

COMMODIFICATION OF CELEBRITIES' CRIMES: THE 'LIVE' BROADCASTING OF OSCAR PISTORIUS' MURDER TRIAL

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Résumé

La diffusion du procès d'Oscar Pistorius '(OP) a été salué comme un «moment crucial» dans l'histoire de la radiodiffusion en Afrique du Sud. Les entreprises de médias commerciaux ont, derrière cette initiative, enrôlé les médias sacro-saints libéraux, les normes juridiques ainsi que les valeurs pour obtenir le droit de diffuser "l'événement". Ces entreprises ont mis en avant les principes "d'intérêt public" et ceux du «droit de savoir». Elles disent avoir été motivées par la promotion de la «justice ouverte», «la confiance du public dans le système judiciaire», et dans la réalisation d'un procès «juste et équilibré». Cependant, peu d'entre elles ont interrogé de manière critique ce récit. Cet article examine la marchandisation de la criminalité (meurtres de femmes) et l'exploitation de la célébrité comme principales méthodes utilisées par les médias, en particulier la couverture d'un procès criminel, commercialement rentable.

Mots-clés

Salle d'audience de radiodiffusion, marchandisation, célébrité, Oscar Pistorius, processus de production, public merchandise

Abstract

The broadcasting of the Oscar Pistorius' (OP) murder trial was hailed as a 'seminal moment' in the South African broadcasting history. The commercial media firms behind this initiative enlisted sacrosanct liberal media and legal norms and values to secure the right to broadcast the 'event'. These media houses maintained that their motive was informed by the principles of 'public interest' and the 'right to know'. They also said they were motivated by the promotion of 'open justice', 'public confidence in the judiciary', and the realisation of a 'balanced and fair' trial. However, very few bothered to critically interrogate this narrative.

This article explores a radically different motive from the one proposed above by the media firms. It proposes commercial imperatives as the main motive behind the broadcasting of Pistorius' criminal trial. The article examines the commodification of crime (femicide) and the exploitation of celebrity fame as the main methods used by the media, especially broadcasting firms in their attempts to convert a high profile criminal trial into a captivating media commodity that transfixed viewers with suspense and drama, while being commercially profitable.

Keywords

Courtroom broadcasting, commodification, celebrity fame, Oscar Pistorius, production process, audience commodity

Introduction

The ruling by Judge Dunstan Mlambo in the South African High Court (Gauteng Division) authorising the ‘live’ broadcast of Oscar Pistorius (OP) murder trial proceedings was celebrated as the country’s ‘biggest judicial moment of the century’ (Sparks 2014). For the first time a ‘live’ television broadcast was allowed in the country’s courts, making history not only in South Africa but the sub-continent as well. For the commercial media firms that sought to broadcast the event, this was a ‘victory’, not for themselves only, but for ‘justice’ as well.

These media firms (*MultiChoice, Primedia, Media 24, Etv*, etc.) motivated their request to broadcast the trial on the basis of freedom of the media. They further presented the promotion of ‘public interest’, ‘open justice’, ‘public confidence in the judiciary’, and the realisation of a ‘balanced and fair’ trial as the objectives of their intention to broadcast the trial. Judge Mlambo (2014) agreed and allowed them to broadcast the trial under certain conditions and in terms of some technical specifications. This paper does not necessarily seek to dispute arguments presented by the commercial media or the reasons provided for the ruling. It seeks to present a ‘hidden’ motive for the broadcasting of this murder trial. Thus, the article argues that the media did not provide a complete picture of its reasons for broadcasting the murder trial. It seeks to uncover this ‘hidden’ motive.

While a separate study is warranted to establish the public’s perception on the broadcasting of criminal trials in the African context, and more particularly on this seminal courtroom broadcast, it is nevertheless necessary, for the purpose of this article, to glance through some of the vast public comments generated by this trial in the media to ‘make sense’ of the ‘public opinion’. From the comments, it can be established that the majority of opinions tended to accommodate the views presented by the commercial media for broadcasting this specific trial. However, there were, a few dissenting voices that questioned the media motive for broadcasting the trial. Among the few who publicly queried the commercial media’s motive were Haji Mohamed Dawjee and Rams Mabote. The former, a ‘social media editor’ for a weekly newspaper, claimed the reason for the OP criminal court broadcast was not for public gain, but for “media houses trying to undo each other”. It was not a broadcast about a murder trial of an athlete, or violence on women, but:

It’s about the celebrity of the media. And the opportunism it takes to trample over one another – one tweet or broadcast at a time – to inch closer to an ivory tower carved out of some Kardishian Reality TV fantasy so that they can stand an illusionary kind of tall and proclaim: BROUGHT TO YOU BY US (Dawjee 2014, 32).

It must be noted that by attempting to ‘undo each other’ or ‘trample over one another’, this author seeks to highlight the increased competition among South African broadcasters that escalated and reached a climax towards the end of the second decade after the end of Apartheid in 1994. The emergence of new players in the sector coupled with the perceived ramifications of digital migration, such as the arrival of multi-channel television, led to the repositioning of major media companies to confront the expected competition in the sector. I will return to this theme later in the article.

The second commentator, Rams Mabote, did not beat about the bush, but called a spade and spade. For him the motive of the media firms was profit. He argues:

Although the media houses that applied for this ruling are ecstatic and call this victory for justice and public interest, I believe the decision to cover this trial is nothing but commercial.

Millions of viewers and radio listeners will do nothing but follow this trial, at least for the first few weeks. This comes with lots and lots of advertising (Mabote 214, 1).

Interestingly, a newspaper owned by the mother company (Naspers) that also owns one of the applicants (*MultiChoice*) had the following to say in its editorial titled “Public interest? Really?”

The world is gripped by this story. Heroes who fall; beautiful women who die young. Blood. Guns. Love. Pistorius is innocent until proven guilty. We are interested, but there is only a smidgen of public interest in this story.

Let us not kid ourselves and pretend that the fight for television rights was a fight for open justice or for free expression. It is a fight for eyeballs and to feed our insatiable appetite for a story with its almost unbelievable elements.

If we are genuinely interested, then we would all do much more to tell ordinary stories with the same verve with which we tell this extraordinary one. If that is what will glue us, then we should be glued to every ordinary story (City Press, 2 March, 2014, 26. My emphasis.).

The present article draws from, and expands on these accounts in its attempts to unravel the ‘concealed’ motive of the media in broadcasting the Oscar Pistorius murder trial. In doing this, the article interrogates the commodification of the criminal trial and the exploitation of celebrity fame as the major methods used in broadcasting the OP murder case by the commercial media. It invites the reader to look beyond the version presented by the commercial media firms when applying for permission to broadcast the murder trial. However, looking beyond this media rationale does not necessarily mean repudiating their arguments, but it also means the public should not lose sight of the actual reasons for the existence of commercial media in capitalist societies.

The article is exploratory and its propositions are tentative. Further research is needed to verify some of the propositions made herein. The article starts by revisiting critical perspectives on the character and role of the media in capitalist society, before outlining the process of commodification in the communication sector. It then traces the brief history and development of courtroom broadcasting in order to locate the first recognition of the profit motive for broadcasting of criminal trials. The article then examines the context in which the first televised criminal trial in South Africa is emerging. It goes on to appraise the production process of the OP courtroom trial, while at the same time interrogating why the OP murder trial made the cut for being the first murder case to be selected for ‘live’ television in South Africa. The article concludes by stressing profit making as the primary rationale of capitalist media. By doing this the article attempts to accentuate the imminent falling rate of profit in

the broadcasting sector. This falling rate could result from increased competition, which at the same time could force broadcasters to experiment with the production of ‘cheaper’ but attractive programmes to lure advertisers, as a way of weathering the imminent cut-throat competition.

It must be stated at the onset that this study does not deal with content of the broadcast murder trial. It is not a content analysis exercise! Thus, it does not seek to evaluate or examine the content of the Oscar Pistorious murder trial – the content of the court trial. While it is acknowledged that any study of television is not ‘complete’ unless the content is examined, it should be accepted that this omission is perhaps one of the limitations of this study. Content of television murder trial are fascinating as the OJ Simpson murder trial and other celebrities’ trial have shown (see Gregory 2008). Despite this, this study has sought to confine itself to the production process and the external characteristics of the OP broadcasting product rather than on its content. Thus, the present study addresses the economic dimension of the trial and not its ideological meaning. Other studies (e.g. Mbenga 2014) and books (e.g. Carlin 2014, Wiener and Bateman 2014, Wiener 2014, Steenkamp 2014) have focused on the content of the trial and on other issues related to the trial. In addition, some television documentaries and special editions of academic journals had also been planned in this regard. The present study complements these other works, by addressing the neglected dimension of the OP courtroom broadcasting, notably its economic characteristic.

