1. Introduction

1.1 What is media regulation?

The `media' whose regulation I am discussing are the public means of mass communication, especially the press, radio and television, but also including film and recorded music as well as a number of newer means of distribution by way of cable, satellite, discs, tapes, etc. Of increasing importance is the internet, which can now be regarded as a `mass medium' in its own right on the grounds of its gradual diffusion to majorities in many countries and its use for a number of public communication functions in the sphere of both entertainment and information. The boundary between public and private communication is an important one from the point of view of regulation, but it is much less easy to identify than in the past, especially in relation to the internet which serves as means of personal communication as well as a means of dissemination and form of publication. To some extent, the same applies to mobile phones.

Regulation refers to the whole process of control or guidance, by established rules and procedures, applied by governments and other political and administrative authorities to all kinds of media activities. Thus regulation is always a potential intervention in ongoing activities, usually for some stated “public interest” goal, but also to serve the needs of the market (for instance, by supporting competition) or for reasons of technical efficiency (for instance, setting technical standards). Regulation takes many forms, ranging from clauses in national constitutions and laws to administrative procedures and technical specifications. Regulation can be internal as well as external. In the former case, we are usually speaking of “self-regulation”, where internal controls are applied, sometimes in response to public pressure or criticism from outside.

1.2 The historical background to media regulation

The history of media regulation begins with the application of the printing press to book production from the mid-15th century onwards in Western Europe. Initially, printing was simply a more productive alternative to the copying of manuscript texts by hand, which had not been formally regulated, although in practice it took place mainly under the oversight of authorities of church or state. As the printing trade and industry expanded, especially after 1500, both church and state took an increasing interest in the content of what was being printed and published,
especially with a view to combating heresy or dissent. This led very widely to the licensing of all printers by the state and/or the requirement for advance approval by church authorities for texts to be published. The export and import of books was also controlled or forbidden. Authors and printers could also be severely punished for publications deemed heretical or treasonable. In more autocratic states, such as the Ottoman Empire and Russia, printing was simply banned for two hundred or more years.

Between the 16th and 19th centuries in Western Europe and North America, the history of media regulation was one of struggle against restrictions on publication waged in the name of political freedom and human rights, but also on behalf of the printing trades and industries, including the rights of authors. The freedom to publish was achieved by gradual change in Britain and by revolution in France at the end of the eighteenth century and gradually in territories of the Austrian and Prussian Empires during the nineteenth century. Similar freedoms were never really attained in Russia, even after the Revolution of 1917, nor in the British colonies and Japan until much later in the twentieth century. For most of the world during the modern era, repressive and punitive media regulation in the interest of state power has been the norm.

A new dimension to regulation was added by the invention of new media during the nineteenth century, especially the electric telegraph, then the telephone and wireless, which led to public radio broadcasting from 1920 onwards. All these media were closely regulated by national laws that were more or less required by international agreements relating to technical requirements (e.g. radio frequency allocation). They also served other interests of state, including military and economic considerations. Often regulation took the form of control by state bodies or public monopolies. In other cases, such as the United States, supervision was exercised by a powerful governmental body (the Federal Communications Commission). During the early 20th century, the cinema film was also established, typically regulated locally for reasons of safety (fire) and/or content (moral standards).

Broadcast media (radio and television) were the most closely regulated of all media nearly everywhere during the twentieth century and they have never achieved the degree of freedom enjoyed by print media. Since about 1980, new forms of distribution by cable and satellite have led to a great expansion of media output and to more relaxed regulatory regimes, especially in relation to content. Although there has been deregulation of media, it is often remarked that, in response to the advent of new media and changed conditions, we are really in a period of re-regulation where regulatory frameworks are amended to reflect new economic and/or political priorities rather than simply removed.

1.3 Why are media regulated?

There is a contradiction intrinsic to the notion of regulating what are supposed to be the free means of expression and information in a modern society. Regulation by its very nature sets limits to freedom, which is the most basic principle of democratic societies. At the very least, this means that there have to be clear and convincing reasons for regulation, and although we can give general justifications for regulation that help to reconcile it with principles of freedom and democracy, we cannot escape from this underlying tension.

There is no single or simple answer to the question `why regulate?’ and often the surface reasons given conceal other purposes (especially the interests of the state). Even so, six general reasons for media regulation can be proposed, as follows:
- The management of what is arguably the key economic resource in the emerging ‘information society’, with a very high dependence on all forms of communication.

- The protection of public order and support for instruments of government and justice.

- The protection of individual and sectional rights and interests that might be harmed by unrestricted use of public means of communication.

- The promotion of the efficiency and development of the communication system, by way of technical standardization, innovation, connectivity and universal provision.

- The promotion of access, freedom to communicate, diversity and universal provision as well as securing communicative and cultural ends chosen by the people for themselves.

- Maintaining conditions for effective operation of free markets in media services, especially competition and access, protection of consumers, stimulating innovation and expansion.

### 1.4 The `public interest' in communication: political, cultural and economic aspects

Although the precise meaning of the term can be disputed, we can speak of there being a `public interest' when something at issue is widely considered to be essential to the longer term welfare of society and its members. Societies differ in how they interpret the specific content of the public interest in respect of communication. Nevertheless there are many cross-national similarities in the arrangements made to protect, control or encourage communication and in the main reasons for doing so. From early times, physical communications such as roads, bridges, canals and harbours were built and maintained at public expense for the general good.

Modern mass media have added a new layer to the communication services, raising new and more complex issues about what is in the public interest. These issues can be considered in terms of three main functions: political; social-cultural; and economic. These can be located in a broader framework of policy and regulation as shown in Van Cuijlenburg and McQuail model (Van Cuijlenburg and McQuail, 2003, p.184).

Let us now briefly consider the three main components of the public interest as indicated in their model.

#### 1.4.1 Political functions of communications media

The machinery of politics, especially competition between parties for support via democratic elections, simply cannot operate without a large and continual flow of information in the public arena. Active participation in political life by the majority is an essential component of democracy, but it too depends on an adequate flow of communication to and amongst citizens and constituent bodies. Possibilities for expressing and disseminating views critical of government have to exist, along with proposals for policy and new ideas. Regulation may be needed to secure all these conditions.

#### 1.4.2 Social-cultural functions of communications media
The social and cultural functions of communication relate to the whole range of news, entertainment and arts, amusement, sports coverage and public education. The media now play an essential part in: the expression and continuity of national and cultural identity; the reflection of regional, ethnic and other forms of diversity; and the 'binding together', by intercommunication, of society as a whole and of particular communities and constituent elements. Each separate institutional field of social and cultural life (e.g. education, the arts, leisure and sport, religion, science) has extensive internal and external communication requirements.

1.4.3 Economic functions of communications media

The economic value of communication to society is unmistakable and is increasing all the time. The mass media and many related communication activities are often industries in themselves, producing informational products. A large and growing sector of industrial production is devoted to electronics and information technology hardware and software of all kinds, from radio sets to mainframe computers or telephone systems. It is thus not surprising that communications businesses are regulated just like other businesses. Special policies are often formulated to stimulate the application of communication technology in the economy and the growth of the information technology sector. They may also be intended to protect national economic interests - see, for instance, complaints about piracy and arguments about cultural protectionism between the USA and Europe in the context of the World Trade Organisation (WTO). Media market regulation also aims at reducing monopoly and stimulating competition for reasons of efficiency.

Activity One (Allow 20 minutes)

Briefly summarise the main reasons for the regulation of mass media. Think of an additional example of a political, economic or social/cultural need fulfilled by the media, and consider in your answer why that need might not be fulfilled by the market left to itself. Do you yourself think there should be more or less regulation?

