

## THE NEW COMMUNICATIONS AGENDA IN SCOTLAND

*Philip Schlesinger*

### INTRODUCTION

In September 2003, in **Holyrood** magazine, a bevy of Scotland's leading cultural figures attacked the Scottish Executive's lack of a consistent policy for the arts (Crawford 2003). The official response came in November 2003 in the First Minister's St Andrew's Day Speech, which claimed that Scots' cultural rights would be at the heart of the Executive's approach in future (McConnell 2003).

How the Executive will implement its eventual cultural policy remains to be seen. The approach will be home-grown because culture is a 'devolved' matter and both the capacity and competence to devise a national strategy lies in Edinburgh's hands (Hamilton and Scullion 2002, 2003). Communications, however, is a 'reserved' matter: thus, it remains London's province. But culture and communications are profoundly related. Whatever Scotland's autonomy may be, the shaping presence of the UK affects many aspects of its cultural life. This is particularly so in the case of broadcasting, which is connected to a wide range of artistic, cultural and leisure activities north of the border.

Just before the cultural elite inveighed against the Executive, a major audit of Scotland's screen industries was published (Graham and Associates 2003). Like similar reports, this one was principally concerned with the value added

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to Scotland's economy of various forms of cultural production: television, feature film, animation, radio, screen-related media, video production and commercials. This approach fits the dominant thinking about the role of culture and communication that is shared by Edinburgh and London policy makers. Economic value is at the top of the agenda.<sup>1</sup> Although Scotland does have a distinctive media economy, the audit treats it as a specific region of the wider UK economy.<sup>2</sup> The Scottish screen industries' worth is both measured against UK performance criteria and also located in an international market place.

In many respects, these two instances both reflect, and encapsulate, the fault-lines that exist in Scotland's cultural and communicative spaces. First, there are inherent tensions between ideas of cultural and economic value when these are applied to the arts and to the creative industries more generally. There is nothing special about Scotland in that respect. Looking beyond the rhetoric, we should not assume that creatives aren't interested in making money; nor should we assume that governments aren't interested in the aesthetic merits of what is produced by the various art worlds. Nevertheless, such opposing stereotypes do contain an important truth not only about the terms on which debate is conducted but also about the self-images and dominant beliefs held by the parties to the debate.

Second, and central to what is argued here, there are inherent limits to how we can presently talk about developing a coherent policy for culture *and* communications in a devolved system of government. For the purposes of this analysis, I shall set culture to one side and my focus will be specifically on communications as an object of policy in the sense designated by current UK law (Communications Act 2003). Broadcasting is a key focus of the Act but the new legislative framework breaks with the past by expanding its scope to embrace telecommunications as well as media and cross-media mergers. How the Act has redefined and combined formerly disparate fields of activity could have significant consequences for the future of policy debate and lobbying in Scotland.

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<sup>1</sup> *But as Simon Frith (2002) rightly argues, questions of aesthetic value inescapably reappear, whether we are talking about traditionally conceived 'high' culture or 'popular' culture.*

<sup>2</sup> *Sub-state regionality makes policy comparisons between Scotland and small European states highly problematic.*

## **SCOTLAND'S MEDIA SPACE**

Scotland has long had an indigenous press, which continues to exercise a strong grip on the country's readership, despite the inroads made by the Scottish editions of London-based titles. Most Scottish national titles (whether indigenous or editions of London papers) are published in Glasgow, which is Scotland's media capital. Significant papers are also published in Edinburgh, Dundee and Aberdeen; and there is also a well-developed local press. Scotland has been an attractive market for newspaper investors and evidently continues to be so.

In the field of public service radio and television broadcasting, the whole country is served by BBC Scotland, with headquarters in Glasgow. Also regulated on public service lines are the ITV companies Scottish Television and Grampian Television which cover virtually the whole country and are owned by SMG, the Scottish Media Group. A small slice of the television audience is served by Border Television. The dominant commercial radio player is Scottish Radio Holdings. The BBC, Channel 3 (ITV1), Channel 4 and Channel 5 all have legal obligations to spend varying proportions of their programme-making budgets outside of London on first-run productions.<sup>3</sup> Part of this expenditure occurs in Scotland and is crucial to sustaining the creative economy there, as in other parts of the UK. Both the BBC and Channel 4 commission programmes for the network (as well as for Scotland) through their nations and regions offices in Glasgow. Some ITV programming produced in Scotland is also destined for the network. In the field of audiovisual production, Scotland is presently one of the UK's leading centres, with Glasgow as the linchpin.

Although Scotland has long had a distinctive communicative space within the UK, devolution has thrown into relief relations that were once relatively implicit. The Scotland Act 1998 distinguished between 'devolved' and 'reserved' powers. Broadcasting – central to the new Communications Act 2003 – was expressly 'reserved' to Westminster. So, too, was telecommunications. Powers over the press (most notably, in respect of cross-media ownership and concentration) are also reserved, coming under UK regulatory bodies. Nevertheless, Scotland does retain considerable autonomy over cultural arenas that relate directly to the 'converging' fields of

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<sup>3</sup> *Current figures are BBC 33%, C4 30%, C5 10% and ITV 50%.*

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broadcasting and telecommunications. Support for film and television production is handled by Scottish Screen. The arts generally are within the remit of the Scottish Arts Council. The business development end of the creative industries comes under the aegis of Scottish Enterprise. The agencies' activities overlap and the Scottish Executive is presently reviewing their roles. The formation of a single, Creative Scotland, agency is a possibility.

