

What is good regulation?

Broadcast Regulatory Master Class
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Regulation

- The regulator implements the policy set by the government and set out in law
- The regulator independently implements the laws and takes various decisions in this framework: it operates within the powers given to it
- Independent regulation does not mean absence of control
- In countries with freedom of expression there should be no interference in editorial policy of broadcasters and only such rules that are necessary

Regulation of broadcasting

- Encourage diversity of programming
- Respect concerns of the audience
- Encourage certain types of investment
- Establish advertising rules
- Protect intellectual property rights
- Promote new technologies
- Protection of democratic principles
 - Impartial and accurate news
 - Election guidelines

What concrete tasks does this entail?

- Licensing
- Codes of conduct for broadcasting, for advertising
- Programming policies and monitoring of content
- Audience complaints
- Election rules and monitoring
- Public service broadcasting (special rules)

Main considerations for regulatory activity

- Transparency
- Objectivity, non-discrimination
- Legal certainty
- Light-touch regulation, one-stop-shop (licence only when necessary)
- Importance of credibility of the system
- Working with the sector
- Voluntary adherence to rules, regulatory intervention only when necessary

Basic communications regulatory principles

- Principles of independent regulation
 - Transparency
 - Accountability
 - Consistency
 - Proportionality
- Converged regulation (suitable for the technical means of delivery)

Main considerations for regulatory decision-making

- Within the legal authority of the regulator
- Proper factual basis for the decision (ask for information, data-bases)
- Sufficient and adequate knowledge of the persons involved
- Independence of the regulator
- Objective, fair, transparent decision-making
- Procedural guarantees

Broadcasting content

- Code of Content (more detail) + guidelines
- Requirements on programming for the licence
- Examples of content issues:
 - Indecent or offensive content and/or language
 - Excessive violence
 - No respect for watershed (time of programming)
 - Insult and defamation
 - Inaccurate and biased news
 - Copyright violations

Jurisdiction

- Legal authority = Is there jurisdiction?
- Licensed operators, the jurisdictional issue is normally clear
- Special considerations for satellite and internet
- International agreements (international obligations and means to prevent escaping any jurisdiction)
- Cooperation with neighbouring regulators

Spectrum issues

The radio frequency spectrum and satellite orbits are the common province of mankind and a common good

- Frequency spectrum allocation for different uses and users
- Implementation of international spectrum rules
- Monitoring of frequency spectrum use
- Allocation of satellite orbital positions

Broadcasting regulatory issues

- Licensing (Tenders, “beauty contests”)
- Application of special ownership rules
- Public service broadcasting (special rules)
- Issuance and monitoring of Codes of conduct for broadcasting, for advertising, for other special issues
- Programming policies and monitoring of content (diversity and plurality, educational aims)
- Dealing with audience complaints
- Election rules and monitoring

Social and economic questions

- Citizen perspective: coverage, not territory
- Access to broadcasting – public service broadcasting (Eliminate inequalities in access)
- Support for equipment (fair, objective criteria + methods for implementation)
- Consumer protection (subscription issues)

Regulatory issues: Digitalisation

- The role of regulation of digital broadcasting may in some respects be closer to that of telecommunications regulation than traditional broadcast regulation
- Only competition regulation not enough (special role of media)
- Importance of infrastructure issues, access
- Increased importance of protection of minors, preventing incitement, etc. with wide variety of channels

Public rulemaking

- Transparency in the rule-making process
- Involve the sector (broadcasters, civil society) – invite comments and outreach activities
- Involve other organisations (election bodies, copyright bodies, etc.)

Appeals

- Individual decisions should be appealable to an independent body
- This can be a regular court, a special court or a special body but it must be independent from the body that took the initial decision (the regulator) and must be legally competent

The future of broadcast regulation

- Technology neutral regulation may mean no special broadcast regulation?
- Can regulation still – when there is so much choice for the audience - be used to promote cultural policy? Minority policy?
- Is there a danger that regulatory activities interfere with editorial freedom?