2. Media Theory, Policy, Regulation and Accountability

Regulation of the media normally takes place within a broader framework of principle and policy. We can think in terms of a hierarchy, with three main levels consisting of theory, policy and regulation, in increasing degree of specificity, followed by means of implementation. As shown in Figure 2, an overarching idea such as that of freedom of expression or human rights is expressed in broad policies for communications media. Such ideas provide direction and legitimation for proposals and actions to secure the public interest. These policies have then to be implemented in regulations that are applied either formally as legal or administrative rules or informally as voluntary industry and professional self-regulation. The matters regulated or self-regulated are: media structure, conduct and content, plus various technical and organizational matters.

<table>
<thead>
<tr>
<th>THEORY, PRINCIPLES, IDEAS</th>
</tr>
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<tr>
<td>POLICIES FOR MEDIA</td>
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Media theory refers to the complex of social-political-philosophical principles which organize ideas about the relationship between media and society. Within this is a type of theory called `normative theory', which is concerned with what the media *ought* to be doing in society rather than what they actually do. In general, the dominant ideas about the obligations of mass media will be consistent with other values and arrangements in a given society. According to Siebert et al (1956) in their book *Four Theories of the Press*, “the press takes on the form and coloration of the social and political structures within which it operates” (pp.1-2). The press and other media, in their view, will reflect the “basic beliefs and assumptions that the society holds”. In the western liberal tradition, this refers to matters such as freedom, equality before the law, social solidarity and cohesion, cultural diversity, active participation, and social responsibility. Different cultures may have different principles and priorities.

Although normative theory of the press is now in a considerable state of uncertainty (see Nerone, 1995), not least because of changes in the media and the rise of new media forms, we can still identify certain broad traditions of thought about the rights and responsibilities of media in society and the degree to which `society' may legitimately intervene to protect the public interest. The main relevant variants can be described as follows:

**Authoritarian** theory (which applies to early pre-democratic forms of society and also to present-day undemocratic or autocratic social systems). In this view, all media and public communication are subject to the supervision of the ruling authority and expression or opinion which might undermine the established social and political order can be forbidden. Although this `theory' contravenes rights of freedom of expression, it can be invoked under extreme conditions.

**Free press** theory (most fully developed in the United States of America, but applying elsewhere) proclaims complete freedom of public expression and of economic operation of the media and rejects any interference by government in any aspect of the press. A well-functioning market should resolve all issues of media obligation and social need.

**Social responsibility** theory (found more in Europe and countries under European influence) is a modified version of free press theory placing greater emphasis upon the accountability of the media (especially broadcasting) to society. Media are free but they should accept obligations to serve the public good. The means of ensuring compliance with these obligations can either be through professional self-regulation or public intervention (or both).
Development media theory (applying in countries at lower levels of economic development and with limited resources) takes various forms but essentially proposes that media freedom, while desirable, should be subordinated (of necessity) to the requirements of economic, social and political development.

Alternative media theory. From a social critical perspective the dominant media of the established society are likely to be inadequate by definition in respect of many groups in society and too much under the control of the state and other authorities or elites. This type of theory favours media that are close to the grass-roots of society, small-scale, participative, active and non-commercial. Their role is to speak for and to the social out-groups and also to keep radical criticism alive.

Often, the media system of a given country will have a mixture of theoretical elements and media types, displaying neither absolute freedom nor absolute subordination to the state or ruling power. Hallin and Mancini (2004) have argued that we should forget about normative theories and look more closely at actual arrangements connecting media with society. They propose a typology of relations between the media system and the political system, based on a comparative examination of contemporary national societies. In this view there are three types or variants, each with different implications for the role and obligations of the media in society:

- a *Liberal* model in which the media operate according to the principles of the free market; without formal connections between media and politics and with minimal state intervention;
- a *Democratic Corporatist* model in which commercial media coexist with media tied to organized social and political groups and the state has a small but active role;
- a *Polarized Pluralist* model, with media integrated into party politics, weaker commercial media and a strong role for the state.

As with the theories outlined previously, these models are also `ideal types' and in practice societies have a mixture of the elements outlined. Public service broadcasting is found in two forms in the second and third models as, respectively, either a neutralized and politically impartial organization or as politicized in some way, usually with division in terms of the political spectrum. In the fully Liberal model, there may be little or no place for public service broadcasting.

**Activity Two (Allow 2-3 hours)**

Before going any further, you should now read chapters 7 and 8 of *McQuail’s Mass Communication Theory* (McQuail, 2005).

**2.2 General principles of media theory in the western model**

Leaving aside such differences, we can still find a good deal of agreement about the principles that should be advanced or respected by mainstream media in countries that seek to follow the liberal/democratic model of a media system. Disagreement is found mainly over the *means* by which the principles can be achieved (e.g. by regulation, self-regulation, or market forces). The main principles can be stated as follows:
Independence: The media should be free to follow their chosen cultural and informational objectives, without undue pressure or limitation from interests other than those of their chosen audiences (especially not pressure from government, business, pressure groups and propagandists). Independence is a necessary condition for playing a critical and creative role in society.

Diversity or pluralism: There should be a wide variety of media in terms of culture, information and ideas. People should be able to choose from a wide range of alternatives according to their different needs, points of view, beliefs and tastes. For this to be achieved there needs to be diversity of ownership and also real opportunities for access to all main voices and interests in society.

Information quality: The news and information made available to the public by the media should be of a high standard of quality, in the sense that it aims at the truth and is extensive, trustworthy, professional, accurate, relevant and balanced (diversity again).

Social and cultural order: There are expectations that the media will not deliberately offend the basic norms of their society (by encouraging crime, for instance, or subverting a legitimate political system) and that they will make a positive contribution to the maintenance of national and minority languages and cultures.

Some of these principles are potentially in conflict with each other (for instance, freedom versus order, majority cultural values versus those of minorities). One of the aims of media regulation is to manage such tensions and mediate conflicts.

2.3 Media policy and policy making

Between such general statements of principles and actual regulation we expect to find policies, which are projects of government formulated in particular countries for application to their own media systems. Communication policies are usually formulated as a result of pressures from public opinion or from self-interested groups (e.g. a branch of the media industry).

Media policies organize goals and means of action in relation to the media in general, to one media sector or some problematic issue (e.g. media concentration or transnational media flow) and the policy-making process normally involves the expression of conflicting interests. The main struggles over communication policy involve the following oppositions:

- public versus private interests;
- economic versus social or cultural interests;
- international versus national or local interests.

The main different levels at which communication policies are formed are the transnational, the national, and the local or regional. Examples of policy actors at the first level would be: UNESCO, the International Telecommunications Union (ITU), and the European Commission (EC). At the national level there is probably the widest range of actors and interests, including many political bodies, labour unions and media industry interests. At the local or regional level, decisions about access (e.g. to a city cable system) may be in the hands of local government. Political and cultural bodies may also sponsor media provision for special needs. The level at
which an issue is formulated largely determines the particular decision forum in which related discussions and decisions take place.

Communication policy-making can follow or appeal to a variety of different logics according to which an actor engages in the policy process. A logic in this sense refers to the “perception of the situation and the structure of goals and means...in a given situation” (McQuail and Siune, 1986, p.16). A logic (of policy) can also be considered as a consistent rationale of thinking and action related to particular goals. The most relevant kinds of logic for media policy and regulation are as follows:

- political (based mainly on partisanship);
- administrative (reflecting organisational efficiency);
- commercial (refers to profitability);
- industrial (related to broader national economic strategies);
- cultural (depending on a choice of values, for instance relating to language, nation, ethnicity, community, gender); and
- technical (operating efficiency and technology innovation).

These terms reflect the different roles and perspectives which are brought to bear on a particular issue.

