Issues facing broadcast content regulation

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Disclaimer

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Aim and Scope of this Report

The Ministry for Culture and Heritage (MCH) and the Broadcasting Standards Authority (BSA) are investigating content regulation policy options and a framework for broadcasting and other forms of electronic content distribution which will meet New Zealand's needs over the coming years. To inform debate, the MCH and BSA have commissioned this study which outlines the dominant content regulation models worldwide and considers how relevant they might be to New Zealand.

Our report first considers briefly some of the assumptions and definitions that underpin discussion about content regulation. We then examine the drivers for regulatory change including the advance of technology. We examine the content regulatory structure as it is in New Zealand and, briefly, in a sample of 13 representative countries, with a closer look at four of those countries.

Finally we consider the policy implications for content regulation in New Zealand.

Our thanks to the assistance provided by Jane Wrightson of the Broadcasting Standards Authority, and Nonnita Rees and Martin Durrant of the Ministry for Culture and Heritage.

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Executive Summary

Content regulation has been based upon a model of content transmission (linear and broadcast) that is becoming outmoded in many countries with the rapid advances in communication technology. The most significant changes have been:

- a radical increase in choice and affordability of content, enabled by digital distribution technologies, including broadband Internet access
- substantial increases in viewer control over the time and place in which they enjoy their choice of content.

As new digital communication technologies have been adopted, the impact has been to

- Fragment audiences as their attention is divided between content choices
- Increase the numbers of niche interests catered for
- Change the audience viewing experience from a mass market, intra-familial activity to one that is increasingly personal and individual
- Divide the audience into passive recipients (or non-recipients) and active (and interactive) viewers or listeners who feel in control of the technologies.

These changes inevitably lead to questions about the purpose and effectiveness of content regulation. Thus many governments are reviewing the role and implementation of content regulation, often against a backdrop of overall regulatory reform in all aspects of public services. The question asked is: Are the original objectives for content regulation still valid?

By content regulation, we mean methods by which intervention into access or supply of certain forms of broadcast and electronic content, either for *protective* reasons such as the protection of children, or *proactive* reasons such as requiring quotas for local content or providing for public service broadcasting.

While the predominant content regulation model for broadcasting internationally remains statutory regulation, there are significant differences in the approach to regulating content delivery over newer platforms such as mobile delivery.

Our report is divided into four sections:

A - an introduction to the issues

B - a discussion of current New Zealand content regulation

C - a comparison with 13 countries, four of which are particularly relevant

D - some concluding observations

Our report highlights two dominant international trends:

- Encouragement of industry self-regulation for new media
- Development of co-regulation to ensure more influence for the regulator over new media

Within both these trends is an increasing responsibility placed on the audience or user to negotiate content delivered via the new technologies. To aid in this transfer of

greater responsibility to the audience or user, many territories have required their regulators to develop or encourage media literacy initiatives or awareness raising programmes to ensure that people are prepared for this role. These initiatives are in part designed to help the avoidance of material that may be to the detriment of the recipient or society in general, either culturally, 'morally' or commercially. Increasingly, there is movement towards helping the audience or user utilise the new technologies to their advantage, and the concept of 'cyber wellness' rather than just 'cyber safety' is being discussed more often.

While technology developments may be driving change in usage, many of the broader objectives of regulation remain the same. Broadcasting still uniquely attracts mass audiences and therefore has a continuing role in helping to meet the social and cultural objectives associated with the public service tradition. Hence some content regulatory systems continue to support and maintain key principles such as those that preserve national identity or those that encourage domestically-produced content.

In some countries these principles are carried forward into regulation of the new delivery mechanisms, although the dominant concern with new platforms is prevention of harm. This report deals primarily, though not exclusively, with protective regulation.

The key questions for New Zealand, traditionally a 'light touch regulator', as it seeks to prepare its content regulatory framework for the 21st century would seem to be:

- Should there be an attempt to distinguish between traditional broadcast delivery and newer platforms?
- How much control is required over the newer forms of delivery? On what criteria should any control be based – age verification, free vs. transacted content, scheduled or pushed content vs. requested or pulled content?
- What are the objectives of that control?
- How best can those objectives be met, bearing in mind rapid developments in communication technology and the market?
- What systems can be put in place to ensure consistency and clarity for both industry and the audience or user?
- Is it better to build expertise for the sector in one place or should the regulatory burden be spread across different structures?

Ultimately New Zealand needs to create a framework which uses evidence-based approaches that enable it to recognise and react to changes in the broadcasting and electronic content environment.

This report aims to provide a basis for exploring where regulatory boundaries, organisational structures and emphasis should lie. It demonstrates that different territories have chosen different approaches to suit their own cultural specificities. New Zealand, a largely deregulated country, will need to examine how best the regulatory practices in other countries – the change from statutory regulation, the increasing responsibilities shared with industry and the audience, for example – can be drawn on to suit its particular needs.

A: Introduction

Summary

The relevance of content regulation, based on traditional models of broadcasting, is being challenged by technological developments in the communications media industry. Increasingly the control of content – how it is delivered, how it is accessed and how it is chosen – is being placed in the hands of the audience or user and within an environment to which it is difficult to apply traditional licence-based regulatory mechanisms.

Regulatory organisations across the world, like the Broadcasting Standards Authority (BSA), are evaluating their role as regulators and weighing that against the changing media content environment. Different forms of regulation, which share the responsibility for content supervision between regulators and the communications industries, are being used increasingly by many public bodies across the world, as is a more active role in the raising of media literacy and awareness among audiences and users.

Background

Developments in electronic content distribution are challenging existing regulatory frameworks. The traditional model of broadcasting – where choice was restricted and control was in the hands of a few broadcasters - has given rise to regulatory models that have developed in different countries to match their particular broadcasting eco-system. In New Zealand a mixed model of broadcasting developed from the early days of television, both in terms of funding sources and social objectives. In 1989, broadcasting was deregulated to encourage competition between broadcasters and to increase consumer choice. However it was determined that the content transmitted by broadcasters should continue to be regulated. The Broadcasting Standards Authority, a statutory agency, was given the power to sanction those that transgressed against standards laid down in broadcasting codes.

A fundamental issue is if and how this system can be adapted to meet the challenges of increasing use of new media or cross-platform outlets not currently covered by the standards regime, and where the control of content has moved much closer to the audience or user.

Broadcasting started at a time of spectrum scarcity, with broadcasters distributing a limited selection of television channels. Then came the development of satellite and cable technologies offering vastly more channel choice. Now digital transmission technologies offer not just more services but the ability to access content at times and in places we choose, with devices that are convenient to use. Thus the mobile phone and personal computer (PC) have become modern-day television receivers, complementing and potentially eroding the role of conventional receivers for an increasing number of consumers.[1]

With these changes come alterations in the way in which audiences and users 'interact' with the broadcaster or content provider, and in the extent to which relationships can be built on established expectations of the way in which media content will be transmitted. The limited offering that characterised the analogue broadcast environment was often free at the point of reception, paid for indirectly

[1] Brown, R. and Price, S., *The Future of Media Regulation in New Zealand: Is There One?*, BSA, 2006

through advertising or government-imposed (television licence) fees. With satellite and cable services came the concept of direct payment for television and a change in the way in which audiences saw their relationship with the content provider. This customer relationship allows the audience a greater sense of control insofar as they need only pay for content they want.[2] Content delivery models being developed now lead to a variety of retail relationships such as subscription and pay-per-view services, as well as indirect funding such as from advertising or sponsorship. The new delivery models also give the audience or user a sense of their own ability to determine the relationship with the content provider.

Broadcasting itself, as a notion, is being challenged. Traditionally the broadcaster or content provider determines when content is received, and the word 'broadcasting' refers to the same content reaching large (or mass) audiences simultaneously, so-called 'one-to-many' transmissions. With pay television, came the idea of narrowcasting with one-to-many transmissions still being the case but now refined to audiences that paid for content or for the technology to receive it.

The next stage of technical development of content transmission puts control in the hands of the user through devices such as personal video recorders or on-demand services. This form of content transmission has not found a generic agreed term as yet. For example, the European Union defines it by the way content is transmitted or scheduled – 'linear' or 'non-linear' content[3]. Linear content is transmitted at a time defined by the content provider (as in traditional broadcasting or in live streaming across the Internet). Non-linear content is defined by the audience or user choosing the exact time of viewing. In this case near video-on-demand (where content can be accessed at (typically) 15 minute intervals) is a linear service while 'true' video-on-demand (where access is immediate) is non-linear.

At present in New Zealand, non-linear content that is paid for (as in video-on demand) falls outside broadcast regulation because it is requested by identified individuals ('one-to-one' transmission) rather than made available in a 'broadcast' sense.

These changes are driven by technology that creates an environment where statutory-based control over content and the way in which it is delivered becomes increasingly difficult as more control is given to the audience or user.

As governments seek to take advantage of the economic and social opportunities offered by these developments, it is agreed internationally that content regulation needs to be reviewed. The UK regulator, Ofcom, said in a statement about the changing relationship of the audience or user with broadcasting and electronic content:

> *This degree of control felt by the audience or user is important. There is a financial relationship in place with subscription television services. In addition, there are a variety of access control systems for many media delivery platforms. For satellite television, this may be access via personal identification (PIN) codes.[4] In the cinema there may be entry restrictions based on (apparent) age. In the mobile telephony world, access may be based on age verification at the point of purchase of a telephone. However,*

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[2] Towler, R. *Platform and Channels*, BSC/BBC/ITC, 2001

[3] http://ec.europa.eu/comm/avpolicy/reg/tvwf/modernisation/proposal_2005/index_en.htm

[4] In New Zealand access by minors can be controlled by the 'child lock' supplied by Sky Television although there is little available information as to frequency of use by subscribers.

the blurring of these traditional boundaries may occur as content is delivered via more or less 'public' access systems, such as radio over the Internet, radio via mobile telephony or radio via television.[5]

The changes from an analogue system of broadcasting to the newer digital age have been summarised as follows:[6]

Old/Analogue	**New/Digital**
Linear	Non-linear (and linear)
Passive	Interactive
Universal	Targeted
Full service	Niche
Broadcasters only	Multi-provider (telcos)
Broadcaster-driven	Consumer driven
Broadcast schedules	Me-channels/ searchable databases
Content in one form	Multi-use, multi-versioned content
One delivery platform	Multi-platform delivery

[5] Ofcom, 2004

[6] Norris, P. and Pauling, B. *Public Broadcasting in the Digital Age: Issues for New Zealand, 2005* - http://www.nzonair.govt.nz/images/media/about/digi-age_may05.pdf

Definitions

In conducting this research, we found a significant potential for confusion about definitions for electronic content, delivery platforms and regulatory processes. With this in mind we offer a set of definitions for terms that apply throughout this report:

Term	Our definition
Converged content regulation	Common standards applied across distribution platforms – for live and on-demand distribution (also referred to as platform-neutrality)
Combined content and platform regulator	A single regulatory body that has responsibility for content and electronic distribution platforms
Converged delivery	Multiple services (e.g. voice, video and data) via single platforms (e.g. cable)
Protective content regulation	Regulation to protect audiences or users from inappropriate or harmful content such as the protection of minors or the protection of participants in programmes against undue infringement of privacy (sometimes called 'negative regulation')
Proactive content regulation	Regulation to promote content themes such as the provision of children's programming or the encouragement of domestic production (sometimes called 'positive regulation')

What is the justification for regulation?

Regulation is usually justified on the basis that market forces alone are unable to deliver required public policy objectives. For content regulation, in particular, a key objective is the avoidance of harm.

Regulators have traditionally worked within the provisions of empowering legislation. This is important as we consider the content regulatory models in place in the evolving broadcasting and electronic media environment. There is a change occurring internationally, from statutory regulation towards systems which have less reliance on industry-specific legislation and place more emphasis on encouraging competition and user or audience responsibility.

The focus of this report is primarily on regulation to protect citizens and consumers from harm. It is widely accepted (through international instruments such as the United Nations Convention on the Rights of the Child) that certain audience groups, especially minors, should be shielded from material that may be considered inappropriate for or harmful to them. Other common protective rules include those around journalistic accuracy and fairness, right of reply, privacy rights of those featured in programmes, controls around television violence, and articulation of standards of good taste and decency.

There are other objectives for content regulation in New Zealand in terms of supporting culture and minority interests. The New Zealand government policy statement *A Programme of Action*[7] speaks of the importance of broadcasting for the

[7] *Building a strong and sustainable public broadcasting environment for New Zealand – A Programme of Action*, Ministry for Culture and Heritage, 2005

economic and social growth and development of New Zealand. Broadcasting is recognised as important to support certain core values in a civil society.

Irrespective of the objectives of regulation, there are certain common principles that should apply in framing new regulation as well as reforming older frameworks. The UK's Better Regulation Task Force sets out five Principles of Good Regulation:[8]

- ***Proportionality***

  Policy solutions should be appropriate for the perceived problem or risk: you don't need a hammer to crack a nut!

- ***Accountability***

  Regulators/ policy officials must be able to justify the decisions they make and should expect to be open to public scrutiny

- ***Consistency***

  Government rules and standards must be joined up and implemented fairly and consistently

- ***Transparency***

  Regulations should be open, simple and user-friendly. Policy objectives including the need for regulation, should be clearly identified and effectively communicated to all stakeholders

- ***Targeting***

  Regulation should be focused on the problem. You should aim to minimise side-effects and ensure that no unintended consequences will result from the regulation being implemented.

