Second, *ownership patterns* have changed. The amount of investment capital necessary to produce and promote major state-of-the-art media products is now enormous. As the wry saying goes, freedom of the press exists only for those who can afford to own one—and the price tag keeps getting higher. With changes in technology and in the scale of production, most competitive media ownership is affordable only for those with substantial capital. Even the start-up costs for major websites now routinely run into the millions of dollars. As a result, media have moved away from their independent localism, and more and more media outlets are part of national and international corporate entities. We saw in the last chapter that large media conglomerates, for example, now own many "local" newspapers. Magazine and book publishers are now largely national, or international, enterprises. The days of free speech protecting the small publisher of pamphlets are largely over. Instead, the control of major media has become centralized in the corporate offices of giants such as Time Warner and Viacom.

These changes have led to the regulation of media ownership. For example, the FCC has regulated the number of television and radio stations a single company can own, and there have been sharp political battles over the extent of these limits. By the early 1990s, the government prohibited companies from owning more than 12 television stations or from owning stations that reached more than 25 percent of the nation's audience. Regulations also limited companies to owning a total of 20 AM and 20 FM radio stations, with no more than 2 AM and 2 FM stations in any one city. The aim was to limit the potential monopolistic power of a media conglomerate and to encourage diverse media ownership.

However, changes introduced in the 1996 Telecommunications Act and subsequent updates eased restrictions on both television and radio station ownership, leading to more concentrated ownership patterns. For example, less than two years after the elimination of limits on radio ownership in 1996, there was a 12 percent decline in the number of radio station owners, even while the total number of stations increased by 3 percent. The FCC acknowledged that the regulatory changes had led to "consolidations of radio ownership [that] have reshaped the radio industry" (FCC 1998). Ironically, this consolidation provided fuel for radio pirates to argue for the licensing of microbroadcasters.

The FCC has also restricted certain types of cross-ownership, although it sometimes gives waivers that override such restrictions. A single company usually cannot own both a daily newspaper and a broadcast outlet (radio or TV) in a single city—except in the 20 largest markets, where there remain at least 8 independent media outlets. Also, common ownership of a television broadcast station and a cable system in a single market is prohibited. The aim is to prevent monopolistic control of media in a local market. But such restrictions are constantly under revision, and media companies work to have such limits relaxed. They have plenty of opportunity to influence the rules: The 1996 Telecommunications Act requires that, every four years, the FCC reviews all of its broadcast ownership rules with an eye toward eliminating or modifying any that are no longer in the public interest due to increased media competition. As noted, revisions of the 1996 act led to further relaxation of ownership rules, and more are likely to come.

In fact, there has been a long pattern of easing regulation on media owners. For example, prompted by the merger of Viacom and CBS, which resulted in one company owning controlling interest in both the CBS and the former UPN networks, the FCC allowed the ownership of two broadcast networks by the same company, something that had long been illegal.

However, the so-called dual network rule prohibits a merger between any of the four m
television networks (ABC, CBS, Fox, and NBC). In addition, court rulings in 2001 overtur
first, regulations that prevented a single company from owning an interest in cable syst
that reach more than 30 percent of the country's cable homes and, second, rules prohib
a cable company from owning more than 40 percent of the programming shown o
system. This continuing deregulation allows for the growth of larger and more concentr
media companies.

One clear way in which government can intervene in the media industry, then, i
regulating ownership of media outlets. By preventing monopoly ownership of media,
government attempts to act in the public interest because control of media informatio
a few companies may well be detrimental to the free flow of ideas. Through such reg
tions, the government prevents media giants from acquiring control of the media mar

Media companies have been so successful in rolling back ownership restrictions
some observers see an unprecedented threat emerging from the consolidation of m
ownership into fewer and fewer hands. As far back as 1995, Reuven Frank, former p
dent of NBC News, suggested that

> it is daily becoming more obvious that the biggest threat to a free press and th
> circulation of ideas is the steady absorption of newspapers, television networks an
> other vehicles of information into enormous corporations that know how to tur
> knowledge into profit—but are not equally committed to inquiry or debate or to th
> First Amendment. (quoted in Shales 1995: C1)

Since that statement was made, media consolidation has continued unabated.