2.4 On media regulation and self-regulation

Regulations are formal and compulsory instructions about the structure, conduct or content of the media. Examples include limits on monopoly ownership or media cross-ownership; limits on the amount of advertising on television (found in many European media systems); or requirements to have an operating or receiving license for television or radio. The legal system provides an important category of formal regulation for media, even if not specifically part of any communication policy (as with laws that govern wireless, broadcasting, telephony and other electronic communication). Legal requirements that de facto help to regulate the media include prohibitions against libel and defamation, laws protecting privacy, laws concerning intellectual property rights, and prohibitions against incitement to violence or racial hatred, pornography or obscenity. Generally the justice system protects itself by law against media activities that might pervert the course of justice (e.g. the publication of information about accused persons). In some countries, political communication is regulated, especially at election times in order to maintain fairness.

The typical framework of mechanisms for media regulation can be described in terms of a dimension of greater to lesser formality in respect of the main areas of application described above. Formality refers to three main aspects of the relevant regulation: whether or not it is established in law; whether provisions carry enforceable penalties (financial or otherwise); and whether it is permanent or temporary. Most informal mechanisms of regulation rely on customary agreement and voluntary compliance, but there are pressures toward compliance aside from the law (e.g. from colleagues, industry clients, audience, advertisers, sources, etc.).
The degree of formality is related to power. Most powerful is the state and government, although the ultimate power to intervene in the media directly is usually avoided, even in authoritarian regimes (because it may be counterproductive). After the state, in descending order of power are: specific laws to regulate the media (Media or Broadcasting Laws); general laws of the country to which the media are also subject; administrative, technical and economic regulations which also affect the media; supervisory and advisory bodies for the media - e.g. the CSA (Conseil Superieur de l'Audiovisuel) in France, Ofcom (Office of Communications) in the UK or the FCC (Federal Communications Commission) in the USA; industry or public bodies to monitor standards of performance in specific areas (e.g. advertising, privacy); press subsidy systems; voluntary codes of practice and ethics for media organizations (self-regulation); outside pressure groups.

Figure 3 arranges the influences on media policy in a hierarchy, ranging from the most powerful and formal at the top to the least powerful and formal at the bottom. The list is as follows:

POWER AND FORMALITY HIGH
- State and government intervention
- Specific media laws
- General laws of the country
- Regulatory and licensing authorities
- Technical/administrative agencies
- Advisory bodies
- Public complaints and standards bodies
- Industry standards authorities
- Professional self-regulatory bodies
- Public opinion and pressure groups
- Voluntary consumer and audience watchdog groups
- Media criticism

POWER AND FORMALITY LOW

Figure 3: Hierarchy of mechanisms of regulation and accountability at national level

In contrast to many of the above examples, self-regulation refers to responsibilities assigned to media operators to implement by themselves or that are voluntarily chosen by them. Such rules often have the character of desirable goals, guidelines or principles, rather than fixed or compulsory standards to be achieved. They are ‘polic[ed]’ either within and by the media organization itself or by some intermediate body representing public and industry interests. The means of accountability are typically voluntaristic and non-punitive. Self-regulation in the press mainly takes the form of journalistic codes of practice for accuracy and fairness plus some procedures for implementation. In broadcasting, it abounds in various forms such as guidelines for reporting on controversial issues such as terrorism or violence. Self-regulation also tends to deal with privacy issues, the protection of journalistic sources and standards in advertising.

There is a large and growing category of communication regulation that is neither clearly formal and binding nor informal which relates to technical, legal and administrative points which may have been agreed nationally and internationally to facilitate better interconnection and smooth operation of markets. Examples of this category include technical standards and copyright rules.

2.5 Alternative mechanisms of media accountability and regulation
Accountability can be defined as “all the voluntary or involuntary processes by which the media answer directly or indirectly to their society for the quality and/or consequences of publication” (McQuail, 2005, p.207). Accountability covers a much wider range of matters than is likely to be dealt with by regulation. It is based on the existence of standards and responsibilities which the media either accept or which may be imposed on them. Where the media are voluntarily accountable to their audience or the society, there is less need for regulation. However, regulation, especially in relation to issues of content and effect, is often necessary because the media do not choose to be accountable. The two concepts are brought together here because there is a considerable overlap between the means of regulation and the mechanisms that exist for accountability.

In general there are four main types of accountability mechanism. One is provided by the media market, which balances the demands and evaluations of the audience (and advertisers) with what the media provides. In an open and competitive media market, the media should be rewarded for good conduct and content, and be punished (commercially) for their sins. A second type is also of an informal character and derives from the pressures from public opinion and pressure groups that may eventually be felt by way of the political system and by new media policy. Thirdly, there is the sphere of law and regulation where the media are formally required to meet certain (limited) standards and may be punished for failing to do so, after due process of inquiry and defence. Fourthly, there is the sphere of industry or professional self-regulation, which has already been explained. In this context, accountability is usually voluntary but carried out according to set procedures. It does not usually lead to any material penalty.

**Activity Three (Allow 20 minutes)**

With the help of specific examples, explain in your own words the relation between theory, policy and regulation.

Consider also the different role of formal versus informal rules and regulations and the different types of accountability that are possible. Why could it be that informal regulation may sometimes be better or more feasible than formal procedures?

### 2.6 The differential focus of media regulation

Media regulations, even with respect to a single medium, seldom if ever apply in an undifferentiated manner across all aspects of media activity. An important question to ask therefore is “Which aspect of the media/medium is being regulated?” Basically we can distinguish six different aspects of the media for this purpose: structure; infrastructure; distribution; access; conduct and content.

**Structure:** This refers primarily to matters of ownership, finance, size, form and overall organisation. Questions of concentration, monopoly, ownership, conditions of licensing and the public or private control of media arise under this heading.

**Infrastructure and technology:** Regulation of infrastructure is primarily concerned with the development, upgrading and efficient operation of basic networks, transmission systems and other physical provisions for carriage, service provision and reception. The main focus of regulation is on technical standards, allocation of frequencies and satellite positions, interconnections between different elements of a communication system, and conforming to international agreements.
**Distribution:** This covers questions of the kind and range of services which are offered and the obligations placed on suppliers of communication services (for instance, universal coverage of a given area and `must carry' rules). Regulation may also apply to receivers (for instance television license charges, permissions to install satellite antennae, etc.). Policies for protecting the national communication sovereignty belong under this heading (e.g. limits on satellite dish ownership).

**Access:** The question of access applies to ownership and operating rights, as well as claims to access to channels owned and operated by others. Typically, there are no rules of access to print media although some press laws provide support for competing views, but cable and broadcasting are often required by license to offer some specific kinds of access, e.g. to political parties or certain minorities. Sometimes there are rules denying access (for instance to voices which are thought to threaten security or good order). Telecommunication and postal services are obliged to provide access to all who want to send messages.

**Conduct:** The reference is to a wide range of matters about how media organizations behave, ranging from questions of journalistic ethics, to matters of copyright, the respect for privacy and rights to information. Issues of conduct can arise in relation to state security, crime or terrorism, where freedom of the media is often limited. Matters of conduct are often dealt with by the general law or by more informal self-regulatory procedures.

**Content:** Despite the principle of media freedom, we can find an extensive range of measures which affect media content, especially in broadcasting. Telecommunications (telephony) has been traditionally free from content regulation, but the rapid extension of new telecoms-based services brings it also within the scope of regulation. Broadcast laws often set both positive and negative requirements for content. Film, video and music are exclusively affected by negative regulation - limits on what they can do.

### Activity Four (Allow 15 minutes)

Explain in your own words the difference between media structure, conduct and content. Why is the distinction relevant for media regulation?

### 3. The Main Issues of Regulation

The term *issue* refers to a particular matter of dispute or conflict which is located in the `public sphere’ and which gives rise to a call for regulatory action. There are two main keys to the (changing) issue agenda. One is the economic-industrial impetus behind the extension of new technologies. The other derives from the claims made against the media by the public or other critics on grounds of failing to meet expectations or of actually causing various kinds of harm. These claims are usually resisted by the media because they interfere with their own claims to free expression and interfere with their commercial objectives.