Character and role of media in capitalist societies

It would be remiss to start analysing the commodification of media products without looking at perspectives that seek to explain the character and role of the media organisations in capitalist societies. The starting point to understand the ‘hidden’ motive (economic rationale) by the media for broadcasting the OP murder trial would be to first revisit the approaches that seek to explain the character and role of the media in late capitalism. Admittedly, this is a hackneyed debate, but it still needs to be re-engaged, in my view, if we are to properly understand the process of commodification of media products in the so-called ‘information age’. The debate juxtaposes economic versus cultural/ideological/political character and role of the media in society.

Marxism historically distinguishes between the notions of media as an ideological tool and the media as an economic resource. This has been conceptualised as a distinction between the media as ‘processes of material production’ and as ‘sites of ideological struggle’. This dichotomy is drawn from Marx’s classical separation of the material transformation of economic conditions of production on the one hand, and the legal, political, aesthetic or philosophical (which is the ideological) dimension of the media, on the other hand. Marx distinguishes between the “unconscious forces governing material production” and the “conscious forces or ideology” (cited in Boyd-Barrette and New Bold 1995, 219 - 220).

Following from this, the main perspectives of Western Marxism (e.g. critical theory, cultural studies and critical political economy) have addressed the character and role of the media from either ideological/cultural/political or economic angles. For instance, the critical political economy perspective has traditionally tended to foreground the ‘economic dimension’ of the media, to the detriment of the ‘ideological function’ of the media.

Describing this position Nicholas Garnham (1990, 30) maintains that critical political economy:

Attempts to shift attention away from the conception of the mass media as ideological apparatus of the state, and sees them first as economic entities with both a direct economic role as creators of surplus value through commodity production and exchange and an indirect role, through advertising, in the creation of surplus value within other sectors of commodity production.

From this explanation it can be seen that the political economy paradigm regards the media as “first and foremost, industrial and commercial organisations, which produce and distribute commodities” (Murdock and Golding 1979, 205-206; cited in Mosco 1996, 105). However, the other paradigms have challenged what was regarded as ‘economic reductionism’ of the political economy. For instance, Robert W. McChesney (2003, 130) had this to say in an attempt to explain what could be regarded as the cultural/ideological/political character and role of the media:

The media system is not simply an economic category; it is responsible for transmitting culture, journalism and politically relevant information. Fulfilling those needs is mandatory for self-governance. The media system is better understood as a social institution similar to the education system, which few would argue should be turned over to market forces. Even as economic entities, most media are public goods. That means that the traditional notions of supply and demand do not apply, because the use of the product is non-rivalrous.

Despite what appears to be a ‘dichotomous’ character and role of the media, recent positions have tended to show these two angles as complementary. Vincent Mosco (2009, 135) makes this clear in his reference to the media product when noting that the emphasis on the economic dimension of the product does not mean that the ideological is irrelevant, but that it is “thoroughly integrated within the process of production that is too often treated as instrumental to ideology (in some political economy) or autonomous from it (in some cultural theory)”. Similarly Graham Murdock and Peter Golding (cited in Fuchs 2013, 277-278) have stressed that “media organisation produce and distribute commodities”, but have “ideological dimension” by disseminating ideas about the economic and political structure”. Again Vincent Mosco (2009: 134) illuminates this when he argues that while media organisations produce “surplus value”, their commodities contain “symbols and images” whose meaning helps to shape consciousness”.

Despite this common understanding, the current article addresses the commodity and surplus value dimension of the media products and not necessarily their ideological meaning, or what Christian Fuchs (2013, 277) calls the “ideology-critique”. This is deliberate. It is designed to illuminate the part of the character and role of the media the South African commercial broadcasters sought to ‘hide’ in their quest to broadcast the OP murder trial. The objective of this article is to interrogate the economic dimension of the media products from a presupposition that media create surplus value directly through commodity production and indirectly through advertising (Mosco 2009).

However, the emphasis on critical (read Marxist) analysis in this article must be seen as just one method many of approaching social life, or as Vincent Mosco (2009, 65) notes as “an entry point in social analysis, one important opening to the social field, but not one to which all approaches should be reduced”. This understanding also should inform the reader that despite using this approach we are aware that there are other approaches that can be used to understand the same phenomenon under discussion. Thus, this understanding takes into consideration tendencies of essentialism (including notions of economic reductionism). This leaves the door open for other approaches to explain courtroom broadcasting under capitalism. This brings us to the process of commodification, which is central to this analysis.

Commodification of media products and audience

The concept of commodification has prominence in the critical theory of the media. A way of understanding the economic dimension of the media is by looking at the process of commodification of media ‘products’. Media content is thus the starting point in understanding the concept of commodification in communication (Mosco 2009, 133). Commodification entails the transformation of the media content into a marketable ‘good’. It refers to the “process of transforming things that are valued for their use into marketable products that are valued for what they can bring in exchange” (ibid. 127). In short, it is the process of transforming ‘things’ into ‘objects’ for sale or transforming “use value” into “exchange value” (ibid. 129). Commodification in this article refers to the transformation of the criminal (murder) trial into a marketable media product.

For us to understand the process of commodification we need to pay attention to the concept ‘commodity’. Commodities are items that can be exchanged for other items and have an exchange value (Singer 1980, 46-47). Marx started his *opus magnum*, *Das Kapital*, with the concept of commodity. He is said to have started with the “result” - commodity - and then provided a comprehensive analysis of the mode of production that creates that commodity (Kiyani 2015, 2). This process amounted to the “peeling off the onion skin” of the commodity appearance, which resulted in the revealing of the capitalist mode of production (see Mosco 2009, 130). Marx (1992, 163 cited in Kiyani 2015, 2). He further explains that commodities are complex than they appear, despite appearing as easily comprehensible. Christian Fuchs (2014, 54) expands this by noting that media content is a “complex process that involves a lot of different forms of work that are to a certain degree not immediately visible and are hidden inside things and artefacts”. I will return to commodities later, more particularly the cultural (or media) commodities.

Since commodification deals with the transformation of use value into exchange value, it is necessary to briefly examine the concept of ‘value’. For Marx, value denotes the relationship between persons, expressed as a relationship between things. For him, ‘value’ is that “labour socially necessarily to produce a commodity”. It is the “unit in which social labour is measured” (Sowell 1985, 108). The value of a commodity is the average labour time that is needed to produce it (Fuchs 2014, 57). Surplus value in contrast is the “proportion of society’s labour that exceeds what is required to produce the livelihood of the workers themselves (ibid.). Put this in simple terms: workers’ labour (labour power) is also a commodity in a capitalist mode of production. Like other commodities labour power has a use value and an exchange value. Its exchange value, like that of other commodities, is the amount of socially

necessary labour embodied in it, i.e. its reproduction costs (Mandel 1990). However, its use value is its capacity to create new value, including its potential to create more value than its own reproductive costs (ibid.). In short, surplus value is the difference between the total new value created labour power (a commodity), and its own value - its own reproduction costs (ibid.).

Profit is not surplus value, but it is derived from it. It is necessary to understand these concepts and their meanings for the purpose of this article. This is because the ‘live’ broadcasting of the OP murder trial was a production process by labour (workers) producing a media product (broadcasting programme) that had both ‘use value’ and ‘exchange value’. This product was produced, distributed (disseminated) and consumed. Profit making (or capital accumulations) was the motive behind the production of this product.

The use value of media and media technologies, according to Christian Fuchs and Vincent Mosco (2012, 133) lies in their capacity to provide “information, enable communication, and advance the creation of culture”. However, their exchange value is manifested in their commodity form. When media products take the commodity form their “use value only becomes available for consumers through exchange money capital in the hands of capitalists”. Media and technologies, according to these theorists, have both a concrete products form represented in use value and a monetary price form represented in exchange value. These two hypotheses, according to them, are “connected through the contradictory double character of media as use values and as exchange values” (ibid.).

