

MAKING DEMOCRACY WORK

The Media Tool Box 2

BROADCASTING REGULATION

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1. About this Box

Tool Box 1 dealt extensively with the pivotal role the media - all media, both print and electronic - play in enabling citizens to exercise their right to know and to freedom of expression. It also made the point that in a democratic state legal and statutory provisions to circumscribe media freedom must be kept to a minimum and that self-regulation is always preferable to the imposition of rules by any outside authority.

So why now a whole Tool Box 2 on broadcasting regulation? Why not simply allow hundreds of radio or TV stations to flourish, as is the case with newspapers, and leave it to the market to decide which of them will make it in the long run? Why shouldn't everyone be entitled to broadcast? Why not have a democratic chorus of as many voices (and images) on air as possible to promote and ensure freedom of expression? What makes the broadcast media so different from print and in need of more regulation?

There are a number of short and long answers to that, but basically they boil down to the relative

scarcity of available space. Newspaper publishers can put out whatever volumes they wish and can afford an unlimited and renewable supply of newsprint. Broadcasters traditionally transmit their messages via 'the airwaves' which they share with a number of other users like the police or emergency services, for example, and, more recently, cell-phone networks. To ensure clear transmission and reception for all users, all have to transmit strictly within their band, that is their allotted segment of the frequency spectrum only. Use of the frequency spectrum as a whole is regulated by international treaties administered by the International Telecommunications Union (ITU). All countries in the world are signatories to these agreements meant to facilitate easy worldwide communication and avoid unwanted overspill or interference both within and between countries.

Take one concrete example: For a radio station of good sound quality, FM is really the only way to go, not short- long- or medium wave. FM broadcasting is generally restricted to the segment from 87,5 to 108 Megahertz, able to carry a total of around 35 channels in any given geographic area - the lower the technical quality of transmitters and receivers, the less channels can be accommodated without interfering with each other. The transmission of television signals takes up a lot more space on the frequency spectrum, and thus the number of possible TV channels in a region or country is even more limited.

All of these limitations, as mentioned before, apply to the traditional way of terrestrial broadcasting

where the radio or TV signal is fed into a transmitter and carried over the airwaves (analogue transmission) with the help of masts, antennae and repeaters over a specific radius or a whole country. With modern digital technologies and transmission via cable, satellite or Internet conditions are going to change fundamentally. (There will be more on these latest developments and the way they affect issues of regulation in the chapter 9 of this Tool Box.)

In many of the richer countries in the world these changes are already far advanced and have led to a proliferation of electronic media quite unthinkable only a few years ago - with all the much discussed positive and negative impacts that such proliferation (some even call it pollution) entails. In poorer countries the pace of change is, necessarily, much slower. Modern communication technologies come at a price which few people can afford. For the foreseeable future, therefore, broadcast media in our part of the world will continue to rely to a large extent on the traditional method of transmission and thus be subject to limitations in terms of numbers. There need to be clear criteria and selection mechanisms to determine who the lucky few should be.

Talking about tradition: Traditionally the airwaves have been regarded as state property, with governments supervising their use and, as a matter of course, assuming the role of national broadcaster - much like they used to run other public services like the provision of road infrastructure, water or postal deliveries. All this is changing, and Africa is no exception.

The African Union's Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples' Rights in 2002, says in Chapter V (1):

“States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression”. (“Private” is defined as “both commercial and community”).

As we all know by now, the much-touted privatisation of formerly state-run operations is not always the best way to go. This certainly applies in the sensitive area of broadcasting. Among the media, radio and increasingly television are the most influential, given their ability to reach people in the most outlying areas, those too poor to buy newspapers and those unable to read. (Governments are only too aware of this - and thus understandably reluctant to cede their controlling powers.) Broadcasting has a role in society which goes far beyond that of any ordinary business supplying a commodity. A democratic state needs to create the conditions for it to play that role.

In line with the African Commission's Declaration then, ending the “State monopoly over broadcasting”, or what is popularly known as opening up the airwaves, means creating diversity by actively encouraging a broad range of independent broadcasters to go - and stay - on air. It also means making the development of broadcasting policies and the regulation of

broadcasting a public task, discharged by independent, democratically constituted bodies on behalf of the people. What kind of bodies these should be, how they are to be set up, what powers and duties they should have and what they are meant to achieve, these are some of the subject matters to be dealt with in this Tool Box.

A democratic society needs to discuss how the precious resource of frequency space can be put to optimum use in the interest of the general public and what kind of broadcasting it wishes to promote. This Tool Box will introduce the main options, together with their respective merits and demerits. What is a public broadcaster and what makes it fundamentally different from a state broadcaster? Where do community broadcasters come in and what can commercial operators do best? Given the reach and impact of broadcasting media, what kinds of generally binding rules can be justifiably imposed to ensure minimum standards without violating basic freedoms?

As in the case of media legislation in general, laying down the rules for the regulation of broadcasting should not be left to the authorities and politicians alone - their interests do not always coincide with those of the general public. The temptation to do so nevertheless may be great because this is not the easiest of subject matters. Apart from ownership and freedom of expression issues it involves a certain amount of technical expertise and a basic understanding of the rapid and far-reaching developments in this field. And because radio and television signals do not stop at borders, some

knowledge of international agreements and requirements is needed as well.

But broadcasting regulation is no rocket science either. Most politicians and law makers do not know much about it themselves to start with. So nobody should be put off by the well-meaning - or self-serving - advice of 'better leave it to the experts'. All listeners and viewers, all citizens in fact, will be affected in their daily lives by the kind and quality of broadcasting on offer in any given country and so they themselves should take an active role in shaping the broadcasting landscape they want. This Tool Box hopes to give them the necessary information to do just that.



2. The different types of broadcasting

Historically, radio (the 'wireless') was bundled with the traditional wire services - telephone and telegraph networks, regulated in the same manner and run as a state service, much like education, health and welfare. The only country to take a different course from the beginning was the United States of America, where the ideal of the free market reigns supreme and broadcasting was left in the hands of private entrepreneurs. In most other parts of the world broadcasting was long regarded as a national task and natural domain of government, with radio as the vehicle through which the authorities imparted information, education - and some entertainment - to the people, the general public. The formerly colonial and then newly liberated African countries took over this tradition of state monopoly radio at independence and held on to it until the very recent past, in a few cases up until the present day.

Obviously a democratic society needs broadcasting of a different kind. A national public service able to reach all citizens equally, regardless of where they

live and in what financial circumstances, remains essential, but it must be free from government interference. The broadcasting landscape as a whole must offer freedom of choice and information from a broad spread of sources, be run by credible, non-partisan bodies, represent a plurality of voices and give citizens themselves direct access.

In an attempt to achieve all of these objectives, most countries have over the years developed a mix of broadcasting models which is known as the three-tier system, consisting of

- public broadcasting services controlled by the public ;
- commercial broadcasting services run as businesses; and
- community broadcasting services.

Public broadcasting

There are probably as many definitions of public broadcasting as there have been conferences held on the subject, papers written and resolutions concluded. What they all say is that public broadcasting is a unique service quite distinct from the other two tiers in a number of ways. (And there will be a whole lot more on this very special animal in Tool Box 3.)

Being a service for the general public and not a specific segment of listeners, it sets out - and is expected - to deliver a number of things over and above mere listening pleasure. Its role is generally

defined as being to inform, entertain and educate. While other types of broadcasting may be doing similar things to a certain extent, public broadcasting is much wider in its scope and approach. It derives its mandate - and often the bulk of its budget - from the public it serves and thus has to be accountable to the public.

A good public broadcaster will provide:

A diversity of programmes for all - the majority as well as minority audiences. It is a service to the general public in all its variety, diversity and controversy, and not just to the opinion leaders in society or those with enough money to spend to make them interesting targets for advertisers.

A forum for democratic debate - with news and current affairs reporting that is impartial, independent, explanatory and pluralistic, which stimulates debate and clarifies the issues. It will always strive to get all voices on the airwaves regardless of how popular the viewpoints expressed may be. It thus gives meaning to the basic right of freedom of expression which must be used actively.

A showcase for culture - by promoting the various cultures, as well as the intellectual and artistic life of the country in general. As a national institution it will give expression to national cultural identity in all its variety and develop partnerships with other cultural institutions and production companies.

A vehicle for development - by running extensive promotional campaigns for development in areas

like health, agriculture, nutrition, civic education, environmental protection, family planning and the like. This will be done through a variety of formats from spot announcements to documentaries, talk shows, drama or film.

Unrestricted public access to events of significance - by offering extensive live coverage of important events in politics, culture and sports. Such events must not be confined to commercial radio or TV outlets which either do not cover the entire country or exclude those who can not pay for their services.

A reference standard for quality - by airing stimulating, well produced material on both radio and TV. In this way it will make the public more demanding of all channels, the commercial and community ones included.

Extensive original production - by actively seeking out local/national talent and increasing, stimulating and supporting the output of local production houses.

Last but not least, the public broadcaster will provide *a continuous service to the public* - it will not just close shop when the going gets tough, but can be relied on as a source of information even in times of crisis.