We can differentiate the main issues for policy and regulation according to two dimensions. Firstly, do they relate to public or private concerns? Secondly do they have a positive or negative direction, framed in terms of possible benefits or harm? A brief indication of the grounds on which the media are problematised can be given, as follows:

**Issues of primarily public concern (either relating to benefits or harms)**
• The protection of public order and the security of the state.
• Maintaining respect for public mores in matters of taste and decency.
• Achieving benefits for the public sphere in terms of information flow, access, diversity and public participation.
• Maintaining cultural standards and supporting the national or regional culture and language.
• Respecting human rights of expression and protection from insult and prejudice.
• Preventing harm to society, especially by way of harm to children and young people from undesirable content.
• Meeting international obligations.
• Protecting and advancing the national economic interest in media and communication industries.

Issues of a more private or individual character

• Protecting individual rights to reputation, etc.
• Preventing offence to individuals.
• Avoiding harm to individuals from violent or perverted content.
• Protecting property rights in communication and information.

Media regulations have tended to reflect quite readily the historical and cultural contexts of the societies in which they are implemented. What is to be defined as a regulatory issue or problem can vary from one country to another, as can the likely responses to resolving it (when examined from the level of the broader political/social system, however, certain patterns or similarities have been observed – see Appendix).

Activity Five (Allow 30 minutes)

Within a maximum of about 200-300 words, describe an actual case or event (from your own observation/experience) which illustrates one or more of these types of issue. Show how the case chosen has implications for either public or private interests (or both). For instance, rights of ownership may stand in the way of broad public access.

4. Basic Models of Media Regulation

A distinctive feature of media regulation is the fact that each successive medium has tended to attract its own distinctive model of regulation, appropriate to the technology and form of organisation and the particular functions and applications involved. Three main regulatory
models have been identified, applicable to the *press, telecommunications* (especially telegraphy and telephony) and *broadcasting*, respectively (Pool, 1983). Although the distinctions involved are becoming increasingly hazy because of deregulation and convergence (see below, section 4.1), it is still useful to base our discussion on this pattern. In this context, a `model' means a framework of inter-related regulation that is based on some legitimating principles and can be referred to for settling disputes, implementing policy and responding to change. It is worth noting that the first `mass medium' - the printed book - is not covered by any model of regulation, since it is the only medium fully protected by historic rights to press freedom (although also subject to the general law on certain matters). The main features of the three models are summarized in Figure 4, (and will be described in more detail in sections 5-8).

<table>
<thead>
<tr>
<th>Focus of Regulation:</th>
<th>Broadcasting (Radio, TV)</th>
<th>Print Newspapers Magazines, Books</th>
<th>Common carrier (Mail, Telephone, Cable)</th>
<th>(Internet) All uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structure:</td>
<td>High</td>
<td>Low</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>Infrastructure:</td>
<td>High</td>
<td>None</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Distribution:</td>
<td>High</td>
<td>Low</td>
<td>Low</td>
<td>None</td>
</tr>
<tr>
<td>Access:</td>
<td>High</td>
<td>None</td>
<td>Low</td>
<td>None</td>
</tr>
<tr>
<td>Conduct:</td>
<td>High</td>
<td>Low</td>
<td>Low</td>
<td>None</td>
</tr>
<tr>
<td>Content:</td>
<td>High</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>

Figure 4: Four models compared in terms of focus and degree of regulation

### 4.1 Convergence of regulatory models

The three "models" still co-exist and they are still useful for describing and making sense of the different patterns of media regulation which are found side by side. However, as noted already, the logic, legitimacy and practicality of maintaining the different regimes is increasingly open to question. The main challenge comes from the technological “convergence” between modes of communication which makes the regulatory separation between print, broadcasting and telecommunication more and more artificial and arbitrary. The same means of distribution, especially cable, satellites and telecommunications, can be used to deliver all three kinds of services (print, broadcasting, voice and data exchange). The single most potent cause of convergence is the rapid spread of digitization of all forms of content – the translation of everything into computer readable digital code.

The monopolistic arrangements which used, especially, to keep radio and television and telecommunications apart are being demolished or undermined. It is also more difficult to justify restricting one medium (e.g. broadcasting) when another medium (e.g. the internet via cable telephone network) can do the same thing quite freely (for instance deliver forms of information and entertainment that are restricted in broadcasting).

Cable systems have already led to a new `hybrid' model of regulation, combining common carrier with watered-down broadcasting regulation, but without the full freedom of the press. There has long been a tension in the arrangement which allows newspapers to publish what they want within the normal law, while broadcast journalists are under much greater restraint, especially the obligation to be impartial. In many countries, cable is also much less restricted
than broadcasting, partly because it is much less indiscriminate in its destination (like print media).

At the moment the other main driving force for convergence, after technology, is that of market forces. Despite these combined pressures, however, convergence of regulation has not yet occurred in any striking form. One reason for the delay is that the different media are still largely perceived and (predominantly) used differently by their audiences. Secondly, authorities are reluctant to give away the power of regulation, especially when many of the issues for regulation outlined earlier (section 3) are still very salient in public opinion.

Activity Six (Allow 15 minutes)

Find one or more examples of the “convergence” of media distribution technology which would illustrate the difficulty of maintaining the three different regulatory ‘regimes’ identified above.

5. Specific Patterns of Media Regulation: the Newspaper Press

The basic model for the press in western democracies is one of freedom from any government regulation and control that would involve advance licensing, censorship, limits to freedom of publication or punishment after the event. Press freedom is very close, but not identical, to freedom of speech and expression. It applies specifically to expression that is made public and intended for unlimited dissemination. It is often enshrined as a principle in national constitutions and in international charters, such as the UN Treaty (Article 19) and the European Convention on Human Rights (ECHR, article 10). Press freedom in these documents is often made conditional on respect for the rights of others and other laws.

The idea of press freedom as expressed earlier is so important and central that freedom itself may be viewed as the main goal (or desirable end state) of any public policy for the press in a free and democratic society. There are, however, other goals of press policy such as: maintaining diversity; protecting the public from abuses of press power; ensuring high standards of news and promoting the essential contribution that the press makes to the democratic process. Regulations towards these aims are difficult to apply because of the risk of undermining press independence. Almost any measure designed to secure freedom of the press or to improve its performance can also be viewed as an intervention which reduces press freedom. This is the central paradox of regulation of the newspaper press. One solution is to think in terms of alternative concepts of freedom.

First of all, we can make a key distinction between negative (laissez-faire) and positive (pro-active) concepts of press freedom. In brief, the negative concept rules out any government actions in relation to the press, leaving it to the free market and maintaining the pure principle of freedom to the maximum extent, whatever the consequences. The archetype of the negative version is represented by the First Amendment to the US Constitution (1791) which states that “Congress shall make no law...abridging freedom of speech, or press...”. The positive concept of press freedom is more concerned with the practical realisation of the goals noted above and with limiting the harm done by unrestrained market forces. According to Picard (1985, p.49) “Positive press freedom is intended to promote the free flow of diverse ideas and public debate by removing and guarding against barriers to that flow”. The essence is to ensure (through regulation if required) the necessary conditions for freedom of expression.
On the basis of this analysis we can say that there are two main types of regulation of the newspaper press, one is essentially negative and reactive, designed to counter threats to press independence and diversity, the other is positive and enabling. In the former case, threats, when they do not come from government itself are likely to stem from natural processes of market concentration or from the efforts of powerful economic or political forces to stop the press from speaking out. Where these efforts take a criminal form (such as threats of violence), the general law can be applied for protection. Most regulatory responses, as described below, are aimed at restricting concentration (see below, section 5.1). The second (more positive) type of regulation involves giving some kind of economic support to some or all newspapers (see section 5.2).

**Activity Seven (Allow 25 minutes)**

Explain what is meant by both the negative and positive concepts of press freedom. What are the potential advantages and disadvantages of either concept? Do you yourself strongly favour one or the other concept, and if so why (which, for example, would you say is more suited to dealing with the problem of press concentration)?

