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Co-/Self-Regulation Bodies in the Mass Media

**Report on the workshop jointly organized by the
Moscow Media Law and Policy Centre
and the European Audiovisual Observatory
with the Grand Jury of the Russian Union of Journalists**

July 2005

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Russian version available under: http://www.medialaw.ru/selfreg/10/05.htm

Co-/Self-Regulation Bodies in the Mass Media
A Workshop Report

The Moscow Media Law and Policy Centre and the European Audiovisual Observatory have been partner institutions for several years, jointly working towards greater transparency of the legal framework that applies to the audio-visual sector in Europe. Co- and self-regulation has been one of the many topics with which both institutions had already concerned themselves when they came to plan a common workshop that would combine their experience in exploring the central role of the bodies entrusted with co-/self-regulation in the Mass Media. The Moscow Media law and Policy Centre also succeeded in winning the support of the Grand Jury of the Russian Union of Journalists for this project.

The workshop was to be held in Moscow, which made the Russian experience with co-/self-regulation a natural starting point for the discussion to be then checked against working examples for co- and self-regulation from other countries. These examples concern three stronghold areas for self-/co-regulation, namely advertising, youth protection, and journalism. In addition, the workshop sheds some light on the challenges that co-/self-regulation faces with regard to the Internet.

The workshop discussions revealed how vast the array of issues is that need to be settled before co-/self-regulation becomes a well established mechanism for a peaceful and constructive way of handling disputes and before it may contribute to a “morally” and “ethically” intact mass media landscape. Definitely, self-/co-regulation is not just another legal instrument for standard setting. On occasions, it may rather resemble a learning process for an entire society – including the industry, journalists, media legislators, consumers and anybody else concerned by the exchange of any form of communications. Pragmatism seems to be an important force because the chances for self-/co-regulation to succeed augment if it yields results appreciated by most of the players. Theory plays its role too, namely where potential actors try to establish self-/co-regulatory concepts while living in a social reality largely devoid of practical examples or relevant experiences.

The following Report reflects this explosive mixture of need – hope – search – reality. While it is structured according to the workshop’s agenda and might therefore be best understood in its chronology, each individual part can also stand alone.

The Observatory is very grateful to all participants who openly and with great enthusiasm contributed to the event and thanks in particular go to the Grand Jury of the Russian Union of Journalists for its strong support. Our wholehearted thanks go also to the Moscow Media law and Policy Centre, who shouldered most of the organisational burden and who supplied us in addition with the following Report.

Strasbourg, July 2005

Susanne Nikoltchev
Head of Department for Legal Information
European Audiovisual Observatory

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Co-/Self-Regulation Bodies in the Mass Media

Report on the workshop jointly organized by the Moscow Media Law and Policy Centre and the European Audiovisual Observatory with the Grand Jury of the Russian Union of Journalists

The workshop was held on Monday, 25 April 2005 at the Marble Hall of the Central House of Journalists, 8A, Nikitsky boulevard, Moscow, Russia.

Introduction

In his word of welcome Andrei Richter, Director of the Moscow Media Law and Policy Centre, explained the mission of the workshop as an exchange of opinions and advice on self-regulation and co-regulation in the media field between Russian and European entities. Recent public opinion polls, he said, suggest that only 7% of Russians trust the mass media, signifying a dramatic fall over the past decade or so. During *glasnost*, respect for journalists was so great that the mere fact of being a member of the profession was enough to guarantee, for instance, that the majority of staff members of one Moscow weekly were elected to various governing bodies - from the Supreme Soviet to city councils.

The key reason for the current lack of trust lies in the low level of professional ethics. Ethical codes in the new Russia are considered a remnant of the past, a lever of control like those once imposed by the Communist masters. Everybody wants freedom without strings attached, regardless of whether the controls come from the law or from within the profession itself.

Today even the government has begun to worry about the low level of trust in the media - after all, it becomes hard to manipulate the public with such a weak instrument. In March, Russia's deputy minister of culture and mass communications made self-regulation a key point of his speech at the conference on media policy of the Council of Europe member States in Kiev. In April, another deputy minister invited media executives to share the burden of governmental regulation of the press - from the distribution of subsidies to newspapers to the allocation of frequencies to broadcasters.

But the idea, picked up from a dissatisfied public and from various non-governmental organisations, was again somehow distorted. What the government seems to want is self-regulation in the trusted hands of the obedient captains of the industry, rather than a grass roots movement.

Mikhail Nenashev, Co-chair, The Grand Jury of the Russian Union of Journalists, said that self-regulation is always a reflection of the state of society. He singled out the main difficulties for establishing self-regulation as:

- Psychology of post-Soviet journalists, their tradition of obedience

- Monopoly situation in the mass media which does not let market forces develop; economic, moral influence on society by the monopolists
- Lack of respect and lack of responsibility towards the audience by many media outlets
- Lack of courage by journalists
- No real consolidation of professionals, not even strong ties between them

The relationship between the triangle "Mass media – power – society" is decisive for the establishment of a self-regulation system. said that today's readers/users/viewers lack the connections to mass media, they don't trust or rely on mass media (only 7 % say they trust mass media, and 70 % ask for censorship).

Vladimir Grigoriev, Executive Counsellor of the Federal Agency for Press and Mass Communication, said that he agreed with Nenashev on all major points. The triangle mentioned is indeed decisive, and deficits in their relationships is indeed the problem. He said that the situation is not as hopeless as one might think having heard Nenashev, if one thinks, for example, of the anti-terrorist convention of TV broadcasters.

The Anti-Terrorism Convention (or Rules of professional conduct for mass media in case of a terrorism act and an anti-terrorism operation) comprises eight sections. According to the first section, "during an act of terrorism or an anti-terrorism operation the priority is given to saving people and to the personal right to life over any other rights and freedoms."

The Convention also puts a range of restrictions on journalists' actions. In particular, journalists shall not:

- Interview terrorists on their own initiative during an act of terrorism except when asked or authorized by the Operations Centre
- Allow terrorists access to airtime without prior consultation with the Operations Centre
- Take the mediator role at a journalist's own discretion, etc.[1]

The Convention was sighed by Konstantin Ernst (1st Channel of Russian TV); Anton Zlatopolsky, the director-general of "Rossia" channel ("Russia Channel"); Alexander Lyubimov, the president of "MediaSoyuz"; Aleksey Venediktov, the editor-in-chief of radio station "Ekho Moskvy" ("Moscow's Echo"); Dmitry Voskoboynikov, the first deputy of the director-general of the Interfax news agency; and others.

Wolfgang Closs, Executive Director of the European Audiovisual Observatory, provided information on the Observatory and described the goal of the workshop in strengthening the relationship between Russian and Western professionals.

[1] The full text of the Anti-terrorism Convention is available in "Gazeta" newspaper (9 April 2003).

Focus: Russia

Session 1 focused on Russia and started with Mikhail Fedotov, Co-chair, from the Grand Jury of the Russian Union of Journalists, secretary of the Russian Union of Journalists, who made a report on "The Present Situation and Future of Self-Regulation of the Media in Russia".

He set forth the following question: How does the structure of civil society relate to self-regulation, and what was the situation like five years ago? From 1993 to 2000, the government tried for 7 years to create and maintain a self-regulation/co-regulation body - the Judicial Chamber for Informational Disputes[2] at the President of the Russian Federation - but with the changes in the Administration of the President, this project died. At about the same time, the Grand Jury of the Russian Union of Journalists was created. It is also based in Moscow and also works in the regions outside of Moscow. Regional sections are very important because of the size of Russia; conflicts have to be dealt with where they arise.

The status of the Jury was based on the experience of Western countries, e.g. Sweden, Germany (Presserat), and others (Press Complaints Commission in the UK).

The Jury's activity, according to Mr Fedotov, compares to the experience of a doctor who opens a body and sees that he has never studied that part of the body. The Grand Jury does not seek to punish the guilty party - it lacks the power and it has a different role. Instead, the sides must start a constructive dialogue - this is the only way to achieve understanding in the Jury's view.

