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Watching the Directive: Sports Rights and Public Culture in the United Kingdom and the Republic of Ireland

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Kenneth Murphy and Andrew White

Introduction
Since the 1990s, sporting genres have become central to broadcasters efforts to leverage advantage in the increasingly complex and cross media environment of broadcasting, be they public or private (Rowe, 2004). The efforts of pay TV operators to appropriate previously free-to-air content to bolster their repertoire and drive new media services is one significant aspect of a recently marketised media environment that points to the increased commodification of what were previously considered to be semi-public goods (Hesmondalgh, 2002, Mosco, 1996). The inclusion of broadcasting within nation states' industrial policies as a means of pursuing new modes of economic growth has seen the emergence of many new channels and pay television operators. The move to a digital standard and the attendant increase in bandwidth has further exacerbated the need to develop or acquire attractive content in an environment where the mass audience is becoming an elusive quarry. The European Union has been central to the mediation of the development of transfrontier broadcasting and the economic co-ordination of a European audiovisual industry. As such it has acted to introduce flexibility and remove market barriers across the European broadcast landscape. However, in reaction to calls for the preservation of the European model of regulated communications it has also sought to attempt to leverage socio-regulatory principles into the new market-led digital environments. One such intervention is the inclusion of article 3a of the Television without Frontiers directive which allows for the retention of events of major importance as accessible through free-to-air television.

This dualistic approach to economic development and regulatory protection reflects varied ideological positions within, and bearing on, the institutions of the
European Union and can generate tensions, even within single policy endeavours. However, contrary to supranational arrangements in cultural trade elsewhere, it does present an attempt to maintain socio-regulatory principles centred on extant public policy goals such as public service, universal access, universal service, diversity and plurality. Yet, the re-articulation of these policy goals tend to see moves to part preserve cultural policy tools that have found full expression at the level of the nation state, orientated towards the subsidiary development and preservation of national cultural policy. It appears evident that, at EU level, the economic potential of the Audio Visual sector has thus been complimented by a rather minimalist appreciation of cultural policy dimensions. It raises the question as to whether European media policy can develop a normative basis for policy related to cultural rights and how this might be accommodated by existing cultural policy tools.

**Cultural citizenship and cultural rights**

The concept of cultural citizenship has entered media policy discourse from the latter part of the 20th century and has been succinctly defined by Toby Miller as the right to 'know and speak' (Miller, 2006, pp35). To further elaborate on this, cultural citizenship differs from mono-cultural citizenship in its recognition of the validity of different cultural formations that are encapsulated within state boundaries, and guarantees their legitimacy. Cultural citizenship can be seen as a further addition to TH Marshall’s characterisation of citizenship as a cohort of political, civil and social rights. If political citizenship granted rights for participation and inclusion in the process of exercising power in society, civic rights allowed for the rights of free conscience, speech and association. In the twentieth century social rights sought to guarantee the right to work, the right to opportunity and due reward for one’s productivity. Cultural citizenship arises from recognition of difference and the moral validity of valuing varied cultural formations and related rights therein. Graham Murdock refers to this as a move from simple to complex citizenship (Murdock, 1998). In a more full definition George Yudice summarises cultural rights thus:
'cultural rights include the freedom to participate in cultural activity, speak in the language of one’s choice, school one’s children in their own language and culture, identify with cultural communities as desired, discover the whole gamut of cultures that comprise our world heritage, resist accepting or tolerating one's culture being commodified, and obtain help from the state to safeguard these rights' (Yudice cited in Miller, 2006, pp72).

