

CHAPTER 6

REGULATION OF MEDIA

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PRIMER QUESTIONS

1. What is regulation?
2. What agencies, organizations, and groups regulate media, and why?
3. How do you think print media are regulated differently from electronic media?
4. How do you think broadcast media are regulated differently from satellite and cable media?
5. What do you think are the main areas of media content that are regulated, and why?

Across the world, media organizations are regulated because of nearly universal perceptions that media content and media operations can significantly impact economies, social policies, political debate, and above all else, the lives of people. People who travel to different countries often notice how different the media content can be from one country to the next. For example, in some countries there seems to be a fair share of violent content in television programs, whereas in other countries there seems to be almost no violent content. The same contrasting statements can be made about political content, advertising content, educational content, and sexual content. Often, such differences in media content are the result of legally binding regulations applied by governments or government agencies in an attempt to achieve societal goals that are consistent with the prevailing philosophies for the given domestic media system.

Regulation is defined as influences on media operations and media content. This broad definition conceptualizes regulation as coming not only from government-related regulatory bodies that have a legal basis for their authority over media operations, but also from nongovernment bodies such as citizen groups, advertisers, audiences, and media organizations themselves. However, because national governments tend to play the most forceful role in regulating media, this chapter focuses on regulation by government-related agencies and branches of government.

Traditionally, broadcast media have been regulated more strictly than print media because of some version of the "scarcity of spectrum space" argument. This argument holds that the broadcasting band can only accommodate a limited number of frequencies for use by broadcasters, but at the same time reaches more people than print because of its pervasiveness in people's lives. In effect, broadcast content is perceived as having a more far-reaching and inescapable impact on audiences than print content and therefore should be controlled. However, two technological developments are causing a reexamination of the scarcity-of-space argument that has guided regulation in the past. One is the growth of cable,

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satellite, and web technologies, which diminish the importance of radio or television frequencies in distributing content. The second is the use of the internet to distribute broadcast content, as well as its own content. Though most governments have refrained from directly regulating internet content, it has been regulated early on in a somewhat piecemeal fashion through legislation or court cases. For example, the French courts ruled in 2003 that Nazi memorabilia cannot be auctioned on French web sites.

In Chapter 3, regulation was likened to the trunk of a tree. Just as the trunk is the base that holds up the rest of the tree, regulation is the base that holds up a media system. Just as the trunk largely determines the parameters for all the parts of the tree above the ground, regulations set the parameters for the visible elements of a media system, including financing of media, accessibility of media, media content, and media audiences. In other words, regulation influences the basic direction and shape of the outer elements of a media system.

CATEGORIES OF REGULATORY BODIES

There are five basic categories of bodies that regulate media in each country:

Government-Related Agencies

Government-related agencies are bureaucracies that have government oversight of media operations. In some cases, government-related agencies exert direct control over all facets of media operations; in other cases, government-related agencies are only able to exert suggested guidelines over media operations. Usually, government-related agencies report directly to a department or branch of government. But occasionally they operate as independent agencies that interpret and administer regulatory functions required by law. A government-related regulatory agency often is formed to ensure that media organizations serve the public according to country-specific interpretations of what that service should be. Such interpretations of "public service" can differ widely across cultures and countries.

There are three industry-related concepts that governments and media organizations use to describe common categories of content that are consistently regulated. The first term is watershed (called *safe harbor* in the USA), which means a specific time period late at night in which certain restrictions on content are relaxed because of the assumption that minors are not watching television or listening to radio. The second term is minutage, or the total number of advertising minutes allowed during a prescribed segment of time (usually an hour). The third term is bumper, which is a momentary graphic that appears on the television screen between regular programming and advertising to create clear separation between the two types of content.

Media Organizations/Professional Organizations

Media organizations are the television stations, radio stations, production houses, newspapers, internet providers, and so on that produce and deliver media content. Media organizations engage in self-regulation—that is, they enact their own policies about what content is either acceptable or unacceptable. Self-regulation is individualized when a single organization regulates itself—for example, when a company owning many radio stations follows a

policy against reporting suicides in news stories to avoid promoting copycat suicides. Self-regulation is collective when an association of media organizations regulates the member organizations—for example, guidelines outlined by a professional organization to which a television station belongs lead that station to rate its own programs according to levels of violent and/or sexual content. Both individual and collective regulation often is implemented by media organizations in accordance with ethical codes of conduct established by industry trade associations.

