

Theses on media deregulation

Robert W. McChesney

UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

Britain is presently considering a new media law that will significantly 'deregulate' the media system. Deregulation in practice in media markets is synonymous with increased commercialization. Some of the impetus for the proposed changes comes from developments in the United States, the world leader in media and communication markets by a wide margin. The United States has always had a more *laissez-faire* attitude toward commercial media and with the passage of the Telecommunications Act of 1996, the United States ushered in an era of explicitly replacing what government regulation exists with free markets. According to conventional wisdom, the effect has been rapid commercial development of spectacular new technologies, more competitive markets that 'give the people what they want', plus a tremendous spur to economic growth in the information age. This is the spirit that infuses Britain's lurch to an ever-greater dependence upon the market to regulate media.

In what follows I will argue that the conventional wisdom about the US media situation is wrong on several crucial points. I do so as an American who has studied the media situation and the US political economy for years. I offer the following to provide a counter to the public relations campaigns that are geared up to promote the joys of deregulated media markets. I believe that Britons are being sold a bill of goods by self-interested commercial media concerns, and that they need to scrutinize claims about 'media deregulation' with utmost skepticism. In my view, a rigorous public examination and debate of media policy issues requires no less.

Coincidentally, the US Federal Communications Commission (FCC) is presently considering a considerable relaxation of its remaining media ownership laws, with the likelihood that the matter will be resolved by the

beginning of 2003. The following points are just as valid for Americans contemplating the future of the US media system.

The notion that the choice for media policy is government regulation versus deregulation and free markets is inaccurate. All media systems are the result of explicit government policies, subsidies, grants of rights and regulations. Cable, satellite and terrestrial broadcasting are based upon government-sanctioned monopoly rights to scarce frequencies and franchises. If a private individual attempts to broadcast on a frequency the government has licensed to someone else, that person will be subject to criminal prosecution. This is a serious form of government regulation. Even publishing, music and films require government regulation to exist as they do. Consider, for example, the role of copyright. Indeed, to have anything close to competitive markets in media requires extensive government regulation in the form of ownership limits and myriad other policies.

More broadly, to have a market regulation of anything, including media, requires explicit government laws and policies recognizing and enforcing private ownership, contracts, the sanctity of profit, etc. Markets are not 'natural'. But the nature of media industries – for example, use of spectrum, need for copyright – makes government regulation doubly foundational.

So the real issue is not regulation versus free markets, but, to the contrary, regulation in the public interest versus regulation to serve purely private interests. The latter is often called deregulation, but that is not the case. Deregulation is better thought of, in most instances and certainly in the case of media, as a misleading term for unabashed and unacknowledged regulation on behalf of powerful self-interested private parties.

This also points to the fundamentally public and social nature of media systems. Public policy comes first, and media systems follow. Private media systems are not exogenous to society, but, rather, they are sanctioned by society. The key issue is: how does a particular society determine to structure its media system? In a democracy, these decisions ought to be the result of informed debate. Specifically, private media systems are sanctioned because a society determines that such systems, on balance, best serve the needs of the needs of the citizenry.

The nature and calibre of the public debates over media policies, subsidies and regulations is therefore of the utmost importance. The more democratic a society, as a general rule, the more likely there will be widespread public participation in these debates. The more widespread the public participation, the more likely the resulting policies will best serve the needs of the people. That is liberal democracy.

Media policy-making debates have varied in quality across democratic nations. One point is certain: once a nation 'deregulates' much of its media to private interests, it is very difficult to maintain public involvement in the policy-making process. Private interests are able to use their cultural,

economic and political power to prevent open evaluation of whether they are the proper stewards of the nation's media. Once this 'deregulation' process is near completion, it is very difficult to reverse the process, as extremely powerful interests block the democratic path.

The American example

One look at the United States provides a crystal clear example of the degradation of media policy-making once the system has been 'deregulated' to private interests. In the United States important media and communication policy decisions are made regularly by the federal government. Many of these are of the utmost importance for determining the structure and nature of the media system. Yet the vast majority of the population – conservatively, 99 percent – have no clue about this policy-making process. Even members of Congress not on the relevant committees are largely clueless. There is almost no press coverage whatsoever, except in the business pages where media policy-making is covered as a story of importance to investors and managers and advertisers, not of importance to citizens in a democracy. The hegemony of the status quo is the starting point for all debate, so there is no debate. This state of affairs is also a striking commentary on the nature of democratic governance in the United States today.