Whereas cultural citizenship promotes the necessity of state intervention to secure cultural rights, it comes up against the reality of political economic pressures and emphases that see a tendency for subsidy and legislation to be channelled into ethno-nationalist projects and cultural populism that seek to maintain national solidarity, legitimise public spending and, increasingly, commodify audio visual experience. Thus post-national pluralist citizenship has less of a political economic currency than ethno-nationalist citizenship and in many ways one can be seen as inimical to the other. National broadcasting has been predicated on cultural policies that have tended to be rooted in national cultural rights, wherein a 'particular contingent historical cultural formation' rooted in the nation state and national identity has been premised (Barker, 2005). The prospect of making the nation as one man, as espoused by Reithian concepts of public broadcasting, thus presents prospects of cultural assimilation even as it articulates broadly egalitarian principles. However public broadcasting has not been a static concept and its adherence to policies of plurality and diversity have increasingly become a central plank through which it legitimises its continuance as a counter to market failure in public communication. Thus moves towards pluralism within broadcasting system have occurred as pragmatic expansions of existing institutional arrangements, for example, the addition of Channel 4 to the British institutional broadcasting mix widened access and introduced a counter cultural public sphere to mainstream audiences. David Rowe teases out a way in which existing elements of cultural policy in broadcasting can be made more responsive to cultural citizenship. It is in this
way that publicly regulated broadcasters, popular sports culture and moves towards cultural citizenship can be negotiated as a progressive element of state supported cultural policy.

Rowe points to the twin ways in which the representation of sports culture may be seen as reifying national power formations at the same time as being internally riven by dimensions of class, race, gender and sexuality. However, Rowe also points to the fact that sport is a de facto part of the lives of a large proportion of the citizenry inhabiting a range of social and cultural categories' (Rowe, 2004, pp384). It is because of this state of affairs that Rowe suggests that popular sports genres, immersed within the discourse of the nation, should remain within public service institutions that are publicly owned or regulated. There are two logics to this, the maintenance of popular sports genres allows for the possibility of public broadcasters making 'a significant, reforming and progressive contribution to it through, innovation, critique and diversification'. One example of this is the way in which the BBC has used its access to world cup coverage to cross promote soccer documentaries that have investigated the global political economy of football, its use as cultural policy by nation states and issues of gender and sport. Otherwise, in the hands of pay TV operators, these genres would be purely constituted by market driven commercial criteria. The other logic is that the retention of popular genres such as soccer can contribute to the financial health and popularity of broadcasters allowing them to carry out their complimentary roles of subsidizing programming that may not otherwise be made. Thus programming of little interest to culturally majoritarian audiences can be generated on the basis of the continued legitimacy of the public broadcaster. In this way cultural citizenship accommodates the mixture of twentieth century national cultural citizenship within a pluralist agenda. Further to Rowe’s argument it can be proposed that creating the basis, via scheduling, wherein majoritarian and minority audiences can overlap, contributes to the potential public sphering duties of public broadcasters, creating the basis for dialogue and recognition of disparate collectivities (Dahlgren, 1998). From this perspective, the relationship
between televised sports culture, public broadcasters and cultural citizenship can be seen as a potentially progressive move towards more pluralistic concepts of citizenship whilst also acknowledging the always constitutive role of political economy.

**Cultural citizenship, cultural industries and the double movement**

Discussions around the concept of cultural citizenship tend to be secondary relative to the cultural/creative industries policy paradigm. Since the 1983 GATT, European member states have come under pressure to liberalise trade in cultural goods, undo systems of cultural subsidies and reduce barriers to the free movement of media related capital. The EU has mediated these moves, within a cultural exemption, by gradually liberalising the EU media industry and introducing stricter regimes for the operation of subsidy and cultural protectionism. Within the EU member states and interest groups have exerted different pressure and taken up varied positions in relation to the development of an internal trade in cultural services. In the EU's treatment of cultural industry growth it is possible to discern a phenomena akin to Karl Polanyi's double movement at work (Polanyi, 1957). In his study of the initial period of the institution of market capitalism in Western Europe, Polanyi identified how market capitalism was instituted in areas previously governed by non market social relations. He demonstrated how a process of commodification inevitably led to market failures and externalities which in turn led to pressure for regulation of a supposedly self regulating system. This was the 'double movement'. It is thus possible to identify the marketising policies within the EU and its member states and the accompanying search for re-regulation as being an expression of this double movement. Thus, in macro-economic terms, the present search for a new regime of accumulation within capital has created the basis for a structural moment wherein varied agencies have sought to introduce market relations to communicative, cultural and informational dimensions of human experience that were previously considered out of bounds to capital. Thus we can situate the move towards re-regulation and the emerging search for normative policy
dimensions in relation to culture as being the latter part of a Polanyian double
movement. Article 3a, as an instrument wherein absolute intellectual property
right is circumscribed by political and cultural concerns, is an expression of this
movement.