Cultural and communicative activity in Scotland, then, is subject to distinct Scottish and UK jurisdictions. But devolution has created a new political system north of the border with the capacity to debate matters that still remain London's exclusive legislative and regulatory prerogative. This debating capacity remains underdeveloped. From time to time, questions about communications, both Scottish and UK-wide, have been discussed in the Scottish Parliament. For instance, when the Communications Bill was passing through the Commons, there was also some debate at Holyrood. The main issue addressed was that of Scottish representation on the new regulatory body, the Office of Communications, Ofcom (Scottish Parliament Official Report 2002). But this was muddled up with arguments about the sale of the **Herald** group of newspapers. In fact, the Scottish Parliament's pre-eminent concern about the media has been rather narrowly concerned with its own image in Scotland, a matter that greatly preoccupied the Procedures Committee early in 2002. Arguably, the fact that communications is designated a reserved matter has inhibited thinking about broader policy questions both in the Executive and the Parliament. For its part, the SNP has periodically advocated greater control over broadcasting north of the border. On the whole, political discussion has been both limited and sporadic. Perhaps this will gradually change. In September 2003, the enterprise and culture committee took private soundings by questioning some key Scottish figures on the implications of the Communications Act 2003. But their fact-finding did not translate into wider public debate.

For the most part, then, media and communications policy issues do not greatly agitate the Scottish political class or public unless – as is the case with some aspects of film policy – they can actually be implemented north of the border. The best known example has been the repeated attempt to gain Scottish Executive financial support for setting up a national film studio. Scots do not lack strong views on what the media and telecommunications services offer. But that is quite a different matter from thinking about policy

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questions. These do routinely concern some of Scotland's elites and lobbies whose gaze invariably has turned southwards.

Apart from material concerns, communications is a field that also sometimes engages the sentiments. Occasionally, a cause célèbre arouses passions. It may mobilise elites and resonate even more widely in the circles of public opinion. The case of the 'Scottish Six' has been a classic example. This concerned BBC Scotland's controversial proposal to broadcast a Scottish-produced version of the news on BBC1 in the 6-7pm slot, and is discussed more fully later. More narrowly, there are expert matters in which tiny elites may identify problems that are ignored south of the border simply because they are not on the London radar screen. The question of Scottish representation in the revamped UK regulatory body for communications was one such issue.

### **TENSIONS IN BROADCASTING**

Because of its prominence in everyday life, broadcasting (especially television) tends to be a focus of jurisdictional tensions. These emerge occasionally and often unpredictably – most often in the field of news and current affairs programming, which is at the heart of politics.

The most notorious recent row occurred in 1998, the year before devolution became a reality. The main lines of the story have been aired elsewhere (Schlesinger et al 2001, ch.2). The heart of the matter was whether or not BBC Scotland should be allowed to broadcast its own 6-7pm hour of news and current affairs on BBC1. This would have entailed an opt-out from network news to follow a news agenda ordered according to Glasgow's priorities. For London, this was simply too much. For some – including John Birt, the BBC's then Director-General – the 'Scottish Six' was but one step away from the dissolution of the realm: 'I was deeply resistant to the proposal. It could have dire consequences for the BBC and unintended consequences for the United Kingdom. ... The end of a single common experience of UK news', Birt wrote, would 'encourage separatist tendencies' (Birt 2002, p. 484).

Senior ministers, most of them Scots, and the Prime Minister, were persuaded by this alarmist vision. Contrariwise, by the end of the various press campaigns, almost 70 per cent of Scots were said to be in favour of a

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Scottish Six (Schlesinger et al 2001, p.46). For present purposes, what is so interesting about this case is its translation from a rather arcane and essentially private broadcasting row, debated for months between the Broadcasting Council for Scotland and the BBC Executive in London, into a major Scottish political story. The Scottish Six became a thoroughly national matter: one of having 'our' news denied to us by 'them'. And for the London-based opponents (the key ones being top Labour Party Scots), BBC Scotland's policy could easily be tarred with the brush of nationalism, and therefore dismissed.

For a while, the political heat dissipated. A little noticed inquiry by the Scottish Affairs Committee at Westminster in spring 2002 showed no concern at all about the Scottish Six, even advocating that ITV also consider such programming and that the Broadcasting Act be amended to facilitate this. But as a safeguard, the committee wanted the interconnections between Edinburgh and London politics, and those of Brussels, to be the guiding framework for news (Scottish Affairs Committee 2002).

A further episode in the saga came in autumn 2003 when it was reported that BBC Scotland had been producing pilot programmes for the BBC1 6-7pm news and current affairs slot as part of BBC Scotland's review of its journalism output. The programmes were described as 'demonstration' tapes, in a vain attempt to stop nervous stirrings in the political dovecote (Fraser 2003). 'These are to assist focus groups with the concept', said a senior BBC source. 'We are not calling them pilots as that would imply the real thing would follow, and we have an open mind about that.'

The idea of revisiting the Scottish Six brought condemnations from Brian Wilson MP, former Scotland Office and UK energy minister. George Foulkes MP, also once of the Scotland Office, warned the BBC not to be parochial. However, Roseanna Cunningham, the SNP's broadcasting spokeswoman, called for more resources to be put into the project. Labour and SNP views for and against the Scottish Six were next aired in **Holyrood** magazine (Russell and Macintosh 2003, pp.48-49).

