

Guidelines for broadcasting regulation

SALOMON, EVE, 1st ed., Paris: Commonwealth Broadcasting Association (CBA) / Unesco. 76 p. 2006. Unesco Reference: CI/COM/2006/PI/3.

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The aspects that should ideally be taken into account in the regulation of broadcasting in general is the main objective of author Eve Salomon in *Guidelines for Broadcasting Regulation*, written on commission from the Commonwealth Broadcasting Association (CBA) and Unesco.

The work, publicly presented in February 2006 at the 26th General Conference of the Commonwealth Broadcasting Association in New Delhi (India), was a response to the need for a document to respond to requests that both Unesco and the CBA regularly receive from governments and independent regulators, both ones that exist and others in the creation phase, about broadcasting regulation, as the CBA Secretary-General, Elisabeth Smith, explains in the foreword.

The result is a text written in a precise English in the form of an essay that satisfies expectations and offers a panoramic view at the international scale that is up to date and which contains key elements about broadcasting regulation, as well as particular examples from the five continents, which shore up the argument and contextualisation offered by this expert in broadcasting and press regulation. Eve Salomon is a member of the UK's Press Complaints Commission, a former director of the Legal Services at the UK Radio Authority and the secretary of the UK regulatory organisation Ofcom.

Guidelines for Broadcasting Regulation is structured in nine chapters and two appendices and is designed not just to be read, but also to be used as a consultation manual.

The publication is available in full at the CBA website (<http://www.cba.org.uk/documents/guidelines.pdf>) and the Unesco website (<http://www.unesco.org>, in the section 'publications', reference CI/COM/2006/PI/3). I am pleased to report it can be openly and freely accessed. Unesco also offers the possibility of buying the officially published paper version via its website.

The Commonwealth Broadcasting Association was established in 1945 as the Commonwealth Broadcasting Conference and was open to public broadcasters from Commonwealth countries. It became the Commonwealth Broadcasting Association in 1974 and in 1995 was expanded to include private broadcasters.

Today the Commonwealth Broadcasting Association is made up of more than 100 broadcasting organisations from 50 countries in Europe, Africa, the Caribbean, Oceania, the Pacific and America (North and South) (www.cba.org.uk/links/index.html, consulted on 28 April 2006). It is funded by subscriptions, with the purpose being to promote the public broadcasting service, freedom of expression and the right to communicate and promote quality broadcasting. The CBA Publications Service regularly presents specialised new products, such as this work by Eve Salomon, and a quarterly magazine.

In the first chapter of *Guidelines for Broadcasting Regulation*, Salomon reflects on the role of broadcasting, implicitly understood as radio and television, and how it has become the most pervasive and powerful means of communication in the world. It should be said that in some areas with significant poverty and illiteracy, the only source of information and news is word-of-mouth among members of a community and, progressively, programmes broadcast on the radio.

In states governed by totalitarian regimes, the state establishes strict control on the sources and content of the news broadcast, based on official versions without any confirmation, pluralism or guarantee of independence. However, the appearance of the internet and the transmission of broadcasters via satellite from other states has enabled access to new media and sources and is forcing totalitarian governments to relax the controls they apply to their own radio and television broadcasters.

The author holds that broadcasting regulation has to rest on two basic principles: first, it must be as minimalist as possible while preserving freedom of expression and the nature of democracy, based on regulation of content on the basis of clear rules to be applied by regulators after content is broadcast, never beforehand (otherwise we would be talking about censorship). The second is the fact that there is no single right way to establish an effective and appropriate system of regulation.

Throughout the text, the author argues the importance of bearing in mind the cultural tradition within a population when it comes to defining the guidelines of broadcasting regulation and that these can be applied with success. "In some cases, there is a generally accepted international standard that can be applied through tried and tested means. However, in many other cases, the best solution will be very culturally specific" (p. 8).

In some countries, programmes with sexual content or where people appear nude are specifically banned during children's viewing times but are allowed at adult viewing times. On the other hand, they are not accepted in Muslim countries at any time.

In the second chapter, Salomon reflects on the reason why it is important to regulate the broadcast media and justifies her beliefs on the grounds that the media directly impacts the way people think and behave, in aspects considered 'good' and 'bad' alike.

In some states, broadcasting is used particularly to shore up the transmission and preservation of indigenous and minority languages and the national culture, and thus to protect cultural independence, which may at the same time be linked to economic interests of the states and the companies that intervene in the private broadcasting sector.