Regulating Content Ownership: Copyright and the Case of Music Sampling

Rap music fans know Public Enemy's 1990 album, *Fear of a Black Planet*, as a classic ir
genre. The album epitomized the group's "wall of noise" approach that layered sound f
ments cut from other recordings into a new and unique composition. Though Pu
Enemy's use of nearly a hundred samples on the album was extreme, frequent samp
was a common practice during the "golden age of hip hop" in the late 1980s. But that
was over in 1991 when a U.S. District Court ruled in *Grand Upright Music Ltd. v. Wa
Bros. Records Inc.* that artists were breaking copyright laws if they sampled sounds f
other people's work without first obtaining permission from the copyright owners.
ruling changed music forever since bands could not afford to pay the permissions fee
so many different samples. Instead, contemporary recordings that use the technique t
cally sample only a couple of sounds to keep costs down.

In 2010, Benjamin Franzen directed a documentary film about music sampling
copyright law. In it, he used over 400 unlicensed music samples. But despite the title o
film, he and his collaborators were not *Copyright Criminals*. That's because their wo
protected under the "fair use" provision of copyright law that allows creators to quote f
copyrighted works without permission for the purposes of education, commentary, c
cism, and other transformative uses (McLeod 2010). Ironically, the film is available for
in a copyrighted DVD version.

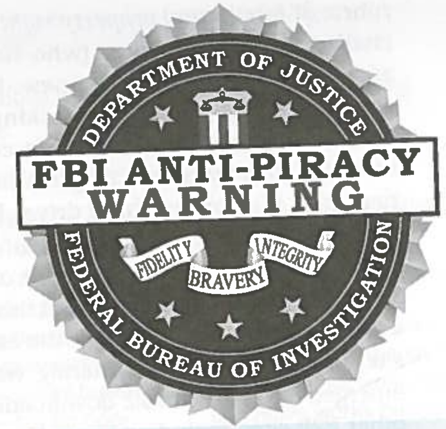
Figure 3.1 Select Ownership Rules Changes in the 1996 Telecommunications Act and Subsequent Amendments

The 1996 Telecommunications Act eased restrictions on media ownership, leading to more concentrated ownership patterns.

Previous Rules	*New Rule Changes*
National Television	
A single entity: Can own up to 12 stations nationwide or Can own stations reaching up to 25% of U.S. TV households	No limit on number of stations Station reach increased to 35% of U.S. TV households (the limit was increased to 39% in 2004)
Local Television	
A single entity: Can own only one station in a market	Can own up to two television stations in the same local market, as long as one of the stations is not among the top four in the area, and there are at least eight independent television stations
National Radio	
A single entity: Can own up to 20 FM and 20 AM stations	No limit on station ownership
Local Radio	
A single entity: Cannot own, operate, or control more than 2 AM and 2 FM stations in a market Audience share of co-owned stations cannot exceed 25%	Ownership adjusted by market size: In markets with 45+ stations, a single entity cannot own more than 8 stations total and cannot own more than 5 in the same service (AM or FM) With 30–44 stations; 7 total, 5 same service With 15–29 stations; 6 total, 4 in the same service With 14 or fewer; 5 total, 3 same service (but no more than 50% of the stations in the market) Limits may be waived if the FCC rules it will increase the total number of stations in operation
Newspaper/Broadcast Cross-Ownership Rule	
Absolute ban on newspaper/broadcast cross-ownership	Newspaper/broadcast cross-ownership is allowed in the largest markets where there exists competition and numerous voices (2008)

The case of music sampling and the "fair use" exemptions illustrate the complicated world of copyright laws that have developed since the copyright clause of the Constitution and the original 1790 Copyright Act. Those laws protect the sale and distribution of

this book. If you flip to the beginning of this book, you will find a copyright page that includes the publication date of the book, the name and address of the publisher, and a statement of copyright. This copyright statement reads, "All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher." This statement, enforced by government laws and regulations, makes it illegal for someone to simply copy and sell this book without permission from the publisher. The language of copyright statements has evolved over time to address new technologies such as photocopying, sound recording, electronic scanning devices, and file-sharing systems. All such forms of reproduction for sale are illegal. Such regulations exist to protect both the publisher, who collects income from the sale of books, and the authors, who receive royalty payments from publishers for each copy of the book that is sold. Because they have invested the time and money necessary to create the book you are holding, the law says that they should control the right to sell, distribute, and profit from such sales. If the copyright laws didn't exist, there would be no way for publishers to earn a return on their investment.



