

Why regulate broadcasting?

Broadcast Regulatory Master Class
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Why regulate broadcasting?

- ❑ The frequency spectrum as a limited natural resource
- ❑ Convergence of technologies, many uses of the frequency spectrum
- ❑ The impact of broadcasting as compared to other forms of media
- ❑ The special role of broadcasting in society (education, culture, minority cultures)
- ❑ The potential harm possible through media (incitement to hatred and violence, defamation)
- ❑ The special role of broadcasting in elections
- ❑ Advertising and broadcasting (consumer protection)

Different types of media

- Some media regulation can apply to different types of media but in many instances, the form of delivery determines the kind of regulation
- In a society with freedom of expression the media regulation should be as “light” as possible, adapted to the type of media
- Regulation is not restriction

Print—light regulation

- ❑ Print is ordinarily not subject to any licensing or registration requirements
- ❑ Often not subject to impartiality requirements, even in regimes that set such requirements for broadcasters
- ❑ Many countries allow self-regulation of printed press
- ❑ Rationale: At least in theory, people can counter speech with which they do not agree by printing and disseminating their own message. This is getting more and more true every day, as computers and printers become more and more affordable.

Broadcasting—licensing regimes

- ❑ Terrestrial television is most commonly regulated through licensing
- ❑ The license normally includes a requirement that the licensee follow certain content codes, rules and regulations
- ❑ Usually subject to content codes setting higher standards than that for print media (e.g., impartiality requirements and during elections)
- ❑ Public service broadcasters generally have additional obligations, such as universal service, programming for minorities, programming in minority languages, children's programming, and additional requirements during elections (fairness, voter information)

Broadcasting—licensing regimes

Satellite

- ❑ Stations uplinking domestically or with headquarters in the country generally can be licensed and regulated like terrestrial stations.
- ❑ The problem is what to do with someone broadcasting inappropriate content from abroad. Cannot block incoming signals from abroad, so limited in approach.
 - Could try to restrict reception by, for example, prohibiting the sale of special decoding equipment (but this will hit also desired satellite broadcasting).
 - States can also enter into international agreements with the state from which content is uplinked to require compliance with certain content standards.
 - States can also work with satellite operators to ban the broadcast of certain stations.

Internet

- ❑ Lighter regulation than other media most everywhere.
- ❑ There seems to be a hesitation to burden what is seen as an exciting new medium with excessive restrictions.
- ❑ Internet requires activity by the user.
- ❑ Also, there is a recognition that, absent filtering, little can be done to prevent access to internet content, as restricted content can be hosted and accessed from abroad.
- ❑ Until relatively recently, the internet was most similar to print media, made up largely of text and static photographs. All of this is changing as technology for streaming audio and video content is improving.

Goals of broadcast regulation

- Ensure quality of technical aspects and programming
- Allow for diversity of opinion and diversity of programming
- Protect and promote local culture
- Protect local cultural, moral, social and religious values
- Promote a competitive environment
- Protect minors from material that would harm them emotionally, psychologically or physically

Goals of broadcast regulation (cont'd)

- Private v. public broadcasting: public interest requirements for all broadcasting?
- Encourage technical developments:
 - Digital broadcasting
 - More choice
 - Availability for all
 - Globalisation
 - Transition from analogue (protection of broadcasters, protection of audience)

Goals of broadcast regulation (cont'd)

Broadcasting is pervasive and persuasive

- Protect and promote local social, cultural, moral, and religious values
- Protect citizens, especially minors, from harmful or offensive material
- Ensure that the public receives accurate and impartial news
- Ensure that people are treated fairly and privacy is respected
- Ensure that broadcasting is not used to incite to terrorism, violence, hatred or disorder or to promote crime
- Protect the public from improper advertising
- Provide a transparent and consistent framework for business investment

Principles of broadcast content

- Broadcasting Codes set out principles of broadcast content to be observed by all broadcasters
- The principles apply to all programme content, including advertising content, regardless of who the author is
- Broadcasters are responsible for all material broadcast by them
- Regulatory activity shall never interfere with editorial freedom

Protection of minors

- Material that might seriously harm the physical, mental or moral development of young people under eighteen must not be broadcast at any time
- People under the age of eighteen must be protected by scheduling and warnings from material that is unsuitable for them
- Specific rules apply for specific themes and at specific times
- Rules apply for involvement of minors in programmes

Broadcast advertising regulation

- Consumer protection (the same kind of considerations as for any consumer protection legislation)
- Protection of broadcasting (enabling a broadcasting market as well as broadcasting quality) – advertising essential for many broadcasters

Intellectual property

- International law, international agreements
- Special legislation and communications law
- The role of the broadcast regulator and that of other organs for copy-right
- Agreements for use of works under copy-right
- Special systems for administration (collecting agencies)
- Different intellectual property rights: Copy-right is automatic, requires no registration

Ownership issues

- Broadcasting ownership: plurality and diversity
- Public service broadcaster: special case
- Restrictions on ownership/cross-ownership

Why regulate Internet?

- Content may be harmful to minors
- May encourages harm to adults, incite violence, crime and disorder, carry messages of racial and ethnic hatred, offend religion or other values
 - *If Internet becomes a main means of communication, similar principles may apply as for broadcasting*

Means of regulating Internet

- No regulation
 - Education, ratings and voluntary filtering by users
 - Used in the United States and United Kingdom
 - Pros
 - This new medium remains unencumbered and unrestricted
 - No overly broad restriction of content
 - Con
 - Allows content that may be deemed inappropriate

Means of regulating Internet (cont'd)

- Filtering software at ISP/server level
 - Symbolic list of banned URLs (Bahrain, Singapore)
 - Filtering software that prevents access to certain broad categories of content (UAE, Saudi Arabia)
 - Pro
 - Prevents access to large percentage of content deemed inappropriate
 - Cons
 - Prevents access to acceptable content
 - Fails to prohibit some content

Means of regulating Internet (cont'd)

- Complaints-based enforcement
 - Regulator issues a take-down order in response to user complaints
 - Used in Australia
 - Pro
 - Is not as “overbroad” as filtering software, as it targets only inappropriate content
 - Con
 - Is removed only after being visible online
 - Does nothing to prevent access to content hosted abroad

Competition law issues

- Agreements between undertakings (cartels)
- Abuse of dominant position
- Mergers
- Undertakings given special tasks and special rights (universal service)
- Special broadcasting issues (public service broadcasting, ensuring diversity)

Reasons for regulating broadcasting

- Are the reasons for regulating broadcasting still valid? (as new technologies allow so much more space in the frequency spectrum and as the audience has so many more different channels of information)
- Should regulation change in this changed situation?
- What does the global media market mean for regulation?