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SI 507: Information Policy Analysis and Design

Wk 5: Concentration, Diversity, and Expression

Overview

- Regulatory approaches / histories to questions of concentration and diversity
- Current stats / indicators of media concentration
- Does concentration still matter?
- Policy proposals and recommendations

Defining diversity?

FCC /courts traditional regulatory goal: "an open and diverse marketplace of ideas"

- **Source**
- **Content**
- **Viewpoint**
- Others: exposure, format, workforce, etc.

Ownership restrictions in media

("structural separation" + the content taboo)

Concentration & *cross-ownership* rules…

- "dual network rule" – prevents radio and TV concentration across the networks); struck down in radio in 1977, TV in 1996 TCA
- "one-to-a-market rule" – prevents simultaneous ownership of radio and TV station in single local market (though frequently excepted)
- Television duopoly rule – prevents ownership of two full-power TV stations in same market
- National ownership restrictions:

  7-7-7 (television, AM, FM), 1953-1985;

  12-12-12 (1984);

  35%-30-30 (1990s on)

More ownership restrictions

- Broadcast-newspaper cross-ownership rule: cannot own newspaper and broadcast station in same local market
- Broadcast-cable cross-ownership rule: cannot own a TV station and cable system in same local market
- Broadcast networks / cable systems cross-ownership rule: cannot own a broadcasting network and cable system (national market)
- Fin-Syn rules – separate networks from producers of television content (i.e. separating production from distribution)
- Cable-telephone cross-ownership rule – cannot own a cable system and telephone network in the same market

1996 TCA requires biannual review of FCC ownership rules in the light of emerging competition, with mandate to repeal those no longer seen to be required.

