

## CHALLENGES OF MEDIA SELF- AND CO-REGULATION

Principles of good regulatory process include sound analysis (we are at this stage), informed decision-making (an adequate analysis of the costs and benefits of the feasible options, and should assess the net impact of each option on the community as a whole) and transparency (towards the stakeholders).

Whether a voluntary (self-regulation) or mandatory (co-regulation) approach to media regulation is taken, both raise questions of whether and how to extend traditional press privileges to new media. Moreover, self- and co-regulating approaches implicitly consider separates the aims, objectives, and sanctions available to them from those of the courts. The purpose of both voluntary and mandatory regulation is to promote good journalistic practice which is different aim and the purpose of the courts.

There are these basic approaches to media voluntary and mandatory approaches to media regulation:

- a) **Voluntary self-regulation:** Finland, Germany and Sweden (albeit incorporating state funding in Finland and Germany, and judicial roles in the Swedish system). The main problem here is prospect of publishers withdrawing from a voluntary system where Withdrawal is without consequence.
- b) **Voluntary ‘independent’ regulation with statutory incentives:** Ireland (where statute recognises the Press Council model and membership). This system has advantage that it provides a demonstration of commitment to accountability and responsibility that is transferable to defences in defamation proceedings and might otherwise be hard to achieve. The Irish model also provides multiple lines of accountability: to its own board, to its member publications and funders, and, through parliamentary scrutiny, to the public. See a special paper on the Irish case (No. 3.9).
- c) **Co-regulation** can be understood as a combination of non-government (industry) regulation and government regulation. Typical example is Denmark, where statute establishes a combination of mandatory regulation, together with self-regulatory elements and benefits for some providers; and incentivises voluntary regulation for others. This approach is backed by the threat of a fine or imprisonment in the event of non-compliance with a

requirement to publish an adjudication or right to reply. See a special paper on the Danish case (No. 3.8).

Whereas in the field of the printed press, the role of professional self-regulation has been predominant, in broadcasting, co-regulatory models have emerged given the higher level of content regulation and the presence of public service broadcasting. There are quite different models that fall under the term of “co-regulation”. The co-regulatory spectrum ranges from mandatory to incentivised to voluntary arrangements which may respectively require, actively promote, or simply encourage compliance with ethical standards.

**Table 1: Components and Criteria for Co-Regulatory Systems**

<p>The non-state component of the regulatory systems includes:</p>	<p>With regard to the link between a non-state regulatory system and state regulation one can speak of co-regulation if the following criteria are met:</p>
<ul style="list-style-type: none"> <li>• The creation of specific organisations, rules or processes</li> <li>• To influence decisions by persons or, in the case of organisations, decisions by or within such entities</li> <li>• As long as this is performed – at least partly – by or within the organisations or parts of society whose members are addressees of the (non-state) regulation</li> </ul>	<ul style="list-style-type: none"> <li>• The system is established to achieve public policy goals targeted at social processes</li> <li>• There is a legal connection between the non-state regulation need not necessarily be mentioned in acts of parliament</li> <li>• The state leaves discretionary power to a non-state regulatory system</li> <li>• The state uses regulatory resources to influence the outcome of the regulatory process (to guarantee the fulfilment of the regulatory goals)</li> </ul>

Under co-regulation, government involvement generally falls short of prescribing the code in detail in legislation. Co-regulatory mechanisms can include legislation that:

- > delegates the power to industry to regulate and enforce codes
- > enforces undertakings to comply with a code
- > prescribes a code as a regulation but the code only applies to those who subscribe to it (prescribed voluntary codes)

- > does not require a code but has a reserve power to make a code mandatory
- > requires industry to have a code and, in its absence, government will impose a code or standard
- > prescribes a code as a regulation to apply to all industry members (prescribed mandatory codes)

While in some approaches non-state regulation is mentioned in the state act, there are many other forms of legal connections like Ministerial decrees, contracts, guidelines issued by public authorities, or letters. There are also different ways for the state to influence the non-state regulatory process in order to guarantee the fulfilment of the regulatory objectives: certification of non-state organisations or codes, appointment of members of non-state organisations and financing of non-state organisations.

The main distinction under a reformed regulator would not be between old and new media, nor professional and amateur journalists, but between regulated and unregulated content, promoting the commercial and ethical value of active regulatory compliance.

Although self and co-regulation is essential in regulation, and currently encouraged, it could also lead to very undesirable consequences given a lack of adequate governance, accountability, transparency, and also government monitoring.

**The potential drawbacks of self- and co-regulation include:**

- > the possibility of raising barriers to entry within an industry
- > unintended monopoly power gained by participants that could restrict competition
- > a danger of regulatory capture
- > the potential to increase government compliance and enforcement costs

In relation to convergence, the Danish and Finnish models, albeit in very different ways, already apply consistency of standards across media platforms including print, broadcasting, and, more recently, other electronic media.

Finally, there are three tests for workable co-regulation: genuine dialogue (including *meaningful* consultation with NGOs and the public), a clear understanding of the system, and clear lines of accountability and monitoring.

Compiled by SCM (2019) from:

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