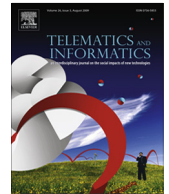




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# The relation between content providers and distributors: Lessons from the regulation of television distribution in the United Kingdom



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## ABSTRACT

Using the United Kingdom (UK) as a case study, this article analyses the growing commercial and regulatory significance of broadcaster–distributor relations within the contemporary television industry. The first part of the article argues that despite important changes in broadcast delivery technology, more recently shaped by the growth of the Internet, and the associated growth of options of receiving television content, the traditional delivery platforms (digital terrestrial, satellite and cable) remain by far the preferred choice for viewers in Britain. At the same time, public service broadcasters continue to be the biggest investors in domestic original non-sport content and account for over half of all television viewing. The strength of PSBs in content and their growing reliance on commercial proprietary subscription platforms (cable and satellite) and gradually on the Internet presents challenges in the nexus between broadcasters and distributors. The article focuses on the debate over retransmission fees between PSBs and Sky, and on the question of whether Sky should be required to offer some of its premium content to rival pay-TV platforms. These two examples highlight the impact regulatory intervention can have on the balance of power between broadcasters and distributors. The article concludes that such debates concerning the commercial relations between content providers and distributors will remain pivotal and become more heated given that similar issues are raised in the Internet environment.

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## 1. Introduction

Understanding the television industry in the United Kingdom (UK) used to be fairly straightforward. Until the 1990s, there were three terrestrial broadcasters – the BBC, ITV and Channel Four – each with reasonably well defined, albeit slightly different, public service remits, and two main sources of funding: either a compulsory licence fee paid by television owning households (the BBC) or the sale of advertising time (ITV and Channel Four). By contrast, the contemporary UK television landscape has become increasingly marketized and far more complex. Specifically, over the last couple of decades or so there has been an enormous increase in the number of channels (and/or aggregated audio-visual content) available to viewers via a range of new delivery technologies, such as satellite and digital television, as well as, most recently, the Internet. Just as, if

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not more significantly, these technological developments have been accompanied (and often driven by) the emergence of a new and increasingly significant source of revenue, namely subscription payments from viewers. At least partly as a result, a key feature of the contemporary UK television industry is the increased commercial and regulatory significance of the relationship between broadcasters (i.e. channel owners and/or content aggregators) and distributors (i.e. owners and/or controllers of key delivery platforms).

When spectrum scarcity limited the number of available channels, power and profit were chiefly located in control of distribution, rather than content production (Garnham, 1987). However, as the number of delivery options for broadcasters has increased, the dominant position of distributors could be seen to have lessened, whilst at the same time the commercial power of broadcasters who produce or control popular content has increased (Christophers, 2008). Consequently, the balance of power between broadcasters and distributors in the contemporary television industry is much less clear. Rather than inherently favouring the dominance of broadcasters by distributors, distributor–broadcaster relations are more clearly characterised by a mutual dependence. On the one hand, to reach viewers (and, in case of pay-TV broadcasters, often to receive a small share of the subscription revenue paid by viewers to delivery platform operators), broadcasters still require access to the leading delivery platforms, such as Freeview (terrestrial), Sky Digital (satellite) or Virgin Media (cable) in the UK. On the other hand, however, to ensure the competitiveness of their delivery platform, rival platform operators require access to the most popular channels/content, most notably Hollywood movies and live premium sport for pay-TV platforms. Moreover, established and emerging market concentration further complicates the broadcasting–distribution relation as well as the broader competitive dynamics in the market. For instance, Sky has always been a broadcaster and a distributor. The vertically integrated Sky is under a regulatory obligation to provide fair, reasonable and non-discriminatory access to its platform in order that it does not favour own and affiliated services at the expense of competing services (see below). Against this background, rather than a simple linear power relationship with a definite winner and loser, the balance of power between broadcasters and distributors can be best seen as shaped by specific market and regulatory conditions (Evens and Donders, 2013). It is with this in mind that the remainder of the article provides a detailed analysis of the relationship between broadcasters and distributors in the contemporary UK television industry.

The first part of the article sets out in more detail how recent developments in broadcast delivery technology have led to a growth in the number of ways of receiving television services for viewers. This section highlights the continued importance of the traditional television delivery platforms, namely Freeview (digital terrestrial), Sky Digital (satellite) and Virgin Media (cable). It also draws attention to the potentially powerful position of Sky within UK broadcasting as a highly successful vertically integrated distributor–broadcaster.<sup>1</sup> Drawing on a wide range of primary documents produced by the UK government, regulators and industry policy stakeholders, the second part of the article focuses on two high profile (and ongoing) case studies in the regulation of television distribution in the UK: first, the dispute between public service broadcasters<sup>2</sup> (PSBs) and Sky over commercial terms for the distribution of their channels/services via its Sky Digital satellite delivery platform; and, secondly, the imposition of a Wholesale Must-Offer (WMO) obligation on Sky by the UK's communication regulator, Ofcom, in relation to the supply of its two principal premium sports channels (Sky Sports 1 and 2) to rival pay-TV platforms. Both of these cases demonstrate how, over the last decade or so, changing market conditions have had an impact on distributor–broadcaster relations, which, in turn, have led to increased calls for legal and/or regulatory intervention. Furthermore, these two examples have been selected because they highlight the impact regulatory intervention (or even just the threat of regulatory intervention) can have on the balance of power between broadcasters and distributors in the case of either a dominate distributor or a dominate broadcaster (or both). Overall, the UK case illustrates that the regulation of television distribution is an increasingly important policy tool for government to use in pursuit of public interest objectives, such as increased funding for PSBs or greater competition within the pay-TV market. As a result, the UK case may well provide a valuable reference point for other countries with similar market structures seeking to achieve the same policy goals. More generally, and perhaps more significantly, the UK example also highlights the underlying point that the ability of governments to shape the nature of the television industry did not disappear with the ending of spectrum scarcity. On the contrary, through the regulation of distributor–broadcaster relations policy makers and regulators retain a potential means to achieve most, if not quite all, of their policy objectives. It is this lesson that makes the regulation of UK television distribution a salient case for both those outside the UK and/or those with interests related to the future of the media industries more generally.

## 2. Developments in UK television distribution

Television broadcasting has always been about audiovisual content as well as audience access to it (Michalis, 2014). Over the last decade or so, due to a combination of technological, market and policy developments, issues relating to distribution and control of networks have become an ever increasingly important part of the TV industry and its regulation.

Following the proliferation of channels with the emergence of cable and satellite analogue platforms in the 1980s and the subsequent rise of strong pay-television operators, the UK media and communications market has experienced more fundamental transformations in recent years, notably the completion of the switchover process from analogue to digital television in 2012; the rise of broadband Internet supporting IP delivery of audio-visual content and the popularity of connected and

<sup>1</sup> Until November 2014, Sky was known as British Sky Broadcasting (BSkyB), but to avoid confusion is referred to throughout in this article as Sky.

<sup>2</sup> The main public service broadcasters in Britain are the licence-fee funded BBC and the commercially funded ITV, Channel Four and Channel Five.

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