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Transparency and Funding of Public Service Media – Die deutsche Debatte im internationalen Kontext



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This significant book explores debates and issues driving efforts for greater transparency in public service broadcasters about their revenues and expenditures and clarity about the nature and uses of state aid. Demands for transparency have originated from both competitors and public interest groups who argue that accountability and needs for information to enlighten contemporary policy require greater openness in the state-supported firms. The volume is set within the context of German debates, but informs that discourse with chapters exploring similar initiatives and discussions in other countries. It is a unique book in which the international debates are addressed in English and the German debate in German for clarity, precision, and depth. This is a useful addition to a growing body of literature on the financial aspects and effects of public

service broadcasters. It accentuates that view that public service organizations must be responsive to changing social perspectives and demands and that they cannot expect their remits and operations to remain unchanged in the rapidly evolving communications environment.

Professor Robert G. Picard,
Reuters Institute, University of Oxford

As public service media organizations operate in ever more diverse and diffuse media environments, the question of the transparency of their operations, and their accountability to multiple publics, has become increasingly important. While public service media have their critics, the rise of the „fake news” controversy suggests that their importance to civic discourse may be increasing as the range of media choices grows. The contributors to this collection navigate this terrain over multiple locations, including Europe, the US, Canada, Australia, New Zealand, Israel and South Africa. The collection also includes activist and civil society voices alongside those of academics. This book is bound to be an important reference point for understanding the future of public service media.

Professor Terry Flew,
Queensland University of Technology

Changing media landscapes have provoked heated debates about the role of public service media in Western democracies. In an attempt to cope with this legitimacy crisis, both scholars and PSM themselves stress the importance of accountability mechanisms. This book offers a timely collection of international perspectives on the transparency and funding of public service media and serves as a valuable reference point for academics and policy-makers.

Professor Manuel Puppis
University of Fribourg

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Teil I

**Transparency and Funding
of Public Service Media:
International Perspectives**

Transparency and Funding of Public Service Media in Germany, the Western World and Beyond

1

Christian Herzog, Leonard Novy, Heiko Hilker and Orkan Torun

Abstract

Funding and transparency of public service media (PSM) have constituted key media policy themes—and matters of considerable public debate—in Germany for some time now. The latter serves as the starting point for this book, which not only describes topical developments and discussions surrounding Germany's public broadcasters but also assesses transparency and funding in 14 international PSM systems. Elaborating on the links between policy-making communities and academia, this chapter gives an introduction to the German developments and debates. It explains the choice of international case studies and provides for an overview of the contributions that follow.

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Introduction

Public service media (PSM) organizations across the globe are under pressure. Patterns of media use, distribution and production are in flux and this has implications for PSM funding, which, as long as funds derive from a licence-/household fee or state subsidies, decreases or becomes increasingly contestable.¹ Financing public broadcasting has always been a challenging and often controversial issue for policy-makers, with a continuous need for reevaluation (Blumler and Nossiter 1991). Roughly until the mid-1980s, public service broadcasting policies in most liberal Western countries were principally determined by socio-cultural concerns. With subsequent technological developments, spectrum scarcity became largely obsolete and erstwhile separated fields such as media and telecommunications increasingly converged. Convergence trends and competition led to the rising significance of economic imperatives in regulating media markets (Van Cuilenburg and McQuail 2003). Increasing European Union (EU) regulation added to this shift and intensified tensions between economic and cultural regulatory objectives and respective competent jurisdictions.

During the last 10 to 15 years PSM organizations adapted to the new environment by reorientating themselves towards the creation of public value, a path first struck by the BBC in 2004 in order to make a case for Charter renewal (Potschka 2012, p. 132). In the years that followed, variants of the BBC's public value test were implemented across Europe (Donders and Moe 2011).² The underlying motive in implementing the respective measures was not just a proactive embracement of a trend in public management. Rather, the tests, involving certain requirements for transparency, were implemented as a response to the

¹According to research by the European Broadcasting Union (EBU 2015a, p. 11), in 2015 the income of the top 10 European commercial broadcasting groups (€52.49 billion) was greater than the total income of the 63 PSM organizations that are EBU members.