The Task Force also noted that alternatives to regulation should always be considered and consulted on:

- ***No intervention***
  Is it really necessary or feasible to intervene?

- ***Information and Education***
  It may be more effective and cost effective to provide users with information, for example through advertising or media campaigns.

- ***Self Regulation***
  Will introducing voluntary codes of practice be as - or more - effective than implementing compulsory regulation?

- ***Incentive-based Structures***
  Can you introduce targets, financial or trading incentives to achieve better standards instead of introducing regulation?

Protective content regulation: an overview

As described, a social purpose frequently used as a justification for regulation is the protection of audiences and users, or 'protective regulation'. Mechanisms used are generally codes of broadcasting practice and complaints determination procedures.

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[8] http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/planning_a_consultation/principles_good_regulation.asp

In all countries surveyed for this study, the protection of minors from inappropriate content is a key principle. Sensibilities differ culturally and some countries consider particular types of content as less appropriate than other countries.

The concept of 'taste and decency', as a regulatory requirement, is also common, although definitions vary widely between countries. The former broadcasting advisory body in the UK, the Broadcasting Standards Council (now subsumed within Ofcom) recognised this and made a distinction between issues of taste and those of decency:

> *A distinction has to be made between attitudes which are subject to rapid changes of fashion, such as style of dress or modes of address, and those which reflect more enduring views of right and wrong. Matters of taste are ephemeral, while matters of decency, such as the dignity to be accorded to the dead and bereaved, reflect ideals that acknowledge our shared values.*[9]

A further, important, role for regulators is that of 'protector of reputation'. In many systems the issue of 'fairness' to participants and those in the news, and the protection of their privacy, are important constructs. It is unlikely that all members of the public understand what the process of filming and editing might do to a contribution they make and there are, in many countries, systems in place to ensure that as much clear and relevant information is supplied as possible, such as pre-filming contracts, pre-transmission viewing etc.

The special situation of child participants in programmes is also common in regulatory systems. The responsibility given to the guardian of a child for their appearance in a programme, may not always be deemed to be in the child's best interest.[10]

Common regulatory tools used for protective regulation include:

- Content codes –sometimes with different requirements placed on different kinds of broadcasters
- Scheduling restrictions – e.g. in New Zealand the adult free-to-air TV watershed (after which content considered unsuitable for children may be shown) applies from 8.30pm, with a later watershed at 9.30pm for stronger material
- Classification of broadcast material (e.g. G, PGR and AO)
- On-screen symbols during programmes (e.g. V for violence)
- Pre-transmission warnings
- Codes applying to advertising and sponsorship – as in New Zealand, advertising is often self-regulated.
- Complaints mechanisms – most content regulators such as the BSA offer audiences a complaints system where breaches of codes can be alleged and adjudicated.

To assist with the process of adjudication and to inform themselves of changing social attitudes and norms many regulators undertake research and public

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[9] *Code of Practice*, Broadcasting Standards Commission, 1998

[10] Messenger Davies and Mosdell,N. *Consenting Children?:The use of children in non-fiction television programmes,* Broadcasting Standards Commission, 2001. See also the BSA Privacy principles in each NZ broadcasting code.

consultation to examine both established evidence and to conduct new work, sometimes in collaboration with other bodies.[11]

Proactive content regulation: an overview

A Programme of Action (op cit) recognises the importance of broadcasting not just as an entertainment vehicle, but as an important component in New Zealand's social and cultural environment, formative in the sustainability of citizenship and social cohesion.[12] The Programme explicitly refers to the importance of creating a shared public space for New Zealanders, especially as the communications market becomes increasingly globalised.

In a number of countries a sense of 'national identity' is promoted through quotas on broadcasters for specified hours of domestic production. In New Zealand, with its essentially self-regulatory structure, there have never been such quotas. More recently, however, voluntary annual targets have been negotiated for each of the main free-to-air channels and for popular music on commercial radio.

In Canada, domestic production quotas are offset against other regulations, while Australia makes specific requirements on broadcasters. The three major commercial channels (7, 9, 10) are required to screen a minimum of 55 % of locally-produced content in primetime, as well as to make particular provisions for children and pre-schoolers. (In Australia 'locally-produced' content can include New Zealand-produced content as well as Australian on commercial networks.)

Many regulators, including the BSA, are also increasing the role they play in the education and awareness raising (media literacy) of audiences and users so that people can be more knowledgeable in a future, less easily regulated world. In the UK, where the Internet is not regulated, the government gave Ofcom the requirement to promote media literacy, while in Canada media awareness and the raising of media literacy have long been regulatory objectives.[13]

Co-regulation and self-regulation

> *Governance has gone global. International organizations, non-governmental organizations (NGOs), transnational companies – all play vital roles alongside national officials in global policy-making.*[14]

Due to the perceived social and cultural importance of broadcasting (especially mass media broadcasting such as free-to-air content), content regulatory models have been applied internationally. Such regulation has been either administered by government departments (often ministries of information or culture) or placed with bodies independent of government, but with a statutory basis (as with the BSA).

Increasingly, in those countries where regulation of broadcasting and electronic content has been held within government, there is a move towards the formation of independent regulatory agencies.

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[11] For example: Broadcasting Standards Authority, *Real Media Real People - Privacy and informed consent in broadcasting,* Dunmore Press, 2004 and Broadcasting Standards Authority, *Freedoms and Fetters: broadcasting standards in New Zealand*, Dunmore Press, 2006

[12] www.mch.govt.nz/publications/public-broadcasting/index.html

[13] See Appendix 4

[14] Benner, T. and Witte, JM. Everybody's Business in Stern, S. and Seligmann, S. (ed) *The Partnership Principle: New Forms of Governance in the 21st Century*, Archetype Publications, 2004

Within the changing media environment, a favoured alternative form of regulation in some countries (such as Australia[15]) is co-regulation. Co-regulation is best described as *a generic term for co-operative forms of regulation that are designed to achieve public objectives and that contain elements of self-regulation as well as of traditional command and control regulation.*[16]

The prime benefits of co-regulation are perceived to be

- the expertise and flexibility offered by a more specialised industry-based organisation and
- a detached regulatory organisation which nevertheless has a clear system of legal backstops and accountability.[17]

The Australian regulator (ACMA) argues that its system for co-regulation of the Internet has arisen from the long-established system of broadcasting content regulation in that country:

> *While censorship arises as a contentious topic from time to time, Australians are broadly accustomed to, and many expect, some degree of government intervention in decisions about what can be shown, when, and to whom.*[18]

Self-regulation is the process whereby industry actively participates in and is responsible for its own regulation, while remaining subject to the general rule of law. The basic elements of self-regulation usually consist of a code of practice or guidelines adopted by the industry and processes by which application of the code or principles may be assessed, complaints handled and corrections applied. Impartiality is seen to be key to the success of such organisations, supported by good governance, and they go to some length to ensure they are not accused of 'industry capture', for example through the appointment of lay members.

Examples of self-regulatory systems are less common. The advertising industry is a model globally for successful self-regulatory practice.

In the UK in 2003, the Association for Television On-Demand (ATVOD) was set up alongside Ofcom to be a self-regulator for the nascent on-demand industry. The founders argued successfully that self-regulation is a more versatile and dynamic mode of regulation than formal statutory regulation and well suited to fast moving or emergent industries.[19] In return for its self-regulatory status, ATVOD was required to produce a Code of Practice and set up a robust complaints procedure for customers of member organisations. It also had to appoint a chairman independent of the industry and lay members. ATVOD makes regular reports to the government department that oversees it and works closely with Ofcom and other co-regulatory bodies in the industry.

Almost ten years ago, Melody argued that

> *Regulators must be able to adapt to changing circumstances or they will simply become a bureaucratic drag on industry development. They must have the power to interpret policy and adapt their approach and methods accordingly. In a dynamic industry sector what are needed are fewer,*

[15] See Appendix 2

[16] C. Palzer, *Co-Regulation of the Media in Europe: European Provisions for the Establishment of Co-regulation Frameworks*, IRIS plus 2002-6

[17] See for example, *Co- and Self-regulation in the UK* , Co and Self Regulatory Forum, 2006 - http://www.broadbanduk.org/reports/Directives/060526%20Co_and_SelfRegulation_intheUK_FINAL.pdf

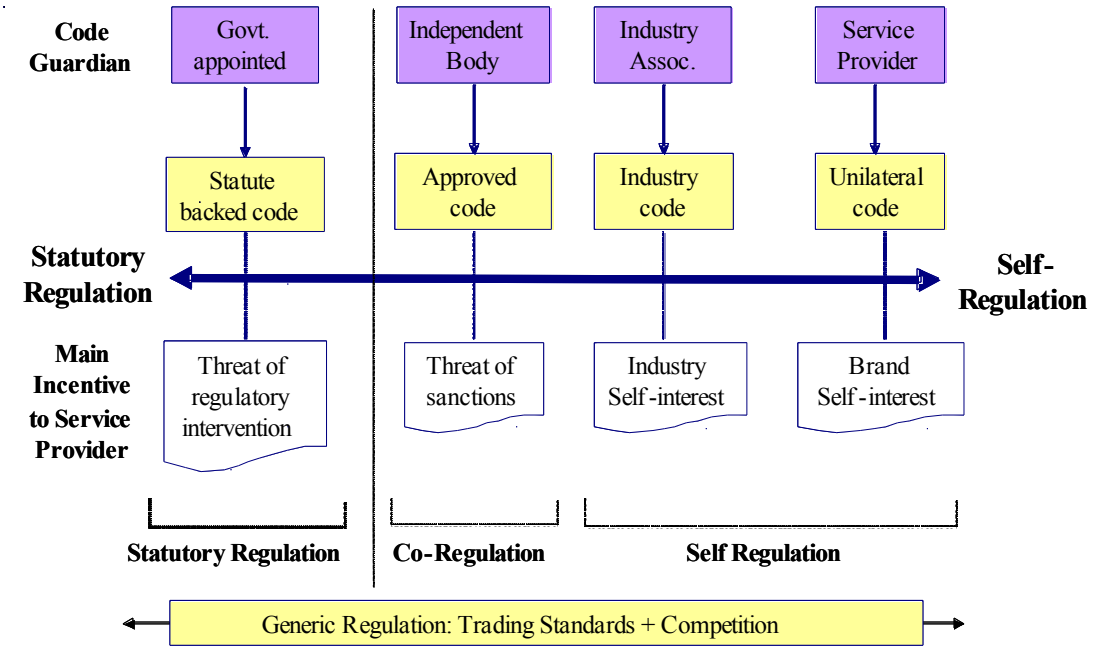
[18] www.oii.ox.ac.uk/microsites/cybersafety/extensions/pdfs/papers/andree_wright.pdf

[19] It should be noted that one of the authors is closely associated with ATVOD.

stronger more independent regulators with responsibilities for a proactive and forward-looking approach to regulation.[20]

Figure 1 illustrates how incentives and code responsibilities change when moving from statutory regulation at one end of the spectrum to self-regulation at the other.

Figure 1: Illustration of the spectrum of regulatory approaches

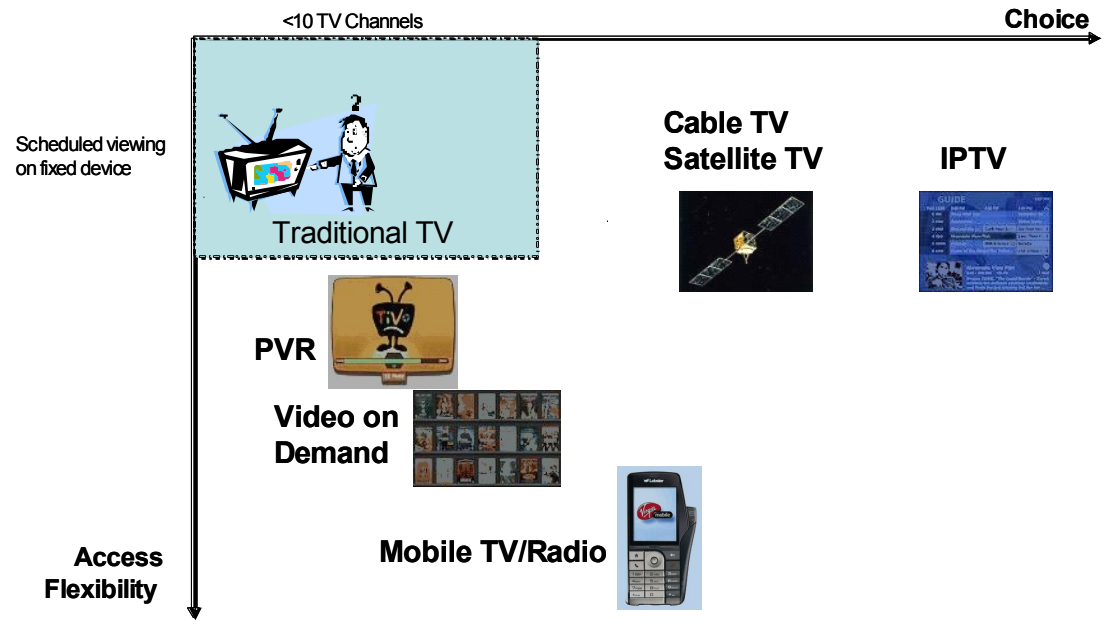


[20] Melody, W. H (ed) 1997. *Telecom Reform: Principles, Politics and Regulation*. Lyngby: Technical University of Denmark

Technological changes and convergence

Advances in digital distribution technology are facilitating a rapid expansion of choice of content and increasing flexibility of consumption. Both of these trends contribute to pressures to reform systems of content regulation designed around constraints inherent in analogue broadcast platforms (with a limited number of sources and relatively predictable modes of viewing and listening).