The UK and Ireland have occupied contrasting positions in relation to these
various pressures and emphases. Successive UK governments have followed
marketising strategies in relation to the media sector, seeking to introduce a
general market system, favourable to corporate interests and characterised by
competition-led industrial policy (Freedman, 2002). This new system is then
accompanied by re-regulation. The UK has thus been a net beneficiary of an
open market approach to the development of international trade in cultural
goods, pursuing a liberalising agenda and supporting what have been labelled
liberalist interventions and corporate agendas in EU media policy. In general it
can be observed that the orientation of the UK media policy agenda is broadly
commensurate with other influential blocks within the EU. Irish governments, on
the other hand, have been less consistent in their approach displaying at times a
dirigiste or interventionist approach and, following a change of government in
1997, what can be described as laissez faire policy adherence followed by
reactive defensiveness. As such, the UK along with the other large audio visual
markets can be described, vis-à-vis its influence and voice, as a media policy
pathfinder, whereas Ireland, in latter years, has largely been a media policy path
follower (Webster and Robins, 1999). Thus the UK policy paradigms of neo-
liberalism and creative industry growth have had significant impact in the
institution of a new policy settlement for communications in general, and,
broadcasting in particular. The Irish government, on the other hand, have
become identified with fringe players who now adapt largely defensive positions
in relation to supranational policy development. One way of illustrating these
contrasting positions is through a brief overview of the input of these member
states on the core element of European media policy under revision at present,
the Television Without Frontiers directive.
Thus to return to the question of cultural citizenship, it is observable that this approach is beginning to achieve support at European level. Yet, because it is instituted under conditions of subsidiarity, it is likely that it will be invoked for largely national cultural reasons. There is however a role for national public broadcasters to play in reflectively incorporating progressive dimensions to its cultural policy and providing the basis for a re-thinking of what we mean when we discuss questions of the national and the public. Likewise, if events of national importance are to be sensitive to non-nationally popular cultural pursuits there is a necessity for groupings to apply pressure on government via lobbying and media campaigns. In the following case studies we will illustrate the larger dynamics at work whilst also drawing attention to the position of governments and the effectiveness of public pressure in relation to the invocation of Article 3a.

**Broadcasting rights for sporting events in the UK**

Indigenous sporting events and those that are deemed of significant interest to the general public have traditionally been provided by the main terrestrial broadcasters in the UK, either ‘live’ or in deferred, ‘highlights’ packages. For at least the latter part of the twentieth century this has meant that events such as the FA Cup Final, Wimbledon tennis tournament and home test cricket matches have been televised live and on a free-to-view platform. These events were ‘listed’ by the Government to ensure that they would be transmitted in this way. At the moment, there are two lists, A and B. Group A events must be broadcast live by free-to-air channels, effectively BBC1, BBC2, ITV and Channel 4/S4C. Group B events can be shown live on pay-TV channels provided that highlights are shown on free-to-air channels.

The UK Government’s response, ‘The Television Broadcasting Regulations 2000’, amended its own 1996 Broadcasting Act by revising its list of events categorised under groups A and B. It was at this stage that cricket test matches in England were moved to group B. Section 17 of the ‘ITC [now Ofcom] Code on
Sports and other Listed Events, revised January 2000’ outlines the circumstances under which group B events can be broadcast live:

17. For those events listed in Group B in Appendix 1, the ITC will give its consent to exclusive live coverage of an event by a broadcaster providing a service in one category (the first service) if adequate provision [our emphasis] has been made for secondary coverage by a broadcaster providing a service in the other category (the second service). The minimum which the ITC will consider to be adequate is where the second service has acquired rights for the provision of edited highlights or delayed coverage amounting to at least 10% of the scheduled duration of the event (or the play in the event taking place on any one day), subject to a minimum of 30 minutes for an event (or the play in the event on any day) lasting an hour or more, whichever is the greater. …

In Appendix 2 of the Code, the ITC lists those services that meet the ‘qualifying conditions’ as set out in the ‘Television Broadcasting Regulations 2000’. Given that one of the conditions is that a channel provides at least 95% coverage of the UK population, only the following four broadcasters meet the criteria: Channel 3, Channel 4, BBC1 and BBC2. It could be argued that section seventeen’s call for secondary adequate provision for sporting events broadcast live by satellite channels cannot be met by channels other than these four.