Cultural commodities

At the beginning of the article we noted one characteristic of cultural commodities when Robert W. McChesney (2013, 130) indicated that media products are “non-rivalrous”. The concept of ‘non-rivalrous’ (non-rivalries) is relevant, because it distinguishes media products from other commodities. Julian Doyle (2002a cited in Heuva 2010, 22) argues that media products tend to defy economic laws and theories of scarcity, because they do ‘not get used up or destroyed’ when consumed. This simply means that when a person watches news, a reality television programme or any other media programme, it does not ‘diminish’ another person’s opportunity to view the same programme (ibid). Similarly, Mike Feintuck (1999 cited in Heuva 2010, 22) notes that media products have two characteristics: firstly, their consumption by one person does not leave less for others to consume and, secondly, it is always costly and sometimes impossible to exclude those who do not pay for these products to consume them.

As can be seen from the example given earlier the analysis of products produced by cultural (and media) industries poses some challenges compared to concrete and traditional commodities (Kiyan, 2015). Apart from what was seen as the ‘immateriality’ of these commodities there was another challenge of determining the nature of labour that produces such commodities. The ‘immateriality’ of media products and the type of labour used to produce them provide challenges when attempts are made to analyse them. However, there is emerging literature that has attempted to address these challenges in recent editions of the *Triple C* journal.

One example is that of Frederick H. Pitts (2015) who in his recent article on creative industries of graphic design, advertising and branding, provides an interesting explanation in his attempt to address distinction between ‘physical’ and ‘non-physical’ characters of commodities. He argues that the status of commodity does not necessarily mean they are material in make-up or not. The same applies to the type of labour involved in their production. Drawing from Michael Heinrich’s reading of Marx, he maintains that we should instead focus on the “social forms” of the commodities, examining “whether objects and services are exchanged” or not (Pitt 2015, 197). For him the transformation from societies based on the production and consumption of goods to those based on production and consumption of services does not threaten the “law of value” (ibid). Despite this explanation, Frederick H. Pitts does not deal with the production process of the media commodities addressed in this article. While working within the Marxist tradition and looking at the role played in value production by labour, his focus is more in the sphere of circulation.

Another work by Zafer Kiyani (2015), for instance starts, from the assumption that not all cultural (or media) products assume commodity form. Drawing from Wayne (2003, 21) Zafer Kiyani (2015, 3) says that cultural commodities are not general but special products that are produced in very different relations of production. We should consider these commodities first and foremost through “content and medium as a way of materialisation and mediation for the content” (ibid.). Zafer Kiyani argues that cultural commodities require a certain type of medium for their production. However, content and medium cannot be easily separated from each other. He explains the relationship between content and medium as follows:

Content, which can exist in the absence of medium, can only transform into a general consumption object solely when it becomes “objectified” through medium. Similarly, medium can only exist in the absence of content but its transformation into a general consumption object requires content (ibid. 3).

Thus, both content and medium transform each other into consumption objects, according to him. In this way the content provides an “internal object”, while the medium constitutes the “external object” of these cultural commodities. At the same time, these commodities have two dimensions, the content on the one hand and a combination of content and the medium on the other hand. Examining content, it is difficult to establish their commodity character, but this character is manifest only when the content is combined with the medium.

Drawing from this analysis, Zafer Kiyani comes to the conclusion that cultural commodities undergo a dual (or two-stage) production process. The first involves the materialisation of the content. This is the stage in which intellectual labour is performed. The second stage is the one in which the content (created by labour) is combined with the medium to produce the commodity. He maintains that cultural products assume commodity form only in the second stage (ibid. 4).

While Zafer Kiyani explains the characters of the media (cultural) commodities lucidly and illuminates the process of commodity production through the combination of content and medium, he does not tell us much about the most important human activity of labour involved in the production of the cultural (or media) commodities. He is silent on the critical elements of the capitalist relations of production involved in the production, distribution and consumption of cultural (media) products. Nevertheless, Zafer Kiyani’s work is very useful in

understanding the relationship between content and medium in the production of media products.

This brings us to the process of labour involved in the production of cultural or media commodities. As noted previously the type of labour used to produce cultural or media commodities has been another contested issue between and among critical perspectives.

Labour producing cultural (media) commodities

The second element that deals, with cultural (media) commodities, as indicated earlier, deals with the question of the type of labour that produces such commodities. Some critical theorists, called Autonomist Marxists (among them Hardt and Negri 2000; Lazzarato 1996; Fumagalli 2011) have developed the concept of immaterial labour to explain some forms of this labour. They maintain that cultural or creative industries, such as broadcasting institutions, are involved in the generation of “novel immateriality of post-Fordist production” (Pitts 2015, 211). The Italian social theorist Maurizio Lazzarato (1996) led the pack by introducing the concept, while others have popularised it. He defines “immaterial labour” as labour that “produces the informational and cultural content of commodity” (1996, 133). To him the concept refers to two different aspects of labour, the informational content of a commodity, and the activity that produces the cultural content of the commodity (ibid). It deals with activities that under normal circumstances are not classified as “work” in the traditional understanding of work. These are activities that include the “defining and fixing cultural and artistic standards, fashions, tastes, and consumer norms, and more strategically, public opinion”. He groups all these activities under the concept “mass intellectuality” (Lazzarato cited in Pitts 2015, 211).

Autonomist Marxists maintain that immaterial labour is ‘immediate and immanent’ and not coerced, while at the same time “creates value beyond measures”. In addition they argue that the power and value of this labour are novel in that they are greater than other industrial contributions; are immeasurable and are something new and unseen (ibid.).

Critics of Autonomist Marxists, who are many, such as Michael Heinrich have dismissed the concept of immaterial labour. Michael Heinrich (cited in Pitts 2015, 211) also contends that the argument of immaterial labour “does not capture what the creative industries do within the circuit of capital”. Other critics such as Christian Fuchs and Sebastian Seignani (2013, 256) also dismiss the concept of ‘immaterial labour’ by arguing that the concept “creates the impression that information work is detached from nature and matter and that there are two substances in the world – matter and spirit – that results in two different types of work”. They further argue:

Information work is however not detached from nature and matter, but is material itself. It is based on the activity of the human brain, which is a material system that is part of the human’s materiality. If the spirit is presented as being detached from nature and matter, as post-operaist accounts often do, then one leaves the realm of a materialist analysis of society and enters the realm of spiritualism,

esotericism and religion, in which spirit is an immortal substance (ibid.).

What then is the labour that creates cultural commodities if the concept of immaterial labour is not admissible? The starting point should be to examine what labour is. To understand labour, we must first understand what ‘work’ is. Work according to Marx is “a conscious productive activity that transforms and organises nature so that humans “produce their means of subsistence” in order to satisfy human needs, which constitutes “the production of material life itself” (Marx and Engels 1845/46, 47 cited in Fuchs and Sevignani 2013, 239). In contrast labour is different from work in that it is the “alienated form of work, in which humans do not control and own the means and results of production (ibid. 240). We distinguish two forms of labour, concrete and abstract. Concrete labour is the use-value generating aspect of labour (or it is work in short), while abstract labour creates the value of commodity, as it is the performance of labour needed to produce a commodity. A commodity has value only because abstract human labour has been objectified or materialised in that commodity (ibid).

For the purpose of the article, it is argued that the producers of the OP courtroom media product were involved in the performance of abstract labour. To paraphrase Christian Fuchs and Sebastian Sevignani (2013, 255), these labourers (of the OP product) made use of their bodies, brains, mouths, speech, ears, hands and audio recording devices and cameras as instruments to organise their experiences in creating a broadcasting programme that was broadcast (audio and visual) through radio and television to the outside world. It is interesting to note that the OP criminal programme producers were alienated human beings. They were alienated from objects and instruments of labour involved in the production process of this media product, and most importantly, they were alienated from the product of their labour (the broadcasting programme) as they were also exploited and did not benefit from the product of their labour – the broadcasting programme.

Audience commodity

The process of producing media products go hand-in-hand with the transformation of media audience into commodities, which the media firms sell to advertisers. This is in line with Dallas Smythe’s (1977) thesis of audience commodity. Dallas Smythe’s argument is that the audience is the primary commodity of the media (Mosco 2009, 136). He believes that media consumers are exploited as they are sold as commodities to the advertisers (Fuchs 2013, 276). This is referred to as “audience commodity”. It is a process whereby media companies ‘produce’ and ‘deliver’ audiences to the advertisers. Explaining Dallas Smythe’s thesis of audience commodity Vincent Mosco (2009. 137) notes:

For him, the process brought together a triad that linked the media companies, audiences, and advertisers in a set of reciprocal relationships. Media firms use their programming to construct audiences; advertisers pay media companies for access to these audiences; audiences are thereby delivered to advertisers.