It is in this context that the notion is spread that media systems are 'naturally' the province of private interests in pursuit of profit, and that any public involvement that might 'interfere' with their profit-making is 'onerous' regulation, a genuine threat to a free society. A more self-serving and purely ideological notion would be difficult to imagine. What in truth is happening is that core democratic rights have been terminated, replaced by the rule of far less accountable private interests.

One way to envision contemporary media policy making in the United States is to recall the 1974 Oscar winning film, *Godfather II*. In a famous scene early in the film, American gangsters are sitting on the rooftop of a Havana hotel in 1958 Cuba. Hyman Roth and Michael Corleone are slicing up pieces of a cake with the outline of Cuba on it and doling them out to the other gangsters. It symbolizes how they own the island and are dividing it between themselves. The gangsters are fighting it out among themselves over who gets the largest slice, but they all agree that they alone should be eligible for slices of the cake.

That is how communication policy-making works in the United States. Powerful corporate lobbies and trade associations fight it out with each other over who gets the largest slice of the US cake that is doled out by the FCC, Congress and other federal agencies. What they all agree upon is that it is *their* cake and nobody else should be permitted to participate in policy

deliberations. The function of the FCC, as one former chair informed William Kennard as he assumed the chair in 1997, 'is to referee fights between the wealthy and the super wealthy'. When one factors in the enormous campaign contributions made to members of Congress, and the tempting jobs in the private sector awaiting regulators, the stench of corruption becomes thick like that emanating from an overflowed latrine.

Nor is this corruption exclusive to the policy-making process. Almost everywhere that media and communication are 'deregulated', there follow waves of corruption in the practices of these firms. Large private firms use the lack of public oversight to fleece shareholders, workers, customers and taxpayers. This is perfectly rational behaviour for private firms seeking maximum profit, though it has deplorable and disastrous consequences for society. It is what logically follows when the media system is made first and foremost the province of private interests, rather than the province of the public interest.

This is not exclusive to media, but applies to all industries that have traditionally been heavily regulated or publicly owned. In the United States recent examples of such corruption have been Enron, WorldCom and Global Crossing. These scandals are a direct result of 'deregulation'.

In media policy-making debates the claim is often made that relaxing ownership regulations to allow more concentration, and capital mobility, will lead to increased marketplace competition, with lower prices and higher quality for the general public. Of course, if deregulation were to threaten a ferocious wave of genuine competition, powerful private interests would never let it take place. To the contrary, the pattern under 'deregulation' is a follow-up wave of mergers in the affected industries. Corporations claim they love competition, but they only love it for other firms and for their workers. For themselves, sane capitalists want as little competition as possible, and that is what tends to result from deregulation. Firms use relaxed ownership rules to get much larger, and therefore make it much more difficult for newcomers to enter their markets.

Consider what has happened in US radio, the one industry most directly reshaped by the 1996 Telecommunications Act. Whereas the 1996 Act advised the FCC eventually to deregulate ownership in other media sectors in the future, it explicitly wrote the radio deregulation requirements into the law. In keeping with the way media policy is done in the United States, the section pertaining to radio was apparently written by lobbyists; there was no public or Congressional debate on the matter, and many members of Congress had little idea it was even in the bill that they had voted for.

So what happened to radio? Prior to 1996 a single company was permitted to own 28 stations nationally, and no more than four in a single community. (Until the 1980s the limits had been much stricter.) The 1996 Act removed the national limit and permitted a single firm to own up to eight stations in the largest communities. Since 1996 well over half of US

stations have been sold, and a stunning consolidation has hit the industry. One firm, Clear Channel, now owns nearly 1,200 stations. Every market is dominated by two or three firms that own nearly all the stations between them. The firms have stripped radio of local content, especially journalism, and have substituted generic, inexpensive national programming. The amount of advertising and commercialism has increased. Radio, which is so inexpensive to produce and receive that it is ideal for decentralized, creative and local uses, has been turned into a cash cow for a few large companies. Everyone else loses. Everywhere one turns in the United States, one hears complaints about the dreadful state of radio. It is blamed on the greed of capitalists rather than deregulation policy.

Related to this, the political commentary on US commercial radio is almost entirely on the far political right. Commentators unsympathetic to the role of corporations in US political and economic life and sympathetic to the concerns of poor people and the working class, not to mention traditional liberals, are locked out by owners and advertisers. Even communities that vote to the liberal-left overwhelmingly like Eugene, Oregon, Detroit, Michigan, and Madison, Wisconsin are inundated by far right radio programming. Were a Martian to visit the United States, they might determine from listening to US commercial radio that the nation was populated almost entirely by militantly hardline far-rightists.