**Cricket as public culture in the UK**

To focus almost solely on the economic merits or demerits of the broadcasting rights for test match cricket fails to account for the importance of popular culture to the functioning of the modern nation state. Other cricketing nations are unashamed in their belief that the sport plays a major part in their respective national cultures. Influential Trinidadian writer CLR James (1963) illustrated the centrality of cricket to the development of anti-colonialism and national identity in
the various West Indian nations in the 1950s. His successful campaign to have Frank Worrell installed as the first long-term ‘black’ captain of the West Indies cricket team had ramifications that went way beyond the sporting arena:

It was not Worrell that white West Indians feared. It was the entire political process that had thrust him into the leadership position by discrediting mediocrity from their ranks. In most territories, whites railed against labour unions, the formation of the University of the West Indies (UWI), adult suffrage and, most importantly, political independence. These institutions, they believed, were adding fuel to the flame raging in black hearts, while independence would leave them stranded in black majority states without the protective armour of the ‘motherland’. Whites in general, then took a grand political stand against the tide of democracy and freedom, which in turn meant that they could no longer support the West Indies cricket team against a white team (Beckles, p. 77).

In Australia, the batting heroics of Don Bradman during the 1930s Depression elevated him to the role of national icon -, a status that he retains to this day and enabled his country to form a common identity not dependent on Britain (Williams, 1997). Similarly, in England cricket is still clearly an important aspect of national culture. In the age of reality TV, 24 hour news and the instantaneity of the Internet, how could a sport which takes four or five days to meander to a conclusion have attracted 8.4 million viewers to the denouement of the England versus Australia test match at Trent Bridge in August 2005 (this despite it clashing with BSkyB’s live broadcast of the Newcastle United versus Manchester United FA Premiership match at St James’s Park)? It may be the case, as Wagg (2007: 20-21) notes, that the English county game only survives through a healthy subvention from international matches, but there can be no denying the continued popularity of the national team.
It is also evident that cricket's appeals extend far beyond its traditional white, middle-class male constituency. Richard Williams (The Guardian, 2002; cited in Wagg 2007) reports that Ian MacLaurin's chairmanship of the ECB from 1996 to 2002 modernized English cricket, increasing participation in cricket by girls by half a million. Indeed, it must be remembered that the Ashes victory parade was a joint one featuring both Ashes-winning sides; England's women cricketers also defeated Australia that Summer. At a time when British identity is threatened by the devolution of political power to Scotland and Wales, the England (ironically, essentially a 'British' team) cricket team represents a form of positive nationalism to which a wide range of Britons can subscribe. This would fill a void that, as Mike Marqusee (1995, p. 251), is all too often occupied by imperialist ideologies:

Unlike its Scottish or Welsh cousins, English nationalism has few popular icons, and nothing like the USA's Fourth of July. England may have the first national anthem, 'God Save the King', but it is a hymn not to a nation, but to a sovereign monarch. The country's flag is a 'jack', something stuck on the mast of a boat to signal the national presence on the high seas and in foreign lands. It has never had the popular potency of the tricolour or the stars and stripes. It is a projection of imperial power, not the symbol of a people. What kind of England can it evoke? Mainly, it seems, an England whose identity consists in dominating others.

Cricket is ideally placed to evacuate imperialism from English national identity. This may seem to a curious thing to say, especially as Marqusee's monograph is replete with examples of imperialist attitudes from administrators and cricketers in the English game. But there is another history that needs telling. That is of an English national side that has included players born overseas from as far back as the nineteenth century. In a clear indication of the way in which the British Empire often privileged class over race, Indian princes were allowed to represent England at cricket, beginning with Ranjitsinjhi in 1896 (Wagg, 2007, p.
The accession of Indian-born Muslim Nasser Hussain to the England captaincy in 1999 was therefore not really the rupture with the past that it was commonly assumed to be.

