

# Balanced Co-Existence of ‘de Jure and de Facto Independence’ in the Public Service Broadcasting Sector

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## Abstract

With directives to deliver impartial news, current affairs and programmes, the social responsibility of media, mainly public service broadcasters (PSBs), is viewed as providing resources for serving democracy and full citizenship. Through these resources, public service broadcasting (PSB) builds the trust of the public in its public service values. However, the continuance of this public trust requires evidence of independence and adherence to institutional norms beyond the reach of vested interests — corporate and party political. This paper<sup>1</sup> aims to investigate critical challenges facing the independence of PSBs to uncover the significance of balanced co-existence of two aspects of independence — de jure and de facto — in the PSB sector. The main argument of the paper is that the disparity between the two elements of independence is widening due to vested interests. And narrowing of such gaps is vital for PSBs to serve the public interest.



1 - This article is based on three chapters of the unpublished MA (Research) thesis titled—De jure and De facto Independence of Public Service Broadcasters.

# Introduction

Corporate social responsibility (CSR)<sup>2</sup> in the media industries falls within the boundaries of its products as information goods that could affect the mental and emotional activity of people (Jung, 2009). For this reason, the development of social responsibilities of media organisations, especially public service broadcasters (PSBs)<sup>3</sup>, is particularly intriguing (Gulyás, 2009, p. 659). Public service broadcasting (PSB) system is chosen because of its unique responsibility to operate independently of those holding economic and political power as it belongs to the public. Independence is necessary for delivering resources for full citizenship, i.e. impartial information, news and current affairs, culture, education and entertainment.

Independence is also crucial for enhancing social, political and cultural citizenship; creating "informed and enlightened democracy" (Jacka, 2002, p. 330) and promoting social cohesion (Council of Europe, 2004). But this sociability in broadcasting is questioned by Morley (2000, p. 110) arguing that each programme conveys signals that appeal to certain parts of the audience, inviting them to take part in the social life while at the same time signalling to other groups that this programme is not for them. Thus, he questions the idea of "addressing all citizens" and the everyday reality of PSB as being able to bridge all cultural and social differences demarcating class, gender or generations in any programme (Morley, 2000, p. 110). In this light, it is argued that he challenges the fundamental values of PSB such as fairness,

accuracy and impartiality, which dispute the independence of PSBs.

Independence is perhaps the most critical attribute of the PSB system, and crucial to achieving primary aims: universal access, diversity of perspectives and freedom from vested interests (Arendt, 1958; Keane, 1991). Geradin and Petit (2004, p. 49) describe independence as "the absence of pressures from political and industry interests." As an institutional principle for PSB, independence implies minimum interference by the state and the market (Klimkiewicz, 2013, p. 189). Interference is minimised so that public service institutions can accomplish their mission of serving the public interest through their full professional autonomy (Klimkiewicz, 2013, p. 189). This professional autonomy may best be defended through the board of directors (B.O.D)<sup>4</sup>, the parliamentary legislation such as broadcasting charters and Media Regulatory Authorities (MRAs) of public service media PSM<sup>5</sup>/PSB such as the Australian Communications and Media Authority (ACMA) or The Office of Communication (Ofcom) in the United Kingdom (UK).

Furthermore, when the concept of independence is used about PSB/PSM and MRA (Klimkiewicz, 2013, p. 189), it can be used interchangeably with the word "autonomy". The concept of autonomy, as mentioned by Dreyer (2013, p. 121) comes in two forms:

a) the first one is "the level of decision-making competencies of the agency";

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2 - CSR was referred to as just "Social Responsibility" in the period before the rise and dominance of the corporate form of business organization (Carroll, 2008, p. 1).

3 - In this paper, occasional references have been made to Australia's public service broadcaster-ABC (Australian Broadcasting Corporation) and UK's public service broadcaster-BBC (British Broadcasting Corporation) while making arguments regarding public service broadcasting.

4 - Board of Directors will be referred as the board in this article.

5 - PSB has gained incredible acceptance in both developing and developed countries around the world. In parallel, the concept of social media and its role in widening the impact of PSB is receiving attention as a critical catalytic force in converting PSB to PSM. In this context, the term Public Service Media is used in place of Public Service Broadcaster/ing, in this article, at all occasions where all the portals of PSB, i.e. television, radio as well as online portals are referred. From here on, it shall be referred as PSM/PSB.

b) the second one is “the exemption of constraints on the actual use of decision-making competencies of the agency.”

Therefore, these two forms of autonomy can also be called *de jure* or formal independence and *de facto* or factual independence respectively. Various scholars have presented their opinions on the relationship between these two sides of independence and the factors that create disparity in this connection. In continuation, this article mentions that, in the field of PSB, the gap between the two aspects of independence is widening due to political and economic interventions. The primary research objective of this paper is to establish the significance of the harmonious existence of *de jure* and *de facto* aspects of independence in PSB sector. It analyses how these gaps might be better managed or minimised which is essential for the independent existence and accountability of PSBs towards their public.

This article is divided into three parts. The first part mentions the traditional concept of PSB and its social and cultural dimensions, the rise of neo-liberalism, its effects on the relationship of PSBs to their complex interactive audience and their independence. The concept of independence is explored in the second part of this paper. A discussion of this idea is taken up as an essential attribute of PSB along with evaluating the dimensions of the two aspects of independence *de jure* and *de facto*. Such an evaluation is required for listing the factors, such as party system polarisation and size of the markets that create gaps between these two aspects, which ultimately affects the accountability and performance of PSBs. The last part synthesises the discussions of section one, and two for establishing that “independence is must for PSBs for offering a publicly funded platform for citizens and audience to interact with one another and their society at large” (Sharma, 2015). This part presents recommendations about how these gaps between *de jure* and *de facto* aspects of PSBs’ independence might be reduced. Narrowing of this disparity is imperative for independent

PSB systems for conducting “independent corporate operations, professing corporate values of honesty, fairness, independence and respect” as their social responsibility (ABC House Committee, 2014).

## **Part 1:**

### **Public Service Broadcasting: Social, Cultural and Political Contributions**

PSB is commonly regarded to be one of the most influential tools for promoting citizens’ democratic participation (UNESCO, 2005, p. 6). It is also widely discussed as a means of disseminating information, analysis and diverse viewpoints to the public, which contributes in forming a constructive public opinion (Murdock, 1992; Collins, 2007; Debrett, 2010). Explaining the role of the “public” of PSB, Rumphorst (1998, p. 6) noted that “the public is not only the beneficiary of PSB and its paymaster but also its controller. It is only consistent, and it could not be any other way”.