Media organizations regulate themselves in order to respond to a range of conditions that include competitor strategies, government mandates, citizen pressure groups, interpretation of legislation, and audience media use. Often media organizations negotiate with government to engage in a kind of coregulation in which there is dialogue between the two entities to achieve mutually expected results through mutually agreed-on regulation. Because this process can be laborious, media organizations often attempt to regulate themselves first to avoid government involvement in their operations.

Citizen Groups

Citizen groups typically are nonprofit organizations assembled by activists because of a concern about various aspects of media operations. Citizen groups such as the Parents Television Council (PTC) in the USA can be sophisticated and powerful organizations consisting of advisory boards, officers, and millions of members. Often, citizen groups are motivated by moral concerns about thwarting media content that is perceived to cause great harm to society. Two common areas of concern are the violation by a news program of an individual's right to privacy and the potential of minors to be morally corrupted by viewing debased media content such as unnecessary cosmetic surgery. Citizen groups rarely have authority that makes their recommendations legally binding. As a result, citizen groups often attempt to convince a media organization to comply with requested changes by organizing grassroots pressure on government-related regulators or by seeking to publicly embarrass a media organization into compliance with the desired changes. For example, the PTC continuously reviews prime-time television shows and posts material it considers to be offensive on its web site (www.parentstv.org), which encourages visitors to fill out a complaint form online that the PTC can send to the FCC.

Advertisers and Sponsors

In most private commercial media industries and in some state-owned noncommercial media industries, media organizations rely on advertisers and sponsors for significant revenue streams. When advertising or sponsorship is a major funding source for media operations, a more covert form of regulation can occur. Advertisers (or sponsors) can make requests that media organizations with which they do business refrain from delivering a certain kind of content, with the threat of withdrawing the advertising (or sponsorship) monies, or media organizations may choose on their own to refrain from producing content that might offend advertising or sponsorship clients. For example, it is almost unheard of for a television drama to include dialogue focusing on unhealthy ingredients that are commonly used to make sodas, because soda manufacturers regularly purchase advertising time on television dramas.

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Audiences regulate media content because the size of an audience often defines the success of media content. If the primary method of financing a media organization is advertising, then the size of the audience plays a paramount role in the regulation of media content. If methods other than advertising are used to finance a media organization, then regulation of media content is determined more by whether there is simply an audience, or a loyal audience, with size being less of a factor.

REGULATION OF MEDIA IN THE EU (EUROPEAN UNION)

France, Sweden, and the UK belong to the European Union (EU), a federation of twenty-five member countries that has regulatory authority over some areas of media operations in the individual countries. Within this context, the EU has approached media regulation as an area over which it should exert influence in member countries. One of the main regulatory provisions is referred to as the Television without Frontiers Directive, described below:

The directive aims to ensure the free movement of broadcasting services within the internal market and at the same time to preserve certain public interest objectives, such as cultural diversity, the right of reply, consumer protection and the protection of minors. It is also intended to promote the distribution and production of European audiovisual programs, for example by ensuring that they are given a majority position in television channels' program schedules.

Specific regulations addressing these areas stipulate that (1) 50 percent of each member country's television and radio programming must originate within the EU; (2) advertising content must have limited advertising minutage; (3) certain genres of programs (e.g., news and films) must not be interrupted by advertising content; and (4) there must be clear separation between advertising content and regular content. Most EU countries use a bumper to achieve this separation. For example, Figure 6.1 shows a bumper that is aired on television in France both before and after a segment of advertisements. This particular bumper displays the word *publicité* (advertisement) against the background of a countryside view. In keeping with the French propensity to include an artistic touch, abstract graphics of birds have been added.

In the material that follows, regulation of media is discussed across the eight countries. The bulk of the information discussed in this chapter was gathered during on-site interviews with senior officials (acknowledged in the preface) at the regulatory agencies.

