

## **RELIGION AND MEDIA: LEGAL CONTROL & REGULATIONS. COMPARATIVE ANALYSIS IN EUROPE AND USA**

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### **RESUMEN:**

Este trabajo está centrado en la elaboración de un análisis comparado relativo al control y regulación sobre materia religiosa en los medios de comunicación en Europa y EEUU. El análisis explora inicialmente las principales definiciones y tipos de control social, político y jurídico en materia religiosa en los medios de comunicación públicos y privados en Europa y EEUU. Sobre todo en el ámbito de la programación en Radio y Televisión.

Un análisis comparado desarrollado en tres áreas:

1. El poder de los medios de comunicación en la sociedad y su necesidad de control jurídico
2. Esfera de control. Definición y límites del control jurídico en EEUU y Europa: moralidad pública y protección del menor, difamación, lenguaje que promueve la violencia y censura.
3. Programación en los medios de comunicación públicos y privados y los nuevos retos en la era digital y vía satélite en materia religiosa.

**Palabras clave:** religión y medios de comunicación – difamación – expresiones de odio o lenguaje que incite a la violencia – censura y moralidad pública.

### **ABSTRACT:**

This presentation is focused on a comparative analysis of legal control and regulations regarding to religion and media in Europe and United States.

The analysis initially explores the main definitions and different types of social, political and legal control regarding to religion in public and private media in Europe and United States. The scope is mainly Radio and Television programs.

The comparative analysis is developed through three topics:

1. Power of media in the society and the need of legal control.
2. Scope of control. Defining the limits of legal control in US and Europe: public morality and protection of minors, libel, hate speech and censorship.

3. Public and private broadcasting and the new challenges of the satellite and digital era regarding to religion.

In this process, I will attempt to establish the main conclusions of my presentation under the instruments offered by a comparative analysis, examining problems and potential solutions regarding to religion in Television and Radio programs, and ways of improvement.

**Keywords:** religion and media – libel – hate speech – censorship – public morality.

## *Religion and media: legal control & regulations. Comparative analysis in Europe and USA*

### **I. POWER OF MEDIA IN THE SOCIETY AND THE NEED OF LEGAL CONTROL**

Media has been increasingly significant in all societies and communities because their massive capability of spreading ideas, beliefs, moral standards and building public opinion. Media has become one of the most powerful elements in any society, an element that has to be legally framed to fit, not only in the ethical and political standards of a particular community, but in the standards of the international community as well.

There is no doubt that some legal framework is necessary. Such a legal framework is necessary in order to protect the well being of the society from abuses that can be spread at large scale by media. False statements and manipulation of public opinion; libel and defamation; scam, hoax and fraud; promotion of hate and violence, and infliction of deep emotional distress, are some of the most relevant examples. The focal point of the debate is how to build that frame in order to establish a proper and balance legal control.

The first historical example of media power on politics took place in the 1898 Spanish American War<sup>1</sup>. US President Monroe's doctrine, the American pro-Cuban self-determination groups and media, played a major role in the struggle for Cuba's independence from Spain. Some American journalists, mainly the mogul William Randolph Hearst, in favor of US intervention, used his media to fuel the conflict, paving the path to war, by manipulating the information about Spanish atrocities committed against Cuban population. The sinking of battleship USS Maine in Havana Harbor in February 1898, caused by an explosion due to unknown causes, but probably accidental, took the lives of more than 200 Americans. Immediately W. R. Hearst blamed Spain for it, spreading a powerful media headline: "To Hell with Spain". In less than two months, US Congress passed a resolution in favor of Cuban independence from Spain. President McKinley gave an ultimatum to Spain in April. Right away Spain broke diplomatic relations with US, the war between US and Spain was inevitable, and the power of media was clearly evident since then.

A famous example, regarding to broadcast hoax and infliction of deep emotional distress, was the Orson Wells radio broadcast in US *War of the Worlds*, in 1939, announcing an "alien invasion" that showed the power of false messages through media and its consequences. A more updated example took place in 1991 two weeks after the beginning of the Persian Gulf War, when a radio broadcast in St. Louis make the announcement of a nuclear attack on United States<sup>2</sup>.

Religious fears and deep distress can also be spread through media, for example, proclaiming prophecies about a close and specific date of the end of the world, like it happened at the end of the XX Century in Europe and US.

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1 See Cule, N. J., Culbert, D., Welch, D.: *Propaganda and Mass Persuasion: A Historical Encyclopedia*. Oxford: ABC CLIO, 2003; Wilkerson, M. M. *Public Opinion and The Spanish-American War: A study in war propaganda*. Louisiana State University Press, 1932.

2 See Sadler, 136, 137.

## II. SCOPE OF CONTROL. DEFINING THE LIMITS OF LEGAL CONTROL IN US AND EUROPE: PUBLIC MORALITY AND PROTECTION OF MINORS, LIBEL, HATE SPEECH AND CENSORSHIP

The democratic model, based on political principles like popular sovereignty and division of power, has been increasingly established as the dominant political paradigm around the world in the last quarter of a century. However, religion in the democratic paradigm has not a similar or equivalent role in all democratic societies in time and space. That role is directly linked to the religious dominant background of each community and its religious and political history.

The role of religion in the democratic paradigm has been developed through different political and social approaches, from very secular attitudes to more religious ones. So different approaches, certainly, have an effect on the communities' laws and regulations and the role played by the media in that context.

The concept of control (as power, rule or domination) is an ambiguous term not legally precise. However, in any democratic system such a concept is settled on the distinction between two existing notions inter-connected<sup>3</sup>:

1. A notion of democratic control, as effective guarantee of the constitutional system.
2. A notion of limitation, as consequence of such a democratic control, because power with no limits in a democratic society is an abusive power.

Then, legal control of media in a democratic society means the ability to use all the juridical mechanisms to ensure the fundamental (constitutional) rights of the citizens. Mechanisms allowing monitor, check, regulate or inspect the exercise of power by media, establishing certain rules and limitations over media power.

Nevertheless, control over press and control over broadcasting don't have the same standards. Press usually has in Europe and US a more liberal regime than radio and television. The mainly reason depend on the meaning of public service and public interest, and the balance between rights of broadcasters and viewers.

Broadcasting service in US<sup>4</sup> started to be regulated in 1927, and two years later was issued the first broadcast program policy basically sustained until the 1980s. The standards of such a policy were initially elaborated by the Federal Radio Commission, indicating the types of programming like religion, education, public events, news...etc. The right to obtain a licence, or its renewal, depended on it. In 1929 the National Association of Broadcasters issued the first guide to self-regulation of broadcasting practices: *Code of Ethics and Standards of Commercial Practice*. However during the 1980s, US went through a period of broadcasting deregulation, which Europe did not experience at the same level and in the same way. In this period took place a change of philosophy based on the rules of competence and free market theories, plus the increasing benefits from commercial advertisement. Nowadays the most common legal problem in US regarding to media is defamation, or libel<sup>5</sup>, 70% of the lawsuits filed against media included libel allegations. US Court decisions have built a frame for libel accusations: defamation (statements that damages person's reputation), falsity, communication by media, identification of persons, fault (actual malice or reckless disregard for the truth) and harm or damage. Lets mention two examples of defamation regarding to religious organizations in US:

3 Aragón, 71-89; Rodríguez García, 18-20.

4 See in more detail Le Duc, Chapter 4 (57-75).

5 Basic frame in Pember & Calvert, 134-241.

1) The Nation of Islam demanded a gigantic claim of \$4.4 billion, as damage compensation to the New York Post for a column regarding to the death of Malcolm X; 2) In 1995 the Church of Scientology sued Time Warner Media for \$416 million because the church was described as “a global racket” or global fraud. The lawsuit was dismissed in 1996<sup>6</sup>.