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It must be said, though, that, unlike the West Indian example, this pluralism was not part of an anti-colonial struggle; on the contrary, as Stoddart (2006: 817) illustrates, cricket was a vehicle in which the occupier could transmit its moral code to the occupied. But the work of Homi Bhabha on postcolonialism has demonstrated that traditional cultural imperialist schemata neglect the impact that the colonized have on the colonizer. In his view, the interaction between colonized and colonizer creates a ‘Third Space’ in which neither’s culture can avoid being tainted:

It is only when we understand that all cultural statements and systems are constructed in this contradictory and ambivalent space of enunciation, that we begin to understand why hierarchical claims to the inherent originality or ‘purity’ of cultures are untenable, even before we resort to empirical historical instances that demonstrate their hybridity. Fanon’s vision of revolutionary cultural and political change as a ‘fluctuating movement’ of occult instability could not be articulated as cultural practice without an acknowledgement of this indeterminate space of the subject(s) of enunciation. It is this Third Space, though unrepresentable in itself, which constitutes the discursive conditions of enunciation that ensure that the meaning and symbols of culture have no primordial unity or fixity; that even the same signs can be appropriated, translated, rehistoricized and read anew (Bhabha 1994: 54-55).

A practical illustration of this occurred during the 1930s when British missionaries introduced cricket to the Trobriand islands as a means of encouraging the indigenous people to give up their predilection for tribal warfare. But, rather than
adopting British moral codes wholesale, the islanders incorporated their tribal practices into their game-playing to create a radically different version of cricket than that which hitherto existed (Stoddart 2006: 826). Therefore, it should not be surprising that South East Asian cricketing nations like India, Pakistan and Sri Lanka have refashioned the global game in their own image in the late twentieth and early twentieth centuries (Marqusee 1995).

How, though, does this impact on cricket in the UK? Well, the significant number of Asian and West Indian immigrants and their descendents in the UK provides a sizeable alternative cricketing constituency to that which is popularized in more traditional conceptions of England. Crucially, this is in marked contrast to football which, despite the influx of overseas players, has an ethos that is overwhelmingly white, working class British/Irish. This may explain why racism appears to be taken more seriously in cricket than it is in football:

Some white players in rugby league and cricket recognized the legitimacy of such complaints [of racism], but there was no such recognition among the white football (soccer) respondents, despite accounts given by black players of the violence they experienced (Long and McNamee 2004: 414).

It is for these reasons that many commentators have turned to cricket as a site for nurturing the hybridity of British Asians. A week after the alleged plot by Islamists to blow up passenger jets flying from UK airports, Sarfraz Manzoor (The Observer, 13 August 2006) wrote that cricket had traditionally been one of the few means of enabling British Pakistanis to express their cultural heritage. While this is still the case, Manzoor detects an increasing tendency for many British Asians to integrate themselves into wider British society through their support for England’s cricket team.

In a political environment where immigrants are required to take citizenship tests based on a series of questions about British culture, it seems counter-productive to undermine a part of that culture enthusiastically embraced
by significant numbers of ethnic minorities. But British sporting culture’s potentially positive input to citizenship is not viewed by the government as a sufficient reason for its support. A fore-runner of the 2005 controversy were disputes over whether or not the England cricket team should play Zimbabwe in Harare at the 2003 World Cup and tour that country the following year. In both cases, the British government was not prepared to intervene:

This equivocation was understandable when one considered the important subtexts of this complex political situation. The Blair government was committed to a neo-liberal economic agenda which prioritized markets and privatization as part of a specific view of globalization. This meant, among other things, parties to commercial transactions being left to resolve them free of government intervention (Wagg 2007: 23).

Since its coming to power in 1997 the Labour government’s cultural policy has been dominated by the need to develop indigenous creative industries. In other words, culture has become increasingly commodified, with an emphasis on revenue generation rather than government support for cultural activities that promote abstract concepts like citizenship. (refs?)