REGULATION OF MEDIA IN FRANCE

Following the Gaullist model described briefly in Chapter 4, most of the media law and policy in France is developed by national government assuming a central role in the marketplace of media activity. At the heart of central government is the concept of a state,

REGULATION OF MEDIA IN THE USA

In the USA, media regulation is developed mainly by the FCC, but also by the legislative branch (the Senate and the House of Representatives) and, to some extent, the Supreme Court. Behind the design of this fragmented approach to media regulation is the principle that there should be a check-and-balance system between the branches of government. Media regulation in the USA follows a libertarian outlook in that there is minimal central government control involved in the day-to-day operations of media organizations; instead, the commercial marketplace is the primary influence on media operations and content. This situation of a primarily commercial marketplace of broadcasters in which there is minimal government is a distinctive feature of the media system in the USA.

In the USA, newspapers and the internet are not licensed or regulated by a central government-related agency. Both newspaper and internet content have been protected from regulation by the First Amendment, one of several amendments to the Constitution created by a 1788 congressional act. The First Amendment also serves as a central guiding principle for the legal approach toward broadcast media, though broadcast media have not been afforded the same level of freedom as print media. The rationale for this distinction has been the scarcity-of-space paradigm discussed earlier. However, the proliferation of cable and satellite radio and television channels has diminished the scarcity-of-space argument to the extent that some regulations covering media ownership were relaxed by the Telecommunications Act of 1996.

In the USA, the main government-related agency for broadcast regulation is the FCC, which was formed by the Communications Act of 1934. The impetus for establishing the FCC was to create an expert agency that would implement the policies and statutes of Congress, rather than have Congress engage in a tedious process of crafting legislation for every piece of media policy. Though the FCC to some degree implements court decisions, the primary oversight body for the FCC is Congress, through the Senate Committee on Commerce, Science and Transportation and the House Committee on Energy and Commerce. Both of these committee designations make clear a conceptualization of media primarily as an activity of commerce. The governing board of the FCC consists of five commissioners, each serving a five-year term staggered with the others. The commissioners are appointed by the president and the USA and approved by the Senate. No more than three commissioners may be members of the same political party. The FCC as an independent, government-related regulatory agency for broadcast media has served as a model for other countries that have sought to disassociate media regulation from direct control by central government.

All television and radio operations (terrestrial, cable, and satellite) and all telecommunication operations (telephone and computer) fall under the regulatory jurisdiction of the FCC. The FCC has the authority to both develop regulations grounded in existing legislation and to enforce such regulations. The FCC has the responsibility to consult with Congress by issuing opinions about potential media legislation. Owing to a pervasive libertarian philosophy, the approach of the FCC in terms of regulatory activity is to let effective competition within the commercial marketplace have the first chance to regulate the operations of media, especially in providing content. In other words, the FCC expects self-regulation by media organizations. Usually, the FCC develops new regulations or enforces existing regulations more strongly only when there is a widespread perception by the

public, the government, or the media that the marketplace is inadequately regulating the activities of broadcast media. Often, any new regulations will be designed specifically to stimulate effective competition as a corrective means of regulating activities of broadcast media.

In the USA, all broadcasters—both public and private—have to be licensed by the FCC. Radio and television stations both are licensed for a period of eight years. License renewals are staggered across the country so that they do not all come up for renewal at once. Licensing is used to ensure that both public and private broadcasters meet the public's "interest, convenience and necessity," a standard that was stipulated by the Communications Act of 1934, and which covers both media content and media accessibility. However, in practice the FCC does not regulate much media content. The primary mechanism used for determining whether broadcasters are meeting this standard is the commercial marketplace.

In the USA, three areas of content regulation overseen by the FCC are particularly distinctive. One area, as indicated above, is indecency, which in the USA has a different legal definition than obscenity (the more punishable of the two activities). In the USA, the Communications Act of 1934 prohibits the broadcasting of obscenity at any time. Obscenity is defined mainly by a three-pronged test arising out of the Supreme Court case *Miller v. California*, 413 U.S. 15, 24 (1973). Essentially, obscenity is defined as whether an average person, applying contemporary community standards, finds that a broadcast appeals to a prurient (appealing to unusual desire) interest. On the other hand, some indecent programming is allowed between the watershed hours (in the USA called the "safe harbor" hours) from 2200 (10:00 PM) to 0600 (6:00 AM). Essentially, indecency is defined by the FCC as "language that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs" (*Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Red 2705, 1987; see also *FCC Policy Statement*, 2001). Again, the barometer of what is considered to be indecent is the marketplace of consumers, which historically has reacted unfavorably toward broadcast media content containing nudity and profanity.