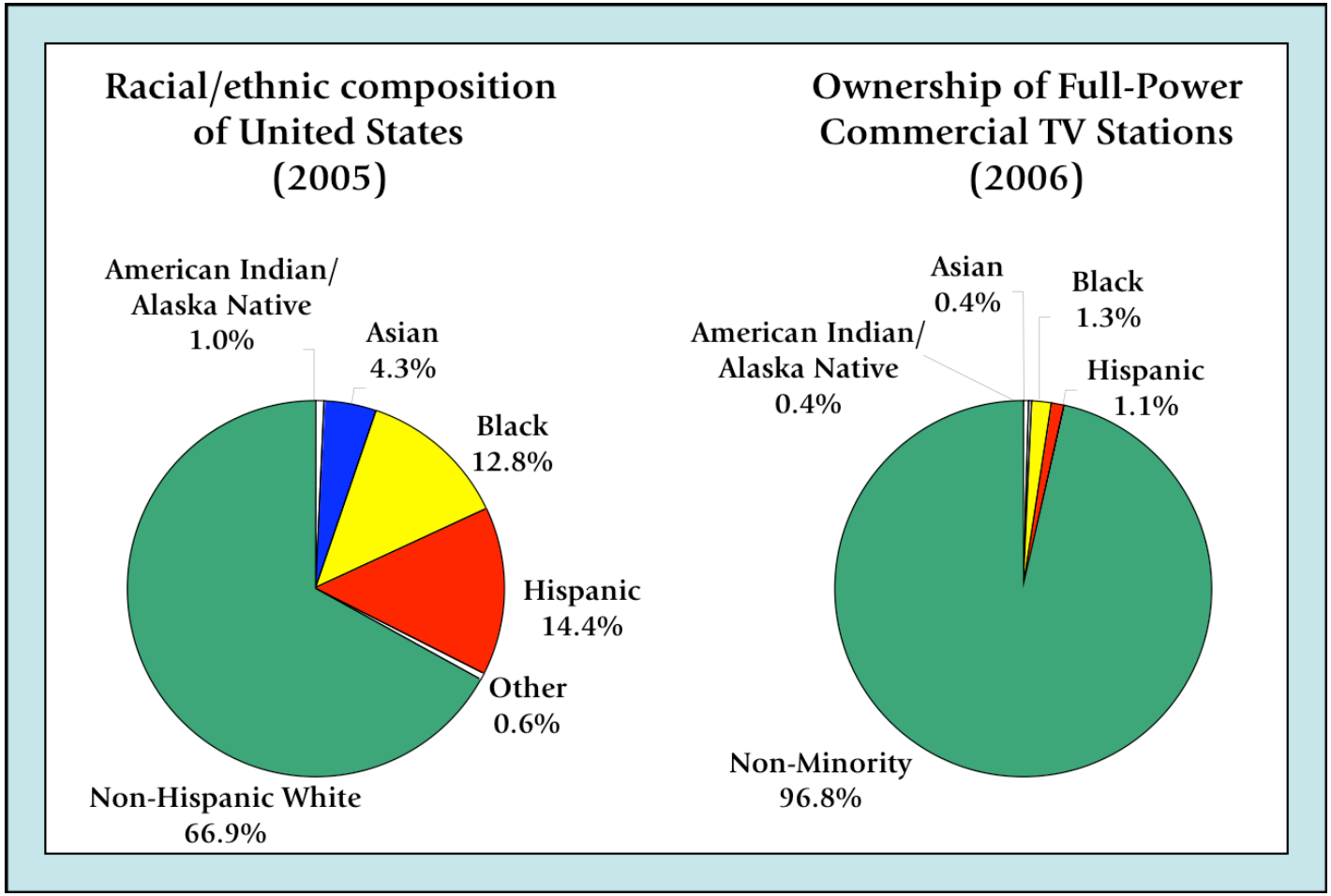
Minority ownership policies

- Driven by civil rights and broadcast reform movements of 1960s
- Supported by studies demonstrating the overwhelming *lack* of ownership and content diversity in 1960s broadcasting
- Minority preference (ownership and management) in radio and TV station licensing (premised on increased likelihood of diverse programming)