Source: www.fbi.gov.

The FBI's anti-piracy warning label can be used to accompany copyrighted content, including films, audio recordings, electronic media, software, books, and photographs. The language that accompanies the warning notes that "The unauthorized reproduction or distribution of a copyrighted work is . . . punishable by up to five years in prison and a fine of $250,000."

While originally intended to provide incentives for people to invest the time, effort, and resources necessary to produce new creations, copyright law has changed dramatically. In the original 1790 Copyright Act, authors were given exclusive rights to their work for 14 years, renewable one time if they were still alive. Since then, media companies have successfully lobbied Congress to repeatedly extend the period covered by copyright. With the "Copyright Term Extension Act" of 1998, sometimes known as the "Mickey Mouse Protection Act" because of Disney's key role in lobbying for its passage, copyright now covers an individual creator's lifetime plus 70 years or, in the case of corporate authorship, 120 years after creation or 95 years after publication, whichever is shorter. Advocates argue this allows creators to pass on the benefits of lucrative work to their heirs or profit reasonably from their creation. Critics argue this undermines the entire purpose of copyright law to both incentivize creativity and also support a robust public domain.

Over the years, the government and the courts have extended copyright laws to include a wide variety of visual, sound, and computer software products under the rights. Peer-to-peer (P2P) networks have posed distinctive challenges to companies (who fear loss of profit), legislators (who have to develop appropriate policies for the new digital platforms), and enforcement agents (who face considerable difficulties in tracking down violators). P2P networks allow Internet users to share digital files—including copyrighted music, movies, and games—with other users for free. By connecting to a site's servers using specialized software, users are able to search each other's hard drives for files and then download them for free.

Early P2P sites hoped to avoid enforcement of copyright laws because the illegally shared copyrighted material did not reside on their central servers. Instead, the P2P sites acted only as go-betweens, linking the hard drives of users. This logic, though, failed to convince the courts, who shut down one of the earliest successful P2P sites, the Napster music-sharing site, ruling that P2P file sharing was an infringement of copyright laws. (Napster later emerged as a legal music downloading site, charging an access fee.) In subsequent years, other P2P sites, including Pirate Bay and Limewire, have been shut down—temporarily or permanently—for violation of copyright laws.

Other sorts of sites can violate copyright laws, too, including the popular YouTube video sharing site. Despite YouTube's policy that explicitly prevents users from posting creative content protected by copyright licenses registered in the United States, a great deal of copyrighted content continues to be uploaded to the site. YouTube has a system that allows users to flag a copyright violation, and they have accommodated many requests to remove such material, as courts in the United States and abroad usually hold the service provider responsible for the content posted on its site. In 2007, for example, Viacom asked YouTube to remove more than 200,000 videos because of copyright infringement.

More broadly, it is illegal to copy and sell music CDs, digital music files such as MP3s, movies, and computer software. Likewise, it is illegal to use a copyrighted photograph in a commercial publication. We had to acquire permission to use all the photographs you see in this book. (We were unable to include some photos we wanted in the book, either because the copyright holders would not grant us permission to use them or because the fees they requested were too high.) The media industry may not want government regulation in some matters but, in this case, it certainly *does* want government intervention. The government's protection of copyright is crucial to the continued functioning of the media industry. Without government enforcement of copyright laws, the for-profit media industry would be unable to survive.

In recent year, critics seeking to enrich the public domain have developed alternative approaches to copyright, such as Creative Commons licenses. Creative Commons is a nonprofit organization that offers free legal tools to protect the use of creative work while maximizing the amount of material that is available for free and legal sharing, use, repurposing, and remixing (Creative Commons 2010). Unlike traditional copyright, Creative Commons licenses allow creators to give users specific rights to use their work while giving the creators the option of having "some rights reserved" (see Lessig 2005). (See Figure 3.2.)

Regulating Ownership of Programming: The Case of "Fin-Syn" Rules

While the government is concerned with protecting the rights of the owners of media property through copyright law, it has also been concerned with avoiding monopolistic

Figure 3.2 **Creative Commons Copyright Alternatives**

Creators who use a Creative Commons copyright can choose different license options, placing varying degrees of restrictions on the use of their work.

Attribution by	Share Alike sa	Non-Commercial nc	No Derivative Works nd
You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.	You allow others to distribute derivative works only under a license identical to the license that governs your work.	You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for non-commercial purposes only.	You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.