In all European legislations programme standards are imposed to broadcasters under the principle of public interest. According to this approach freedom of expression and opinion, as a constitutional right of broadcasters, viewers and listeners, has to be adjusted with the broadcast programme standards. Such standards allow that the audience should be exposed to a balanced range of programs under two main rules: pluralism and impartiality. The US and European Legal systems have different measures of control over violence, indecency and children protection.

In US indecent and obscene language and images are prohibited especially in broadcast by administrative regulations. During the British colonial era, obscenity and libel were used to be punished as blasphemy, and later US Supreme Court (from now on USSC) consistently has ruled that obscenity is not protected under First Amendment Free Speech and can be under censorship. Definition and court standards for obscenity have been developed in several court decisions<sup>7</sup>. In 1967 the first presidential obscenity commission was appointed and in 1985 the second one.

The US legislation on media was updated by the 1996 Telecommunications Act (from now on 1996 Telecom)<sup>8</sup> signed into law by President Clinton amended the 1934 FCA. Its Title II is focus on Broadcast Services, updating the old FCA adding new rules regulating violence on television according to age-based ratings. Its Title V, entitled “Obscenity and Violence”, prohibits obscene programming on TV. Part of this Act was the Communications Decency Act (CDA) regarding to indecent material in Internet. The American Civil Liberties Union (ACLU) filed a suit against the government on the grounds of violating the First Amendment to the US Constitution, and in 1997 USSC *Reno v. ACLU*<sup>9</sup> ruled that the CDA was unconstitutional and it violate the First Amendment indeed. Besides children were particularly protected by the Child Pornography Prevention Act (CPPA), passed by US Congress in 1996, but in 2002 the USSC ruled, as the previous case, that some parts of the CPPA violated the First Amendment<sup>10</sup>.

Generally speaking, Europe is more focused in the protection of children in this matter, and there is quite less concern regarding to adults, except if issues of religious sentiments and insulting religion is taking place. In this scope, we can find quite recent examples of discrimination when more legal protection is given to the state religion, or former state religion, because Europe still is culturally Christian although has become progressively secularized in many aspects.

Great Britain offered few years ago a good example of this protection towards the state religion regarding to blasphemy cases, when the court has to decide if blasphemy is only applicable in cases involving Christian faith, or should be extended to other religions like Islam. The case emerged during the process of accusation of blasphemy of Salman Rushdi’ Satanic Verses almost two decades ago. The court decision declared that only are protected Christian sentiments if they coincide with the Church of England<sup>11</sup>.

6 *Ibid.*, 135, ft.3.

7 See full reference Sadler, 235-254.

8 P.L. No. 104-104, 110 Stat. 56 1996.

9 521 U.S. 844 (1997).

10 *Ashcroft v. Free Speech Coalition*, 122 S. Ct. 1389 (2002). See also Pember & Calvert 472-474.

11 *R. v. Chief Metropolitan Magistrate, ex parte Choudhury* (1990) 140 NJL 702-703; and *R. v. Bow Street Magistrates’ Court, ex parte Choudhury* (1991) 1 A11 ER 306. See in Rodríguez García, 134 fn 486.

However, since then progressively most of European countries have removed or reformed blasphemy laws, toward one of today main concerns in European broadcast regulation: preventing the promotion of racial or religious hate. In Great Britain, for example, there is a new legislation on this issue, the Racial and Religious Hatred Act 2006<sup>12</sup>, particularly n. 29 F is focused on racial or religious hate in broadcasting. Critics claim this Act could hold back freedom of speech.

After the II World War, European legislation, as international legislation as well, has been more sensitive toward human rights issues, particularly activities involving or promoting racial and religious hate, and xenophobia through media. Some countries in Europe have very restrictive legislation regarding to the spread of racial and religious hate in the media, yet for these reason some European countries have specific legislation condemning racism, xenophobia, and in some cases condemning particularly anti-Semitism, like France<sup>13</sup>. Some European countries (Austria<sup>14</sup>, Belgium<sup>15</sup>, Czech Republic<sup>16</sup>, Germany<sup>17</sup>,

12 [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060001](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060001) (latest access September 2008).

13 **Law No 90-615** to repress acts of racism, anti-Semitism and xenophobia (1990). Modifications on 29 July 1881 Law on the freedom of the Press.

Art 8. - Article 24 of the Law on the Freedom of the Press of 29 July 1881 is supplemented by the following provisions: In the event of judgment for one of the facts envisaged by the preceding subparagraph, the court will be able moreover to order: Except when the responsibility for the author of the infringement is retained on the base for article 42 and the first subparagraph for article 43 for this law or the first three subparagraphs for article 93-3 for the law No 82-652 for 29 July 1982 on the audio-visual communication, the deprivation of the rights enumerated to the 2o and 3o of article 42 of the Penal Code for imprisonment of up to five years maximum.

Art 9. - Art. 24 (a). - those who have disputed the existence of one or more crimes against humanity such as they are defined by Article 6 of the statute of the international tribunal military annexed in the agreement of London of August 8, 1945 and which were a carried out either by the members of an organization declared criminal pursuant to Article 9 of the aforementioned statute, or by a person found guilty such crimes by a French or international jurisdiction shall be punished by one month to one years imprisonment or a fine.

Art 13. - It is inserted, after article 48-1 of the law of 29 July 1881 on freedom of the press.: Art. 48-2. - publication or publicly expressed opinion encouraging those to whom it is addressed to pass a favorable moral judgment on one or more crimes against humanity and tending to justify these crimes (including collaboration) or vindicate their perpetrators shall be punished by one to five years imprisonment or a fine.

14 **National Socialism Prohibition Law (1947, amendments of 1992) § 3h** As an amendment to § 3 g), whoever denies, grossly plays down, approves or tries to excuse the National Socialist genocide or other National Socialist crimes against humanity in a print publication, in broadcast or other media.

15 **Negationism Law (1995, amendments of 1999)** Article 1 Whoever, in the circumstances given in article 444 of the Penal Code denies, grossly minimizes, attempts to justify, or approves the genocide committed by the German National Socialist Regime during the Second World War shall be punished by a prison sentence of eight days to one year, and by a fine of twenty six francs to five thousand francs. (...) the term genocide is meant in the sense of article 2 of the International Treaty of 9 December 1948 on preventing and combating genocide. In the event of repetitions, the guilty party may in addition have his civic rights suspended in accordance with article 33 of the Penal Code.

16 **Law Against Support and Dissemination of Movements Oppressing Human Rights and Freedoms (2001)**

§ 260 (1) The person who supports or spreads movements oppressing human rights and freedoms or declares national, race, religious or class hatred or hatred against other group of persons will be punished by prison from 1 to 5 years. (2) The person will be imprisoned from 3 to 8 years if: a) he/she commits the crime mentioned in paragraph (1) in print, film, radio, television or other similarly effective manner; b) he/she commits the crime as a member of an organized group c) he/she commits the crime in a state of national emergency or state of war.