Self-regulation in Russia has "entered" the legal sphere, e.g. the Jury quotes decisions of Constitutional court.

Negative experiences related to self-regulation are that only a small number of claims reach the Grand Jury, and it is not known or sufficiently accepted on certain issues (e.g. in large TV companies). Decisions taken by the Grand Jury have little enforcement power; often even people who signed on to the Grand Jury don't respect its decisions. The regional network of Grand Juries is weak - only at most one third of regional Grand Juries are operational, and there is a danger that regional Grand Juries become obedient tools of regional political decision makers. Regional politicians lack interest in participating in their respective regional Grand Juries.

[2] The Judicial Chamber on Informational Disputes was set up by presidential decree on 31 December 1993. Its chair and members were appointed by the president. Until abolished in June, 2000, it assisted the president in executing informational policy by means of monitoring developments in the media field, preparing an annual report, and most importantly, by solving disputes that arose. Its novelty was in its ability to reprimand not only the media outlets but also governmental offices. In the course of the parliamentary and presidential election campaigns the chamber received numerous complaints (mainly defamation-related) and would call for apologies. However, it could not fine or otherwise punish the wrong party that ignored its ruling. Thus its decisions were mainly of moral significance, though the official *Rossiyskaya gazeta* daily was bound to publish the most important resolutions of the chamber. Also, according to its statute, within two weeks of having received a judicial chamber ruling, state bodies and officials to which the ruling applied were to notify the Chamber about its implementation.

On 25 May 2005, a Grand Jury for Media Complaints should be established (and it was established – Editor), based on the British example; 21 mass media organizations and 32 non-media public organizations support it, 57 candidates for the new institutions have been nominated and shall be voted upon (selecting 25). Further, a new Media audience branch of the Grand Jury for Media Complaints will be created, and many candidates were already nominated, of which only 25 will be elected.

Viktor Monakhov, former Acting Chair of the Chamber, gave a report, titled "The Rise and Fall of the Judicial Chamber on Informational Disputes at the President of Russia." He started with a short historical introduction. He stressed the new approach: combination of self-regulation and co-regulation in the activity of the Chamber. The results of the Chamber's activity, which comprises several hundred resolutions, are studied by students here and abroad. The approach of the Judicial Chamber on Informational Disputes was that of an open and objective review, issues reviewed were not just complaints on the mass media but concerned also the protection of journalists from prosecution as well as the safeguard of the journalists' access to information.

Working and Not-Working

Session 2 of the workshop was dedicated to issues of what is working and what is not working.
"Why Self-Regulation Works in the Local Media in Russia?" was the subject of the report by Sofia Khavkina of the Council on Informational Disputes in Nizhny Novgorod, Russia.
She said that the creation of the Council on Informational Disputes ("Council") in the Nizhniy Novgorod area in February of 2004 marked a qualitatively new stage in the development and strengthening of journalists' professional etiquette and responsibility. The Council became the first body for mass media self-regulation in the region and has reviewed a number of moral-ethical conflicts arising from mass media activity.

The success of the Council has created opportunities for the extrajudicial resolution of conflicts between mass media publications and viewers, listeners, and the government, as well as internal disputes. The Council has also enabled highly qualified experts and professionals to participate in the process.

The Council's activity, as well as the entire idea behind self-regulation, embodies the concept of "socio-ethical marketing." Socio-ethical marketing assumes that where several companies in a market satisfy consumer demand equally (while deriving comparable profits), a consumer will choose the firm that not only evaluates individual consumer interests, but also considers "general welfare", thus evaluating its activity from a long-term perspective.

This suggests that the Council is not only a powerful mechanism for the resolution of information disputes, but because it is supported by marketing interests of the heads and proprietors of mass media organizations, the Council can also serve as a tool to

create a favourable information environment and social responsibility of mass media professionals,.

In preparation of the setting up of the Council, contacts were established with some of the largest mass media organizations in the region (mostly in the printed press), such as "Komsomolskaja Pravda," "Nizhegorodskaja Pravda," "Nizhegorodskij Rabochij," etc. Letters prepared for the attention of the heads of these publications described the advantages of socio-responsible mass media in the publishing market and the concepts of self-regulation.

Similar letters were also addressed to S.V. Kirienko, the representative of the President of the Russian Federation in the Privolshkij federal district, and E.B. Ljulina, the chairman of the Legislative Assembly of Nizhniy Novgorod area .

S.V. Kirienko and E.B. Ljulin showed great interest in the project and gave it significant attention at the Third Conference of Privolzhskaja Press, which took place on 11-12 June 2003. In his speech, S.V.Kirienko noted that, as a representative of the local authority, he was ready to create the conditions and opportunities for implementation of the concept provided that the professional public were ready for self-organization. He spoke in support of full independence of the envisaged self-regulation institute from governmental bodies. He noted the necessity for an immediate development of the mechanisms for its creation, "since the sociology on the level of trust of the population to the local mass media is really worrisome."

During the development of the project, a dialogue with the judicial community has been established. N.D. Hohlov, the Vice-President of the Nizhniy Novgorod Regional court and M.V. Lysov, the president of the Nizhniy Novgorod Regional Council of Judges, expressed their high esteem for the project. The judges actively participated in seminars for the journalists of Nizhniy Novgorod. This involvement promoted the mutual understanding between the judicial and media communities.

Based on the analysis of the Russian and foreign experience conducted by the Nizhniy Novgorod Centre for Protection of Press Rights, two variants of implementation of the self-regulation idea were offered:

1. Creation of a permanent ombudsman post, or "a reader's" editor;

2. Establishment of a self-regulation institute, common to all mass media organizations of the region - i.e. an independent "Press Council". This institute would be responsible for self-regulation of mass media in the given territory and remain independent of the government or the judicial system. The institute would create a code of ethical rules for journalistic activity and use it for resolving disputes.

The project activity revolved around the implementation of both ideas.

Three of the local papers in the Nizhniy Novgorod region ("Semenovskiy Vestnik," "Arzamasskie Novosti," and "Vyksunskiy Rabochiy") created the ombudsman post, also known as the "readers' editor," a denomination more familiar to Russian readers. The ombudsmen was assigned permanent columns in the newspapers, which raised the level of reader trust toward the newspapers, according to the leadership of these

publications. In 2004, the ombudsman of "Semenovskiy Vestnik" considered six conflict situations and was able to prevent judicial interference in five of these cases. The "Arzamasskie Novosti" newspaper experienced a serious conflict only once, and it was only thanks to the ombudsman that the conflict was resolved.

The creation of the Council on Informational Disputes in the Nizniy Novgorod region represented the second track of the activity for mass media self-regulation.

To create the Council, heads of mass media outlets received letters that announced the creation of the Council, provided a description of the Council, and requested that they recommend some of the more highly regarded journalists working for that media outlet. The heads of the media outlets themselves were excluded from joining the Council.

Some of the leading journalists of the region became members of the Council, including Journalism professors from the Journalism department of the Nizhniy Novgorod state university, leading linguists (holding PhDs in philology studies), legal scholars, and leading members of the Nizhniy Novgorod journalist union.

The "Nizhniy Novgorod" concept of self-regulation slightly differs from the "classical" British model. However, we believe that the basic idea has not been corrupted, and probably just the opposite - it is more viable and feasible within the context of the modern Russian reality.

Here are some of the differences: Article 2.4 of the Rules of Council on Informational Disputes ("the Council Rules") states that instead of an Ethics Code, decisions on a case should use "legislative norms of the Russian Federation on mass media outlets, article 19 of the Common declaration of human rights, and article 19 and 20 of the International Treaty on citizen and political rights, as well as article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, resolution 45/76 of the UN Assembly of 11 December 1990, related to the information for the service of mankind, Declaration of principles of tolerance, adopted at the UNESCO General Conference in 1995, and other UNESCO declarations on the strengthening of independent and pluralistic methods of information, documents of the OSCE, related to the activities of mass media outlets and journalists, Moscow declaration of journalists in support of world culture from November 14th, 1998" - i.e. legal sources, both Russian and international, ratified by the Russian Federation.