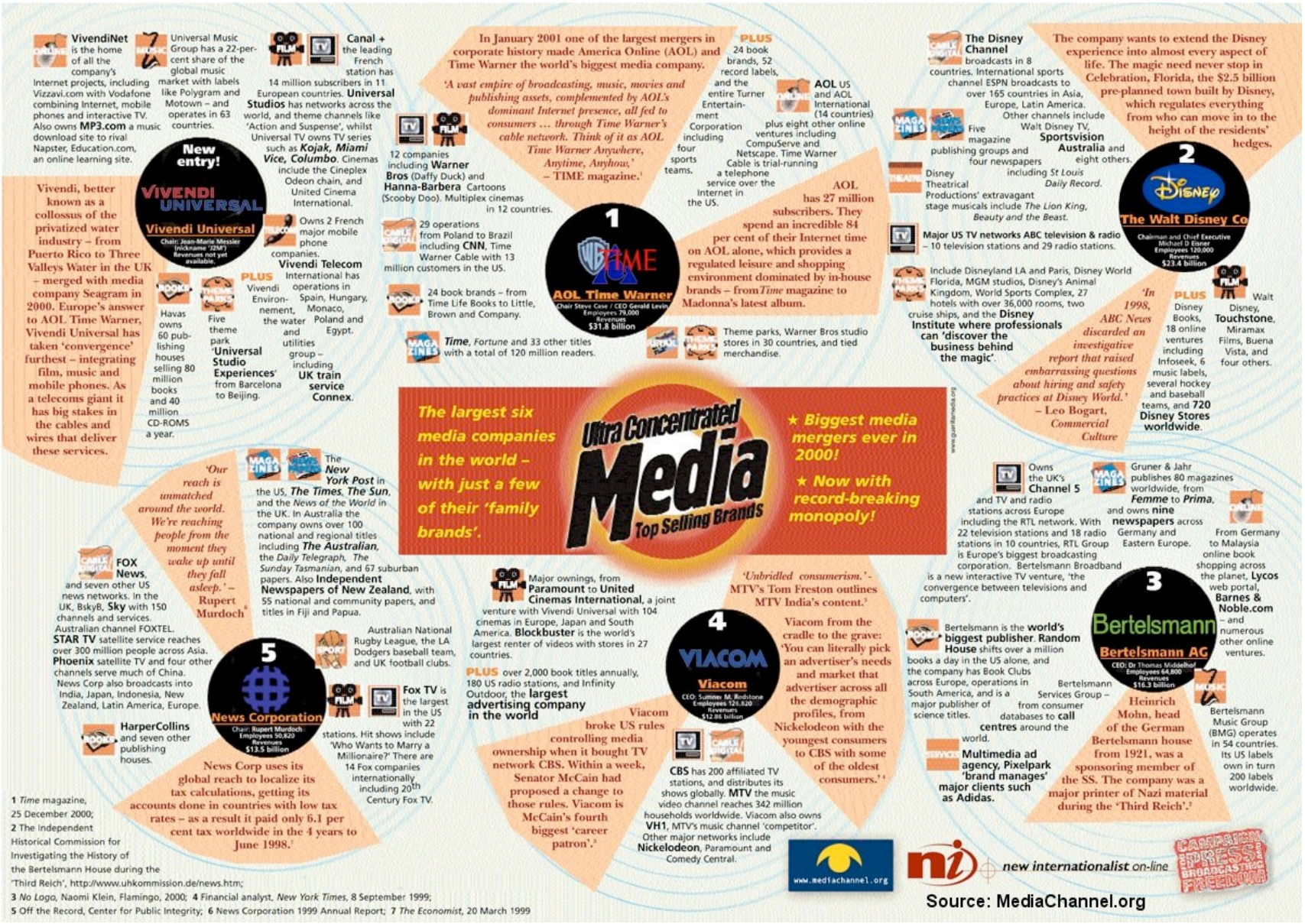
Questioning diversity

- Metro Broadcasting v. FCC 1990 – upholds 'important' governmental interest in FCC's diversity policy, meeting requirements of 1st Am. 'intermediate scrutiny' (but note influential dissent by Judge O'Connor)
- Technological convergence and deregulatory zeal
- Courts increasing demand for 'non-conjectural' evidence
- Supreme Court's turn to a formalistic reading of the First Amendment (tilting away from civil rights jurisprudence, greater sympathy for the speech rights of owners)
- 1996 TCA rolls back or eliminates many traditional cross-ownership restrictions
- Transition to Michael Powell FCC; some Congressional swing back?