Figure 2: Expansion of choice and flexibility provided by new digital platforms



However, the expansion of choice offered by new digital broadcast platforms pales into insignificance in comparison with the choice of content available via the Internet, some of which is contributed by users themselves (for example, with blogs or on sites such as MySpace or YouTube).

Ongoing technology developments have also radically increased flexibility of access to content, which no longer relies on viewing with a fixed-television receiver but supports access through mobile and handheld devices. Music has been in the vanguard of this change, illustrated by the meteoric rise of the iPOD and its companion download service, iTunes. Many of the latest generation of portable players support video too and the growth of video downloads from iTunes suggests that video will follow where music (audio) has led.

See Appendix 15 for a more detailed discussion of technology developments.

Differences in devices

The way content is used varies considerably with the type of device and the context in which it is used. Consequently there are differences between them and it would be wrong to make assumptions that all lessons from the one (the personal computer and the Internet) can be carried over into the other (the mobile telephone and mobile content services).

Some of the main differences are:

- **Mobile phones and other portable devices are usually personal** devices whereas home PCs are often shared

- **Access by different demographics**
  Research in New Zealand showed that nearly three quarters (73%) of those aged 12-19 have a mobile phone.[21] In the UK 65% of those aged 8-15 have a phone, with the percentage increasing to 82% of 12-15 year olds.[22]
- **Lack of supervision**
  The intensely private nature of mobile phones means they are less likely to be supervised, whereas the personal computer can be placed in a less private location in the home and the history of sites visited more easily checked, for example. Further, in some countries, young people tend to have pay-as–you-go accounts (70% of young people in the UK) rather than the itemised telephone bills that come with contracts. This also makes parental supervision less easy.

- **Point of control**
  The Internet service provider, often through industry bodies, offers some control over the type of content that can be accessed through the application of content filtering systems. For the mobile operator offering access to the Web outside its own portal, there are still relatively few access control systems that can be put in place. Age verification is possible but is not widely implemented as yet, although operators such as Orange and Vodafone are reportedly creating global models for dealing with child protection issues. (For example, in New Zealand Vodafone has filtering applications that must be opted out of when the customer's age is verified).

- **File sharing**
  While there is concern about the ability to share data across mobile phones (publicised by the infamous 'happy slapping' or assault cases that are sent from one mobile phone to another), mobile platforms are currently unable to compete in terms of either price or performance with broadband PC-enabled Internet access. However the arrival of devices such as the PlaystationPortable and the steady improvements in wireless networking technology will soon facilitate better mobile Internet access.

- **Inappropriate contact**
  Risk of grooming by paedophiles through chatrooms is already an issue with the fixed Internet. With the use of mobile phones, the risk may be higher since there is less ability for parental supervision. Professor Livingstone found in the UK that nine out of 10 children aged between eight and 16 have viewed pornography on the Internet, in most cases, unintentionally.[23] Similarly the YISS-2 survey in the US found that 90% of the young people sampled who had received unwanted sexual advances were aged 13+, suggesting the greater vulnerability of young teens to such material.[24] NetSafe in New Zealand offers advice and guidance on how to avoid such risk.[25]

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[21] Internet Safety Group, *The Text Generation: Mobile Phones and New Zealand Youth*, 2005

[22] Ofcom, *Media literacy Audit: Report on media literacy among children*, Ofcom, 2006

[23] Livingstone, S et al, *UK Children Go Online*, London School of Economics, 2005

[24] Wolak, J., Mitchell, K., & Finkelhor, D. (2006). *Online victimization of youth: Five years later*. National Center for Missing & Exploited Children Bulletin - #07-06-025. Alexandria, VA

[25] See www.netsafe.org.nz

Need for greater international cooperation

Satellite service roll-out and broadband developments are increasing the availability and consumption of content from service providers residing outside domestic borders. Internationally fragmented content regulation puts domestic providers at a disadvantage and tends to undermine domestic regulation. Given that consumption of these off-shore services is likely to increase, there may be a case for increasing international cooperation in efforts to harmonise content standards.

It is recognised however, that the cultural specificities of content standards make all but the broadest of frameworks difficult to apply. An example of where this has been successful is the Pan-European Gaming Initiative (PEGI) which has agreed an age-based labelling framework for electronic games.[26] This initiative applies across the Europe and is considered to have brought benefits to both industry and consumers.

[26] http://www.pegi.info/pegi/index.do

B: Content Regulation in New Zealand

Summary

As numerous commentators have pointed out, New Zealand is media rich in respect of the myriad of media outlets available to a population of little more than four million. In radio, for example, there are more radio stations available to Auckland residents than in the much larger markets of Sydney or Melbourne, just across the Tasman.

The move towards a deregulated broadcasting market began in 1989 with a determination to increase competition in the market (and so consumer choice). Public service objectives were assigned to funding agencies NZ On Air and, later, Te Mangai Paho. Public radio (Radio New Zealand) maintained its non-commercial status and was later given a Charter But the public television broadcaster (TVNZ) was funded primarily by advertising and was required to act as a business, returning a dividend to Government.

In 2003, amending the previous model, TVNZ was given a Charter requiring it to deliver a broad range of programming objectives including the requirement to inform, entertain and educate.

With deregulation came a move away from much statutory regulation, as practised in many other countries, especially for the public broadcasters. However protective content regulation remained and the BSA was set up to oversee television and radio standards. It replaced the Broadcasting Tribunal, but was given a much narrower focus, in essence providing a complaints process in relation to programmes once broadcast.

Other regulatory bodies also have some jurisdiction over aspects of broadcasting – such as in the field of privacy and advertising. Other media in New Zealand are largely self-regulated.

The BSA works with broadcasters to produce broadcasting codes which if breached can result in legally enforceable sanctions against the broadcaster. There are separate codes for radio, free-to-air and pay TV. The last has slightly different rules applied for those subscription channels that are effectively 'open access' once the subscription is paid, and those that require additional access mechanisms or payment of a separate fee to be 'unlocked'.

Along with the rest of the world, New Zealand is undergoing media diversification and audience fragmentation, with the attendant issues of funding, production, distribution and regulatory fit. With the changing media environment and the globalisation of the media, it is an opportune time for a stock-take of content regulation in New Zealand.

New Zealand broadcasting since deregulation: an overview

The guiding principles of the deregulation of broadcasting in 1989 could be summarised as:

- Increase competition between broadcasters
- Increase consumer choice
- Separate clearly the commercial from the non-commercial

These changes took place within government initiatives (begun by the third Labour Government in 1984, and continued by subsequent National administrations) to deregulate state-owned activities and favour unfettered market processes.

Subsequent developments included:

- The first private television channel TV3 which began in 1989
- The first pay TV provider Sky which began in 1990
- NZ On Air, established in 1989 and initially also responsible for collecting and distributing the Public Broadcasting Fee (PBF), had direct responsibility for funding social and cultural objectives of broadcasting
- A separate Maori funding agency, Te Mangai Paho, was created in 1993
- The creation of a market in radio and television frequencies
- A large increase in privately owned radio stations
- Abolition of conditions on broadcaster licences
- Auctioning of spectrum
- The abandoning of any restrictions on foreign ownership of media companies. Foreign interests may own 100% of any private media company in New Zealand. Similarly there are no restrictions on cross-media ownership
- Creation of the Broadcasting Standards Authority in 1989.

In other words, the market was to be the driver of most decisions, with regulation by the state minimalist and dictated by specific needs.

However, there is a significant difference in approach and history between radio and television. Publicly-owned radio has always had two non-commercial networks (Radio New Zealand's National Radio and Concert FM), whereas television from its earliest days was financed in part by advertising. By the time of deregulation in 1989, television was receiving most of its revenue (approximately 85%) from advertising. Successive governments had opted not to raise the PBF, preferring that the broadcaster relied increasingly on advertising. The period from 1989 to 1999 saw the publicly owned television broadcaster TVNZ, a State-Owned Enterprise, behaving primarily as a commercial operator, required to make profits and return a dividend to the government.

This funding structure made TVNZ the only known example in the Western world of a state broadcaster making payments to the government. The reforms of the Labour-led government of 1999 were aimed at restoring a public broadcasting function for TVNZ. In 2003 TVNZ was granted a Charter requiring it to deliver a range of public broadcasting objectives including the obligation to inform, educate and entertain. It also received direct government funding for the first time.

In 2004 Maori Television was launched, funded in part by Te Mangai Paho and in part by direct government funding. It also carries advertising.

Media regulatory structures in New Zealand[27]

Legislation and content regulation bodies

The regulatory framework for broadcasting in New Zealand is defined by the Broadcasting Act 1989. Prime responsibility for programme standards is on the broadcasters, with the BSA mostly acting as a referral and approval body.

The Films, Videos, and Publications Classification Act 1993 covers publications including films, DVDs, computer games and books. It defines what is objectionable and it is illegal to 'possess, own, sell, give or buy an objectionable publication'.

Various principles of regulation are implemented through a number of agencies and organisations. All laws impacting on media content apply to all media, with one or two qualifications. The Privacy Act exempts all media in their news activities, except that TVNZ and RNZ are affected in respect of personal information they may be holding on people.

The table below shows the media content regulatory authorities in New Zealand and their overall remit as well as their constitution and funding. Further description follows.

[27] See also Appendix 1

Table 1: Organisations involved in overseeing media content in New Zealand

Organisation	Sector	Overall role	Constitution	Funding	Regulatory Function
BSA	TV & Radio	Protective	Statute	Govt. + levy	Codes of broadcasting practice, complaints
OFLC	Film, Video and 'Publications'	Protective	Statute	Govt. + fees	Classification and censorship
Film & Video Labelling Body	Film and Video	Protective	Statute but self-regulatory principles	Fees	Labelling unrestricted content
ASA	Advertising on all media	Protective	Self-regulatory	Industry	Code of advertising practice, complaints
NZ Press Council	Print media	Protective	Self-regulatory	Industry	Statement of principles, complaints
Privacy Commissioner	All media (with the exception of news)	Protective	Statute	Govt.	Codes of practice, investigation and rulings
Internet NZ	Internet	Proactive	Industry-defined	Industry	No code yet
Telecomms Carriers Forum	Mobile telephony	Protective	Industry-defined	Industry	Voluntary code

a. Broadcasting Standards Authority

Covers: Television and radio content, including subscription services and streaming video on the Internet but only if a simulcast of radio or TV content broadcast by a NZ-based company

Standards: Codes of broadcasting practice (mostly ethical standards, specific, exclusive)

Author of standards: industry and BSA together, based on Broadcasting Act criteria

Funded by: government, levy on broadcasters.

Process: Complaints driven. Complaints must be made first to the broadcaster. Only if the complainant is dissatisfied with the broadcaster's response, is the complaint taken to the BSA, which is for the most part a complaints appeal body. The one exception is complaints about privacy, which may either be made direct to the BSA or to the broadcaster.

Determined by: Authority of four members appointed under statutory criteria, chaired by long-standing lawyer

Remedy: costs, compensation for privacy infringement, corrective statement/apology, order broadcaster off-air or advertising blackout for up to 24 hours.

Average number of complaints determined annually: about 200

Average upheld: 21%

All decisions by the BSA are published. Decisions can be appealed to the High Court.

Broadcasters are under no obligation to reveal their in-house decisions. In its most recent Annual Report (2005/6), TVNZ reported 338 complaints, of which it upheld 40, and 62 went on to the BSA.

b. Office of Film and Literature Classification

Covers: Publications requiring restriction (including films, videos, DVDs, books, print media, computer files, computer games, billboards, t-shirts)

Standards: related to sex, horror, crime, cruelty or violence and "injurious to the public good"; variety of statutory factors.

Author of standards: Parliament

Funded by: Government, fees

Process: Classification system, complaints, investigation, Court referrals

Determined by: Chief censor and staff, and Film and Literature Board of Review on appeal. All government appointments.

Remedy: ban or restriction (criminal offence to breach) or excisions

Average number of classifications issued annually: About 1450 and about 700 film poster, slick and advertising approvals.

Average number banned: 14%

c. Film & Video Labelling Body

Covers: Film and video already classified unrestricted in relevant territories. Refers all others to OFLC

Funded by: Industry fees

Remedy: Referral of material to OFLC

d. Advertising Standards Authority

Covers: Advertising across all media, including billboards.

Standards: Codes of practice (general ethical guidelines and subject-specific codes; exclusive)

Author of standards: Industry

Funded by: Industry

Process: Complaints driven

Determined by: Advertising Standards Complaints Board, with half public membership, and Advertising Standards Appeal Board, with a majority of public members.

Remedy: advertisement withdrawn

Average number of complaints determined annually: about 250

Average number upheld/settled: 52%

e. Press Council

Covers: Newspapers and magazines and associated websites

Standards: Statement of Principles (ethical standards, broadly drafted, not exclusive)

Author of standards: Industry

Funded by: Industry

Process: Complaints driven

Determined by: Council with majority of public members and (usually) retired High Court judge chairing.