At a first glance, the use of these sources contradicts the idea of self-regulation as one of a moral-ethical normative regulation because it takes the form of legal regulation. However, we think that the impression is false because of the following important positive considerations:

1. In the given context, legal norms lose their status. They no longer serve as legal norms, since they lose their most significant characteristics: the norms cease to be compulsory and in a self-regulation context they are not enforcable by the government. Therefore, these norms in some way are more like moral-ethical norms, completely consistent with the legal ones. Furthermore, the article 2.7 of the Council Rulesstates, that "an application for consideration of a conflict situation should be submitted to the Council in written form, with an agreement to accept its jurisdiction."

It is therefore supposed, that by accepting the power of the Council to resolve informational disputes, its decisions will not only be seen as legitimate, but will also be implemented."

2. Of course these norms are not created by the journalistic community, and that is clearly a disadvantage. However, this, too has a logical explanation: the Council is not yet very experienced. Only five decisions and three resolutions have been carried out, and this is not enough for a deliberate and comprehensive investigation of relationship between the public and the media or between the journalists themselves. However, Council Rule Article 2.3.3. states that "the Council conducts investigations of the media sphere with the goal of identifying the change and development of relations in the sphere, as well as conducting investigation of public opinion."

3. In an effort to compile applicable rules of ethics, the Nizhniy Novgorod Centre for the Defence of Press Rights is working on a project of professional journalist ethics codes, which has not yet been completed (due to reasons indicated in point 2). The project is open to changes and additions. The Council also uses the Code of Professional Ethics of Russian journalists, developed and adapted by the Russian Union of Journalists (RUJ).

4. Besides, neither the public, nor the journalistic community is ready for understanding and appreciating the moral-ethic method of resolving information disputes. Therefore, using legal norms as a normative foundation has the advantage that mass media outlets, which have obviously violated these norms, and want to escape responsibility merely by publishing a refutation and an apology, must instead pay large fines, as they would have to if the case were decided in court. And this consequence is quite realistic, since very highly qualified professionals conduct the analysis of the disputes: lawyers (e.g. G.N. Gorshenkov, professor of criminal law of the Nizhny Novgorod State University, NNGU, member of RUJ), philologists (Professor L.V. Ratziburskaja, doctor of philology, vice-chair of the department of modern Russian language and languages department at NNGU,), linguists (Professor E.P. Savrutzkaja, doctor of philosophy, vice-chair of the philosophy department at NGLU), and others.

Of course, there are some disadvantages to the Nizhniy Novgorod approach. The most significant shortcoming lies in the organizational immaturity of the Nizhniy Novgorod Council, and therefore in its inaccurate self-identification. It is quite obvious that the Council does not fully understand its objectives. The objective is to settle an informational dispute, to reach a consensus between the plaintiff and the defendant. An analysis of the Council's short but positive experience, reveals several mistakes. Ideally, the idea of self-regulation does not suppose a resolution of a dispute in a judicial hearing, where both sides attempt to prove their point . The Council should serve as an active mediator between the parties of an information dispute. Working towards (if need be: lengthy and detailed) agreements with both sides, the Council should reach a decision that would satisfy both sides. However, in practice the Council has taken a slightly passive role, more like a judicial role in an adversary process (perhaps, this is a legacy of the activities of the Judicial Chamber on Informational Disputes under the President of the Russian Federation).

Thus, according to Marina Kurkchijan, who received a PhD in Sociology from Oxford

University, in the UK such settlements are pursued so scrupulously, that the conflict may not be settled because of disagreements on minor details. In contrast, it seems that the Nizhniy Novgorod Council does not follow the objective to reach a consensus between the two disputing sides, but rather to establish an infringement and to find out who is guilty.

Yet the Council is in a learning process, trying to establish its own place in society and searching for the mechanisms best suited to the implementation of the concept of self-regulation.

The shortcomings of the Nizhniy Novgorod approach can be explained by the fact that the institute here must be adapted to the historical and cultural circumstances in Russia. Merely borrowing the British model may not result in a workable system here.

The goal of the Council as an element of the civil society is not only to relieve the courts of a certain workload and reduce the need to introduce laws that may limit the freedom of speech. Mass media, as the fourth branch, has a wide range of powers. "It is hard to identify the nature and range of powers of the mass media; its visible role in modern life is obvious." - the mass media is capable of influencing the ideological public sphere because it can penetrate people's conscience. The real goal of the Council consists of appreciating the mass media's responsibility and self-imposed limits on the freedom of speech in order to maintain professional ethical standards .

The relationship between the public and the mass media is a subject of serious discussion. Today, it seems that in a democratic society, the mass media represent the "voice of the people," expressing its concerns, and representing varied and trustworthy information for public discussions As the American playwright Arthur Miller said, "a good newspaper...is a nation talking to itself." Clearly, such conversation is not possible unless mass media professionals appreciate the importance of these goals and voluntarily and actively participate in their implementation.

We hope that with time, referrals to the Council will become routine. Mass media outlets will understand that the resolution of conflicts is more effective for the people, on the one hand and more advantageous for the publication, on the other hand. Hopefully, they will appeal to the Council more often than to judicial powers.

Natalya Dovnar, Belarus Media Law and Policy Newsletter, Minsk State University spoke on the Reasons for the Absence of Media Self-Regulation in Belarus. The greatest achievement of humankind – the freedom of speech – may be destroyed by using that same freedom of speech, she said. Knowing this, democratic states are constantly working to develop mechanisms to realize effectively the freedom of speech both within the legal sphere and the ethical sphere. Legal regulation mechanisms and mechanisms for self-regulation of the mass media can play an important part in this process. The aims of such mechanisms are closely interrelated with the aims of journalism and are directed primarily at raising the social responsibility of all those engaging in information relationship.

The social norms, which form the basis for the activities of persons acting in information relationships, fall within a definite system whose elements develop depending on specific temporal and historical factors. The mechanism for self-regulation of the mass media should be viewed as a complex multi-level information sphere system. It is characterised by the variety of forms and the multi-functionality of activity of its bodies.

Self-regulation is based on the principles of free will, independence, objectivity, openness and responsibility.

From among the forms inherent in the mechanism of self-regulation, the following may be highlighted: corporate, inter-corporate, socio-corporate and government-social forms. The main features of such forms are predetermined by the subjective composition of bodies of self-regulation and the procedure for their formation.

Thus, if self-regulation bodies (councils, boards, commissions) are organized by one or several journalistic corporations and include only journalists among their members, then such self-regulation bodies pertain to corporate or inter-corporate forms of regulation. If such councils, boards or commissions are organized for example by a journalistic corporation but include, in addition to journalists, members of the public, then we are talking about a socio-corporate form.

A socio-governmental form is either characteristic of a state which is seeking to keep the activity of mass medial outlets under its tireless control or may be used at an early phase in the development of mass media self-regulation. As a rule, socio-governmental organizations appear at the behest of the State. In such cases, self-regulation bodies most often include representatives of the State, members of the public and representatives of mass media outlets. The State itself sets out the functions of such a self-regulation body and invests it with appropriate powers.

Among the functions performed by a self-regulation institution the following may be mentioned first and foremost:

1) regulatory function;
2) control function;
3) protective function;
4) function related to conflict resolution;
5) the function to initiate proposals for changing legislation;
6) cognitive function;
7) educational function.

Which functions will be performed by a self-regulation body depends on its type (level), form and manner of organization/formation.

The level of self-regulation may be determined according to the scope of powers of the self-regulation bodies. As a rule, the level is related to the activity of an editorial office, a public association or the entire journalistic community. The former two cases should be classed as editorial and corporate (inter-corporate) levels. In the latter case, it is possible to speak of a national (republican) level.