Advertising attracts the audience who are ‘sold’ to advertisers. This is remarkable in that it is not the product that is sold to the consumers, but the consumers themselves who are a commodity and are sold to the advertisers (Fuchs 2012, 144). The more consumers (audience/viewers) a media company or other media platform (e.g. social media) can attract, the higher the advertising rates would be (ibid.).

The OP courtroom broadcast brings into sharp focus Dallas Smythe’s thesis of audience commodity. What was interesting during the trial is that the commodification of the audiences was not confined to the audiences of the traditional media (radio and television), but also those of the social media. This is because media consumption in the digital age has included new media which comprises social media. Thus, the commodification of audiences was extended to audiences of the social media. It was expanded from the narrow traditional households to the whole society as many today can consume media content on their cell phones, tablets, on PCs and laptops.

The development of new communication technologies and the emergence of social media have expanded that scope of audience commodities. The accumulation of process happens across societies because households and societies have become ‘capitalist factories’ (Fuchs 2013). For instance, Christian Fuchs (2013) citing Sut Jhally (1987) notes that in terms of the audience commodity the entire living room of a household has become a factory. This relates to the television and radio broadcasting. However, with the social media (Facebook, Twitter, etc.) which are on mobile, these can be accessed by everyone, as audiences are no longer confined to their living rooms to access the media.

Again drawing from Mario Tronti’s living room factory Christian Fuchs (2013, 276) argues that:

Social media and the mobile Internet make the audience commodity ubiquitous and the factory not limited to your living room and your typical space wage labour – the factory and work place surveillance are omnipresent. The entire planet is today a capitalist factory (Emphasis in the original).

Moreover, commodification is recursive in nature and leads to further commodification. Ratings are such other commodity. For instance, the process of audience commodity production itself leads to the creation of another commodity, which is a rating. This process is referred to as “immanent commodification” (Mosco 2009, 141). Vincent Mosco notes that “ratings” are commodities “born directly out of the process of creating another” (ibid). Eileen Meehan (1984 cited in Fuchs 2012, 702) has noted that commercial media do not have media product (or message) and audiences as commodities only, but have also ratings as commodity. Ratings to her play such a crucial role in the production of media commodities as they “set the price that networks” can demand and that advertisers have “to pay for access to commodity audience” (Meehan 1993, 387 cited in Fuchs 2012, 702).

Media research and rating agencies during the OP murder trial broadcast paid particular attention to the audience (viewers) to produce various ratings and other statistics, both for the ‘old’ as well as the ‘new’ media, including social media (see Ferreira 2014). The multiplatform approach in which the courtroom OP broadcast was disseminated led to enormous media agencies becoming interested in the ratings of viewers and listeners,

‘audience ratings’ which became another important commodity produced by another commodity.

Emergence of courtroom broadcasting

Before interrogating the context in which the broadcasting of the OP murder trial emerged it is necessary to first trace the origin and development of the broadcasting of criminal trials. This originated in the USA and despite having become a “logical extension of the constitutional principle of a public trial” in some democracies (Trossman 2002, 14) the ‘live’ television of criminal trials is still allowed in relatively few free democratic states. The first courtroom trial was televised in 1953 in the USA (first in Oklahoma City in 1953 and then in Waco in Texas in 1955) (Lambert 2011). Cameras were always allowed in USA courts but were abruptly banned from courts in 1935. This followed the disruptions of a court proceeding in a small town in New Jersey involving the kidnapping case of Bruno Richard Hauptmann. About 700 reporters and 130 photographers descended on, and disrupted the small court, causing logistical nightmares (Howard 1997, 57).

There was always opposition to courtroom broadcasting, but it is interesting to note that this opposition did always come from the courts, but from society as well. For instance, Mindy S. Trossman (2002) tells us that when the *Chicago Tribunal* in 1924 sought public opinion on the possibility of broadcasting proceedings of a criminal court trial over its radio station involving two teenagers, Nathan Leopold and Richard Loeb, accused of kidnapping and murdering the 14-year old son of a business tycoon, the majority of its listeners rejected the idea of such broadcasting, claiming it to be ‘whimsy’ (ibid. 4).

Nevertheless, through fierce lobbying combined with the development of new technologies ‘live’ broadcasting of murder trials was subsequently allowed in some courts in the USA. But the most important development that led to authorisation of live television of criminal trials was the transformation of the television itself. This process related to the change of focus from television as an entertainment instrument (in the 1950s) to news/information and education (in the 1960s and 1970s). Since then television was seen as an important medium of educating people on the effects of crimes. In addition to the perception of TV as an educational medium, new technological advances resulted in improved equipment and methods to deliver the media content to the audiences. These made the instantaneous transmission of events easy (Howard 1997, 55). Already by the mid-1970s, many courts started experimenting with televised courtroom trials. By the 1980s many states in the USA had legalised televised courtroom trials (Trossman 2002, 10). Despite this ‘positive’ development most Federal courts including the US Supreme Court were not prepared to authorise ‘live’ broadcast coverage of criminal trials for a very long time (ibid.).

The final episode in easing broadcasting restrictions followed the Chandler judgment, which came shortly after a proposal by the American Bar Association (ABA) Committee on Fair Trial-Free Press in 1978 to allow unobtrusive electronic coverage under guidelines established by the trial judge (Fulton 1981, 1393). By this time technology was developed to allow the recording of court proceedings without disturbances indicated earlier. The Chandler judgment rejected a previous constitutional rule that prohibited broadcast coverage of trials under all circumstances. Instead this new ruling held that the coverage of court cases should

be subject to the decision of the presiding judicial officer. In addition the judgment compelled States to provide guidelines that would obligate the trial judge to ensure that the accused persons had rights to a fair trial (ibid.).

The right of the accused vs. public interest

We must understand that the broadcasting of criminal trials was not only a technical matter but was a legal issue as the Chandler judgment showed. The question that was asked at the level of law, related to the interpretation of the law itself, which dealt with human rights and basic freedoms. The right to broadcast criminal trials in the US broadcasting history was also contested between the right of freedom of expression (media freedom and the right to know) on the one hand, and the right of the defendant to a fair trial. This was an intense debate that cannot be reviewed in this article, safe for highlighting the main points of this discussion briefly.

The USA constitutional provisions of the Sixth Amendment and the First Amendment were at the centre of this debate. The Sixth Amendment guarantees a public trial (fair and open trial) while the First Amendment promotes freedom of the media (free press). Both constitutional provisions are concerned with the public interest, but for two different but related reasons. The Sixth Amendment guarantees a public trial for the accused person only. This Amendment says that, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ...” (US Constitution Amendment VI cited in Rosenfeld 2010, 12). It requires that court proceedings be held in the open and not in secret (private). It thereby ensures and protects the criminal defendant’s constitutional right to a fair trial. In this regard societal interest concerns the personal protection of the accused. This is eloquently explained by Timothy L. Kern (1981, 374) who notes that an open trial does not amount to a public right of access to the trial, but that this guarantee is based on the distrust for secret proceedings. This provision tends to deny societal interest (public interest) and thereby reject automatic right of access to court proceedings by the media. Shelly Rosenfeld (2010, 12) notes that “the right to a ‘public trial’ does not mean, however, that criminal trials must be accessible to anyone who wants to watch from their homes. In other words, that specific ‘right’ is not absolute”.

The First Amendment in contrast recognises the public access principle since this right foregrounds the public right to know. This Amendment states:

Congress shall make no law respecting an establishment of religion, or promoting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the government for a redress of grievances (US Constitution, Amendment I cited in Rosenfeld 2010, 12).

The First Amendment deals with access to information by citizens in order for them to make informed decisions on issues of public interest and it foregrounds the dissemination of information. Citizens rely on the media for information on which they make informed decisions as most of them do not have time or resources to obtain information directly from

government and its agencies. The media, as agents of the public, facilitates the free-flow of information which is crucial to a knowledgeable public participation (Kern 1981, 377). Nevertheless, the media does not enjoy special consideration greater than that accorded to the public. The right of access of the media is defined in terms of the rights of the public. In terms of this principle the court room trial is a public event, and what transpires in the courtroom is public property (ibid.).

Nevertheless, the US court has rejected the argument that the First Amendment gives the right to televise court trials and the US Supreme Court does not allow the television of its trials. Despite cameras and the television of both criminal and civil court cases are allowed in the ‘superior courts’. The discretion on the allowance of the television of court cases lies, in most cases, with the presiding judge (Rosenfeld 2010).