²The public value test is a detailed set of regulations for Internet and new media services, assessing the value for users and society and the impact on the domestic market.

complaints about distortions of competition by public funding and ‘illegitimate’ state subsidies put forward by publishers and other media businesses.³ Since then, as governments across the globe increasingly implement transparency initiatives and experiment with ‘open government’ (Bowles et al. 2014), the calls for more transparency in relation to PSM have become louder. In Germany, for example, there are demands for the disclosure of the costs of sport rights, salaries of high-profile presenters and journalists as well as expenditures incurred for retirement provision. While the case for greater transparency of the PSM organizations initially originated from corporate interests, this time a variety of civil society interest groups and to some extent even the public at large joined in. A key reason for this perhaps unprecedented public scrutiny of the Consortium of Public-Law Broadcasting Institutions of the Federal Republic of Germany (ARD), Second German Television (ZDF) and Deutschlandradio was the recent German PSM funding reform replacing the licence fee bound to the possession of a receiving device with a new household fee (Herzog and Karppinen 2014). The new household-fee model, which came into force on 1 January 2013, allows for only few exemptions from the rule that each household (and business) is subject to fee liability. The reform ultimately came into being after distinguished lawyer and former judge of the Federal Constitutional Court Paul Kirchhof had made recommendations for the future of PSM funding in a commissioned report (Potschka 2011). In 2017 it is Kirchhof who will deliver another report that is widely expected to serve as a blueprint for a new commitment to transparency by ARD, ZDF, Deutschlandradio and the PSM governance boards (*Gremien*).⁴

As early as 2013, when the new household fee had been in place for only a couple of weeks, Kirchhof emphasized the need for greater transparency. Each person and business paying the PSM fee has a right to know how funds are spent, which programmes and audiovisual contents are bought and produced, and at what price (Kirchhof 2013). These demands, however, remained largely ineffective and were not implemented by either the Federal Government or the *Länder* governments. Furthermore, the Federal Constitutional Court, the most influential actor in German post-war media policy-making, had repeatedly called for more

³The tests were implemented in those northwest European countries where PSM organization’s media and Internet services are most advanced. Publishing and other media businesses were accordingly most affected, and thus complained.

⁴The most important PSM governance boards (*Gremien*) are the broadcasting councils (*Rundfunkräte*) of the nine PSM organizations which form the ARD, the ZDF television council and Deutschlandradio broadcasting council (*Hörfunkrat*).

transparency in its jurisdiction of broadcasting freedom but, until recently, no major action was taken. In its ‘ZDF-decision’ of 25 March 2014, the Court dealt with the composition and politicization of the PSM governance boards (see Thomass 2016). In the decision the Court stressed that the governance boards have to guarantee at least a minimum dimension of transparency to enable the public to exert an additional controlling function. Transparency is required to disclose the influence of governmental and government-affiliated members. It is also a means to ensure against illegitimate agreements, the abuse of power and control of vested interests (BVerfG 2014).

According to Dörr (2016), ARD and ZDF have for a long time seen the PSM governance boards as the only bodies to whom they are accountable. At last, the boards are composed of members of socially relevant groups and, in turn, represent the public. This notion, however, as the Federal Constitutional Court has outlined, is merely one side of the coin. The other side is direct accountability vis-à-vis the public. With regard to the latter, Volker Herres, ARD director of programmes, sees a conflict of objectives. On the one hand, PSM organizations must be transparent about how they spend funds. On the other hand, they must spend economic resources efficiently and have to comply with budget discipline. Fulfilling both objectives requires striking a difficult balance. If PSM organizations publish how much they bid for or spend on sports rights, it gives their competitors an advantage. Publishing individual salaries will naturally lead to a rise in payments as employees earning less than others renegotiate their contracts. This, in turn, contradicts the overall commitment to economic efficiency (Herres in Schillat 2014). How to solve this matter by determining adequate degrees of transparency is a matter of contested debate which goes beyond publishing figures about how funds are spent. The EBU has identified four indicators of transparency: corporate transparency, financial transparency, remit transparency and social transparency (EBU 2015b, pp. 10–11). These indicators, in combination with the forthcoming Kirchhof report about PSM transparency, will serve as the basis for ARD, ZDF, Deutschlandradio and the PSM governance boards’ new commitments to transparency (see Wille’s chapter in this volume), rendering transparency the key media policy theme in Germany during 2017.