Remedy: (If complaint against member) requirement to publish the "essence" of the determination if complaint upheld

Average number of complaints determined annually: about 50

Average upheld/part upheld: 23%

f. Privacy Commissioner

Covers: Privacy issues. Media organisations are exempt from the Privacy Act for news activities, except for Radio NZ and TVNZ in respect of personal information held by them

Standards: related to the privacy of personal information, and the uses to which it may be put

Author of Standards: Parliament, through the Privacy Act

Funded by: Government

Process: complaints driven

Determined by: Privacy Commissioner and her staff

Remedy: settlement between parties, or complaint may proceed to Human Rights Review Tribunal

Number of complaints closed 2004/5: 970

Number where substance found: 63

Number referred to Tribunal: 13

g. InternetNZ

InternetNZ is a non-profit organisation whose mission is to keep the Internet open and uncaptureable. It performs a range of roles in the New Zealand Internet scene including management of the .nz domain name system (through the Office of the Domain Name Commissioner) and the ownership of the .nz domain name registry (.nz Registry Services).

InternetNZ does not regulate content but it does support the Netsafe initiative, a cybersafety education programme run by the Internet Safety Group (ISG). The ISG

has been designated by the Ministry of Education as the agent of choice for cybersafety education in New Zealand. Netsafe's primary sponsor is the Ministry of Education. In 2003 the Netsafe Kit for Schools was sent to every school and library in New Zealand.

InternetNZ published a draft Internet Code of Practice in 2005 setting out a range of best-practice principles for ISPs. No progress has been reported since submissions closed that year.

h. Telecommunications Carriers' Forum

The TCF is a membership-based forum that sees its role as ensuring dialogue between the industry and other stakeholders. It has recently (2006) published a voluntary Mobile Content Code for members which includes advice on areas such as the provision of offensive or illegal material, age verification procedures and complaints systems.

Broadcasting content restrictions

The BSA has approved four broadcasting codes of practice, produced in conjunction with broadcasters and usually after public consultation. The codes include standards and guidelines. Recently the BSA began developing Practice Notes to help complainants and broadcasters understand the approach the BSA is likely to take in considering issues about content. The BSA also undertakes research to help inform its judgments and states publicly that it will review the codes every five years (it has recently updated the Pay TV Code).

The codes cover New Zealand-originated 'broadcasting' as defined in the Broadcasting Act (s2(1):

> *Any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcast receiving apparatus but does not include any such transmission of programmes*
>
> *(a) made on the demand of a particular person for reception only by that person; or*
>
> *(b) made solely for performance or display in a public place*

The Act also states a 'programme' *does not include visual images, whether or not combined with sounds, that consist predominantly of alpha-numeric text*.

Thus radio, free-to-air, pay TV and possibly Internet streaming from NZ-based sites are covered but not offshore channels directly accessed by satellite, video-on-demand, downloaded content (except when simulcast), or (presumably) mobile content.

The codes are protective codes which recognise the different ways in which audiences interact with different media. Thus, the free to air code is more restrictive in its guidance, requiring broadcasters to classify content (G, PGR or AO) and operate a watershed for material that may not be considered suitable for children.

The pay TV code is less restrictive and pay TV channels have a more graduated system of classification, based on cinema classifications (from G to 18). The code takes account that subscribers have to be 18 years of age to take out a pay television

subscription, that they choose to pay for the content they watch (thereby asserting greater control and awareness of their choices) and that there are often other mechanisms in place for the additional blocking or filtering of access to inappropriate or unwanted content. These include use of

- Electronic programme guides carrying programme information
- Conditional access systems such as parental lock mechanisms or Personal Identification Number (PIN) codes.

Both of these tools are likely to be available on free-to-air television when digital FTA broadcasting begins in New Zealand, sometime from late 2007.

Similarly the Radio Code (currently under review) recognises the particular, often personal relationship listeners have with the medium. This code too is less restrictive than the television codes, with no watershed.

A brief description of matters covered by the broadcasting codes is set out in Table 2:

Table 2: BSA Broadcasting Codes

Coverage	Free to Air	Pay TV	Radio
Taste and decency	✓	✓	✓
Watersheds	✓	✓ (Only for 18 content on UHF services)	×
Programme classifications	✓	✓	×
Mandatory programme information	✓	✓	×
Conditional access	×	✓	×
Children's participation/interests	✓	✓	✓
Privacy	✓	✓	✓
Fairness	✓	✓	✓
Balance	✓	✓	✓
Accuracy	✓	✓	✓
Social responsibility	✓	✓	✓
Violence	✓	✓	×
Restrictions on promotion of liquor	✓	✓	✓

Platform regulation

The spectrum and telecommunications regulators also play a part in addressing public policy objectives:

a. Spectrum

Spectrum management is the responsibility of the Ministry of Economic Development (MED), as prescribed under the Radiocommunications Act 1989, and as amended in 2000.

The Act enabled the creation of property rights for spectrum and also the use of a market-driven allocation mechanism for the distribution of such rights. Since 1996 the mechanism used has been auction using an Internet based procedure.

There are no programming or content requirements attached to spectrum purchased in this way.

Certain frequencies may be reserved, in line with Government policy, for public policy purposes e.g. for the promotion of Maori language and culture, or for the provision of community broadcasting (access radio). The MED remains responsible for issuing licences for reserved frequencies, and monitoring compliance with the terms of such licences.

The Ministry for Culture and Heritage advises on the allocation of such licences and monitors, via contracts, compliance by broadcasters holding them.

b. Telecommunications

Regulation of the telecommunications sector has a number of key aspects:

- The preservation of the “kiwi share”, retained when Telecom was privatised in 1990, to ensure that all residential households continue to have the right to free local calling. This falls under the Telecommunications Service Obligations, the cost of which is calculated annually and allocated amongst the industry.
- The appointment of a Telecommunications Commissioner under the Telecommunications Act 2001. The commissioner’s key roles were to resolve disputes over access to regulated services and to recommend regulation of new services or changes to the scope of existing regulation, if the need arose.
- The Government’s decision in May 2006 to impose local loop unbundling, effectively enabling competition in the last mile of copper between exchange and consumer. In addition naked DSL will be allowed, meaning that consumers will be able to purchase broadband without the accompanying phone service.
- The prospect of structural separation if the Government remains dissatisfied. Telecom has announced that it will move to operational separation.
- The issue of mobile termination charges, and the fact that there are only two operators in the mobile phone market. These issues are under examination by the Commerce Commission (see below).

c. The Commerce Commission

This body enforces all regulation specific to the telecommunications industry, as instanced above.

It also enforces legislation that promotes competition in New Zealand markets. In this regard, the Commission is required to determine whether or not mergers and

acquisitions by media companies should be allowed to proceed. The key test in such determinations is whether the proposal will have or be likely to have, the effect of substantially lessening competition in a market. Its most recent determination (in February 2006) was to allow the pay TV provider, Sky, to purchase the free-to-air network Prime, despite opposing submissions from the other free-to-air broadcasters.

Policy agencies and their roles

Three ministries are involved with the regulation of broadcasting in New Zealand.

a. Ministry for Culture and Heritage

The key Ministry overseeing content regulation is the Ministry for Culture and Heritage (MCH) which advises the Minister of Broadcasting and Minister for TVNZ (currently both the same person) in relation to broadcasting issues.

MCH also administers government funding to a number of broadcasting-related organisations including:

- Broadcasting Standards Authority
- NZ On Air
- Radio New Zealand International (the Ministry also advises on the funding of Radio New Zealand more generally)
- TVNZ (in relation to the Charter)
- the non-governmental National Pacific Radio Trust for the nationwide service, Niu FM.

MCH is responsible for developing policy on reserving radio and television broadcasting frequencies for non-commercial purposes, such as Access Radio. It is also responsible for applying the Government's non-commercial broadcasting framework to decide between competing applicants for reserved frequencies and monitoring successful applicants' compliance with the terms of contracts.

Major policy issues such as the transition to digital are developed and co-ordinated by MCH. The position of Director, Digital Strategy, was established within MCH to oversee this project.

b. Ministry of Economic Development

The MED is responsible for the efficient use of the radio spectrum in the provision of telecommunications and broadcasting services. It provides advice to government on the allocation of radio frequencies to meet the demands of emerging technologies and services.

Other broadcasting-related roles of the MED include:

- Spectrum allocation, auctions and licensing, in conjunction with the roles of the Ministry for Culture and Heritage and Te Puni Kōkiri
- Broadcasting competition issues
- Technical planning of broadcasting bands
- Regulatory and economic impacts of broadcasting technology.

c. Te Puni Kokiri (Ministry of Maori Development) (TPK)

TPK has the lead role in the government's commitment to revitalise the Maori language. Maori broadcasting is seen as an important vehicle for the transmission of the Maori language.

TPK administers funding provided to Te Mangai Paho and Maori Television. TPK is also responsible for developing policy on reserving radio and television broadcasting frequencies for the promotion of Māori language and culture, for determining successful applicants, and monitoring compliance. The MED remains responsible for issuing licences for reserved frequencies.

Implications for regulation

The regulatory framework for content in New Zealand has some overlaps and is spread across different media, recognising the differing 'relationships' audiences have with the various media. These will become exacerbated as media delivery becomes yet more fragmented, appealing to different and more specialist audiences. There is little uniformity of definition in what was once considered 'broadcasting' where the content was offered to audiences in a particular manner and at a particular time.

Nevertheless, the nature of the regulatory principles remains the same and there is a recognition that some outcomes should remain constant (such as the protection of minors). The issue remains whether the same content should be treated in a similar way across different platforms. Regulatory processes will need to respond to the changes in the way in which content can be accessed (mobility of content delivery, for example) or the sheer quantity of choice on offer through digital platforms.

There are six key implications for regulatory policy that seem to be emerging.

(i) Regulatory structures

It may not be possible to apply the same or similar content principles across all media delivery forms. Indeed, the BSA codes recognise this by having codes that recognise the audience has differing degrees of control over the material they access.

It is likely that the prime function of a body such as the BSA that already operates within an essentially deregulated environment is to provide guidance (as it does) and clear principles with a complaints function to back that up. However in order for the complaints function to remain effective it must have sufficient expertise in the areas in which it is adjudicating and sufficient knowledge of the audience- or user-relationship with that medium.

(ii) Protective content regulation

In common with other content regulators (see Part C of this paper), two principal content regulatory objectives in the New Zealand system are the protection of minors and the importance of maintaining 'current norms of good taste and decency'. The premise is that although regulatory suppression of harmful content necessarily restricts consumer choice, it is judged to be in the best interests of the public as a whole. In an era of deregulation, there are two difficulties with this approach:

(i) Restriction of choice is seen as inappropriate by some who believe the market should best be able to determine what types of content are acceptable, with individuals in control of their choices

(ii) The number of sources and distribution routes for content are multiplying to such an extent that traditional regulatory interventions are becoming impractical.

There are now global initiatives to prevent the distribution of potentially harmful material, many backed by statute (for example dealing with illegal content such as child pornography). Similarly ways to deal with content detrimental to consumers are being considered internationally – for example, spam.

Given the tendency for providers of illegal content to locate themselves offshore, international legislators are now focussing on the potential for filtering and placing greater responsibility on consumers. Already illegal in New Zealand, the UK Government recently has proposed to make possession or viewing of extremely violent sexual content a criminal offence.

(iii) Labelling content – the role of metadata

One way of giving greater control to service users is to ensure that a consistent set of information accompanies content during its distribution, ideally on all platforms. Such content information (metadata) would allow more effective filtering processes in the distribution networks (which might not be accepted in the New Zealand environment but may be elsewhere) and automatic or manually imposed control at the user end. Metadata can include information to:

- Allow content rights to be identified
- Help with navigation, editing and display of the content
- Label content, such as actors, location
- Help parents decide on the suitability of the content for their children
- Support access services – e.g. subtitling

Thus, for example, rating metadata can be used to enable PIN-based control of access to content.

The emergence of industry standards and support for metadata in content production and management systems is helping content producers to start to integrate metadata in their processes – with potential benefits for consumers.

In some countries, metadata are already integrated within broadcast content. For example, the Canadian and American V-chip solutions[28] that allow the blocking of material considered inappropriate for children already require such labels to be attached, although awareness of such facilities is relatively low.[29]

International technology initiatives such as TV Anytime aim to develop metadata structures to accompany content distribution via broadcast and other electronic platforms.[30] As well as improving applications such as personal video recorders, this could enable improved parental control over children's viewing. Harmonisation of content labelling would be a key contribution to this effort. However, the timetable for introducing such metadata schemes is unclear and thus the current fragmented application of metadata seems likely to continue in the short term.

[28] See Appendix 5

[29] 39% of parents who probably have a V Chip system are not aware of it - http://www.kff.org/entmedia/upload/Parents-Media-and-Public-Policy-A-Kaiser-Family-Foundation-Survey-Report.pdf

[30] http://www.tv-anytime.org/

(iv) Media literacy

Many of the regulatory implications lead to an increased reliance on the ability of audiences and users to navigate their way around media content on offer and to exercise informed choice. The regulator's role in increasing and supporting media literacy initiatives becomes more and more important, especially as young people create content of their own, outside of any regulatory boundary (other than those developed by industry for moderated chat rooms or moderated user generated content sites). Taking an international leadership role is the UK's Ofcom, which is required by its statute to promote media literacy. Singapore is also active in this area and the Media Awareness Network in Canada also seeks to develop cross-media literacies.