Effect studies: educational role of criminal broadcasting

The US Supreme Court in 1965 had called for empirical studies into television courtroom effects. However, Paul Lambert (2011b) argues that the issues the Court sought to be examined had not been addressed as only a relatively few studies had been conducted related to the Court’s request. As indicated earlier, the assumed ‘educational role’ of television was the primary criteria for allowing ‘live’ broadcasts of criminal cases. From the beginning the focus or motivation for broadcasting a criminal trial was seen as ‘educational’. This can be deduced from research conducted in courtroom broadcasting since the first live television of courtroom trials in the USA. Most of these studies focused on the effects of television broadcasts of trials on audiences. Framed from within the dominant American positivist social and behavioural sciences, these studies focused on effects inside and outside the courts. They dealt with issues related to education, information and the enhancement of public confidence in the justice system - these being presented as the core reasons behind early courtroom broadcasts.

For instance, the first court room broadcast was premised on the assumption that it would be “educational”, “informative” and would enhance public confidence in the justice system” (Lambert 2011a, 1). However, Paul Lambert maintains that there has not been “sufficient body of research to back up the various arguments” on these effects. Some of the studies Paul Lambert examined provide interesting findings. For instance, a study by William Petkanas (1990) concludes that “confidence in the justice system did not increase as a result of television courtroom broadcasting” (Lambert 2011a, 1). Ironically, another study by Kermit Netteburg (1980) could not find any educational effect or any enhancement of knowledge about court procedures (ibid).

Paul Lambert (2011a, 2) concludes in his review of studies on the impact of courtroom broadcasts by arguing: “Research conducted to-date does not demonstrate that the goals of education, increased confidence or enhanced information are achieved”. In another study Paul Lambert (2013) argues that there has been a “significant decline” of perspectives that favour courtroom broadcasting as educational, while views that see courtroom broadcasting as informative are on the increase (ibid. 3). Similar conclusions were made by Susanne S. Barber (1985) in her study, a little bit earlier, on the advantages and disadvantages of televised trials.

Profit motive of criminal broadcasting

The idea to recognise courtroom broadcasting as a profitable undertaking came from an unexpected source. It was a high court judge who argued and campaigned for the recognition of this in the USA in the late 1990s. Judge Stephen D Easton (1997) recognised profits made by the media in broadcasting courtroom trials. It is perhaps remarkable to note the context in which this recognition was made. Judge Easton recognised the profit-making nature of courtroom broadcasting in the aftermath of the OJ Simpson murder trial. It is reported that within two hours after the discovery of the bodies of OJ Simpson's ex-wife, Nicole Brown Simpson, and her friend, Ronald Lyle Goldman, the process of commercialisation of the murder was put in motion. Within this short time the president to a research company ("that seeks out hot stories before they get hot"), Industry R&D, Tom Colbert, called Bill Birnes, a Los Angeles book packager, telling him that "there was a really big story breaking in Brentwood". By six o'clock the next morning Birnes was talking to New York publishers about "doing an instant book on the grisly murders" (Kim 1994, 2). Apart from the nature of the murder, the fact that about 95 million Americans watched the arrest of OJ Simpson on television on June 17 made it impossible for this event to be ignored by television stations (including movie producers and book publishers. Thus, the subsequent criminal and civil trials of OJ Simpson spawned their own "cottage industry" and led to the institutionalisation of the 'Court TV' in the USA (ibid. Rosenfeld).

In a 1997 article titled "Whose Life Is It Anyway?: A Proposal to Redistribute Some of the Economic Benefits in the Courtroom from Broadcasters to Crime Victims", Judge Stephen D Easton proposed a fee to be paid by the media for "electronic access" from the profits made from these broadcast trials, and this to be used to "compensate crime victims as subsidised damage payments" (Howard 1997, 56). This was above and beyond the administrative and other minor 'mechanical' costs paid by the media. It is interesting to see what another high court judge said on his colleague's proposal:

Under Easton's proposal, fees are driven by the television market. They are not related to the administrative costs of having cameras in the courtroom. In a high-profile case, the setting is modelled on an auction process using sealed bids, with exclusive access granted to the highest bidder. In a typical case, the trial judge would set television access fees, which are charged to all media desiring to televise the proceedings. These access fees compensate the victim in the particular trial being televised if the victim has not otherwise been compensated by the legally responsible parties. Any access funds would be paid into a victim compensation fund for the benefit of other victims of crime (ibid. 57).

It can be seen that Judge Stephen D Easton discounted the educational and informative roles of these broadcasts and paid attention to the profits made by the media in broadcasting criminal trials. Judge Stephen D Easton realised that the broadcasting of criminal trials was not educational, but entertainment (drama), which was profitable to media companies broadcasting them. This is the reason why he proposed that the media should be charged for "electronic access to courtroom" and to "reallocate those large TV profits" derived from the "telecast of high profile trials" to the victims (ibid. 57). Judge Easton's proposal had another

dimension. He proposed that the court should “auction” the broadcasting rights of the high-profile cases to the highest bidder” (ibid. 56).

This proposal elicited heated legal debate among America’s foremost legal minds. It attracted both support and rejection from many in the American legal circles. However, the fiercest criticisms were observed from his (Judge Stephen D Easton’s) peers, among them Judge William L Howard who in a 1997 article titled *Televised Trials: Can the Government Market Electronic Access?*, challenged some of the propositions made by Judge Easton. The latter responded to this criticism in another article of the same year (1997) titled *No Pay, No Play: Trial Broadcasting Fees are Constitutional*.

While the debate that ensued following Judge Easton’s proposal is refreshing and may benefit those interested in the ‘live’ broadcasting of criminal cases, it will not be entertained in this article due to space. Neither is this article going to interrogate the merits and demerits of Judge Easton’s proposal. However, the article wants to recognise the contribution made by Judge Easton in terms of pointing to the economic rationale for broadcasting of criminal trials in the USA. This helped in drawing attention away from the narrow confines of the USA positivist behavioural sciences. This article, underlines the most salient issues raised by the learned Judge, which are of utmost importance to a critical political economic discussion, the recognition by Judge Easton of market forces propped behind the broadcasting of the criminal trials.

Context in which ‘live’ courtroom television is emerging

This section seeks to sketch briefly the context in which the broadcasting of Oscar Pistorius murder trial emerged. It argues that the broadcasting of the OP murder trial did not fall from heaven or result from the benevolence of the media companies in their attempts to promote open justice as they want the public to believe. It emerged as a result of contradictions within the South African broadcasting environment. The South African broadcasting environment was fluid for almost two decades after the democratisation of the country and its institutions. The public needs to appreciate this context in order to understand the ‘hidden’ reasons for the production and dissemination of this courtroom product.

It should be stated at the onset that the broadcasting of the OP criminal trial resulted partly from commercial media companies’ experimenting with the production of cheaper broadcasting (television) programming as preparation for the imminent competition in the sector. This competition resulted from three major developments in the South African broadcasting industry in the post-1994 era, notably:

- (a) Digital migration (migration to the DTT) and its ramification for the broadcasting sector
- (b) Liberalisation of the pay-television market (in an attempt to break *MultiChoice*’s monopoly; and
- (c) Emergence of multi-platform delivery of broadcasting content as one of the outcomes of the new information and communications technologies

These three factors combined presented the fluid environment in which the broadcasting sector found itself. These elements need to be examined in order for us to understand the broader processes that informed the development of courtroom broadcasting in the South African context. This understanding takes us to the inner tensions or contradictions that offer the driving force for new development and transformation within the broadcasting sector. Our discussion about the production of the OP media product through the commodification of femicide should be seen as the “intrinsic pattern of potentialities” (Sowell 1985, 21) for addressing some of these contradictions and challenges within the current broader South African media (broadcasting) environment. I will attempt to thrash out the three elements.

Perceived impact of digital migration

One of the contradictions within this process is the perceived ramifications of migration to the digital terrestrial television (DTT). It was argued that the ‘migration’ from analogue to digital platform would release more spectrums and result in the availability of more broadcasting channels. The more the channels the more choices would be provided to consumers. But the new channels would need immense content, which would place pressure on the media to acquire and/or produce more content to fill the new space (channels), if the broadcasters want to remain relevant and attract/maintain audiences in a highly competitive environment. This dilemma is well captured by Thinus Ferreira (2015: 8) who in an opinion article notes (sarcastically though) that while with the looming digital migration everybody is “demanding local content”, “nobody has talked about what exactly will be offered in terms of this content beyond the vague promises of more channels”. The search for this content was the prime mover for experimentation with the production of ‘cheaper’ but ‘attractive’ television material.