Altogether this may sound like a very ambitious vision indeed for a public broadcaster. And so it is. But it is also a reality in many parts of the world, even if no such organisation will always score full marks on all counts. The public will expect and

demand, though, that it keeps trying and improving its performance in line with the vision. That's what the notion of accountability is all about, and that's the essence of what makes public broadcasting special.

Commercial broadcasting

This second tier is pretty self-explanatory. The main purpose of commercial - or private - broadcasting services is to make money. They want to benefit the financial interests of their owners by targeting and developing a specific market, and thus maximise the return on shareholders' investment. They finance themselves mainly by selling air time, and their survival (and profit) ultimately depends on the size and nature of audiences they are capable of delivering to prospective advertisers and sponsors. For this reason they will mainly broadcast entertaining, easy listening programmes - those most likely to bring in the numbers.

The specific objectives of commercial broadcasting services depend on their respective target audiences. These are generally defined in terms of age and/or interest groups and addressed by different formats. Most of them go for a tried and tested winning formula in terms of subject matter, presentation style and genre of music played. This may have a positive and a negative side: it can (and often does) result in rather formulaic programming, i.e. predictable and in the longer run boring fare. But it may also offer an especially attractive service for

niche markets and special interests – as long as they are profitable, of course, say lovers of sports or fine music.

Because they keep - and need to keep - a close eye on their market, private operators are often better able to react more flexibly and quickly to developments in society and popular demand than larger, public bodies with their more elaborate structures and procedures. Good commercial broadcasters will create healthy competition and keep the public broadcasters on their toes.

Quite a number of commercial stations also offer programmes that might well be described as 'public service': extensive coverage of current affairs, talk shows (phone-ins) and studio discussions on topical issues, comprehensive reporting on political parties campaigning for elections. The less attention a national broadcaster pays to discharging its public duties, the greater the chance for private operators to offer an attractive and balanced programme that appeals to large audiences. In countries where there is no political will to transform the state into a public broadcaster, commercial stations can present a more credible alternative, even though their coverage area is usually restricted to the more densely populated regions.

Community broadcasting

The third tier, community broadcasting, is a relative newcomer in the field in our part of the world and as

such warrants a more detailed description, both of its special character and its role in society.

While community stations come in all shapes and sizes not always easy to categorise, their main purpose is to provide a radio service for the people by the people. They serve either

- geographic communities: people residing in a particular geographic area,
- or communities of interest: cultural, institutional - e.g. a university or college, or religious - denominational or multi-denominational.

The latter, by the way, is a point of growing concern. Quite a number of licences in Africa have gone to religious groups which are now too often using them as a permit to disseminate fundamentalist beliefs, with the stations being run by the leaders of these groups or even international organisations rather than the community itself. This, obviously, is contrary to the idea of community broadcasting.

One more preliminary point: there are no community television services as yet anywhere in Africa - TV stations generally being too expensive to establish and maintain. This is why we will refer to community radio only in the following pages.

Mandate and objectives

The essence of community broadcasting is for a community to run its own station - the community itself and no one else (within the existing laws, of course) decides what should go on air. For this reason the station must really be owned, managed and shaped by the people it serves. It responds to the community's expressed needs and priorities and is accountable to community structures. It is managed and controlled by a board democratically elected from and by members of the community. In legal terms a community radio will be constituted as either

- a voluntary association - a body, group or organisation that people join to take forward a lawful aim and which is not for the purpose of gain or profit; or
- a company not for gain; or
- a trust - a body set up by community organisations to look after and administer a broadcasting service for the benefit of the community.

The mandate of community radios does not include the making of profits. The constitution of such a service must stipulate that any surplus it may make will be used to further develop the service or to benefit the community at large, that no payment of dividends is made to its members, that any salaries paid to staff must be reasonable, and that upon its dissolution, all assets shall be given to a non-profit community related purpose.

By definition, the mandate for a community radio may not come from organisations outside the

community. This does not mean that international or foreign organisations, for example, should not promote or support community based media. What it does mean is that the actual initiative to start such a service should genuinely come from the community itself. This is important to note because quite a number of community radios in Africa have been initiated by international bodies to punt their agendas, or, indirectly and using various front organisations, even by governments for use as a tool of party-political propaganda. (Just one of many possible abuses that independent broadcasting regulation needs to guard against.)

The main objective of community broadcasting is to offer a communication tool to a specific group of people – and communication, as we know, is a two-way affair. The Media Institute of Southern Africa (MISA), which has gained vast experience in this sector over the years, pithily summarises the essence of community radio in terms of the five A's: It must be

- Available to the community residents so that they can participate in the programmes, express their needs and wants or discuss issues of interest relating to their own community, allowing for community development.
- Accessible, so that community members can reach the station and benefit from it. It should be based within the community it is serving. Community members should have equal access to the station.

- Affordable to the community.
- Acceptable to everybody in the community by catering for all. It should be sensitive and respect the community's language, traditions, beliefs and culture.
- Accountable to the community that it serves.

Programming

What would one expect to hear on a community radio station? Obviously anything to do with matters of common interest if that is what brought the community together in the first place. And in the case of geographically defined communities? A sure way of achieving the objectives just listed and getting the community involved in “their” radio station, some might think, would be to give every sector or organisation within the community their own time slot – say half an hour for the youth, for women, for the elderly, for the church, for business people, the trade union and so on and so forth. But such a compartmentalised programme would not really achieve what it sets out to do: get the community talking to each other. It would also be pretty awful radio. In the longer run nobody in the community will put up with bad quality just in order to support a good cause. Community radio needs to be attractive to keep attracting listeners. Take one existing programme schedule, the weekday programme of Radio Atlantis near Cape Town in South Africa:

0600 - 0800	Wake-Up Show (music, interviews, weather, news)
0800 - 1000	Atlantis Live (religious programme)
1000 - 1200	Community awareness (focus on health, education, services)
1200 - 1400	Lunch Time Rave (mainly entertainment)
1400 - 1600	Heartbeat of the Community (focus on talking-points in Atlantis – phone ins)
1600 - 1700	Teenz Alive (music and news for youth)
1700 - 1900	Drive Time (music, interviews, news)
1900 - 2100	Talk-Show (phone-in on special topics)
2100 - 2400	Quiet Storm (specially selected, very popular music)

At first glance, this might look much like what many commercial radio stations (and quite a number of public ones as well) have on offer. Rather long slots - between one to three hours, talk, music as the backbone, phone-ins, with the familiar voice and personality of presenters hosting their particular programme segments for a couple of hours each. This is simply what radio, often described as a one-on-one medium, can do best: talk to - and with - each individual listener on a person to person level, in their kitchen, lounge, bath or car. Community radio does not need to reinvent the wheel.

The main difference lies in the fact that community radio presenters know their audience, are members of that community, in many cases known to listeners not just as a voice but also in person. They are not just DJs, playing music, telling jokes and keeping their largely anonymous audience (and, not least, their employers and the advertisers) happy. They share common concerns and experiences, and this results in proper two-way exchanges when they communicate over the radio - with listeners directly or with guests in the studio, again mainly people with something to say from the community itself, either on their special field of expertise or on any matter of interest.

These magazine-type programmes or variety-shows make it possible for all sectors and organisations in the community to get their information, advice, good news, problems, queries and gripes across. In Atlantis, people without private phones are often seen queuing at public phone booths, a radio in one hand and a coin in the other, to make their point in an on-air discussion. When a child goes missing, Radio Atlantis is asked to alert the whole community so that everyone can help look for the kid. If there are complaints about the police, service in shops or conditions at schools, the station is informed and people trust it to follow up on the story.

A successful community radio station is more than a provider of information and entertainment. It becomes a public forum, a centre for communal activities and a motor for communal development.

Staff

Most people who work in community radio do it because they are fascinated by the medium, because they like to communicate, to have their own voice on air, may be even to become famous in their community. They are not likely to gain any material benefits because all community radios depend heavily on volunteers. If they are lucky they are able to employ a core staff: Radio Atlantis for example has a full-time station manager, a full-time programme director who also presents the occasional programme, a full-time producer/technician who doubles up as presenter of the breakfast show, a news and current affairs editor, and two sales persons who earn a commission on the advertising time they manage to sell to businesses in their coverage area. Most programmes are prepared and presented by volunteers for no pay at all, many of them young and otherwise unemployed.

What they do gain is more than money. They grow as people, become self-confident, gain skills - both inter-personal and technical; they do something useful that earns them respect in their societies, rather than just lazing around or engaging in criminal activities. In addition to their training on the job, some are offered the opportunity to attend formal courses and start a career in broadcasting, getting poached by the talent scouts of public or commercial stations. Some, spurred on by this work experience, decide to further their education by doing their matric or going into tertiary education, or stay in the communication field as press officers

with government or in business. Community radio stations are indeed an instrument for human development.

Funding

Funding, of course, is the big hurdle to overcome before setting up a community station. A proper on-air studio will cost some US\$ 18.000 for analogue or US\$ 20.000 for digital equipment which is technically more advanced but easier to operate. Transmitters cost up to US\$ 11.000, depending on capacity and reach.