It is not easy to define the concept of PSB. For the most part, it means broadcasting funded by the public purse that should produce news and education (Born, 2004, p. 79). United Nations Educational Scientific and Cultural Organisation (UNESCO) described PSB as broadcasting made, financed and controlled by the public, for the people. It is neither commercial nor state-owned, free from political interference and pressure from market forces. Through [public service broadcasting], citizens are informed, educated and entertained. When guaranteed with pluralism, programming diversity, editorial independence, appropriate funding, accountability and transparency, public service broadcasting can serve as a cornerstone of democracy (2005, p. 13).

It is implied in UNESCO’s definition of PSB that while PSB systems are held in state ownership for the benefit of the public, they

are protected from political interference through their governance policies and the legislative framework in which they operate. Those PSBs that are non-commercial, such as Britain's British Broadcasting Corporation (BBC) and Australia's Australian Broadcasting Corporation (ABC), are also free from the commercial pressures associated with selling airtime to advertisers. Taking a broader perspective, various other scholars define PSB as a "technology of citizenship" (Foucauldian approach) (Foucault et al, 1991) that provides the basis for the proposition that contemporary formations of citizenship are shaped by interactions between different authorities and the different ways in which they define "the public" (Nolan, 2006, p. 227).

Furthermore, the BBC early established what became universal goals for PSB - "to inform, educate and entertain." In addition to these three basic objectives, the chairman of the ABC, Hon James Spigelman (2012), AC QC, while speaking at the RIPE Conference in Sydney in 2012, proposed one more element "... a public broadcaster should interact with his audiences". The literature in which this research is grounded offers ongoing discussion and debate about the public interest justifications for and continuing relevance of the interventionist PSB system, and of independence — from government and vested interests — a key rationale for PSB that also underpins the other rationales as well. However, among the eight rationales of PSB, as identified by the BBC's Research Unit (Lawrence & BFI, 1986), the sixth rationale – "detachment from all vested interests and government to maintain editorial independence and freedom of expression in broadcasting" informs the central focus of this paper.

## **Rationales for Public Service Broadcasting**

Many PSBs are based on fundamental established principles: universality of service, impartiality and freedom from vested interests, diversity in programming,

provision for minority audiences and information for an engaged electorate (Price & Raboy, 2003, p. 6).

In 1985, a Committee on Financing the BBC was established under the chairmanship of Professor Alan Peacock, to investigate the funding of the BBC, particularly the possibility of replacing the license fee with a subscription service. This recommendation was made by this committee, based upon expectations of Mrs Thatcher during the conservative Thatcher government, but was never implemented (Graham, 2005, p.79). It prompted the BBC to call upon its Broadcasting Research Unit (BRU) to justify its license fee funding system. Under the chairmanship of Richard Hoggart, the BRU assessed both commercial and PSBs to differentiate PSB, producing a booklet: *The Public Service Idea in British Broadcasting: Main Principles* (Lawrence & BFI, 1986). This booklet identified the following eight principles or the rationales of PSB that have been taken up by scholars as a starting point for analysing the value of PSB (Banerjee & Seneviratne, 2006; Franklin, 2001):

- Geographic universality;
- Universality of appeal or catering to all tastes and interests;
- Catering for the interests of minorities;
- Universality of payment;
- The sense of national identity and community;
- Detachment from all vested interest and government;
- Competition around sound programming rather than in increasing audience numbers;
- Public guidelines to liberate program makers rather than restrict them.

The first principle, geographic universality, declares that broadcast programmes should be available to all. The second principle, the universality of appeal or

catering to all tastes and interests, establishes that PSB should appeal to the mass audience and cater to all tastes and interests: regarding program genre, target audience and subject matter (Banerjee & Seneviratne, 2006, p. 20). Others again have proposed that diversity and universality are equivalent terms in the sense that PSB should aim to make "popular programmes" good and "good programmes popular" (White et al., 1987a, p. 2). The third principle, catering for the interests of minorities, positions PSBs in a special relationship to the needs and interests of the minority groups: including minorities of taste, minorities, disadvantaged in the wider society, young children, the poor and needy, people with special needs, the elderly and those of different race, cultural or religious background. The universality of payment, the fourth principle, signals the importance of PSBs being directly funded by the corpus of users, namely the BBC's license fee system. The fifth principle refers to a sense of national identity and community. PSB is commonly expected to reflect the national identity, providing a forum for all citizens to express their needs, concerns and interests, creating a shared sense of national identity (White et al., 1987a, p. 2). The sixth principle, detachment from all vested interest and government, relates directly to the independence of PSB. This principle implies the need for strong institutional governance arrangements for maintaining independence and freedom of expression in PSB. Independence as a key attribute of PSB is intended to shield the system from political pressures and commercial interests, both in programming and news coverage thereby serving "plurality of opinions and an impartial, informed electorate" (Banerjee & Seneviratne, 2006, p. 19). The seventh principle, competition around good programming rather than in increasing audience numbers, emphasises competition amongst producers for quality programming rather than for audience ratings, a critical challenge for public service systems in a pluralist society (Born, 2004, p. 79; Nissen, 2006, pp. 65-

82). The eighth and final principle, public guidelines to liberate program makers rather than restrict them, acknowledges the importance of the free flow of ideas and opinions, freedom of expression, experimentation and innovation. To ensure such freedoms, it is important that regulations are "permissible and not restrictive" (White et al., 1987a, p. 2).

These principles for PSB reflect the delicate relationship between media and citizens, mass taste and minority interests, the demands of audience and autonomy of the broadcaster along with its duty to serve the public interest.

### **Serving Social Cohesion, Citizenship, National Identity & Democracy**

PSB has had two broad social functions to perform. The first one is to expose the entire nation to the more delicate aspects of culture. And the second one is to inform the whole population, thus enhancing their ability to exercise citizenship in a variety of ways including national elections (Jacka, 2002, p. 331). The media's role in guaranteeing citizen participation means providing full access to the broadest range of information to facilitate participation (Murdock, 1992, p. 21). This concept of "media citizenship" is based on a theory that the public can be engaged via media resources that contribute to their national and cultural identity, thereby establishing a foundation for their participation as active citizens, rather than being passive consumers (Schudson, 1994). While PSBs are widely perceived to deliver resources for full media citizenship, private commercial broadcasters, driven by the need to make a profit, are regarded as focusing on consumer satisfaction rather than the needs of citizens (Freedman, 2008); although, with globalisation, definitions are shifting.