The mechanism for regulation of social relations includes substantive and procedural norms. As regards the self-regulation mechanism, we may speak of norms which are contained in ethical conduct codes and standards developed by journalistic communities.

As a rule, these communities also develop procedures for the application of the norms adopted.

There are two major journalistic organizations in Belarus, the Byelorussian Union of Journalists (BUJ) and the Byelorussian Association of Journalists (BAZh). They are established as public associations. Both adopted their own code for ethical conduct governing the activity of their members. The two organizations perform a control function, that is, they control compliance with ethical conduct norms; they also perform the function of conflict resolution and knowledge dissemination (a cognitive function).

In accordance with its Charter, BAZh for example actively protects the rights and interests of members of its organization in the event that they be sued in court for libel, as well as in the event of warnings issued by competent mass-media registration and oversight authorities being challenged by editorial offices .

The function of conflict resolution is relegated to committees for ethical conduct created by the two organizations (in the BUJ, it is a committee for professional ethics and premiums, in the BAZh, a committee for ethics). The committee of the BUJ not only resolves conflicts arising among the members of the organization but also issues opinions on breaches of ethical conduct rules at the request of a court or a party to court proceedings concerning any libel case.

If we speak of examples, the government set up the Public Council for the resolution of disputes arising in the process of the application of the Law “On the Print and Other Mass Media” of the Republic of Belarus as a mass-media self-regulation body (Enactment No. 1591 of the Council of Ministers of the Republic of Belarus, dated 2 December 1997). The Public Council included among its members: philosophers, a sociologist, a historian and several representatives of governmental agencies and bodies (the Administration of the Council of Ministers and the Ministry of Justice) and representatives of two state-run publishing houses. In 1998 the Council of Ministers issued an enactment by which it approved the Statute on the Public Council (Enactment No. 59 of the Council of Ministers of the Republic of Belarus, dated 19 January 1998).

The Public Council was envisaged as a consultative-analytical body and was established in order to provide competent State agencies and bodies with assistance in the correct application of the Law concerning the Print Media and in the better implementation of the Law’s requirements for periodical publications. The Public Council was to act on a voluntary basis.

In accordance with responsibilities relegated to the Public Council, it had the right to issue its opinions on the presence (or absence) of any violations of the requirements of Article 5 of the Law of the Republic of Belarus “On the Print and Other Mass Media” in any materials published by the periodical press. ,The Public Council had to

provide explanations to interested governmental agencies and bodies on the correct application of the above law in respect of legal relationships arising in the organization process and activity of periodical publications, and to make proposals to the Council of Ministers of the Republic of Belarus on further improvement of laws on the press. The Public Council was empowered to appeal to government authorities, enterprises, institutions and organizations for additional documents necessary to prepare and take its opinions and, if necessary, to hear the author of a published material, which means to hear the head of the editorial office of the periodical publication in question.

The Public Council could review materials on the initiative of a government authority, a court, the prosecutor's office as well as of members of the Public Council. Decisions made by the Public Council were supposed to be communicated to the interested parties within a week.

It follows from the enactment that the Public Council, which was organized in the form of a public-governmental co-regulation institution, was mainly invested with control functions.

Because of the lack of transparency, very little is known about the concrete activities of the Public Council, which, strictly speaking, is indicative of its low effectiveness.

In 2004, during the period of preparing for and holding the elections to the Chamber of Representatives of the National Assembly (parliament) of the Republic of Belarus, the Central Elections Commission of the Republic of Belarus formed a supervisory board to ensure order and compliance with the rules for pre-election campaigning in the mass media (Enactment No. 39, dated 17 August 2004). The Board was created at the Central Commission and consisted of 7 members. It included representatives of the Ministry of Information, the state enterprise "Public Press-Centre of the Press House", the newspapers Sovetskaya Belarus and Minskaya Pravda, the National State Tele- and Radio Company, and the Byelorussian Union of Journalists.

The members of the Supervisory Board were approved by the Central Commission and chosen from candidates recommended by government bodies, public associations, and leading (state-run) mass media outlets.

The tasks of the Supervisory Board included monitoring compliance of mass media outlets with the norms of the Election Code of the Republic of Belarus, the Law of the Republic of Belarus "On the Print and Other Mass Media" and with other legal acts stemming from the laws of the Republic of Belarus that regulate the activity of the mass media during elections. Furthermore, the Supervisory Board had to ensure equal opportunities for election campaign speeches by candidates on television, radio and the print media or for canvassing voters. Where necessary, the Board had the right to make proposals for review of activity of a press outlet by the Central Elections Commission.

In addition, the Supervisory Board had the right to review disputes that arose during the use of mass media outlets during preparing for and holding of elections, to offer recommendations and opinions subject to immediate review by heads and directors

of mass media outlets, to apply to heads and directors of mass media outlets with queries and obtain required information from them.

During the preparation and holding of elections the members of the Supervisory Board were required to abstain from making mass media appearances that related to the discussion of political, business and personal qualities of candidates for election. The organization and technical support for the activity of the Supervisory Board was provided by the administration of the Central Commission.

As we see, the government again initiated the creation of a co-regulation body (public-governmental form) and, accordingly, its main function was that of control.

The draft of a new version of the law on print media envisages the formation of a public coordination board for the mass media. It shall consist of 10 members – representatives of government agencies and bodies, mass media experts and scientists. The composition of Board members and the Statute governing the Board's activity will be approved accordingly by a government agency. The Board's decisions will be of an advisory nature.

The examples of Belarus and other countries show that, whenever mass media self-regulation bodies are created upon the initiative of the State, they are before anything else empowered with the functions of control, and there is no reason to complain about this fact for such is the nature of the State. However, if self-regulation of the mass media is initiated by the journalistic community itself, then it will be far more effective in achieving its goals, whatever its form. And its effectiveness will be in direct proportion to the number of functions that such self-regulation body undertakes to perform. The optimum number of functions may be undertaken by a self-regulation body organized in public-corporate form that spreads its jurisdiction to the entire journalistic community.

In 1999, an initiative group of members of the Centre for Legal Rights Protection of the Byelorussian Association of Journalists developed a concept for reformation of the laws of the Republic of Belarus on mass media in which it displayed a deep understanding of the problems of self-regulation of mass media activity.

In particular, the concept called for the creation of a body for journalistic self-governance and control in order to ensure the responsibility and accountability of the mass media toward society. The board was to introduce self-regulation of print and electronic media activity with the aid of a Public Board on mass media organizations. The procedures for creating and operating the Public Board should be defined in a statute to be approved by the Congress of journalists of the Republic of Belarus. The main tasks of the Public Board for mass media should be as follows: review of complaints about breaches of professional ethics by journalists and application of appropriate sanctions to those at fault; review of other claims concerning the activity of the mass media as a precondition for taking recourse to regular courts, representation of the interests of the mass media before government agencies and bodies; submission of proposals on improving mass media legislation.

The following question then arises: why did Belarus lack until now an organization which could perform all or most of the functions inherent in the concept of mass-media self-regulation? The answer may be found with the help of some psychological theories and concepts.

Thus, by using a general theory put forward by P. K. Anakhin, it may be forecast in what cases it will be possible to see increased activity to create a socially important concept or institution. Self-regulation is an open system whose development is influenced by many factors. One of the main factors is the presence of a dominating motive. Such a dominating motive may, for example, materialize in the desire to preserve the independence of the mass media. The dominating motive may in turn become the main component underlying increased activity but only under specific conditions, which are determined by the prevailing environment (political, economic conditions, etc.). A special role, especially at the initial phase, is played by a starting impetus (for example, the necessity for establishing such a concept or institution at a given moment may be recognised when the State threatens with the adoption of a restrictive norm).

Activity develops rapidly only if, at the time, all of the above factors are in sync (a dominating motive + conditions + a starting impetus). If such factors are truly in sync, then mechanisms will be put in motion for making the right decision and executing it.