§ 261 The person who publicly declares sympathies with such a movement mentioned in § 260, will be punished by prison from 6 months to 3 years.

§ 261a) The person who publicly denies, puts in doubt, approves or tries to justify Nazi or communist genocide or other crimes of Nazis or communists will be punished by prison of 6 months to 3 years.

17 **Criminal Code: § 130 Public Incitement (1985, amendments of 1992, 2002 and 2005)**

(1) Whoever, in a manner that is capable of disturbing the public peace: 1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or 2. assaults the human dignity of



Liechtenstein<sup>18</sup>, Poland<sup>19</sup>, Romania<sup>20</sup> and Switzerland<sup>21</sup>, explicitly recognize the Holocaust denial a criminal offense related to racial/religious hate and crimes against humanity. Guilt

*others by insulting, maliciously maligning, or defaming segments of the population, shall be punished with imprisonment from three months to five years. (...) (3) Whoever publicly or in a meeting approves of, denies or renders harmless an act committed under the rule of National Socialism of the type indicated in Section 6 subsection (1) of the Code of Crimes against International Law, in a manner capable of disturbing the public peace shall be punished with imprisonment for not more than five years or a fine. (4) Whoever publicly or in a meeting disturbs the public peace in a manner that assaults the human dignity of the victims by approving of, denying or rendering harmless the violent and arbitrary National Socialist rule shall be punished with imprisonment for not more than three years or a fine. (...)*

**Code of Crimes against International Law: § 130 Genocide** (1) *Whoever with the intent of destroying as such, in whole or in part, a national, racial, religious or ethnic group: 1. kills a member of the group, 2. causes serious bodily or mental harm to a member of the group, especially of the kind referred to in section 226 of the Criminal Code, 3. inflicts on the group conditions of life calculated to bring about their physical destruction in whole or in part, 4. imposes measures intended to prevent births within the group, 5. forcibly transfers a child of the group to another group, shall be punished with imprisonment for life. (...)*

**Criminal Code: § 189 Disparagement of the Memory of Deceased Persons (1985, amendments of 1992)** *Whoever disparages the memory of a deceased person shall be punished with imprisonment for not more than two years or a fine.*

**Criminal Code: § 194 Application for Criminal Prosecution** (1) *An insult shall be prosecuted only upon complaint. If the act was committed through dissemination of writings (Section 11 subsection (3) or making them publicly accessible in a meeting or through a presentation by radio, then a complaint is not required if the aggrieved party was persecuted as a member of a group under the National Socialist or another rule by force and decree, this group is a part of the population and their insult is connected with this persecution. The act may not, however, be prosecuted ex officio if the aggrieved party objects. When the aggrieved party deceases, the rights of complaint and of objection devolve on the relatives indicated in Section 77 subsection (2). The objection may not be withdrawn. (2) If the memory of a deceased person has been disparaged, then the relatives indicated in Section 77 subsection (2), are entitled to file a complaint. If the act was committed through dissemination of writings (Section 11 subsection (3) or making them publicly accessible in a meeting or through a presentation by radio, then a complaint is not required if the deceased person lost his life as a victim of the National Socialist or another rule by force and decree and the disparagement is connected therewith. The act may not, however, be prosecuted ex officio if a person entitled to file a complaint objects.*

**18 § 283 (5) (2000)** *Whoever by the word, through pictures, in writing or electronic media denies, coarsely trivializes or tries to justify the Holocaust or other crimes against humanity shall be punished with imprisonment of up to two years or a fine. Whoever by the word, through pictures, in writing or electronic media denies, coarsely trivializes or tries to justify the Holocaust or other crimes against humanity shall be punished with imprisonment of up to two years or a fine.*

**19 Act of 18 December 1998 on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation (Dz.U. 1998 nr 155 poz. 1016)**

**Article 55.** *Who publicly and contrary to facts contradicts the crimes mentioned in Article 1, clause 1 shall be subject to a fine or a penalty of deprivation of liberty of up to three years. The judgment shall be made publicly known.*

**Article 1.** *This Act shall govern: 1. the registration, collection, access, management and use of the documents of the organs of state security created and collected between 22 July 1944 and 31 December 1989, and the documents of the organs of security of the Third Reich and the Union of Soviet Socialist Republics concerning: a) crimes perpetrated against persons of Polish nationality and Polish citizens of other ethnicity, nationalities in the period between 1 September 1939 and 31 December 1989:- Nazi crimes,- communist crimes,- other crimes constituting crimes against peace, crimes against humanity or war crimes. b) other politically motivated repressive measures committed by functionaries of Polish prosecution bodies or the judiciary or persons acting upon their orders, and disclosed in the content of the rulings given pursuant to the Act of 23 February 1991 on the Acknowledgement as Null and Void Decisions Delivered on Persons Repressed for Activities for the Benefit of the Independent Polish State (Journal of Laws of 1993 No. 34, item 149, of 1995 No. 36, item 159, No. 28, item 143, and of 1998 No. 97, item 604)*

**20 Emergency Ordinance no.31 (2002, ratified May 2005)** (3) *Promotion of the cult of persons who are guilty of crimes against peace and humanity, or of promoting fascist, racist or xenophobic ideologies through propaganda, carried out through any means, in public, shall be punished with imprisonment from 6 months to 5 years, and the loss of certain rights. (4) Public negation of the Holocaust or its effects is punished with imprisonment from 6 months to 5 years, and the loss of certain rights. It is prohibited to erect or to maintain in public space, statues, statutory groups, or commemorative plaques celebrating persons guilty of committing crimes against peace and humanity as well as to name streets, boulevards, squares, parks or other public space after such persons.*

**21 Emergency Ordinance no.31 (2002, ratified May 2005)** (3) *Promotion of the cult of persons who are guilty of crimes against peace and humanity, or of promoting fascist, racist or xenophobic ideologies.*

and fear played an important psychological role in this legislation of those European countries in which anti-Semitism emerged with particular violence during 1930s and 1940s guided by Nazi ideology. Such a guilt and fear are deeply rooted in the history of Europe. Unfortunately, mostly since the Christian Roman Empire enforced catholic faith as state religion (380 Thessalonica Edict) we have numerous examples of popular violence and anti-Jewish legislation. Examples repeated it in many of the emerging European Medieval Christian kingdoms ruled by Germanic tribes between 5<sup>th</sup> and 11<sup>th</sup> Centuries. Again during the Crusades waves of hate and violent riots against European Jews took place from 12<sup>th</sup> to 15<sup>th</sup> Centuries, and anti-Jewish legislation was enforced in medieval kingdoms like England, France, Castile, the Holy Roman Empire and the Papal States.

The Parliamentary Assembly of the Council of Europe adopted on 29 June 2007 the Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion. This Recommendation set the guidelines for Member States of the Council of Europe, and the most updated address is given by the Reports and analysis on national legislation in Europe concerning blasphemy, religious insults and inciting religious hatred<sup>22</sup>. There is also the judiciary guarantee given by the European Court of Human Rights (ECHR) in Strasbourg. Cases as the Öztürk case in 1984, the Müller case in 1988 and Otto Preminger Institute v. Austria, in 1994, are examples on blasphemy grounds, and Refah Partisi v. Turkey in 2003 on inciting religious hatred grounds.