Kirchhof (2016) has already given some insights about his treatment of PSM transparency: There must be a balance between the objective to enable the public to control PSM and the operational capabilities of the PSM governance boards as, for instance, the conduct of *ex ante* debates of planned programmes and possible alternatives within the PSM governance boards lacks feasibility. As freedom

of information laws are strikingly different in the 16 German *Länder*⁵, Kirchhof holds the view that excessive freedom of information rights may enable individual groups that seek to suppress critical journalistic content to paralyse PSM organizations. In this regard, he also refers to a decision of the Federal Administrative Court, which noted that the protection area PSM organizations enjoy covers all issues related to programming. There is, however, no protection that covers their entire range of functions (BVerwG 2013). Concerning financial transparency, Kirchhof differentiates between transparency vis-à-vis individuals, the PSM governance boards, *Länder* parliaments, audit courts and the Commission for Ascertaining the Financial Needs of the Public Broadcasting Corporations (KEF). He notes that there must be a level playing field between PSM organizations and the commercial media business and that the same transparency requirements should apply to both (Kirchhof 2016). It is expected that these notions will serve as guiding themes in his report about PSM transparency.

Comparing Transparency and PSM Funding

Germany is not, by far, the only country in which PSM organizations are challenged by increasing requirements for transparency and accountability. Still, as the 14 international case studies exemplify, developments, trends and issues differ, depending on national idiosyncrasies, different regulatory traditions and distinct relationships between the media and politics. The most elaborate treatment of the latter can be found in Hallin and Mancini's media systems typology *Comparing Media Systems*. Hallin and Mancini (2004) based their three models on four key dimensions: the structure of media markets; political parallelism (journalistic) professionalization; and the role of the state. To measure each dimension empirically they used a variety of indicators. For instance, they considered public service broadcasting the most important form of state intervention in the media and referred to it as an indicator for the role of the state. Revisiting their eminent work and reviewing the research of others that resulted of their 2004 book, Hallin and Mancini (2017) identified four major purposes in how their work was used: (1) scrutinization of the theoretical framework, (2) case selection for comparative analysis, (3) operationalization of specific variables or (4) testing the

⁵In some *Länder*, PSM organizations are excluded from the scope of freedom of information legislation.

patterns. The contributions in this volume prepare the ground for future studies which set out to work with the indicator of PSM funding. Based on the transparency theme, the chapters may also contribute to the development of other indicators.

One key argument brought forward in Hallin and Mancini's work was that the three models converge towards the liberal model, with a fairly limited role for the state.⁶ Focusing solely on the indicator of PSM funding, the chapters in this volume confirm this convergence towards the liberal model. With the exception of Canada, in all countries under study the amount of public funding that PSM organizations receive is declining. Even though the Canadian Broadcasting Corporation's (CBC) parliamentary funding for the period from 2017 to 2021 has been increased, this is a very short time period for assessing a hypothesis about long-term change. Furthermore, this increase followed years of cutbacks.

The choice of countries was largely based on the criteria relevance of the PSM regime, topical developments in relation to transparency and funding of PSM and suitability of the case for issues of policy transfer.⁷ The contributions exemplify that in those countries where there is no adequate funding in place for PSM, transparency is rather a 'luxury topic'. The practice-based contributions which form Part I of the book introduce trends, initiatives and solutions that may be scrutinized for their suitability for policy-transfer. The chapters are written by media policy scholars and many of the contributors play(ed) active roles in domestic processes of media governance and regulation and/or have formerly worked in PSM organizations. As such, the book sets out to contribute to bridging the gap between academia and policy-making (see e.g. Braman 2003; Just and Puppis 2012; Ali and Herzog 2016).

International Case Studies (Part I)

This chapter has provided a brief overview of topical German developments in relation to PSM transparency and funding. The chapters that follow in Part I are broadly organized according to their geographical distance from Germany. Chapter 2 starts with an elaboration of the Austrian PSM organization Österreichischer Rundfunk (ORF). Anne Ganter and Annika Sehl outline transparency as a controversial

⁶Therefore, a chapter investigating the US case is included.

⁷With regard to South Africa the role of the civil society organization SOS Coalition appears as particularly interesting as (civil society) interest groups offer an innovative opening into investigations of media policies and PSM governance (Herzog and Zetti 2017).

topic in Austria, while the ORF financing regime, based on a receiving-device-dependent licence fee, is unlikely to change in the near future. As with other European PSM regimes, changes in ORF financing and transparency resulted from supranational specifications by the European Commission. Like in Germany, the ORF's distribution of content via apps and social media accounts is controversial. What makes the small Austrian media market distinctive is that consumers have adapted comparatively slowly to digital content and this contributes to ORF's tardy rate of change. Chapter 3 deals with the Netherlands. Leen d'Haenens argues that the Dutch PSM organization NPO remains firmly rooted in the domestic media landscape, even though it has been subject to cutbacks in funding. NPO relies on mixed funding. Public funding comes in the form of a government grant and the portion of commercial funding (around 30%) is comparatively high. However, the NPO has made great strides in achieving a suitable balance in the transparency of its reports with respect to its 'owners', taxpayers, and market players.