Decision-making mechanisms are, as a rule, created by normative (regulatory) documents (statutes, so-called civil initiative documents, local documents). It is precisely at that point that codes for ethical conduct appear at a corporate or national level as do various commissions, councils, and committees. If any of the afore-mentioned factors are missing, then it is practically impossible to create a social institution, and this is exactly happening now with respect to national level self-regulation bodies in Belarus.

While there are several reasons why there is insufficient activity to create self-regulation bodies, we are going to enumerate the most important of them.

First, a lack of corporate unity is very telling in Belarus at present (this is one of the most important reasons).

Second, the development of forms of self-regulation depends on how morality from a viewpoint of what's right and valuable conforms to the level of interpersonal understanding of communication rules. Today few editorial offices pay particular attention to the rules of ethics, adopt internal documents containing such rules, or use mechanisms of contractual relationships when hiring employees. Journalists become seriously interested in legal issues and ethics only when a legal controversy arises and they are made accountable.

Third, an important role is played by traditions (or lack thereof which is more to the point in the case at hand), which have been engendered in journalism, by preferences displayed by editorial offices, associations of journalists and even government agencies and bodies charged with determining policies in the

information sphere and which are applicable to the selection of mechanisms for regulation of mass media activity. Thus, in Belarus there is practically no tradition to defend civil rights using public institutions. Many prefer to settle their disputes in court.

Fourth, a very serious influence results from a prevailing economic and political situation in the country. To create and support the activity of any organization, even if it operates on a voluntary basis, funds are necessary.

Besides, the journalistic community is slow to realize that, if the government wants to extend its control over the mass media and there is no ongoing dialogue with journalists, self-regulation bodies will appear, that perform functions prescribed by those in power rather than journalists.

The creation of a new social mechanism undoubtedly depends also on the time factor. To change the prevailing perception, both individual (journalists and government officials) and collective (public opinions), and to form new traditions, a decade will not always be sufficient. And from this viewpoint it seems that the phenomenon of mass media self-regulation will nevertheless be developed in Belarus eventually.

Advertisement

The afternoon session 3 was focused on self-regulation of advertisements. Mr Kristoffer Hammer, Policy and Compliance Officer from the European Advertising Standards Alliance (EASA), created a report titled "Self-regulation of advertising in practice – Opportunities and challenges." Self-regulation of advertising has a long history in Europe, he said. The principles are more than 100 years old. What is perhaps remarkable, in view of the disparity between European national systems, is the degree of similarity to be found between the rules that they apply and the fact that, despite differences of structure and procedure, all these systems set out to achieve the same result: a high standard of consumer protection based on the premise that all advertising should be legal, decent, honest and truthful.

In 1992, The European advertising industry was given a challenge by the European Commission: With the establishment of the single market, barriers to trade were removed, so that businesses and consumers could act on a market covering 12 countries. This is when the Commissioner responsible for Competition policy, Sir Leon Brittan called for a protection of consumers against advertising on a European level. Self-regulation of advertising was already in place in most member states, and it was time to protect consumers against advertising that crossed borders.
This was the beginning of the European Advertising Standards Alliance, or EASA.

EASA started by establishing a cross-border complaint system to deal with complaints from a person in one country about an advertisement which has appeared in that country but was carried via media based in another country. The Self-Regulatory Organisation ("SRO"), in the complainant's country has no control over the media in other countries. However, the EASA system enables the complaint to be passed to the SRO in the country where the media is based, which then deals with it

according to its own code. From the time it was set up in 1992, the EASA cross-border complaint system has handled almost 1500 cases. The results are published regularly on EASA's website. The system has attracted praise from EU institutions and was described by Commissioner David Byrne as ”a fine example of how effective self-regulation can be when there is the will to find solutions”.

However, recognition one day does not protect you from criticism the next. Advertising in Europe is increasingly regulated by the EU. The role of EASA has therefore become more and more important in representing this additional layer of consumer protection against the European Institutions. It is now the single authoritative voice for self-regulation in Europe and works extensively on making sure that advertising reflects developments in society and can work effectively in dealing with such challenges.

To address these issues effectively, EASA needs to represent the entire advertising sector. We therefore have advertisers, agencies and media in our membership, together with 28 national self-regulatory organisations. The industry and SRO members are on equal footing on our board and have their respective roles. SROs provide the experience of enforcing self-regulatory codes and know the markets they cover.

Industry members on their side represent those that have established and financed the system. They are those that are primarily faced with the political agenda, dealing with challenges related to products, services or the nature of advertising and may cause restrictions of advertising freedom. And it is the industry that has driven the recent processes of further reinforcement of the self-regulatory system.

Mr Hammer started by saying that the EASA has a system which is united through diversity. Every system in each of the 19 member states where self-regulation is established is a unique system. Each has its own history and its own code, reflecting the market it is covering. Some systems are more focused on working on pre-launch, while others are spending most of their time and resources dealing with post-launch issues such as complaints. However, for self-regulation of advertising to be seen as an effective alternative and complementary level of consumer protection, we need to be seen as having certain crucial features in common. This conclusion has led EASA to drive a programme of development and implementation of Best Practice across Europe, a programme which was adopted by the Self-Regulatory Summit one year ago.

The summit united high-level representatives from all parts of the industry, namely advertisers, agencies and the media, which all signed the self-regulatory charter, which outlines a Best Practice model for self-regulation, which is based on the following 10 principles:

1. Universality of the Self-Regulatory System

An effective advertising self-regulatory system should apply without exception to all practitioners – advertisers, agencies and media. To achieve this, there needs to be a general consensus on the need for a self-regulatory system and the practical, active support of all three parts of the industry. Additionally, a self-regulatory organisation (SRO) must be able to depend on the moral support of a large majority of the

industry, to lend credibility to its decisions and ensure that they can be applied even to uncooperative advertisers.

2. Sustained and Effective Funding

Freedom to advertise has a price. Self-regulation is not a price-cutting option: it can function effectively only if it is properly funded. A self-regulatory system requires a robust method of funding, with the commitment of all the parties involved in the various sectors of commercial communications. It is important that such a method be sustainable, i.e. affordable and not extravagant, but it should also be buoyant, i.e. so designed that it cannot be placed in jeopardy by the unilateral action of any company or industry sector. A levy system based on a small percentage of all advertising expenditure has been found to be a very satisfactory way of fulfilling all these criteria.

3. Efficient and Resourced Administration

Self-regulatory organisations should be managed in a cost-efficient and business-like manner with defined standards of service. To maintain public confidence in the system, an SRO must be – and be seen to be – independent of the industry which funds it. To achieve this, requires a dedicated secretariat within a structure that provides the necessary independence and external credibility.

4. Universal and Effective Codes

A key element of any self-regulatory system is an overall code of advertising practice. This should be based on the universally-accepted ICC Codes of Marketing and Advertising Practice; it may subsequently be extended and developed in response to national requirements. It is important that the code should apply to all forms of advertising. It is equally important to establish a procedure for the regular review and update of the code, ensuring that it keeps abreast of developments in the market place, changes in public concerns and consumer sensitivity, and the advent of new forms of advertising. Finally, the code must be made widely available, and advertisers, agencies and media must be familiar with its contents.

5. Advice and Information

One of self-regulation's key roles is to prevent problems before they happen by providing advice to advertising practitioners. The advice provided by an SRO takes several forms: first, copy advice, i.e. confidential, non-binding advice about a specific advertisement or campaign, supplied on request before publication. Secondly, the SRO offers general advice on code interpretation; this advice will also draw on "case law", i.e. precedents established in previous adjudications. General advice of this kind can also be made available in the form of published guidance notes, which supplement the code and indicate best practice, for example in high-profile or problem areas. Like the code itself, guidance notes can be updated as necessary.

6. Prompt and Efficient Complaint Handling

The public perception of a self-regulatory system will depend to a very large extent on how efficiently it is seen to deal with complaints. One of self-regulation's principal advantages over the judicial process is, precisely, its speed. Consequently it is essential that complaints are seen to be handled promptly. The amount of time required to investigate a complaint will depend on its complexity. Business-to-business complaints typically may take longer to resolve.