For media companies to be competitive they needed to produce and broadcast material cheaper in terms of production as well as material that appealed to the majority of their audiences. But more importantly, material that would be able to attract more people and thereby increase their advertisement revenue in this competitive market. It must be remembered that the more/many channels will result in a broad choice which will force advertisers to spread their funds thinly across the many emerging channels. Thus, companies would attempt to outdo each other in terms of producing and screening content that would raise their profile, while at the same time seeking to secure more profits in this competitive era.

The question of digital migration has been associated with the highly contested issue of the encryption of broadcasting signals. With South Africa migrating to DTT there is a need to ensure that low-income households’ television handsets that receive the analogue signal are assisted to access the digital signal. The government decided to provide these households with set-top boxes that would convert the digital signal into an analogue one to enable them to continue watching television on their old sets. It set aside an amount of about R4 billion (four billion Rand) to do this.

The question that arose with regard to these processes was whether the set-top boxes should be encrypted to allow conditional access or not. Encryption or conditional access would permit the operator (broadcaster) to grant or deny access to specific channels through

the set-top boxes. Without encryption (or conditional access) broadcasters would not deny viewers access to the programme (signals) (Gedye 2013, 4). In a nutshell the system of encryption would determine access control to television channels. If there was encryption then households would not have access and must first subscribe to the provider.

The contestation among the broadcasters was characterised by ensuring that the system of encryption was in their favour. Therefore, some broadcasters such as *Etv* preferred encryption, while others like *MultiChoice* did not desire encryptions. *MultiChoice* was supported by the Association of Community Television SA (ACT-SA) and the National Association of Manufacturers in Electronic Components in its quest for set-top boxes without a control system. But *Etv* demanded set-top boxes with control systems (Curling-Hope 2014, 15). The government changed its policy from supporting encryption to being against encryption during this time. However, it required a high court decision to resolve the impasse. This decision favoured those against the encryption mechanism.

Challenge to the pay-TV monopoly?

Another element relates to the liberalisation of the pay-television market segment. The introduction of competition in the television market has been slow since the dawn of democracy. In more than two decades after democracy, the pay-TV monopoly held by *MultiChoice* had not been broken. The regulator, the Independent Communication Authority of South Africa (ICASA) had on a number of occasions attempted to open this market without success. In its first attempt, ICASA licensed about five companies in this market segment but, only one, the *StarSat* (formerly *TopTV*), managed to start its operations. Another company that operates in this market is *Etv*'s sister company *Platco Digital*, which through its OpenView HD platform provides 18 free channels to viewers provided they buy a dish and a decoder (Gedye2015, 28). However, more companies are slowly but surely entering this market.

For instance in 2014, ICASA licensed other groups of potential pay-TV operators, including the *Close-T* Broadcast Network Holdings, *Mindset Media Enterprise*; *Mobile TV*, *Kagiso TV* and *Siyaya Free to Air TV* (Speckam 2014, 20). The *Siyaya TV* is a fully black-owned consortium, of which the major shareholder is the Bakgatla B Kgafela traditional authority in the North West Province (Gedye 2015, 28). *Close TV* seeks to cater for the interests of the gay, lesbian and transgender communities in South Africa; *Kagiso TV* offers local content to lower and middle income households, while *Mindset Media Enterprises* seeks to produce and offer educational material (ibid.).

During this time ICASA also announced the licensing of a third free-to-air TV station planned to come into operation by the middle of 2016. This meant a new competition for both the *SABC* and *Etv* that operate in the free-to-air broadcasting market. All this happened at the time when the country was in the process of migrating to digital terrestrial television.

Online streaming services

Another ‘threat’ to the traditional broadcasters was the introduction of the online streaming operators to the country. It is important to note that the threat of online competition remained mainly in the background during the period of broadcasting the OP murder trial. This is because the country experienced a problem of low broadband capacity and online streaming services could not take up fast and thereby make a significant inroad in the television market. Nevertheless, some low broadband streaming service providers, such as *VIDI* and video on demand (VOD) service were already launched by the time the OP murder trial was broadcast in 2014. *MultiChoice* offers online movies on its Box Office service. Africa’s largest media and technology company (and the holding company of *MultiChoice* and *Dstv*), *Naspers*, joined the fray as it also set up a video-on-demand service, called *Showmax* in the second part of 2015 (Spillane 2015, 15).

Others, such as the *Beyond the Eyes* (BTE) (also an online streaming service provider) was launched shortly after the broadcasting of the OP murder trial. The BTE screens African content. Foreign online streaming services have been entering the South African broadcasting space. One prominent one is *iRoko-TV*, which is a video-on-demand subscription service. *iRoko-TV* is Nigerian in origin but streams across Africa, providing African content together with a selection of foreign (Western) material (Gedye 2014, 4). However, an important player that is set to threaten local competitors in the streaming market is the United States company, *Netflix*, which has planned to enter the South African market by the end of 2016 (Maake 2014, 6). Other video-on-demand services that were launched during this time were MTN’s *Frontrow* and Altech’s *Node*, which shows that the market is becoming more competitive for both the traditional television operators and the new online video and programme streamers.

Moreover this development points to the belief that the future of television is online. Young people in Africa, as elsewhere, have been migrating to the online platform and it is where the advertisers have sought to find them. They are watching television online, on their smart phones and tablets. This is becoming a major challenge to the traditional broadcasters, both public service and commercial, as they are losing audiences and finances. Already the world is experiencing the emergence of what the A Nielsen company calls Zero-TV households (those who have turned to watching shows and movies online: (Internet, cell phones, laptops, etc.) and no longer fall under the traditional definition of a “television home” (Nakashima 2013, 19). Many of the so-called Zero-TV households are inhabited by ‘digital natives’ (young people between 18 and 24) who are more conversant with the new ICTs and are more receptive to the new streaming and other online content services.

Competition in the print media

Remarkable changes have also taken place in the print media markets. Apart from the significant changes in ownership in the post-Apartheid era there have been major restructuring in terms of production and the delivery of products. One such remarkable development was the attempt by the print editions of the print publications to follow the migrated readers to the online platforms. Most print publications today have introduced on-line editions. In addition, some print media companies also introduced other online products,

such as video-on-demand as seen in terms of Naspers. The newspaper group the *Times Media Group*, for instance launched the *Vidi* video-on-demand service in September 2014.

More remarkably, traditional print media companies set up their own ‘wire’ services shortly before and immediately after the demise of the *South African Press Agency* (SAPA). The objectives of the new wire services are to sell and supply news articles to newspapers, radio, TV stations and anybody needing news content. Naspers established its own service called *News24 Wire*, the Times Media Group has *Rand Daily Mail News Wire*, while Sekunjalo (which bought the Independent Media Group) took over SAPA assets and established the *African News Agency* (ANA), billed as a Pan-African wire service (see Benjamin 2015, 8).

Development of Reality TELEVISION

Before we attempt to examine the OP production process it is necessary to assess the emergence of reality TV as it shares common elements with the ‘live’ television of courtroom trials. While courtroom broadcasting is not in the ‘real sense’ a reality television, we can still learn from some features of Reality TV, more especially when looking at the production (labour) process of the broadcasting programme. Two aspects that particularly link the OP courtroom broadcast to reality television are the context and the type of programmes. As indicated earlier, the pressure of imminent competition in the South African sector ushered in new ideas of producing cheaper programmes. This is not unique to South Africa but was experienced elsewhere too. I will demonstrate this point by drawing from the work of Chad Raphael (1997) on the emergence of Reality TV in the USA in the 1980s.

The emergence of Reality TV, according Chad Raphael, was a “fiscal strategy” in response to the economic restructuring of the television sector (Raphael 1997, 103). The USA of the 1980s saw increased competition in the television sector following the introduction of VCRs and the use of cable. The main TV networks became competitive in terms of programming to attract more of the fragmented viewers as advertisers opted to spread their funds thinly across the networks (ibid.). This development had a major impact on television programming as the environment became more competitive and more content was needed to be produced to attract the advertisers.

With advertisers spreading their capital thinly across the networks, the producers opted to “spend less and get more”. The outcome was the emergence of cheaper TV programmes, such as reality television. While popular among the viewers, it was cheaper to produce such programmes (ibid.). Thomas Fenoglio (ND: 2) emphasises that “reality TV is cheap to make and in order to pursue a more ‘authentic’ depiction of reality, cheap production is a must” (ibid.)