Specific media literacy initiatives for the general population in New Zealand are sparse. In 2006, the BSA along with three other funding partners launched mediascape.ac.nz a web portal devised, designed and managed by CPIT's NZ Broadcasting School to provide information about the media to the interested public. NetSafe also runs a detailed cybersafety programme for New Zealand.

However New Zealand is ahead of many countries in terms of media teaching within formal schooling as media education is officially recognised as a subject in the National Certificate of Educational Achievement (NCEA) and Scholarship (Year 13). There are also teacher-led assessment standards (NCEA Achievement Standards). Many countries struggle to get media education recognised as part of the official education curriculum.

(v) Audience research

It is debatable whether audiences respond to broadcasting and electronic content in the same way, regardless of the delivery system. The research evidence suggests this is not so, and the different conventions and expectations brought to different modes of delivery remain, for now, distinct.[31] It will be important to understand how the new media delivery platforms affect the way in which content is received and cross-industry or cross- organisation research among audiences and user groups should be encouraged.

For example, there is a growing body of knowledge about children and the media in New Zealand, which demonstrates how important television viewing remains in the lives of children in comparison with other activities.[32] Such findings reinforce the suggestion that broadcasting regulation in New Zealand should continue to pay particular attention to this sector of the population.

Equally it is important for organisations with responsibilities to communities (such as the BSA which has to take account of 'current norms of good taste and decency') to remain in touch with current expectations and changes within society. Again this may be best effected through research.

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[31] Millwood Hargrave, A. and Livingstone, S. *Harm and Offence in Media Content: A review of the evidence*, Intellect Books, 2006

[32] Lealand, G. (2006), *'Dreams of excess and mobility: The media worlds of New Zealand children*'. Presentation to Empowerment, Creativity and Innovation: Challenging Media and Communication in the 21st Century: annual conference of the Australia & New Zealand Communication Association, University of Adelaide, Australia, 5-7 July 2006

In some countries such as Malaysia[33] and the UK, forums and consultation groups have been set up by the regulator so that the voices of audiences and interested groups outside the main stakeholders can be heard.

(vi) Public service requirements are being eroded by the expansion of choice

New Zealand has recognised that public policy requirements are unlikely to be met purely through a commercial broadcast market. This is because of the high cost associated with providing certain types of programming in a relatively small market. Thus it has adopted regulatory intervention for local content in the form of funding, either directly or through funding agencies, to ensure that these public policy principles are met.

Technology developments that increase TV platform capacities threaten this already-fragile system through expanding the choice of content available to consumers. Commercial broadcasters see an erosion of their exclusivity and ratings, which reduces their willingness to fund production and sacrifice airtime to programming which does not optimise commercial opportunities.

In some markets such as Australia at least part of the extra spectrum capacity provided by digital TV distribution technology is likely to be mopped up by high definition TV, limiting the increase of competition, particularly on the terrestrial platform. For example, high definition TV services can occupy around four times the capacity of standard definition TV channels.

Broadcasting in New Zealand remains in a state of flux, characterised by continuity in structures of production, scheduling and audience behaviour, but also significant change brought about by channel diversification and a long-delayed shift to digital distribution. In the past, when broadcasting in New Zealand has experienced massive upheaval (as in the deregulation wave of the 1990s), it has been difficult for all voices to be heard, especially against those who propose totally market-based solutions. In this new environment, we cannot necessarily expect that consensus will again be possible but it is critical that debate continues.

[33] See Appendix 6

C: Content regulatory models

Summary

The brief for this study was to consider models 'for the regulation of broadcasting and related electronic content'. The analysis does not cover other content issues such as film classification models or spectrum and licensing issues, except insofar as they impact on the content issues to be discussed.

A sample of broadcasting content regulators in 13 countries was constructed to examine how they are looking to the future. In many countries (half in this particular sample) there has been a move to bring together telecommunications and broadcasting to create a combined broadcast content and platform regulator. However this analysis shows that these regulators do not, for the most part, regulate both broadcasting and other electronic content (outside cable and satellite content). Australia and Malaysia have co-regulatory systems in place for such content. In other countries the systems for content delivered through the newer delivery platforms is, in the main, self-regulatory.

It is this link with the statutory regulator that creates the two classificatory models of content regulation described in this report: the broadcasting-centric model (Model A) and the converged content regulation model (Model B).

In Model A, a 'traditional' model applies with the regulation of broadcast content. Regulation of content delivered by the Internet, for example, or mobile telephony, is primarily self-regulated. This seems to be a method of regulation that is gaining ground, certainly in this sample and in those territories that already have established broadcasting content regulation in place.

In Model B regulation of content is converged. That is, all media delivery platforms fall within a single regulatory or co-regulatory system.

The prime regulatory mechanism used for broadcasting content – and to inform the regulation of other forms of content delivery – is the Code of Practice or Guidance, usually backed by a complaints system. Codes are sometimes produced by the industry and approved by the regulator (as in New Zealand) or they are produced by the regulator (with consultation processes). In addition some of the regulators have structured forums to allow advice to be given to the regulator about content issues. In Malaysia, Content Forums sit outside the regulator while in the UK, the Content Board is part of the regulatory structure.

As well as a shift to co- and self-regulation there is a move towards promoting education, often described as increasing media literacy. Content providers are encouraged to provide information and systems that allow the user or audience to take greater control - and hence responsibility - over the content they access.

Regulatory Models: 13 Countries

In order to conduct this analysis, the broadcasting and electronic content regulatory models in a sample of countries were considered. The countries were chosen from each of the continents and/or for their particular demographic or other characteristics. Summary data are given for the sample in this section, with attributes from individual countries highlighted where this is thought particularly relevant to New Zealand.

Appendices 2 -14 provide information about the diversity of media available and regulatory systems in place for each of the countries considered in identifying the dominant regulatory models. New Zealand data are at Appendix 1.

The thirteen countries selected are:

Australia

Botswana

Canada

Finland

India

Ireland

Jamaica

Japan

Malaysia

Spain

South Africa

United Kingdom

United States

The brief also asked that a sub-sample of countries where the content regulator has 'a wider mandate than that of a regulator of spectrum/licensing or a content standards/ complaints body' be considered in greater detail. Five countries, including New Zealand, have been chosen for this and the analysis of these is given in the section that follows.

Table 3 below illustrates, in summary, the structure and responsibilities of the broadcasting regulator in each country[34] – whether or not they have responsibility over all forms of content, regardless of delivery, and whether they also regulate platforms. The table shows that, in all the countries sampled, except India and Japan, the broadcasting regulator is situated outside government departments. Public broadcasting – or aspects of it - also falls within the remit of the content regulator in all countries bar Malaysia where it falls within the jurisdiction of the Ministry of Information.

Local or domestic production content rules apply in most of the countries sampled – this is not to be confused with the role of the public broadcaster as a reflector of the national and/or regional community.

The final columns in the table illustrate whether or not the broadcasting content regulator has responsibility for content delivered via other delivery platforms – video-on-demand services, the internet and mobile telephony.

[34] This study largely excludes film, video and DVD regulation except where they impact on broadcasting and other forms of network-based content distribution, although they are described, where applicable, in the Appendices.

Table 3: Key features of broadcasting content regulator: 14 countries

Country	Combined broadcasting and electronic content regulator	Combined content and platform regulator	Indep of govt.	Public broadcasting covered by regulator	Local content rules*	Cable/ Satellite	VOD	Internet	Mobile
Australia	✓	✓	✓	✓	✓	✓	✓	✓	✓
Botswana	×	×	✓	✓	×	N/A	N/A	×	×
Canada	✓	✓	✓	✓	✓	✓	✓	×	×
Finland	✓	✓	✓	✓	✓	✓	×	×	×
India	×	×	×	✓	×	✓	N/A	×	×
Ireland	×	×	✓	✓	✓	✓	N/A	×	×
Jamaica	×	×	✓	✓	×	✓	N/A	×	×
Japan	×	×	×	✓	×	✓	N/A	×	×
Malaysia	✓	✓	✓	×	✓	✓	✓	✓	✓
New Zealand	×	×	✓	✓	×	✓	N/A	×	×
Spain	×	×	✓	✓	✓	✓	×	×	×
South Africa	×	✓	✓	✓	✓	✓	N/A	×	×
UK	×	✓	✓	✓	✓	✓	×	×	✓[35]
USA	✓	✓	✓	✓	×	✓	×	×	×

* European programming quotas apply for broadcasters in European Union countries

Key

✓ = Is an attribute or responsibility of the broadcasting content regulator

× = Not covered by broadcasting content regulator

N/A = Service not available

[35] Some mobile content carried on premium-rate telephony services is co-regulated with ICSTIS, the premium rate services regulator

Dominant Content Regulatory Models

The project team was asked to identify dominant regulatory models for broadcasting and electronic content regulation. It identified two models.

MODEL A: Broadcasting-Centric Model

Eleven of the 13 countries in the sample (all except Australia and Malaysia) fall within the broadcasting-centric model. That is, their defining characteristic is that they regulate broadcasting but do not directly regulate electronic content delivered via other platforms such as fixed line telephony (ADSL etc), the Internet or mobile. Australia and Malaysia have co-regulatory systems in place for these platforms.

The exception to this rule – but still broadcasting-centric – is Canada which regulates video-on-demand (VOD) services. These services must be licensed and are subject to requirements with respect to Canadian programming, in both English and French, and to broadcast codes and standards.

In the countries where content services are available, but they fall outside the direct remit of the broadcasting content regulator, they still fall within the general rule of law. For most platforms, there are self-regulatory systems in place. These produce codes and guidelines which offer advice on protective content regulation, setting out content standards, for example, or complaints procedures.

Table 4 considers the self-regulatory or industry backed organisations that oversee, at some level, non-broadcasting electronic content.

The nascent video-on-demand industry (the non-linear system described earlier, where the audience or user has direct control over the exact time of reception) is subject to a variety of regulatory mechanisms, ranging from statutory regulation (Canada), to co-regulation (Australia), self-regulation (UK) to no specific regulation (Spain). In many of the countries in the sample video-on-demand is not yet available.

The Internet is subject to self-regulation or no regulation for non-illegal content in most territories in the sample. A number of countries also belong to the International Association of Internet Hotlines for the reporting of illegal material to law enforcement agencies (INHOPE), although only the most extreme content is dealt with through this mechanism (New Zealand is not currently a member of this association).

In many of the countries where content is available through mobile telephony, self-regulatory systems are being developed or are in place.

Table 4: Self-regulatory bodies for non-broadcasting content

Country	Video on Demand	Internet	Mobile telephony
Canada	BCR	Canadian Association of Internet Providers (www.cata.ca)	NFR
Finland	N/A	NFR [36]	NFR
Ireland	N/A	Internet Advisory Board (www.iab.ie)	Regulator of Premium Rate Telecommunications Services Ltd. (www.regtel.ie)
Japan	N/A	Internet Association, Japan (www.iajapan.org/index-en.html)	Telecoms Association of Japan (www.tta.or.jp - in Japanese only)
Spain	N/A	Internet Quality Agency (www.iqua.net)	NFR
South Africa	N/A	NFR	Wireless Application Service Providers Association (www.waspa.org.za)
UK	Association for Television On-Demand (www.atvod.co.uk)	Internet Services Providers Association (www.ispa.org.uk)	Independent Mobile Classification Body (www.imcb.org.uk)
USA	NFR	US Internet Industry Association (www.usiia.org)	NFR

BCR = Within the remit of the broadcasting content regulator

NFR = No formal (self-regulatory) body, subject to general rule of law

N/A = Not available

In New Zealand there are industry bodies that may draw up guidelines, although they are not self-regulatory bodies per se. As previously noted, InternetNZ released a draft Internet Code of Practice some time ago which considers such issues as the provision of adult content and offensive material.[37] Such a Code of Practice would come into effect only once a certain number of members (15) have been signed up.

The Telecommunications Carriers' Forum (TCF), an industry body, has created and agreed a voluntary Mobile Content Code that includes areas such as offensive and illegal content, and outlines complaints procedures.[38]

[36] In Finland advocacy groups such as Save the Children Finland (www.pelastakaalapset.fi/nettivihje/english/) are active in preparing guidelines

[37] http://www.Internetnz.net.nz/pdfs/issues/current/icop/2005-03-23_icop_draft.pdf

[38] http://www.tcf.org.nz/inc/download_doc.php?d=778

Many of the organisations that fall within the broadcasting-centric model (those in Canada, Finland, South Africa, United Kingdom and the USA[39]) are combined content and platform regulators. The premise of combining the two areas is not necessarily based on a view about content or the way in which will it will be received by the audience, but rather is based on a recognition that platform capabilities are converging and so expertise and experience can be built within one organisation to meet these developments.