But the problem lies less with evil owners than with the failure of democratic policy-making. A simple shift in policy – to, say, a limit of just two or three stations per owner – would change the situation almost instantly. There are no economic reasons to justify concentration in the industry, as the physical cost of transmission is very low. Indeed, as in most other media industries, all the benefits of concentrated control in radio have gone directly and exclusively to shareholders. None to the public at large. But the corrupt policy-making process makes reform of radio laws in the public interest impossible. Indeed the radio station owning lobby is so powerful, it successfully neutered attempts to launch 1000 low-power non-commercial radio stations on the dial. The behemoths love to talk about competition, but what they really want is monopoly. It is not their fault; the problem is the failure of policy-making that granted them so much unaccountable power.

Markets and media

Most of the above is not controversial. But adherents of 'deregulation' claim that, regardless of the facts, the turn to private domination is necessary and beneficial for society as a whole. The claim has three parts. First, even if the policy-making is corrupt, the market, even a highly concentrated market, is the best means to rule media as everything else.

Second, there is no alternative. Every other media system that has been tried, including the system that dominated in Britain for much of the 20th century, has failed. Third, new technologies, especially the Internet, make traditional justifications for regulation and public involvement in media obsolete.

Regarding the market, whatever its strengths in other areas, it has clear limitations in the area of media. Hence the US style of regulation, which effectively seeks to allow private firms to make as much money as possible, is not only corrupt, it is indefensible. The media system is not simply an economic category; it is responsible for transmitting culture, journalism and politically relevant information. Fulfilling those needs is mandatory for self-governance. The media system is better understood as a social institution similar to the education system, which few would argue should be turned over to market forces. Even as economic entities, most media are *public goods*. That means that traditional notions of supply and demand do not apply because the use of the product is non-rivalrous. In the case of broadcasting, once a programme is produced, whether ten people watch the programme or 10 million do, does not affect the cost of the programme. If I watch a movie or read a book, it does not mean I keep another person from watching the same movie or reading the same book. It is not like purchasing a car or eating a hamburger. It is this non-rivalrous nature of media that led to the rise of copyright and other policies to deal with their unusual nature. It is a core reason why media systems have long been shaped, their character determined, by public policy decisions.

There is a long literature examining the limitations of the market with regard to media, but I want to make just a few points most pertinent to the policy-making matters at hand. It is said that competition in the market forces media firms to 'give the people what they want'. In truth, competition in the market forces firms to 'give the people what they want within the range of where they can make the most profits'. This tends to be a much smaller range than that from which people might wish to select. Certain crucial desires people have – like for less advertising and commercialism, or for exposure to new cultural forms – are very difficult, if not impossible to express in the commercial marketplace. They can only be expressed in public policy debates.

Indeed, in many media markets the primary audience is not the general public, but advertisers. This changes the nature of the media market considerably. It introduces a layer of commercial vetting of content – and nothing good comes from that – and it gives media tremendous incentive to appeal to those audience members that the advertisers wish to reach. In general, advertisers are interested in people with disposable income, so the reliance upon advertising magnifies the class bias in media content. This has proven to have especially dreadful effects on commercial journalism in the United States, and worldwide. Commercial journalism routinely empha-

sizes business stories and issues of importance to investors. Material concerning poor and working-class communities is very uncommon, and usually framed in terms of how it affects the more privileged. It is a poison pill for democratic governance.

The problem of the market becomes magnified in highly concentrated oligopolistic markets, which is the nature of most media markets. The higher the degree of concentration the more the power in the market is shifted from the consumer to the producer. This is elementary micro-economic theory. It is a main reason why democratic media policies have had a strong bias toward encouraging competition. Where technology or capital requirements, or other factors, make it impossible to enhance competition, democratic media policy often uses regulation to make sure that dominant media firms do not exploit their market power to take advantage of the public.

But the fact remains that, even where there is considerable competition, markets are a flawed mechanism for regulating media. In addition to being *public goods*, media have what economists call *externalities*. This means that there are costs associated with markets that neither the buyer or seller assumes, but for which society pays. The traditional example is pollution. Neither the manufacturer nor the consumer have to 'pay' for the pollution; it is irrelevant to their calculations. But society as a whole has to live with the pollution and deal with it. There are positive externalities too, as when a firm builds an unusually beautiful building that gives pleasure to all who pass it by. But firms are adept at capitalizing upon their positive externalities as much as possible and avoiding their negative ones.