These skirmishes were but the preamble to the publication on 17 December 2003 of BBC Scotland's **Journalism Review** (BBC Scotland 2003). This 40-page document offered a self-assessment of the BBC's output in Scotland since May 1999 and the establishment of the Scottish Parliament. Amongst a range of findings, what grabbed the headlines – predictably enough – was the

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report's virtual interment of the long-debated Scottish Six. The evidence was rather equivocal. Two options were canvassed – an integrated Scottish-edited news broadcast between 6-7pm, and the present arrangement whereby the 6pm news is UK wide followed by **Reporting Scotland**. Of the 1000 people surveyed, 55% of respondents said they were interested in one single programme, 63% favoured the current arrangement. Pressed to choose between the two, 38% chose the integrated news (the Scot4ish Six) whereas 45% opted for the status quo, with 17% don't know. While the research uncovered some doubts about the relevance of news from London, the conclusion was that while 'the case for an integrated Scottish news hour does not appear strong enough to justify the change being made, the position should remain under review' (BBC Scotland 2003, pp.17-23). So the door has not been entirely closed by the BBC.

Irrespective of what the corporation might decide, others seem determined to keep the matter on the public agenda. On 8 March 2004, the Scottish Consumer Council (2004) published a riposte to the BBC's research. The report, based on a survey of attitudes towards the BBC's news provision, found that a majority of respondents was in favour of the creation of a Scottish Six. Strong or slight support was at 69%, with 14% opposed, and 17% don't know. The SCC found that support for a Scottish Six was greater among lower socio-economic groups than amongst ABs. The SCC's chairman, Graeme Millar, said that the findings demonstrated 'a level of dissatisfaction in Scotland with news' from the BBC (Ward 2004, p.7). Paul McKinney, head of news and current affairs at Scottish Television, also took up the cudgels. Speaking at a conference on the media at the Royal Society of Edinburgh the following day, he argued that Scottish broadcasters should broaden their horizons and put out an international, UK and Scottish news programme on ITV in the slot currently occupied by ITN's late night news (Fraser 2004). McKinney's sally, although billed as a personal view, was approved by SMG, and reflected one possible strategy that the company might pursue, although it would require changes in UK communications legislation to deviate from the standard ITN offer.

Scotland's distinctive political map and electoral cycle occasionally throw up other complications. Even before devolution, the country's political culture would create the odd difficulty for London schedulers. For instance, a well-known case occurred when the UK networked programme Panorama intended to run an interview with the Conservative Prime Minister, John

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Major, in spring 1995, three days before the Scottish local elections. A legal move by opposition parties in Scotland succeeded in preventing the broadcast by way of an interdict from the High Court in Edinburgh on the grounds that it breached the impartiality rule (Barendt 1998, p.111).

Post devolution, the same inherent tensions have persisted. When the ITV network broadcast **Ask the Prime Minister** in winter 2000, it once again faced protests about impartiality. The network had scheduled a programme with Tony Blair and an audience of questioners. The programme was due to be screened before a parliamentary by-election in Falkirk West. Speculation was then rife about whether there would be a UK general election the following spring. Putting on an access show of this kind featuring Mr Blair meant that, in order to ensure due impartiality, ITV had to reschedule its programmes in Scotland. It also added a special edition of the election programme, **Hustings**, to meet the objections of the SNP. Such incidents tend to be rather intense, to attract much press Sturm und Drang, some parliamentary expostulations, and, from a Scottish point of view, serve to rattle the cage of a presumed, homogeneous Britishness.

Although the impact has not been dramatic, network broadcasters have had to rethink aspects of programming and scheduling in the wake of devolution. However, this has not posed any fundamental problems for them and the continuities are more striking than the changes. For instance, recent research (into cases such as **Any Questions?** and **Question Time**) has shown how London-based programme teams in the current affairs field have made adjustments to established formulae to meet Scottish needs, while at the same time keeping the entire UK audience in mind (McNair et al 2003).

### **PRESS COMPETITION**

Another example, also post devolution, concerns the press. To reduce its debt, in 2002 SMG decided to divest itself of its newspaper holdings and put **The Herald**, **Sunday Herald** and the **Evening Times** on the market. Given the pivotal opinion-forming role of the **Heralds**, not only for the west of Scotland, but also for the entire devolved political system, much hung on the purchaser. Both elements of Scotland's political class and sections of the blethering classes were somewhat exercised. The sale revealed much about how post-devolution politics over the press is conducted. In substance, it is

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just the same as pre-devolution politics. However, one thing is different: the stakes have risen.

At the time of the Competition Commission inquiry, decisions about questions of media ownership rested with the Department of Trade and Industry under the newspaper provisions of the Fair Trading Act 1973. Although, in the eyes of competition law, Scotland is simply a regional UK market, its new national politics – however implicitly - have to be factored into regulatory decisions. Section 375 of the Communications Act 2003 affords greater discretion in the interpretation of what constitutes a plurality of views in particular contexts. But this was not the legislative position at the start of 2002.

Among the range of potential buyers for the **Herald** group was an investment vehicle for the Barclay Brothers, who own Scotsman Publications. There was evidently widespread concern in the political class about the **Scotsman** stable making a successful bid. In the parliamentary debate already noted, Mike Russell MSP, the SNP's media and culture spokesman, quickly lodged a motion with the Scottish Parliament, calling for more diversity of ownership north of the border, thereby underlining the importance of decisions made in London for a devolved Scotland. By early November 2002, the SNP was calling for the power to regulate the media to be transferred to the Scottish Parliament from Westminster. Russell asked for the sale of SMG's papers to be subject to an inquiry by a parliamentary committee in Edinburgh.