Spigelman (2012) asserts that it is a defining characteristic of PSB to treat its audience as citizens and not as consumers, an assessment also supported by Rumphorst (1998, p. 3). While it is common for organisations to treat people as consumers, Rumphorst points out that “the person’s interest as a ‘consumer’ is only one part of the person’s status as a citizen” consumers have desires or needs whereas citizens have “rights and duties” (Spigelman, 2012). The relevant public interest of these discursive figures of consumer and citizen has been the focus of a longstanding debate in the field of media and communication (Clarke, Newman & Smith, 2007). This discussion is closely connected to the concept of PSB independence, with freedom from vested interests deemed critical to the delivery of impartial information and analysis necessary for citizenship (Murdoch, 1992).

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Describing PSBs as the agora, drawing connections to early Greek democracy, Tony Mary (2004, p. 94) noted that “public service broadcasters, independent of political and commercial pressures, are a guarantee of independent, trustworthy and impartial information.” However, free speech is essential for PSB for providing resources through which both “individual and collective identities are constituted”, thus providing “a common culture and constructing the un-coerced opinion of civil society”, independently of “political influence” (Dahlgren, 1995; Nolan, 2006, p. 229). Censorship by the government

is one of the external constraints on free expression explored by Isalah Berlin (1969) in his lecture on “Two Concepts of Liberty” — negative and positive freedom. In 1989, referencing the dependency of British broadcasters on government, Rupert Murdoch asserted that such dependency results in “less than independent, neutered journalism” (Murdoch, 1989). A counter-argument to this notes that non-commercial government-funded space is a better platform for protecting journalism independence and that such area cannot be provided by the business (Smith, 2002, p. 287). McNair (2011, p. 46) also argues that whether the threat comes from political or economic interests, it is vital for the civil society that PSBs remain independent from all external vested interests, to maintain the professional ethics of objectivity in reporting and to distance opinions from factual reporting.

However, as Mulgan (2003, p. 1) notes, with independence comes power and there is always a suspicion of abuse of this power by public institutions. Thus, the independence of PSBs, in their capacity as public institutions defending the public interest, calls for public accountability. Even though accountability is a slippery term (Muller, 2005, p. 42), with many definitions, holding PSBs accountable usually means making them responsible for finances, fairness, and performance. In this context, focusing on the relationship between PSB and government, the following section, explores the impact of neo-liberal policies on broadcasting regulation and PSB.

## **Neo-Liberalism, Digitalization and Deregulation**

Global media and communications technologies now connect people across the world, crosscutting the boundaries of nation-states, enabling a dynamic global

marketplace and contributing to the emergence of a sophisticated transnational culture (Lunt & Livingstone, 2012, p. 1). Tomlinson (1999) defines globalisation as “an empirical condition of the modern world” while Lunt and Livingstone (2012, p. 1) refer to it as complex connectivity, noting “globalisation refers to the rapidly developing [...] network of interconnections and interdependencies that characterise modern social life”. In the new digital and online environment, the PSB goals devised by Reith — “to inform, educate and entertain” — have evolved and expanded with Dyke’s addition of “connect” (Born, 2004, p. 486).

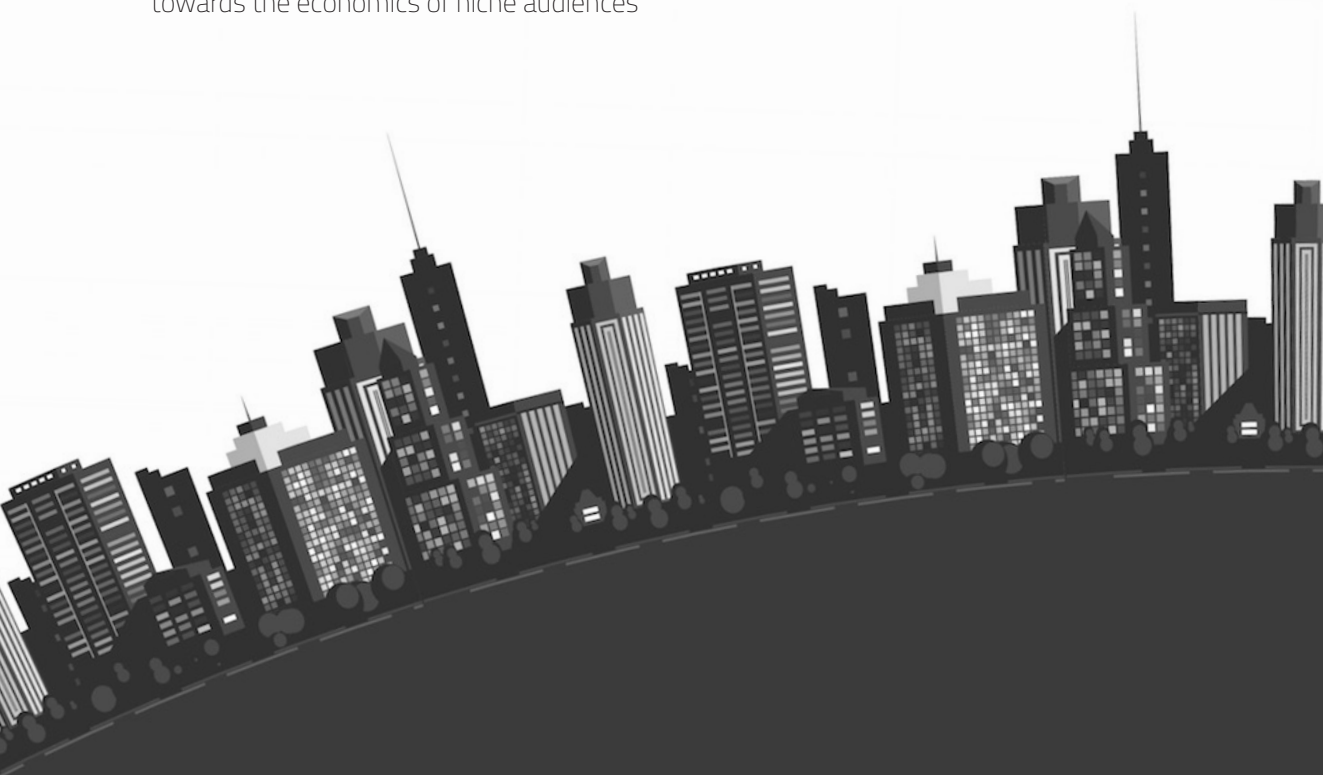
Digitalization has brought in a new wave of on-demand media enabling television via the internet (Internet Protocol TV), and user-generated content (UGC), forms which are characterised by always-on availability and global reach (Thompson, 2006). To make their content more convenient, relevant and available, PSBs have started narrowcasting via digital on-demand forms such as podcasts, and vodcasts (Debrett, 2010, p. 197). These new delivery modes constitute a shift towards the economics of niche audiences

away from addressing the audience as citizens, creating tensions between the market and public service values. If PSBs are to retain public trust such tensions need to be openly acknowledged and addressed in governance structures to maintain public accountability (Feintuck & Varney 2006, p. 40). The complex connectivity of globalisation and digitalisation discussed earlier has led to deregulation, thereby challenging government control over markets, social life and culture in keeping with the individualism underlying neo-liberal economic policies (Lunt & Livingstone, 2012, p. 2).