But why do radio and television have to have a specific form of regulation different from other media like the press, magazines or the internet? Because they use the broadcasting spectrum which is a public good pertaining to a state and which at the same time is conditioned by complex international agreements. Consequently, the majority of governments establish a number of conditions on broadcasters via licences, which are often assigned by the state for a limited period, although in some cases at no economic cost.

With regards freedom of expression as a universal human right, Eve Salomon emphasises article 19 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948, which is also taken into account in other laws such as article 9 of the African Charter of Human and People's Rights; article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, and article 13 of the American Convention on Human Rights, although there are governments that do not monitor this right, as happens, for

example, and according to Salomon, in various states in Eastern Europe and Central Asia.

The key factors to be considered before a democratic proposal of radio and television legislation are, according to Salomon: the right to appeal, the right of reply and rules on impartiality; obligations to ensure information is accurate and impartial; general obligations of impartiality; rules to prevent discrimination; special rules for broadcasting religious matters; the establishment of an independent regulator; appointment mechanisms (in the face of possible interference or pressure from political or economic powers); attributions of the regulatory authority; terms for appointments; subsidies and conflicts of interest.

At the same time, there are reasons of cultural and consumer protection and economic purposes: the application of international trade agreements; as a means of balancing domestic investment; to protect the promotion of national industries and support the domestic production sector; to promote new technologies and the application of competition laws.

In the third chapter, the author takes an in-depth look at the creation of an independent regulator. Former Soviet states and some states in Western Europe have struggled to separate the media and government, while other states with a longer democratic tradition have found the process easier. In the process of regulatory control it is important to have the support and permission of the government, but ideally from a politically independent institution.

Armenia, for example, experienced a protest movement and violence a few years ago because the regulatory body sponsored by the government decided to revoke the license of a television broadcaster that had supported the opposition party. Since then, Armenia has changed its law to create an independent regulator which marks more distance between the state and the regulator and which really involves a depoliticised regulation, Salomon explains.

Jurisdictional aspects are dealt with in the fourth chapter, in the part that speaks about the difficulties of determining legislative limits. "One of the trickiest issues facing broadcasting regulators is the question of where their jurisdiction begins and ends" (p. 25). With regards the specific terrestrial spectrum, she specifies that cable operators generally provide broadcasting on the one hand, and telecommunications (telephone and more recently the internet)

on the other. In the section dedicated to satellite, she argues it is not possible to stop a service initiated by satellite from another jurisdiction, although it can be restricted, especially if a decoder is needed. But the author says today's jurisdictional problems could be relieved by making more international agreements that are binding (like the European Union's Television Without Frontiers directive) and promoting new agreements in the future.

The fifth chapter is dedicated to the awarding of licences, a complex field which anticipates making awards to community media, as radio or television services whose purpose is to help a sector of the minority population (because of their language or religion). With the introduction of digitalisation, each state will have to find the best way for the analogue switch-off. Salomon says that some regulation initiatives charm operators into cooperating by guaranteeing automatic licence renewals or exemption from paying the licence fee for years.

Salomon analyses ownership and plurality in the sixth chapter and stresses that plurality is often measured from the national and local points of view. In small states where there is no broad spectrum, guaranteeing a plurality of broadcasters is more difficult because there is sometimes only one medium created by the state.

In the seventh chapter, dedicated to content regulation, Salomon goes into detail about the protection of democratic principles, the protection of minors, the work against offending human dignity, the protection of the individual in the face of crime and disorder, ethnic and racial discrimination, religious programmes and generally accepted standards, the legality of content, honesty, decency and truth, separation and identification of advertising, sponsorship and advertising ploys. In the sphere of sanctions she emphasises procedures, suspensions and withdrawals.

On this point, Salomon stresses the importance of a regulator providing the public with a code or guidelines listing the main details of the interpretation of the country's basic legislation, which includes, among other things, whether the 'watershed' (protected viewing time for children) ends at 10 p.m. One of the problems of the European Union, for example, is that the watershed is the same time for all, although public, cultural and time habits are different. But in states where there is no legal code or directive, the limits are left up to the interpretation of

a court, which decides on the basis of each conflict.

In some jurisdictions, e.g., Switzerland and Canada, there is a complaints organisation different to the regulatory body. "This serves to act as a separation between the legislature (the regulator who sets the rules) and the judiciary (the body which adjudicates on whether the rules have been broken)" (p. 62).