Reflecting Scottish Labour's desire not to have an open dispute with London, Karen Gillon MSP, convener of the Scottish Parliament's education, culture and sport committee, expressed her confidence that the UK competition minister in the DTI, Melanie Johnson MP, was fully aware of the issues. Gillon had written to Johnson about the sale, raising questions about its impact on the diversity of content and the plurality of media ownership in Scotland. Ms Gillon echoed other MSPs' concerns about the risks of a 'predatory' bid by the Barclay brothers. Only the Scottish Conservatives appeared to favour a **Scotsman** take-over (Horsburgh 2002). The issue and its wider implications spilled across the border in the shape of careful analyses by both the **Financial Times** (2002) and **The Guardian** (Brown 2002). No doubt these pieces were influenced by cross-border media connections.

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Jack McConnell, the Labour First Minister, is believed to have lobbied the UK Labour leadership. Robin Cook, Leader of the House of Commons, stated his preference for the **Herald** and **Scotsman** groups to remain separate (Summers 2002). The Scottish Secretary, Helen Liddell MP, incurred the wrath of Andrew Neil, the **Scotsman** group's publisher, for her open concern about the sale (Ashley 2003). Such expressions of opinion carried weight. The SMG board's judgement eventually went in favour of Gannett. Although commercial considerations were predominant, the SMG board were also clearly sensitive to the political atmosphere and how they would look in their own backyard (Hope 2002).

The company opted to sell to Newsquest, the British arm of the US media giant, Gannett, for some £216m (Kane 2002). The sale was then investigated by the Competition Commission, which visited the Glasgow-based papers and held hearings in Scotland. The Commission was charged with considering public interest aspects of the sale and gave signs of being sensitive to the fact that devolution had special implications for the Scottish media market. The Commission opted for Newsquest and the Secretary of State for Trade and Industry accepted the recommendation. The case brought out the capacity of the Scottish Parliament to debate questions of media concentration but also its incapacity to act legislatively. Just as in the days of the Scottish Office, mobilising the old north-south lines of political influence to Westminster was the chosen path. Senior politicians' views, in all likelihood, were a significant factor in the decision-making process, not least as the potential political consequences of making errors of judgement about media ownership in Scotland have grown considerably since 1999.

### **INFLUENCING THE COMMUNICATIONS ACT 2003**

On 17 July, the Communications Act 2003 received Royal Assent. A striking feature of current UK communications legislation has been the retention of all legislative and regulatory powers in London at a time of devolution. There are both political and economic calculations behind the refusal to devolve powers over the media. Politically, and most notably in relation to broadcasting, there has been a fear in key government circles and amongst some senior broadcasters that parcelling out powers will lead inevitably to separatism and the collapse of the Union. John Birt stated this most dramatically.

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Economically, the thinking underlying the Communications Act was summed up in the phrase that introduced the legislation. Government policy is intended to make ‘the UK the most dynamic and competitive communications market in the world’.<sup>4</sup> Increased competitiveness is conceived of as occurring within a ‘convergent’ digital electronic environment. UK government policy envisages a new communications economy in which broadcasting, telecommunications and computing come together to create the basis for an ‘information society’. For British policy-makers, the key reference point is the global economy and building ‘UK plc’s’ strengths within that context. Permitting the emergence of bigger players – for instance, a single ITV – easing cross-media ownership rules, and encouraging foreign investment are all part of this picture. The Communications Act 2003 has been strongly driven by competition considerations.

The Act was preceded by a lengthy period of consultation. First there was a White Paper, **A New Future for Communications**, published in December 2000. This was followed by the draft Communications Bill, on which consultation began in May 2002. The public consultation was paralleled by the pre-legislative scrutiny of a joint committee of the two Houses at Westminster, chaired by Lord Puttnam (House of Lords, House of Commons 2002). The joint committee reported in August 2002. The government accepted a substantial number of amendments and a revised Communications Bill was issued at the end of 2002. The relatively open consultation process allowed a variety of lobbies to intervene.

It was striking just how little public debate took place in Scotland during the Act’s lengthy gestation period. The Voice of the Viewer and Listener (a UK body) held a public conference on the Bill in Edinburgh in 2002. There was an occasional newspaper forum for articles on the Communications Bill (Galbraith 2002; Kemp 2002; Schlesinger 2002). There was the one, rather unfocused, parliamentary debate in October 2002. More typical, apart from direct lobbying in London by a variety of interests, was the convening of small private meetings. One such Glasgow encounter in February 2002 was a lunch sponsored by the Scottish Consumer Council, the only body in Scotland to attempt to think through the consequences of the new legislation for both broadcasting and telecommunications. The discussion made it clear

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<sup>4</sup> [www.communicationsbill.gov.uk/policynarrative/550806.html](http://www.communicationsbill.gov.uk/policynarrative/550806.html), p.1.

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that London policy makers had given little thought to the implications for Scotland of their legislative proposals. Arguably, the expression of strong views around the table did at least put Scottish concerns onto the agenda. The SCC's own focus was on the effects of market consolidation on 'regional identity, plurality and choice' in broadcasting; it was also worried that Scotland was falling behind in the communications revolution, in particular with respect to the Internet and digital television take-up (Scottish Consumer Council 2002).