In the 1980s, widespread adoption of neo-liberal economic philosophy, along with the emergence of multi-channel technologies, prompted questions about the relevance of PSB (Freedman, 2008; Hamelink, 2002) and opened new user-pays models of production<sup>6</sup> and distribution (Debrett

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6 - The neo-liberal ideological position is that the “market will create, generate and support on its own, without any necessary government funding” eliminating the need for public investment in broadcasting (Jolly, 2011, p. 35).



2010, p. 16). Neo-liberalism favours consumer sovereignty, an ideological concept that deems the consumer to be sovereign of their consumption by their pay for it, an idea, which is the antithesis of PSB (Makwana, 2006). Hence, as noted by many, neo-liberalism is at odds with the rationales for PSB particularly that of "offering universal access and coverage" to citizens. With the implementation of neo-liberal policies, citizens are treated unequally as consumers depending on their spending power (Knoll, 2012, p. 71). It runs counter to the equality of opportunity for citizenship promised by PSB (Feintuck & Varney, 2006, p. 19). Therefore, in respect to its social and civic role, PSM/PSB needs to devise ways of ensuring that the cornucopia of information becomes "accessible to all the citizens and is not only packed as market commodities or targeted to elites" (Price & Raboy, 2003, p. 206).

Further, neo-liberal ideological tendencies represent PSBs as little more than liabilities for the public purse, fuelling contemporary

debates about their funding (White et al., 1987, p. 4). Advocates of neo-liberalism support the deregulation of markets and argue that the market should be left to regulate itself, with regulatory agencies only as a last resort. The interests at stake are not just pecuniary or technological but in the case of media and communications are also social, cultural and most importantly democratic (Lunt & Livingstone, 2012, p. 18). With the convergence of the telecommunications and broadcasting sectors, statutory, regulatory bodies have also been merged giving rise to super-regulators such as Ofcom in the UK and ACMA in Australia. Since the centralisation of regulatory control within a single entity in these converged sectors, some have argued that commercial and publicly funded broadcasters should be regulated under the same systems. The defence of dedicated regulation for PSBs, outside the market regulator, may well be critical for the future of PSB independence.

The next part of this article will discuss the notion of independence in the context of PSBs, in relation to two concepts: *de jure* and *de facto*.





## Part 2:

### Concept of Independence for Public Service Broadcasters

In English and German, the concept of independence is interpreted in a negative sense, as “the absence of dependence” (Schulz, 2013, p. 5), which leads Schulz (2013, p. 5) to suggest that “autonomy” would be the most suitable positive synonym. Dreyer (2013, p. 114) defines independence as the antonym of “dependence”, implying “freedom from the control of influence of another or others”, meaning “no externally imposed constraints”, and “immunity from arbitrary exercise of authority”. The dependency of broadcasters, on the external factors of social interaction with their audience and other media players, as well as their financial resources, knowledge and external regulation may make it impossible for them to achieve absolute autonomy (Dreyer, 2013, p. 117). Thus, independence in an institutional and social context is accepted and understood as a relative not perfect concept. In line with this proposition, the article argues that the two sides to independence *de jure* and *de facto* are invariably distinct from one another, yet cannot exist without the other. These two aspects of independence will be discussed in the next section.

Independence, according to Klimkiewicz (2013, p. 190) minimises the “external dependency” of PSB/PSM on the “political realm, the media market (specifically the role of advertising and sponsorship) and the socio-cultural environment (support and claims of various social groups)”. The bipolar relationship between independence/autonomy and external dependency exists because their meanings “are associated with both value-ridden and value-free qualities” (Klimkiewicz, 2013, p. 190). Independence/autonomy may minimise the external dependency of PSBs on economic and political factors, but it may also minimise their dependency on certain positive determinants such as “the public” and “the audience” (Klimkiewicz, 2013, p. 190). It has been argued

that this might undermine the relationship of PSBs to “the public”, jeopardising the entire concept of PSB.

White, McDonnell and Way (1987a) propose that although the principle of independence is fundamental for PSBs, it could potentially imperil democracy. They suggest that the rules governing the negative determinants of PSB/PSM external dependency — political and economic influences — are ambiguous and opaque since it is not clear what constitute legitimate political pressures (White et al., 1987a). Thus, it is argued that independence and regulatory theory are not two different concepts but two various features of the same idea (Schulz, 2013, p. 6). Koehane and Nye (2000) observe a gradual shift away from the “regulation paradigm” to the “concept of governance” that refers to a system of norms, rules, laws, protocols, charters, agreements and guidelines to direct and restrict the activities of any institution not always conducted by the government.

Under the governance approach, the independence of an object or institution can be assessed by analysing “dependencies” and “autonomies” that refer respectively to “factors that enable another object to control the object of which the independence is in question and the factors that make it more likely for that object to act according to its own rules rather than giving in to pressure from outside” (Schulz, 2013, p. 7). Dreyer (2013) compares this to the concept of autonomy and its two types – *de jure* or formal independence and *de facto* or actual independence — mentioned previously.

### Types of Independence:

#### De jure and De facto

The preceding discussion explains that within any governance structure, the concept of independence is not only governed by the regulations laid down in the formal law but also by “dependencies” and “autonomies” based on social norms

rather than formal regulations (Gilardi, 2008, p. 4; Schulz, 2013, p. 8). This approach focuses the discourse around independence on two iterations — de jure and de facto aspects of independence (Gilardi, 2008, p. 4; Schulz, 2013, p. 8).

The normative framework that constrains any potential external interference in institutional operations establishes the de jure independence of an institution (Schulz, 2013, p. 9). Here, the normative framework refers to all the provisions, standards and procedures that are embedded in written codes, laws, bylaws, agreements, charters, guidelines, regulations and similar legal documents (Dreyer, 2013, p. 122), which direct or restrict the activities of any institution (Koehane & Nye, 2000, p. 6). The degree to which this governance system works to shield the institution against threats or inducements is its de jure independence. In the field of PSM/PSB, all these elements of governance contribute to the autonomy of the broadcasters de jure independence. However, the concept of autonomy, similar to independence, is never an absolute concept. There is always an element of external dependency and potential challenges to this institutional independence. In the case of PSM, it may be characterised through a competitive and complementary relationship with other actors in the media landscape (Blumber & Hoffmann-Riem, 2002).

