

Regulating International Television in an age of convergence

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Introduction #1 – the importance of **context**

Two different approaches to content regulation:

Either driven by content....

- Principle: the same content should be treated the same way wherever it appears...

Or driven by context...

- Principle: content itself has only limited meaning without the context in which it is consumed being part of the analysis

Both approaches are well-respected and important...

... and neither is sufficient on its own...

... but increasingly, context is more important

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Introduction #2 – the goals of regulation

“Positive”

- Consumer choice - access
- Quality
- Diversity
- Local production base / industrial policy

“Negative”

- Protection for social values
 - Fair debate
 - Access to information
 - Generally accepted standards – taste, decency, religious tolerance
- Protection of the individual
 - Specific protection for vulnerable audiences
 - Protection of privacy

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Introduction #3 – my credentials

TV and Radio production

- **BBC Drama, Documentaries, News and Current Affairs**

Government Policy

- Head of Broadcasting Policy
- Responsible for the 2003 Act that introduced converged regulation to the UK

Regulatory Experience

- Responsible within Ofcom for all aspects of the regulation of content in broadcasting and non-linear services
- Vice President of the European Platform of Regulatory Authorities – umbrella grouping of European Content regulators

Advisory

- Europe, Middle East – advice to governments, regulators and media industry on the relationship between media policy, media strategy and regulation

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Ground to cover

- **The changing shape of the media landscape, and the regulatory response to it**
- **Some international experience to draw on**
- **Looking ahead to the implications for the future of content regulation more widely**

Context

Old - TV	New - Media
<ul style="list-style-type: none">• Linear	<ul style="list-style-type: none">• Non-linear
<ul style="list-style-type: none">• Limited competition: high barriers to entry	<ul style="list-style-type: none">• Extensive competition: low barriers to entry
<ul style="list-style-type: none">• Small number of channels – therefore greater diversity within the schedule (mixed genre approach)	<ul style="list-style-type: none">• Large number of services – audiences chose the content they want when they want it: thematic approach (though themes can be very broad...)
<ul style="list-style-type: none">• Parental control exercised via “crude” time-based restrictions (watershed)	<ul style="list-style-type: none">• Parental control exercised via technical blocking
<ul style="list-style-type: none">• National	<ul style="list-style-type: none">• Global

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Regulatory responses

For “Old” TV:

- Highly regulated for both positive and negative outcomes
 - High Investment / production quotas
 - Strict enforcement of content standards
- Rationale:
 - Limited choice for consumers means highly pervasive medium, strongly influential on views and standards
 - Access to scarce national resource- therefore national interest in regulation
 - Limited number of institutions makes regulatory purchase easy to define and enforce

For “New” Media

- Largely unregulated by the state, other than by strict legal blocking
- Emphasis on consumer empowerment though mix of media literacy and technical means of blocking access
- Rationale
 - Highly international: very difficult to find regulatory purchase
 - Major players are “non-state” institutions and corporations

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Context

<i>Old - TV</i>	<i>Pay-TV</i>	<i>VoD</i>	<i>New - Media</i>
<ul style="list-style-type: none"> <i>Linear</i> 	<ul style="list-style-type: none"> Linear 	<ul style="list-style-type: none"> Non-linear 	<ul style="list-style-type: none"> <i>Non-linear</i>
<ul style="list-style-type: none"> <i>Limited competition: high barriers to entry</i> 	<ul style="list-style-type: none"> High levels of competition but high barriers to entry – impact on quality 	<ul style="list-style-type: none"> Lower barriers to entry, but SVoD demands high quality 	<ul style="list-style-type: none"> <i>Extensive competition: low barriers to entry</i>
<ul style="list-style-type: none"> <i>Small number of channels – therefore greater diversity within the schedule (mixed genre approach)</i> 	<ul style="list-style-type: none"> Services defined by theme: clear audience choice 	<ul style="list-style-type: none"> Catalogue 	<ul style="list-style-type: none"> <i>Large number of services – audiences chose the content they want when they want it: thematic approach (though themes can be very broad...)</i>
<ul style="list-style-type: none"> <i>Parental control exercised via “crude” time-based restrictions (watershed)</i> 	<ul style="list-style-type: none"> Parental control exercised by combination of time-based and technical 	<ul style="list-style-type: none"> Parental control exercised by technical blocking / age-related 	<ul style="list-style-type: none"> <i>Parental control exercised via technical blocking</i>
<ul style="list-style-type: none"> <i>National</i> 	<ul style="list-style-type: none"> National and international 	<ul style="list-style-type: none"> Largely international 	<ul style="list-style-type: none"> <i>Global</i>

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The regulatory question for International / Pay-TV

As TV, it shares characteristics with strictly regulated services, but more with SVoD:

- Linear but highly thematic – consumers know what they are going to get
- Subscription model gives greater technological and financial opportunities for consumers to exercise control
- International providers
- Positive impact on consumer choice

So at a time when the rationale and model for how to regulate content is changing, the critical question is whether the regulation of Pay-TV should be backward looking (to old TV model) or forward looking (to new media model)

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2. Some comparisons: European response

At EU level: Audio-Visual Media Services Directive sets minimum standards for all media (including VoD) in relation to