Source: http://creativecommons.org/about/licenses.

ownership of that property. One example of this concern was the FCC's regulation of ownership and control of television programming through "fin-syn" (financial interest and syndication) rules (Crawford 1993; Flint 1993; Freeman 1994a, 1994b; Jessell 1993). Through much of television history, the TV networks generally did not own the programs they broadcast. They merely bought the rights to broadcast programs produced by others. The fin-syn rules, established in 1970, limited the ability of the three major TV networks (ABC, CBS, NBC) to acquire financial interests or syndication rights in television programming. (In syndication, a producer sells the rights to rebroadcast a program.) In its words, the FCC "imposed these constraints to limit network control over television programming and thereby encourage the development of a diversity of programs through diverse sources of program services" (FCC 1995). The fear was that the three networks—which shared an oligopoly in television broadcasting in 1970—could also dominate programming industry-wide if they were able to own and control the creation and syndication of programming. Regulators theorized that they could encourage the emergence of a more competitive marketplace of program producers by forcing the networks to buy programming from independent producers.

For more than two decades, the fin-syn rules were the law of the land. During that period, though, the landscape of American television broadcasting changed dramatically. Many new independent television stations, cable stations, and even new television networks emerged. The audience share controlled by the three networks declined, and fear of a network monopoly subsided. Finally, in 1993, a U.S. district court ruled that networks were not subject to many of the FCC's fin-syn regulations because competing cable stations and the emergence of new networks and independent stations precluded them from monopolizing production and syndication. In that case, changes in technology were a factor in changing how government regulates media.

The changed FCC rules meant that, among other things, networks could now acquire financial interests in and syndication rights to all network programming. This encouraged vertical integration, as networks turned to studios owned by their corporate parents to produce more of their programming. Before the new regulations, network production was limited to a maximum of 20 percent of a network's prime-time programming. One year after the changes in regulation, the "Big 3" networks either produced in-house or had financial interests in about half of all prime-time programming. In the 2004–2005 season, for example, Viacom (then owner of CBS) had a financial interest in more than 90 percent of the new programs on the CBS schedule. By the 2007–2008 season, in-house production accounted for two thirds of prime-time programs on the four major networks. The major studios that own networks—Disney (ABC), Universal (NBC), Twentieth Century Fox (Fox), and Warner Brothers (CW)—produced about 90 percent of the series on the major networks (Kunz 2009). Independent producers were largely left out of this closed system of production.

But the new rules were a very lucrative opportunity for networks to generate more revenue, at no additional cost, by licensing long-running programs they produced to appear in reruns on other stations. For example, NBC generated $130 million by selling syndication rights to its popular comedy *The Office* (Dempsey and Adalian 2007).

The fin-syn debates, in all their inside details, illustrate some of the basic tensions that exist in the media industry. The unbridled growth of major media conglomerates threatens small media producers. In turn, major conglomerates argue that monopolistic control is no longer possible because we live in a diverse media world with many options. The question for policy makers is whether the government needs to use any regulatory constraint to control the actions of the growing media corporations.

These debates are yet another illustration of the tension between structure and agency. In this case, the same regulatory structure that protects the media industry's copyright claims constrained its ability to produce and resell its products. However, the agency of the media industry is seen in its ability to promote changes that favored the major networks. Meanwhile, relaxing old regulations ended up harming the viability of smaller media producers. Once again, regulations constrain some and benefit others.

Regulating Ownership and Control of Technology

For over 20 years, the growth of digital media has been seen by some observers as a revolutionary change in media development (Negroponte 1995). Digital information—the 0s and 1s that make up binary code—is now the common underlying basis for storing audio, video, and print media in many different formats, including MP3 or CD (music), DVD or Blu-ray (video), and GIF or JPG (graphics and photographs). This common digital foundation is what enables your computer, television set, or cell phone to access text, images, video, and sound and to "talk" with other digital devices.

The impact of digitization was enhanced by other technological developments that increased the amount of data that could be easily stored or transmitted. Flash drives enable you to carry hundreds of songs or other data on an iPod shuffle the size of a matchbook. Fiber optics allow a vast amount of information to travel by way of light over a tiny, pure glass fiber. Digital broadcasting via traditional transmission towers or by satellite has also increased communication options and enabled wireless devices to access all this data.