Competition amongst media players arises in some circumstances: the size of the market, a share of viewership, quality, innovation, professionalism, standards, social relevance and serving the public interest. However, complementary functions arise due to the narrowing imperatives of media markets: preserving the social values neglected by other media actors (commercial media), providing overall quality and diversity to the audiences (Blumber & Hoffmann-Reim, 2002), and forming an enlarged public opinion through representativeness and impartiality (Arendt, 1958). Therefore, the independence that is enjoyed by an institution according to the law (de jure)

is likely to be different from the reality of actual practice (de facto independence), due to external dependency leading to various constraints.

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De facto independence is defined by Maggetti (2007) as the practical independence of agencies to manage their day-to-day regulatory actions. This term can also be extrapolated from Majone's seminal paper (Majone, 1997). In this paper, de facto independence is referred in the context of regulatory authorities as "the autonomy enjoyed by them in their decision-making process", while Nordlinger (1987, p. 361) presents it as an "autonomy to be able to translate one's preferences into authoritative actions, without external constraints". Hanretty (2010) a leading researcher in this field, consolidates these features of de facto independence within the framework of PSB and defines de facto independence from political influence:

The degree to which PSB employees take day-to-day decisions about their output or the output of their subordinates, without receiving and acting based on instructions, threats or other inducements from politicians, or the anticipations thereof; considering whether the interest of those politicians would be harmed by choices about output (Hanretty, 2010, p. 76).

There have been different opinions about the relationship between these two aspects of independence. Irion and Ledger observe that de facto independence cannot be entirely separated from formal

independence as the two complement each other at least to the degree that the actual situation complies with the legal provisions (Irion and Ledger, 2013). The term *de facto* independence, however, is not limited to the type of compliance as it requires further delegation of powers, organisational autonomy and the absence of external constraints or influence (Irion and Ledger, 2013). Gilardi and Maggetti (2011, p. 2) and Baudrier (2001, p. 7) assume that *de jure* and *de facto* independence do not necessarily coincide with another point of view which is in line with system theory<sup>7</sup> and one of the leading positions of discussion regarding these two aspects in this paper.

The next two sections of this part evaluate common characteristics of *de jure* and *de facto* independence.

## Evaluating De Jure Independence

Due to the tangible nature of *de jure* independence, its formal criteria, as discussed earlier, are the primary assets for any assessment of the regulatory independence of an organisation (Irion & Ledger, 2013, p. 144). As already explained, for PSB/PSM (and MRAs), any assessment of “independence” must consider the relationship between autonomy and external dependency across time in any given culture and geographical context (Klimkiewicz, 2013, p. 192).

The interaction between PSBs and their external cultural and geographic context is necessary to identify those factors most likely to weaken PSB independence (Dreyer, 2013, p. 120). Adopting this strategy, Dreyer (2013, p. 126) recommends five criteria for evaluating independence: i) “status and power”; ii) “autonomy of

decision makers”; iii) “financial autonomy”; iv) “knowledge”; and v) “transparency and accountability mechanisms”. Gilardi (2001, 2002, 2005, 2005a, 2008) notes that the credibility of the regulator (which can be referred to as a broadcaster in case of PSB internal self-regulatory processes) is linked to its formal independence. Drawing on the model of Cukierman, Webb and Neyapti (1992) Gilardi identifies key dimensions of formal independence: “the status of the head of the agency, [...] the status of the management board [...] the relationship with the government and legislature, and the financial and organisational autonomy” (as cited in Irion & Ledger, 2013, p. 145). Assessing the operation and independence of PSB/PSM in Poland, Klimkiewicz (2013, p. 192) categorises the criteria mentioned above into four dimensions of autonomy and external dependency: i) appointment procedures and management; ii) accountability; iii) financing mechanisms; and iv) performance.

Klimkiewicz’s model for assessing *de jure* independence, albeit a quantitative one, offers the most recent research approach and integrates all factors raised by other researchers.

Identifying the board appointment procedure and role of management are particularly important in measuring the formal independence of a broadcaster, Klimkiewicz (2013, p. 193) argues that when appropriately managed, board composition can be guaranteed as fair and independent without any vested political or economic interests. Recruitment of management and governing board members should be based on professional requirements rather than external power/influence (Klimkiewicz, 2013, p. 193). There are two particularly important factors involved in the appointment of board members: first the guaranteed security of board-membership tenure (to alleviate

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7 - This theory states that the functions of autonomous media systems such as PSB institutions can only be fulfilled if there is absolute factual (*de facto*) autonomy that is not normative (*de jure*) or pre-conditional (Luhman, 1997, p.707). But this does not undermine the importance of normative concepts in protecting the factual independence against interference and guarding the functions of a specific institution, which in this case are the PSBs (Schulz, 2013, p.8).

the fear of government retaliation taming board actions), and second the protection of remuneration from political manipulation (Mendel, 2000).

However, the independence of a board is not the same as editorial independence, which is the fundamental mission of de jure provisions. All rules and regulations must support freedom in the day-to-day editorial decisions, preserving these from any interference from the board of Trustees.<sup>8</sup> The latter, Mendel observes, should liaise with the broadcaster and government without compromising editorial independence (Mendel, 2000).

The independence of PSBs can be assessed through the prism of appointment procedures and management. At the same time, the normative fundamentals and functioning of these procedures and management within each broadcasting institution reflect the dimension of accountability. In this sense, as Klimkiewicz (2013, p. 193) notes, prompts the question - what kind of accountability and to whom? Accountability is essential for PSBs, ensuring that they remain faithful to their public service obligations/responsibilities and the public interest (Mendel, 2000). But this invites questions about who PSBs are accountable to and in what proportions and about which mechanisms ensure such accountability. Broadcaster accountability comes in various kinds, for example, administrative accountability, which implies that superiors are answerable (Klimkiewicz, 2013, p. 193). Blind (2011) notes various mechanisms for ensuring administrative accountability such as auditing, evaluation or other oversight measures for monitoring performance and the implementation of management requirements as detailed in law, rules or regulations.

Goetz and Gaventa (2001, p. 7) suggest another form of accountability - legal accountability. It is directly linked to the rule of law where the judiciary keeps a check on the actions of officials and managers and guarantees that they act within the "mandates of their legally prescribed competencies" (as cited in Klimkiewicz, 2013, p. 193). Legal accountability is not only ensured from sources outside but also from within the corporation by the board<sup>9</sup> or the trustees who are responsible for assessing its performance to provide a high degree of objectivity, a point discussed below.