Many community radios are initially funded by international donors who recognise their importance for media diversity and the promotion of democracy. But donors usually enter into short-term commitments only. They are often happy to pour money generously into new set-ups, but will not help to cover running costs or pay for the replacement or upgrading of ageing equipment. How to generate income in order to survive, therefore, is uppermost in the minds of many community broadcasters. Being non-profit is one thing, paying the bills is another. Radio Atlantis, for example, needs some US\$ 2.000 per month - for salaries, rental, phones and electricity. They usually just manage to break even because they have a very dedicated sales team. On average community radios in South Africa make between US\$ 900 and 6.000 a month from advertising.



3. Shaping the broadcasting landscape

These then, broadly, are the available options in broadcasting as currently practised worldwide. In most countries they evolved haphazardly over time, in response to developments in society, public demand or favourable market conditions, helped along by advances in broadcasting technology. Regulation was often an afterthought, an attempt to contain adverse effects of uncontrolled growth or unforeseen infringements of rights.

Young democracies in the process of opening up their societies and their airwaves have the chance to actively shape and create the broadcasting landscape of their choice and best suited to their needs, rather than merely react to developments or adopt a ready-made formula. With government, the broadcasting sector and civil society working together they should develop a broad policy framework which allows the electronic media to develop their full potential and play their important role in society to the best of their ability. Such a policy will be based on the principle of public interest and seek to achieve four main goals:

Universal access

Universal access to as many information sources as possible is recognised as a basic human right and essential to human development. Without information there can be no education, no improvement of personal lives, no development of the economy, no democracy. Broadcasting is the best means to reach people wherever they are and whatever their circumstances. All citizens should have access to such services and these should be generally accessible also in terms of content, language and format. This does not mean that all broadcasters must serve all the people equally all the time. But the broadcasting industry as a whole must guarantee universal access.

Diversity

The broadcasting landscape should be as diverse as technically and economically feasible to reflect the diverse shades of people's cultures, opinions, beliefs, views, interests and tastes. This diversity relates not just to the quantity of services, but also to their quality. In other words: diversity is not created simply by allowing large numbers of different stations to operate who then all offer much the same fare. Diversity in its full sense needs to be promoted and nurtured.

Independence

A democratic state must safeguard the independence of the broadcast media and respect the principle of editorial freedom. The 2001

Southern African Community Development (SADC) Protocol on Information defines “media independence” as

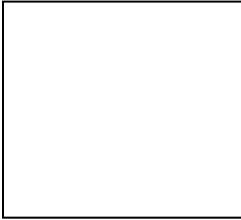
“editorial independence, whereby editorial policy and decisions are made by the media without interference”.

Restrictions of this freedom can only be justified where basic rights are infringed (say the right to privacy) or if there is a clearly defined overriding public interest (say protection against hate speech). Such restrictions must be prescribed by or based on law and be necessary in a democratic society.

Promotion of economic growth

In the context of the lofty ideals just listed this may come as a bit of a surprise. But just as universal access, diversity and independence have very practical implications, so too do economic considerations affect the overall wellbeing of the industry. Quite simply: if the broadcasting dispensation put in place - while full of noble intentions - doesn't work, it cannot deliver the goods. If it does, society as a whole will profit. So policy makers will do well to take the economic benefits of a diverse and open broadcasting industry into account. Experience has shown that it is capable of creating jobs – both directly and as spin-offs in other industries from music production to advertising and catering, facilitating the transfer of skills and technology, providing a significant tax base and boosting foreign and domestic investment.

For example, in South Africa it is estimated that since democratisation in 1994 investments of several billion Rand were made in the broadcasting sector alone. Some 80 community radio stations now provide more than 600 paid jobs and more than 2000 positions for volunteers who have been empowered through training and skills development. 15 privately owned radio stations and a free-to-air television service have created an estimated 1000 direct jobs. Outsourcing of television programme productions has been an incentive for the establishment of an independent film production industry that is now attracting clients from all over the world.



4. Roles of government, regulator and service providers

One of the fundamental characteristics of democracy is the separation of powers, typically between legislative, judicative and executive. In the field of broadcasting a similar separation of responsibilities applies between government, regulator and service providers. The 2002 SADC Declaration on Information and Communications Technology establishes a three-tier system

“with the Government responsible for a conducive national policy framework, independent regulators responsible for licensing, and a multiplicity of providers in a competitive environment responsible for providing services”.

In most African countries the process of developing such a three tier system of responsibilities is only in its initial stages. Some governments have chosen to move unilaterally and sought to impose new policies of their own choice without any consultation with stakeholders or citizens in general. Some are happy with the status quo and reluctant to move at all.

Some do not really seem to know where and how to start.

In all cases ultimate success will depend to a large degree on the broadcasting media and civil society as a whole taking the initiative and driving the process. Together they must come up with ideas, concrete proposals, even draft bills, bring public opinion on their side and thus compel governments to comply with the wishes of the electorate and pass the necessary legislation. Sounds pie in the sky? Not really. Just this approach has already produced the desired results in South Africa and Zambia or some of the emerging democracies in Eastern Europe, and is beginning to do so in Kenya, to name only a few examples.

Such legislation will mainly provide for the democratic separation of powers and give a broad outline of the responsibilities of the regulator. If that regulator is indeed to be independent, it must be given room to make its own decisions – within the confines of its responsibilities - and be able to react to new technological, economic, social and cultural developments without continually having to seek amendments to the law.

Once the “conducive national policy framework” that the SADC Declaration speaks of and the appropriate enabling legislation are in place, governments will have no further powers over the broadcast media. This is where the independent regulator takes over. The African Commission on Human and Peoples’ Rights - which has the mandate to interpret the African Charter and whose

interpretations are binding for members of the African Union - says in its 2002 Declaration of Principles on Freedom of Expression in Africa:

“Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.”

In South Africa such a regulator has been in place since 1994. Its independence is guaranteed by the constitution, which says in article 192:

“National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society”.

The regulator - again in consultation with all interested parties - will work out a more detailed policy to form the basis for the granting of licences. It will also develop clear procedures for applications, and criteria and conditions to be met for licences to be awarded. Once the licence is granted, the service provider - the broadcaster - will operate independently from government and the regulator for the duration of the licencing period, with the regulator keeping an eye on whether the service is indeed complying with the law and its licence conditions.

Broadcasting regulation is meant to see to it that all the various interests and aims set out in the broad

policy framework are taken care of and correctly balanced so that citizens do indeed get the best radio and TV services possible. Broadcasting licences will be issued with this overarching goal in mind. The regulator's job is not all about policing, restricting or punishing offenders – though this may form part of its duties from time to time. Its prime function is to enable and promote quality broadcasting – diverse, independent, vibrant and stimulating services of all shapes and sizes that respect and help to realise people's right to know.



5.Setting up the regulator

Who then is going to do the actual work and how to make sure that the authority does indeed discharge its duties in the manner intended - for the benefit of the general public? Like in all such bodies there will be a governing board or a council that decides on policies and supervises management, which in turn will be responsible for the day-to-day running of affairs. What we are concerned with here is the composition of such a board or council.

“The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.”

So says the African Commission’s Declaration of Principles on Freedom of Expression.

In South Africa, where the system is already working, the selection of board members is made by the parliamentary committee responsible for broadcasting policy. It advertises the posts and calls upon all relevant groups in society as well as individuals to nominate candidates. The committee shortlists nominees, invites them for interviews in

public hearings and then decides on its final list. The names are published and the list is passed on to the entire house for approval and lastly to the President for appointment.

To ensure that there really is no influence of a “political or commercial nature”, certain groups of people are excluded by law from membership of the council: persons with a financial interest in the broadcasting industry as well as office bearers of the state or political parties.

The 2002 Zambian legislation which establishes an Independent Broadcasting Authority in that country contains a similar list of exclusions, and the selection process has – on paper - even more safeguards against any possible political influence. Members of the IBA board are selected not by a parliamentary committee but by a special appointments committee. These are nominated by the law association, non-governmental organisations active in human rights work, religious organisations, media organisations and the ministry responsible for information and broadcasting (one each). The selection process itself is similar to that in South Africa: nominations by the public, hearings, and final list to be approved by parliament. In practice the procedure has shown one major flaw. The minister of broadcasting actually appoints the selection committee and has the opportunity to handpick the organisations allowed to nominate. (The NGO community, however, did not wait for the minister to act but quickly decided on a list of their proposed names themselves, thus successfully forcing the minister’s hand.)

Both these African procedures are more in line with democratic principles than the one used in the United Kingdom which is often cited as the model to follow. In the UK four different bodies are in charge of broadcasting: the Independent Television Commission (ITC) is responsible for private television as well as satellite and cable TV; the public broadcaster British Broadcasting Corporation is supervised and regulated by its own board of governors; a Radio Authority manages the licences for commercial radio; and the Office for Telecommunications (OfTel) is in charge of telecommunications. There are steps under way to merge some of these institutions but all of their members are appointed in the same way: by government without any parliamentary scrutiny or confirmation, let alone public participation. “In the past appointees have tended to come from a small Westminster circle of the elite”, says the International Institute for Regulators in Telecommunications. “The Blair Labour government has attempted to widen the pool of potential appointees by advertising for BBC governors” – but it still retains the sole right of appointing.