The Communications Act 2003 and Ofcom were not born into a vacuum. A key legacy of the British broadcasting system, as it moves into its new phase, is the long-standing commitment to sustain regional identities and also to maintain broadcast production outside the M25 belt. While at one level there are intense pressures on broadcasting to face outwards and address the global market, there are also inherited constraints that mean that audiences in the nations and regions have to be served in ways largely continuous with the past. The principled argument to retain 'regionality' was most effectively propounded by the outgoing regulator for commercial television, the ITC.

The ITC set out a **Charter for the Nations and Regions** which noted that ITV had committed itself to an annual investment target of 50 per cent of expenditure on out-of-London originated programmes. A further commitment was made to extensive regional news coverage at peak time. According to the ITC, the reforms ensured 'a concentration on core regional values: news and current affairs; diversity for local needs and interests; a distinctive and comprehensive alternative to the BBC'. At least 90 per cent of Scottish regional programmes were to be produced in Scotland. Some independent producers remained sceptical about how the Charter would impact on their businesses. From the point of view of influencing the climate of opinion during the legislative process, however, this commitment was highly significant. The ITC also argued strongly for the retention of offices in the nations and regions. ITC research was used to bolster the arguments. It found that there was a considerable appetite for news provision that addressed local and regional concerns and that that regional programming was regarded as a vital service by the majority of viewers (Hargreaves and Thomas 2002; Kidd and Taylor 2002).

Independent producer interests were effectively prosecuted by their trade organisation, PACT, which was instrumental in ensuring that favourable programme supply conditions were established as the Bill was debated (ITC

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2002a; PACT 2002). Independent television production for BBC Scotland, ITV and Channel 4 (and other broadcasters) has contributed to building capacity in Scotland, particularly in Glasgow. The Communications Act 2003 has endorsed the demand for some decentralisation of the broadcast economy, which long predated devolution. However, as before, the present order does not favour Scottish interests as against those in any other nation or region. Ultimately, the performance of the broadcast economy in Scotland will be decided by its competitiveness within the wider UK framework. There is scope for intervention by Scottish agencies to improve the business practices and market strategies of Scottish companies. But other regions are not standing still (The Research Centre 2002, 2003).

It was to address the country's competitive concerns that the Screen Industries Summit for Scotland was held in Glasgow on 3 November 2003. Participants were mainly broadcasters, independent production companies and Scottish development agencies. Attended by over 150 people, this was the largest meeting to discuss the future of the audiovisual industries in Scotland for well over a decade. Of the UK's total of £4.8bn audiovisual content production in 2001, Scotland accounted for £240m, or 5 per cent (Graham and Associates 2003). Two ministers – Frank McAveety MSP, Minister for Tourism, Culture and Sport, and Lewis Macdonald MSP, Deputy Minister for Enterprise and Lifelong Learning – addressed the conference.

A Screen Industries Summit Group was formed, reflecting the range of interests present in Glasgow. Meetings held in January and February 2004 set about identifying key objectives for a potentially powerful Scottish lobbying exercise. Issues in play for television at this time of writing include agreeing targets for a 'realistic' percentage of network production and increasing commissioning power in Scotland. It is intended to establish clear goals not only for television but also for film, the games industry and research and development. Industry interests and the Scottish national agencies are now seeking the active involvement of the Scottish Executive in fighting their case at the UK level at a time of considerable volatility in the media and communications sector.

### **REGULATION AND THE REGULATORS**

The distinct Scottish interest in communications has long been recognised, and in certain instances institutionalised, at the UK level. Until 2003, and the

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launch of Ofcom, the Office of Communications, the reigning model had been a politically inspired one, based on the seat in the UK cabinet accorded the Secretary of State for Scotland. It was no accident that as that office was demoted in significance during the summer of 2003, congruent changes were also taking place in the world of communication regulation. In fact, they preceded it (Trench 2004).

The BBC's Board of Governors has long had 'national' members for Scotland, Wales and Northern Ireland. Each national governor has the support of a national broadcasting council. This system recognises the territorial distinctiveness of the smaller nations in the UK state. The practice was extended – by statute – to the Independent Television Commission (and its predecessor bodies, the ITA and the IBA), as well as to the Radio Authority. The Broadcasting Standards Council also statutorily followed the national member model. In the field of telecommunications, there was a Scottish Advisory Committee on Telecommunications (SACOT), with a statutory duty to advise the then regulator, Oftel, on the needs of telecoms consumers in Scotland.

Before Ofcom, therefore, regulatory bodies dealing with broadcasting had Scottish representation at their highest levels. Scottish ire was aroused when it became evident that Ofcom was to have a relatively small main board and that the territorial principle was dropped for this strategic level of decision making. It was obvious from repeated ministerial statements, as well as the blank wall encountered during lobbying lunches such as that organised by the SCC, that the principle was not going to be conceded. The Office of Communications Act 2002, which set up the Ofcom board in advance of the Communications Act 2003, made no provision for territorial representation on the board of nine members.

The Puttnam committee, which reviewed the government's draft Bill, and was open to submissions of evidence, expressly considered the 'representation of nations and regions'. It supported the UK government's approach to the composition of the main board. However, the committee asked that existing provisions in respect of the two key subordinate committees – the Content Board and the Consumer Panel – be strengthened:

We welcome the proposal for national and regional Councils reporting to the Content Board through the designated national members and we recommend that formal provision for their establishment be made on the

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face of the Bill. We further recommend that, in establishing such Councils, Ofcom be required to have regard to the views of the relevant devolved institutions.