Additionally, Blind (2011, p. 7; cited in Klimkiewicz, 2013, p. 194) mentions a form of political accountability, which he defines as "the obligation of the elected officials to answer to the public, and of the public servants to answer to the elected officials and is ensured through elections and the legislative system..." In the context of PSB, this refers to the accountability of the board to the main legislative body or Parliament (Mendel, 2000), usually through the "annual reports"<sup>10</sup>. Another form of accountability is social accountability, which relates to the engagement of citizens in public affairs through various direct/indirect civil society initiatives (Klimkiewicz, 2013, p. 194). It refers to how PSBs stay in touch with public opinion — through polls, surveys, seminars, regular public meetings and advisory committees (Mendel, 2000). Along with these resources, PSB online portals also provide a platform for audiences and broadcasters to connect and interact directly with each other, marking the transition of PSB to PSM. However, this platform also brings challenges — new accusations of unfair competition with commercial broadcasters and the issues of moderating user-generated online content

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8 - BBC board members are now designated as The Trustees after changes brought to the BBC's structure in 2005.

9 - Directors take fiduciary responsibility.

10 - The reports contain information about the following matters of PSBs: financial accounting, audited accounts, information about its compliance system and likewise (Mendel, 2000).

— which will be discussed below. This matter of finding a balance between public participation as being accountable and editorial accountability for the nature and quality of user-generated content (UGC) is one of the most critical issues for PSB accountability.

The complaints process is one of the principal tools for delivering this accountability. The complaints system also serves legal accountability, although it is arguably more relevant to PSBs' social responsibility to address public grievances about serving the public. The structure of the complaints system is one of the components of *de jure* independence but the actual decisions undertaken to reflect *de facto* independence. Further, the more the complaints made, the more *de facto* independence is established. Thus, the *de jure* and *de facto* editorial, administrative and regulatory independence of PSBs to broadcast, while maintaining a safe distance from external political and financial constraints, is guaranteed by their rigorous accountability mechanisms (Sharma, 2015, p. 142).

The next dimension of independence is funding. There is a range of overlapping broadcasting models of ownership and control, from state-controlled to public service broadcaster, to private commercial ownership (Buckley et al., 2008, p. 35). Each of these models is defined by the unique dynamics in which they exist and the different methods by which they are funded. One amongst them is PSB model, which is independent of both governmental and commercial interests and is directed to serve the public interest. It operates under statutes explicitly sanctioning editorial independence, freedom of expression and sovereign governance arrangements. It also renders financial independence to PSBs, while making them accountable to the public. This raises another proposition, that funding might be a criterion by which to measure the independence of the PSB, although not the sole criterion.

Financing mechanisms affect the quality of the broadcasting and the autonomy of the broadcaster (Klimkiewicz, 2013, p. 194). But Barnett and Docherty (1987) claim there is no evidence that the method of direct funding, such as that of the Australian Broadcasting Corporation (ABC), allows for any more political interference in programming and news than the license fee method like that of the BBC. In this vein, White, McDonnell and Way (1987) argue the independence of PSBs is not determined by the method of financing but rather by political pressure, which is one of the few factors differentiating *de jure* and *de facto* independence. Thus, the funding of PSBs should be substantial, predictable and must guarantee their independence from the political and commercial pressures while upholding PSB values which is their prime responsibility. It is a central argument for this paper underlining the various rationales, and the different dimensions of PSB independence as discussed above.

Further, the complementary and competitive functions of PSB/PSM, as explained earlier, differentiate them from the market-driven media (Klimkiewicz, 2013, p. 194). Such differences, evident in the Charter provisions for informing, entertaining and educating are assessable as performance or programming, the fourth dimension of independence (Blumberg & Hoffmann-Reim, 2002, p. 207).

Editorial independence is evidenced by the fair and impartial news and current affairs an integral aspect of the civic role of the PSBs commonly referred to the "flagship" of PSB and widely acknowledged in Charter aims for freedom from the "vested interests of commerce or government." The distinguishing quality of PSB news that makes it so valuable is public trust (Debrett, 2010, p. 188). Trust as defined by Bakir and Barlow (2007, p. 110) is a "complex phenomenon comprising many subtleties with three features as its core — rationality, faith and confidence." And as Biltreyst (2004, p. 342) explains, there is a close connection between public trust and the traditional PSB ethos and values

of impartiality, independence, diversity, quality, truth, integrity and accuracy.

PSB/PSM has played an active role in engaging and building the trust of the public, by delivering diverse special interest programming and providing a platform for interactions, to bridge a gap between social and cultural differences and therefore proving the public value of the broadcasting (Giddens, 1994, p. 186; Bardoel & Brants 2003, p. 169; Debrett, 2010, p. 206). With the introduction of new digital platforms, PSBs in transitioning to PSM changed how citizens are informed: the public now interacting with content providers online (Cinque, 2007, p. 97), and by extension through the social networking activities of these broadcasters.

However, PSM faces various challenges with the emergence of this new on-demand, interactive, cross-platform programming and the influence of neo-liberal policies. One of those problems, the accusation of unfair competition comes from private providers of new media businesses that fear losing audience share and advertising revenue (Jolly, 2011, p. 21). Another challenge for PSB content online is its moderation. There are ambiguities associated with the regulation/moderation of the online content of PSBs, such as the use of external hyperlinks, global availability, and the compromising of editorial independence and integrity that comes with open public commentary. Many of these were raised by a 2000 Senate inquiry into ABC online over the ABC's negotiations with Telstra for expanding ABC's services and building more revenue, a deal that was terminated following public disclosure (ABC, 2000). Such expanded interactive potential of PSM/PSB is a threat to the delicate relationship between the audience and the broadcaster and that "the most valuable asset is public trust" (Debrett, 2010, p. 215). Somehow PSM/PSB must manage and moderate its online content to preserve both user interactivity and that investment of public trust on which continuation of public funding depends. In this regard, various measures

are mentioned in conclusion, adopted by the BBC and the ABC for moderation of their own UGC in their newsrooms.

## Evaluating

### De Facto Independence

The evaluation of de facto independence relies mostly on (qualitative) social science research methods such as expert surveys, as recommended by Cukierman, Webb and Neyapti (1992). Existing literature indicates that measuring independence in practice — de facto independence — is difficult as it often cannot be substantiated by empirical evidence (Irion & Ledger, 2013, p.146). Pedersen and Sorensen (2004) suggest conducting semi-structured interviews whereas Maggetti (2007) proposes media content analysis for assessing the regulator's reputation (Irion & Ledger, 2013, p. 146). Maggetti's (2007) "reputation" or Gilardi's (2002) "credibility of the regulatory body" is among the functions of de facto independence which are extremely hard to measure objectively (Irion and Ledger 2013, p. 146).

