

# TELEVISION AND DEREGULATED GLOBAL MARKETS

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## Globalisation and Regulation

Notwithstanding the global trend towards liberalisation and deregulation, it is important to recognise right from the start that wherever there is broadcasting there is some kind of regulation. This is as true for television today as it was at the dawn of broadcasting nearly one hundred years ago. Television regulation takes place, as it always has, in a context marked by two broad tendencies: ongoing technological change and increasing globalisation.

Digitalisation and the resulting explosion in channel capacity have created a paradigm shift in the basis for regulation, from airwave scarcity to content abundance. At the same time, the growing importance of international trade regimes with respect to broadcasting policy has forced a rethinking of the role of national governments vis-à-vis television. Neither of these trends, however, has replaced the need for regulation. Rather, it is the nature of regulation that is changing.

Technological convergence means that the regulation of broadcasting must from now on go hand in hand with regulation in the related fields of telecommunications and information technology. At the same time, it is no longer possible to consider broadcasting regulation in any given national setting without taking account of the impact of global pressures – yet, paradoxically, while broadcasting regulation can no longer be dealt with strictly within the confines of national borders, every country's national regulatory framework in the final instance determines how the effects of globalisation will be played out locally.

Having said that, clearly the quality of regulation can vary greatly, depending on a number of factors – such as who (if anyone) is formally charged with the job of regulation, and to what end. Regulation is always tied to a specific context. During the past two decades, broadcasting systems in the countries of the Western cultural orbit have been liberalised, making more room for commercial, market-based activities. This has been common to all exist-

ing national systems, in spite of their very different histories and regardless of the relative place accorded to public, private and community broadcasters.

In this context, regulation of broadcasting has taken on new importance, for two sets of reasons: regulation provides some order in an increasingly cluttered and chaotic environment, and – perhaps more importantly – regulation enables the conditions in which non-commercial objectives can still be achieved. These two reasons to regulate are in perfect continuity with the historical foundations of broadcasting regulation.

### WHY REGULATE?

On the whole, the type of regulatory framework – that is, the framework for rule-making – that is adopted in any country is basically a question of public policy. In fact, the decision not to regulate as a matter of public policy is itself a policy decision. Thus, to the extent that broadcasting today is essential to every country's cultural development, broadcasting regulation is a reflection of cultural policy. But broadcasting, particularly television, is often also regulated with industrial and commercial objectives in mind. The more important television is to any country's cultural and industrial policy, the more serious will be its effort to regulate.

The political economists Peter Golding and L. van Stippenburg (1995) have proposed the following representation of possible stances on media governance:

### STRUCTURE

C		Interventionist	Liberal
O			
N	Interventionist	Authoritarian	Free market/ strong state
T			
E			
N	Liberal	Regulatory	Libertarian
T			

The typical Western broadcasting governance model is relatively interventionist with respect to structure, and liberal with respect to content and market constraint. Here

are some examples of what can be influenced under this type of regulatory model:

- Licensing of public, privately owned and community broadcasting services (goal: competition, system administration)
- Property transactions (goal: market pluralism, diversity)
- Abusive content (goal: protect societal norms)
- Content quotas (goal: protect and promote national culture)
- Performance obligations (goal: public service, programming requirements)
- Rates for free-to-air, subscriber and pay-per-view services (goal: consumer protection)
- Access provisions (goal: equal opportunity for free expression)
- Relation between public and private services (goal: system balance)
- Funding requirements (goal: promote priority services)

In general, the role of regulation of broadcasting is to determine the public interest, on an ongoing basis, and with regard to specific issues such as these. This is too fine a job to be done by governments in the course of their general activities. It cannot be left to broadcasters alone, for they have necessarily vested interests (even in the case of public service broadcasters). The marketplace is too blunt an instrument. Citizens can individually and through their collective organisations articulate their expectations, but have no power for implementing them.

Most Western countries have found that the key to guaranteeing basic values such as pluralism and diversity – as well as a more general right to communicate – is the extent to which the regulation can be accomplished free from the direct pressures of the market and the state while remaining accountable to the people whom broadcasting is supposed to serve. Theoretically, there is essentially one main model capable of achieving these goals for broadcast regulation and that is the model of the ‘independent regulator’.