**Rights for cricket and the Government’s response**

In 2005 the England and Wales Cricket Board (ECB) awarded the rights to broadcast live England’s home test matches from 2006 to 2009 to BSkyB. In addition, a deal for the highlights of England’s home test matches was struck with Channel 5. The controversy over this decision was exacerbated by England’s success over the previous eighteen months, culminating in its regaining of the ‘Ashes’ from Australia in the summer of 2005. Indeed, such was the furore that the House of Commons Culture, Media and Sport Committee decided to initiate a short inquiry on 19 October 2005, inviting written submissions and holding an oral evidence session on 29 November 2005.
The Committee was particularly concerned with what it believed was the breaching of a so-called ‘gentlemen’s agreement’ between the then Secretary of State Chris Smith and Lord MacLaurin, the then ECB Chairperson. After the DCMS had decided in 1998 to accept the recommendation of an advisory group chaired by Lord Gordon of Strathblane that home test matches in England should be listed as a group B event, Smith and MacLaurin met and made a verbal agreement that this did not mean that home test matches would completely be removed from free-to-air TV; an understanding that both Smith and MacLaurin corroborated in their testimony to the Committee. Subsequently, MacLaurin did a deal with Channel 4 and BSkyB in which the vast majority of home test matches – and all the most important ones like ‘Ashes’ test matches – would be broadcast live free-to-air. Therefore, it was the view of the Committee that both the ECB and the Secretary of State, Tessa Jowell, reneged on this agreement when the 2005 deal was struck. The Committee concludes that these so-called ‘gentleman’s agreements’ should not be used by policy-makers.

Despite this, the Committee does not believe that home test matches should be re-designated as group A events, primarily because it concedes that the 2005 deal will generate so much money for grassroots cricket in the UK; indeed, the difference between BSkyB’s bid and those from free-to-air channels was around £80 million over the 2006-2009 period. It does, though, believe that the ECB should have insisted on a non-exclusive deal which would have allowed some test matches to be shown live free-to-air. It is also critical of the decision to award the highlights package to Channel 5 as, by the ITC’s own admission, this is not a broadcaster that is available to 95% of the UK population. The Committee is not sanguine about the likelihood of the 2005 deal being revoked, merely calling for the Minister of Sport to attempt to convene a meeting with free-to-air broadcasters and BSkyB. It does, though, propose that the ECB treats the next deal for broadcasting rights as ‘non-exclusive’, thus ensuring that some home test match cricket will be able to be broadcast live free-to-air.
The DCMS responded to the Committee’s report in its Command Paper 6772, ‘Government Response to the Culture, Media and Sport Select Committee Report on Broadcasting Rights for Cricket. Session 2005-2006’. The central thrust of the Government’s response is that within the existing listing framework, the responsibility for decisions on broadcasting rights should rest with the ECB. For this reason, it is not prepared to compel the ECB to insist that the next rights deal is non-exclusive. It also points out that the onus is on free-to-air broadcasters as well: if they fail to put together bids that are financially attractive to the ECB, it should not be surprising that they are rejected. It believes that Channel 5’s highlights package should be seen in this light. And, while the channel clearly does not command 95% coverage of the UK population, the Government argues that its 92% coverage is not far from the minimum acceptable figure. The Government does, however, assent to the Committee’s call for the Minister of Sport to convene a meeting if the BBC, or any other free-to-air broadcaster, indicates their willingness to negotiate with BSkyB to try to secure some live home test match cricket under the existing deal.

**Adopting Article 3a in the Republic**

Article 3a of the television without frontiers directive was transposed into Irish law by the Broadcasting (Major Events Television Coverage) Act 1999. The Act enabled the Minister for Communication and Natural Resources to designate events that are considered: 1. to have a special general relevance for the people of Ireland; and 2. have a generally recognized distinct cultural importance for the people of Ireland. The Act also proposed two criteria on how such judgments may be made, i.e. whether the event involved 'participation by a national or non-national team or by Irish persons' and 'past practice or experience with regard to television coverage of the event or similar events'. It also allowed for a number of different options in relation to how an event should be designated for broadcast on a free television service, 'on a live, deferred or both live and deferred basis' and 'in whole, in part or both in whole and in part'. Under the terms of the Act, the
Minister was obliged to follow a number of procedures before designating any given event. These procedures included consultation with the Minister for Arts, Sport and Tourism and the event organizers and broadcasters. Following this consultation a list would be published, wherein the public would be invited to comment on its contents before it made its way through the Irish parliament to become national legislation. It was during the time lag produced by this procedure that the Football Association of Ireland (FAI) opted to sell the rights to the Irish national soccer team's home European Championship and World Cup qualifying matches. Government accounts indicate that a round of consultations took place in early 2000, but, inexplicably nothing happened for the best part of two years. In that time BSkyB continued to expand into the Republic whilst News International sited a printing press in County Meath, opened by none other than the Taoiseach himself. It appeared that Ireland was a very good place for media corporations to do business.

