

# Communications Regulation in a Globalised World

Broadcast Regulatory Master Class  
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# Topics to cover

- Start with some reasons why we regulate broadcasting
- Discuss the differences between telecommunication and broadcasting regulation
- Briefly discuss some trends and advancements in communications technology
- Raise questions of jurisdiction
- Discuss various types of media and their differences and similarities
- Introduce international legal standards for regulation of media and the concept of 'international best practice'
- Explore how these concepts might affect the way media is regulated and under international best practice in particular
- Briefly discuss regional issues

# Reasons for regulation of communications generally

- Ensure technical quality
- Boost the sector and encourage growth
- Protect the public and consumers
- The special role of (broadcast) media in society

# Broadcast v. telecommunications

- ❑ With broadcast regulation, there are content issues as well as technical issues. Protection of consumers primarily means protection from inappropriate content.
- ❑ With broadcast regulation, there are policy goals such as diversity of opinion and cultural policy through regulation
- ❑ Different kind of monitoring of compliance—with broadcasting it's not merely a question of service
- ❑ What makes someone a broadcaster?
  - Sending content from one source to anyone with the capacity to receive it (without specifying the identity of the recipient)
  - Editorial control

# Trends and advancements in communications technology

- Rise of the internet
- Broadcasting over the internet and mobile networks
- Increased transmission speed
- Prevalence of cheap satellite receivers
- Convergence
- Digitalisation

# Effects of technological advances in electronic media

- ❑ Independent regulation—more specialized, fast-moving environment where real technical expertise is needed
- ❑ Light-touch regulation—recognition that with everyone able to take photos on mobile phones and post content on websites, the time when governments can easily control the media sphere has passed
- ❑ Converged technology has led to converged regulation, and converged regulators with authority over more than one type of communication (e.g., both broadcasting and telecommunications)
- ❑ Media more difficult to control—new questions of jurisdiction



# Converged regulators around the world

- ❑ Broadcasting and Telecommunications
  - Canada, Switzerland, Brazil
- ❑ Broadcasting, Telecommunications and Spectrum Management
  - USA, South Africa, Italy, Iraq
- ❑ Broadcasting, Telecommunications, Spectrum and Online Content
  - Australia
- ❑ Broadcasting, Telecommunications, Spectrum Management, and Competition
  - UK
- ❑ All of the above – plus postal services
  - Malaysia

# Questions of jurisdiction

- Is the media outlet headquartered in the territory?
- Are there offices in the territory?
- Are the means of transmission in the territory?
  - Terrestrial broadcasting
  - Satellite broadcasting--uplinking
- Are means of distribution in the territory?
  - Cable operators
- What are the means of receiving, and can they be regulated?
  - Satellite broadcasting—receivers
- Is it possible for users to access without any other presence by the media outlet in the territory?
  - Internet

# Jurisdiction

- ❑ If there is no jurisdiction (no attachment to the country as explained), the regulator cannot take action against the media outlet
- ❑ There may be limited action possible (take-down of content from cable or internet, etc.)
- ❑ Co-operation with other regulators

# Different ways content is delivered through the media

- Terrestrial television (analogue and digital)
- Terrestrial radio
- Satellite television
- Satellite radio
- Internet
- Mobile telephony
- Print publications

# Terrestrial television and radio broadcasting

- ❑ Delivers powerful visual images and sounds, often live, and thus has greater impact than print (and television perhaps has even more impact than radio because of its visual imagery)
- ❑ Is the most important source of news and information for most people in many countries
- ❑ Can be stumbled onto by mistake, when changing channels
- ❑ Can be watched/listened to in a group setting
- ❑ At least in theory, is open to anyone who plugs it in (and thus, unlike satellite television, requires no equipment for reception, selection of channels, etc.)

# Terrestrial television and radio broadcasting—cont'd

- ❑ Uses radio frequency spectrum to broadcast, which is a scarce public resource
- ❑ Radio frequency spectrum requires some organization to prevent interference
- ❑ Has high barriers to entry (expensive transmission equipment; need for license)
- ❑ Broadcast through transmitters with a limited geographical area, a government can generally control which broadcasters broadcast on their territory

# Satellite broadcasting

- Can be transmitted from abroad. Incoming satellite signals cannot be easily blocked, so more difficult to regulate.
- Not received just by plugging in, but rather requires special equipment. Such equipment normally allows the user to block channels (e.g., to protect children).
- High barriers to entry.
- Scarcity is much less of an issue than with terrestrial broadcasting.

# Mobile phones

- Becoming possible to watch television on them
- Usually used by teens and older
- Less likely to be watched in a group
- Require the user to choose content



# Internet

- Users search and select content
- Users can protect themselves and their children with filtering software
- Often used alone
- Usually used by older teens or adults or with adult supervision
- Content posted and hosted abroad can be accessed as easily as local content

# Print

- ❑ Less expensive to set up than broadcasting
- ❑ More difficult to stumble upon offensive content (can see a headline and move on)
- ❑ No imagery and sound, thus arguably less of an impact
- ❑ Does not use a scarce, public resource, thus everyone, at least in theory, could own a “printing press”—all you need is a computer and printer or copy machine.

# Possible distinctions/relevant factors other than mode of delivery

- Public v. private ownership
- Foreign v. local ownership/transmission
- Likely audience
- Political and security situation in the country

# Legal protections for free speech and media

- ❑ Most countries have a constitutional provision protecting freedom of expression.
- ❑ International agreements, such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, contain provisions protecting expression and specifying a right to impart and receive information through any media. Most countries are signatories to these types of international accords, and thus are bound by them to a certain extent. They tend to be viewed as goals even in non-signatory countries.

# Article 19 of the Universal Declaration on Human Rights

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

# Legal standard for restrictions on media and expression

- ❑ Right to freedom of expression is not absolute
- ❑ Every society restricts speech and media in certain circumstances
- ❑ Legal certainty and consistency of limitations are important
- ❑ In sum, restrictions should not be overly broad, but rather should be appropriately targeting to accomplish a legitimate purpose

# Legal standard for restrictions on media and expression

Article 10 of the European Convention on Human Rights states:

*the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

# Legal standard for restrictions on media and expression

Under US law:

- Content-based restrictions on speech must be narrowly tailored to address a compelling governmental interest.
- These interests are limited to things such as advocacy of imminent illegal conduct, defamation (meaning damage to the reputation of others), obscenity, and fraud (lying intentionally to take advantage of someone else).



# International best practice --standards

- ❑ There are standards for regulation of various media that are generally accepted in North America and Europe and have become models for countries with a more transitional communications environment—these are often referred to as ‘international best practice’ or ‘international standards’
- ❑ These take into consideration the legal standards that we have discussed today
- ❑ They also take into consideration the various similarities and differences among different types of media
- ❑ There is not always 100% agreement, but there are a number of generally accepted norms and principles

# International best practice --application and examples

- Independent appointment of board members of regulatory bodies
- Consultation with stakeholders when making rules
- Efficient administration of licenses
- Transparent and fair handling of complaints
- Escalating and proportionate sanctions
- Rules and regulations that take into account technological advancements in communications

# How are these various types of media regulated?

...taking into consideration the factors we have discussed, including:

- Reasons we regulate broadcasting
- Trends and advancements in communications technology
- Questions of jurisdiction
- Differences among various types of media
- International legal standards

# Regional issues

- ❑ What are the most pressing issues in broadcasting and communications confronting broadcasters, regulators and governments in your region?