The Argument for Self-Regulation in the Media

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This paper argues that self-regulation, with all the criticisms against it, remains the best form of regulation for the media industry, if the media is to serve its role as a platform for the exchange of ideas and a watchdog on government.

It explores the theoretical background to the idea of self-regulation in the media, examines the Press Complaints Commission (PCC) model as a self-regulatory organ in UK print media and the criticisms against the PCC, then looks at the alternative suggested regulatory models. I finally show why self-regulation is still the answer to media oversight.

Freedom of Expression and the Media

Puddephat (2011) defines Self-Regulation in the media as “The combination of standards, setting out the appropriate codes of behaviour for the media that are necessary to support the freedom of expression and the process how those behaviours will be monitored or held to account.”
The media is seen as critical to providing a platform for freedom of information to thrive, a fundamental right granted by Article 19 of the UN Charter on human rights.

The media encompassing newspapers, broadcast media and new media is also seen as a watchdog of the government and a protector of societal values.

The media is however often criticized for exceeding its brief. Citizens often complain of invasion of privacy or misrepresentation while the government is always concerned about the influence the media has on citizens and how that influence is managed.

This has often led to calls for regulating the media by both citizens and the government. The contention has however remained what is the best model for holding the media to account.

Liberal theorists of press freedom believe that the press can only account to the public. They argue that the Government, which the press are meant to watch over cannot be allowed to dictate the rules by which they will be watched, hence, the need for self-regulation by the press or media. The peer review system inherent in self-regulation serves as a powerful check on the media.

**The UK Press Complaints Commission (PCC) as an example of Self-Regulation**

A good example of self-regulation is the way that the Press Complaints Commission (PCC) in the United Kingdom works and
how it has responded to the criticisms of its operations following the phone hacking scandal. The PCC regulates the print media in UK and it was set up by newspaper industry owners. The PCC, which currently is in transition, in line with its self-regulatory status for print media in UK, developed a set of code of practices with over 16 articles covering a wide range of issues from accuracy, privacy, harassment, intrusion, children, listening devices, discrimination, confidential sources and payment for articles.

Any person can lodge a complaint with the PCC. Complainers do not pay a fee to lodge a complaint nor do they need legal representation. The PCC website shows that it received more than 7000 complaints in 2010, the last date for which reports are available. The PCC was able to reach an amicable resolution in respect of 1,687 cases.

**Criticisms of Self-Regulation**

Several criticisms have been raised against the self-regulatory model as not being effective. The recent and most often cited example is the failure of the PCC in not stopping incidents like the phone hacking scandal in UK. (Hadwin & Bloy, 2007, p. 208) highlights several of the criticisms often raised against the PCC and the self-regulatory model.

These criticisms include the fact that “self-regulation means that complaints are handled by an old boy network where journalists shrug off problems and defend the indefensible.” Other criticisms include
the fact that self-regulatory bodies like the PCC are ineffective since they cannot impose penalties, and that corrections imposed which is the common type of remedy for complaints imposed by the PCC, are often buried in the publications and that the PCC and most self-regulatory models do not entertain third party complaints.

Other criticisms of the self-regulatory model is that it allows newspapers to avoid ethical and legal responsibilities, allows the press to engage in excesses where there is no complaint, does not prevent excesses in the tabloids, is weak at safe guiding privacy and does not provide room for appeal.

**The Call for Statutory Regulation of the Media**

Criticisms of the self-regulatory model have led to calls for statutory regulation of the media. (Nielsen, 2004) defines statutory regulation as “The imposition of rules by a government backed by the use of penalties and the authority of the state, that are meant to change the behaviour of individuals or groups” or broadly as “Any technique or approach designed to control, alter or influence behaviour.”

In the media, this would mean a government putting in place any form of law or rules designed to control, alter or influence media behaviour. Proponents of statutory media regulation argue that the government’s power to impose penalties keeps the media in line.

Proponents also argue that a democratic government passing a legislation to control the media is in the public interest since it has the
mandate of the people through an electoral process. However, they fail to disclose that in practice, the government is made of people and in most cases regulating the media has been used to protect the government in power and not public interest, thereby undermining freedom of speech.

The Criticisms against Statutory Regulation

Freedom House, a Non-Governmental Organisation which advocates for media rights globally published in September 2011 several instances where statutory regulation has been used as tool for media censorship. The three common ways in which statutory regulation is used to restrict press freedom include statutory controls on licensing and registration, the creation of nominally independent regulatory bodies with built in avenues for political influence and legal imposition of vague or burdensome content requirements (Karlekar, Radsch, & Sierra, 2011, p. 1).