Similar developments happened in the United Kingdom (UK) at almost the same time. Like in the USA the UK’s terrestrial broadcasters (BBC and ITV) in the early 1980s feared losing audiences due to competition from emerging audio-visual providers. The TV industry from the early 1980s faced intensified threats of possible falling profitability (Ursell, 2000). The mainstream TV channels in the UK were set to lose income from advertisers and on their technological advantage as the new entrants did not only attract advertisers but also took charge of the digital and electronic capacities (Ursell, 2000: 807). These combined

uncertainties resulted in the restructuring of the television industry. However, this restructuring, unlike in the USA, was not so much based on programming but rather on labour (employment) relations and the restructuring (downsizing) of the media organisations. More specifically, UK's restructuring touched on the reduction of permanent employees and their replacement with freelance workers. In addition, this process paved the way for de-recognition of the trade unions in the media industry (ibid.). The UK response to the falling rates of profitability led to what Gillian Ursell (ibid.) calls an "aggressive degradation of the terms and conditions of employment and a more aggressive exploitation of the labour power".

Production of the OP courtroom product

Courtroom broadcasting is essentially an interesting undertaking. It resembles a labour process of commodity production and accumulation of profit. With regard to the OP criminal court broadcast, I will argue, that the media companies set out to produce and disseminate a product for profit making. These companies spent relatively little in terms of producing this product compared to their expected returns. They did not spend money (costs) on talent (actors) but appropriated the product of this free labour. In fact, the companies appropriated a public event (criminal court proceedings) and commodified this into a profitable media product. This process depicted a production process in which the accused produced a media product which together with other programmes and advertising forms, what Vincent Mosco(2009, 133) calls a "packaged product", was 'sold' (broadcast) in the 'market place' for profit. The motive of the commercial media companies remains, in all this, capital accumulation.

The production process of the OP criminal broadcast is similar to that of a reality show, as both have minimal production costs, while making use of 'free labour'. Generally, courtroom dramas, like the crime broadcasts, are very cheap to make, as companies pay small fees for the installation of equipment, while the rest of the costs are left to the courts. The OP courtroom production did not require money to be spent on talent, direction, scriptwriting, music composition, computer animation, wardrobe, location costs, make-up and other props, generally associated with normal television programme production. In fact, the production of the OP TV programme did not need talent (expensive actors), scriptwriters or story editors. It used the free labour of the accused person, witnesses, the judge and her assessors, lawyers (both prosecution and defence teams), court orderlies, etc.

All those involved were not compensated for their parts in the production of the OP murder trial product by the beneficiaries of this programme – the broadcasters. The productive labour time that is exploited by the media companies involves the unpaid time of productive labour. It must also be remembered that these media firms used legal 'experts' to comment on and analyse certain aspects of the criminal trial. These comments and analyses were also flighted on television and on air (as well as on all other platforms) alongside the broadcast product (the murder trial). However, the product of these experts like the other productive labourers mentioned previously remained uncompensated. The experts formed part of the unpaid productive labourers the media firms had used in the OP murder trial.

The broadcasting companies in a nutshell spent very little in this production process, while they were set to gain vast profits in terms of advertisement revenue. Another favourable

condition in terms of the production costs of the OP criminal drama relates to the absence of a production company. The OP production was a product manufactured directly by the broadcasters themselves. This production process was not ‘outsourced’ but ‘produced’ cheaply ‘in-house’ by the media companies. The visible costs incurred by the broadcasters, apart from salaries of their staff, are those associated with the installation of equipment in the courtroom to record and video tape the proceedings. In fact this was one of the pre-conditions for being allowed to broadcast the trial. It should also be noted that Judge Dunstan Mlambo instructed that there should be no other “cost” to be carried by the broadcasters, noting that “there is no order as to costs” (Mlambo 2014, 19) in the judgment.

Having explained the issue of production costs we now need to understand that the broadcasting of the OP murder trial by mostly privately-owned media demonstrates the appropriation of publicly-generated data (information from the court) for their private accumulation. The media produced a commodity (media product), which was accomplished by transforming a public event into a private commodity for profit. The aim of all this was to make profit. Furthermore, it can be argued that the media firms combined various elements of television programmes (genres) to produce an ‘attractive’ (read ‘profitable’) televisual product (commodity) that would appeal not only to the South African television viewers, but to the global ‘audience’ as well.

The courtroom broadcasting production process reflected an exploitation process as it relied on free labour. It incorporated people who found themselves in a coercive relationship with the state to perform duties that were in the public interest. Those involved in this process had no choice, but had to participate in the trial in their respective roles as ‘accused’, ‘witnesses’, etc. They had no control over this process as they were under obligation to be part of the trial. Their relation was with the High Court, the Judiciary, and not with the media firms that broadcast and sought to benefit from the broadcasting. While their task was to contribute towards the resolve of the trial, they were also at the same time producing a programme which was recorded, packaged and disseminated by the commercial media firms.

Celebrity culture and fame

Why was the OP murder the preferred one? This section seeks to unravel this puzzle. Our starting point must be to ponder what journalists call news values or news selection criteria of news items for us to understand why the Pistorius criminal case made the cut. This will enable us to understand the media houses’ expectations and why the OP criminal trial ultimately became the first historic courtroom broadcasting in South Africa. The same features that enabled Oscar Pistorius to make the cut played a role in making OJ Simpson’s case the “trial of the century” (Hunt 1995, 2). Shelly Rosenfeld (2010, 12) argues that because of public fascination the OJ Simpson trial was transformed “from a standard criminal case to a courtroom drama”. She goes on to argue that the story of OJ Simpson “was made-for-TV from the beginning”.

Courtroom murder trials as we have noted at the beginning of the article combine suspense with drama that transfixes audiences. Let us now unpack some of the elements of this product for the reader to understand why the broadcasting of the murder trial in general and the OP courtroom trial in particular, was attractive to the consumers. To understand this we need to

reflect on the answer Mondy S. Trossman (2002) provides after pondering the issue of what makes a “trial of the century”. In her response to this question she retorts: “The crime, the accused, the lawyers, the legal issues and, of course the media” (ibid. 4), all these elements define the selection of courtroom broadcasts, and perfectly fit the selection of the Oscar Pistorius murder trial.

The OJ Simpson featured similar elements. It involved a celebrity sport personality and had an element of domestic violence. Moreover, what made the OJ Simpson trial ‘sensational’ was the fact that it was viewed from a spectrum of “race”, which is so prevalent in the American society (Fairchild and Cowan 1997, 583). The fact that the accused was a black man and the victims were white made it interesting. Moreover, OJ Simpson was a celebrity; was rich and was an icon of corporate America. However the issue of race was at the core of prosecution and verdict. In this regard Halford H. Fairchild and Gloria Cowan (ibid. 589) note that the “real challenges of the Simpson trial revealed involve correcting the imperfections in the criminal justice system; not the imperfections that led to the acquittal, necessarily, but the imperfections tied to the inappropriate relevance of race in all criminal trials”.

The OP murder trial involved highly rated celebrities as well: Oscar Pistorius and Reeva Steenkamp. Celebrities attract media attention as they are “newsworthy subjects”, and must be considered as a “news selection criteria on its own” (O’Neill 2001 cited in Panis and Van den Bulk 2014, 26). More importantly media coverage increases when a celebrity is well-known and has attained “star power” (Trall et al. 2008 cited in Panis and Van den Bulk 2014, 26). Oscar Pistorius and Reeva Steenkamp were newsworthy as celebrities and their murder trial, made a case for broadcasting. This trial involved celebrities: a double amputee, Oscar Pistorius who made Olympic history as the first sprinter to compete using prosthetic blades (the “blade runner”); and Reeva Steenkamp a celebrity model.

This explains why the media firms were attracted to Oscar Pistorius and Reeva Steenkamp. Oscar is or was a global star. Werner Swart (Swart 2014, 9) describes him as “a true superman.

A man who took the cruel fate he was dealt when he was born without fibula in his legs and turned his disadvantage into victory by becoming ‘the fastest man on no legs’. A man with will power and determination so strong that he could take on and change the landscape of the world’s most celebrated event

Reeva Steenkamp was a ‘top’ model and law graduate who started modelling in her teens. She was twice named one of the “100 Sexiest Women in the World by FHM. She was also a contestant in the reality-TV show “Tropika Island of Treasure”, and was involved in a number of charity work (Smith 2014, 5).