In Chap. 4 Karen Donders and Tim Raats identify transparency as a prerequisite for accountability. They make a case for increased transparency of multi-stakeholder-driven policy-making processes but stress that the effectiveness of policy-making does not necessarily increase with more transparency. According to Donders and Raats, governments could increase their accountability vis-à-vis electorates if they were clearer about the ways in which they use input from stakeholder consultations, public hearings, research and audience surveys. Beyond this, the chapter emphasizes the need to include audiences more actively in PSM policies. After providing an outline of the most important transparency instruments of the Flemish PSM organization Vlaamse Radio- en Televisieomroeporganisatie (VRT), Donders and Raats conclude that the VRT appears to be hesitant to do this. Finally, they develop some policy suggestions of how to increase VRT transparency.

The notion of transparency has also fostered recent debates in France, which, as Raymond Kuhn outlines, in Chap. 5, rarely move beyond the purview of certain established elite stakeholders. The public is rarely consulted in any formal way as an integral part of policy reform and have no representation on the governing bodies of the French PSM organizations. Kuhn also examines the funding of PSM in France. With four organizationally separate entities, PSM in France is fragmented, though in recent years there has been a regrouping of the public television companies within the single framework of France Télévisions.

In Chap. 6 Jeanette Steemers interprets the politics of children's television in the UK as a microcosm of many PSM challenges related to competition, funding,

commercialization and changing modes of consumption in a rapidly changing media landscape. The chapter focuses on the provision of public service content and services for children in the context of debates around the BBC and Charter Review, which took place between July 2015 and May 2016. It draws extensively on data from Ofcom. Steemers stresses that PSM needs to connect much more effectively with future audiences, specifically young people and children, whose engagement with public service television is becoming weaker as more of their time is taken up with online, participatory and mobile media. In Chap. 7 Phil Ramsey discusses PSM in Ireland in the context of the recent financial crisis and major demographic changes. After an introduction to the Irish social and political-economic context and a brief historical review of PSM in Ireland, the roles of the domestic PSM organizations RTÉ and TG4 in the Irish media market are discussed. The chapter addresses initial government support for the introduction of a German-style household media fee: a Public Service Broadcasting Charge. While the charge was intended for introduction in 2015, it was ruled out by the Irish Government in 2016.

Chapters 8 and 9 deal with two Nordic countries. Christian Nissen examines the Danish PSM system: a complex arrangement of 11 independent PSM organizations. These represent a considerable variety in their size, legal status, market share and funding, which includes a combination of licence fee, advertising and subscription. Nissen focuses on recent developments in the licence fee, its amount, the criteria for charging and how it is regarded by Danish citizens. The chapter also treats the issues of platform neutrality and the political debate on possible alternative PSM funding methods. Finally, PSM funding is discussed in relation to accountability and transparency. In Chap. 9 Kari Karppinen and Marko Ala-Fossi elaborate on the Finnish case. Yle, the Finnish PSM organization, is financed almost entirely by a special public broadcasting tax and does not receive revenues from advertising or sponsorship. It is firmly rooted in the Finnish media landscape, though in recent years its funding, transparency, efficiency and accountability have been questioned, with many of the attacks from the commercial media industry. The chapter reviews the respective debates, the issues discussed and arguments brought forward. It concludes that, in the short term, the fragile consensus on media policy will most likely be maintained.

In Chap. 10 Amit Schejter provides a critical-legal history of the financing of public broadcasting in Israel, reviewing 55 years of rulemaking and policy development. Israeli public broadcasting has relied on licence-fee funding since 1965 before a recent law reform eliminated the licence fee. Schejter concludes that it is not the funding mechanism that threatens Israeli public broadcasting's viability but political expediency and lack of respect for its public service mandate.

Lukasz Swiatek and Benedetta Brevini in Chap. 11 examine the funding and transparency of the Australian Broadcasting Corporation (ABC). Throughout its history the ABC has had to accept multiple incisive budget cuts, mostly imposed by conservative governments. These had an impact on the PSM organizations operations, involving, for instance, less funding for programme production. Lately, a federal review has also criticized the ABC for its lack of transparency. Swiatek and Brevini outline the ABC's ongoing fight to ensure budget efficiency and transparency. They give an overview about recent developments such as the merit-based selection process for board members. The chapter concludes that the ABC remains a perpetual battler. This is followed in Chap. 12 by a contribution from Alan Cocker who investigates the case of New Zealand. In the late 1980s the public broadcasting system in New Zealand experienced unprecedented deregulation. Free market advocates often refer to it as a role model, not least for its move from the licence fee to a contestable funding regime. Cocker, by contrast, argues that the New Zealand history of public broadcasting in many instances stands for government failure. Broadcasting policies failed to recognize the distinctiveness of the sector, were not broadly supported by the public and did not include extensive public consultation. Furthermore, contestable funding has not effectively and consistently delivered high quality PSM programmes but, rather, has encouraged populist local content.

