

# Why and what to regulate in broadcasting content?

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# Why Broadcasters are licenced?

- The use of a scarce public resource (spectrum) is generally has been the primary rationale for regulation of broadcasting accepted in *Athukorale and others v AG (1997)*
- The perceived powerful effects of broadcasting (Immediacy, pervasiveness, 78% house holds have TV)
- Prevention of potential harm and disorder including during elections
- Restraining market power of the medium, (ownership concentration, impact on content diversity, local content and pluralism)

# Public policy objectives in regulating the broadcasting sector

- A major source of news and trustworthy information
- A platform for public discourse
- A tool to enrich and strengthen the cultural, political, social and economic fabric of the society with high-quality content
- Cater to the needs of the entire Sri Lankan population in terms of location, age, gender, ethnicity and interests
- Enhance the public's right to know through the promotion of pluralism and a wide variety of programming on matters of public interest including less profitable genres
- Promote competition and diverse ownership and to restrain the exercise of market power in broadcasting
- Facilitate technological and business innovation conducive to enhanced listening, viewing and participating experience for the public
- Make provision for adherence to Codes of Practice/Programme Code, for their enforcement, and responding to complaints from the public
- Prevent being used to propagate or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence
- Help improve media literacy among the public, in collaboration with educational institutions, licensees and others.

# Why regulate broadcast contents – what to expect

- Good journalism/ editorial responsibilities and independence – Codes of Practice
  - **Due accuracy**, disciplined use of language and production technique
  - **Integrity**: the information is truthful, not distorted to justify a conclusion. Broadcasters must not show personal bias.
  - **Fairness**: the information reports equitably all relevant facts and significant points of views. It deals fairly and ethically with persons, institutions, issues and events
- Right to hear different viewpoints:..”it is the right of the viewing and listening public, and not the right of the broadcasters, which is paramount” (The Principal emphasised in the Red Lion case) – In broadcast media free speech does not mean broadcast of the preferred opinion and deliberately shutting out other view points and expressions.
- In the same Red Lion case the US Supreme court pointed out that the purpose of the 1<sup>st</sup> amendment was to make people more knowledgeable.
- *Reduce the potential harm, (the pervasive nature of broadcast media, immediacy, the television’s audio-visual capacities, high audience penetration, immediacy, it invades your living room, family and could have a discerning effect on children, who are often exposed to TV)*
- *Protection as consumers (advertising codes, prevent misinformation)*

# How to regulate?

## Programme Council – Adjudication of complaints

- Appointed by and accountable to the regulatory authority
- Rules of procedures
- Functions and powers of the Council – primary function is to promote professional standards among broadcasters
- Establishes programme and advertising codes
- Monitor compliance with the codes
- Receive investigate and decide on complaints
- Recommend to the authority appropriate sanctions for breach of codes

# From a programme code - illustrations

## News and current affaires programmes

- Report and present news and current affairs honestly by disclosing all the essential facts.
- Respect the right of listeners to hear a variety of significant views.
- Do not suppress relevant, available facts or distort by wrong or improper emphasis.
- When discussing a controversial issue the broadcaster should try to present all sides
- Achieve the balance within a reasonable time if cannot be done in a single programme or a news bulletin.
- Fairness does not mean being unquestioning, or that every side of an issue should receive the same amount of time.
- No simulation of news broadcast in a manner misleading audience.

# Special impartiality requirements (E.g. [UK /OfCom Section 320](#)) - No undue prominence given

- **Broadcasters cannot take sides or broadcast their own views and opinions on**
  - matters of major political or industrial controversy; and
  - matters relating to current public policy.
- **Cannot give undue prominence in the programmes to the views and opinions of particular persons or bodies on any of those matters.**
- **Should preserve “due impartiality” on those matters and in the News broadcasts.**
  - (“that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with”)

*The impartiality requirement has helped labor party to achieve the biggest poll shift since 1945 in the 2017 elections - Dr. Justine Lewis, professor of Communication at Cardiff University.*

## Do not express broadcaster's views in the treatment of current affairs programmes (E.g. Ireland broadcasting authority)

- “Every broadcaster shall ensure .....that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views, except that should it prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other”,- (Section 39 b, Ireland Broadcasting Act 2009)