At international level, since the aftermath of 11 September 2001, the Commission on Human Rights of the United Nations expressed deep concern over the increasing trend of defamation of religions and incitement to religious hatred as manifestations of contemporary forms of racism, xenophobia and intolerance. At its request the Special Rapporteur on this matters at that time, Doudou Diène, prepared several reports from 2003 to 2008<sup>23</sup>, one of them is specifically address to the issue of defamation of religions, entitled “Defamation of religions and global efforts to combat racism: anti-Semitism, Christianophobia and Islamophobia”<sup>24</sup>.

The Human Rights Council of United Nations (HRC) requested in March 2006<sup>25</sup> a joined report from the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur Doudou Diène, on incitement to racial and religious hatred and defamation of religions and the implications of the phenomenon for article 20, paragraph 2, of the International Covenant on Civil and Political Rights. This report was presented to the Council on 20 September 2006<sup>26</sup>. In this report some of the main conclusions<sup>27</sup> are the following:

- Encourage the Human Rights Committee to consider the possibility of adopting complimentary standards on the interrelations between freedom of expression,

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*through propaganda, carried out through any means, in public, shall be punished with imprisonment from 6 months to 5 years, and the loss of certain rights. (4) **Public negation of the Holocaust** or its effects is punished with imprisonment from 6 months to 5 years, and the loss of certain rights. It is prohibited to erect or to maintain in public space, statues, statuary groups, or commemorative plaques celebrating persons guilty of committing crimes against peace and humanity as well as to name streets, boulevards, squares, parks or other public space after such persons.*

22 [www.venice.coe.int](http://www.venice.coe.int) . Search for: CDL-AD(2007)006; CDL (2008)090add arc-en-ciel; CDL (2008)090add2 arc-en-ciel

23 E/CN.4/2003/23, E/CN.4/2005/19, E/CN.4/2006/17.

24 E/CN.4/2005/18/Add.4

25 Resolution 60/251 of 15 March 2006.

26 A/HRC/2/3 of 20 September 2006.

27 N.61 & 65.



freedom of religion and non-discrimination, in particular by drafting a general comment on article 20.

- Member States should bear in mind that defamation of religion must receive the same degree of concern and equal treatment regardless of which religion is targeted.

In US hate speech is also a sensitive and controversial matter because the former segregation laws, Jim Crow laws survived until the 1960s mostly in the southern states, and the development after the American Civil War of the Ku Klux Klan among some Confederate soldiers and officers defending white supremacy. KKK and Nazi organizations have often quite close relationships in US. However, the Supreme Court had established the full protection of the Free Speech (First Amendment) even in cases of hate speech. The only limitation to it is the fighting words doctrine, established in 1942 in *Chaplinsky v. New Hampshire*<sup>28</sup>, restricting messages that have “a direct tendency to cause acts of violence” in order to protect “the social interest and morality”<sup>29</sup>. In 2003 USSC specify the scope of the fighting words doctrine explaining that state laws have the rights to protect citizens from certain types of intimidation like cross burning<sup>30</sup>, a typical action of the KKK.

United States has a long-standing constitutional tradition of Free Speech, under the First Amendment to the Constitution. On the other hand, the interpretation of the Free Speech by the US Supreme Court has been expanded only in the last 30 years, to be able to suit the social changes of American society. The US Supreme Court Decision *Near v. Minnesota* (1931) declared that preventive censorship (known as prior restraint) was unconstitutional in most cases. However in the American legal history of the XX Century are well known several cases of political censorship. The most significant ideological censorship took place between years 1940-1950, it was known as McCarthyism. It was a period of a radical anticommunist ideology sweeping US for almost a decade, affecting most aspects of social life. In 1941 President Roosevelt signed the Executive Order 8985 establishing The Office of Censorship, an official emergency agency in charge of censoring war reports. More recently, information on war has been restricted during the Vietnam War, Balkans conflict and the Iraq invasion as well, mainly since 2004, applying the prior restraint doctrine in some cases.

The access of media to government sources is regulated in US by the Freedom of Information Act (FOIA) in 1966, and amended in 1996 by the Electronic Freedom Information Act (EFOIA). According to these laws the public has a right to access to most existing government documents except nine types classified as “secret”, private personal files, financial data and oil and gas well exploration data. After the 9/11 terrorist attacks, federal and state lawmakers are passing laws restricting even more the public access to government records under the full support of Bush administration. Nevertheless strong critics are opposed to those laws because they are restricting the US civil liberties traditional scope, particularly since October 2001, when almost 1000 persons have been detained and jailed in US suspected of links to terrorist groups, and the federal government refused to release their names disregarding the FOIA regulations. In June 2003 US Circuit Court of Appeals for the District of Columbia (12<sup>th</sup> Circuit Court) ruled a 2-1 split decision that Justice Department can keep secret the names of foreign detainees<sup>31</sup>. Unfortunately the USSC declined to review the case in 2004<sup>32</sup>.

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28 315 U.S. 568 (1942).

29 Sadler, 22-27.

30 *Virginia v. Black* 123 S. Ct. 1536 (2003).

31 *Pember & Calvert, 324, 325. Center for National Security Studies et al. v. U.S. Dept. of Justice* 331 F. 3d 918 (2003).

32 *Ibid.* 2004 U.S. LEXIS 46.

In the broadcasting sphere, the prohibition against censorship in US was technically regulated from 1934 to 1996, by the 1934 Federal Communications Act (from now on 1934 FCA). Since 1996 is regulated as well by the Telecommunications Act.

1934 FCA created the Federal Communication Commission (from now on FCC) an administrative agency, which regulates the broadcast industry. The actual five members of the FCC are appointed by the US President, with the approval of the Senate, serving for a five-year term. The FCC has the power to regulate the frame given by the FCA and a basic mandate given by the US Congress, the broadcaster should operate under the equal opportunity provision (Section 315 of the FCA) and in favor of the public interest, convenience or necessity<sup>33</sup>. As I mentioned, the FCC has technically no power to censor broadcasters, (according to Section 326 of FCA). However this rule not always is applied literally, for example when involved indecent language the FCC has the power to impose a fine, forfeiture, or even deny the license or its renewal to any broadcaster. The public interest played a pivotal role through the Fairness Doctrine, from 1949 to 1987, requiring the broadcaster to provide open discussion and contrasting viewpoints on controversial issues. The Fairness Doctrine received the USSC approval on the *Red Lion* Decision in 1969<sup>34</sup>. Few decades before 1969, several federal courts upheld the right to deny renewal of license to a station, if makes intemperate religious and political speech<sup>35</sup>. But under Regan administration the Fairness Doctrine reached to its end when the Congress tried to make the Fairness Doctrine a law but President Regan veto that bill considering that the Fairness Doctrine did not serve any longer to public interest.

In Europe censorship has a different scope and approach from US. It is mainly consequence of the development of broadcasting as state monopoly; while in US broadcasting remains mostly in private hands. Broadcasting in countries like United Kingdom, France, Germany, Spain and Italy, it has been a matter of enormous political debate during the last decades. In Great Britain the Sykes Committee on Broadcasting considered as soon as 1923 that state control of media was essential regarding to its influence over public opinion, but was opposed to censorship. Broadcast is considered in UK a public service and is under parliamentarian and governmental control. However, since 1927 British government established by Royal Charter the British Broadcasting Corporation, giving a special and independent status to the BBC. The BBC was until 2007 controlled by its Governors, usually twelve, chosen by the Prime Minister under Royal Prerogative. As Eric Barendt<sup>36</sup> explained in 1993, the British “Prime Minister enjoys a monopoly of power of appointment to the controlling body unparalleled” comparing with other western European countries, until major changes started to shape in the present decade.