Chapter 13 deals with Canada. Gregory Taylor outlines that in 2016, in contrast to most other PSM regimes, Canada's liberal government, increased the funding of the Canadian Broadcasting Corporation (CBC) for the period from 2017 to 2021. Still, transparency and accountability remain structural flaws for which further reform is needed. Taylor argues that the CBC needs to address these issues in order to become truly responsive to Canadian audiences. In the United States the situation is strikingly different as PSM plays a small role in the large and commercially driven liberal US American media market. According to Matthew Powers (Chap. 14), pressing issues for PSM in the US are to secure adequate funding and to preserve its independence from government, sponsors and culturally elite audiences. With such challenges, transparency is rather a 'luxury' topic. The chapter concludes by discussing future directions for PSM in the US. In the last chapter of Part I Viola Milton examines the funding of the South African Broadcasting Corporation (SABC). The SABC consists of two PSM stations and one commercial media outlet. The latter, by mandate, is supposed to cross-subsidize the PSM stations, which is not happening in practice as the commercial station is just not profitable. Drawing on recommendations of the civil society interest group SOS Coalition, the chapter unpacks some of the challenges faced by the SABC to secure funding for its public service arm that would be realistic and

substantial enough to allow the public broadcaster to fulfil its mandate in a competitive market.

From South Africa, we return to Germany. Part II of the book delves deeper into the respective German developments and debates. It also introduces a variety of viewpoints towards PSM funding and transparency with some contributions working towards conceptualizations of the latter. The overwhelming majority of the chapters in Part II are written by media policy practitioners who play active and often decisive roles in domestic processes of media governance. The list of contributors—representing most stakeholders involved in the respective German debates—includes regulators, politicians, PSM managers, and stakeholders from business and civil society, complemented by scholars.

The German Contributions (Part II)

The second part of the book (in the German language) starts with an introductory chapter that provides a detailed outline of the German developments, debates and legal issues. In Chap. 17 Uwe Grund, deputy chairman of the North German Broadcasting Corporation (NDR) broadcasting council (until May 2017), and former chairman of the ARD *Gremienvorsitzendenkonferenz*⁸, links transparency with trust. Referring to Hamburg's transparency law, Grund argues that calls for increased transparency emanate from a lack of confidence. According to Grund, other PSM organizations, such as the BBC and the Austrian Broadcasting Corporation (ORF), are more advanced than the ARD as issues of programme quality and how PSM offers fulfil societal needs are more central to the work of their governance boards. In Chap. 18 Willi Steul, director of Deutschlandradio, emphasizes the importance of justifying the value of PSM. Steul refers to four criteria against which transparency ought to be assessed: quality of the PSM offer, the recognition of changing audience expectations, an optimization of cost-effectiveness and transparency of economic actions. Steul believes that current procedures to make expenditure in a variety of categories transparent are appropriate. Responding to demands for the disclosure of individual salaries he stresses caution and refers to personal rights and data privacy laws.

⁸The ARD *Gremienvorsitzendenkonferenz* is the governance body dealing with the joint functions of the nine federal PSM organizations combined in the ARD.

Chapter 19 is written by ARD chairwoman and Middle German Broadcasting Corporation (MDR) director Karola Wille. Wille gives an overview of the transparency initiatives of the MDR. These include annual reports to the *Länder* parliaments⁹, producer reports (*Produzentenberichte*) (since 2015), data protection reports, equal opportunities reports as well as costs for the MDR's own programme productions. Beyond this, there is a website on which the MDR corrects inaccurate journalistic information. The next steps in this direction will be inspired by the EBU's guidelines and the recommendations outlined in Kirchhof's forthcoming report about PSM transparency. In Chap. 20 Deutsche Welle director Peter Limbourg starts out by examining the link between state funding and independence. Limbourg stresses that Deutsche Welle, despite being funded by the Federal Government rather than a portion of the household fee, enjoys journalistic autonomy. A major challenge for Deutsche Welle is to find the right balance between quality and accuracy of journalistic information and the pressures of swift coverage that grew with digitization and the increasing reception of news via social media. Limbourg notes that PSM organizations have to prioritize quality and accuracy before introducing the platform [Verify.Media](#). Partly funded by Google's Digital News Initiative, [Verify.Media](#) supports the verification of news material.