Notwithstanding everything that has been said about broadcasting regulation during the past few years, we have no actual examples of either pure market or total state control of regulation in the West. Serge Robillard, who studied the regulatory systems of thirty-five European countries in the mid-1990s, found a remarkable ‘organizational uniformity’ among the systems he looked at: ‘with only rare exceptions, all have conferred the key areas of regulating the broadcasting sector on so-called independ-

ent authorities’ (1995, p. 267). The same is true in the Western countries outside the European orbit, such as Canada and Australia, and even the United States. Just how independent the regulator really is can be a crucial issue in any given case. It is well known to students of regulation that regulatory authorities tend to be captured by the industries they regulate and they tend to be beholden to the states (and even to the specific governments) that created them. The bottom line is to what extent an independent regulator permits correction of the insufficiencies of the marketplace while guaranteeing independence from government – bearing in mind Robillard’s caveat that: ‘It is useful to remember that independence is a concept which is best assessed in practice rather than as it is stated in the law’ p. 271).

### BENEFITS OF AN INDEPENDENT PUBLIC AUTHORITY

An independent regulator can – theoretically, at least – do some or all of the following:

- Oversee system equilibrium: balance between the public, private and community sectors
- Guarantee the accountability of the public sector
- Specify the public service contribution of the private sector
- Facilitate the viability of the community sector
- Oversee system development (for example, introduction of new services)
- Set general policy (between the macro-level of broad state policy and the micro-management of broadcasters’ operations)
- Oversee industry self-regulation
- Supervise licensing and renewal processes
- Deal with complaints and content issues on the basis of established codes and standards

But there is still a wide range of different operational possibilities within the scope of this general dominant model. In their actual operations, existing Western regulatory systems differ significantly in terms of their actual powers, structures and guiding principles. It is interesting to note that in general, the oldest and most extensively developed regulatory systems are to be found in those countries where commercial broadcasting is most established. For example:

- The United States has one of the longest continuous traditions of broadcasting regulation, dating back to the creation of the Federal Radio Commission in 1927 (predecessor to today’s FCC)

- Countries with a long history of 'mixed' public-private broadcasting systems, such as Canada and Australia, have relatively elaborate regulatory bodies, with broad powers
- On the other hand, in the Scandinavian countries, which have only recently introduced privately owned commercial broadcasting, regulatory traditions are relatively new

An important distinguishing characteristic concerns regulatory responsibility for public broadcasting. Canada's CRTC, for instance, regulates both public and private broadcasters, but Australia's ABC and the UK's BBC are governed by separate charters. In Germany, ARD and ZDF are subject to 'self-regulation' – a term generally used in other countries to refer to certain private sector responsibilities. France's CSA has a role in the nomination of top public broadcasting executives. Another aspect concerns the scope of the regulatory authority – or, in some cases, authorities. In Canada, the CRTC is responsible (since 1976) for telecommunications as well as all broadcasting regulation, one of the world's most comprehensive mandates. In the UK, recent legislation proposes to create a new super-regulator, Ofcom. In Sweden, on the other hand, national terrestrial television is governed by contracts between the broadcasters and the Ministry of Culture, while the Broadcasting Commission deals with complaints and the Radio and TV Authority handles local and cable broadcasting. All national regulators are now faced with deciding to what extent they will be involved in the so-called 'new media' based on the Internet.

The role of the regulatory authority is also tied to the overall politics of the country concerned. Germany's uniquely decentralised federal structure is reflected in the *Landesmedienanstalten* which regulate private broadcasting in each of the federal states. The FCC (US), CRTC (Canada) and ABA (Australia), on the other hand, are national regulators in the same sense as Britain's ITC or France's CSA. The action of national regulators everywhere is driven by grand principles which vary from case to case, but all have in common some general notion that regulatory activity is part of the broader democratic process. France's CSA, for example, describes itself as 'the interface between the broadcasting media and the French population'. The way in which these principles are put into practice depends on the procedures specified by the regulatory process, as, for example, the requirement in Canada to hold public hearings prior to any decision involving a particular broadcast licence. In sum, the success of an independent regulatory agency will depend on the following:

- Clear, but general, policy guidelines from the constituting government
- Clearly defined powers, backed up by effective compliance mechanisms
- The fullest possible transparency in all of its operations
- Real, meaningful access to decision-making processes for all of the actors concerned, especially public interest organisations which are otherwise relatively removed from the centres of power

As it has just been described, regulation can be seen as a brokering process between the interests of the state, the broadcasting industries and civil society. Gareth Grainger has called this interaction between policy-makers, industry and citizens 'co-regulation', whereby

a balance is struck between the need of a mature and rapidly evolving industry such as broadcasting to accept responsibility for itself, and the need of the individual citizens to have the means to ensure that their interests are being guarded in the implementation of self-regulatory regimes. (1999)

## THE FUTURE OF BROADCASTING REGULATION

In order for any of this to make sense, regulation will have to be adapted to the new technological and political-economic conditions of the twenty-first century. Authorities therefore need to invent a new regulatory model appropriate to the new context of technological convergence. It is useful to start by recalling some of the characteristics of the basic 'pre-convergence' models of broadcasting and telecommunications. In broadcasting, emphasis is placed on the active receiver, on free choice, and access refers to the entire range of products on offer. In telecommunications, emphasis is on the sender, on the capacity to get one's messages out, and access refers to the means of communication.