In cases alleging misleading information, it is a fundamental principle of self-regulation that the advertiser must appropriately substantiate its claims. The SRO should ensure that it has the means to evaluate technical evidence produced by advertisers to support their claims, including access to independent, specialist experts. Competitive complainants should be able to show *prima facie* evidence of a code breach in order to avoid abuse of the system.

7. Independent and impartial adjudication

A self-regulatory system must be able to demonstrate that it can judge cases brought before it efficiently, professionally and, above all, impartially. The complaint handling process itself, the complaints committee and its adjudications must be conducted in an independent manner. They must be subject neither to the influence of the advertising industry or any particular industry sector or company, nor of government, NGOs or other interest groups.

The complaint committee should have a majority of independent members, and its chairman should be an independent person.

8. Effective Sanctions

Although in most cases self-regulatory systems can count on voluntary compliance with their decisions, their credibility depends in no small measure on the ability to enforce them. The so-called ”name and shame” principle, involving routine publication of adjudications, with full details of the complaint and the name of the brand and the advertiser, has proved to be a powerful deterrent. It can, where necessary, be reinforced by deliberately publicising a case where voluntary compliance with a decision is not forthcoming. However, perhaps the most effective means of enforcing a disputed decision is media refusal of the offending advertisement. This requires a commitment on the part of the media as a whole to uphold the decisions of the SRO and is likely to depend on the adoption of a standard “responsibility clause” in all advertising contracts, by which both parties agree to be bound by such decisions.

9. Efficient Compliance and Monitoring

To be truly effective, an SRO cannot afford to restrict its activities to responding to complaints: if it does so, its intervention will inevitably be haphazard and lack consistency or thoroughness. To proceed effectively against violations of the code, it will need to put in place a planned programme of systematic monitoring, based on specific product sectors or problem areas. This allows the SRO both to instigate cases on its own initiative and to evaluate levels of code compliance.

10. Effective Industry and Consumer Awareness

An effective self-regulatory system should maintain a high profile: consumers should be aware of where and how to complain and the industry should be aware of the codes and procedures by which it regulates itself.

Finally, the SRO will need to be able to produce information and evidence of its activities, in the form of published surveys, case histories and statistics (for example, numbers of complaints handled or copy advice requests). Information of this kind is essential both at European and national level to demonstrate the effectiveness of self-regulation.

Mr Hammer informed the conference that, to ensure that these principles are implemented across the EU, the EASA has designed a “Get fit programme”. He said that this is not their contribution to the obesity discussions, but a programme to ensure that an effective system is in place in most or preferably all EU Member States, before the end of 2006. The EASA has made this commitment to the European Commissioner for Consumer Protection and Health, Markos Kyprianou, and intends to deliver its promises. And one of the main challenges is to ensure that self-regulatory system are up and running in all of the new Member States – and the EASA is making progress. Four systems were already in place before enlargement. Lithuania got their SRO three weeks ago, Estonia will have theirs in May, and Poland, Latvia and Cyprus are expected before the end of the year.

With a self-regulatory system based on the above model, the advertising industry is equipped to work on the various challenges it faces, due to the fact that it is a service which by definition is in the public domain, and attracts significant attention.

We all know that advertising is blamed for alcohol related harm, obesity, car accidents, denigration of women, children putting pressure on their parents to buy the right products, just to mention a few of the issues which are blamed on advertising.

Self-regulation of advertising can be a tool to fight these battles, but we need to define the responsibility the advertising industry may take for these issues, after all not all car accidents are due to advertising! On this basis can the EASA elaborates appropriate measures. Bans on advertising have rarely been seen to make the problems disappear, but legislation is what you get, if the necessary actions are not taken.

The EASA has therefore worked extensively over the last few years with a number of sectors. In the last two years it has worked with the alcohol and food sectors. Together this organisation has reviewed the existing codes, drawn up new and stricter ones, and encouraged their implementation across Europe. The results of the reinforcement of the codes have been verified through wide-ranging monitoring exercises. These exercises have included the review of all advertising of the product concerned appearing in selected markets, and their compliance with the code. On the basis of the results of the monitoring exercises, the EASA is organising training for all parts of the industry, and self-regulatory organisations, to ensure the proper understanding and application of the codes.

Advertising freedom comes at a price – eternal vigilance. Self-regulation has proved on a number of occasions to be a means of obtaining the necessary recognition to be a trusted partner. Industry wants to be seen as a part of the solution, not as the problem. Self-regulation of advertising provides a tool in deserving such confidence.

Mr. Hammer emphasised– that, if you do advertising self-regulation – do it well. It is better to have no system at all, than a malfunctioning one.

Dmitry Badalov, Director General of FENEK1 Ltd. Consulting agency and Vice-President of the Russian Chapter of the International Advertising Association (“IAA”), spoke on “self-regulation of advertising in Russia.” He said that its history in

Russia dates back to February 1995 when a group of directors of Russia's leading advertising agencies, politicians, scientists and public figures founded a public supervisory board for advertising. In 1999 the Public Advertising Council was reorganized into a non-profit partnership, the Advertising Council of Russia. It included heads and directors of associations and unions of advertising agencies, mass media outlets, advertisers and consumer societies, as well as some individuals. In 1997 the Council set up committees for development of ethic norms and for review of submissions from the public. The Council actively encouraged the creation of regional organizations for self-regulation of advertising and incorporated some regional organizations exhibiting an appropriate level of activity. In 1998 the Council became an observer member of the European Advertising Standards Alliance (EASA) and in 2000 became a fully-fledged member of the Alliance. For the duration of its membership in the Alliance, the Council regularly sent to it required reporting documentation about its activity.

In its activity, the Council was guided by the Code of Advertising Practice of the International Chamber of Commerce (ICC) and by the "Statute Book of Customs and Rules of Business Activity in Advertising in the Russian Federation" (1996, 2000). In March 2001, a Russian advertising code was signed into law, which brought together provisions from the ICC Code of Advertising Practice and the Statute Book.

In the spring of 2002, the Advertising Council of Russia de-facto terminated its existence.

During the existence of the Council's Committee for Submissions, over 200 reviews and reports were prepared for advertising agencies, advertisers, mass media outlets, consumers and government agencies and bodies. The procedure for reviewing submissions was free of charge and, in its main aspects, conformed to the approaches utilized by the European Advertising Standards Alliance.

In addition to its direct activity in respect to advertising self-regulation, the Council also actively participated in the law-making process acting as a co-organizer of parliamentary hearings, taking part in the discussion and preparation of well-balanced and well-substantiated recommendations for introducing changes in the Federal Law on advertising.

In addition to meetings of the Council and its Committees that were held regularly, the Advertising Council of Russia also organized scientific and practical conferences on the state of the Russian advertising market and its legal regulations, as well as seminars for advertising councils and associations from Russia's regions. In the autumn of 2001, the Advertising Council of Russia acted as the organizer of an international conference on advertising laws and advertising self-regulation. The conference brought together representatives of legislative and executive branches of power, public associations and unions from 12 CIS States.

Council members actively participated in events organized by associations and unions concerning advertising, festivals and competitions.

During its existence the Council printed 22 publications: Council bulletins, annual reports on the Russian advertising market, conference proceedings and other topical literature.

In 2002 the Union of Mass Media Industry Associations was established, with an advertising section in its structure. The advertising section brings together associations of advertising agencies, mass media outlets and advertisers. With minor alterations, which mainly concern procedural issues, the Russian Advertising Code was signed by the members of the Union, a number of television channels and other mass media outlets. A commission for ethics was created in late 2004 within the advertising section.

In the past few years, the Russian public has been rather widely discussing a draft law on self-regulation organizations, the main provisions of which are directed at the regulation of relationships between the government and economic entities within the industry. Such an approach does not entirely conform to the European advertising self-regulation model, which is a complex polyphonic process in which representatives of various entrepreneurial activities take part.