The committee was open to lobbying on this question and also recommended strengthened representational capacities for the Consumer Panel, which, it said, should 'be granted a power to establish such committees as it considers appropriate. We expect that this power be exercised to establish consumer committees for Scotland, Northern Ireland and Wales.' The committee called on the Government to honour its pledge to maintain the existing regulatory presence in the devolved countries, recommending that 'Ofcom be placed under a statutory duty to maintain offices in Scotland, Wales and Northern Ireland'. Sensitivity to the existence of devolved bodies was shown by recommending that 'Ofcom be required to include in its annual report accounts of its activities in Scotland, in Wales and Northern Ireland.' (House of Lords, House of Commons 2002, pp.20-21).

MPs, Peers and MSPs had been vigorously lobbied by SACOT to strengthen the rather weak provisions agreed by ministers.<sup>5</sup> The Puttnam committee was influenced in its thinking by these and other representations. The Scottish Executive was also apparently effective in its lobbying and its line on securing improved representation was the same as SACOT's. This was a fallback position. The First Minister, Jack McConnell had taken exception to the lack of representation on the Ofcom main board. But Tessa Jowell, the Secretary of State for Culture, Media and Sport at Westminster, rejected his argument.<sup>6</sup> Mr McConnell also raised the issue with Helen Liddell, the Scottish Secretary. According to his spokesman, the First Minister was exercised about the 'cultural and democratic importance' of broadcasting to Scotland and wanted the Ofcom board to 'take into account Scottish interests and circumstances' (Macleod 2002). The retreat by the Executive was fully exposed during the brief parliamentary debate initiated by Mike Russell MSP. Russell maintained that Scotland needed a full-scale discussion on how

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<sup>5</sup> *UK Communications Bill: Briefing for all MSPs, SACOT: Edinburgh, December 2002.*

<sup>6</sup> *The Deputy Minister for Tourism, Culture and Sport, Dr Elaine Murray, candidly said in the parliamentary debate referred to above: 'It is on record that the First Minister requested a seat on the central board. The DCMS feels strongly that it should not be a representative board...'* Col.14807.

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it would be affected by the new legislation. He was supported in this by Michael Shea, Scottish national member of the ITC, who said, 'While broadcasting in Scotland is not a devolved power, Scots ought to be interested in what's going to happen in terms of ownership and in terms of content of Scottish coverage' (Fraser 2002). Shea had also taken private soundings among Scotland's great and good, holding a meeting at his Edinburgh home. The Scotland Office, according to some insiders, toed the line being put out by the DCMS and DTI, which was hostile to any statutory provisions being made for Scottish representation.

At the end of 2002, the revised Bill statutorily required offices to be set up in each of the UK's nations. The Content Board and Consumer Panel would each have a member for Scotland. SACOT argued that this was not enough capacity to attend to the country's needs and that 'the Bill should be amended to provide for a Committee for Scotland, reporting to the Ofcom Board, with input to and from both the Content Board and Consumer Panel'. SACOT also argued that the remit of the Consumer Panel should be broadened to take in a wide range of broadcasting policy areas. The Committee for Scotland amendment was resisted by the Ofcom Board 'on the grounds that it was something they were going to do anyway. It was also resisted by the Government up to the final stages of the debate in Lords.'<sup>7</sup> Lobbying efforts, however, which included amendments to the Bill drafted by SACOT, resulted in provision for a statutory national committee.

Statutory status has entrenched the Scottish committee's functions. This status had to be fought for, and represents one of the signal outcomes of Scottish lobbying. It was bodies such as SACOT and the SCC (and the Scottish Executive working behind the scenes) that focused attention on the potential loss of Scottish statutory representation.

### **INFORMAL POWER LINES**

In the year-long run-up to the creation of a Scottish national advisory committee, Ofcom's leadership kept open the lines to Scotland, providing

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<sup>7</sup> *Personal communication from Jeremy Mitchell, Chairman of SACOT, 4 September 2003.*

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both personal briefings for key figures in broadcasting and telecommunications and meeting interested parties.

On 24 April 2003, Richard Hooper, Chairman of the Content Board, visited Glasgow to deliver the Campbell Swinton Lecture to media decision-makers, policy wonks and academic specialists under the auspices of the Royal Television Society. He noted the appointment of Matthew MacIver as Scotland's man on Ofcom's Content Board. Well before the Scottish committee had acquired formal statutory status, Hooper intimated that some sort of consultative body might be set up and underlined the importance of 'regional' production for the new regulator's remit (Dixon 2003).

Barely a month had elapsed when Lord Currie, Ofcom's Chairman, came to Glasgow on 30 May for a breakfast seminar hosted by SMG. He said that Ofcom had a 'bias against intervention' and assured his audience of media folk, industry interests and members of the policy community that regional production would be safeguarded. Ofcom, he said, recognised that in the nations there were 'different needs and interests' and that the regulator would 'adapt arrangements from experience'. In more definite mode, Currie said that the Content Board would be seeking advice from national councils with a wide membership that covered the range of functions dealt with by the new converged body. He went on to say that Ofcom would seek to support 'genuine regionality' and that the use of quotas for policy purposes would be in the remit of the Content Board. Currie further said that he expected Ofcom to develop a relationship with 'the various legislatures' in the UK.<sup>8</sup> Since then, Stephen Carter, Ofcom's Chief Executive, has travelled north of the border for one-to-one briefings with a number of key individuals in the Scottish Executive and in broadcasting and telecommunications. On 24 February 2004, Ofcom ran a focus group discussion in Glasgow, tapping into the public's views on the future of public service broadcasting. On the same day, also in Glasgow, it consulted on its annual plan for 2004/05 (Ofcom 2004) before an invited audience of industry people, representatives of various associations and academics. The Scottish advisory committee held its first meeting on 27 March.<sup>9</sup>