Other public policy objectives are dealt with in chapter eight, which especially includes access to television programmes by people with a degree of disability, media ownership, inhouse production quotas, independent productions and languages.

The ninth and final chapter is devoted to technological convergence. Salomon emphasises the speedy evolution of the sector, particularly over the past seven years, and how it is affecting regulation and leading to guidelines being questioned which had been agreed upon traditionally. She also reflects on the particular case of community media (not always anticipated in documents that specialise in broadcasting regulation).

Finally, the author makes a very valuable contribution with the first appendix on essential elements in the establishment of a hypothetical law that bears broadcasting regulation in mind, with 12 sections: the definition of concepts, the objects of the law, the Broadcasting Commission, jurisdiction, licensing, ownership rules, content standards, emergency broadcasts (if the government has to broadcast news during an emergency), copyright, retention of recordings, production quotas and sanctions.

In the second appendix, Eve Salomon includes an analysis of three particular cases of broadcasting regulation: Canada, with the CRTC (Canadian Radio-television and Telecommunications Commission/Conseil de la Radio-diffusion et des Télécommunications Commission); South Africa, with the ICASA (Independent Communications Authority of South Africa) and Ofcom (Office of Communications) in the United Kingdom.

The Canadian case features a flexible form of regulation based on the protection of broadcasting in English and French, the preservation of language rights, the promotion of domestic production and the defence of the development and application of information technologies in public services.

In the case of the Independent Communications Authority

of South Africa she particularly emphasises its contribution to the defence of democracy, the development of society, the protection of national construction, gender equality and the protection of historically disadvantaged groups. South Africa promotes a system based on three broadcasting sectors: public, commercial and community. The broadcasting services are controlled by the South Africans.

The third case studied, i.e., Ofcom in the UK, is the only one of the cases analysed that establishes the effective promotion of self-regulation, a debate generated in some forums of an international scope about diverse peculiarities of regulation (e.g., self-regulation and co-regulation), aspects that are of more concern in societies with an advanced democracy.

However, on this point, I thought there was a lack of justification, even if brief, about the reason for choosing these three cases and not others. I also would have liked a final reflection, by way of conclusions, although the first appendix does set out some of the elements essential for regulation in the author's opinion, in the format of an outline.

In short, *Guidelines for Broadcasting Regulation* is a basic and rigorous work. Although one may initially think the models Salomon provides are aimed particularly at states in democratic transition, I also feel that legislators and the people responsible for public policies in Spain should take them into account when it comes to approving and applying the future broadcasting law and the law creating the independent regulatory authority at the State level. They may appear to be basic concepts, but we should not forget that, at May 2006, the central government has still to create a broadcasting regulatory authority, an element considered essential for the development of a full democracy and for the preservation of the rights of its citizens.

The Screen: Neither Friend Nor Enemy - Quite the Opposite

FERNÁNDEZ CAVIA, JOSEP.

La pantalla amiga? Nens i adolescents davant el nou entorn audiovisual (The Friendly Screen? Children and Adolescents and the New Audiovisual Environment). Tarragona: Arola, 2005.

by Anna Estrada i Alsina, CAC Technical Services Officer

'Neither Apocalyptic Nor Integrated, But Quite the Opposite' is the title of the final point in this book and the periphrasis that defines the author's posture throughout the whole of the work. This attitude by Fernández Cavia makes the monograph an excellent and up-to-date examination of the question of the relationship between children, teenagers and the electronic communication and leisure media. From the very first pages, we can see the good sense of his viewpoint when he says "the media – television, Internet, videogames, mobile phones – are not intrinsically benign or wicked. [...] The difference lies in the content transmitted and the use made of them" (p. 23).

This work is structured around three major sections. In the introduction, the author establishes the idea that the electronic communication and leisure media have collaborated significantly in creating a new social context in which being a child or teenager today is not the same as it was a few years ago and therefore we cannot judge what today's young people do from our adult perspectives and memories of earlier experiences. Fernández Cavia holds that today's children and teenagers are characterised by daily contact with technologies that form part of their daily routines and which enable them to see and understand the world differently from previous generations.

At this point, the author introduces the concept of 'new audiovisual environment' to refer to all the media and devices within the reach of young consumers and which form a practically undifferentiated continuum. As a result of media convergence, it is not unusual to find common characters, stories and forms of entertainment on different screens (film, television, mobile phone, PC, console, etc.). To contextualise the information he will later present, Fernández Cavia then includes a brief but interesting review of the main trends in the electronic communication and