A second area of regulation is advertising by noncommercial broadcasters. In the USA, noncommercial broadcasters—public broadcasters, college and university broadcasters, and community broadcasters—are strictly prohibited from airing advertisements. Under strict guidelines, however, noncommercial broadcasters are allowed to air sponsorships, which are defined by clear boundaries. The main boundaries include the prohibition of programming that urges the audience to buy anything, gives a price for a product or service, or favorably describes a product or service.

A third area of content regulation emphasized by the FCC is children's programming. Through a combination of a 1996 FCC Report and Order, along with the 1990 Congressional Children's Television Act, a set of regulations was developed that require all television stations to provide children's programming according to certain guidelines. One requirement is that all stations must provide at least three hours per week of educational/informational programming for children, though it is left to broadcasters to define what educational and informational programming is. A second requirement is that bumpers must be aired between children's programming and advertising. And a third requirement is that advertising minutage is limited to ten and a half minutes per hour on weekdays and twelve minutes per hour on weekends (the only restriction on advertising minutage that broadcasters in the USA are required to follow) during children's programs.

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The FCC uses two main powers of enforcement to elicit compliance with regulations. The FCC's first power of enforcement involves revoking a license or failing to renew a license, a rarely used power reserved normally for cases in which a broadcaster demonstrates willful and repeated disregard for the law. The second and main power of enforcement is the fine, which the Enforcement Bureau of the FCC can levy against broadcasters that violate regulations or statutory law. For example, in 2001 the FCC fined *KKMG* for airing unmistakable offensive sexual references from an Eminem song called "The Real Slim Shady." For violations of content-oriented regulations, the FCC relies on receiving citizen complaints (as a function of the commercial marketplace).

REGULATION OF MEDIA IN MÉXICO

In México, the national government is directly involved in the regulation of broadcast media, though this involvement has diminished somewhat through México's transition to an open democracy. The national government licenses all television stations and radio stations. Newspapers and the internet are not licensed or regulated by a centralized, government-related agency in México. The Mexican national government does not fund national television. State governments fund regional public television networks. The Mexican national government partially funds a national, twenty-six-station commercial radio network called *IMER* (Mexican Institute of Radio), that carries many different genres of programming (e.g., rap to classical). The Mexican government owns the country's main news agency, *Notimex*, which distributes news information primarily to Mexican media. For one hour on Sundays, all radio broadcasters during the *National Hour* must offer their frequencies to transmit government information. This situation of a primarily commercial marketplace with strong government regulation is a defining feature of the media system in México.

In México, newspapers were granted freedom from government regulation by the 1917 Mexican Constitution under Articles 6 and 7, which guarantee freedom of the press and freedom of expression. However, a long-standing tradition of surreptitious intimidation from the government has curtailed freedoms both of newspaper and broadcast media, though the practice has fallen off significantly, but not completely, since 2000. Prior to 2000, during the PRI's seventy-one-year rule, reporters working on sensitive stories about activities of government officials were subjected to such actions as prosecution by the government, threatening phone calls from anonymous people, personal mail being stolen, men in cars following them, and other forms of intimidation ostensibly designed to persuade them into backing away from certain news stories perceived to be unfairly critical. It remains to be determined whether 1998 marks the year in which surreptitious intimidation as a form of regulation is permanently on the wane.

In México there is no national association that promotes voluntary codes of journalism conduct widely subscribed to by newspapers. Thus, most Mexican newspapers and reporters determine their own journalistic codes of ethics and professional conduct.

Broadcast media in México are strictly regulated by the government, primarily through provisions of the 1940 General Law of the Ways of Communication, which was updated by the Television and Radio Federal Law of 1960. In México, all broadcasters have to be licensed to deliver content. The larger climate of Mexican law governing broadcasting can be described as permitting Mexican broadcast media to have general freedom in producing