In Chap. 21 Siegfried Schneider, president of the *Bayerische Landeszentrale für neue Medien* (BLM), the regulatory authority for new media in Bavaria, and chairman of the conference of directors of the *Länder* media authorities¹⁰, indicates that out of the household fee, which amounts to €17.50/month, the *Länder* media authorities receive € 0.33. They use these funds to license and regulate private commercial broadcasters and to engage in mediapedagogical projects. As with the federal PSM organizations that form the ARD, different rules and regulations apply to the 14 state media authorities in relation to transparency, and some authorities are more advanced than others, perhaps even more advanced than the governance boards of ARD and ZDF. For instance, while the first public meeting of the ZDF Television Council took place in March 2015, the BLM Media Council (*Medienrat*) has held its meetings in public since 1985.

In Chap. 22 Claus Grewenig und Daniela Beaujean, representatives of the *Verband Privater Rundfunk und Telemedien* (VPRT), the interest group of private commercial TV, radio and telecommunication businesses in Germany, outline the

⁹The MDR serves the three *Länder* Saxony, Saxony-Anhalt and Thuringia.

¹⁰*Vorsitzender der Direktorenkonferenz der Landesmedienanstalten.*

VPRT position with regard to PSM transparency. In 2003, the VPRT had already filed a successful complaint with the EU Commission about illegitimate distortions of competition by public funding. Grewenig and Beaujean argue that the aggregated cost figures provided by ARD, ZDF and Deutschlandradio are insufficient. Trimediality and the online activities of PSM organizations are the key areas where interests represented by the VPRT demand more PSM transparency. The chapter that follows is written by Tabea Rößner, the speaker for media, creative economy and digital infrastructure of Bündnis 90/Die Grünen in the German *Bundestag*. Rößner addresses the PSM governance boards and argues that these should increasingly discuss issues of quality and projected expenditures. Overall, the PSM governance boards, organized from within the PSM organizations but formally independent, should confront ARD, ZDF and co. more critically. Beyond this, Rößner proposes the implementation of audience councils to establish closer bonds between PSM organizations and audiences.

An actor with a similar goal is the civil society interest group *Initiative Publikumsrat* [Initiative for an Audience Council]. In Chap. 24 one of its founders, Christine Horz, investigates means of audience participation in the processes of German media governance. After introducing the motivations that led to the establishment of the group, the chapter addresses a variety of current developments in PSM transparency and funding in Germany. Subsequently, these issues are linked to the positions of *Initiative Publikumsrat*. According to Horz, three dimensions of audience participation can be distinguished: (1) viewers and listeners in their capacity as citizens and not merely consumers should have opportunities to participate in the processes of media governance by means of their inclusion in the broadcasting councils; (2) audiences should be allowed to co-determine programme content; (3) audiences should be included in the debates about future PSM remits and the creation of public value.

In Chap. 25 media scholar and independent three-step test consultant Hermann Rotermund deals with the transparency of the broadcasting councils. Focusing on the WDR, he makes a case for supporting the existing governance model. This is followed by Chap. 26 in which Christian Handke and Christian Herzog, both from Erasmus University Rotterdam, discuss how to generate a more robust evidence base for the financing of PSM organizations. Handke and Herzog suggest choice experiments as a relatively cost-effective and flexible method to achieve two objectives: (1) to document the full social value of public broadcasting and (2) to support the adaptation of public media services in the context of social and technological change. The chapter first elaborates on the challenges associated with the financing of services that have public good attributes. It then identifies choice experiments as the most suitable experimental method to establish the

value of PSM, summarizing previous applications and suggesting extensions and refinements in future research.