Main first reforms of broadcasting law in UK came from the report of the Peacock Committee in 1980s. This Committee declared that pre-censorship has no place in a free society<sup>37</sup>. But as I mentioned before, critics to the Racial and Religious Hatred Act 2006 are concerned about if this Act could impose censorship at some level. Like in US, several Acts of the United Kingdom Parliament officially protect national security material. Historically, there have been a number of organizations in UK whose main function was to approve material prior to distribution. Until 2006 ruled general standards of taste and decency in broadcasting, but those standards have been removed

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33 Pember & Calvert, 589

34 *Red Lion Broadcasting Co. v. FCC* 395 US 367 (1969)

35 See Barendt, 29 ft. 105

36 *Ibid*, 68

37 *Ibid* 35

by those so-called “generally accepted standards” and the prevention of harm. Since 2003 the Office of Communications (OFCOM) is the new regulatory body for UK television, radio, and telecommunications services under the Communications Act 2003<sup>38</sup>. OFCOM works in close relationship with the Secretary of State. OFCOM maintains TV broadcasting as public service, insists in specific protection of children, and demands that British Television and Radio standards follow those adopted by the European Committee of Standardization. The 2004 Hutton Inquiry and the subsequent Report raised questions about the BBC’s journalistic standards and its impartiality. This led to resignations of senior management members and the then Director General.

The most recent Charter came into effect on 1 January 2007. Among its main features should be highlighted the following: 1) Abolition of the Board of Governors, replaced by the BBC Trust; 2) the General management of the organization is in the hands of a Director-General appointed by the Trust.; 3) BBC’s public service has been redefined to promote more education, higher cultural standards and innovations.

However, as I mention, in the last years it has been some criticism regarding to lack of enough impartiality in the BBC news approach in the Israel-Palestinian conflict, and in the Irak invasion and war coverage. BBC news has been accused of misleading, perhaps, the public opinion. Critics like from the Glasgow Media Group and the Hutton Inquiry create an open debate in the media on these matters.

In Germany after the II World War mass media were under direct control of the Allied Government in West Germany (ARD Broadcast), and under the Soviets in East Germany (DFG Broadcast). In the 1960s another TV network was founded, ZDF.

Article 5 of the Basic Law guaranteed the constitutional principle of broadcasting freedom. It declares, “There shall be no censorship”. Broadcasting is also considered a public service in Germany but it is not under the federal control, instead is under the federate states (lender) control. As Eric Barendt pointed out, “this is an understandable reaction to the exploitation of radio by the Nazis”<sup>39</sup>. However the ZDF has a national scope and since 1961 is regulated by an Agreement among German states. The TV Council or commission of ZDF has almost seventy members appointed by state governments, federal government, unions, investors, and by the only three recognized religious organizations: Protestant Churches, Catholic Church and Jewish Community<sup>40</sup>. After reunification, the East Germany Broadcast was dismantled, founding more regional TV Broadcasts merging into the ARD network German TV known as “the Third Programmes”. Progressively private broadcasting started to play an important role in German media and today its programme diversity is by far the largest in Europe.

In France from 1945 to 1982, broadcasting was a state monopoly and the French government kept a strong control mainly on news. The reforms begin to take place in the 1970s during the presidency of Valery Giscard d’Estaing, and the government seems to exercise less control over the broadcast news than before. In 1982 the socialist government of Francois Mitterrand liberalized the French broadcast. Statute of 29 July 1982 declares in the Article 1: “*La communication audiovisuelle est libre*”. Initially the agency in charge of the supervision and the guarantee of independence of the public French broadcasting system was the High Authority. The Government and the Parliament chose its nine members. In 1986 the Chirac government liberalized even more the French broad-

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38 Full text in [www.opsi.gov.uk/acts/act2003/ukpa\\_20030021](http://www.opsi.gov.uk/acts/act2003/ukpa_20030021) (latest access September 2008)

39 Barendt, 19

40 Rodríguez García, 57-62

casting replacing the High Authority with a different administrative council. In 1989 a new council was created but the legacy of government political control still was present, and the appointment of the council members was fully in hands of the President of the Republic, the President of the Senate and the President of the National Assembly, yet no other social group had the right to appoint and to be represented in the 1989 council. At the same time religious organizations has no place in the French broadcast council, because the strict secular approach of the French political system. In 2000 was created the first public TV Broadcasting group in France, *France Televisions*, it was a big step toward the future of the new model of public television in Europe.

In Italy and Spain the fascist and authoritarian governments of Mussolini and Franco kept strong political control over broadcasting as state monopoly and a tight political and religious censorship.

In Italy after the IIWW it was established a Parliamentary Commission reassuring Radio Audizione Italiana (RAI) political independence. Since 1954 RAI was engaged in educational programme. Major changes took place from 1990 with a new legislation that open a long term debate about the excessive influence by the political parties over broadcasting. Nine members governed RAI administrative. Six of them are elected by the Parliament, and Minister of Economy appointed the rest of them. The council appoints the RAI General Director. In 2005 ends a long debate regarding to the privatization on RAI, keeping its profile as state-owned entity, offering about a dozen of TV channels, in order to compete for the audience with an increasing amount of private channels in the free media marketplace.

In Spain the political transition toward democracy took place between 1976 and 1978. RTVE has been transformed several times to be able to suit those social and political changes. In 1977 became a public, but autonomous, entity owns by the State. Major legal changes took place again in 2006 with the *Ley de la Radio y la Televisión Estatal (Ley 17/2006)* trying to reinforce its political independence from the government and from political parties, yet still it is a state-owned public entity. An administrative council of twelve members elected by Parliament governs the present RTVE Corporation. Its President is elected among the council members by the Parliament as well, and not by the Government as in previous legislations. For consulting activities there is an advisory council in which religious organizations are not represented, although other major segments of society are.

Italian and Spanish systems of control were until this decade quite similar, and critics regarding to such a legal control were focused on the insufficient protection of the two main aims of public television: impartiality and pluralism. The reason of it has been the excessive entanglement between government and political parties in both systems of control. As consequence, society was and still is not balanced represented. Particularly the religious interests of the society are not represented in those administrative councils. Yet several religious organizations have the right to access to broadcast religious programs in public broadcasting, and also they have the right to own private media. For example in Spain, the Catholic Church, which was the only official state established church until 1978 and has a preferential treatment under the 1978 Spanish Constitution, owns the Popular Airwaves Radio Network (COPE).

Since the last decade, the model of public broadcasting as state monopoly in most of European countries is loosening its traditional scope of legal (parliamentarian, governmental and administrative) control, when market demands, social needs, regional public broadcasting and private broadcasting open the door to a more liberalized broadcast regulation. And the new broadcasting era through cable, satellite and digital television is developed, in which public broadcasting has to redefine its role in the society. Since the beginning of this new Century, regulations and new agencies created in Europe under quite similar administrative standards, are trying to fulfill this challenge.