In the United States, a Federal Communications Commission (FCC) is responsible for all sectors – radio, TV and telecommunications. Nominees for the five posts of commissioner must first be confirmed by the Senate before being appointed by the President. Only three commissioners may be members of the same political party. The FCC is financed directly with money allocated by a vote in Congress and thus vulnerable to undue influence

brought to bear by large media corporations and other powerful lobbyists.

The German model is widely seen as a progressive alternative because it is based on civil society representation. Boards of regulators (one in each of the federal states) are fairly large in order to reflect as broad a spectrum of society as possible. Churches delegate members, as do trade unions and employers' bodies, as well as sports associations. In addition, there must be representation from cultural, youth and education organisations and other relevant social groupings, as well as one delegate each from all political parties with seats in parliament. The downsides are obvious: boards are unwieldy and decision making processes cumbersome. Political influence is institutionalised with political parties having guaranteed seats.

In the emerging democracies in South East Europe, for example in Montenegro, media reformers have also settled for a system of civil society representation but have tried to avoid the pitfalls of the German model. Once nominated to the council of the regulator, members are no longer representatives of the organisations that named them but expected to act independently according to their own knowledge and conscience.

Each country will decide for itself whatever solution will best suit its specific needs. The existing models briefly outlined here are just meant to illustrate some of the pros and cons and provide a few general guidelines:

1. The appointments procedure for governing bodies of an independent broadcasting regulator must ensure that the risk of political or commercial interference is minimal.
2. Persons with vested interests of a political or commercial nature, i.e. office bearers with the state and political parties or those with a financial interest in the broadcasting industry, must be excluded from membership.
3. Members should be reasonably representative of society at large and have the necessary expertise to fulfill their duties.
4. The appointments process should be open, transparent and democratic. There are several options:
 - The parliamentary committee in charge of broadcasting calls for proposals from the public, conducts public hearings, and nominates members. They are formally appointed either by the Speaker of parliament or the head of state.
 - The law provides for a list of civil society groups entitled to name members.
 - In order to keep numbers down to a manageable level, delegates from civil society groups listed in the law form an appointments committee and select members following the same process of public nominations and hearings as outlined in the first option. In the last two cases the first procedure will be initiated by the

Speaker of parliament, thereafter this is done by the board of the regulator itself.

Once appointed, members will serve for a term (or several terms) of office as set by law. They can only be dismissed by the appointing body under clearly prescribed circumstances: for example when they become office bearers with the state or a political party or involved in the broadcasting industry. Other reasons may be a criminal conviction or failure to perform their duties for a specified period of time. Such strict rules are meant to protect members' independence and allow them to decide freely in accordance with their mandate, even if such decisions may be unpopular with the appointing body.

With the regulator deriving its mandate from the public it must also be answerable to the public.

“Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.”

These, again, are the words of the African Commission on Human and Peoples' Rights. The logical choice and ideal “multi-party body” is, of course, the elected parliament and/or a portfolio committee in charge of communication.



6. What needs to be regulated?

Programming decisions are made by broadcasters independently, on the basis of professional criteria and the public's right to know. This is the essence of their editorial independence and applies equally to all three tiers of broadcasting. The regulator, therefore, will not interfere in matters of programme content or presentation, other than to monitor that all services do indeed comply with their licencing conditions in this regard. In other words: If a service licenced as a youth channel were suddenly to offer sports coverage only, the regulator would intervene. (More of that later.)

General professional standards

While not interfering with the service providers' editorial independence, the regulator will ensure that certain professional standards are upheld. These are not standards imposed by it arbitrarily, but those which form part of a generally accepted code of conduct and are already being applied by responsible broadcasters all over the world, mindful of the special range and impact of the broadcasting

media. They concern a number of areas and are summarised here drawing on various regulations worldwide:

- *Violence*: Material shall not be broadcast which contains gratuitous violence in any form, that is violence which does not play an integral part in developing the plot, character or theme of the material as a whole or which sanctions, promotes or glamorises violence. These restrictions do not apply to bona fide scientific, documentary, dramatic, artistic, discussion or religious broadcasts.
- *Children*: Broadcasters shall not broadcast material unsuitable for children at times when large numbers of children may be expected to be part of the audience. Children's programming has to follow special guidelines on language, violence, domestic conflict, death, or possible imitation of acts.
- *Programmes for adults*: Programming on television which contains scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences shall not be broadcast before the watershed period which usually starts at 22h00 in free-to-air services, and 20h00 in subscription services where parental control mechanisms are available.
- *Audience advisories*: To assist audiences in choosing programmes, broadcasters shall provide advisory assistance, which shall include guidelines as to age, at the beginning

of broadcasts and wherever necessary, where such broadcasts contain violence, sexual conduct and/or offensive language.

- *News:* Broadcasters are obliged to report news truthfully, accurately and fairly, without intentional or negligent departure from the facts. Where it appears that a broadcast report was incorrect in a material respect, it shall be rectified. Special guidelines are used in regard to the identity of victims of sexual violence, and warnings in advance of scenes or reporting of extraordinary violence.
- *Comment:* Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.
- *Controversial issues of public importance:* Opposing points of view should be presented either in the same programme or in a subsequent programme forming part of the same series of programmes. In such cases there should also be a right to reply.
- *Privacy:* In news and comments, broadcasters shall exercise care in dealing with private lives of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

Obviously decisions on what may be right or wrong in these cases will not always be clear-cut and easy to make. So while applying these standards especially in regard to language, violence and

sexual conduct, what the Botswana draft broadcasting policy terms “a degree of responsible flexibility” needs to be exercised. Different standards may well apply in the case of different target audiences. What is considered offensive or acceptable for broadcast often differs sharply between sections of the community and between generations.

In addition, not all services (terrestrial, non-terrestrial, pay-TV, free-to-air, radio, TV) should be treated in the same manner as they operate in different markets. A public broadcaster, because of its general accessibility, should be even more aware of its responsibility than an encoded channel and pay special attention to choosing suitable times for airing potentially contentious material. This does not mean to say that it should act as a censor and disregard people’s right to make their own choices. Adult viewers and listeners must be provided with the requisite information to decide for themselves whether they want to tune in to programmes even though they may be considered by some as offensive, harmful or distasteful.

The standards outlined here cover the areas where problems are most likely to arise. More specific codes of conduct can and should be developed – not imposed - either voluntarily, as in-house policies or industry agreements by the service providers themselves, or by the regulator - in consultation with the industry. Once such codes have been adopted, there must be clear guidelines on how adherence is to be monitored and what sanctions, if any, should apply when violations have occurred.

All the relevant information needs to be made public and adequately explained, so that citizens know what to expect of their broadcasting services. Where their expectations are not met, there must be appropriate complaints procedures for them to follow.

Presently such complaints from the public are being dealt with in a number of ways. In some Southern African countries the media, both print and broadcast, have set up their own common self-regulatory bodies or are in the process of doing so. In Germany, public and commercial broadcasting services have separate voluntary complaints structures. In Britain public broadcasters have their own procedures, and complaints against private broadcasters are adjudicated by a Broadcasting Standards Commission. In South Africa, members of the public have a choice: They can address complaints either to a Broadcasting Monitoring and Complaints Commission which was appointed by the regulator after public tender, or to the complaints structures established by the public and commercial sectors respectively. In Canada, the Canadian Association of Broadcasters (CAB) addresses issues of ethics, professional conduct and the manner in which a medium or its journalists and advertisers portray violence, gender and ethnic representation, e.g. stereotyping. While adherence to its findings is voluntary, there have been instances where the regulator required a broadcaster to follow CAB codes as a condition of having its licence renewed.

One final word of caution: The regulator should not attempt to micro-manage in this area. Standards can never be objectively measured, they change over time, and they are meant to enable free, open and vigorous debate, not stifle it. Any procedure for the enforcement of standards should opt for self-regulation of the industry in the first instance, then statutory regulation, then judicial review.

Local content

The one area where many regulators do exercise a certain amount of control over programming is that of local content. The most common way of doing this is by setting quotas to be met by the various stations or even in certain programme genres such as drama or children's programmes.

The proponents of such regulation point to the need for broadcasting in any particular country to have its own recognisable flavour and identity and reflect the reality that people find themselves in. This applies across the board from music to soap operas. Listeners and viewers can easily relate to material produced specifically for them and take pride as a community in the achievements of their own actors, musicians and the like. And this is certainly not a matter of the authorities deciding what is good for the people: Research results have shown again and again that local programming is extremely popular with most audiences. It can also make good business sense by developing the quality of local production and creating employment.

Australia is one of the examples often referred to, where both the music and the film industry received a major boost due to the setting of local quotas. In South Africa there was considerable unhappiness especially among commercial broadcasters when the regulator in 1998 imposed a local music quota of 20 % for radio stations. As a result, sales figures for the local recording industry have gone up from 21 % of the total in 1999 to 32 % in 2003.

Local content on radio is comparatively easy to produce. Television poses greater challenges. There are heaps of material readily available on the international, especially the English language market. Local production, on the other hand, does not come cheap – to put it mildly. (And it should by no means appear to be cheap if it is to keep attracting audiences and not be dismissed as inferior.) BBC Television, for example, broadcasts 78 % local content – with an annual budget of £ 2.5 billion. (And still, the bulk of these productions is described by the British Broadcasting Standards Commission as “humdrum, over-familiar and formulaic”.)