Table 5: Model A: Broadcasting – centric model

Strengths	*Weaknesses*
• *Thorough understanding of and expertise in dominant content market*	• *More limited regulatory power over or knowledge of new platforms* • *Increased resource required by industry on new platforms*
Opportunities	*Threats*
• *Create market benefits for audiences/users and industry* • *Ability to react quickly in a dynamic new platform market* • *Buy-in by industry with concomitant commitment* • *Lighter form of content regulation possible*	• *Unexpected sources of harm could emerge and cause embarrassment for political and regulatory authorities*

[39] See relevant Appendices

MODEL B: Converged Content Regulation Model

Two countries, Australia and Malaysia have adopted this model, with statutory responsibility for broadcasting and co-regulatory systems in place for Internet and mobile-delivered content.[40] The two systems differ in several respects however.

Australia[41]

The Broadcasting Services Act 1992 gives broadcasters the responsibility for the development of codes and guidelines applied to free to air and subscription broadcasting. Within its responsibilities, the regulator, the Australian Communications and Media Authority (ACMA), approves and monitors compliance with these codes through a complaints system (as happens in New Zealand).

The system that has been developed for Internet and mobile content adopts similar regulatory principles as apply to offline media (broadcast but also film), based on the premise that Australian audiences and users expect regulation. So the regulator argues that what is illegal offline should also be illegal online.

Consequently the co-regulatory codes in place use many of the same classification tools as are used for broadcasting services. For the Internet these include classification symbols, while the mobile industry is encouraged to develop systems to restrict or prohibit access to certain categories of content. The determination on which the mobile premium rate services measures are adopted is under review (2006).

Malaysia[42]

The combined regulator, the Malaysian Communications and Multimedia Commission (MCMC), has established the Communications and Multimedia Content Forum which is a body whose members include stakeholders from the communications industry, civic groups and academics. It prepares industry codes and monitors compliance. The principal code is the Malaysian Communications and Multimedia Content Code. This covers protective content regulation as well as advice on the way in which the code should be administered and public information and awareness procedures (media literacy). The Forum is setting up a Content Advisory Centre so that content providers and other stakeholders can seek advice on the Code.

There is also an Internet Access Service Provider (IASP) Sub-Code for the Communications and Multimedia Industry. Unlike Australia, this code does not require the provision of rating or classification systems.

It should be noted that although they are not specifically mentioned in the Code, relatively strict Malaysian laws relating to areas such as sedition, pornography and defamation must be complied with. Take-down procedures and prosecution can result in the event of non-compliance. Similarly the Film Censorship Board in Malaysia has, as a distinct part of its remit, the requirement to monitor films and *to safeguard racial harmony in the country against negative influences that may be shown in certain films.*

[40] Hong Kong is currently preparing to converge its regulatory functions. Singapore's Media Development Authority also has converged functions including programme and film funding.

[41] See Appendix 2

[42] See Appendix 6

A Cabinet Committee is looking at the role and responsibility of broadcasting stations and other electronic media delivery platforms with reference to the advancement of the national agenda and the way in which they can support concepts such as 'Malaysia's national identity' (2006). The Committee will consider policies and guidelines to define and clarify the meaning of such issues.

Table 6: Model B: Converged content regulation model

Strengths	*Weaknesses*
• *Better understanding of multiple platforms and their potential impact by main regulator (intellectual capital)* • *Use of industry for understanding of both industry and audience/user objectives*	• *Too much control over industry – regulatory burden* • *Regulatory capture and consequent slowing of market growth*
Opportunities	*Threats*
Buy-in by industry with concomitant commitment *Lighter form of content regulation possible*	• *Loss of innovation potential, consumer choice and economic benefits* • *Consumers feel unnecessarily constrained in choice*

Comparison of Models A (Broadcasting-centric) & B (Converged content regulation)

Table 7: Features in common between models A and B

Strengths	*Weaknesses*
• *Answers key social and cultural objectives* • *Political/government backing* • *Independence from government and industry* • *Thorough understanding of and expertise in dominant content market* • *Objectives clear and consistent for industry and audiences* • *Established protection mechanisms for audience/user*	• *Ability of technology to circumvent regulatory systems* • *Increased resource required by industry* • *Open to political pressure* • *Poorly financed and resourced* • *Understanding of market disadvantaged from being at a distance*
Opportunities	*Threats*
• *Consumer awareness initiatives and clear labelling procedures to allow informed content choice* • *Buy-in by industry with concomitant commitment* • *Lighter form of content regulation possible*	• *Political change* • *Consumers losing confidence in regulatory systems*

Analysis of the two models indicates that Model A – focused on the regulation of broadcasting and allowing for self and co-regulatory systems of 'new' media – is the more flexible of the two. It allows industry to act quickly and invest in innovation, especially in developing markets, due to the lighter regulatory burden. In the UK for example, the self-regulator for the on-demand audiovisual content industry, ATVOD, can create codes and guidance accepted by industry. This is important in creating an ethos of self-regulation and responsibility towards audiences and users within and throughout the industry. Legal backstops do apply but long-standing self-regulatory systems rarely need to use them. The biggest concern from detractors of self-regulation is that there may be less regulatory 'discipline' afforded towards audiences and users – ATVOD members argue this is not so as these users are their customers who can stop subscribing to their services at any time.

Model B accepts that content will cross technology boundaries and seeks to create a consistent and uniform system for regulation of similar content across broadcasting and electronic media. Its strengths lie in the consistency it offers to many

stakeholders, including government, industry and audiences and users, and in the expertise that is built within the organisation. Co-regulatory systems allow the regulator to have greater access to industry and industry decision-making. This may be one of the criticisms or perceived weaknesses – that regulator capture may occur. Both the countries comprising this model rely on industry-developed codes, created outside the regulatory mechanism. In effect, the regulator acts as a backstop in the event of regulatory failure.

Neither of these models is mutually exclusive and it is clear that they have many features in common. What is important is that regulators are working with the industry and other stakeholder groups to find solutions to the challenges raised by the technological developments.

Independence of content regulation varies

Broadcasting and electronic content regulatory models span a continuum of regulatory structure, from regulators sitting within government departments (in Ministries of Communication or in Ministries of Culture, for example), to regulatory agencies independent of but accountable to government, to co- and self-regulatory bodies.

All 13 countries have a statutory basis for broadcast regulation.

Twelve are national in scope. The exception is Spain[43] where there are three regional broadcasting content regulators and no national content regulator.[44] In that case, legal instruments are used for content regulation. However the Spanish Parliament is discussing whether or not a single national regulatory body should be commissioned.

While not considered separately here, in all the countries sampled, bar the UK, advertising comes within a self-regulatory structure. In the UK broadcast advertising falls within a co-regulatory structure with Ofcom – other advertising is self- regulated.

Combined content and platform regulators

Australia, Canada, Finland, Malaysia, South Africa, the UK and the USA have combined their broadcast content and platform regulation. However the sample has a bias towards such organisations (part of the brief was to look at organisations with a remit that is wider than broadcasting content issues). Globally, combined regulators are still relatively infrequent, and they have a range of regulatory objectives. For example, the Malaysian Communications and Multimedia Commission describes its role as being to *'implement and promote the Government's national policy objectives for the communications and multimedia sector'.*'[45] To do this it uses four regulatory tools:

- Economic regulation
- Technical regulation
- Consumer protection

[43] See Appendix 9

[44] The other country that has this federal system is Germany, although there is a national code that applies for the protection of minors.

[45] http://www.cmc.gov.my/about_us/roles.asp

- Social regulation (includes the twin areas of content development as well as content regulation; the latter includes the prohibition of offensive content as well as public education on content-related issues).

Importantly only two of the regulators that have combined content and platform regulatory structures also have combined broadcast and electronic content systems (Australia and Malaysia).

Protective content regulation

All 13 countries give their regulators responsibility for protective content regulation, such as the protection of minors. This may be applied directly by statute (as is currently the case in Botswana[46]), through codes created by the regulator and applied by the industry (as is the case in India[47] and the UK) or via codes created by the industry but approved by the regulator (as in New Zealand, although the content of codes is governed by statute and imposition of codes is possible).

Content regulation of private or commercial services, including services delivered by cable and satellite, also lies with all broadcasting content regulators through the administration of codes. Obligations on these services may differ from that of free-to-air broadcasters in many countries, as in New Zealand. In India for example, there is a section of the Code that makes taste and decency-type requirements of the cable industry not required of free-to-air services.

All the regulatory authorities accept some responsibility for post-transmission remedies such as complaints handling although these are generally first handled by the broadcasting organisation.

Proactive content regulation

In many (but not the majority) of the countries surveyed, local content rules are applied to television services. These relate to domestically-produced content and may be regulation for production quotas, or amount of transmission time or a mixture of the two. In the countries of the European Union a quota is placed on broadcasters – European productions should account for over 50% of the transmission hours of each broadcaster established in the UK, for example, (subject to certain exclusions) and European independent productions should account for at least 10% of transmission hours.

In those countries where there is more than one official language, broadcasting in all the official or in other main indigenous languages is regulated or encouraged. In New Zealand and in Ireland,[48] for example, funding mechanisms are in place to promote the production of local or indigenous language content.

In all the countries, bar Malaysia, the broadcasting content regulator has some jurisdiction over the public broadcaster. In Malaysia responsibility for the public broadcaster sits outside the regulatory body and within the Ministry for Information.

[46] See Appendix 10

[47] See Appendix 11

[48] See Appendix 12

New platform content regulation

As noted above, only Australia and Malaysia (through its establishment of Forums) have co-regulatory structures for media content delivered via the Internet and other new delivery mechanisms. In the other countries surveyed there is either an industry-backed self-regulatory body or simply a reliance on general legislation (e.g. defamation, copyright) to act as a brake on such content (see Table 4).

Four regulatory environments relevant to NZ

This section considers four countries in more detail: Australia, Finland, Ireland and the UK.

As Table 3 showed, of these four countries only Australia has a converged content regulatory model. In summary this means that Australia has regulatory processes in place that not only cover the regulation of broadcasting content but also of content delivered via other media such as the Internet or mobile devices. The system that is implemented for these other electronic content delivery systems is co-regulatory. For this, the regulator, ACMA, acts as a backstop in the event of failure of the industry-led mechanism.

Ireland and the UK regulate broadcasting content while Finland has an essentially self-regulatory structure, even for broadcasting (with the regulator monitoring output). For all three of these countries (Ireland, the UK and Finland), the regulation of other (non-broadcast) electronic content rests with self-regulatory bodies. In the event of failure of the self-regulatory system, legal remedies would be applied.

In each country the regulatory objectives remain similar – public broadcasters are encouraged (and funded in some cases) to provide appropriate material for audiences and protective content regulation provides for the protection of minors and other detriments.

(Further detail on each country is contained in the appendices.)

Australia[49]

ACMA: Remit

The Australian Communications and Media Authority (ACMA) became operational in July 2005 and is the newest of the combined content and platform regulators. Part of its remit is to foster '*an environment in which electronic media respects community standards and responds to audience and user needs'*.

It is a licensing authority and the protective content regulator, producing and applying codes to broadcasters.

It regulates some Internet content through a 'co-regulatory' complaints-based scheme with a specific remit to address concerns about offensive and illegal material on the Internet and, in particular, to protect children from exposure to material that is unsuitable for them. The co-regulatory scheme has encouraged the development of codes of practice - one for Internet content hosts (ICHs) and two for Internet service providers (ISPs). There are no codes of practice developed for content providers.

[49] See Appendix 2

The Mobile Content and Premium Rate Services Code is a co-regulatory code to which mobile operators have subscribed. More recently a review of the Regulation of Content Delivered Over Convergent Devices concluded that there is a need for more statutory regulation and this debate continues.

Broadcasters

Within Australia there are two national television and radio public broadcasters, the Australian Broadcasting Corporation (ABC) and Special Broadcast Services (SBS). The ABC is backed entirely by government funding and is commercial-free. SBS receives some of its funding from advertising but is also backed by government monies. SBS broadcasts in a number of languages, using subtitling as necessary. Both the public broadcasters have their own sets of guidance but the national regulator (ACMA) may consider complaints about their programming.

There are three major national private television broadcasters, all receiving licenses from ACMA.

Protective content regulation

The environment for content regulation in Australia is more controlled than that for the other countries with combined regulators (in this sub-sample). It is the view of ACMA that audiences and users expect the basic tenets of the established regulatory system to be carried through into other content delivery forms. The Australian media content regulatory system therefore relies not just on codes for broadcasters, but on co-regulatory schemes for delivery platforms such as the Internet and, more recently, mobile telephony.

Table 8: ACMA Broadcasting Codes

Coverage	Free to Air	Pay TV [50]	Radio
Taste and decency[51]	✓	✓	✓
Watershed	✓(9.30pm)	×	✓ (9.30pm for sexual themes)
Programme classifications[52]	✓	✓	×
Mandatory programme information	✓	✓	×
Conditional access	×	✓	×
Children's participation	✓	×	×
Privacy	✓	×	×
Accuracy	✓	✓	✓

An incident in July 2006 illustrated the problem in trying to balance the different content available through different media. A sexually explicit scene in the *Big Brother* house was streamed by the broadcaster Network Ten. The scene was not shown on broadcast television, but seen live on the website at around 4am to a limited audience via a paid service restricted to over 18s. Such live streaming is not covered by the relevant legislation, the Broadcasting Services Act 1992. Under political pressure, the Government directed ACMA to review whether there were adequate safeguards to deal with the potential dangers of reality television. The Communications Minister commented that the incident reinforced the need for changes to the Act to ensure that commercial new media, such as websites and mobile telephony, were subject to the same content rules as television. This is now being debated with the industry opposing such a move and pointing to the co-regulatory mechanisms already in place.