- Protection of access across Europe
 - *Country of Origin principle*
- Protection of minors
 - *Specific rules to prevent availability of material that might **seriously** impair... and protection against inadvertently viewing material that might impair (emphasis important)*
- Protection of consumers
 - *Advertising and sponsorship rules*
- Protection of the European production base
 - *Quotas for European works*
- Protection against hate speech / incitement

Specific rules beyond that left to member states

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UK approach: general

Single content code, but flexibility in application:

- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.
- watershed
 - for non-subscription television: 2100 – 0530
 - for premium subscription film services 2000.
 - For PIN protected services, no watershed on premium subscription film services or pay per view services
- Factors affecting whether content is likely to be accessed by children include (but are not limited to):
 - the **nature of the content** – whether it is aimed at or has particular appeal to children; and
 - the **nature of access to the content** e.g. whether there are measures in place that are intended to prevent children from viewing and/or listening to the content.

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UK approach: films

- BBFC 18-rated films or their equivalent must not be broadcast before 2100, on any service (except for pay per view services), and even then they may be unsuitable for broadcast at that time.
- Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2000 and post-0530.
- In addition, those security systems which are in place to protect children must be clearly explained to all subscribers.
- Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2100 and post-0530.
- In addition:
 - information must be provided about programme content that will assist adults to assess its suitability for children;
 - there must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
 - those security systems which are in place to protect children must be clearly explained to all subscribers.

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UK approach: other flexibility / inflexibility

Flexible for Pay-TV	Applicable to all
Due impartiality	Accuracy
Product Placement	Separation of editorial from advertising
Possible carve-out from EU production quotas	Respect for individual privacy, fairness
	Protection against incitement / religious tolerance

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Media Zone Authority – Abu Dhabi

Single Content Code, but explicit flexibility in interpretation:

- **“Members of the audience that pay to subscribe to content generally exercise a greater degree of choice (and control) as to the type and strength of content they want to receive with a corresponding tolerance for receiving stronger content as a result.”**

Three key principles that underpin the Code:

- **Freedom of expression:** “This is protected by the Constitution of the UAE. However, in exercising freedom of expression, licensees are expected at all times to operate as responsible participants in, and contributors to, society”
- **A duty to take account of cultural and social expectations:** Specific cultural expectations that are reflected in the Code include “generally accepted UAE standards such as religion, the Ruling Families and privacy”
- **Responsibility for complying with the Code rests with the licensee:** Licensees control the decisions about the content they disseminate and are responsible for any breaches of the Code.

Media Zone Authority – Abu Dhabi

Matters to be taken into account:

Editorial Justification

Context – including:

- the nature and type of the service as a whole (e.g. free to air, Pay-TV, newspapers, etc)
- the time or method of dissemination and the likely composition, and expectations of, the audience
- other content adjacent to the published or disseminated
- provision of adequate information about the content is provided to the audience (e.g. warnings to the audience)

Internal processes

- internal compliance processes;
- editorial review;
- evidence of referral to senior management; and
- relevant training and supervision of all staff involved in the licensee's production, content buying and scheduling processes.

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Media Zone Authority – Abu Dhabi

Three interesting features in the “modern” approach:

Single Code applicable to all media services but with application and interpretation highly dependent on the nature of the service and the self-selection of the audience

No watershed rules

- Responsibility of the service provider to ensure appropriate scheduling, balancing
 - Information available to the audience
 - Technical protection – subscription / blocking etc
- Recognition that some ex-UAE content might need to be specifically edited to comply with UAE moral, social or cultural norms

Areas where linear services have specific rules limited to coverage of news and information

- “due” impartiality
- Prominence given to particular persons or institutions on matters of public controversy or political debate

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Conclusions from brief comparative approach

Where specific rules apply, they are lighter for subscription / thematic services:

- Plays a different role in achieving public policy outcomes: increasing consumer choice, access to high quality content.... But reduced role in broader industrial policy goals
- Balance of responsibility tilts in favour of the audience: prior and informed choice creates higher threshold for intervention

Responsibility for content decisions lies with the service provider:

- No prior constraint
- Clearly identified criteria against which any breaches will be considered

3. Towards a new approach to regulation

Any media regulatory system depends on the balance between three players, whose relationship has shifted and will shift more

- **The State:** represented by government, regulatory authority
- **Industry:** broadcasters, media service providers
- **Consumers and Citizens**

In the old world of broadcasting, the key regulatory relationship was between the state and media companies, with the state operating on behalf of the citizen

In the new world of media, the key relationship is between media companies and consumers / citizens, with the state providing a basic framework and minimum standards

Implications

From the perspective of the **state actors**, there will be

- A continued role for comparatively heavily regulated national media services, serving specific public policy goals – increasingly separate in its approach from other forms of media regulation
- The establishment of a set of minimum standards which underpin the approach to all media services and provide minimum guarantees and protection against harm

From the perspective of the **audience**, there will increasingly be

- Increasing expectations of choice, quality, diversity
- The provision of effective technical tools to deliver necessary protection for vulnerable audiences
- Responsibility and responsiveness on the part of media companies themselves

From the perspective of the **media**, there will increasingly be an expectation of

- A new “self-regulatory” approach building audience trust and showing high levels of accountability

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