**Soccer as public culture in the Republic of Ireland**

Despite the cultural nationalism that has been at the centre of cultural policy in Ireland for the best part of the twentieth century, soccer has had a presence in established sport culture in Ireland since the 1890s. In general soccer in Ireland has gone through three phases, the first being its status as a minority sport from the turn of the century until the 1960s (Garnham, 2002). In a second phase, liberalization of the Irish economy from the 1960s on brought with it a more outward orientation towards popular culture and with this an increased interest in English and Scottish soccer leagues. Continued migration, the availability of British media and a growing presence of Irish players in the British leagues also contributed to increased interest in the game. In the latest phase, the popularity of Irish soccer as popular culture co-incided with a run of successes by the Irish soccer team in the late 1980s providing a point of solidarity in times of troubled economic, political and social contexts. This sense of solidarity then became grafted onto the story of success linked to the emergence of the 'Celtic Tiger' economy. The national soccer team is thus seen as representative of a general
narrative of arrival on the international scene as Ireland experienced economic success through its integration into the international neo-liberal economic system. As Ireland became more globalised, soccer as a resource for collective identity became more important and central to the hybridised 'celtic' culture of post-national Ireland (Arrowsmith, 2004). As such, the acceptance of soccer as national culture symbolises the end of Ireland’s postcolonial cultural insularity. With the increased centrality of soccer in Irish life the institutions of soccer experienced new pressures to become more professionally organised. Success now had political and economic as well as social dimensions. The undercapitalisation at the base of Irish soccer thus became an issue creating the contexts for the Football Association of Ireland’s (FAI) consideration of the sale of the rights to soccer games to the highest media bidder (Flynn, 2005).

**The directive in action**

The issue of broadcast rights and access to sports programming became an explosive issue in Irish public life in summer 2002. The drama surrounding the sending home of Roy Keane from the World Cup had already elevated the subject of the management of the Irish national soccer team to a topic of widespread discussion. When, soon after, the Football Association of Ireland (FAI) announced that it had sold the rights to Ireland's home qualifying matches for the upcoming European Championship to BSkyB, the issue of free-to-air access to national events also came to the fore. The FAI stood to gain €7.5 million from the deal and argued that it was an important financial input into the development of the sport in Ireland. Whereas the Government wrung its hands and expressed its displeasure at the deal it suggested that there was nothing it could do as the FAI/BSkyB deal, as a private contract, was 'done and dusted' (see Flynn 2005 for a thorough account). However as the story was publicly debated it emerged that this response did not adequately reflect the options open to the government. These options arose from an expanded interpretation of Article 3a of the 'Television without Frontiers' directive as outlined above. The government, it emerged, was not powerless to intervene. Representatives of the
European Commission's Education and Culture directorate clarified that the legislation allowed for the retrospective listing of events wherein all previous contracts for sports rights could be overridden by a retrospective listing of events. It also clarified that governments were free to list a whole tournament if they so wished to do so. The Commission even agreed to fast track the process so that the greatest amount of matches could be returned to free-to-air broadcasting.

Following a surge of public and media pressure, the government consulted the Attorney General on the legalities of the matter and then established a public consultation on the development of a list of designated events. In 2003 a statutory instrument activated the list and BSkyB were forced to negotiate a deal with RTE to allow for free-to-air transmission of the remaining European matches.

**Assessing the process**

A crucial element in the events recounted above was the failure of the Government to pre-empt the sale of important rights by activating the list enabled by the 1999 Act. Whereas the procedural obligations of the Act recognize the importance of ensuring consensus and co-operation amongst the various stakeholders, a government is mandated to act as representatives of the public interest, not as impartial broker. It is here that fora for the elaboration of public purposes in sports and cultural issues were initially absent from the overall process. Government and state officials thus found themselves deferring to the proprietary and financial agenda of economic stakeholders. The crux of the matter thus resided in the difficult and imbalanced interpretation of where proprietary rights end, and where cultural rights begin.

