

# Application of Regulatory Rules

Broadcast Regulatory Master Class  
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# Legal framework

- The regulator plays a part in the development of the legal framework
- Research, expertise, knowledge of application of rules
- Different levels of legislative instruments relevant for the creation of a comprehensive regulatory system:
  - International law
  - National laws
  - Regulations
  - Instructions, guidelines – soft law

# Legal framework

- Laws:
  - Communications (Broadcasting) legislation
  - Copyright legislation
  - General criminal and civil legislation
- Licence
- Codes of Conduct (Regulations)
- Guidelines
- Internal guidelines of broadcasters, self-regulatory system

# Legal framework

- Application of sanctions: legal basis as well as legal guarantees
- Possibilities for intervention by the regulator: legal basis as well as legal guarantees
- Close connection between broadcasting law and other law (libel, copyright violations, etc.)

# Guidelines

- Explanation of normative instruments
- Interpretation of normative instruments
- Details that are not in normative instruments
- Handbooks

# Guidelines

- When a binding rule is not suitable and/or not needed
- Interpreting concepts in the rules (what is offensive, what is incitement, etc.)
- How to deal with special situations like live interviews, live coverage of events (where something offensive and inciting may be said)
- Copyrights and neighbouring rights, right to short excerpts, etc.

# The aim of content monitoring and enforcement of decisions

- To create a diverse, high-quality broadcasting sector
- Not to seek to punish broadcasters but to encourage them to comply voluntarily
- To achieve a common understanding of what content rules entail and how they should be interpreted
- To respect concerns of viewers and listeners

# Main considerations

- There must be a genuine possibility for broadcasters to understand and comply with the rules: the regulator should assist
- Voluntary application and a complaints driven system should be the backbone, with regulatory intervention only when strictly necessary
- Broadcast rules differ from other communications (content element)
- Monitoring of all broadcasts by the regulator is time-consuming and inefficient
- Spot monitoring as a complement to complaints
- Complaints-driven system: simplify for complaints through special forms or phone numbers, on-line forms, etc.'
- This is in touch with the concerns of the public

# Monitoring

- Rules on keeping recordings of broadcasts for a reasonable time
- Rules on giving information to the regulator
- Requirements in the licence as well as in law/regulation
  - Reasonable requests and requirements so as not to overburden the broadcasters or the regulator

# Monitoring and Enforcement

- Compliance with the Broadcast Code must be a condition in all broadcasting licences.
- The regulator should have a complaints system that is easy to use, clear, and transparent
- Enforcement should be primarily in response to complaints—made either to the broadcaster or the regulator.
- Complaints should be able to be submitted by fax, telephone, post, e-mail or website interface.

# Monitoring and enforcement

- Guidelines/training for monitoring staff: what to look for, how to evaluate seriousness, how to prepare reports, etc.
- If spot monitoring – a system to cover relevant broadcasts without overburdening the system
- Must be in touch with the concerns of the public

# Main considerations

- There is a subjective element in content monitoring (as opposed to technical issues)
- Even if there is a subjective element, enforcement must be objective
- Legal certainty is essential
- Importance of credibility of the system

# Enforcement

- Possibility for quick decisions to be able to stop offensive broadcasts (by Head of regulator or similar) – to be confirmed in the due process
- Normally collegial decisions by Board of regulator or special body
- Cases prepared by regulator staff
- Legally trained persons to prepare cases and evaluate

# Enforcement

- Involvement of the broadcasters in making guidelines, etc.
- Self-regulation, informally and/or in a formal self-regulatory system with codes and guidelines (usual for press but can be used to some extent also by broadcasters, may be handled by journalist's associations)
- Broadcasters own complaint system

# Enforcement

- Appeals against sanctions
  - In Court (normal procedure or special procedure)
  - In a specially established system
- The Appeals' body must be objective and independent

# Enforcement: Sanctions

- Sanctions must be based on law, be proportional and gradual
- Start with a warning, fines (proportional), suspension or loss of licence in serious cases
- Take into account violations at licence prolongation
- Coordination with any sanctions under other legislation

# Enforcement: Sanctions

- Sanctions should not be so strict so that they have the effect of jeopardizing the balance on the broadcasting market (by forcing broadcasters to close, limiting diversity)
- Sanctions against public broadcasters must be different than against private ones (no loss of licence possible)

# Enforcement: Sanctions

- Importance of implementation of any properly decided sanction
- Enforcement by regulatory action or action by law-enforcement agencies (depending on nature of sanction)
- Encourage voluntary compliance

# Enforcement

- Create and make available a body of case law (to help interpretation of different concepts in content regulation)
- Publish collection of decisions as well as make every decision available (web-page)

# Reply and rectification

- A right to reply (and/or rectification) can in many cases be sufficient remedy
- A right of reply may also be combined with a sanction
- Denial of right of reply should lead to sanctions
- Rules must exist on the conditions for the right of reply

# Jurisdiction

- Through licensing requirements, the jurisdictional issue is normally clear
- Special considerations for satellite and internet
- International agreements
- Cooperation with neighbouring regulators

# The development of the sector and the regulator

- The regulator is a specialised, expert body in its field that should participate in the rule-making, debate and development of the sector
- The regulator is a partner to the sector as well as an enforcer
- Research, public consultations, outreach activities to be in touch with reality of the sector

# The challenges of enforcement

- What are the main difficulties in your region with enforcement of regulatory rules?
- Is monitoring of all broadcasts a useful and efficient tool?
- Which bodies can and should support the regulator in enforcing rules?
- Is there trust and cooperation from the sector?