Opinions on how best to achieve a higher percentage of local content differ and so do the methods put in place internationally:

- In Canada, free-to-air television broadcasters must air a minimum total of 60 % Canadian programming. The quota for local music on radio is 30 % with exceptions for niche services such as classic or jazz stations.

- In Australia, the quota for local content on TV is 50 % and it must be met during broadcast hours from 06h00 to midnight. This requirement ensures that clever companies do not seek the easy way out and bury local productions in the “graveyard shift”, the time from midnight to early morning when very few people tune in. On music, the regulator initially also introduced quotas (the highest being 20 % in 1976), but these are since being determined by a representative body of stakeholders in the recording and broadcasting industries, as well as members of the public. Popular music stations have accepted quotas of 25 %, while niche radios have more appropriate quotas set for them.
- In Europe, a “Television Without Frontiers” directive requires all member states of the European Union to set aside half of stations’ air time for “European works”. The degree to which this directive is being implemented varies. France has the highest local content quota of 60 % (which has hampered commercial TV in that country and even bankrupted one service). At the other end of the scale is Germany where there are no quotas at all. Nevertheless, local productions are both plentiful and popular especially on the two public service channels (plus regional public service TV stations) and the two biggest commercial stations. The US government has repeatedly criticised the European broadcast quota as being in breach of World Trade Organisation

principles. The Europeans, however, maintain that broadcast productions are “cultural goods” and therefore not subject to unlimited liberalisation policies.

- In South Africa, all radio services that dedicate more than 15% of air time to the broadcasting of music are required to comply with South African music regulations. At present these impose a minimum quota of 40% for music of South African origin in public service and community radio stations, and 25 % in commercial services. The regulations also define what constitutes South African music: “The majority of production and post production personnel in all levels of production are South African citizens.” In regard to television, there is a more elaborate quota system, with public service TV to offer 55 % local content in its overall programming, commercial free-to-air TV 35 %, and terrestrial subscription services 8 %. The figures for South Africa Drama are 35 % (public), 20 % (commercial), 20 % (subscription); for children’s programmes 55 % (public) and 25 % (commercial); documentaries 50 % and 30 % respectively; and current affairs 80 % and 50 %.

There is ongoing debate, not just in South Africa, on how narrow the definition of “local content” should be. Should it be restricted to material produced by nationals and within the borders of the country only? Could and should there perhaps be provision for productions from the entire African continent or a

region to be similarly categorised and make up part of the quota, so as to promote a regional and continental identity - following the example of the EU.

The African Charter on Broadcasting, adopted by a UNESCO Conference in Windhoek in 2001, says on local programming:

“Broadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas”.

It is important to remain realistic in the discussion, even more so the imposition of local content quotas. While there is no doubt that the aim is a worthy one and that audiences generally like home-made fare, there is also the hard fact that there may not be enough such material available at affordable rates and that the local market may be unable to provide sufficient supplies.

For television, some countries have introduced the “play or pay” principle: If a broadcaster cannot find local material suitable for its genre, it will pay a percentage of its programme acquisition costs into a fund earmarked for the development of local productions. This may not be easy to do in poorer economies, where services work with very tight budgets, but it points to a very important aspect: The stipulation of local content quotas must go hand in hand with the promotion of the local production industry. You can’t have one without the other.

In line with general economic trends, most television operators worldwide now tend to keep their in-house production to a minimum (mainly news and current affairs) and out-source the majority of their local productions. Large public broadcasting organisations in particular, with a wide spectrum of programming on offer, are increasingly finding this to be to their advantage. Considerable savings can be made when they do not need to invest in costly production facilities and keep production staff for all the different genres on the pay roll. Some countries even prescribe that part of their local content production must be outsourced and commissioned to independent producers. The African Charter on Broadcasting says:

“Without detracting from editorial control over news and current affairs content and in order to promote the development of independent productions and to enhance diversity in programming, public service broadcasters should be required to broadcast minimum quotas of material by independent producers.”

Language diversity

Most multi-lingual countries recognise - and cherish, at least officially - their linguistic diversity. In practice, however, there is usually one lingua franca in the business, academic or political field - in Africa mostly the language of the former colonial power. Radio and television, very often, are no exception. And the trend towards that language becoming the preferred choice also on air is fueled by a number of

factors, perhaps most prominently among them the easy availability of ready-made material, and the elevated status widely attributed to the use of the international as against a national language. The Kenyan scholar Peter Mwaura says:

“The way we report events, the way we think about them, and what we decide to do about them is influenced by the language we use. In a very true sense, the medium of expression is also the message”.

Clearly, the issue of language needs to be addressed by society as a whole and not just the broadcast regulator. The African Commission’s Declaration on Freedom of Expression speaks of an “obligation ... to take positive measures to promote diversity” by, among other things, “the promotion and protection of African voices, including through media in local languages”.

The SADC Protocol on Culture, Information and Sport (2001) encourages

“the use of indigenous languages in the mass media as vehicles of promoting local, national and regional inter-communication”.

In South Africa, for example, where the constitution lists eleven languages as “official”, the public broadcaster is obliged by law to serve all of these linguistic groups. It operates eleven different radio stations and broadcasts TV programmes, news in particular, on its three channels in all tongues, according to a carefully worked out roster and their

relative numerical strength. (Quite a costly exercise, as one can imagine.) Commercial broadcasters, on the other hand, are free to choose their languages according to their target audiences. And community stations, by their very nature, speak the language(s) of their communities, often more than in one show, depending on the preference of those calling in.

Regulations on language use, just like those on local quotas, should be approached with a healthy dose of pragmatism – while keeping the aim of promoting diversity firmly in view. As in matters of culture generally, ‘the right way’ for any particular society to go can never be prescribed but only evolve as a result of the totality of individual preferences and a free and open discussion among all.

Advertising and sponsorship

Most broadcasters in the world, including public broadcasters, have come to depend to a large degree on advertisements and sponsorships. Many of us may not like this and prefer to sit through a film without interruptions or enjoy our morning coffee and the breakfast show in peace, not bombarded by unsolicited invitations to buy a certain washing powder or take out a particular funeral insurance policy. But not many would be prepared or able to pay for that luxury, and so most of us rather put up with the nuisance than not have a service at all.

Commercial services are generally free to decide on the amount of advertising they air and it is in their own interest to make sure they keep the right balance, so as not to lose either audiences or advertisers. Community radios, by definition, are not allowed to make a profit – which acts as a natural check on the number and nature of the spots they will carry.

Advertising time on services partly (or largely) funded by public sources, on the other hand, is often limited by the regulator to allow for a level playing field with the commercial sector, where the sale of airtime is the only source of revenue. Limitations used are restrictions on minutes per hour and the prohibition of advertising for certain periods such as, for example, after eight in the evening or on Sundays or public holidays. The public broadcaster should also not be allowed to offer below-market rates to ensure fair competition.

Possible restrictions regarding the kind of advertising in all three tiers of broadcasting relate mainly to products considered harmful to health, such as tobacco or alcohol products. General standards are usually set either by self-regulatory bodies of the advertising industry or by the regulator in consultation with the industry.

In regard to sponsorship, general practice is that

- a programme or series of programmes sponsored in whole or in part, be clearly identified as such by appropriate credits at the beginning and/or end of the programme;

- broadcasters ensure that editorial integrity is not influenced by the presence of sponsorship;
- sponsorship of news and current affairs be prohibited (there are certain exemptions for radio in South Africa, where many stations derive significant revenue from news sponsorship);
- weather forecasts and sports bulletins may be sponsored;
- sponsorship of children's programming must be appropriate and not promote products unsuitable for use by children.

Events of importance

Many countries have developed a list of events of major national importance which must be accessible to the entire audience by way of free-to-air broadcasts that cover the country as widely as possible. This is meant to ensure that receiving coverage of such events does not become the privilege of a few able to pay for subscription services. In effect, this concerns mainly sporting events, given the fact that transmission rights in this field have become a major money spinner with prices demanded by organisers otherwise often beyond the reach of even large public stations. In South Africa, for example, the list drawn up by the regulator comprises, among others, the Summer Olympic Games, the Commonwealth Games, the All

Africa Games, the Soccer World Cup, the African Cup of Nations, as well as a number of national and international knockout competitions.

Election coverage

This is an area where both equal and widest possible access is vital and where the regulator can play a crucial enabling role. In a democracy, all citizens must receive adequate information in the run-up to and during election periods - general voter education, platforms of political parties, candidates, campaign issues - by way of news and current affairs services, as well as through special election programmes and direct access political broadcasts (transmission of rallies and the like).

Internationally, there are different approaches.

- In some countries (e.g. in Europe) it is entirely up to each broadcasting service how to cover elections in its news, talk shows or any other programming - using the professional standard of news value as a benchmark. In addition, all political parties are given free air time for spots of between 30 seconds and two minutes in which they address the electorate in whichever way they see fit. The length and frequency of such spots will vary according to the parties' numerical strength in the outgoing legislature or the previous election.

- Other countries (like the USA) have legal provisions which provide for “equal opportunities” for candidates in the use of broadcasting facilities: If one candidate appears on a programme, all other candidates must be given equal free time - only regularly scheduled news broadcasts are exempted from this rule.
- In the UK, the BBC broadcasts a special series of programmes before a general election - the allocation of time is decided by a Committee on Party Political Broadcasting made up of representatives of the political parties in parliament and broadcasters. In covering election stories during news bulletins, the principle of news value continues to apply.
- In South Africa, the regulator has the duty to ensure that the electronic media treat all political parties equitably during the election period. In doing so the regulator regards itself to be primarily accountable to the broad public rather than to political parties contesting elections or to broadcasters.

Generally, the public broadcaster will have the primary obligation to ensure appropriate election coverage, in line with its public mandate. Similarly, community stations will get engaged at the local level in order to serve their communities.

Democratic societies will respect the editorial independence of commercial broadcasters in covering election campaigns according to

professional news values in their news and current affairs programmes. They must ensure, however, that all political parties are treated equitably. To this end, appropriate guidelines should be developed by the regulator to provide for equal opportunities for candidates in the use of broadcasting facilities, bearing in mind that fairness and equitability should not be judged in terms of quantity only. Broadcasters should seek to achieve fairness through the quality of their journalism, rather than simply the amount of time given to contesting parties.

Ownership

The issue of ownership as a legitimate area of regulation is often overlooked, especially in the initial euphoria of ending the state monopoly over broadcasting, with privatisation appearing to be the obvious solution. Only later, in some cases too late – as in a number of industrialised countries where the principles of the free market were traditionally given free reign in the media industry – it turns out that privatisation alone does not necessarily produce the desired results. At worst, it may result simply in the privatisation of the monopoly itself – with the old monopolist, the state, being replaced by one or two powerful business conglomerates. Both options are equally unacceptable. If the broadcasting landscape that a democratic society seeks to shape for itself is indeed to be diverse and independent, ownership should come under the regulatory spotlight right from the start.

Diversity and independence of the media in general are directly related to diverse and independent ownership. Concentration of such ownership in fewer and fewer hands needs to be guarded against and prevented as far as possible. Typically the trend – worldwide and in Africa - has been for established newspaper owners to take advantage of their experience in media field and the newly liberalised access to the electronic media and branch out into the lucrative broadcasting market as well. Media concentration, therefore, needs to be looked at across the board. It comes about in a number of ways, generally categorised as follows:

Horizontal concentration: When an ever smaller number of companies dominate the media sector.

Cross ownership: When print media companies expand into the broadcasting market and vice versa.

Vertical concentration: When entertainment companies integrate their operations across various industries from publishing houses, magazines and broadcasting services to distribution networks, toys and clothing manufacture and/or retailing, with all of these cross-promoting and cross-selling the same product through their various outlets. This ability to cross-promote products and services has been a powerful incentive for media mergers.

Interlocking directorates: When directors of companies sit on the board of other companies. A director of a media corporation, for example, might also be a board member of a bank, investment or technology firm. In that case, conflicts of interest are

likely to arise and make their way into decisions on the policies of the media house, thus undermining its editorial independence.

Naming the problem is one thing. What to do then to prevent such concentration? Many countries have introduced legislation to promote and maintain competition, largely similar in intent and overall thrust. The basic difference of opinion is over whether competition in the media market should be safeguarded by general competition legislation or by regulations specifically designed for the media.

Many countries have generally applicable anti-trust laws in place to prohibit monopolies and anti-competitive conduct. Such laws apply to the steel or the automobile industry in much the same way as they do to the print media, television broadcasting networks or news bureaus. In addition, some have enacted a number of media-specific ownership laws, premised on the idea that the media are not just producers of a commodity, and therefore demand a different, more specific way of organisation or regulation. According to prevailing legal and political opinion in the USA, for example, a society is likely to find concentration of power in the field of free speech more troubling than in other areas with less consequences for democratic values.

Internationally, regulation regarding *cross-ownership* takes various forms:

1. Shareholding of TV licencees in other TV operators:

- General restriction: No person shall exercise control over more than one TV licence (South Africa); no person shall own more than two TV stations (US);
- Licence area: A TV licensee is not allowed to have shares in another service operating in the same area (Australia);
- Market share: A TV licensee is not allowed to hold more than a certain percentage of market share (e.g. 30 % in Germany, 15 % in the UK);
- No limits are set: for example in Sweden.

2. Shareholding of TV licencees in radio stations and vice versa:

- General restriction: TV licencees are not allowed to own national, but regional/local radio stations only (Hungary);
- Licence area: Multiple shareholding not allowed in the same area (Australia);
- No limits: for example in Germany and USA.

3. Shareholding in more than one radio station:

- Multiple shareholding not allowed in same licence area (e.g. Hungary, Ireland, Netherlands); not more than two stations in one area (Australia);

- No person shall exercise control over more than 35 % of the number of licensed radio services, and not more than 2 radio services in the same licence area (South Africa);
- Up to 35 local stations or maximum four local plus one national station (UK);
- No limits: for example Germany, Sweden, USA.

4. Cross-ownership between print and broadcasting media either

- has no limitations (e.g. Germany, Sweden); or
- is not allowed in the home market or same licence area (e.g. Australia, USA);
- is limited in terms of percentages of shares which newspapers may invest in broadcasting enterprises or vice versa (UK);
- is limited according to circulation figures (in France, e.g., a newspaper which controls up to 30 % of the daily press is not allowed to control any other media);
- is limited depending on a combination of shareholding and circulation figures: a newspaper is able to acquire or retain a financial interest in a radio or television

licence, but may not be allowed to have control over that licence if its Audit Bureau of Circulation figures exceed the prescribed limit of 25 % (South Africa).

If you think all of this looks more like an elaborate employment creation scheme for lawyers and media consultants than anything else – think again. Most of these regulations have come about in answer to adverse developments in media markets previously left to their own devices. And ‘adverse’ in this context means nothing less than that the basic right to freedom of expression and information was (in danger of) being eroded. To prevent that from happening and, if possible, avert such a danger right from the start, is surely worth the effort.

On the other hand, one argument in favour of a more liberalised media market especially in small economies should also be taken into account: The principle of competition and the costs involved in enforced separation between the various media entities need to be balanced. While monopolies over the “opinion market” must obviously be prevented, the fact is that in many poorer countries newspapers often only manage to survive financially because they also operate a successful radio and/or TV station. This allows for cross-subsidisation, i.e. using the profits from the one to make up for losses in the other, and makes operations in both arms more cost efficient because of the resulting economies of scale and synergy effects. Taking an extreme – and not completely hypothetical – case, the public might lose both the paper and the radio station if such a possibility is outruled completely. Creative solutions

need to be found to fit the circumstances in each individual country.

One other important aspect regarding ownership, and again one that is of special importance for smaller economies with limited resources, is the extent to which *foreign ownership* should be allowed or regulated. Where such regulation exists the options vary widely:

- No limits are imposed: in EU countries regarding investment from other EU members; other foreign nationals are allowed shares of up to 49 %;
- Up to 20 % of shares (South Africa; this is about to be changed to 25 % for a single foreign investor in an unlisted radio firm, 35 % for a single foreign investor in a listed radio company and 35 % for group investors);
- Allowed by special approval only: granted by the regulator or national treasury (e.g. UK, Australia, Ireland);
- No foreign ownership is allowed: e.g. in Japan.

As can be gathered from these few examples, foreign ownership is generally regulated according to each country's specific national interests. Where there is a trading bloc, as in the case of the EU, the principle of the free flow of capital supersedes the national interest within the bloc, but does not extend beyond its borders. There are plans presently in the

UK and Australia to liberalise foreign ownership rules. It is worth noting, though, that both these countries were able to develop their own broadcasting sector over a very long period of time. Only on the basis of a well established industry are they now beginning to consider opening up their borders for unrestricted foreign ownership.

The aim of limiting foreign ownership is obvious: to maintain diversity and protect the distinctive character of a country's own broadcasting services. Younger and developing democracies, while seeking to attract foreign investment, will and should be particularly mindful of that need. Again, they will have to work out their own best way to balance both requirements.



7. Licensing

Once all the necessary policies and regulations are in place - while still leaving enough room to make adjustments as the need arises - the main task of the broadcasting regulator is to issue licences. These will be valid for a specified period of time and be linked to a number of clearly spelt out general and specific conditions. Adherence to these conditions will be monitored by the regulator on an ongoing basis and violations will be sanctioned, in extreme cases by revoking the licence.

Internationally, there are two schools of thought with regard to licencing:

- the free market approach, which allows for as many operators as can be accommodated on the frequency spectrum: market forces will determine which will survive and which will not;
- a more “guided” market approach with the objective to ensure that new players are

economically viable and that they contribute to the diversity of services offered.

Accordingly, there are two basic ways of granting licences:

- Auction: Available frequencies are auctioned to the highest bidder. The advantage is that the manner of allocation is transparent to all applicants. The disadvantage is that the auctioning process limits the circle of potential applicants to those with the most cash available. An auction can also lead to problems later if the bidder paid too much for the licence and can not then provide an adequate service.
- Beauty contest: Available frequencies are publicly tendered and the regulator issues licences to successful competitors according to pre-set criteria. The disadvantage is that, if these criteria are not clearly defined, the decision process might be perceived as subjective. The advantage is that the regulator can actively contribute to creating a diverse broadcasting landscape and broaden choices for the audience. The main criteria for allocation will be the profile of intended programming, the nature of ownership and the viability of the proposed service. Internationally, the beauty contest is the preferred option.

The regulator will not necessarily put all technically available frequencies up for tender or not all at the same time. It may prefer a more cautious approach: find out what the prevailing circumstances, including economic conditions are in the country as a whole and the various regions, and establish how many broadcasters are likely to be sustainable. Fewer but healthy and vibrant stations with a recognisably individual flavour may do more to create the desired diverse broadcasting landscape than a large number of struggling ones, all battling to survive and of low quality.

Criteria

The criteria for licencing will include:

- The demand for the proposed broadcasting service within the proposed licence area, having regard to the already existing services;
- The type of service applicants propose to provide, e.g. music to speech ratio; ratio of original to repeat programming; space devoted to news and current affairs - national, international and local; sports coverage; the range and type of music to be played; features and documentaries; minority language programming; plans, if any, for the purchase of broadcast material from other broadcast organisations and independent producers;

- The quantity, quality, range and type of local programming and the extent of programme production relating to local culture, as well as the extent to which the applicant will create opportunities for local talent in journalism, music, drama and entertainment;
- The undertaking by the applicant to service audience groups neglected by other broadcasters, or to cater to the needs of particular communities;
- The expected technical quality of the proposed service, having regard to developments in broadcasting technology;
- The capability, expertise and experience of the applicant;
- The financial means and business record of the applicant;
- Transparent ownership and control structures in line with existing provisions on media concentration.

Some aspirant broadcasters have been known to promise heaven on air in their applications in order to beat their competitors. The regulator in South Africa has found a simple way of keeping such hyperbole in check: applicants are informed beforehand that when a licence is granted, all programme promises will become part of the licence conditions.

Procedure

Bearing in mind that the regulator plays a facilitating role and needs to be seen by all to be fair and even-handed in its decisions, the licensing process should be easy, unbureaucratic and transparent, with the various steps of the procedure clearly outlined.

- The frequencies assigned to the various broadcasting sectors will be put up for public tender in advertisements in all major papers.
- To assist potential tenderers, the regulator will provide information packages for the relevant broadcasting categories.
- The regulator will convene a meeting with applicants to clarify the licensing process.
- Within a reasonably short period, say 30 days, after the deadline for applications, the regulator will publish a list of all applicants in the national media, giving particulars of the applicant, the licence area and the nature of the proposed service.
- The regulator will invite interested persons to lodge objections – in writing - within two weeks from the date of such notice.
- Where objections have been received, the regulator will, say again within 30 days, convene a public hearing to which the applicants, persons who have lodged objections and the general public as observers shall be invited.
- Within two months after the receipt of applications (or, where objections have been

raised, within two months after the public hearing), the regulator will decide on the applications and provide written reasons for its ruling.

All licences will be granted for a specified period of time and be renewable. With the amount of investment required for setting up and running a broadcasting service, operators need to be able to plan well ahead and be reasonably sure that their licences will be renewed as long as they keep doing what they set out and are expected to do.

Monitoring and penalties

Once the newly licenced broadcasters are on air, the regulator has the ongoing task of monitoring just that: that all comply with both their specific licence conditions and the broadcasting law in general. This may sound like a mammoth task and conjure up images of 'Big Brother' - and many little helpers - cooped up 24 hours a day in a room full of screens, loudspeakers and recording devices. This is not how it is going to happen! At the risk of repetition (but perhaps this cannot be said often enough): the regulator is an enabling body, not a bunch of control freaks. It also has limited resources and should not even attempt to do the impossible.

The democratic, common sense approach relies on the cooperation of service providers as well as

listeners and viewers. Many broadcasting laws oblige operators

- to keep and store sound and video recordings of all programmes broadcast for a minimum period of three months, and
- on demand by the regulator, to produce such material for examination.

The regulator may do occasional spot checks itself, but the more usual case will be for it to receive specific complaints from concerned citizens. So if a radio station, for example, carried unethical advertising or a television station aired pornographic material, the regulator will demand that specific recording for it to make a finding. By the way: this way of record keeping will also help the operators themselves to deal with complaints received directly from the public. The recording of a live interview may well demonstrate that the statement in dispute was not what the listener heard or remembered.

In addition, the regulator will oblige broadcasters to keep a number of other records such as documentation on ownership and management, a log of all programmes broadcast and the percentage of local music played, a file of public complaints received and correspondence in this regard. Community broadcasters will be requested to keep minutes of the proceedings of all annual general meetings and board meetings, documents that reflect their community support and a list of all donations.

From time to time, the regulator will ask a licence holder to submit such records for examination. It will check the material to see whether the service is indeed in compliance with its licence conditions, and issue a report on its findings. If there are minor irregularities, the regulator will recommend action to rectify the situation. In more severe cases it will impose penalties.

Most broadcasting acts include provisions for such penalties. These range from a warning to fines and up to the suspension or even withdrawal of the licence. If a broadcaster is in breach of its licence conditions, of the law or of regulations issued by the regulator, it will first receive a warning, specifying remedial measures to be undertaken. If the broadcaster does not take appropriate action within a specified period, a fine will be imposed. Serial offenders or those who persistently ignore the regulator's rulings may have their licence suspended for a certain period or, in extremely serious cases, even withdrawn. Such a drastic step, however, will be a rare exception.



8. How to organise the regulator

Given this long list of various duties, some might think that quite a sizeable bureaucracy must be needed to tackle all of them adequately. Not really. Rather think lean and mean.

As a rule, board members will only serve part-time in their positions. (South Africa's regulator is one of the few to have a full-time board, which has not exactly led to the most efficient of work processes and the speediest of deliveries.) Board members will meet every month or two to decide on the issues before them, and appoint a full-time executive director to run the day-to-day affairs, together with a core support staff: a couple of engineers able to check whether operators follow technical standards set, perhaps a legal expert, a few monitors to follow up on complaints and examine records held by the broadcasters, and a minimum of clerical staff.

At the start of the transformation process, when the independent regulator is being established and needs to develop policies, a frequency plan, regulations and tender procedures, the workload is indeed considerable - and so might be the temptation to set up what will quickly turn out to be an overblown structure: overstaffed and overly

expensive. Instead, the body might look at the option of outsourcing some of the groundwork to be done to experts on an honorarium basis.

Costs for this first stage should be covered from the state budget. Once the regulator is fully operational it will have an income of its own from fees charged for the issuing of licences. In South Africa, these fees go into the state coffers, and parliament allocates a budget for the regulator. This creates a dependency which should be avoided. Other regulators calculate their fees in such a way as to cover their operating costs. This makes them independent from outside influences and is a fair way of charging for services rendered.

To merge or not to merge?

So far, we have been talking about the regulator being in charge of broadcasting only. In recent years there has been an increasing tendency, especially in industrialised countries, towards creating combined authorities responsible for both broadcasting and telecommunications regulation. The reason given is the steady convergence of broadcasting, telecommunications, information technology and other electronic media – the aim is to avoid overlap of responsibilities and bring all these areas together under one roof.

Currently, there are four models for the regulation of broadcasting in place worldwide:

1. An authority acts as a “one-stop-shop” and decides autonomously on the granting of licences and frequencies - after the telecommunications authority has determined the frequency spectrum for use by broadcasting services. In this scenario, the telecommunications authority will ‘hand over’ the entire broadcasting frequency spectrum to be managed by the broadcasting authority (example: Germany).
2. An integrated communications authority, usually consisting of two separate departments, is in charge of both broadcasting and telecommunications issues - a relatively new approach, applied in Switzerland, Italy, and South Africa. In Britain a new Office of Communications (OFFCOM) is currently being created to incorporate the Independent Radio Authority (IRA) and the Independent TV Authority (ITV). It is argued that the new centralised regulator OFFCOM will be able to offer better strategic responses to the challenges of multi-media convergence with a pool of professional skills under one roof dealing with ICT, radio and TV.
3. A broadcasting authority has regulatory powers over telecommunications and infrastructure as far as broadcasting signal distribution is concerned - the traditional model, as practised in Austria, for example.
4. There are two separate authorities, one dealing with broadcasting, the other with telecommunications - a model still in use in

Spain, for example. In practice this means that a broadcasting service will need to apply for the go-ahead to both authorities separately before being allowed on air.

Most developing countries prefer the first model – for good reasons. Regulation of broadcasting, as we have seen, is primarily about shaping the overall broadcasting landscape as well as about broad programme content and professional principles designed to further the aims of a democratic society, while telecommunications regulation is first and foremost about purely technical and economic matters of transmission. Both fields of work need different kinds of expertise – not readily found in the same kind of people. Experience in existing combined bodies has shown that the two groups do not merge easily but tend to talk past each other and end up operating separately, much like they used to in their previously separate bodies.

Experience in Europe also shows that in a combined body the necessary arms-length relationship between the state and the regulator may be jeopardised: While the state has a role to play in the area of telecommunication, due to its international responsibilities in this field, the broadcasting regulator needs to be completely independent if it is to play the role expected from it in a democratic society.

And the chance of cutting costs by having just one body with a shared infrastructure instead of two? Since the Independent Broadcasting Authority (IBA) and the South African Telecommunications

Regulatory Authority (SATRA) merged to become the Independent Communications Authority of South Africa (ICASA) in 2000, it has turned out that the hoped for synergy effects did not materialise: The workload was not reduced by avoiding duplication and overall staff numbers did not come down. The small savings made through sharing finance and support structures have been outweighed by the separate and distinct demands of broadcasting and telecoms regulation. The bottom line: the new, integrated body is just as expensive – or cost efficient - as its two predecessors.

Whichever model is chosen: it should be kept in mind that industrialised countries had the chance to develop their broadcasting industries over many decades with the help of specialised regulators and are only now about to consider or implement combined authorities. Countries which are still in the process of building up a vibrant broadcasting landscape will probably be better served by one specialised body. Even South Africa had six years of sector-specific regulation of broadcasting before the birth of ICASA. In that period the broadcasting regulator was able to focus exclusively on the vital task of broadcasting reform and to achieve key milestones.



9. What about the future?

Technological advances in broadcasting currently under way are not likely to make the regulator's job any easier. These are not just about improving the quality of sound and image. Above all they allow much larger volumes of material to be broadcast through new modes of transmission.

Broadcasting signals used to be spread terrestrially over a specific geographic area with the help of transmitters. In addition they can now be sent via cable to individual households – after the installation of the physical, quite costly infrastructure. Or they can be beamed up to a satellite and from there back down directly to customers with the necessary decoders to receive such signals (satellite dishes).

Both cable and satellite transmission circumvent the physical limitations set by the broadcasting spectrum and give service providers and audiences a much wider choice of options. This effect is going to be increased dramatically by the latest development, often referred to as the digital revolution – the change from analogue to digital signal distribution. This technology basically

compresses sound and image into distinct small packets. Such digital signals can be carried in very large numbers either terrestrially, or via cable or satellite. To receive the signal you need a digital radio or TV set or, in the case of TV, a device to decode the encoded digital signal, i.e. convert it into a format that is readable by the existing set: a so-called set-top box.

In future, everyone – not just those who can afford to pay for subscription services – will have the choice of potentially hundreds of channels with much better image and sound quality. And operators will be able to offer a much greater variety of products, from full-time channels to an individual choice of pay-per-view movies. Transmission costs will also be lower.

This revolution will not come over night. The new technology is facing more resistance from consumers than originally expected, even in highly industrialised societies. Digital Audio Broadcasting (DAB) was hailed as the one and only future of radio ten years ago, certain to replace the old FM receiver with its limited number of frequencies and offering many more stations and sound quality equal to that of CDs. In Europe, governments and broadcasters invested millions of euros into the new technology, but the project turned out to be a tremendous flop. In Germany, for example, by 2002 only 15,000 DAB receivers (at a price of between 250 and 500 euro) had been sold. Consumers are obviously happy with the more than 30 radio programmes and perfectly acceptable sound on their old FM sets.

For TV the situation is slightly different. A wider choice of home movie quality viewing is obviously attractive, and so the “switchover”, meaning the migration of households from analogue to digital reception, is gaining momentum. But people – even in supposedly affluent societies - do tend to think very carefully before investing in a new TV set, even more so an expensive digital one. Digital terrestrial TV was introduced in Germany in late 2002, with the densely populated capital, Berlin, as a pilot area. Projections are that it will take up to eight years to extend the service to the entire country. Of course, analogue transmission is being continued - but for a limited time only. This so-called double illumination period, while broadcasters are obliged to offer both modes of signal distribution, is obviously an expensive exercise and thus needs to be kept as short as possible.

In Africa, discussions and efforts are under way here and there to convert terrestrial transmission from analogue to digital. Given the complexities, social implications and costs involved, such conversion needs long term national and international planning – and millions of dollars of investments. In South Africa, for example, the whole switchover has been estimated to cost almost US\$ 860 million.

But the revolution will come – in Africa and the world over. Regulators and policy planners need to prepare themselves for the digital age now. And they must decide on the kind of signal delivery system best suited to their country's specific needs.

Terrestrial transmission of digital signals allows mobile reception: programmes can be received directly and the existing network of masts can be used, just fitted with new transmitters. The disadvantage is that the number of channels carried terrestrially still remains limited. Digital broadcasting via cable, on the other hand, offers the largest potential carrying capacity. The obvious drawback: the costly infrastructure with cables laid to each individual household would have to be built from scratch - a cost that few African countries will be able to easily afford. Satellite broadcasting is the most cost-effective delivery mechanism if the entire nation or a region is to be served. In this case, however, viewers will need to buy a satellite dish to receive the signals. On balance, the system most likely to be used on the continent in the future will probably be terrestrial or satellite digital broadcasting.

Whatever the technology chosen, with digitalisation the spectrum especially for TV transmission will grow exponentially and become almost limitless. And when there is a multitude of available channels for broadcasting, the traditional argument for regulation – the scarcity of frequencies - will fall away. Will this then mean the end of the need for regulation altogether?

Some media experts suggest that in future the “scarcity rationale” be replaced by a “public property rationale”. The spectrum, be it small or huge, still remains public property. And there must be a mechanism to ensure that all citizens, regardless of their economic status, have access to broadcasting.

If there was no public oversight over the spectrum and the free market reigned supreme, private companies might give access to their programmes only to those households able to pay for their services, and offer quality services at a correspondingly high price only. This would create a society of different classes with different standards of information and run counter to the democratic principle of equality.

The public interest goals as outlined earlier remain valid in the digital age: universal access, diversity, independence and promotion of economic growth. And regulation will continue to be needed to guarantee fair rules of competition, adherence to certain programme requirements and standards as well as technical standards, and respect for the rights of audiences. With a dramatic widening of choices it becomes even more important for the regulator to ensure equal chances of access to broadcasting and distribution facilities, and to prevent over-concentration of ownership and control over broadcasting by one or a handful of monopolists.

The regulator must see to it that free-to-air services, financed publicly and/or by advertisements, remain meaningful and of sufficient standard and appeal, compared to all other offerings in the market. Access to attractive programmes must not be restricted to viewers who can afford to pay a subscription or a per view fee.

Cable distribution systems in particular need to be licensed to ensure compliance with technical

standards. The regulator must safeguard that cable operators provide universal access for all broadcasting services equally in accordance with technical capacity (“must-carry” rule) and that fees charged are reasonable. And it must see to it that there is no cross-ownership in these two fields: Cable operators and broadcasting services must be separate legal entities: cable operators should not distribute their own programme content, and should not have a stake in broadcasting services.

And what about satellite broadcasting? In many countries, the regulation of distribution of television or radio signals via satellite forms part of the duties of the broadcasting regulator. This may be easier said (or legislated for) than done - satellite signals obviously know no borders and can enter a market without permission. The international trend therefore is to follow an ‘open skies’ policy that allows for regulation of trans-border services in their country of origin only. Many regulators have decided to go the pragmatic route and not try to prevent the reception of any spill-over signals that may be available in their respective countries even though they are not intended for that market.

Finally, there is also the Internet which increasingly carries radio and TV programmes as well. Worldwide, Internet has gained acceptance much faster than all other electronic media before it. Radio needed 38 years to reach more than 50 million users, television 23, and Internet only 5. Even in developing countries it is often punted as *the* communication solution of the future. This may well

be the case, but a few sobering facts should be borne in mind.

Access to the Internet depends not only on the availability of telephone lines (basic access) but, to an even larger extent, on their quality. Among others, this is measured in terms of bandwidth, i.e. the carrying capacity of the digital highway measured in bits per second. For good quality Internet services, including the reception of broadcast programmes, huge investments into the extension of the existing network of fixed telephone lines are needed to allow for the inclusion of broadband technologies and the introduction of Integrated Services Digital Network (ISDN) lines.

A typical Internet user needs 18 times more bandwidth than a typical telephone user, and the needs of Internet users are likely to increase with websites offering broadcasting and multimedia services. Looking at the availability of capacity internationally, the 400.000 citizens of Luxembourg between them at present have access to more international Internet bandwidth than all of Africa's 760 million citizens. Growth in fixed lines infrastructure in Africa is slow and in some cases almost coming to a standstill, giving way to mobile telephones, which are often the more cost effective option but whose Internet connectivity is still being developed. The introduction of ISDN is proceeding at an even slower pace.

Quite literally there is still a lot of ground to be covered before Africans will be able to profit equally from Internet technology. Nevertheless, the

problems arising from the convergence of Internet and broadcasting – two very different animals in their scope and original intention - are already high on the agenda of policy makers. Regulators must be prepared to tackle them intelligently and efficiently when the situation demands it. The various options of governing cyberspace under international debate - geographically based law, international treaties, international organisations or voluntary acceptance of technical protocols - are all still inconclusive and largely untested at present. More informed input from all sides is necessary.

All in all then there is no danger of regulators running out of work to do in the brave new information world. And in a truly democratic society the citizens' right to equal and free access to quality information needs to be defended continuously. The new technologies raise the bar for policy makers and regulators and present both new chances and new challenges.