As legitimation for the sale of the exclusive rights for the qualifiers, the FAI argued that the games did not receive high enough ratings to justify designation, whereas the extra revenue from Sky would help build the national soccer infrastructure. The determinate value placed on exclusive access to these games won out against an indeterminate value of allowing free-to-air access. The latter
value points to the importance of an accessible national culture wherein benefits accrue to both the society and its cultural space. For society, equal access is guaranteed and commonalities result from shared experiences, fostering inclusion, participation and solidarity in social life. It can also provide a forum for the negotiation of what the 'national' means during times of ubiquitous change (as was demonstrated by the national/corporate, familial/professional and Irish/non-Irish dichotomies that emerged in the wake of the McCarthy/Keane controversy). For the sport, wider access holds out the possibility of a greater popularity for the activity in relation to both spectators and participants. This in turn ensures the future vibrancy of the sport/cultural activity itself.

**Comparing the approaches of the Irish and UK governments**

In the run up to the review of Television Without Frontiers directive (re-titled the Audiovisual Media Services directive, AVMS), both governments outlined their position in relation to its renewal and extension. The revised directive can be seen as an extension of the EU's approach to both internationalisation and convergence in European media services. The UK government articulated the UK's concern regarding moves from the EU commission to extend the basic tenets of its regulatory agenda into new media such as IPTV, online services and mobile services. The UK government reacting to pressure from media interests and the sector regulator argued vigorously against such regulation on the basis that it may chase investment and development in new media services out of Britain and the European Union. Instead, it promoted its own developed approach to a tiered regulatory system that depended on how a given service is accessed by a user. In addition to its opposition to regulation of on-demand services, the UK rejected any calls to tamper with the country of origin principle, articulating the fears of national and corporate interests that any roll back on this principle would allegedly introduce a patchwork of regulatory barriers to the free movement of AV services. This had largely come on the agenda as a result of strenuous efforts by the Irish and Swedish governments to introduce qualifications to the principle. Partly as a result of the case studies outlined below
the Irish government had become more vigorous in its pursuit of a legislative basis for a regulatory input into services emanating from other member states that specifically targeted the Irish market. As part of its presidency of the European Union in 2004, the then communications minister called a special conference at which he signalled Ireland's intention to amend the principle of mutual recognition. Thus advertising opt outs aimed at the Irish market and programming made to address specifically Irish audiences, could not, according to the Irish government, be satisfactorily regulated in other jurisdictions. The efforts of Ireland and Sweden appear to have won recognition, in principle, in the new AVMS, with provision being made for co-operation between regulatory authorities where services chiefly aimed at a state's population are regulated elsewhere. However, the extension of the country of origin principle to audio visual services delivered via the Internet, illustrate the continued centrality of this feature in European media policy.

With the ongoing development of European media policy and its attention to liberalisation and the attraction of investment into media growth it is clear that the Europeanization of media policy is decidedly driven by constitutive interaction with the larger European media markets such as the UK, France and Germany (Harcourt, 2002). The uneven development of European media markets means that these countries have the capacity to leverage their experience and paradigmatic approaches into market restructuring via the developing policy agenda at European level. Whereas the EU can constrain and Europeanize the policies of these member states, it also takes on their agendas, experiences and solutions. Thus for example, the article allowing for the protection of events of major importance was a national policy instrument in the UK from 1996 as it developed more experience of a liberalised and competitive broadcasting system. Added to this the success of the industrial policy of major European markets makes them sensitive to the over-regulation of areas of potential media sector growth. Thus in its dealings with BSkyB the British government has been careful to balance any protectionist regulatory interventions or subsidy with
concessions to commercial media development. As such it is ahead of the curve in regulatory terms and careful to be seen as balanced as opposed to protectionist. In this regard, protectionist measures in relation to the listing of events not seen to be popular enough to justify listing, would be thought retrogressive and anti-business. In contrast, the Irish government has been on a steep learning curve in relation to the nature of liberalised international digital broadcasting markets. It has had to deal with a policy experience lag. It has displayed an adherence to a national consensual governance style even as international, commercial and economic strategies have put pressure on this type of approach. Presently, even as it becomes more engaged in supranational regulatory development, it has focused its attention on problems already encountered as opposed to being overly concerned about the emerging regulatory settlement in relation to broadcasting delivered by means of digital networks. The case study outlined above illustrates how the Irish government were jolted into action, and equally, how the UK government balanced populist regulatory interventions with corporate friendly policy.

Works Cited


James, CLR. (1963/1996) *Beyond a Boundary*, (Serpents Tail).