Hungary is a good example of a country using legislative regulation to stifle the media. A new Hungarian media law sets up a supposedly independent watchdog that has the power to impose fines for violating public interest, public morals or order (BBC, 2011). The loose definition of what is public interest, public morals or order means that all news media in Hungary will operate under the constant threat of being sanctioned.

Co-Regulation
The tendency for statutory regulation to be abused and the perception that self-regulation is weak has led to calls for co-regulation by critiques of the statutory and self-regulatory models. A co-regulatory system combines elements of self-regulation as well as traditional statutory regulation to form a new and self-contained regulatory system (Palzer & Scheuer, 2004).

An example of co-regulatory system is the proposed News Media Council (NMC) in Australia. The NMC, which was proposed by an independent media enquiry set up by the Australian government, will be statutorily backed but operate independently and be in charge of print, broadcast and online media regulation with the stated aim “to promote the highest ethical and professional standards of journalism” (Ramsay, 2012). The government will fund the NMC while an independent committee is supposed to appoint members of the NMC. The proposal fails to state clearly the process for the appointment of the independent committee though they are expected to comprise of senior lawyers and academics.

Another challenge with the proposal is the definition of the “highest” ethical standards of journalism and who determines it. What are the guarantees that a NMC that is legally backed and funded by the government will be truly independent from its influence or control in practice? The susceptibility of co-regulatory regimes to indirect control from government also makes it a poor tool for media regulation.
Advantages of Self-Regulation

Self-regulation has several advantages over statutory or co-regulation. A significant advantage of self-regulation is that it lends credibility and trust to the media. In jurisdictions where the media is seen as strictly regulated or not independent, citizens tend to lose interest in the media and the quality of freedom of expression and consequently public debates are diminished.

A good example is the Nigerian media which is divided into state owned broadcast media and privately owned print media. The public media sector is dominated by the Nigerian Television Authority (NTA) which is spread across the country. However, due to its close association with the government and the perceived lack of independence in its news content, it has lost its audience to independent television stations considered more credible.

Another reason for self-regulation is the ease with which self-regulation responds to changes and new developments. A good example is the way the UK’s PCC has responded to the phone hacking scandal by changing the way it self-regulates whereas the government is still conducting an enquiry on an appropriate legal response to the new developments in the British media.

Following the phone hacking scandal in UK media, and in response to the several criticisms raised against it, the PCC is being broken into two arms. According to a statement on its website, one of the arms
will deal with complaints and mediation which was the function of the old PCC. However, there is a new arm which will now deal with audits and where necessary “enforce standards and compliance with the editors’ code.” Also the new PCC intends to compel news organisations to have an internal auditor or ombudsman in place that will ensure that each news organisation respects the editors’ codes.

The new PCC is also introducing an independent assessor who will not only be able to consider the substance of adjudication, the process by which it is arrived by, but could also refer adjudications back to the PCC adjudication panel, to be reviewed again, as at when it is necessary. This answers to the criticisms that the PCC is “Old boys” network and that there is no appeal at its adjudications.

The PCC will also have powers to investigate cases of serious breakdown of the standards and where the offending news organisation is found guilty; it will be compelled to pay a proportional fine, answering the criticism that it cannot bite. To further enhance its capacity to bite; the new PCC codes will also be enforceable in civil law by compelling news organisations to sign a commercial law with the PCC.

It has also taken into consideration the rise of new media. Under its new rules, online news providers will be allowed to sign onto aspects of the PCC code by using “badging system” to incentivise online news sites and bloggers.
These new rules are in response to the criticisms that it is weak, cannot enforce its regulations and has no investigative powers. The PCC new proposal shows how fast a self-regulatory body can respond to changes in its environment.

Another reason while self-regulation is preferred in the media is that it is free and this encourages aggrieved persons to take up their case with the self-regulator. For example, the PCC received 7000 complaints in 2011. If these complaints were all to go through the legal system, it would not only be costly for the complainers but also clog the legal system. Besides, for the fact that a case is handled at the PCC, does not bar the complainant from seeking legal redress where he is not satisfied with the decision.

Also, it is easier for self-regulatory bodies to adapt to the new developments in the media. A good example is the decision by the PCC to introduce a badging system for online independent media while at the same time bringing the online versions of the regular media under its control. The unique nature of online media which operates without boundaries makes it almost impossible for statutory regulation to be enforced in cyberspace which makes self-regulation the best option.

Advances in modern technology, which has led to the convergence of media platforms makes it almost impossible for countries to insist on statutory regulation or they may end up regulating just a tiny fraction
of current sources of media consumption as cyberspace does not take kindly or easily to statutory regulation.

Finally, the fundamental need for self-regulation of the media is for the media to be accountable only to the public. Both statutory and co-regulation cannot guarantee this need.

References:


