

Media Ownership, Viewpoint Diversity and Free Speech : Some Observations from U.S. Jurisprudence

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Abstract

The discussion on the interaction of media markets and free speech has long focused upon how corporate control of media will lead to the monopolization in production and distribution channels of information and content, as well as lead to the result of denying the public's access to important information and viewpoints. Consequently, it is crucial to explore how the structure regulations imposed upon media markets can prevent media consolidation, promote viewpoint diversity, and justify media ownership limits. With its observations on U.S. regulatory history, in Part II this Paper analyzes the free speech implications of media ownership regulations in promoting viewpoint diversity while introducing Edwin Baker's complex democracy theory and its explanation on the impact of media concentration upon free speech and democratic values. In Part III, this Paper discusses how the Federal Communications Commission (FCC), Congress, and the courts in U.S.A. tackle with media concentration issues. By an analysis of decisions made for the past two decades, Part III shows that the FCC's attempt to find the "optimal number" of media outlets which it assumes will create a sufficient diversity of viewpoints is a failure. Part IV of this Paper explores the reasons for FCC's failure in media ownership regulation and argues that using "marketplace of ideas" metaphor to guide regulatory policy confuses the social and economic goals the First Amendment is supposed to pursue. This Paper concludes that the "marketplace of ideas" metaphor is a flawed justification for media ownership limits and won't work for the promotion of viewpoint diversity. Rather than attempting to identify the optimal number of

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media outlets, we shall shift the theoretical focus of this debate toward the strengthening of the vital function the media plays in a democratic society so that a balanced future of media ownership regulatory scheme can be created.

Keywords: freedom of speech, viewpoint diversity, media ownership, cross-media ownership, freedom of press, complex democracy theory, structure regulation