Over a remarkably short period of time, digitization has transformed the social lives of those with access to it. Computer networking through the Internet, to take just one example, links individuals to commercial sites, community organizations, government agencies, and other individuals. From a home computer or mobile device individuals can shop, pay bills, take an online course, check want ads, listen to music, engage in political discussion, register their child for the local Little League, watch a video or television program, e-mail a government official, stay in touch with friends through a social network website, Skype relatives, and check a map before travelling. All of this seems quite obvious and normal to us now, but it simply didn't exist just a few years ago.

Digitization led to a convergence of mass media formats. The lines between cable television, broadcast television, telephone, computer, and so on have become less and less identifiable. The result is the emergence of more integrated multimedia services. We will examine the implications of such technology in more detail in Chapter 9, but it is important to note here that such changes raise critical issues for the regulation of technology.

The Internet and "Net Neutrality"

Formerly, the government protected against monopolies by regulating the ownership and control of some technologies. Telephone companies, for example, could not enter the cable TV business and vice versa. In the 1990s, however, all this changed because of the merging of different media forms. In 1996, Congress revised federal laws limiting ownership of cable television. The government allowed the seven regional local telephone companies—the "Baby Bells"—to enter the cable television business. In turn, deregulation opened local phone service to competition from cable providers who wanted to carry phone service over their cables. Some hailed this change as a step toward more competitive, integrated media. Others worried that phone companies would have a substantial advantage in funding new cable ventures, given their steady stream of income from phone services. Many critics were concerned about the specter of a "single-wire" monopoly, that is, a single company providing a wire that could bring cable television, telephone, and Internet access to a home. With various media company mergers, such a bundled package is now routinely offered by providers such as Time Warner, Verizon, Cox, and Comcast.

The changes created a quandary for the FCC. In 1998, faced with convergence in Internet, cable TV, and telephone service, the FCC sought public comment on the question of whether Internet service via cable should be considered a cable service, a telecommunication service, or an information service. Each legal designation brings with it different types of regulation. As one FCC official put it at the time, "When you have the capability that the Internet provides—now you can do almost anything over one medium—you have to start thinking which rules are applicable, or whether any of our rules are applicable at all" (quoted in Simons 1998: B8). Such rethinking of the basic regulatory ground rules will continue as new technologies develop.

Early Internet dial-up via telephone modem operated as an *open access* forum, meaning that all users and content providers were treated the same. Regulations covering telephone lines require this equal treatment because telephone companies are common carriers. However, such regulations do not exist for cable. So broadband access to the Internet via cable opens up the possibility of unequal access to the Internet. A cable company, for example, might structure access so that users visiting company-owned sites (or sites that license with the cable company) are able to download material at top speed, while other sites load more slowly or are blocked entirely. Or it might be able to charge users more for access to data-heavy sites, such as Netflix and YouTube.

The possibility of some Internet content receiving preferential treatment, while other content is slowed or blocked, has raised concern among policy makers and public interest advocates. In response, they have promoted legislation to ensure *net neutrality*, preserving open access to the Internet and a level playing field for all websites, whereby all content would be treated equally. In 2009, the FCC began considering whether or not to add a non-discrimination principle to its Internet Policy Statement, mandating that service providers may not discriminate against any content or application. Many of the major telecommunications and cable providers—those companies that provide access to the Internet through their high-speed cables wired into homes and workplaces—oppose net neutrality. Instead, they have proposed various plans for a two-tiered Internet with an expensive high-speed network that major content providers will pay to access, along with a much slower lane for everyone else.

In December 2010, in a split vote, the FCC passed regulations that fell far short of true net neutrality, giving the major telecommunications firms much of what they wanted. The new rules stipulate that service providers cannot deny access to websites, but they allow cable and phone companies to charge customers more based on the amount of data they download or for access to data-heavy websites. In addition, the regulations exempt wireless service providers, so that access to certain sites via telephone or other mobile device can be blocked by the Internet service provider. For the first time, this would create a two-tier Internet where access is limited by a user's ability to pay and would allow wireless service providers to discriminate against any site they choose (Karr 2010; Stelter 2010). As of this writing, the new regulations are being challenged in court, and net neutrality remains among the most important unresolved media policy issues.