Media Content

The next session 4 was focused on media content. "Experiences of a Converged Institute for the Classification of Audiovisual Media" was the title of the presentation by Wim Bekkers, Director of NICAM - The Netherlands Institute for the Classification of Audiovisual Media. NICAM is a foundation, set up in 1999. Its founders are all public TV-stations, all commercial TV- stations, the cinema film sector, the video/DVD sector, the game sector, including distributors, cinemas, video stores and retail. It is a joint initiative of the entire Dutch audiovisual industry.

NICAM is the result of negotiation and discussion between the government and representatives of the audiovisual industry. This discussion took place in 1997 and 1998. The NICAM system is a tool aimed especially at parents with growing children. The name of the system is "Kijkwijzer": watch wiser. Kijkwijzer is an information system, and advice for parents: it is not censorship. The system generates uniform information to parents (e.g. consumers) that can help them decide whether a TV programme, film, video or DVD can be harmful for their children. NICAM provides information -product information - its goal is not to forbid or prohibit something. Why was NICAM established? There are several reasons: 1) Explosion of audiovisual supply (TV, games); 2) Concern among parents and politicians about possible harm for children/youth; 3) EC Directive "Television without Frontiers"; 4) Reasonable consensus among scientists that audio-visual products can be harmful for children.

NICAM is a form of self-regulation; at the request of the government the audiovisual industry is taking its responsibility. The government is stimulating and supporting NICAM. NICAM is officially acknowledged as the institute for the protection of minors. If one speaks of relations between NICAM and the government, then the following is important: NICAM had to meet a number of conditions before being acknowledged: statutes and rules. The government is supporting (financially) and evaluating the system; NICAM is urging the government to continue involvement

and to continue financial support. We think the protection of minors by the Dutch industry is more effective when the government evaluates and controls the system. So, *de facto* NICAM is a form of public–private cooperation.

NICAM's governance consists of :

- The General board – independent chair and 8 members (representing TV, film, video/DVD industry);
- The Advisory board – ca. 20 members (societal groups, organisations);
- The Independent Complaints Board and
- The Committee for Appeal; Independent Criteria Committee (academics).

NICAM's financing comes to the following ratio

- in 2000 – 2003: government 75%, industry 25%,
- in 2004: government 65%, industry 35%,
- while the goal for 2005 is to have the ratio at: government 50%, industry 50%.

NICAM's standpoint: the government should continue to evaluate the system and continue to co-finance the institute. The reason is that the protection of minors is the joint responsibility of the industry and the government.

There are two cost factors: 1) The NICAM institute paid by government and industry, and 2) the internal cost for TV-stations and distributors: all classification and information activities inside the member companies.

NICAM membership is not obligatory, the system is a voluntary one, but in practice TV-stations are "forced" to join. If a TV-station does not join the system, it may broadcast programmes rated for all ages only.

Principles and Rules of the system are as follows:

- The NICAM system classifies TV, film, video/DVD in the Netherlands
- Suppliers (TV stations, distributors) are responsible for rating
- Programmes and films are classified, with the help of a scientific rating system, by coders; coders are employees of the member companies
- Two watersheds for TV: programmes rated 12 year permitted only after 20.00 hrs, programmes rated 16 year only after 22.00 hrs
- Penal law: children under 16 not allowed to cinema films rated 16; the same principal is applied for video and DVD in video shops.

It is NICAM practice that all TV programmes, films and videos/DVDs are rated. That includes 3 National public TV channels, 11 national commercial TV channels, plus dozens of film and video/DVD distributors, leading to a large number of ratings (3000-4000 per year).

How does the NICAM system function?

- Classification system developed by independent experts
- Extensive questionnaire identical for the rating of films and TV programmes

- Self rating by company coders
- Each member company has one or more coders (total > 150)
- Coders are trained by the NICAM institute
- Films and TV programmes are classified through a special internet application
- Coders enter the internet application with password
- The system is a computerised questionnaire
- All data (answers to questions) is stored in a central database.

Uniform pictograms were developed for consumers. For DVD/ Video the pictograms are placed on boxes, on tapes and in advertisements. For film: pictograms are seen in advertisements and cinemas, on posters. TV pictograms are on screen, in TV guides, in Teletext and EPG.

It is important, that the public can make complaints. Anybody can report a complaint via www.kijkwijzer.nl or to the Independent Complaints Committee and Appeals Committee, while sanctions vary from warnings to fines.

Critical factors of NICAM system are the following:
- Independent research-based expert committee responsible for rating system
- Independent Complaints Committee with access to sanctions with real bite
- User-friendly computerised rating system (Internet-based)
- Motivated coders
- Helpdesk plus training package for coders.

Two surveys were held in June 2004. They showed that over 90% of parents with growing children appreciate the service and over 70% say they are using the pictograms when it comes to making choices for children.

The government evaluated the project in November 2003 and expressed the official view that after a trial period of three years the Kijkwijzer system is a success and has proved its right to exist.

For the classification of games, last year a specific European-wide system was introduced: PEGI. PEGI stands for Pan-European Game Information. PEGI is built and created by a platform of European experts (industry, governments, rating institutes). PEGI is a Pan European system, modelled according to the NICAM system; since the introduction last year it is very successful. The European Commission is supporting the system.

The NICAM and the PEGI story is a story about product information for parents/consumers to help them to make better informed decisions when choosing films, TV programmes and games for their children.

The next speaker was Ian Mayes, Readers' Editor of The Guardian daily (London). "News Ombudsmen as Self-Regulatory Mechanism in Press and Broadcasting" was the topic of his presentation. Mayes said that his job is a running conversation with the paper's readers, or very often, a discussion between the readers and the Guardian journalists, mediated by the Readers' Editor as impartially as possible. In

many cases the subjects of his columns are ethical issues raised by readers and arising from the Guardian's journalism, every aspect of which comes under scrutiny. The columns represent one way in which one particular media organisation has chosen to respond to the potential for interaction between the journalist and reader that has been created by the radical and rapid changes in the communications environment of the past decade — changes that have created, in fact, not only the potential for greater interaction but an increasingly insistent demand for it.

Journalists, as the editor of the Guardian has often remarked, cannot, and indeed are no longer able to, stand apart and avoid accountability for what they do. They are, whether they like it or not, more open to question than ever before. The role of an ombudsman is to encourage and facilitate that accountability, acting from a position of independence within the organisation. It is a legitimate question to ask: How can you be truly independent or impartial if the Guardian pays you? The contract, which is published on the Guardian website, guarantees that the Readers' Editor is able to assess complaints or discuss other issues completely free from interference. Within the period of the contract, which at present runs for two years, the editor cannot sack the Readers' Editor, he cannot veto subjects he wants to deal with in his column and he cannot change what the Readers' Editor writes before publication. Strictly speaking, the editor reserves the right to decide when and to whom the paper should apologise for an error, but in practice this has also been left to Readers' Editor during the entire time he has done this job, that is since November 1997.

If the editor can't sack the Readers' Editor, who can? The answer is the Scott Trust, the independent body which owns the Guardian. It is named after the Guardian's most famous editor CP Scott whose philosophy may be summed up in his maxim, "Comment is free but facts are sacred." The editor of the Guardian sits on the Trust, and Guardian journalists are also represented on it. The Scott Trust has never asked the Readers' Editor to explain or justify an adjudication. The creation of the role of Readers' Editor at the Guardian was the idea of the present editor. Any tension that may have arisen between the Reader's Editor and the newspaper's Editor on those occasions has quickly been subsumed in their shared commitment to the principle of having an independent Readers' Editor.