### **III. PUBLIC AND PRIVATE BROADCASTING AND THE NEW CHALLENGES OF THE SATELLITE AND DIGITAL ERA REGARDING TO RELIGION**

There is no legal definition of broadcasting public service, but as we saw it links with two principles under a democratic system: impartiality and pluralism. However has been connected as well with the approach as state monopoly in European countries, giving us the idea that public broadcasting is equivalent to state broadcasting, when shouldn't be. Even if this approach as state monopoly has been swept away in the last decade, still remain certain features traditionally associated with the notion of state monopoly like promotion of national identity, free access, variety of programs including religious ones, programme standards and certain independence from commercial interest, yet this feature has been reduced in order to compete with the aggressive market rules of private broadcasting. At the same time, the recent and extensive development of private broadcasting in Europe by the new technologies, it represents a real challenge for public television competing for the audience. But this challenge unfortunately did not bring to public television an increase of quality programs; on the contrary, reality shows, soap operas, increasing of commercial breaks and programs of poor quality and taste, like talk shows gossiping on celebrities, has replace many of the old style quality cultural and educational programs that have been a cornerstone of programming public television in Europe.

Regarding to public television in US the situation is quite the opposite of Europe because television broadcasting in US was born in private networks looking for profits from commercial advertisement, not as state public service, as state monopoly. For this reason in US the public broadcasting system (PBS) is not equivalent to state or national broadcasting. PSB was founded in 1969 in US, and is a non profit corporation collectively own by over 300 local stations. In 1973 it merged with educational television stations. It is focus in communities' issues, high quality cultural and children programs, and no commercial advertisement except sponsors references and the pledge of donations to the viewers, allowing PBS financial sustainability, complementing the 20% received from federal sources and another 25 % from State and local taxes. In the modern broadcast marketplace, some critics considered this organizational structure outmoded and incapable to compete with cable and satellite TV. Some conservative critics focus most in the liberal approach of PBS regarding to politics. However the high quality profile and variety of many PBS programs don't have an equivalent inside the large private broadcasting corporations of US, where the search for benefits and higher audience affects negative the programs quality as it happens in Europe.

One of the biggest challenges in this new era is the maintenance of programme standards. There are some differences between public and private broadcasting regarding to programme standards. Those differences are based on the diverse and complementary role that public and private television should play. It is quite easy to legally frame such standards using as a reliable reference the comparative analysis, but as always, the biggest difficulty is to enforce the law and regulations properly and according to the constitutional frame of each country. Mainly since cable and satellite are available, competition law is necessary to be implemented regarding to the increase of such a competition, and cross-media ownership rules has to be properly place and enforce.

International media integration and transnational broadcasting have encouraged the development of institutions and commissions at European and pan-European levels. The European Union and the Council of Europe have taken important steps forward to establish common basis and rules of standardization and cooperation among their Member States.



At the Council of Europe level, the regulatory framework<sup>41</sup>, presented by the Media Division of the Directorate General of Human Rights, explains the first major legal achievement: “The European Convention on Transfrontier Television (ECTT or simply Convention) is the most relevant legal instrument of the Council of Europe in the broadcasting sector. The Convention lays down a number of minimum rules on transfrontier broadcasting and in so doing provides a framework for the free and unhindered circulation of television programmes across Europe. The Convention was adopted in 1989 and was the first instrument to define at the European level a number of common principles for the transfrontier circulation of television programme services. The Convention served as a basis for the preparation of the 1989 EU Directive on Television without Frontiers, and has also been an inspiration for several countries when designing their national television broadcasting legislation. As a result of the combination of both the Convention and the EU “Television without Frontiers Directive” (which harmonises/approximates national broadcasting legislation in the 15 EU member States) a coherent legal space for the broadcasting sector in Europe is created, and the conditions for the free movement of television services in Europe are clearly laid down”.

By 2001, 23 European States have ratified the Convention. “The main objective pursued by the Convention, in accordance with Article 10 of the European Convention on Human Rights, is to encourage the free circulation of television programmes on the basis of a number of commonly agreed standards (linked to the fundamental values of the Organisation) and thus to promote the free exchange of information and ideas”.

The Convention Preamble explains clearly the broadcasting standards to be followed according to the freedom of expression and information embodied in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Mainly those principles are: 1) “The principles of the free flow of information and ideas and the independence of broadcasters, which constitute an indispensable basis for their broadcasting policy”. 2) “The importance of broadcasting for the development of culture and the free formation of opinions in conditions safeguarding pluralism and equality of opportunity among all democratic groups and political parties”.

The Convention, therefore, provides a pan-European framework for the free circulation of television programme services, but does not regulate domestic broadcasting activities. This is precisely the fundamental difference between the Convention and the EU “Television without Frontiers” Directive (TVwFD): the Convention only applies to transfrontier programmes whereas the Directive applies to both domestic and transfrontier broadcasting in the EU Member States. However, many broadcasting services, which are initially created with a domestic intention become transfrontier out of the fact that they are transmitted or can be received in another country.

At European Union level, as explained in the regulatory framework of the Television without Frontiers Directive<sup>42</sup>: “The first attempts to shape a Community audiovisual policy were triggered by the development of satellite broadcasting and the rapid increase of the deficit with the United States in audiovisual trade. In 1984, the Commission presented a Green Paper on the establishment of a Common market in broadcasting on the basis of which the Television without Frontiers Directive (TVwFD) was developed. The Television without Frontiers Directive - adopted in 1989, first

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41 [http://www.humanrights.coe.int/Media/topics/broadcasting/transfrontier/convention\\_on\\_transfrontier\\_tv.htm](http://www.humanrights.coe.int/Media/topics/broadcasting/transfrontier/convention_on_transfrontier_tv.htm)

42 [http://ec.europa.eu/avpolicy/reg/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/index_en.htm)



updated in 1997 - aims to create the conditions necessary for the free movement of television broadcasts within the Community (the scope includes all forms of transmission to the public of television programmes, except communication services providing items of information or other messages on demand). It achieves this by providing that Member States cannot restrict reception or retransmission of broadcasts from other Member States for reasons falling in the areas coordinated by the Directive; these cover the promotion of European works and works by independent producers, advertising, the protection of minors and public order, and the right of reply. The directive ensures also that events, which are regarded by a Member State as being of major importance for society, are broadcast “free-to-air”. The development and application of digital technologies, combined with other developments in the broadcasting markets, have changed the reality of European broadcasting. Consequently, the Commission proposed the revision of the current Directive transforms it into an Audiovisual Media Services Directive (AVMSD). The AVMSD was adopted in December 2007 and Member States have two years to transpose it. The Treaty on the European Union, which entered into force on 1 November 1993, makes a specific reference to the audiovisual sector: it provides that the Community shall encourage co-operation between Member States and, if necessary, supplement their action in such fields as artistic and literary creation, including in the audiovisual sector. It also specifies that the Community shall take cultural aspects into account in its action under other provisions of the Treaty. In addition, the Protocol on the System of Public Broadcasting, attached to the Treaty of Amsterdam clarifies how the Treaty rules apply in that area. Further milestones in the development of the Commission’s audiovisual and media policies were the Green Paper on the convergence of the telecommunications, media and information technology Sectors, and of a Communication in 1997 on principles and guidelines for the Community’s audiovisual policy in the digital age in 1999”.

The Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services<sup>43</sup> highlights two main issues in this matter:

- “The separation between the regulation of transmission and the regulation of content does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection”.
- “National regulatory authorities should have a harmonized set of objectives and principles to underpin, and should, where necessary, coordinate their actions with the regulatory authorities of other Member States in carrying out their tasks under this regulatory framework. The activities of national regulatory authorities established under this Directive and the Specific Directives contribute to the fulfillment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning”.