Internet Browsers

As media forms converged, companies involved in related industries became intertwined with the delivery of media content. Microsoft Corporation, best known for its software applications, is one such example. In 1998, the Justice Department and 20 state attorneys general filed an antitrust lawsuit against Microsoft Corporation. With its Windows products used on more than 90 percent of personal computers, Microsoft dominates the operating system software market. Among the allegations in this suit was that Microsoft engaged in illegal anticompetitive practices by using its operating system monopoly to attempt to control the Internet browser market as well. It did so by bundling its Internet browser (Explorer) with its operating system software and pressuring computer manufacturers to include this package on their computers. This would make it much more likely that users of the Microsoft operating system software would opt to use Microsoft's Internet browser, perhaps leading to Microsoft's monopoly control of that market as well. Microsoft was found guilty of monopolistic practices, but the suit ended with a settlement that required relatively minor changes in Microsoft practices (Auletta 2001).

In 2004, the European Commission—the executive body of the European Union—found that Microsoft had abused its dominant position in the operating system software market by its bundling of the Windows Media Player with Windows. It also criticized Microsoft's bundling of the Explorer Internet browser with the Windows operating system. The Commission ordered Microsoft to release a version of Windows without its Media Player, so consumers would have a choice, and it hit Microsoft with a US $655 million fine. When Microsoft repeatedly failed to comply, the Commission fined it again, for $370 million in 2006, and $1.18 billion in 2008. In 2010, European customers were finally able to choose their default browser from a browser choice screen (European Commission 2010).

These examples are just a few of the many similar changes occurring in media technology and subsequent media regulation. Some changes have international implications. With the advent of satellite-based television and the Internet, media products now easily cross national boundaries. In an attempt to control the social implications of such information, the Chinese government has pressured Western media companies to limit the content of some news broadcast via satellite in China. In 1996, the Chinese government announced that all Internet users would have to register with the government and that all Internet service providers would be subject to close supervision by various government agencies. Internet search engine company Google, which entered the Chinese market in 2005, was no exception. In order to enter the lucrative Chinese market, it adopted a self-censorship strategy that blocked access to certain sites, including some promoting democratic reform and human rights in China (BBC 2006). Still, on several occasions, China restricted access to Google's content. After vocal criticism from human rights advocates for its acceptance of the government restrictions, Google announced in 2010 that it would no longer comply with censorship requirements and started redirecting queries to its Hong Kong website, thus bypassing Chinese censorship (Helft and Barboza 2010). Shortly afterward, China temporarily blocked access to Google, forcing the company to stop the automatic redirect to its Hong Kong site if it was to maintain its Internet provider license in China. Such back-and-forth confrontation between media companies and governments in both democratic and authoritarian countries is likely to recur in the coming years. The dust from technological changes and their regulation has not yet settled.

REGULATING MEDIA CONTENT AND DISTRIBUTION

While the regulation of the ownership and control of media outlets, content, programming, and technology raises basic questions about the relationship between government and media, a different set of issues is raised with respect to the regulation of media content itself. However, the basic dynamic of structure and agency remains.

Regulating the Media Left and Right: Diversity Versus Property Rights

In the everyday political world, calls for media regulation come from both liberals and conservatives. However, the intended target of the regulation differs based on political orientation. The sides do not always line up neatly, but conservatives and liberals generally tend to approach the topic of regulation differently.

Liberals and the left usually see the government's role in media regulation as one of protecting the public against the domination of the private sector. (Conservatives see this as government meddling in the free market.) As we have seen, this view manifests itself in liberal support for regulating media ownership of outlets, programming, and technology, with the aim of protecting the public interest against monopolistic corporate practices. Inherent in this approach is the belief that the marketplace is not adequately self-regulating and that commercial interests can acquire undue power and influence.

Liberals and the left also tend to support regulation that encourages diversity in media content, such as the Fairness Doctrine (discussed below). Finally, liberals also support publicly owned media such as the Public Broadcasting Service (PBS) and NPR because such outlets can sometimes support important programming that may not be commercially viable. A central theme for liberals and the left is the need for diversity in all facets of the media.

Conservatives and the right tend to respond to such arguments with staunch support for property rights and the free market system. (Liberals see this as protecting corporate interests at the expense of the public interest.) When it comes to regulating ownership and control of media, conservatives tend to advocate a laissez-faire approach by government. They caution against the dangers of bureaucratic government intervention and the tyranny of "politically correct" calls for diversity. They are often enthusiasts for the ability of the profit motive to lead to positive media developments for all. Conservatives generally see the marketplace as the great equalizer, a place where ideas and products stand or fall based on the extent of their popularity. They often portray ideas like the Fairness Doctrine or public television as illegitimate attempts by those outside the American mainstream to gain access to the media.