**5.1 Regulatory response to the problem of press concentration**

Press concentration occurs where ownership and control of many newspapers falls into the same or a few hands. This condition reduces the independence of editorial staff, gives great power of publicity and control over the news agenda to a few and may deny or limit access to opposition or dissident voices. It has been considered a problem since the early days of mass commercial newspapers in the early twentieth century. In fact, in most countries there is a relatively high degree of concentration of the national press, with a small number of large publishing groups owning most of the large circulation newspapers. In Europe, in many countries, the main national and regional newspapers are typically divided between less than a half dozen owners. In the United States, there are more groups, but a small number have a very dominant position on the largely city and regional press.

Ownership rules have mainly been formulated in such a way as to prevent a very high concentration of circulation in a given market. Typically a market share above 30% is considered excessive. The main tool available is legal restrictions on mergers. This can also be legitimated on economic grounds without raising the issue of limiting press freedom.

Relatively few (developed) press systems have specific or effective regulations concerning monopolistic press ownership. In western Europe the main regulating countries are Ireland, Italy, Germany, France and Britain. France has the most clearly specified laws concerning press mergers, set out in the 1984 Media Law and there is a legal ceiling to the proportion of the newspaper market which may rest in the hands of any one proprietor. In Germany, press mergers are judged by a specially adapted version of general anti-trust law, designed to prevent any firm obtaining a dominant position in a given market. In Britain newspaper mergers are normally referred to a Competition Commission [The Competition Commission replaced the (perhaps better known) Monopolies and Mergers Commission on 1st April 1999.], with the power to forbid such a move. In Italy, the law forbids mergers which lead to excessive market dominance, interpreted as more than 20% of national circulation or more than 50% of titles in a given region.

**5.2 Positive support for the press in regulation**
Positive support has come mainly in the form of direct or economic assistance. Subsidies to help the press can be classified according to whether they are:

- **General** (applying to all papers) or **specific** (intended to help weak papers or certain types of paper with a social, political or cultural role).
- **Indirect** (e.g. tax concessions) or **direct** (e.g. grants and loans).
- Intended for **existing** (perhaps ailing) papers or designed to help **new entrants** into the market.
- **Aimed at local or national** press markets.

Other types of economic support (direct or indirect subsidy) which have been implemented are as follows:

- Tax concessions, especially reduced or remitted VAT [Value Added Tax: a form of sales tax on goods and services in the UK.] on subscriptions or sales.
- Postal, telephone and transport concessions.
- Government advertising (which can also be a means of control).
- Grants and loans for specific purposes, especially: education and training; new technology; start-up costs.
- Aid to specific publications in a weak position.
- Financial support given to political parties for their own publicity purposes.

All these measures have different advantages and disadvantages. General measures of support which do not discriminate between publications (but help the whole industry) are the most common and least controversial because they do not threaten the independence of publications nor distort the market: there is no inducement for a newspaper to take a pro-government line, for instance. On the other hand, the main beneficiaries of such measures are necessarily the largest and most successful papers, thus often the (potential) monopolists.

Press subsidies are usually introduced under pressure of some perceived crisis and often have little practical effect in the longer term, or not the intended effects. They are also difficult to take away. Most observers are inclined to the view that government economic support to the press around the world has not made a great deal of difference but nor has it done any harm.

### 5.3 Other forms of press regulation

In France, ownership of the press is forbidden to foreigners (subject to international obligations). In addition to ‘monomedia’ regulation of press ownership there are additional (and increasing) controls placed on multiple ownership across the boundary of different media (for reasons given above). A typical form of regulation in Europe is one which forbids or limits ownership of television (or radio) by a press firm which exceeds a certain circulation limit (e.g. more than a
third of total circulation). These rulings are often found in broadcasting or general media laws, rather than in any specific press regulation, but the effect is the same.

In Britain, for instance, there are limits on terrestrial broadcasters having any newspaper interests, although not on satellite broadcasters. In Italy, press concerns with more than 8% of relevant circulation (market share) are denied television ownership, and under that limit, only one channel may be owned. France has no restrictions on cross-media ownership of this type, despite its strict rules on press mergers. In Germany there are limitations operating at the level of the lander (regional government).

An aspect of newspaper regulation which goes together with the control of concentration tendencies and also the administration of various economic supports, where these exist, is the requirement of transparency of ownership - the need to have clear and full information about who actually owns which parts of the media system. In Europe, transparency rules are present and most stringent in countries with the strictest ownership rules - especially France, Greece, Spain, Italy. Rules usually require the publication to be registered, the legal owner to be identified and full information provided about the publishing firm.

The European Union has actively considered the issue of regulation to protect press pluralism, but is likely to come up against the same obstacles (both practical and on principle) to any regulation or economic intervention that arise in individual countries.

5.4 Regulation of press conduct and content

While, in general, the newspaper press in democracies lies outside the scope of all direct content regulation, immunity is never unlimited. The limits on freedom and on forms of expression differ from country to country, according to local customs and concerns. An example of a constitutional statement of press freedom which recognises limits is that of Norway (where the press is very free) and reads as follows:

*There shall be liberty of the press. No person must be punished for any writing, whatever its contents may be which he has caused to be printed or published, unless he willfully and manifestly has either himself shown or incited others to disobedience to the laws, contempt of religion or morality or the constitutional powers, or resistance to their orders, or has advanced false and defamatory accusations against any other person.*

*(Picard, 1988, pp.44-45).*

There are three main areas of public concern, where an approach to regulation of newspaper content can be discerned. One relates to the security and integrity of the state and maintenance of the law (also national defence). Another relates to matters of morals, decency or public offence (e.g. racism, sexism, undue violence). A third has to do with matters around privacy, which range from the issue of confidentiality of information to intrusion by reporters on private space. There are quite a few other issues of conduct and ethics of the press which become matters of public concern, but which, under conditions of freedom, do not raise the possibility of regulation.

Most such issues can only be dealt with by the courts and normal law, or by way of voluntary codes of press conduct and ethics. In some countries there are Press Councils, which are typically composed of press and independent representatives and try to reach some
adjudication on specific complaints (see Bertrand, 2003). Their only real means of redress is to order publication of retractions or apologies, although in some cases they may, by agreement, apply financial penalties (publication costs of apologies are also a financial penalty). Figure 5 provides a summary of the main forms of either formal or informal regulation of the press according to six main headings of field of application of regulation.

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<th>MORE FORMAL</th>
<th>LESS FORMAL</th>
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<td>STRUCTURE:</td>
<td>Laws limiting monopoly and cross-ownership.</td>
<td>Informal agreements by publishers</td>
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<td>Registration of ownership</td>
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<td>INFRASTRUCTURE:</td>
<td>Investment grants for new starts.</td>
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<td>Tax concessions.</td>
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<td>DISTRIBUTION:</td>
<td>Postal rate concessions.</td>
<td>Distributor agreements.</td>
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<td>ACCESS:</td>
<td>Subsidies to promote.</td>
<td>Publishing complaints and</td>
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<td>pluralism. Replies</td>
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<td>CONDUCT:</td>
<td>Copyright laws.</td>
<td>Press codes of conduct.</td>
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<td>Normal civil law.</td>
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<td>Press ombudsman.</td>
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<td>Court or legal ban on publication.</td>
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Figure 5: Examples of newspaper regulation

6. Specific Patterns of Media Regulation: Broadcasting

By contrast to the press, radio and television broadcasting were subject from the beginning to high levels of restriction, sometimes involving public control approaching a condition of censorship. The general concept of social responsibility and public interest lies at the core of the broadcasting model, although there are several variants as well as weaker (as in the USA) or stronger forms (as in Europe). The main difference is between systems that are within public ownership and control and those that operate commercially, but subject to licensing conditions and public scrutiny.