Very recently, in April of this year, Irini Katsirea published an excellent research about Public Broadcasting and European Law<sup>44</sup> in which she analyzes in-depth broadcasting for the public interest in six countries (France, Germany, Greece, Italy, the Netherlands, and the United Kingdom) showing the influence of European law on the definition and enforcement of programme requirements; presenting, as well, how the case law of the European Court of Justice encourages deregulation at national level wit-

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43 *Official Journal L 108* , 24/04/2002 P. 0033 – 0050.

44 See full reference in the section Suggested Bibliography of this paper.

hout offering adequate safeguards at supranational level in exchange. In her research she explores two main questions: 1) whether broadcasting in Europe is still committed to protecting values as cultural diversity, the safety of minors, media pluralism, and the fight against racial and religious hatred; 2) and if the pressure from national politics or the ideology of market sovereignty creates certain vulnerability of broadcasting today in Europe. Those are precisely the clear challenges of this new broadcasting era in this matter. We also should keep in mind that the process of progressive secularization, that took place in Western Europe since 1970s, has decreased the power of established, official or national churches in Europe, and this religious power is no longer a strong dynamic force in Western Europe.

How fits religious television in this satellite broadcasting scenario?

Religious television has been enormously developed in the satellite era expanding its possibilities in Europe further than the restricted limits and access set, few decades ago, for religious programme in public television.

Until very recently, religious programme in Europe was, generally speaking, based mostly in free access to the viewers according to certain regulations set in each country, mainly laid down by agreements between states and religious organizations, allowing specific time to use broadcasting for this purpose, as a part of the broadcasting role as a public service.

In US, in this matter, religious broadcasting experience is different. According to Kimberly A. Neuendorf<sup>45</sup> the history of religious broadcasting in US has been developed through four eras: 1) Pre-commercial religious radio (1927); 2) Sustaining-time religious broadcasting (1927-1960); 3) Paid-time religious broadcasting and the growth of the Electronic Church in which fund raising became a critical task (1960-1980); 4) Religious cablecasting-paid time in a free market place (1980-on). We should add to the last one, the development of religious broadcasting without frontiers in the cosmos of the satellite dish and digital era.

In US, religious television, mainly Evangelical groups, has been since the 1970s very successful opening their own path, gaining audience and shaping a spiritual market through a religious broadcasting, known as “the emergence of electronic church”<sup>46</sup>. It has become a major revolution in religious communication. As Abelman and Hoover point out<sup>47</sup>: “when the first of the new religious broadcast emerged nationally in the mid-1970s, they appeared to many to be just a curiosity and an anomaly”; but “the ministries of this new religious broadcasting seemed to grow and develop as the 1970s wore on, (c)oincident with the rise of the (political) new right” and “they seemed to be playing a central role in the developing new right”. As Razelle Frankl explains: “Today’s electronic church may best be described as a hybrid socio-political institution”<sup>48</sup>.

When time has passed by, we see at least three important facts involved in US TV preaching: 1) Proselytize in search for increasing believers and conversions among a faithful and popular audience. 2) Increase involvement in politics through charismatic leaders, even if the origin of religious broadcasting was not political. 3) The development of powerful *neocón* evangelical networks, like the Billy Graham’ Evangelical

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45 Neuendorf, K, “The public trust versus the almighty dollar” in *Religious Television*. (Abelman & Hoover Ed.) 72.

46 *Religious Television* . *Ibid*, 2-3.

47 *Ibid*.

48 Frank, R. “A Hybrid Institution” *Ibid*, 57.

Crusade associations. These evangelical networks played an increasing role, known as “the Evangelical effect”, over the public opinion since the US Presidential elections of Jimmy Carter, and clearly since the elections of Ronald Reagan and the two elections of President George W. Bush. Ever since, the candidates to the US Presidency regularly appeared at the annual conference of evangelical broadcasters, looking for opportunities for fund-raising and more voters. Even more, there have been several attempts by Evangelist ministers to present themselves as candidates to the US Presidency, but running unsuccessfully in the primaries, since TV preacher and Republican Pat Robertson attempted in the presidential race of 1988.

Today in US seems clear that the electronic church has the fuel to be an influential axis of social and political power, capable to build a religious broadcasting private industry through sophisticated fund-raising and market techniques.

How the electronic Evangelical churches interact with other major religions in US?

In 1990 Bruce Adams<sup>49</sup> wrote why televangelists are bad for Judaism and vice versa. His arguments focus in this main idea from his own Jewish background: the Jews in US never had a national religious broadcast because they do not actively seeking converters. In his view, Jews do not trust evangelicals TV preachers, even in their seemingly strong support for Israel, because still in US Jews “are suspicious of an underlying anti-Semitism”<sup>50</sup> especially if we pay close attention to the Armageddon theology.

However the connexion between media, religion and politics regarding to Israel issues is obvious in the role played by the organization Christians United for Israel (CUFI) and other neo-conservatives evangelical groups, quite active in religious broadcast networks. In the words of CUFI founder John Hagee: “We support Israel because all other nations were created by act of men, but Israel was created by an act of God”<sup>51</sup>. This is a today typical view of Christian Zionism in U.S., as I said very active in religious (evangelical) broadcast networks, and it is influencing strongly the view of some Republican politicians<sup>52</sup> and part of the American public opinion as well. Unfortunately, criticism on Israel policies is often mistakenly identified as anti-Semitism and anti-Judaism.

Another negative side effect in US regarding to televangelism that should be mentioned has been the fraud and scandal cases emerged under the umbrella of electronic churches. Cases like Oral Roberts, Jim Bakker or Jimmy Swaggart, challenged deeply the credibility of electronic churches. For that reason the US National Religious Broadcasters created a regulatory agency: the Ethic and Financial Integrity Commission.

Europe has been mostly importer of US broadcasting and very dependent on it to fill their programme with US movies, TV series, soap operas and so on, but this process has not been affected by the “Evangelical effect” by any means. As Eric Shegog<sup>53</sup> explains “religion has not been a significant part of this cultural invasion from US”.

In my view there are two main reasons for that: 1) Even if the national churches in Western Europe do not play a dominant and dynamic role as in the past, still such a

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49 Adams, B, “Why televangelist are bad for Judaism and why Judaism is bad televangelism” in *Religious Television*, 145-151.

50 *Ibid.* 148-149.

51 Mearnsheimer & Walt, 134.

52 *Ibid.* 135.

53 Shegog, E, “Religion and Media Imperialism: A European perspective” in *Religious Television*, 331.

religious background survive at social and cultural levels acting as a skeptical filter. 2) The increase of social secularization in Western Europe still is at its peak, and there isn't signs of a strong and extensive religious revival in Western European countries, like it happened in the Eastern Europe after the Communist era. This social secularization is acting as a secondary skeptical filter.

This new satellite and digital era in Europe will encourage and open more opportunities to religious groups, mostly the minority ones, to access viewers without frontiers, at least the American experience regarding to Electronic churches shows advantages and des-advantages of this new path, and will be a valuable experience preventing some of their mistakes and wrongdoings.

Few major questions should be answered: 1) How to keep the proper balance among market rules, finances, politics and religious television? 2) How to prevent alienation, isolation or manipulation, and encourage pluralism and impartiality in a progressive deregulating environment? 3) How to strengthen and invigorate the dialogue among religions?