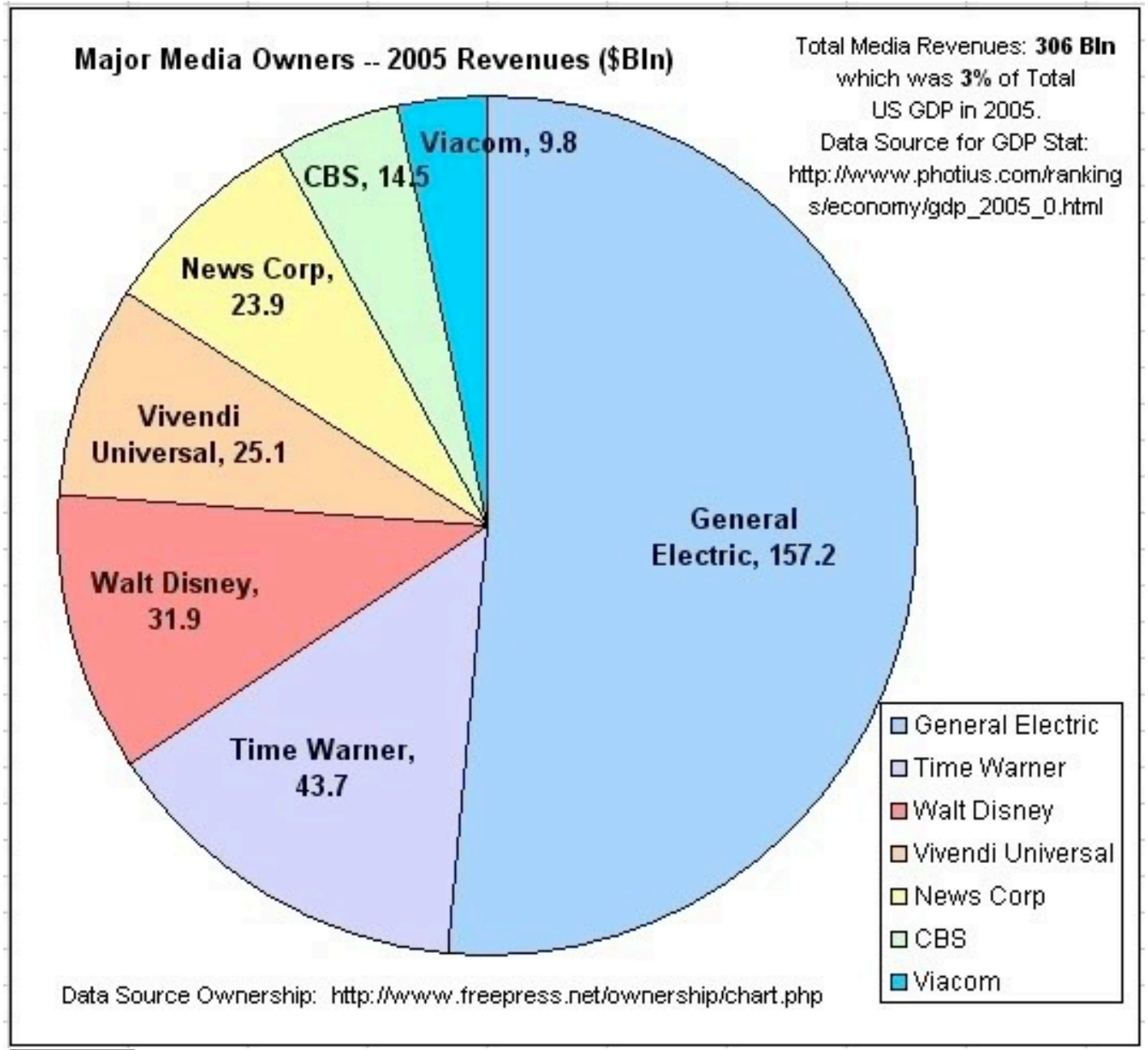
Ownership of broadcast television



PD-INEL Source Undetermined



PD-INEL MediaChannel.org


Major Media Owners -- 2005 Revenues ($Bln)
Total Media Revenues: 306 Bln
which was 3% of Total
US GDP in 2005.
Data Source for GDP Stat:
http://www.photius.com/rankings/economy/gdp_2005_0.html
Viacom, 9.8
CBS, 14.5
News Corp, 23.9
Vivendi Universal, 25.1
Walt Disney, 31.9
Time Warner, 43.7
General Electric, 157.2
General Electric
Time Warner
Walt Disney
Vivendi Universal
News Corp
CBS
Viacom
Data Source Ownership: http://www.freepress.net/ownership/chart.php

PD-INEL

C. Edwin Baker, "Media Concentration and Democracy"

1. Enhanced / robust application of antitrust
2. Government approval for ALL mergers
3. Prohibit mergers that: a) increase concentration, or b) involve takeover of media by non-media firms
4. Strengthen editorial independence
5. Require journalistic approval for merger
6. Tax and subsidy policies to encourage dispersal and discourage concentration
7. Special access obligations on LARGE media firms

Two sides of the debate:

Current concentration stats / figures / critique at:

http://www.freepress.net/ownership/chart/main

Ben Compaine's blog (about why media concentration doesn't matter) available at:

http://compaine.bcompany.com/

Changing Media: Public Interest Policies for the Digital Age
(Free Press, May 2009; http://freepress.net/files/changing_media.pdf

- THE FCC SHOULD ➜ begin its inquiry into a national broadband plan by reviewing every major regulatory decision since the 1996 Telecommunications Act to determine whether or not its predictions for market competition and deployment have come true.
- THE FCC SHOULD ➜ reverse the foundational mistake of its broadband policy framework by reclassifying broadband as a telecommunications service.
- THE FCC SHOULD ➜ conduct a rule-making to protect nondiscrimination protections, or Network Neutrality, for users on the Internet. Congress should concurrently pass a law to place these nondiscrimination protections in the Communications Act.
- THE FCC SHOULD ➜ make an honest assessment of broadband deployment and take decisive action to establish a more rigorous competition policy to ensure truly affordable next-generation broadband is being deployed to all Americans in a timely fashion.
- THE FCC SHOULD ➜ develop a set of common standards for competition analysis. The commission's decisions on competition policy have been plagued by inconsistencies, false assumptions, and incorrect projections.

Changing Media: Public Interest Policies for the Digital Age
(Free Press, May 2009; http://freepress.net/files/changing_media.pdf

- THE FCC SHOULD conduct a thorough review of its policies governing competition and pricing in the "special access" and "enterprise" markets where deregulation has raised prices and stunted the deployment of competitive networks.
- THE FCC SHOULD ➜ explore opportunities to open more of the public airwaves to unlicensed use.
- THE FCC SHOULD ➜ implement rule-makings to transition the Universal Service Fund from supporting telephone service to supporting broadband by building a fiber-optic network throughout rural America. This shift — over a 10-year period — would reduce waste, fraud and abuse, and gradually reduce the fund to less than a third of its current size.

Changing Media: Public Interest Policies for the Digital Age

(Free Press, May 2009; http://freepress.net/files/changing_media.pdf

- NEW OWNERSHIP STRUCTURES. ➜ Encouraging the establishment of nonprofit and low-profit news organizations through tax-exempt and low- profit limited liability company (L3C) models.
- INCENTIVES FOR DIVESTITURE. ➜ Creating tax incentives and revising bankruptcy laws to encourage local, diverse, nonprofit, low-profit and employee ownership.
- JOURNALISM JOBS PROGRAM. ➜ Funding training and retraining for novice and veteran journalists in multimedia and investigative reporting.
- R&D FUND FOR JOURNALISTIC INNOVATION. ➜ Investing in innovative projects and experimenting to identify and nurture new models.
- NEW PUBLIC MEDIA. ➜ Transforming public broadcasting into a world-class noncommercial news operation utilizing new technology and focused on community service.

Media concentration and diversity questions

Does the Internet change the media concentration debate in any fundamental way? Why or why not? What specific practices might lessen or enhance traditional concerns around media concentration and diversity?

Horwitz, Balkin and Baker suggest 3-4 separate enemies or dangers to diversity and freedom of expression in the current era: mass media concentration, intellectual property, restrictive telecommunications policies, and arguably a certain tradition of First Amendment law itself. Which (if any) of these do you think poses the greatest threat at present? What specific policies (or policy directions) do each of Horwitz and Balkin point us toward? Which (if any) of these do you find most promising or compelling? Are there other positive policies or strategies to be pursued?