Media have enormous externalities. If the market generates a lousy journalism that keeps the citizens poorly informed, the entire society suffers – not just the consumers of particular media – because the resulting political governance will be shoddy. If it leads to an unnecessary war or to massive corruption, for example, we all pay. It does not just affect buyer and seller. Conversely, if the market generates a splendid journalism that leads to wise policies, everyone benefits, even those who are not purchasing specific media products. There can be tremendous positive externalities. In another example, routinely carpet-bombing children with advertising and commercialism, or programming featuring sex and violence may generate profits for media firms, but it will produce self-evident negative externalities for those children and everyone in society down the road. The list goes on and on. In short, media markets make some of their profit by passing the actual social costs of their activities off to others. It is the factoring in of these externalities that lay at the heart of much democratic media policy-making. Adept policy-making attempts to maximize positive externalities and minimize negative ones.

In the case of broadcast media, the historical lesson is clear: private commercial broadcasters must be held by publicly determined, public

interest regulations to address the matter of externalities. If they are not, it puts inordinate pressure on the public broadcaster to maintain public service standards, and tends to lead to the entire system unravelling into a commercial morass. One sample of US television or radio is a clear indication of what this 'deregulatory' regime offers.

Alternatives?

As for the notion that there is no alternative, that depends upon how one frames it. If, as in the United States, the matter is framed as one of either having the existing commercial system or a system like that found in the old Soviet Union, then, indeed, there is no alternative. But that is a bogus framing. There is no reason a society cannot maintain a regulated commercial system, a democratically accountable public media system, and also have a large non-profit and non-commercial media sector. None of this entails any government content censorship, as it has been traditionally understood. It merely means identifying the values that are important from the media system, and attempting to determine policies that will produce a media structure that will be most likely to generate those values, and minimize the negative externalities.

There are in fact several superior policy proposals that would improve the diversity and quality of our media censorship without opening the door to any form of censorship. We *can* have a pluralistic media system with a significant independent non-profit and non-commercial sector, as well as media markets that are not under the thumb of a small number of massive private corporations. If leaders in nations – and scholars interested in the subject – devoted a hundredth of the energy to working on such policies as they do on trying to make a personal fortune in media industries, we would have a mother lode of policy options to examine and debate. The problem is that powerful private interests work at many levels to prevent such a democratic debate, and the political class in many countries – especially the United States – lacks the capacity or courage to stand up for the public interest.

The BBC is a striking example of what public policy can accomplish in the area of media. Left to the market, nothing like it would have ever existed.

Some argue that any effort to limit capitalist domination of media is an underhanded backdoor effort to eliminate capitalism. It is true that for those who are socialists or who are critical of capitalism, having a commercial media system is problematic; the track record is that such a system will not have much enthusiasm for hard-edged social criticism, especially from the Left. But even those who believe in the legitimacy of capitalism need not believe that media should be the sole province of

capitalists. Indeed, they should not, if they value democracy. Market economies can survive, arguably even prosper, without having US-style commercial media systems. The real question is whether democracy can survive as anything more than a superficial fig leaf covering concentrated private power.

As for the argument that new digital technologies render regulation – meaning regulation that might impede private interests, not regulation that assists them – obsolete, it does not even pass rudimentary analysis. Merely being able to launch a website is wonderful and it has opened up the media system, but what has been striking has been how little effect it has had on the commercial media system so far. Not a single new commercially viable media content concern has been introduced on the Internet. The power of the market trumps the magic of the technology. If we want the Internet to spawn a new generation of viable media content providers, we cannot look to the market to produce that outcome. It will require explicit policies to generate such an outcome.

Moreover, however one might want the Internet to develop, policy decisions will go a long way in pointing it in its ultimate direction. Global trade agreements, intellectual property laws and regulations, traditional media subsidies and regulations and the like will be decisive in determining the future of the Internet. As with media writ large, the question is not whether we want regulation, but what type of regulation we want.

It is worth noting as an addendum, that the Internet itself is a tremendous testament to public sector policy-making and cooperative economic and social activity. The Internet would never have developed if left to the market. The same is true of many other innovations in communication. In short, the public sector has a cornerstone role in communication, and fundamental interests to protect. This also suggests that the positive economic benefits from developing the media-information sector can, should and do come from significant public sector involvement.

Robert W. McChesney is a research professor in the Institute of Communications Research and the Graduate School of Information and Library Science at the University of Illinois at Urbana-Champaign. He is the author, with John Nichols, of *Our Media, Not Theirs: The Democratic Struggle Against Corporate Media* and, with John Bellamy Foster, the forthcoming *The Big Picture: Understanding Media Through Political Economy*. A paperback edition of McChesney's multiple award-winning *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, with a new preface by the author, was published in 2000.

Address: Institute of Communications Research, College of Communications, University of Illinois at Urbana-Champaign, 237 Gregory Hall, 810 S. Wright St Urbana, IL 61820.

[email: rwmchesh@uiuc.edu]