Chapter 27 is the second contribution from a civil society interest group. On behalf of the Open Knowledge Foundation (OKF) Germany, Mara Mendes elaborates on PSM and open data. To our knowledge, this is the very first time that the OKF has taken a position in relation to PSM. Mendes acknowledges that making the PSM offer fully available online would raise a variety of legal issues. At the same time, such a move would strengthen the accountability of PSM. Finally she calls for the increased use of Creative Commons licences and the opening-up of metadata and archives. Following this, Chap. 28 features an interview with Heinz Fischer-Heidlberger, chairman of the KEF and former president of the highest Bavarian audit court. The KEF was installed in 1975 as an independent regulatory agency by the heads of the *Länder* governments to depoliticize the process of settling the licence fee. Fischer-Heidlberger introduces the KEF's remit, work procedures and intervention instruments. Thereafter, Thomas Frickel, chairman of the *AG Dokumentarfilm*, the interest group of German documentary film-makers, investigates the PSM funds spend for commissioned and co-produced programmes. According to Frickel, a large portion of these programmes is not fully financed. One reason for this is the amount of money that ARD, ZDF and co. withhold for retirement provisions. This makes it difficult for independent producers to recoup their costs. Transparency concerning this matter is in the interest of the PSM organizations, which can thereby regain trust.

In Chap. 30 Konrad Mitschka, responsible for the ORF Public Value report, gives an account of PSM transparency in Austria and links this to issues of competition between PSM organizations and commercial media businesses in a common market. According to Mitschka requirements for PSM transparency can create asymmetries, undermining the chances of PSM organizations to compete, which, for example, is manifest in the German three-step test. Mitschka notes that transparency in the public interest must inform about media ownership, provide details about the persons or companies who produce audio-visual content and give an account of how content is created and which quality control measures apply.

It is to be expected that transparency and funding remain central media policy issues in PSM regimes in Germany, the Western world and beyond. It is hoped that the procedures and state of implementation, combined with the views of stakeholders involved in shaping further developments as covered in this volume will be a useful basis for future research in these areas and help to inform policy-makers.

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Austria: Financing and Transparency in the Case of the ORF. Strong Structures, Several Controversies and a Little Flexibility

2

Sarah Anne Ganter and Annika Sehl

Abstract

Public service broadcasting (PSB) in Austria occupies a particularly central role in this small media market. Public debates about the ORF in Austria are controversial in relation to transparency issues, but less predominant when it comes to changes in the financing regime. ORF structures are strong and largely inflexible. Changes in financing regimes and transparency as a core value have been made, following formal requests by the European Commission. Overall, consumers have adapted comparatively slowly to digital content and this contributes to ORF's slower rate of change. Additionally, media law obstructs more stringent digitalisation efforts. Licence fees in Austria are accordingly still bound to devices, excluding the mobile phone. National debates are mainly led by political parties and ORF officials and frequently concern personnel and structural changes. ORF's distribution of content via apps and social media accounts is subject to controversial debates. Like in Germany, commercial players claim unfair competition as ORF's content is largely licence fee funded. In summary, ORF's strong structures, Austrian media consumption habits, and media and competition laws foster ORF's central position in Austria. These factors also impede further changes to its established financing regime.

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Keywords

Austria · ORF · European Audiovisual Media Service Directive · Germany · Public value test · Financing regime · Transparency · Small media market · Structural change

The Role and Market Position of Public Service Broadcasting in Austria

This chapter examines the role of the public debate on financing and transparency with regard to the Austrian public service broadcaster, the ORF (*Österreichischer Rundfunk*). We show that these two issues are highly relevant and have attracted considerable attention over the last years, although this attention is divided between the national and European arenas. Changes to the financing regime of the ORF were introduced in 2012 at the request of the European Commission but, at first, these were not the subject of intense national debate. Only recently have discussions around the financing models of the ORF gained urgency at the national levels, as the ORF law (Bundeskanzleramt 2012) requested a debate concerning this issue until the end of 2016.

We argue in this contribution that the strong position of the ORF in this comparatively small media market is the reason for why transparency and financing are debated to a different extent and scope in Austria. This constellation makes transparency a critical, national issue, whilst the evaluation of the financing models is treated as of secondary importance. A second factor that might explain the lack of public debate on the financing model is the relatively slow adjustment of the Austrian market to digital models for distributing news. Austrian news organisations operate in a market where news consumption habits have remained comparatively traditional, as digital and mobile forms of consuming content are developing more slowly compared to other countries (Fletcher et al. 2015; Newman et al. 2016).

According to the Austrian TV and Radio Licence law, all Austrian households with a television or radio need to register and pay a licence fee. The Federal Administrative Board decided in 2014 to exclude computer and mobile devices with internet access (Bundesverwaltungsgericht 2014). The *Gebühren Info Service GmbH* (GIS) is a 100% subsidiary of the ORF and administers the payments. The fee differs from one federal estate to another (*Länder*), but accounts for around 244 m € per year for TV and radio (GIS 2015). The licence fee accounts for 60% (578.4 m €) of the ORF's budget, and the remainder is obtained from

advertising (221 m €) and ‘other services’ (176.9 m €). In 2015, the overall budget consisted of 976.3 m € (ORF 2015).