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<sup>8</sup> *Author's notes taken at the meeting.*

<sup>9</sup> *Ofcom's Advisory Committee for Scotland, which reports directly to the Ofcom Board, has the following membership:*

## **WHERE NEXT?**

Will the emergent communications agenda simply be responded to in a reactive manner in Scotland or will the capacity to identify, debate, analyse and work pro-actively on communication issues become part of the devolved political culture? A difficulty that the devolved institutions confront in developing a strategic view lies in their response to date to the division of powers between the Parliaments. There has been a reluctance to explore the boundaries between the devolved and the reserved. If that continues to be so, 'ownership' of the communications agenda will surely remain with major interest groups that have the resources and motivation to get to grips with current policy debate. But at a period of far-reaching change there is a major public interest in communications being widely understood and discussed amongst all citizens as a counterweight to the elite and expert circles of influence which presently monopolise debate.

Across the UK as a whole, Ofcom will have a key role in policing the terms of trade for regional production that falls within a public service broadcaster's target. While BBC Scotland, the SMG companies, and, to a lesser extent, Channel 4, are significant players, the independent production companies – with few exceptions – are very small. Recent industry reports (The Research Centre 2002, 2003) stress the need to improve the business skills of independents and to make them more market aware. Producers and

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*The Ofcom Content Board and Consumer Panel Members for Scotland, and the Chair of the Gaelic Media Service (Matthew MacIver, Fiona Ballantyne and Neil Fraser, respectively);*

*Peter Black, previously on the UK management board of NTL;*

*James Hunter, chairman of Highlands and Islands Enterprise;*

*Fiona McLeod, partnership officer, East Dunbartonshire Council for Voluntary Services;*

*Andrew Muir, independent telecoms consultant;*

*Thomas Prag, media and PR consultant;*

*Selma Rahman, co-ordinator of Equal Futures;*

*Philip Schlesinger, Professor of Film and Media Studies, University of Stirling;*

*Joyce Taylor, non-executive director of Mersey Television.*

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broadcasters are concerned about Glasgow increasingly losing out to Manchester and other major English regional centres. The Scottish public agencies could make a telling intervention, as nations and regions are in effect competing with each other for business. As noted, the Screen Industries Summit Group has taken the message firmly to heart and is developing its campaign.

The new-style ITV (following the Carlton-Granada merger) is imposing pressures on the regional-federal commercial model that has been in force since 1955. This framework has been transformed increasingly by the growing concentration of ownership that has characterised the past two decades. Although it is not impossible to sustain decentralised production for ITV, much depends on the future balance between competition and public service considerations. Current speculation about a possible alliance, or even merger, between the publicly owned Channel 4 and the private Channel 5 suggests that we face a rapidly transforming terrestrial broadcasting landscape.

Against this volatile background, the Scottish ITV landscape is shifting. The future of SMG is increasingly questioned. The group first sold its newspapers and then a key part of its radio assets to address its debt problems. If Scottish and Grampian are bought up and integrated into a consolidated ITV, this is likely to have major implications for the extent of TV production north of the border and for a Scottish voice on Channel 3. The stations could also be of interest to a non-UK buyer. Even if the SMG companies were left to their own devices, broadcasters and producers fear that the proportion of Scottish-produced programming on the integrated ITV network would fall. The uncertain future ownership of ITV in Scotland means that how Ofcom defines and polices 'regionality' is likely to become an economic and political issue for the Scottish Executive and the Scottish Parliament.

Ofcom will also soon take a view on the pricing of the radio spectrum, as part of its current review. At present, ITV pays for access to the spectrum through its licence fees. The BBC and Channel 4, as public service broadcasters, do not. Whether this position will be sustained is now an open question. The outcome is linked to the rethinking of what constitutes public service broadcasting and what are the best forms for its finance and delivery. These matters are unavoidably on the political and regulatory agenda.

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As we head towards the government's goal of a digital switch-over by 2010, those who wish to argue for a different model of commissioning public service production, and for changing radically the nature of its distribution, point to the impact of new technology. Digitisation under regulated conditions expands the capacity for universal delivery. If a large number of channels were to become universally accessible, in principle the delivery of public service programming could be put out to tender on different principles from those that now pertain. The new access technology also makes it possible to transform the nature of payments for services. Such arguments raise fundamental questions about the future of the licence fee. Should it be maintained? Should it be top-sliced? Should it be distributed by a new public service broadcasting agency across a wider range of recipients, of which the BBC would be only one, even if the most significant?<sup>10</sup> Increasing numbers now buy their broadcast entertainment and mobile telephony as a matter of course, making unquestioning future public support for the licence fee as a special tax more and more doubtful. Longer-term changes in media consumption patterns are fertile ground for those who would argue that public service tax-based revenues should be parcelled out rather than earmarked for the BBC. How individual choice can be mobilised to sustain a public good has become the new background of debate about public service broadcasting.