There were similar court cases involving femicide like the Oscar Pistorius one, but these did not meet the commercial media’s selection criteria. At the start of the OP trial there was a similar case in the courtroom. This was the case *State v Kutumela*, involving 26-year-old Thato Kutumela convicted of raping and strangling to death his 18-year-old girlfriend, Zanele Khumalo (also a model) in 2011. Both cases involved femicide, however the people involved are what made the difference to the media. Novelist, Margie Orford (2014, 14) in an opinion piece following the verdict of the Oscar Pistorius sums this vividly, when she notes that:

Lethal domestic violence is too commonplace to be of national, let alone international, interest. But celebrity elevated Oscar Pistorius above every other man who killed his girlfriend on that Valentine's Day, and every other day before and after.

Interesting, media firms also raised the issue of celebrity when applying for permission to broadcast the trial. Writing in the *Los Angeles Times* Robyn Dixon (2014: 1) notes that the applicants emphasised the status of Oscar Pistorius as an 'iconic celebrity', arguing that his trial was of immense public interest and to avoid media distortion of the trial it was necessary to have an unfiltered live broadcast.

Disseminating the OP media product

The OP courtroom broadcast (media product) attracted millions of the audience, locally and abroad, which could mean primary income for the broadcasters in terms of advertisement. This relates to the production of 'audience commodities', described earlier.

In addition to broadcasting the programme during the trial period and providing programme (material) to other broadcasters (as per court order) one applicant, *MultiChoice*, set up a pop-up channel on its *Dstv* platform (Channel 199) specifically devoted to the OP murder trial, running on a 24-hour basis. During the trial, this channel was the fourth most watched channel in South Africa, following the free-to-air television channels, *SABC1*, *SABC2* and *Etv*, taking the first to the third place in that order (Ferreira, 2014). Furthermore, the Oscar Channel ranked the 10th most watched channel of the *Dstv* during the trial, bringing it in the league of the premium channels such as *Kyk-Net*, *M-Net* and *Mzansi Magic* (ibid).

If this channel which is on a pay-TV was so popular, one can just imagine how many people flocked to the free-to-air channels, such as the public broadcaster (*SABC*) and the commercial free-to-air channel (*Etv*) to watch the trial (ibid.). The majority of South Africans do not have access to pay television (subscription television), but can access the free-to-air television. About 62% of the TV households have access to the free-to-air television channels, while only 38% of the TV households have access to pay television services (General Household Survey 2013), as already indicated.

With regard to audio (radio) one of the applicants, Primedia also broadcast live audio about the trial on *Talk Radio*, *567 Cape Talk*, *94.7 Highveld Stereo* and *94.5 Kfm*. In addition Primedia, like *MultiChoice*, set up an online pop-up radio station called *Oscar Extra* (Meletakos & Wright, 2014). It must also be noted that these were not the only radio stations that aired the OP murder trial, as others, both private and public, broadcast the trial as well (Ferreira, 2014).

Capital accumulation was attempted at various platforms, not only through the traditional broadcasting media (television and radio), but also through the 'new' media, such as social media, as already noted. The media companies disseminated the product on multi-media platforms such as Twitter, Facebook, WhatsApp, Instagram and You-Tube. In this way social media and the Internet were used along radio and television to disseminate the OP trial and this extended further the "pubic existence and availability of the event", as John Corner

(2002: 257) would have argued. This is remarkable, as through this multi-platform strategy the companies could reach more people, especially the younger audience who prefer to access their news online. What was important in terms of commodification of these digital natives using social media is that these mediums (social media) again produced further and more content that also commodified and was sold to advertisers (Fuchs 2012, 718). Think of the digital natives' activities on Facebook, Twitter, WhatsApp, Instagram, etc. This is content that advertisers are interested in. This refers to immanent commodification, a concept and process already dealt with in this article.

For instance, the rating agency Data Driven Insights - according to Jessica Sparks (2014) in her analyses of data and trends of social media on the OP murder trial, says that over 3.5 million tweets were reported from the day of the killing of Reeva Steenkamp to the sentencing of Pistorius (Data Driven Insight cited in Sparks, 2014). That many people relied on twitter for news about the trial is illustrated by Jessica Sparks who shows how a journalist's twitter followers grew exceptionally during the trial. For instance, Jessica Sparks says that Barry Bateman (a senior reporter with Eyewitness News) who was actively covering the trial had about 10 000 twitter followers a week before Reeva Steenkamp was killed. However, this number grew exceptionally to 160 000 after Pistorius bail application, and to a massive 228 000 followers after the judge gave the verdict (ibid.).

Furthermore, other sources provided this impressive data on Twitter during the trial. In fact Twitter is said to have outdone the Oscar Pistorius channel run on DStv on a 24-hour basis. Whereas this channel recorded almost 200 000 viewers at peak times, Twitter is said to have produced more than 400 000 tweets during the first four weeks of the trial. Most of these tweets were the result of journalists in court tweeting every detail of the trial (ibid.).

Despite the popularity of the channels and the active social media, managers of the media firms maintained that advertisers failed to follow this number of consumers. Many viewers were said to have set aside their favourite channels and programmes in order to watch the murder trial, but the advertisers did not grab this opportunity. The advertisement revenue did not correspond to the popularity of the courtroom broadcasts and the size of the viewers. Sources drawing from research conducted by Carat SA and iProspect indicated that only six advertisers invested in the Oscar channel and spent a combined amount of R4.3 million (US\$330 769) by the end of the trial (Lefifi 2014, 4). This was despite the Professional Evaluation and Research (PEAR) group estimating the value equivalency of the coverage (what the editorial coverage would cost if it were paid for advertising space) to be R236 million (US\$18, 2 million) (ibid. 4).

Two theories sought explain this low to poor advertisement response. The first theory ascribed this poor advertising response to budgeting. It argued that advertising budgets of companies are planned long in advance and advertisers may not have planned for this event, bearing in mind that there was no similar event before. Nobody knew in advance that the OP murder trial would be televised. Secondly, there was speculation that some companies did not want to be associated with the sensitive issue of femicide (ibid.). It must be remembered that this murder case polarised many sections of the South African society (ibid.). However, this is a topic for another research that may be interested in considering why advertisers consider moral issues before advertising in programmes that involve issues related to crime and murder including femicide (and domestic violence) (ibid.).

Nonetheless, the alleged non-profitability of the OP media product does not diminish the profit logic described in this article. The poor advertisements do not refute the fact that broadcasts in courtroom murder trials are motivated by capital accumulation. This would be tantamount to denying the primary existence of commercial media. Moreover, the media monitoring and ratings agencies have not disputed the fact that that the OP courtroom broadcast was popular and that it was widely watched, and thereby a possible source of audience attraction by advertisers.

Conclusion

The article has attempted to show that despite the commercial media's claim of broadcasting the OP criminal trial in the 'public interest' and promoting an open trial, the media had a commercial motive for broadcasting the murder trial. Firstly, this is demonstrated by the fact that media are first and foremost industries that produce commodities for profit despite the fact that these commodities contain 'symbols and images whose meaning help to shape consciousness' (Mosco 2009). This remains the major function of media companies in capitalist societies. The media are in the business of making a profit for their owners and shareholders, like other business enterprises. In this process, the media do not only produce commodities to be sold, but they also commodify the consumers (audience) into commodities to be sold to advertisers. The commodification process is further multiplied through the process of immanent commodification, which is increasingly exacerbated by new media including social media. The article has demonstrated that all these procedures took place with regard to the OP courtroom broadcasting process.

The article has further demonstrated that the OP courtroom production process was characterised by 'exploitation'. 'Free labour' from the accused, witnesses, and everybody who participated in this court case in one way or the other, was used in this process. The commercial media behind the OP 'live' broadcasts appropriated a 'public event' for private gain. Furthermore, they commodified femicide by manipulating 'celebrity fame' and thereby constructing a captivating media commodity (programme) that was offered on multi platforms to an extent of its 'public existence and availability' (Corner 2002).

In addition, the article has demonstrated that the 'live' broadcasting of the OP criminal trial did not come out of the blue, but emerged in a particular context and was driven by identifiable factors. It emerged as a need to experiment with the production of 'cheaper', but attractive (popular) programmes for the audience. This need arose from an imminent 'threat' of fierce competition resulting from developments in the broadcasting sector. These developments are notably, the country's migration to the digital terrestrial television platform and the resultant emergence of multi-channels; the liberalisation of the pay-TV market; as well as the emerging streaming (and other online) services in the broadcasting sector. All these have served as an impetus, driving broadcasters to experiment with the production of new and cheaper programmes in order to survive in the emerging competitive broadcasting environment. The production of the OP criminal trial media product is a result of this development. Its motive was capital accumulation.

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