



Week 4: Media Regulation and Freedom of Expression for the Media

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Review of Basic Principles; Journalists and Print Media Part II

Review from Last Week

- Basic principles:
 - Independent and transparent regulatory regimes and bodies
 - Preserving editorial independence and avoiding censorship
 - Promoting media diversity



Review from Last Week

- Different principles apply for any regulation of each category:
 - Journalists
 - Print media
 - Broadcasters
 - Public service media



Journalists

- Licensing or registration of individual journalists is not appropriate
- Accreditation schemes may be appropriate in some contexts (such as parliaments) to ensure press coverage where public access is limited
- Protections for confidential sources are crucial



Regulating Print Media

- Licensing requirements are not valid under international human rights law
- Registration requirements are permissible, but special registration regimes are prone to abuse and not necessary.
- Any technical registration requirements (like registration fees) should not be overly burdensome



Self-Regulatory versus Co-Regulatory Systems

- Review:
 - Self-regulation: system is entirely created and run by the media
 - Co-regulation: system is backstopped by a legal rule but has significant media involvement in running or overseeing it
 - Statutory: legislative body in which media does not play a significant role



Self-Regulatory versus Co-Regulatory Systems

- For the print media:

Self-regulation: preferred

Co-regulation: may be acceptable if media independence is preserved

Statutory regulation: Not acceptable



Self-Regulatory versus Co-Regulatory Systems

- There are a number of benefits to these types of systems:
 - For the media, they tend to route complaints away from the courts, where they are expensive, time consuming and potentially involve harsh sanctions
 - They also often set clear and appropriate professional standards, clarifying often complex issues
 - For citizens, they provide an accessible system of redress (unlike the courts which are too expensive for most)
 - For society as a whole, they can often be effective ways to improve overall professionalism in the media



Self-Regulatory versus Co-Regulatory Systems

- Self-regulation has a number of benefits:
 - It is normally strongly protected against political interference
 - It will normally be sensitive to the needs and pressures of working media
- At the same time:
 - Due to its entirely voluntary nature, it can fail to be effective in promoting professional standards and may fail to attract public trust
 - It can be difficult to set up outside of very mature media markets



Self-Regulatory versus Co-Regulatory Systems

- Co-regulation has some advantages:
 - Since it has a legal backstop, it has more power to enforce professional standards
 - It can be a lot easier to establish
- But much depends on the legislation:
 - Co-regulatory systems can be independent, but there is a risk of government capture
 - If media does not play a significant role, the system may not be sensitive to the needs of the media
 - In some cases, the law provides for excessive sanctions
- International standards prefer self-regulation but don't necessarily exclude co-regulation



Journalist Safety

- This is a slightly different issue than the media regulation issues discussed during this week
- But it is important to ensuring journalists can work independently and produce content on controversial or sensitive issues
 - If journalists face threats when reporting on certain content, the public is less likely to get information on these subjects
 - The journalist's own right to life and other fundamental rights are also at stake



Journalist Safety

- States should ensure State actors avoid causing harm to journalists
 - This obviously includes any illegal actions, such as attacking journalists in retaliation for their journalistic work
 - It may also include other steps, like training police on the role of journalists who are reporting on protests, or developing codes of conduct for public officials that discourage using negative language about journalists



Journalist Safety

- Journalists may face threats from non-State actors, like organised crime or armed groups
- International human rights law governs State actions and States aren't directly responsible for the acts of others
- But they should take steps to protect journalists, and prosecute and seek redress when a journalist is harmed
 - For example, ensuring law enforcement provides support when a journalist is threatened and promptly investigates crimes against journalists
 - Depending on the circumstances, this could mean developing specialised journalist safety mechanisms



Journalist Safety

- What about non-State armed actors?
 - Responsibilities towards civilians under international humanitarian law (the “laws of war”)
 - May have human rights obligations when they control an area and have government functions
 - Lots of debate about this from legal scholars
 - Can apply to other FOE and human rights issues but safety issues often arise during armed conflict
 - Other moral and humanitarian considerations





Discussion



Broadcast Regulation

Regulating Broadcasting

- Broadcasting licensing is permissible and a well-established practice because (historically) it was necessary to ensure a diversity of voices on limited airwaves
 - Only a limited number of available TV and radio stations
- Important to have an independent licensing authority and an open and transparent license allocation process



Broadcasting Authority

- Independence is key
- How can a body established by a government be “independent”?
- Recall the factors that can ensure independence, such as:
 - Mandate to act independently; clear powers
 - Protection for its budget
 - Appointment process for its leaders insulated from political interference
 - Tenure protection
 - Other steps to safeguard independence



Broadcast Licensing

- Licensing process should meet a number of requirements, such as:
 - Clear criteria for awarding licenses
 - Not based solely on the highest bidder
 - No excessive fees or requirements that could harm diversity
 - Clear procedure, including precise deadlines
- Rules around withdrawal of licenses must protect against political retaliation
- Special license categories for community/non-profit broadcasters



Broadcast Content

- Positive requirements imposed on broadcasters (requirements to carry certain kinds of content)
 - Example: local content requirements
 - Can be legitimate if they serve the public interest, promote media diversity
 - But requirements that would interfere with media independence, like requirements to carry certain political messages, would not be legitimate



Broadcast Codes of Conduct

- Address similar issues to other press codes of conduct
- But they can be enforced by the regulatory body and can be linked to the license (for example if a broadcaster can lose its license for violating the code)
- This poses a risk of State interference with freedom of expression:
 - This is why it is so important to have an independent regulator
 - Sanctions for violating the code of conduct must comply with the three-part test



Review: The Three-Part Test

- Restrictions must:
 - Be provided by law
 - Protect a legitimate interest: respect of the rights or reputations of others, the protection of national security or public order or the protection of public health or morals
 - Be necessary for the protection of that interest





Public Service Media

Public Service Media

- Older term is “public broadcasting”
- Public service media has a public interest mandate but is independent of government control
- Receives public funding
 - This means less commercial pressures, which can make it harder to deliver public interest content
- Should be free of both government and commercial pressures



Public Service Media

- Public service media is NOT the same as State media
- It is also different than private, community, or non-profit media
- Any media may aim to serve the information needs of the public but “public service media” is a technical term for this distinct kind of media





Independence

- The board of public broadcasters should be protected against political interference
 - Similar steps to guarantee independence as we have discussed earlier
 - Also, best if the board cannot make editorial decisions to add additional protection for editorial independence



Funding

- States should fund public service media in a way that does not undermine independence
 - This can be complicated
 - Some countries fund public service media through special taxes or fees instead of through the government budget
- Public service media can be allowed to seek commercial advertising but safeguards should be in place to avoid commercial pressures compromising the public interest mandate



Mandate

- Public interest mandates may include a special focus on:
 - Impartial reporting on news and current events
 - Coverage of legislative or government proceedings
 - Educational content
 - Content covering diverse ethnic groups, in diverse languages or otherwise covering groups underserved by commercial media



Accountability

- Public service media is accountable to the public
- Transparency requirements, including annual reports and annual audits, are one way to promote accountability
- Public service media may adopt stricter codes of conduct given their mandate
 - This may include public complaint options





Discussion



Exercise



Contact Information

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