ACMA also has a requirement, by legislation, to raise awareness of the potential risks associated with the Internet, and how to manage them - the media literacy agenda.

The Internet Industry Association produces codes for its members, and offers advice to consumers, including making suggestions as to the sorts of tools that can be used to block inappropriate material. The IIA has produced a trustmark concept for its websites which indicates that a site is 'family friendly'.

[50] As with New Zealand, subscription television is allowed greater freedoms in the way content is scheduled because of *the direct contractual relationship between the service provider and the subscriber.*

[51] Referred to as 'community standards'

[52] The classifications use the film classification (OFLC) system

Table 9: Strengths and weaknesses of the Australian content regulatory system

Strengths	Weaknesses
• Understanding of and expertise in converging technologies and their implications • Political/government backing • Well-financed and resourced • Ability to maintain key social and cultural objectives • Objectives clear and consistent for industry • Buy-in by industry with action by ACMA only if problem • Established consumer protection for audience/user • Use of industry for understanding of both industry and audience/user objectives • Consumer awareness initiatives and clear labelling procedures to allow informed content choice	• Potential for regulatory capture • Increased resource (cost, manpower, legal expertise) required by industry to service the regulatory system • Potential for failure to be able to react quickly in a dynamic market • Ability of technology to circumvent regulatory systems • Large infrastructure

Ireland[53]

BCI: Remit

The Broadcasting Commission of Ireland (BCI) is a licensing and regulatory body overseeing independent broadcasting services (television and radio) in Ireland. It does not have powers over the public broadcaster.

Both Internet and mobile services operate under self-regulatory structures (the Internet Advisory Board was set up following a government report on illegal and harmful material available through the Internet in 1998). For mobile telephony, RegTel regulates premium rate telephony services calls and handles complaints about receiving unwanted material and unjustified charges (i.e. self-regulation).

Broadcasters

The public broadcaster in the Republic of Ireland is RTE, governed by the Broadcasting Authority Acts 1960-2002.

Private broadcasters are licensed under the Radio and Television Act 1988. Private broadcasters have public service obligations in the area of news and current affairs.

[53] See Appendix 12

More than half the population subscribes to multichannel television and 43% of homes are now connected to digital transmission systems.

The Broadcasting (Funding) Act 2003 for private broadcasters makes requirements regarding national culture and identity. The BCI funds *'new television or radio programmes on Irish culture, heritage and experience'* from 5% of the licence fees collected. The content that is funded must have a prior commitment from a broadcaster that it will transmit the programme at peak viewing or listening hours.

Protective content regulation

The BCI is required by the Broadcasting Act to draw up a Code of Programme Standards for licensed services. This is in the final stages of consultation. The Code relies heavily, because of legislation, on the concepts of taste and decency.

Table 10: BCI Broadcasting Codes (proposed)

Coverage	Commercial television	Radio
Taste and decency[54]	✓	✓
Watershed	✓(9.00pm)	×
Programme classifications	×	×
Mandatory programme information	✓	×
Conditional access	×	×
Children's participation	×	×
Privacy	✓	×
Accuracy	✓	✓

[54] *Programme material must not offend against commonly held standards of what is acceptable in contemporary Irish society.*

Table 11: Strengths and weaknesses of the Irish content regulatory system

Strengths	Weaknesses
• Political/government backing • Independence of government and industry • Matches social and cultural objectives • Consultative process allows buy-in by industry • Still in process of development so potential to adapt	• Limited understanding of and expertise in converging technologies and their implications • Reliance of industry on external/statutory regulation • Inability to react quickly in a dynamic market • Need for adequate resourcing/funding • In European market, need to adapt to non-domestic objectives (i.e. country of origin principle)

United Kingdom[55]

Ofcom: Remit

Ofcom (the Office of Communications) is the combined broadcast content and platform regulator in the UK. Its remit includes

- Ensuring a wide range of TV and radio services of high quality and wide appeal
- Maintaining plurality in the provision of broadcasting
- Applying adequate protection for audiences against offensive or harmful material
- Applying adequate protection for audiences against unfairness or the infringement of privacy

Ofcom regulates only broadcasting content or linear services and does not regulate other forms of electronic content or non-linear services. These are governed by self-regulatory bodies in the main.[56] In this sense Ofcom sits between Australia's ACMA – which has co-regulation as a firm attribute – and Finland's FICORA, with its greater reliance on self-regulation.

Ofcom has no jurisdiction over the Internet, but does have an obligation to promote media literacy, including literacy of the Internet. The industry has a self-regulatory system, for which the industry body (Internet Service Providers Association) has developed a code of practice.

Premium rate services are regulated by a co-regulatory body, ICSTIS (with Ofcom). ICSTIS's Code has to be agreed by Ofcom. In the UK, mobile operators have joined together to form an organisation, the Independent Mobile Classification Body. It has published a code of practice for the self-regulation of new forms of content on

[55] See Appendix 3

[56] A notable exception is ICSTIS, the premium rate telephony services regulator which will follow-up any consumer complaints regarding issues of taste, decency, harm and offence concerning content delivered via telephone and charged for via the user's telephone bill.

mobiles and has created an independent classification body for content that is unsuitable for customers under the age of 18.

Broadcasters

Within the United Kingdom the public broadcaster, the BBC, is going through the final stages of renewal of its Royal Charter to cover the period to 2016. The debate around this process has raised many questions about the future of broadcasting and electronic content delivery as well issues such as funding, independence from government and value for money. The BBC has pioneered digital broadcasting and has driven the launch of the successful free-to air digital terrestrial television service, Freeview and an increasingly successful family of digital radio channels. Exploiting the potential of the Internet, the BBC has one of the most frequently visited web sites globally and has developed a service which allows programming to be downloaded and stored for viewing up to seven days post original transmission (referred to as the Internet Media Player).

The principal private broadcasters, ITV and Channel 4, have public service remits, covering programme genres such as news, current affairs and the provision of children's television.

S4C is the Welsh-language channel, receiving funding from advertising and the government.

The major supplier of satellite-delivered services, British Sky Broadcasting, pioneered digital multichannel television and is now exploring the potential of mobile and broadband delivery platforms. It recently acquired a major UK broadband access provider (Easynet) and has started to offer broadband access as part of its service bundles. News Corporation, which owns the majority shareholding in BSkyB, has also bought the leading user-generated content site, My Space.

The UK leads the video-on-demand market in Europe with both independent suppliers (such as HomeChoice, recently acquired by Tiscali) and cable TV systems (operated by ntl:telewest) offering services.

Content regulation (protective and proactive)

Ofcom is committed to rolling back regulation, which means that when it does intervene, the objective is to achieve a state where regulation can be further reduced in the future. In broadcasting it aims to use digital switchover to increase competition as a regulatory force within the hitherto sheltered UK broadcast market.

The Communications Act 2003 set out a three-tier structure for regulation of broadcasting content:

Tier 1 - basic requirements to cover all broadcasters (standards of programme content, advertising standards and impartiality);

Tiers 2 and 3 apply to the public broadcasters, namely the BBC , S4C, Channels 3, 4 and 5 and public teletext and defines their "individual public service remit":

- Tier 2 - specific requirements that can be measured objectively, e.g. quotas on independent/original production and regional programming and production, and educational programming.
- Tier 3 - system of self-regulation e.g. an obligation to produce an annual statement of programme policy and an annual report of performance.

The Broadcasting Codes apply to Tier 1 regulation.

Table 12: Ofcom Broadcasting Code

Coverage	Free to air television	Pay television	Radio
Harm and offence[57]	✓	✓	✓
Watershed	✓(9.00pm)	✓(8.00pm)	×
Programme classifications	×	×	×
Mandatory programme information	✓	✓	×
Conditional access	×	✓[58]	×
Children's participation	✓	×	×
Privacy	✓	✓	×
Accuracy	✓	✓	✓

Ofcom has created a Content Board that is part of the Ofcom structure but operates independently. The Board has recently recruited new Members (and a new Chairman) who have a particular understanding of the developing digital content world. It invests heavily in detailed and continuing market research programmes and consults on proposals for change – such as in its recent investigation of the merits of banning advertisements for unhealthy foods during children's programmes.

As previously mentioned the audio-visual on-demand industry is self-regulatory and has its own code for members of the Association for Television On-Demand (ATVOD). It has two principles:

1. The protection of minors
2. That consumers be given adequate information about the content they are to see so that they make an informed choice.

The classification systems used by ATVOD members are voluntary but a system must be used – either based on content classifications or by time of day. While the ATVOD Code is based loosely on the Ofcom Broadcasting Code, the Association develops Practice Statements, binding on its members, to allow for the particular one-to-one transactional relationship it has with its customers.

Table 13: Strengths and weaknesses of the British content regulatory system

[57] Reference is made to generally accepted standards.

[58] Where additional conditional access systems are in place, the watershed may be waived as in New Zealand

Strengths	Weaknesses
• Understanding of and expertise in converging technologies and their implications • Political/government backing • Independence of government and industry • Statute identifies social and cultural objectives • Consistency • Understanding of both industry and audience/user objectives • Consumer awareness initiatives encouraged through statute	• Less able to act quickly in statutorily regulated sectors of a dynamic market • Increased industry cost to support skilled staff and market research etc. • Constrained by European Union market regulation • Large infrastructure

Finland[59]

FICORA: Remit

The Finnish Communications Regulatory Authority, FICORA, is a combined content and platform regulator. It advocates self-regulation but does have a monitoring role over broadcast content. There are a number of advocacy bodies and media literacy groups as well as industry bodies that self-regulate the Internet and mobile services industries.

Broadcasters

In Finland private terrestrial broadcasters must have a licence from the government, although the public broadcaster, YLE, does not. YLE, which may not carry advertising, is funded through the licence fee and a fee levied on private broadcasters. As Finland has two official languages YLE offers a radio and television channel in Swedish, with much of the programming having Finnish subtitles. YLE is also legally bound to provide services in the Sami, Romany, and sign languages.

In Finland there are four analogue television channels (two of which are run by YLE). There are also some regional broadcasters.

The government has decided on an analogue switch off date of 2007.

[59] See Appendix 7

Protective content regulation

Freedom of speech is a key principle, and the media operate under a predominantly self-regulatory system. There is significant cooperation between the various agencies. Within television, the broadcasters have agreed an age-related watershed system (with 9pm as the prime adult watershed time).

K-11 (under 11 years)	5pm and later
K-15	9pm and later
K-18	11pm and later

The Council for Mass Media acts as a self-regulatory body for the mass media. There are a variety of self-regulatory organisations for newer media platforms such as the Internet (the Finnish Federation for Communications and Teleinformatics and Save the Children Finland are particularly active) but they work together and have published guidelines on how the Internet may be appropriately and safely used.

Table 14: Strengths and weaknesses of the Finnish content regulatory system

Strengths	**Weaknesses**
• Understanding of and expertise in converging technologies and their implications • Ability to react quickly in a dynamic market • Political/government backing • Matches social and cultural objectives, especially regarding freedom of speech • Buy-in by industry with action by FICORA only if problem • Independence of government and industry • Use of industry for understanding of both industry and audience/user objectives • Consumer awareness initiatives encouraged	• Lacks established consumer protection systems for audience/user • Increased resource required by industry – cost and human resource • In European market, need to adapt to non-domestic objectives

These four countries show the variation in content regulation. This is despite three of the countries theoretically being subject to very similar – European – legislation, both in structure and approach. Much depends on the country's historical and cultural background to its regulatory environment.

Broadcasting regulation (including the regulation of cable and satellite) remains the constant with other forms of regulatory practice adopted for the newer delivery platforms.

D: The future of content regulation

Summary

Broadcast television has been the prime focus for content regulation over many decades because of its impact and widespread availability. No other medium has quite the same impact in terms of hours viewed and number of people reached.

The slow but relentless rise of multi-channel television, through cable, satellite and now digital terrestrial, mobile and IP(Internet Protocol) platforms has started to change what viewers expect from television. As channels struggle to differentiate from each other, broadcasters continue to test the regulatory boundaries with innovative programme concepts and content designed to catch viewers' attention.

The expansion of choice offered by new digital broadcast sources pales into insignificance in comparison with the choice of content available via the Internet, some of which is contributed by users themselves.[60] Governments need to find mechanisms to ensure that cultural and public policy objectives are met without preventing the development of such potentially important economic and social capabilities.

Formal mechanisms such as licensing and the imposition of codes are less feasible in an environment where there are potentially countless content sources and where control of content consumption is placed (increasingly) in the hands of the user or audience. Broad, general regulatory principles may be more suitable for the newer platforms with a greater emphasis placed on self-regulation by the industry and greater responsibility expected of users. However no content regulators in this sample had reached this stage yet.

Further technological advances

Technology developments have dramatically increased flexibility of access to content, which no longer relies on viewing with a dedicated television receiver but supports access through mobile, handheld and personal computing devices. Such trends are global, but some countries have experienced more rapid change than others, having benefited from greater investment in infrastructure and new services. Examples of such countries include: South Korea, Taiwan, Sweden, UK, and USA. While the UK has the greatest penetration of digital television platforms overall, the widespread availability of high capacity broadband has enabled television over broadband (IPTV) to move ahead more quickly in France, Italy and South East Asia. In France, in particular, an early focus on enabling rapid local loop unbundling (LLU) has been fundamental in achieving this level of advancement. The role and impact of LLU is covered in Appendix 15.