The main reasons for the high regulation of broadcasting can be expressed in terms of the following main aims (see Hoffmann-Riem, 1996; and Feintuck, 1999):

- To ensure universal availability to the general population of the country of broadcast services.
- To allocate frequencies and broadcasting concessions in an equitable and orderly manner and supervise conformity to the rules laid down.
- To ensure a wide range of services and access opportunities according to the needs of society - meaning diversity in social, political, cultural and local/regional terms.
To promote high quality of content provided as far as possible according to locally decided values and standards, with particular reference to information, education, advertising, culture, taste and decency.

To look after the basic interests of the state in matters of security and good order, as locally interpreted.

The broadcasting model covers two main types of system. One is the public service variant, the other consists of privately owned and financed systems. The distinction is not always absolute, since some commercial broadcasters may also have public service duties as a licensing condition. Public service broadcasting is expected to serve the needs of significant social institutions (for instance, in relation to politics, education, the justice system). It is also directly or indirectly expected to serve or to respect the main party political groups. In some countries, the political interest is served by imposing political neutrality (as in Britain) or ‘fairness’ (as in the United States), while in others political party influence is more or less openly and proportionately allowed (as in Italy, France and Germany).

In a fully developed form public service broadcasting generally refers to five main features, which are supported by policy and regulation. One is the provision of a universal service (a full service to all). A second is that the system should be financed by payments from all citizens or, as in the UK, all receiving households (not just the consumers of the service). Thirdly, there is public control of access to broadcasting channels, in greater or less detail, to ensure “fairness”, political neutrality, independence from vested interests and from the state.

Fourthly, a public broadcasting service is democratically accountable to the society (or nation). This is usually achieved by way of parliamentary control of financial allocations and periodic renewal of licenses to operate. Fifthly, a public broadcasting service seeks to achieve various goals of quality of service. Some of these features can also apply to broadcasting systems that are privately owned and financed by advertising.

Detailed regulation inevitably limits the freedom of public broadcasters and it is inconsistent with running services in a fully commercial manner. In fact one of the values of public broadcasting is its non-commercialism and ‘non-profit’ character. The regulation of public broadcasting makes it accountable to the public and to society rather than to owners, or the market.

Commercial broadcasting systems, in contrast, are free to choose their own objectives, in the sense of whichever consumer audience or advertising market they want to serve. They are primarily accountable to owners, investors and clients. Regulation in this case is essentially restrictive and prescriptive and is designed to establish the ground rules and set limits within which the systems operate. These ground rules mainly concern the following matters: permitted amount and content of advertising; control of other means of finance (e.g. sponsorship); content potentially harmful to the young or causing offence to some value or group (e.g. in matters of racism, or religious blasphemy); procedures for complaints and rights of reply.

Commercial broadcasting systems often have to meet certain minimum standards as a condition of receiving a license or operating concession. These conditions vary a good deal from one system to another, but often relate to such matters as provision for education, news and information, local language or culture, political or other access opportunities, minority needs.
The *forms* of regulation are diverse, but there is a certain standard pattern. Generally, we find a media or broadcasting law governing the structure of the system as a whole. Such laws state broadly the goals of the system and who or what bodies are eligible to operate as broadcasters and under what conditions. For instance, some countries forbid or limit foreign ownership and, as indicated earlier, many have rules forbidding cross-ownership between press and broadcasting (especially where they operate in the same marketplace). In some European countries political or religious organizations are not allowed to own and operate broadcasting stations.

Finance, control and accountability to government and society are also covered by such regulation. More detailed terms and conditions may also be set down in license and franchise agreements, which have to be periodically renewed and can be revoked. Broadcasting and cable laws often contain content-related regulations, for instance requiring a balance between different kinds of content (especially information and entertainment) or requiring a certain amount of home production or transmission in the national language.

Laws of this kind are the province of parliaments and governments and there will often be a Ministry or other Department of government which has the responsibility for their formulation - for example, the Ministry of Culture (in Sweden), the Department for Culture, Media and Sport (in Britain), or the Ministry of Communications (in France). However, there is usually another layer of administrative machinery between government and the actual broadcasting organizations which can serve as a two-way link and, in certain cases, help to preserve the independence of broadcasting from direct government interference. This link is increasingly formed by powerful regulatory agencies which have an oversight over different media. In Britain, for instance, we find (again) the Office of Communications (Ofcom), in France the Conseil Superieur de l'Audiovisuel (CSA), in Sweden the Broadcasting Commission, in Holland the Commissariat for the Media, in the USA the Federal Communication Commission (FCC), and so on (see d'Haenens and Saeys, 2001, and Kelly et al, 2004, for a fuller exposition of broadcasting regulation in different countries).

Quite often there are additional advisory or supervisory bodies that play a part in the regulatory framework with varying aims and degrees of competence. Most public broadcasting organisations will have their own Boards of control which are separate from day to day management and are the equivalent of the Boards of commercial companies which run private broadcasting systems. These bodies decide on overall policy and have final responsibility. In general, we can observe a chain of control from the political to the legal, to the administrative, to the managerial. There may also be a few additional bodies (both statutory and voluntary) that represent the interests of viewers and listeners, whether as consumers or citizens and keep up pressure for enforcement of rules and for expressing complaints.

In Europe, transnational television has been institutionalised within a loose framework provided by the Television Directive of the European Union. This sets out the general conditions and rules for cross-border television transmissions between countries of the Union. In practice, this is mainly a lowest common denominator of rules that does not have much practical effect, apart from enabling cross-border transmission. However, it does support basic standards of fairness and objectivity and there are rules limiting advertising time and types as well as for protecting children and young people from extremes of undesirable content. Some preference is also given to “European” content and independent production. Using the same framework as Figure 5, Figure 6 provides examples of the main types of formal and informal regulation of broadcasting.
Figure 6: Summary and examples of national broadcasting regulation

Activity Eight (Allow 25 minutes)

Explain why broadcasting is much more regulated than other media and what the main aims of broadcasting regulation are. Do you think that the heavier regulation of broadcasting will always be necessary?

7. Specific Patterns of Media Regulation: Telecommunications and Cable

The third main model of regulation actually predates broadcasting and is usually called the ‘common carrier’ model because it originates in communication services, such as the mail, telephone, and telegraph, which are purely for distribution and intended to be open to all as universal message transport services. They are ‘point to point’ media, not for open distribution. This model has been gradually extended to encompass a range of new electronic services available via telephone and cable networks (especially the internet). These new services (such as information supplies or chat lines, for example) are called ‘value-added’ services because they offer the network user content benefits, for which extra has to be paid, and they are not universally provided.

As we have seen, the regulation of telecommunications is very uneven, with elaborate control of structure and infrastructure but almost no rules for content. Current developments are, however, extending the scope of regulation, as the nature of the services provided by telecommunication systems expands and as the systems are ‘liberalized’. Cable systems are also more regulated
than old 'common carriers'. Traditionally, telecommunications in many countries was operated as a state monopoly, usually by the national postal service (e.g. Deutsche Bundespost in Germany, or the Royal Mail in Britain), but the privatization of telecommunications has now largely replaced state monopolies with companies operating in the market, although often with some state participation (see Hills, 2002). In the United States, telecommunications was effectively a private monopoly (the Bell system) until the break-up (divestiture) of the system in the early 1980s, creating six regional companies.

Policy for telecommunication was traditionally in the hands of government and detailed regulation was largely carried out by the industry itself according to an 'administrative' or technical logic. It was originally not considered a matter for political debate in the public arena, but only for experts and administrators. Much the same still applies under conditions of private ownership, although the privatization of telecommunications has meant effectively a privatization of much relevant policy with the WTO (see section 9) as a major instrument of this (Winseck, 2002). Even so, the availability of telephones and the quality and cost of service has become a much more important and salient matter of public welfare than in the past. The telephone is a tool for private communication as well as for business and government and has become almost a necessity of everyday life, especially with the rapid diffusion of mobile phones. The range of services available to consumers from the telephone has also widened greatly, encompassing the so-called 'value-added' services mentioned above. Telephony is now much more than a simple message carrier and current developments of internet protocols are rapidly blurring the line between telephony and many other online services as well as between the two 'media' (telephone and internet) themselves.