Although conservatives abhor the idea of limiting, restricting, or regulating private property rights, they are often quite comfortable with restricting the content of media products, especially in the name of morality. The problem with a pure free market system for the media is that it leads to things such as graphic violence and pornography. Media images of sex and violence are popular and profitable (Dines 2010). However, nearly all observers agree that some restrictions on the content of media are necessary, especially to protect children and minors. In fact, it is conservatives who have often led the call to regulate material they deem unfit for minors. So while conservatives oppose government regulation that requires additional content for the sake of diversity, they are generally comfortable with regulations that restrict or prohibit the dissemination of material they deem unsuitable. The result has been both voluntary and mandatory regulation of media content. We turn now to some of the more common forms of content regulation.

Regulating for Diversity: The Fairness Doctrine

While media have tremendous potential to inform citizens about events and issues in their world, they also have unparalleled potential for abuse by political partisans and commercial interests. One way in which the government attempted to protect against potentially abusive media domination was the establishment of the Fairness Doctrine (Cronauer 1994; Frank 1993; Jost 1994b; Simmons 1978; Wiley 1994). The goal of the doctrine was to promote serious coverage of public issues and to ensure diversity by preventing any single viewpoint from dominating coverage. The Fairness Doctrine provides an interesting example of the rise and fall of a government attempt to regulate media content in the public interest.

In 1949, the FCC adopted a policy that reaffirmed the congressional precedent that "radio be maintained as a medium of free speech for the general public as a whole rather than as an outlet for the purely personal or private interests of the licensee." To achieve this goal, the FCC required, first, that licensees "devote a reasonable percentage of their broadcasting time to the discussion of public issues of interest in the community served by their stations" and, second, "that such programs be designed so that the public has a reasonable opportunity to hear different opposing positions on the public issues of interest and importance in the community" (13 FCC 1246 [1949] in Kahn 1978: 230). While the specific dimensions of the Fairness Doctrine evolved over time, the two basic provisions—requiring broadcasters both to cover public issues and to provide opportunity for the presentation of contrasting points of view—remained intact.

The goal in the application of the doctrine was to ensure diversity of views within the program schedule of a station. The Fairness Doctrine, for example, did not interfere with conservative radio talk shows but rather required the station to provide other programming that included differing points of view. Thus, the Fairness Doctrine never suppressed views, but it sometimes required additional speech for balance. The goal was not to stifle criticism but instead to ensure the airing of vigorous debate and dissent. FCC involvement in any Fairness Doctrine case came only after someone filed a complaint.

Over time, competing actors tried to use and, in some cases, abuse the Fairness Doctrine. The Kennedy, Johnson, and Nixon administrations, for example, harassed unsympathetic journalists by filing complaints under the Fairness Doctrine (Simmons 1978). But in many cases, the doctrine enabled the airing of opposing views that the public would not otherwise have heard. That was the intent of the regulation.

The broadcast industry challenged the legality of the Fairness Doctrine but, in 1969, the Supreme Court unanimously upheld the policy. The Court based its decision, however, on the scarcity of broadcast frequencies, agreeing with the FCC that, because the airwaves were a scarce public resource, broadcasters should use them to serve the public interest. Regardless, as part of the Reagan-era push for government deregulation, the FCC voted in 1987 to revoke the Fairness Doctrine (though technically leaving it on the books until it was deleted in 2011). Failed attempts to revive the Fairness Doctrine have occurred periodically ever since.

The key argument used against the Fairness Doctrine is that the premise of broadcast frequency scarcity on which it was built is no longer an issue. Critics note that, when the government introduced the Fairness Doctrine in 1949, there were only 51 television stations and 2,600 radio stations in the United States. By 2013, there were more than 2,235 broadcast television stations and more than 15,256 radio stations, not counting low-power stations (FCC 2013).

However, the scarcity discussed in the 1969 Supreme Court decision referred to the availability of frequencies, not to the number of media outlets. While the number of media outlets has exploded over the years, the demand has kept pace. As "radio piracy" vividly illustrated, there is still more demand for prime frequency use than space allows. Some new technologies, such as personal communications equipment, require more space on