself, to exchange ideas, to explore culture, to make culture, to develop social network, to organize civic action. For copyright holders of cultural and informational products, however, the Internet represents a threat to the viability of established business models. This is different from a threat to business generally, despite the industry’s claims about losses. The rights holders’ problem seems to be that unlicensed Internet download of popular culture products such as songs, films, or electronic books antagonizes sales of physical items, which decline. Whether this is exactly the case is debatable, as the industry itself recognizes that there are new models of business being developed and new ways to monetize users’ developing relation with new media (ELIAMEP, 2009).

The more pressing question here is to what extent copyright regimes should be applied in the online environment. Is it time for the coexistence of provisions that allow a freer circulation of content without punishing – or, worse, criminalizing – the consumer? In many ways, the power struggle over “illegal” downloading, to use the industry’s framing, is odd. Most cultural products can be found “recycled” (used/like-new) through individual sellers in online “marketplaces,” for example Amazon or E-bay, for as little as £0.01. These sales generate income for E-bay and Amazon, not for rights holders. The point is that the life of a cultural product can be very long, but also very unprofitable. Peer-to-peer exchanges and other forms of downloading function to disseminate cultural products as a way of reconnaissance with newer cultural forms, with lower economic risk.

At the same time, the change in the consumers’ relation to the cultural products they consume (even if “unauthorized”) is linked to the profound changes that are taking place in the making of nonprofessional and noncommercial culture. Cultural producers are now encountering severe restrictions in their work. In the analogue world, copyright was not something users of information and culture had to think about; it was rather the concern of music publishers, librarians, and Hollywood lawyers (Lessig, 2008). In youth cultures of yore, for example, “mix tapes” were considered a thoughtful and special present to give someone. Now, mixed media infringe copyright. While the practice of making a mix tape was not necessarily ever in line with copyright laws, Lawrence Lessig (2008) asserts that the difference between then and now lies in the fact that the practice could not be monitored or policed. It did not make sense to go after consumers in this way. Besides, it was also a creative process; no two mixed tapes were the same, unless they were copies of each other. The process expressed emotions by way of putting together selected songs; it was a word-of-mouth promotion of songs and bands and a practical way to arrange one’s collection in a mobile format, to use it when on the move.

Today this very same act, in different media, is subject to monitoring, policing, and an increased frenzy among multinational organizations intending to “fend off” threats to their intellectual property. The art of remixing – or collage – and even the art of satire are under threat. Every single use of material is subject to explicit permission unless the copyright period has expired, which varies in duration according

to form. Musical copyright expires in Europe earlier than in the US. Book copyright expires later than music copyright, and so on. In the hyperbolic new media environment, digitalized material or material directly produced in digital form can easily be traced if it is used in derivative works such as collage, video clips, or short films. What was previously practically possible, permissible, and legal with "lesser" technologies is now criminalized, if it is created through new technologies.

At the time when technologies have seemingly democratized creativity and cultural production, the structural frameworks of law and the market seek to criminalize this technological democratization. Extreme stories of overzealous copyright holders have been well publicized, for instance the capers of those pursuing royalties from the Girl Scouts for singing songs around campfires. In another case, a group of Swathmore College students were prosecuted because they published 15,000 emails and memos that leaked from Diebold Election Systems (DES). DES runs the electronic voting machines used in the 2000 US presidential elections, which resulted in the electoral victory of former President George W. Bush. The stunt exposed the flaws and problems in the company's software and security, but it was also deemed to infringe the company's copyright according to the US Digital Millennium Copyright Act of 1998. The decision resulted in the college taking down the messages and effectively silencing the students without even a court procedure (Boynton, 2004). The effect of these cases has been chilling for all the citizens who make and distribute "culture."

The advent of all kinds of communication technologies, and in particular of those with the capacity for converged, digital communication, generated the reproduction of existing goods while dictating the possible production of future goods. New digital media allow the download and storage of – theoretically – an infinite amount of material. Some critics say that any act of using content is an act of copying. Other critics say that, given the technological superiority of our times, "copying" as a practice has lost its meaning. In any case, these critics are worried about what they see as the progressive silencing of cultural producers and of their public speech. Lessig and Siva Vaidhyanathan characteristically argue that cultural remixing has been historically free of regulation, whether through the adaptation of original works or the retelling of stories in order to emphasize different people's perspectives.