The main contemporary issues for the regulation of telecommunications and cable are as follows:

- The supervision of monopoly operators and securing competition between operators, in the interests of efficiency, development, and consumer protection (in pricing and other matters).

- The question of what services telecommunications and cable should be permitted to operate, and on what terms, especially in competition with press, broadcasting and film/video industries.

- For cable systems, the question of 'must-carry' rules for channels such as national television.

- The possible limitations on content carried (such as child pornography) and how to apply them (for instance, relating to sex chat lines and similar services).

- Maintaining universal service obligations and cross-subsidization from more profitable to less profitable operations in the interests of equity.

- Questions of the privacy of transmitted data and the protection of users from undesired uses of telephones.

- Access for providers and consumers to services such as e-mail and internet.
• With respect to the internet, there are increasing provisions being made to support e-commerce by dealing with issues of confidentiality, security and the 'electronic signature'.

• There are also issues about general confidentiality in the wake of government and law-enforcement efforts to combat cyber-crime and terrorism.

• Securing the interconnectedness of the various networks under conditions of competition, including equitable access to basic networks. Non-interference of services has also to be secured.

• Achieving international agreements on protocols for many of these issues.

The main forms of regulation of telecommunications are likely to consist of the following four main elements:

• A basic telecommunications law relating to the structure of ownership and control.

• A supervisory role for some arm of government, with particular reference to technical aspects (for instance, the FCC in the United States, or Ofcom in the UK).

• A set of conditions attached to operating licenses and concessions, with some form of official public regulator to look after the public interest.

• A body (or more than one) which integrates national telecommunication systems into supranational administrative-technical patterns.

8. Regulation of the Internet

The internet is the main new medium of our time and it has a very anomalous position in respect of the three regulatory models outlined. In fact it illustrates very well the causes and consequences of media convergence as discussed above (section 4.1). Aside from its being distinctive as an electronic, computer based, medium, with a powerful interactive capacity, it is also multi-functional. It is much used as a means of private communication by e-mail, as a means of transferring documents, as an interactive service facility for banking, shopping, etc., as a source of information for consultation by individuals and also as the equivalent of a means of mass distribution of news, advertising and entertainment. In short, it does everything that the press, broadcasting, telephone and library system already do. Despite this, however, for regulatory purposes it is treated primarily under the common carrier model and is subject to no particular regulatory regime of its own. It does not have guarantees of freedom like the press nor content regulations like broadcasting.

There are several explanations for this situation. One stems from its lack of central organization. It is not owned by anyone, but is a coming together of many users of the same basic technology and infrastructure. As such it is difficult to make it accountable or even to encourage self-regulation. It is also an international medium and its operation does not fall under any single jurisdiction or sovereignty, except in respect of its users and the various service providers. It has a voluntary and loose form of international management for certain matters essential to its operation. In practical terms it would be very difficult to regulate without diminishing its character. The very novelty of the internet accounts for some part of the lack of regulation. Despite these points it is not impossible to regulate (Lessig, 1999) and many of the uses made
of the medium are subject to existing general laws relating to communication and publication. The more the medium is commercialized and formally organized, the more likelihood there is of regulation appearing, although much will have to be of an international character.

Activity Nine (Allow 25 minutes)

Explain why telecommunications has usually been a monopoly industry and why the content has been relatively free from control. Considering the main issues for telecommunications regulation, what in your view are the most likely or significant effects of deregulation? Do you think the internet needs its own form of regulation?

9. International Media Regulation

The media are still essentially national institutions which do not yield competence to external bodies. In the absence of global government, international communication is not subject to any central or consistent system of control. The forces of the free market and of national sovereignty combine to keep it this way. Nevertheless, there is quite an extensive set of international controls and regulations that do constrain nationally based media, typically as a result of voluntary cooperation for necessity or mutual advantage. For the most part such regulation is designed to facilitate global media in technical and trade matters, but some elements are concerned with normative matters, however non-binding.

The origins of global governance are to be found in agreements designed to facilitate the international postal service, by way of the Universal Postal Union in the mid 19th century. At about the same time (1865) the International Telegraph Union (ITU) was founded to help coordinate interconnections and establish agreement on tariffs, with a subsequent extension to responsibility for the radio spectrum. In both cases, for the moment, governments and state monopolies played a key role. After World War II, the United Nations provided an arena for debate on mass media matters, with particular reference to freedom of expression (guaranteed by its Charter), the free flow of communication between countries, and issues of sovereignty. In 1978 an attempt was made in UNESCO, at the behest of a number of developing countries, to introduce a Media Declaration stating a number of principles for the conduct of international media, especially in relation to propaganda for war and hostile reporting. Opposition by western countries and free market media led to its failure, but it did place a number of new and contentious issues on the agenda of concern and debate and contributed to the recognition of certain communication rights and obligations. There are still international treaties, including the UN Declaration and both the European and the American Conventions on Human Rights, that offer some redress to those injured by misuse of communication.

The paradigm shift that has occurred towards deregulation and privatization, coupled with the new ‘communications revolution’ based on computers and telecommunications, closed off the path towards greater international normative regulation. But the same shift increased the need for technical, administrative and economic cooperation on a range of issues. Most recently, the development of the internet has stimulated calls for international regulation, but this time with some reference to content as well as structure.

The main bodies that now play a variety of key roles in the emerging system of media governance at the international level are as follows (see O Siochru and Girard, 2002):
- The International Telegraph Union (ITU): governed by a council of delegates nominated by national governments, the ITU deals with telecommunication technical standards, spectrum allocation, satellite orbits and much besides.

The World Trade Organisation: the WTO has immense power on economic matters and impinges more and more on the media, as they become bigger business and more commercialized. Central issues for the WTO are free trade and protection, with implications for limits to national sovereignty in relation to media policy. The policy of the EU for protecting broadcasting is especially vulnerable as is public broadcasting generally. Apart from the EU, other regional trade organizations, or agreements (such as NAFTA [North American Free Trade Agreement.]), can impinge on media issues.

- The United Nations Educational Social and Cultural Organisation (UNESCO): a branch of the UN established in 1945, UNESCO has wide competence on cultural and educational matters, but little power and no very specific media functions. It is, however, active on questions of freedom of expression and the internet.

- The World Intellectual Property Organization (WIPO): established in 1893, WIPO has a main aim of harmonising relevant legislation and procedure and resolving disputes between owners of rights, authors and users.

- The International Corporation of Assigned Names and Numbers (ICANN): this is the latest addition to an array of governance bodies. It is a voluntary private body that aims to represent the community of internet users. It started in 1994 after privatization of the World Wide Web and its main function was to allocate addresses and domain names, plus some server management functions. It has little power to deal directly with the emerging social and other problems relating to the internet.

- The European Commission (EC): the EC can influence certain aspects of broadcasting and telecommunications relating to the 25 member states of the European Union.

There are many other bodies with varying remits for issues relating to international media. Many represent various industry interests, including those of publishers, journalists, and producers. There are also many non-governmental organizations (NGOs) speaking for interests in `civil society'. For the reasons given, effective regulation is still largely confined to technical and economic matters, rather than social and cultural issues, with the possible exception of freedom of communication. Nevertheless, there are many scattered signs of growing internationalism and, arguably, a need for a more suitable frame of analysis than is offered simply by an array of national states.

The growth in international media raises new issues for control of media. While media messages are no longer easy to halt at the national frontier, there are still many practical obstacles to transborder flow.