These technological developments notwithstanding, it is still uncertain how quickly consumers will take up the content opportunities open to them. Initial access to broadband content has been through PCs. However, it is clear that PC-based access is a barrier to widespread use: a recent survey by Eurostat across the European Union showed that over a third of people (aged 16-74) lacked basic computer skills,

[60] See also Brown, R. and Price, S. *ibid.*

although this fell to 10% of those aged 16-24.[61] This youngest group is, of course, in the forefront of take-up of technologies such as iTunes and user-generated content.

Whilst new set-top based broadband TV platforms (IPTV) are in principle as simple to use as cable or any other multichannel platform, consumers may need to be 'educated' both to take advantage of the choice and flexible access afforded by new content delivery systems and to enable them to protect their children.

Over the last decade, technology vendors such as Microsoft have tried to position the PC as a new way of watching television – termed PCTV.[62] Now the industry has moved to position the new devices as an evolution of television, with PC technology hidden away from users. However comments on PCTV may still have some relevance:

> *Convergence is the essence of merging positive features of two or more technologies into one...While heavy users of PCs and early adopters of PCTV understand this phenomenon and value it, the absence of these expectations and values among the potential market suggests that these characteristics will have to be framed for consumers by stakeholders in the industry.*[63]

In other words, the attributes of PCTV would have to be taught. Low expectations of PCTV as a medium and anxiety over its complexity indicate that it is likely to remain a niche offering. Extrapolating to today's interactive digital platforms, Neumann's observation is that while some media consumers may like the interactive option, most prefer to remain passive (Neumann, 1991). Historically, poor service design, inadequate device performance and uncertainty over charges have probably contributed to a reluctance to interact with television. However, the apparent initial reluctance or lack of interest seems to have been replaced with a gradual acceptance of the new features. Thus the BBC regularly reports 3 to 4 million viewers interacting with its annual Wimbledon Tennis Tournament coverage[64] and commercial broadcasters in the UK too have seen strong responses where the audience has been invited to vote.

Similarly research conducted among users of personal video recorders (PVRs) in the UK showed that these devices were used as extensions of conventional television choice i.e. they were supplementary to linear, scheduled programmes. Thus, some analysts predict that at least 80% of viewing will still be live in 10 years' time.[65]

Adapting to expanding flexibility

Increasing flexibility is generally a desirable outcome for consumers and industry and therefore seems of little concern to a regulator. However greater flexibility makes parental control of viewing more difficult, for example, with the following devices:

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[61] epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-NP-06-017/EN/KS-NP-06-017-EN.PDF

[62] PCTV is viewing of television using a personal computer as receiver. It should not be confused with IPTV which refers to the distribution of television via Internet Protocol networks. IPTV is typically received via set-top and standard domestic TV.

[63] Ledoux Book, C. & Barnett, B 'PCTV: Consumers, Expectancy-Value and Likely Adoption', in *Convergence: The International Journal of Research into New Media Technologies*, 12(3), pp 336-337, 2006

[64] Provided as part of its BBCi interactive service, this service also provides continuing access to news and weather alongside programme-specific content.

[65] Barwise, P and Pearson, S. Fast-Forward puts TV Advertising to the Test in *Marketing Insight*, London Business School, 2006

- Personal video recorders, which simplify time-shifting
- Mobile devices, PCs and portable TVs that enable viewing apart from parents

These render the watershed increasingly obsolete except as an indicator of the type of content. Therefore parents and regulators need to look for alternative approaches.

The simplest and most practical technique uses content-rating data in conjunction with PIN code access to restrict viewing within a household. Parents can set the PIN code and seek to withhold it from their children. This technique has already been used on personal video recorders,[66] which can examine content labelling and take into account the time of the original broadcast in determining whether a PIN code needs to be entered.

Service providers (as well as advertisers) may in future seek to use increasing amounts of personal data in tailoring what they offer. For example with a mobile content service they might base decisions on what to list in the programme guide on parameters such as:

- The time of day/day of week
- Where the user is
- What the user may have selected previously at that place/moment

Media literacy and consultation

With the advent of new media there is a corresponding responsibility to educate the public so they can make informed choices from what is available, and understand how to protect their children against more extreme forms of content. This is especially important as we consider the access children and young people have to various media content forms.

The UK is known to have a high penetration of media delivery platforms in the home. A study by Ofcom in 2005 found that nearly three quarters of children aged 8-15 (72%) have access to digital television, 64% have access to the Internet and 65% have their own mobile phone.[67] Just over one quarter (28%) have access to all three media delivery platforms at home.[68] Nearly three-quarters (73%) of the children (aged 8-15) have a set in their bedroom, with nearly one quarter (23%) saying they mostly watch television on their own and mostly watch television in their bedroom. Across the children who have access to the Internet at home, 6% say they mostly use it on their own and mostly use it in their bedroom. This degree of solitary Internet use accounts for one in ten (11%) of all children who use the Internet at home. While this is a far smaller percentage than watch television on their own, it is still significant and makes media literacy – and Internet literacy in particular – all the more important.

Many schools now teach some Internet literacy and about a third (31%) of the older children in the sample (12-15s) say they make checks on new websites (from a prompted list of checks they were given by the researchers). There was a ten percentage point difference in those that said they made such checks, depending on whether or not Internet literacy had been taught at school (33% of those that say they have been taught about the Internet at school compared with 23% of those that have not). The audit also found that the parents of those children who are mostly

[66] TiVo has provided this facility on its recorders, at least in the UK market

[67] Of which a growing proportion can reproduce audiovisual content.

[68] http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/children/

solitary Internet users are significantly less likely to have any rules about Internet use.

When considering mobile telephones and their safe use, much discussion draws on the negative experiences that have been found with the Internet.[69] However it may not be appropriate to make direct correlations as the mobile phone is considered by its user as a truly personal device. Children and young people see it very much as an extension of their identity and it would be far more intrusive (and difficult) to check how the device is being used, and to receive what content. Therefore, with little prompting, many of the mobile operators now produce guides for children and their parents advising on safe use of mobile telephones.

Increasingly there is a movement towards the concept of 'cyber wellness' as part of the media literacy debate.[70] While much of the focus (described above) has been on protective measures as an argument for media literacy, there is a strong movement towards trying to teach people (including young people) how to use the Internet safely and appropriately.

What remains vital in this fast-changing environment is a need to keep in touch with shifting attitudes (as demographic characteristics change, for example), developing technologies and the way they are used, and the way in which audiences and users react to, and with, the content choices available to them. This can be aided significantly by researching audiences, the industry and other stakeholders.

Many regulators are also incorporating or accessing advisory committees and systems within their structure to help provide advice and guidance on changes that are occurring within technologies, within communities and within audiences and users. The BSA in New Zealand has itself, announced the creation of a community advisory panel, while Ofcom has both a Content Board and a Consumer Panel (the latter sits outside the organisation's structure). This would seem to be the direction in which many regulators are heading to keep abreast of change and its implications.

Media education

There is rapid growth of media teaching in New Zealand, which is occurring at both secondary school (NCEA Media Studies) and tertiary levels. In 2005, for example, nearly 10,000 New Zealand students were enrolled in NCEA Media Studies Levels 2 and 3 or Scholarship. There are also discussions underway about the possibility of introducing Level 1 NCEA Media Studies in New Zealand's secondary schools.

Regulators, broadcasters and policy-makers are also beginning to provide support and encouragement for this significant area of education. Examples include direct support from TVNZ for the National Association of Media Educators (NAME); the development of teaching resources by NZ On Air and the New Zealand Film Commission; the development of web-based resources such as mediascape.ac.nz, and netscape.org.nz, Media Studies resources on the Ministry of Education's TKI site, and the planned BSA NCEA teacher resource.

But media as a tool for teaching - or a focus for teaching - remains patchy or under-developed in other sectors of education, such as primary schooling, and adult education.

[69] Millwood Hargrave, A. and Livingstone, S *ibid*

[70] http://www.internetsafetyzone.co.uk/root/Parents/cyberwellness/

Policy Implications

The changes in the broadcasting and electronic content environment are recognised in all the countries surveyed, whatever their own stage of development. Even in countries which are only now setting up broadcasting regulators not attached to government (such as Botswana), or those countries where the concept of public broadcasting is still being developed (such as Jamaica [71]) there is a recognition that technological changes may overtake the structures being put in place.

In other countries the move towards converging delivery platforms has led to the recognition that their regulatory structure may no longer be fit for purpose (Australia is the most recent of the territories to have opted for a combined regulator). This question - whether or not it should consider embracing telecommunications regulation within its content regulation structure – is a question that New Zealand will have to address at some stage.

Nevertheless broadcasting and audiovisual images (including film) are still recognised as important and influential in creating ideas and concepts, for the transmission of information, for creating a sense of social cohesion. It is also likely that, for the medium term, much viewing will still be live and viewing behaviour and patterns will be similar to those noted now.

Protective regulation

There is unanimous acceptance that certain aspects of content may be harmful or inappropriate for particular audience groups, such as children. The protection of minors is included in all the regulatory frameworks considered for this study. The analysis of the countries shows that even where self-regulation is practised such as in Finland or by the UK's ATVOD, advice or a framework is offered to practitioners to allow for some form of standardised control of content inappropriate for young people.

The question is how far this type of constraint can be applied by a statutory regulator, by the industry (either through co- or self-regulation) or by the user (in the case of children, the guardian). Would it be sufficient to leave the protection of minors from harm to the parents, guardians or even the police, for example, rather than considering the potential negative effects of certain material? At this stage this type of thinking would probably not be generally acceptable. But is it the only way forward in a world of limitless content choice, or should a risk-based approach to regulation be sought?[72]

[71] See Appendix 14

[72] See Millwood Hargrave and Livingstone *ibid.*

Proactive regulation

A concern is that the market alone may not provide content that is required to meet public policy objectives – national identity, indigenous language, children's programming, domestic programmes (vs. cheaper acquisitions).

In New Zealand public broadcasting is facing a decline in audience shares and the protection of public policy objectives that such a system might advance would need to be considered. A significant gap is the absence of any body with the specific role of monitoring public broadcasting in New Zealand (such as there is in the UK for both the BBC but also the commercial broadcasters with public service obligations).

Concluding remarks

In conclusion these are some of the questions that might be asked as New Zealand moves towards a digital future:

- It is clear that broadcasting (the mass media, linear services, however defined) remains important to society. In none of the content regulatory structures examined for this report were the significance, value and influence of broadcasting questioned. So what are the public policy objectives for the digital world and how do they differ from that of the 'traditional' analogue model?
- Should major players, who are licensed as broadcasters, be held to account on all the platforms they use?
- Globally there is a recognition that broadcasting content regulation may not be 'fit for purpose' in the new electronic content delivery environment. Countries have sought to adopt a structure that combines statutory regulation for broadcasting (still considered an important public good) with other structures, depending on their social and cultural objectives (and historical perspective). Should New Zealand seek to regulate the new forms at all, or should it stay focussed on a content framework for broadcasting, still an important medium?
- Should the definition of broadcasting in the Broadcasting Act be amended, for example to include free-to-receive live streaming and podcasts within a complaints mechanism? And how could this be applied to services from overseas providers?
- Should a distinction be made between forms of content and the way it is accessed? For example, should there be the same treatment for content that is linear or 'pushed' to audiences and users and free to receive, in comparison with that specifically requested or 'pulled'?
- If it is thought that a different regulatory structure is needed, which model should New Zealand choose? That which is content delivery-platform neutral (as in Australia and Malaysia) or that which is broadcasting-centric?
- Which regulatory structure creates a more flexible (future proof?) structure that answers both public policy objectives and industry needs? Should statutory regulation be augmented or supplanted by co-regulation or self-regulation?
- Should regulatory activities remain fragmented?
- On the protective side there seems little dispute in any of the countries examined for this study that the protection of minors is key. Increasingly, the

protection of human rights such as freedom from denigration, the right to privacy and the right to be treated fairly also seems important. Is content regulation an appropriate and effective vehicle for effecting these protections?

- Are public policy objectives important for the newer content delivery systems or should such objectives be confined to the public broadcasters? Which objectives are important – those that are protective or those that are proactive, or both?
- There is no single independent body in New Zealand charged with the oversight of public broadcasting, or the monitoring of whether public broadcasting objectives, in the widest sense, are being met. Is this a gap that needs to be filled?
- A number of countries recognise that media literacy is a newer and effective way of helping audience empowerment. This can be encouraged through formal education, relationships with advocacy groups, information given to users and audiences. Should the current content regulatory structure in New Zealand (which is essentially protective) become more outward-looking and more proactive, promoting literacy initiatives (as has been started with NetSafe and Mediascape) and education. Can the regulatory framework help ensure that this will happen?
- The importance of research is vital in ensuring that standards and other content measures are appropriate and relevant. Should the regulatory framework in New Zealand be redesigned to encourage more research either by the regulator or by industry itself?
- Countries such as Malaysia and Finland place great store on having industry/regulator forums. Should New Zealand be considering the fostering of such structures on a formal basis? Should this be part of the BSA's role?
- Finally, will New Zealand be able to maintain its deregulatory, market-encouraging stance in the face of technology changes? Should it keep a robust broadcast focus in the face of increasing pressure to treat content on all platforms equally?