The ORF provides a wide range of channels, including four television and 12 radio channels. These compete directly for audience attention with other national commercial channels, such as ATV, as well as with other German speaking channels, such as RTL, SRG, ARD and ZDF. According to a news consumption survey, 19% of the participants stated that, in 2015, they accessed the ORF online weekly, whilst 43% said that they used the TV-channel ORF II and 42% said that they used ORF I weekly for consuming news (Fletcher et al. 2015, p. 20). The *Digital News Report 2016*, however, shows that Austrian consumers are catching up with other countries (Newman et al. 2016). The ORF is, after the daily newspaper *Kronenzeitung*, the most influential news brand in the country and the fact that competitors were only granted access to the terrestrial TV market in 2001 favoured this development (Trappel 2007).

As consumers integrate new digital channels slowly into their consumption habits, the ORF has been even less pressured to explore new ways of distributing content. It was only in 2014 that the ORF launched their first news app. The restrictive nature of the new media law (Bundeskanzleramt 2012) also obstructs more stringent digitalisation efforts. This confirms once more that the environment in which the ORF operates contains strong, traditional structures (see also: Ortner et al. 2009). This situation supports the status quo and in only a few cases allows for debate which has the potential to trigger a more profound change to the existing structures.

Developments and Debates: Intervention of the European Commission and the Legal Consequences

The most fundamental change in the last few years was the legal amendment of the audiovisual laws in Austria. In 2010, the new KommAustria law (BGB1 2010/50 ‘Rundfunkrechtsnovelle’) amended the existing audiovisual laws to create a new regulatory structure that complies with the rules set by the European Audiovisual Media Service Directive (AVMSD). With the establishment of this new regulatory frame, the Austrian government reacted to the need to adapt the regulatory frame to the new situation created by the digitalisation of audiovisual content.

The changes enacted transformed the regulatory body from an authority subordinated to the Federal Chancellor (with all the decisions taken by the general director) into an independent panel authority which is not subject to instructions

from any other authority. The revision of the ORF Act in February 2010 expanded KommAustria's supervisory powers to include the ORF and its subsidiaries. The ORF is now steered by the communications regulator KommAustria, and the *Rundfunk und Telekom Regulierungs-GmbH*, that supports its activities (Rundfunk und Telekom Regulierungs-GmbH 2010). The Audiovisual Media Services Act (formerly the Private Television Act) implements the AVMSD and expands KommAustria's control over public service broadcasting (PSB) to include audiovisual media services on the Internet.

Based on paragraph 4 f) of the so-called 'ORF-law', KommAustria decided in 2012 that the ORF had to withdraw from social media and delete its 39 different Facebook accounts. This restrictive position towards the use of new platforms for distributing news significantly influenced the development in Austria. For instance, the ORF waited until 2014 to introduce its first news apps. In the same year, the constitutional court had decided that the use of Facebook accounts by the ORF did not violate the constitution. Today, the ORF uses social media and also several news apps to distribute its content.

In addition to the need to regulate the use of digital means of distributing ORF content, the other driver of this legal reform was the European Commission's legal action regarding the financing regime of the ORF (European Commission 2008b). The investigation was based on the European Commission's state aid rules, which the Commission considered were being violated in several countries, including Austria (European Commission 2008a; Steinmaurer 2012). Possible market activities beyond the public service commitment were detected by the Commission, particularly in the areas of sports programmes and online activities. The Commission therefore demanded a clarification of the public service remit as well as the introduction of ex-ante tests to evaluate the public value of any proposed programmes.

This discussion plays out in a wider context in which the Commission encouraged its member states to (a) 'Set out in a formal act a clear remit for public service broadcasting', (b) 'Ensure independent national monitoring of the fulfilment of the PSB remit', and (c) 'Ensure that the funding of the PSB is proportionate' (European Commission 2005). In reaction to this, many European countries developed public value tests to evaluate the impact of planned, publicly-funded media services prior to their introduction (see Breitenacker 2013; Donders and Moe 2011). The Commission closed its investigation by concluding that the 'financing regime of Austria's public service broadcaster ORF is now, following formal commitments from the Austrian Government, in line with EU state aid rules' (European Commission 2008b). Neeli Kroes, European Commissioner for Competition (2004–2010), stated that 'the commitments offered by Austria will ensure the right