One such modern form of nonprofessional, noncommercial creativity is music videos that are made by fans of anime. The Anime Music Videos website (see <http://www.animemusicvideos.org>) counts several hundred thousand members who create video clips from remixing cartoons and songs to make new themes and videos that tell a story. Factual information can be mixed with fictional imagery through the use of sophisticated animation software. Fans typically create their own stories on the basis of their favorite anime characters, but they can create powerful political commentaries too. The amateur context within which these videos are produced means that they are clearly defined as personal creations, not for profit. The productions demonstrate skills and knowledge, as well as the depth of the producers' "fandom" in showcasing their abilities. The music used in these video clips is taken without any regard for copyright, at least until recently.

In 2005, the recording company Wind-Up sent Anime Music Videos a cease and desist note, meaning that it wanted all videos using work of its artists to be withdrawn from the site. At the time, this amounted to almost 3,000 videos and translated into thousands of additional hours of creative labor by people who love anime and creative production. As one fan noted: "The corporate cycle is consuming the 'creative' cycle – [ergo] all is right with the world" (Otohiko, 2005).

In the digital age, consumers are a locus for creative production. Fans, as a subgroup of consumers, depend on the use of preexisting works under the control of copyright holders – in most cases, large and powerful publishers. There are legal protections for "transformative" work, meaning work that differs significantly from the originals it uses and/or provides new creative material. Challenges posed through cease and desist letters, however, place the onus of responsibility largely on the creators to prove their work to be transformative – a definition that is often found elusive. The patenting of ideas and knowledge as a form of property right and intellectual property is raising doubts about the usefulness of such protection for the public good and for the development of new ideas and technology in the short and the long term. The impact of cease and desist letters can be chilling for users and societies across the world – with potentially profound consequences.

The Future of Culture

The quality of the governance of media and culture is located on the interface of two levels of governance. First there is a macro-level of information and communications policy that regulates private and public actors, such as the communications and cultural industries. Second, there is a micro-level of control of cultural and communicative expression, manifest in the regulation of individual behavior. In both arenas, the delimitation of boundaries and conditions of activity for corporations and people takes place in fundamentally different ways. On a global scale, there is light governance of transnational industrial activities, whether through policy processes, in their actual media production processes, or through their interactions with consumers. Private actors' actions also have a regulatory character, one that is *normalizing* the cultural and media sector's *public* activity, especially when this brings changes to, and challenges, existing legal frameworks. Examples include the liberalization of commercial media, the light-touch regulation of production processes, the transnational trafficking of private data for e-commerce, the international trading allowances, and the concentration of ownership (Artz & Kamalipour, 2003; Braman, 2004; Chakravartty & Sarikakis, 2006; Mosco & McKercher, 2007; Sarikakis, 2010). On a national scale, the state governs people by focusing on *private* behavior, for instance individual wrongdoings, and it does so through intellectual property and copyright policies, privacy, censorship, and the monitoring of Internet usage (Bonetti, 2003; Sarikakis, 2004; Sidak, 2004; Zittrain, 2005).

A new set of legal principles adds to the oddity of this already complex set of conflicting interests in governing digital media. The principles of private initiative that lead in the sphere of digital media and information policy conflict with traditional notions of freedom of expression, creativity, and public access. Similarly, the notions of Internet freedom and accessibility are not compatible with the motivations of those promoting the private ownership of symbolic and material resources. Structural transformations have colonized the digital spectrum from the public and increasingly stand in opposition to public access and to the free flow of information through intellectual property law and copyright. The emergence of new geographies of power in decision-making over production and consumption defines the ways in which the circulation of cultural goods and the accumulation of profits coexist and concur.

The future of the freedom and substance of culture depends on the choices we make today. Transformative culture and investigative media require an active protection of and responsibility for the materiality of communicative and cultural expression and its constitutive elements. Communication and cultural policies play an important role in regularizing changes in the regime of accumulation that consists of the processes of production and consumption of cultural goods.

NOTES

- 1 Also see the shock doctrine of Naomi Klein on the global liberalization-cum-privatization "project."
- 2 At a national level, media and communication industries have helped construct and have been shaped by the reorganization of symbolic and technological markets. Media and culture products address localized cultures and operate within reformed, largely regulatory frameworks. Media production is therefore still shaped by the dynamics and regulatory frameworks of local or national markets.
- 3 The phrase *information society* (IS) came to include all aspects of media and communication technologies in everyday social, business, cultural, and political life. Some main aspects of IS policy concern the development of infrastructure, access to communication technologies, and skills.

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