It is clear, therefore, that the position of the BBC, as the principal vehicle of public service broadcasting, has come increasingly under question. Ofcom's review of public service broadcasting during 2004, and the BBC's Charter Review (which will conclude in 2006) will be severe tests for the corporation. At this time of writing, the BBC is still absorbing the impact of the Hutton Report (2004). Lord Hutton found the BBC's journalistic rigour wanting. After apologising for its sins of omission and commission, the corporation officially accepted his judgement. Many wonder whether the corporation will now become a more tim'rous beastie.

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<sup>10</sup> *Such questions have been posed by the Elstein report for the Conservative Party, as well as by other protagonists in current debate (see Elstein 2004 and Cox et al 2004; for comments, see Schlesinger 2004 and Wells 2004). Ideas repeat themselves. The Peacock Committee (1986) proposed a new model that dispersed PSB services across the market place. Neither the technology nor the market conditions then existed to make this proposition easily realisable. Whether it will be pursued depends, ultimately, on political considerations.*

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Hutton's strictures concerning the BBC's performance came precisely at a time of burgeoning debate about key aspects of the corporation's structure and functioning. The future role of the BBC Governors – already a matter of controversy among those who would either subordinate them to Ofcom or recast them in some other guise – was thrown further into question by Lord Hutton, who accused them of taking insufficient distance from BBC management during the Kelly affair.

The overall UK broadcasting agenda will have a major impact in Scotland. It remains to be seen how it will affect the development of Gaelic language broadcasting. The new Gaelic Media Service set up under the Communications Act 2003 has a line of responsibility to Ofcom in London. It is represented though its chairman, Neil Fraser, on the Scottish national advisory committee. As Mike Cormack (2004, pp.28-29) has underlined, public support for Gaelic falls under the remit of the Scottish Parliament, but broadcasting remains a reserved matter. Alongside the Scottish Executive, the Scotland Office has a locus in the matter, as does the Department for Culture, Media and Sport. Policy development will therefore require a complex partnership between London and Edinburgh. There is an aspiration to run a coherent Gaelic television service on a digital channel. This will require funding, and coming debate about the feasibility of this might well, in turn, raise questions about the possibility of establishing a Scottish digital channel.

Telecommunications is far less accessible than broadcasting to widespread discussion and does not easily acquire headline status. But it is crucial for the functioning of everyday life and is now integral to the 'converged' legislation. The SCC's concern about Scotland falling behind in the 'communications revolution' – shared by SACOT – was also echoed by joint research from the ITC and the Broadcasting Standards Commission. Their survey of viewing habits in the UK, **The Public's View 2001**, revealed 'that whilst the number of people with Internet access in the UK has almost doubled, 67% of Scots can still not access the Internet' (ITC 2002b). Scottish digital take-up has also trailed all other parts of the UK, with 65% not having access.

SACOT has argued that there is inadequate competition in the Scottish market place, which remains overwhelmingly dominated by BT, with 69% of the residential fixed telephony market. It suggested that, as many residential consumers and small businesses might not be able to access broadband,

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combined public and private initiatives would be required to ensure this. SACOT pointed to the Scottish Executive's 'Pathfinder' project – of aggregated public sector procurement initiatives – as a possible way forward in expanding access to remoter areas. However, this last initiative has raised complex issues concerning competition rules.

In its final report, SACOT (2003) identified four key regulatory issues needing future attention by Ofcom. BT's market dominance in Scotland headed the queue. SACOT also pointed more generally to the need for accessible consumer information about telephony to make markets work more effectively; for more rapid progress to be made in the rolling out of broadband in Scotland; and for more consumer protection for young buyers of mobile phones.

### **A LAST WORD**

I began by considering cultural policy debate in Scotland. Unlike media and communications, the national culture can be made into an autonomous object of policy because for the most part it is not directly subject to diverse jurisdictions.<sup>11</sup> It is increasingly clear (though generally still not openly acknowledged) that the spectre of independence has haunted the calculations of devolutionist politicians.<sup>12</sup> This has produced an impasse and the scope and sophistication of contemporary debate must now urgently be addressed.

Scotland's institutional frameworks for handling culture and for dealing with media and communication are asymmetrical. That we cannot imagine a neatly bounded national space is one of the inherent complexities of the devolved Scottish condition. Although the image of a self-contained nation does not reflect the realities of cultural and communicative flows in the era of

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<sup>11</sup> *Count in broadcasting and matters complicate: most Scottish expenditure and content production fits into a larger market. Furthermore, although film policy can be autonomously pursued by Scottish Screen, its relationship with the Film Council in London is of key importance, as it that with the sector skills council, Skillset.*

<sup>12</sup> *As clearly stated by John McTernan (2003, p.26): 'Scotland has a Parliament because it is a nation, albeit one within a larger political unit. But because of the strength of nationalism over the last thirty years, there remains a residual fear that doing anything to build national identity is a gift to separatists.'*

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'globalisation', at the same time it does point to something important. The levers of statehood continue to afford decisive policy advantages that those of mere autonomy within a state do not. The United Kingdom therefore still disposes of considerable room for manoeuvre in how it addresses culture and communications in the context of developing 'Europeanisation' and other forms of transnational governance (Schlesinger 2003).

That said, I would argue that the Communications Act 2003 has created unforeseen opportunities for the articulation of Scottish perspectives on the media and communications industries. Ofcom Scotland and its national advisory committee could become an important focus of informed debate and influence. But for that to take place, it will first be essential for the Scottish Executive and Parliament, the civil service, and the Scottish public to be equipped to understand how the new communications agenda will impact on the country (and its culture).

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