# What is “due impartiality”?

- Impartiality itself means not favouring one side over another. “Due” means adequate or appropriate to the subject and nature of the programme.
- Thus, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented.
- The approach to “due impartiality” may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. (Ofcom)

# Editorial Independence – how to go about?

(E.g. Island's regulatory (Media Commission ) law: Article 24 *Editorial independence*

- Media service providers shall lay down their **own rules regarding the editorial independence of those of their staff who are involved with news and current-affairs programming**. Such rules shall be compiled in consultation with the employees concerned and their professional associations or trade unions.
- Rules on editorial independence shall include provisions on:
  - a) The working conditions experienced by the relevant journalists and news reporters employed by text and audio-visual media entities, including those with managerial responsibilities,
  - b) The procedures put in place to safeguard the editorial independence of the journalists and news reporters concerned, including those with managerial responsibilities, *vis-à-vis* the owners of the media service provider; and
  - c) The conditions for cautioning and dismissing the journalists and news reporters concerned, including those with managerial responsibilities.
- Rules on editorial independence shall be submitted to the regulator for approval [and shall be published on the relevant media service provider's website.]
- Rules on editorial independence shall be reviewed every year. The regulator shall be informed when the review has taken place, and the new version of the rules shall be submitted to it for approval if changes have been made.

# No Political advertisements (?) E.g. UK

- **No advertisements directed towards a political end:** May include provisions prohibiting advertisement which is inserted by or on behalf of a body of a political nature; which is directed towards a political end; or an advertisement which has a connection with an industrial dispute.
- For this purpose objects of a political nature and political ends include each of the following—
  - influencing the outcome of elections or referendums, whether in the country or elsewhere;
  - bringing about changes of the law in the whole or a part of the country or elsewhere, or otherwise influencing the legislative process in any country or territory;
  - influencing the policies or decisions of local, regional or national governments, whether in the country or elsewhere;
  - influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the country or of a country or territory outside the United Kingdom;
  - influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
  - influencing public opinion on a matter which is a matter of public controversy;
  - promoting the interests of a party or other group of persons organised, in the country or elsewhere, for political ends.

# Elections and referendums

Special impartiality requirement (E.g. UK Section 320 applies)

Broadcasters should give all candidates, parties and issues equitable treatment. Equitable doesn't mean equal – it means that all candidates and parties get some air time to share their ideas on issues with the public. (Canada)

Equitable treatment applies to the following types of election coverage:

- Paid campaigning advertising time
- Free campaigning advertising time
- Campaign news coverage and current affairs
- On air Political debates
- Prime time advertisements (Canada)

Withdrawal of TV/Radio Personalities well before declaring candidacy for (Canada)

Political advertisements are not allowed in some countries (E.g. the UK)

Where allowed rates charged by the broadcaster is regulated by the regulating authority (USA – FCC)

# The Right to correction/reply, and rules on fairness

- Those who consider that they have suffered damaged to their legitimate interests, and their reputation and good name, as a consequence of the distortion of facts in a broadcast can claim for right to correction/reply.
  - Replies shall be published or made available immediately after reasons have been advanced in support of a request to this effect.
  - Replies shall be published or presented, irrespective of the form of the broadcast programme, in such a manner as to command attention.
  - The licensee shall not seek payment for publishing the reply or making it available.
- The licensee may reject a request to reply where:
  - the reply exceeds the time considered necessary to rectify the facts of the case;
  - the reply contains other content and/or more content than that which rectifies the facts that have been publicised by the licensee;
  - the reply contains content that violates the Penal Code and is of such a nature as to involve the licensee in compensatory liability, or is contrary to public morals;
  - the reply infringes the legally protected interests of a third party;
  - the interested parties are unable to demonstrate that they have personal legally protected interests at stake, or
  - the information broadcast by the licensee consists of direct citations of content originating from the president, parliament, government authorities or courts of law.

# Protection of minors

The intention is to seek to protect children from material which would, or could damage them morally, psychologically or physically.

There is no single set of content standards which can be applied universally; more than any other area of broadcast regulation, content standards must be set according to local values and norms, and applied by local people who can use their discretion to assess compliance according to the generally accepted standards in their society.