10. Trends and Dynamic Forces Affecting Regulation

10.1 Forces for change

Since the main models of media regulation are closely linked to differences between communication technologies, continual changes taking place in technology have consequences
for regulation. Technological change can remove the rationale for certain regulations and create a need for new forms of regulation. There are other causes of change, including political transitions from more state-controlled to liberal free market regimes (as happened in the former Soviet Union and East/Central Europe), and also ideological and cultural changes within countries. For the most part the last-mentioned impulses to change have led to greater commercialization of the media and the decline of public support for cultural policy regulating media content. A third main source of change (although it may be considered in some respects as the primary driving force for developing new technology) is economic. Entrepreneurs and investors have perceived many new potential markets that can only be opened up by relaxing old forms of regulation and state control and providing new, more welcoming regulatory frameworks. A fourth general factor is the ongoing march of globalization that continues to have a large impact, especially by weakening national state control on the flow of media. For all these reasons, the theoretical and normative frameworks employed to guide and interpret such changes also adapt to the new circumstances.

### 10.2 Trends of policy and regulation

The continued *multiplication* of distribution channels of all kinds makes effective regulation (at national or international level) more and more difficult, as well as less necessary, insofar as regulation is designed to increase the universality of provision, safeguard diversity and access and limit the growth of monopoly. Advocates of the free market claim that the market can achieve many objectives of the ‘public interest’ without a need for regulation. This view is contested by critics who see the results of the market in terms of excessive commercialization, homogenization, decline in cultural standards, limitations on access and a concentration of power over information and news in a few corporate hands, with links to the political elite.

The several forces at work are having a number of consequences for traditional forms of regulation. The regulated sector of public broadcasting, mainly (but not only) in Europe has been much affected. It lost its monopoly status some time ago and has faced greatly increased competition from commercial rivals and relative or absolute reductions in funding. Although its status is protected within the European Union, the general effect of current change is towards the increasing marginalisation of public broadcasting and its focus on social and cultural functions that the market might not provide. Another consequence is the increased disinclination to regulate on behalf of the newspaper press for purposes of public policy. In today’s complex media market system, such support is seen as both less necessary and less feasible, leaving political will to one side. Rightly or wrongly, it is widely thought that there are so many alternative media, including those on the internet, that there is no longer a danger of loss of informational diversity, as long as market freedom and innovation are supported. In general, we see regulations that restrict the media (on grounds of public interest) being dismantled or weakened. In the international economic forum of the WTO it has become increasingly difficult to argue for any exceptions or limits on free trade because of national or cultural policy reasons. Normative issues and questions of human rights take second place to economic and technical considerations. Within countries, many traditional limitations on content (e.g. in matters of sex and violence) are being relaxed, partly also on grounds of impracticality in a multi-channel environment.

The issues for regulation, as summarized in section 3, have not, however, gone away and calls for regulation of the media from the public and from particular interests are still forcefully made as new issues arise. In general, policy has aimed to encourage media self-regulation and
voluntary accountability. Where issues of crime and terrorism are concerned there has been a greater willingness to cooperate and regulate where feasible.

The internet, as a new, growing and very influential mass medium is a special case that has received contradictory and ambivalent treatment. It grew up as a marginal addition to the range of media possibilities in the 1990s (see Castells, 2001) and from the beginning was virtually free of any specific national or international ownership or control. It benefited from the laissez faire spirit of the times as well as from its status as a point-to-point telecommunication based medium. It is also difficult to regulate effectively, although not impossible (Lessig, 1999). However, its functions have greatly expanded to extend into the public communication arena and many of the issues for media regulation are now raised with reference to the internet (Hamelink, 2000). The current situation is that it remains formally unregulated, but it is subject to some forms of self-regulation, especially by service providers, and it is subject to the same general laws that apply to public communication (e.g. in respect of libel, copyright, etc.) in the countries where it operates (see Akdeniz et al., 2001). Motives of commercial and state security are driving forces towards more formal control and supervision. The internet does not have firm protections of its basic freedoms.

In view of the rapid pace of technological change, we can make few predictions about the shape of future media regulation. It is unlikely that the recent deregulatory wave will be turned back, but it would be unwise to predict the ‘withering away’ of regulation. It is also unlikely that we will see a complete convergence of rules and regulations for the media across media types and countries, but the trend is still in that direction.

11. Checklist

- Media regulation is inevitably in tension with freedom of expression and of economic activity.

- Media regulation of some form is unavoidable because public communications media fulfil a wide range of essential functions in a modern society.

- Different types of media are still regulated according to different ‘models’ of control, mainly relating to technology, but there is a trend for these separate models to converge, along with the underlying technologies (especially because of digitalization).

- In the study of regulation, we need to distinguish between levels of analysis, with particular reference to: theory/philosophy; policy projects; specific rules and regulations and self-regulation.

- Media regulation is subject to strong influence from local and national aspects of history, culture and circumstance, but the pressures of commerce and globalization are leading to a reduction of differences.

- Regulations and control apply in different ways to media structure, organizational conduct and actual performance (i.e. the content and service provided).

- Current media regulation is having to adapt to the pressures of globalization, market liberalization as well as the emergence of new technologies. Most regulation is still national rather than international: as yet, international regulation is weak and incomplete.
The general tendency of policy-making in global communications takes little account of normative issues in the field of ethics and human rights.

In general, the trend is towards less regulation.

The internet poses new challenges to regulatory projects because of its lack of a clear national location, its loose forms of control, elusive technology and multiple functions. Its position is very ambiguous.

References


Selected Further Reading


Appendix

Global Differences in Media Systems and their Regulation

Media regulation has deep roots in national histories and cultures. Because of this, and because of the close connection between the media and vital social functions, each nation state has its own distinctive pattern of media regulation. In general, we can think of regulation as an attempt to solve each country's own media-related problems since many common regulatory issues (see Section 3) may be defined in quite different ways from one country to another. However, whilst
all media regulatory systems are unique, there are still some similarities and patterns present as a result of the same basic factors at work.

Twenty years ago, Salvaggio (1985) suggested a model for globally comparing communication policies for new media and information technology. In this model he distinguished four main types of social system: competitive (free-market), communist (as formerly in the USSR, Eastern Europe and still in China), public utility (the mixed or social market economies of West Europe), and Third World (most developing countries). In the intervening time, West European media have become less public utility and more competitive and former communist countries have moved towards competitive or public utility forms, but the distinctions remain valid nonetheless.

Salvaggio argued that communication problems are perceived and responded to differently in the four systems, but that there are some constant factors. First of all, the response to problems is determined in each system by the reigning "ideology". In communist systems it is, or was, Marxist theory of class struggle, etc.; in competitive systems the principle of the free-market has the status of an ideology; in public utility systems it is the supposed 'public good' or social welfare; and in the Third World it is the ideology (or rhetoric) of national development. Secondly, the response to problems takes a different form in each system. In a communist system, a ruling party decides how to respond; in competitive systems, market forces are supposed to solve problems; in the utility model, some ministry or other public body usually proposes solutions; in developing countries, external forces shape response and limit the capacity for a country to protect its media.

These four variants account for different degrees and styles of regulation. We can say that communist systems regulated nearly every aspect of media production and distribution by way of state administrative and bureaucratic means. In `competitive' systems, most regulation is media market regulation which operates only at the margins of the system to limit certain economic abuses (like monopoly) or to prevent supposed damage to the social order (e.g. as a result of media incitement to crime or violence); in `public utility' systems there are often media and press laws which allow intervention in the 'public interest' (for instance to ensure political neutrality in broadcasting, or the supply of cultural and educational content).

In developing countries there is a wide range of different media systems from socialistic and regulated to totally unregulated. This makes it hard to generalise about the 'Third World', but we can suggest, following Salvaggio, that economic dependence severely limits the autonomy and effectiveness of policy making. Media also have limited autonomy internally, either because governments put (their view of) development needs first, or because political power is used to set limits to opposition. Regulation of the media is also often openly used to maintain a ruling party in power. At the same time, orderly regulation of the media in developing countries is also often defective for practical reasons (poor administration and lack of resources).