Empirical research on the evaluation of de facto independence is often conducted via suitable proxies as indicators of de facto independence, but these vary widely according to data and assumptions (Irion and Ledger, 2013, p. 146). It is difficult to identify the indicators of de facto independence, such as those leading to the politicisation of PSB board appointments (Gilardi, 2002; Hanretty and Koop, 2012).

### De jure and De facto Independence: Relationship in Public Broadcasting Sector

Four factors differentiate the two sides of PSB independence according to Hanretty (2009, p. 17). These factors also



elucidate political autonomy with three of the four derived from existing media studies scholarship (Hanretty, 2010). The first element refers to bureaucratic partisanship. Surviving in the same normative framework and same political arena signifies that PSBs will share some standard features with the government bureaucracy (Hanretty, 2010). Hanretty (2009, p. 17) noticed that in the model of political-bureaucracy which includes party-politicisation, bureaucrats are used to receiving and either accepting or denying the partisan orders from the politicians according to their professional norms.

Hanretty's (2009, p. 39) next reason, which potentially creates the difference between *de jure* and *de facto* aspects of independence, is the size of the news market, which refers not to the sector's total profitability, but rather to overall consumption. Hanretty (2009, pp. 39-44) also proposed that "the larger the market for news in each country, the more likely journalists in that country are to embark on a professionalisation project, producing rules which raise their status". However, the size of news market is considered only to the extent

that larger markets may better enable highly professional journalists to move into top executive positions and become responsible for formulating the rules or guidelines for their profession. Recruitment of journalists with a less professional approach implies a lowering of professional standards that may well only defend ideas held by "particular identifiable groups of the society" (Hanretty, 2009, pp. 39-44).

The factor of the size of the markets could also be understood regarding the free market ethos of neo-liberalism that challenge PSB through deregulation and the user-pays models of media production and distribution. The rise of neo-liberalism and the consequent significance of these markets are contributing factors to the space between the *de jure* and *de facto* aspects of PSB independence because of the pressure it places on publicly funded media.

Party-system polarisation, Hanretty (2010) suggests, also affects the independence of broadcasters. This view is reflected in the claim of Oliver Whitley, chief assistant to the BBC Director-

General, that “the nation divided always has the BBC on the rack” (Briggs, 1979). Thus, “the party-polarisation has been cited both as a correlate of media systems and as a specific explanation of low levels of independence in PSBs” (Hanretty, 2010). It has been observed that the ruling party always makes claims of bias against the PSB, with their views changing once they move to the opposition (Jolly, 2011, p. 26).

Hanretty (2009) also notes that de jure independence is sometimes used as a proxy for de facto independence which makes the concept of de jure independence unclear and blurs differences between the two. The de jure independence of the broadcaster rests in its legal provisions. These may invoke the moral suasion, which implies that the politicians and journalists feel their commitment to maintaining independence with the acceptance of these regulations; or they might create space for independent behaviour (Hanretty, 2010). This autonomous behaviour could refer to PSBs taking independent decisions regarding management, programming, funding or their self-regulatory systems. Regarding politicians, it relates to interventions sanctions, rewards and appointments, those who rely on the “legal possibilities open to politicians in virtue of their office” (Hanretty, 2009, p. 33).

Apart from these direct legal interventions, politicians might also intervene indirectly by writing letters to the PSB criticising its coverage, by meeting management members to discuss issues; by threatening to induce funding cuts or organising licensee fee non-payment campaigns and likewise (Hanretty, 2009, p. 33). Indirect intervention, according to Hanretty (2009, p. 34) may not be as intimidating to broadcasters as the legal interventions because “indirect” intervention depends on the “politicians” ability to take further legal actions. Such methods can have a psychological effect on the broadcaster, however, triggering consciousness amongst the executives or journalist against repeating such incidents (Hanretty, 2009, p. 34).

**(...) it is argued that the political and economic interventions can each contribute to the disparity between de jure and de facto aspects of independence.**

In conclusion, it is argued that the political and economic interventions can each contribute to the disparity between de jure and de facto aspects of independence. Furthermore, as drawn from the preceding arguments, that although digital platforms have introduced a new element of accountability for the PSM/PSB, there are still many issues related to the content moderation of audience interaction due to its spontaneity, ambiguity and the hidden possibilities in it for commercial exploitation. The latter subsequently intensify political and financial pressures and risking public trust in these institutions (Debrett, 2010, pp. 214-216). It may also increase the space between de jure and de facto aspects of independence of PSBs.

The following conclusion offers recommendations and suggestions about how this disparity might be narrowed to better defend the independence of PSB system in the future for ensuring its public service obligations/ responsibilities.

### **Part 3: Conclusion**

The previous section found that political and economic intervention could each contribute to the disparity between de jure and de facto aspects of independence. The accountability mechanisms for better shielding the public broadcasting sector from all external vested interests, both political and economic rationale of PSB along with the appropriate moderation protocols to manage public interaction online, are needed as “independence and accountability are inter-dependent and any



alterations to the accountability apparatus appears to affect the de jure and de facto aspects of independence exercised by the PSBs in their roles.” (Sharma, 2015, p. 143) The following conclusion, based on the research findings of this paper, offers three recommendations and suggestions about how this disparity might be narrowed to better defend the independence of the PSB systems in the future by increasing their accountability which is necessary for performing their social responsibilities.

### **1. Legislation, PSBs and De jure and De facto Independence**

The legislation governing PSBs needs to grant these institutions genuine independence and protection. The rigorously drafted law is one of the most effective ways to depoliticise the boards of PSBs and guarantee both de jure and de facto independence while eliminating bureaucratic partisanship and party politicisation. The above arguments of this paper established several factors to be considered in drafting PSB legislation.<sup>11</sup> Legislation should set out the powers and duties of the board members, panel members, regulators and the principles of good governance to be followed by them for upholding transparent and fair procedures. It is necessary for maintaining arm’s length independence from government and other factors that narrow the space between the two sides of independence.

In this context, the second recommendation is the enhancement of public engagement in the matters of governance of PSBs for maintaining their public accountability, which is again required in the interests of narrowing the disparity between de jure and de facto independence.

### **2. Enhancing Public Engagement**

The advent of digitalisation and PSM has brought new methods for producing and presenting news including user-generated content (UGC), enabling public participation in the news production process and serving PSB charter directives to be innovative (Jolly, 2011, p. 23). Public participation is a key for upholding public trust in PSB institutions (Debrett, 2010, p. 216). The higher an institution ranks in surveys of public trust, the more independent it is deemed to be (Bakir & Barlow, 2007, p. 5). The integration of UGC into PSB online content and TV programming offers a more demonstrative form of public participation and accountability. PSBs such as ABC have subsequently developed multi-level moderation systems to manage interactions and protect their different audiences online.