- Adults' material cannot be shown or aired when children are likely to be watching or listening. - **watershed time (2100-0530)**,
- Programmes and the films should show approved classifications(X-rates, parental guidance, General public etc)
- Depending on the societal values the nudity may be permitted on television at any time, with only nudity in a sexual context limited to adult viewing.
- Coverage of sexual and other offences involving minors/under 18 (UK) –identification,
- Illegal drugs, smoking , alcohol must not be featured in Children programmes unless there is an overriding editorial reasoning.
- Dangerous and violent behavior, imitable by children should not be featured in programmes broadcast before watershed
- Offensive language, should not be broadcast before watershed
- When dealing with matters of privacy, special attention must be paid to children, who are particularly vulnerable as they are not in a position to give informed consent.

# Contents related to exorcism, the occult and paranormal

- Demonstration of exorcism, the occult, the paranormal, divination or practice related to any of these that purport to be real (as opposed to entertainment) must be treated with due objectivity.
- If they are featured purely for entertainment it must be made clear to the audience
- They must not contain life changing advice directed to individuals
- Exorcism, occult and paranormal features should not be included in the programme broadcast before watershed.
- Hypnotists – a proper degree of responsibility
- Viewers are not materially misled.

# Protection against inciting hatred and violence

- **Protection against crime and disorder**

- Most regulatory regimes include a provision that nothing in programmes must incite crime or disorder. This is common sense but could be difficult to interpret.

- **Protection against racial or ethnic hatred**

- One of the most serious issues facing many regulatory authorities is 'hate' speech. As a most basic protection of human rights, it is essential to include in the regulatory regime a strongly worded rule prohibiting the broadcast of any material which may incite hatred and violence on the grounds of race, ethnicity, tribal origin, religion, sex, or nationality.

( In situations of community tension, uncontrolled, irresponsible broadcasters can have enormous impact. It is generally accepted that local radio stations in Rwanda greatly inflamed the Hutu slaughter of the Tutsi people.)

- Religious programmes should not be used to degrade other religions; there should be a proper degree of responsibility concerning religious programmes.



# Other content related areas.

- Disability assistance: Close captioning of programmes for people with hearing disabilities
- Emergency response
  - Need to coordinate with the emergency response agencies
  - Guidelines on responding to emergencies –
    - Early warnings
    - With whom to check etc?
    - Disability access
- Broadcast competitions – prizes must be described accurately
- Voting
- Forecasting
- Broadcast of opinion polls – credibility
- Facts checkers – A recent feature to combat fake news.

# Local content requirements

- Measures to promote local content
  - Overall percentages of local content
  - Broadcast of local content during prime time
- Children's programmes
  - Requires to cater to children
- Content produced by independent producers
  - Support to independent productions
- Record keeping
  - Preserving broadcast contents for a specific period or until termination of disputes
  - Archiving and preservation of valuable content

# Advertising standards

## ***Advertisements should be Legal, honest, decent and true***

- Legality: broadcast advertising must comply with all other laws specifically consumer protection legislation. exists separately, or specific laws relating to advertising in general, then these will also apply to broadcast advertising unless explicitly stated.
- Decisions may be taken to prohibit advertising for specific products or services on public policy, health or moral grounds. It must be clear that illegal products or services cannot be advertised.
- Advertising, as with all broadcast content, should be fair. This means that advertisements should not unfairly compare the advertiser's products with those of competitors. (for example, illegal drugs, or illegal prostitution). general provision governing standards and practice in advertising and in the sponsoring of programmes
- Advertising must be truthful and not misleading. This is a basic tenet of consumer protection law.
- When the regulator believes that an advertisement may be misleading, or receives a complaint to that effect, it must ask the broadcaster(s) who aired the ad to provide evidence of the claims made in the ad. This is the *broadcaster's* responsibility, although of course the material will come from the advertiser.
- Advertising standards may include provision prohibiting advertisements and forms and methods of advertising or sponsorship
- Advertising standards may include provision prohibiting forms and methods of product placement

# Sanctions

In a fair process giving the affected an opportunity be heard, the regulatory authority may

- warn the broadcaster
- require the broadcaster to carry a message acknowledging the breach
- Order the broadcaster to take such action or desist from taking actions necessary to rectify the breach
- Impose a fine (E.g. not exceeding 2% of the previous years revenue – through courts?)
- Suspend the part of the programme schedule
- Terminate the license in extreme cases with a provision to appeal to the courts