When the two converge, approaches to regulation converge as well. The regulatory challenges in this context include:

- How to ensure access to both content and technologies
- How to balance service and cost to users
- How to guarantee free choice and fair charges
- How to distinguish between public communication and private information
- How to promote both cultural and economic development

- How to situate the user as both citizen and consumer
- How to achieve both participation in the public sphere and quality of life

Regulatory issues in the future will also be increasingly dependent on international co-operation. A wide range of issues are already being dealt with at the transnational level and the ongoing shift from the national to the global is perhaps the most important overriding factor determining the future of regulation.

A genuinely global regulatory framework is emerging and this provides both limits and possibilities: for example, while it limits and redefines the capacity to regulate conventional media at the national level, globalisation makes possible regulation at the transnational level of satellite-delivered or web-based media, which cannot be easily confined within national borders. Questions involving global issues such as copyright and use of the Internet will necessarily be at the cutting edge of future broadcasting regulation. A central question here concerns whether broadcast media are to be considered part of the sphere of culture or that of trade – and, by extension, whether cultural sovereignty is still possible in a world governed increasingly by international trade rules.

The politics of regulation are therefore becoming increasingly part of international diplomacy. For the foreseeable future, national states will be trying to preserve some sovereignty over national regulation while, increasingly, acting as negotiators on behalf of their citizens and corporate clients in the new multilateral forums where global regulatory decisions are being made. They will be increasingly joined there by transnational NGOs and commercial corporations. In short, globalisation in itself does not mean an end to regulation: it does however mean a shift in where and how that regulation takes place. As issues involving the regulation of broadcasting go global, then, these issues will be increasingly played out in the emerging global regulatory arena.

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### RECOMMENDED READING

- Golding, Peter and van Stippenburg, L. (1995), 'Government, communications and the media', in O. Borre and E. Scarborough (eds), *The Scope of Government*, Oxford: Oxford University Press.
- Grainger, Gareth (1999), 'Broadcasting Coregulation and the Public Good', The 1999 Spry Memorial Lecture, Graham Spry Fund for Public Broadcasting, Montreal and Vancouver, <[www.fas.umontreal.ca/COM/spry/spry-gg-lec.html](http://www.fas.umontreal.ca/COM/spry/spry-gg-lec.html)>.

Hoffman-Riem, Wolfgang (1996), *Regulating Media: The Licensing and Supervision of Broadcasting in Six Countries*, New York: Guilford.

Robillard, Serge (1995), *Television in Europe: Regulatory Bodies. Status, Functions and Powers in 35 European Countries*, London: John Libbey.

## Globalisation and National Identity

Globalisation has been held responsible for many social ills of our time: the intensification of economic inequalities; exploitation in the global labour market; the displacement of populations as labour migrants or refugees; ethnic violence and the so-called 'new wars' produced by the erosion or collapse of nation-state structures; the internationalisation of crime and the drugs trade; environmental pollution; the spread of a global culture of consumerism; and so on.

Globalisation is clearly involved – though in complex ways – in all these things, but it would be intellectually and politically lazy to assume it was guilty of every charge routinely laid against it. It is commonly assumed that globalisation also leads to a destruction of cultural identity, and that the effects of a globalised media – particularly Western-dominated television – is a key factor in this process. However, there are good reasons to treat this particular charge with some scepticism. The implicit reasoning behind this assumption runs as follows. Once upon a time, before the era of globalisation, there were local, distinct and well-defined, robust and culturally sustaining connections between geographical place and cultural experience. These connections constituted one's – and one's community's – 'cultural identity'. This identity was something people 'inherited': a benefit of traditional long dwelling, of continuity with the past. Identity then, like language, was not just a description of cultural belonging, it was a sort of collective treasure of local communities. But it was also discovered, latterly, to be something fragile, in need of protection. Into this world of manifold, discrete but, to various degrees, vulnerable cultural identities there suddenly burst the corrosive power of globalisation.

Globalisation, so the story goes, has swept like a flood tide through cultures, destroying stable localities, bringing a market-driven, 'branded' homogenisation of cultural experience, thus obliterating the differences between locality-defined cultures which had constituted our identities. While those cultures in the mainstream of the flow of