Empowering the public by enabling them to contribute to news bulletins, UGC also offers a means of building engagement with youth audiences, accustomed to sharing via social media. However, maintaining editorial values across blended professional/amateur (ProAm) content such as this requires the execution of very skilled judgement, given the need for speed and currency and the risks of accidental or deliberate inaccuracy or misinformation in public contributions.

The interactive portals of PSBs thus raise new issues: the accountability of online content; claims that they constitute unfair competition for commercial broadcasters, and represent a costly and unnecessary replication of services provided commercially. The content produced via UGC and audience participation online does challenge professional norms and PSB values such as objectivity and impartiality.

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<sup>11</sup> - Factors such as the appointments and termination procedures of the board members, knowledge and experience of the board members, a separation between matters of policy and execution while forming the broad and the selection process of the board members.

The tension of new interactive services is evident in observations about the BBC's editorial system: "techies have gained definitional powers in the newsroom and have acquired sufficient capital to start affecting editorial practices and decisions about what to publish of the UGC" (Bélaïr-Gagnon, 2013). Discussing the role of a "techie" in the monitoring of PSB values such as impartiality, Beliar-Gagnon notes that "tech-savvy journalists" are now involved in social media-related projects such as the UGC Hub in the BBC newsroom (2013). Besides, "tech-savvy journalists" have "appropriated verification processes" developed through editorial guidelines including social networking guidelines and Twitter guidelines.

In the context of the television newsroom, where a speed of delivery is critical, integration of UGC puts new stresses on fact-checking and assessment of balance and other professional norms. Beliar-Gagnon (2013) observes that embracing of the participatory possibilities of digital media has resulted in a weakening rather than strengthening of accountability mechanisms. Such issues have the potential to diminish public trust in the institutions of PSB. However, it is suggested that adequately moderated online UGC along with other techniques for eliciting public interaction, like polls, surveys and focus groups, maintain the accountability of PSBs towards their public, contributing citizen-generated news and content alongside professional services (Bakir & Barlow, 2007, p. 84). To exemplify, in 2011, new ABC editorial policies and standards were introduced for the moderation of UGC (ABC, 2011). Three levels of moderation are detailed in the ABC online editorial policies; these accommodate the needs of different audiences by offering varying degrees of protection or freedom. The first level is the "pre-moderation that enables the ABC to manage sites where the risk associated with publishing inappropriate content is high". The second level is the "post-moderation" where all posts are moderated after they appear online and

the risk of appropriation is low; and the third level is labelled "reactive moderation" where the posts are only moderated if there is an alert from a user for the moderator (ABC, 2011). The role of a moderator is to keep the interactive space open for the public, to editorially justify the content and to maintain the consistency of external hyperlinks. In this way, moderation enables different categories of citizen-consumer to interact directly with the broadcaster and each other, enhancing the de facto independence of the ABC while ensuring that the language and the tone of UGC follow PSB values of accuracy, impartiality and the expression of critical and negative opinions.

Political will to uphold PSB independence offers the most significant protection for those broadcasters with well-developed governance systems for their accountability. Both independence and accountability (as discussed in previous sections) are balanced in PSB governance arrangements (Buckley et al., 2008, p. 197), but this balanced relationship often gets disrupted during emergencies by state intervention (Hale, 2010, p. 52; O'Connor & Delaney, 2009). However, the findings of this paper combined, with the previous discussion of interactive media and UGC, suggest that appropriately moderated, enhanced public participation offers an effective means of mediating state intervention and market pressure on PSBs, both of which exacerbate disparity between de jure and de facto independence. It would enable more sense of ownership by the public who fund these broadcasters. Public awareness of public ownership is established through better modes of public engagement with the public broadcaster. In the future, this could include more sophisticated software that better manages online comments threads in the public interest, without curtailing free expression. The participatory models of communication such as UGC provide space for expression, interaction and innovation while broadening a broadcaster's representative capacity. PSM needs to

embrace such participatory platforms more fully by better integrating them into mainstream programming while ensuring that all governance protocols are also adapted satisfactorily, as discussed above.

### **3. Future Possibilities for PSB Independence**

The last recommendation for narrowing the disparity between the two sides of independence relates to the following:

#### **A) External Regulatory Arrangements of PSBs:**

It is recommended that the PSBs should be externally regulated by commercial regulators, such as Australian Communications and Media Authority (ACMA) and Office of Communication (Ofcom) (for the ABC and BBC respectively). However, as suggested, the external regulation of PSBs should be by a non-governmental accountability body that is funded by the industry and cooperates with the complaint process. This suggestion is similar to the kind of an organisation recommended by the Convergence Review committee, established in 2011, in its final report, that examined “the operation of media and communications regulation in Australia and assessed its effectiveness in achieving appropriate policy objectives for the convergent era” (Boreham, 2012).

The committee established a need for an independent communications regulator that should be a small organisation, which does not have to administer the existing complex system of broadcasting licensing as ACMA does (Boreham, 2012). It further suggested that the independent regulator should be a statutory body independent of government, especially in its staffing and finances, so that, it can make decisions independent of its political cycle (Boreham, 2012, p. 15). The regulator, it was also proposed, should be able to develop most efficient and effective methods for dealing with complaints, and the objectives of regulation should be stated in its legislation for regulator’s accountability towards

its public. However, the provisions long established for public service broadcasting were left intact.

#### **B) Security of Funding:**

The final factor, which is essential for the independent survival of PSB, is the security of financial supply. It is observed that the role of the government is to administer the revenue from taxation for the budget of the PSB, and not to control it (Sharma, 2015). Arguments have been developed favouring various modes of funding, but ultimately political will is the crucial determinant for PSB independence and integrity, rather than the funding model, as already established.

Additionally, a transparent and fair appointments procedure that better delivers board members of high integrity with relevant backgrounds and expertise, along with the facilitation of genuine public/citizen/audience engagement in the matters of PSB governance and funding can better safeguard the independence and integrity of such broadcasters against political/economic attacks. It is also essential for the non-bureaucratic and non-polarized administration of these broadcasters, required for narrowing the gap between the *de jure* and *de facto* aspects of PSB independence.

Therefore, in conclusion, it appears from this research that there is no failsafe strategy to shield the independence of PSBs in the digital era. The critical factors remain careful development of PSB charters, to reflect the public interest; astute drafting of governance systems to best defend these; and engagement of the public, in maintaining both public accountability from the broadcaster, and independent funding supported by the government. This field is a dynamic one and remains open for further research as online interactive platforms expand.

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