It is clear that this new technology is pushing forward an active state policy of deregulation in Europe, affecting perhaps negatively to the religious programme in broadcasting television. For that reason it will be extremely important in this new era of communications a sustainable government policy, at state and European levels, based on a well tuned system of checks and balances for religion in broadcasting as a part of a steady broadcasting programme. At the same time, it seems wise to me to set our goals in a middle ground and healthy distance between Babel menace and the utopias of a digital universe.

## SUGGESTED BIBLIOGRAPHY

- ABELMAN, R. & HOOVER, S. M. (Editors): *Religious television: controversies and conclusions*. Norwood, N.J., 1990.
- ALDRIDGE, M. & HEWITT, N., *Controlling broadcasting: access policy and practice in North America and Europe*. New York, 1994.
- ARAGÓN, M.: *Constitución y control del poder*. Buenos Aires, 1995.
- BARENDT, E.: *Broadcasting Law. A comparative study*. Oxford, 1993.
- BARTON, J.V.: *Television standards? : Indecency, booze, and violence*. New York, 2005.
- BERRIGAN, J.: *La comunicación comunitaria (Cometido de los medios de comunicación comunitaria en desarrollo)*. UNESCO, Paris, 1981.
- BUCKLEY, S., (et al.): *Broadcasting, voice, and accountability: a public interest approach to policy, law, and regulation*. University of Michigan Press, 2008.
- CARLASSARE, L.: *Il pluralismo radiotelevisivo tra pubblico e privato*. Padova, 2007.
- CHEVALIER, J.: *Le service public*. Paris, 1987.
- CHINCHILLA MARÍN, C.: *La radio-televisión como servicio público*. Madrid, 1988.
- CULE, N. J., CULBERT, D., WELCH, D.: *Propaganda and Mass Persuasion: A Historical Encyclopedia*. Oxford: ABC CLIO, 2003.
- D'HAENENS, L. & SAEYS, F. (Editors): *Western broadcasting at the dawn of the 21st century*. Berlin, 2001

- DE BELLESCIZE, D., FRANCESCHINI, L.: *Droit de la communication*. Paris, 2005.
- DORNFELD, B.: *Producing Public Television, Producing Public Culture*, Princeton University Press 1998.
- EMERY, W.: *Broadcasting and government*. Michigan State Univ. 1971.
- ENGELMAN, R.: *Public Radio and Television in America: A Political History*, Sage Publ, 1996.
- FRIENDLY, F. W.: *The good guys, the bad guys and the first amendment: free speech vs. fairness in broadcasting*. New York, 1977.
- GIBBONS, Th.: “La televisión pública en la Unión europea”. *La televisión pública en la Unión Europea*. Madrid, 1996.
- HARRISON, J.: *European broadcasting law and policy*. Cambridge Univ. Press, 2007
- HELBERGER, N.: *Controlling access to content: regulating conditional access in digital broadcasting*. The Hague, 2005.
- HOLSINGER, R. L., DILTS, J. P.: *Media law*. New York, 1994.
- HORSFIELD, P. G.: *Religious Television: The American experience*. New York, 1979.  
Free access on line to the complete book: <http://www.religion-online.org/showbook.asp?title=1627>
- ISAR, H.: *Le service public et la communication audiovisuelle*. Paris, 1995.
- ISEPPI, F, BOSSI, V., *Il ruolo e la missione del servizio pubblico radiotelevisivo e l'etica d'impresa*. Roma, 1998.
- JAFFE, L.L.: “The editorial responsibility of the broadcaster: reflections on fairness and access”. *Harvard Law Review* 85 (1972) 768-792.
- KAHN, F. J.: *Documents of American broadcasting*. New Jersey, 1978.
- KATSIREA, I.: *Public broadcasting and European law: A comparative examination of public service obligations in six member states*. Aspen, 2008.
- KEANE, J.: *The Media and democracy*. Cambridge, 1991.
- KRATTENMAKER, T. G., and POWE, L. A.: *Regulating broadcast programming*. Washington D.C., 1994.
- LE DUC, D. R.: *Beyond broadcasting: patterns in policy and law*. New York, 1987.
- MEARSHEIMER, J. J. & WALT, S. M.: *The Israel Lobby and US foreign policy*. New York, 2007.
- MONTORO, A.: *El derecho de acceso a la radiotelevision publica: el acceso del art. 20.3 de la Constitucion Espanola*. Madrid, 2007.
- MOORE, R. L.: *Media law and ethics: a casebook*. New York, 2008.
- McCAULEY, M. P. (et al. editors): *Public broadcasting and the public interest*. New York, 2003.
- MUÑOZ MACHADO, S.: *Público y privado en el mercado europeo de televisión*. Madrid, 1993.
- PACIULLO, G.: *Il mezzo radiotelevisivo: evoluzione normativa, modelli di riferimento, sistema delle garanzie e tutele*. Perugia, 2001.

- PATTERSON, P. & WILKING, L.: *Media ethics. Issues and cases*. McGraw Hill, 2005.
- PECK, J.: *The gods of televangelism: the crisis of meaning and the appeal of religious television*. New Jersey, 1993.
- PEMBERT, D. R. & CALVERT, C.: *Mass Media Law*. McGraw Hill, 2005.
- PRICE, M. E.: *Television, the public sphere, and national identity*. Oxford Univ. Press, 1995.
- REGOURD, S.: *Droit de la communication audiovisuelle*. Paris, 2001.
- RODRIGUEZ GARCÍA, J.A.: *El control de los medios de comunicación*. Madrid, 1998.
- SADLER, R. L.: *Electronic Media Law*. Western Illinois University, 2005.
- SCHULTZE, Q. J.: *Televangelism and American culture: the business of popular religion*. Grand Rapids, 1991.
- SMITH, R. C.: *Broadcasting law and fundamental rights*. Oxford Univ. Press, 1997.
- TILLINGHAST, C. H.: *American broadcast regulation and the First Amendment: another look*. Iowa State Univ. Press, 2000.
- WILKERSON, M. M.: *Public Opinion and the Spanish-American War: A study in war propaganda*. Louisiana State University Press, 1932.
- WOOD, J. & DAVIS, D. (Editors): *The Role of government in monitoring and regulating religion in public life*. Baylor University, 1993.
- ZACCARIA, R.: *Radiotelevisione e Costituzione*. Milano, 1977.
- ZUKOWSKI, A.: *Cable television and adult religious education*. Washington DC, 1984.

## USEFUL WEB SITES (FOR UPDATING INFORMATION)

European Commission Communication Media:

- [www.ec.europa.eu/information\\_society/media](http://www.ec.europa.eu/information_society/media)
- [www.ec.europa.eu/information\\_society/policy/ecomms/index\\_en.htm](http://www.ec.europa.eu/information_society/policy/ecomms/index_en.htm)
- [http://www.humanrights.coe.int/Media/topics/broadcasting/transfrontier/convention\\_on\\_transfrontier\\_tv.htm](http://www.humanrights.coe.int/Media/topics/broadcasting/transfrontier/convention_on_transfrontier_tv.htm)
- US Federal communication:  
[www.fcc.gov](http://www.fcc.gov)
- US Code collection:  
[www.uscode.law.cornell.edu/uscode/current/broadcasting/index/en.htm](http://www.uscode.law.cornell.edu/uscode/current/broadcasting/index/en.htm)