Mr Mayes said that he thought the discussion of issues between the newspaper and its readers, openly and frankly, is probably more important than trying to impose a definitive conclusion in all cases. He said that he does frequently give an opinion or adjudication, and that he quite often favours the reader and not the editor or his staff. His criticism of the paper for its treatment of a picture of the immediate aftermath of the terrorist bombs at Atocha station in Madrid is one example. In this particular case both the editor of the Guardian and the duty editor of the day, both of whom were involved in publishing this picture agreed, on reflection, with Mr Mayes's view of the matter — that it should have been printed without any alteration. Part of the purpose of discussions such as this, conducted publicly in the paper and on the website, is to remind readers of the realities and pressures of the journalist's life and to allow them to hear the journalists thinking aloud. The principle is that the better informed readers are about the way in which a news organisation works — whether it be a newspaper, website, television or radio station — the better informed, and perhaps more reasonable, will be their criticism. Mr Mayes hoped that the right of citizens to scrutinise and criticise the media is beyond question. Why should any news

organisation which almost by definition is constantly calling on others to account for themselves not be accountable itself?

What has been happening at the Guardian, and what is happening increasingly in news organisations in many parts of the world, amounts to a cultural shift that is redefining the relationship between journalists and their readers or audiences. Mr Mayes felt that this is something that journalists everywhere should welcome. The development of websites and the internet has changed our world dramatically and is bringing us closer together. In one of his columns he has noted that the Guardian through its website now has readers in almost every country in the world. Global communications already mean that in a sense the divisions between home and foreign news are increasingly artificial. What a newspaper calls foreign news — news from beyond the boundaries of its circulation as a printed paper — now comes under the same immediate scrutiny as home news. It means, among other things, that news organisations with global publication through their websites, are now subject to challenge by electronic lobbies largely made up of people with no experience or knowledge of the printed newspaper and its ethos. A number of his columns attempt to explore this uncharted new world.

Mr Mayes explained that his columns fall roughly into three categories, those dealing with ethical issues, those in which he describes more directly how parts of the Guardian work, and — a category not represented here — columns dealing with the Guardian's use and misuse of the English language. He has tried to do this in a way that restricts paranoia among the paper's journalists and encourages consensus. All staff journalists are able to see at their desks the queue of incoming email to the readers' editor and very often to see his replies to readers. Journalists or section editors are always consulted before significant corrections are published. The names of journalists are not published in corrections — unless there is a need to do so to exonerate all those not involved, as in rare cases of plagiarism, for example. The aim is to achieve a consensus or near consensus in which most of the journalists for most of the time believe that the system is a good one that works for the general good.

When the opinion of Guardian journalists was tested recently about 95% of those questioned thought that having a resident ombudsman was, on the whole, a good thing. This is a view that appears to be shared by readers. For those who have something to complain about, the readers' editor offers a generally fast and always free service. The Guardian lawyers estimate that it cuts down their libel or defamation workload by about a third. In other words it substantially reduces the number of people wanting to sue the paper. It also appears to reduce the number of people who complain to the industry regulatory body, the Press Complaints Commission, which in one recent three-month period received no complaints at all concerning the Guardian — a circumstance perhaps never to be repeated.

Mr Mayes concluded that; from a personal point of view, having been a journalist for almost half a century, the role of ombudsman has allowed him to make practical use of the accumulated experience of those years. He expressed the belief that his newspaper had been able to show that self-regulation can work at a very basic level, and in a way that strengthens the journalist and enhances the contribution that journalism can make to the society it serves.

"Introduction of an In-House Code of Professional Standards for Journalists and Editors" was the topic of the presentation by Evgeny Abov, Chairman of the Board, Izvestia Daily Newspaper, Vice President, Guild of Press Publishers (GIPP).

My Abov stated that only a few Russian newspapers provide for and adhere to "internal" professional standards. Often these are leading newspapers in their markets and niches.

The journalistic community in Russia, unfortunately, is too weak to be instrumental in developing self-regulation codes. Journalists would prefer that CEOs or publishers or owners of print media take the lead here. The recent case in the Izvestia daily is a proof. Mr. Abov elaborated on the recently approved Professional Standards of Conduct for Journalists and Editors of the Izvestia daily newspaper. They are designed to supplement the labour contracts of journalists and editors. The Professional Standards of Conduct of Journalists and Editors of the Izvestia follow the models set by the German Presserat and the Code of Practice introduced by the Press Complaints Commission in the U.K.

Mr Abov made a point on the need of horizontal processes here, i.e. within the internal mechanisms of the industries (TV, print, etc.)

Internet

The focus of the next, 5th session, was the Internet. Danilo Leonardi from the Programme in Comparative Media Law and Policy (PCMLP), Oxford University, made a report on "How to Organise Internet Self-Regulation." He explained that the purpose of his reportwas to attempt a response to the question put by the organisers of this Moscow Workshop on Media Self-regulation as to how to organise Internet self-regulation. The answer has a very large potential scope but he proposed to focus on presenting some of the results of research carried out by the IAPCODE research group (of which he was a member) at the University of Oxford's PCMLP - Programme in Comparative Media Law and Policy.[3] In his answer he proposed to be more "forensic" than predictive, as he would be reporting on findings that, in the Internet sector[4], were mainly obtained by monitoring the content of the codes of conduct of ISPs (Internet Service Providers). He proposed to very briefly address the use of codes of journalistic ethics in the regulation of the content of some online news services and online versions of newspapers and to reduce the scope of the answer by leaving aside a variety of other areas of Internet studies such as the physical infrastructure, the users, domain names, software and e-commerce.

[3] This presentation and the underlying paper are based on the final report of the IAPCODE Project (Internet Action Plan CODE Project) that PCMLP delivered to the Directorate General Information Society of the European Commission in May 2004. For the full report see http://www.selfregulation.info/iapcoda/0405-iapcode-final.pdf
I wish to acknowledge the contributions of all of my PCMLP colleagues who were members of the IAPCODE research group (2001-2004), in particular Damian Tambini (project leader) and Chris Marsden. All remaining inaccuracies in of this description are my own.

[4] Noam, Eli (2003) Oxford Internet Institute Issue Brief No.1 The Internet: Still Wide Open and Competitive? (August 2003). He defines the Internet sector as: 'the core industries that provide instrumentalities and infrastructure components underlying the Internet's basic functioning' (at 2).

Supervision of Internet content by means of industry self-regulation

There has been a degree of creative chaos in the development of Internet content self-regulation over the past few years. The rapid change that characterises this sector also means that the current system of Internet content self-regulation is of course not at all stable. Aside from the attempts made in Australia and Singapore to apply broadcasting standards of taste and decency to Internet content, so far most countries seem to have accepted that it is not pragmatic to do so. The focus of self-regulatory activity in Internet tends to concentrate on illegal and harmful content (rather than on standards of taste and decency), assuming a similar standard for print media and private viewing of material with regards to obscenity, hate speech, defamation, and copyright infringement. In the first decade of the Internet, therefore, Internet content self-regulation developed mostly via the codes of conduct that were created to address those problem areas. Much regulatory activity has been taking place voluntarily at the industry level, among the ISPs, with codes often overlapping, conflicting and complementing one another. At PCMLP they have placed the study of those developments in Internet in the context of research into the use of codes in other media industries[5]. Their investigation highlighted resemblances among regulatory approaches, with of course industry-related as well as country-related variations.

The IAPCODE survey[6] confirmed the prevalence of codes of conduct in the Internet sector (these are voluntary industry codes), and brought to light some of the reasons and mechanisms for code adoption and revision. The research left little doubt that industry concerns with liability underscored in most cases the decision for adopting a code. Although the size of the sample was small, the rather passive "ordinary industry practice" was the reason for adoption of a code in almost half of the organizations in the survey, while adopting a code as a response to consumer complaints lagged behind with 18.2 % of responses. Self-interest is however an important element in successful self-regulation. The survey also showed that codes tend to be weak as regards provisions for their enforcement. In the sample, only 16.7% of the codes contemplated fines, while 33 % included the removal of ratings or privileges as a possible sanction. Half the codes surveyed specified no penalty for any violation of their rules.

The question of the responsibility of those ISPs who carry content to consumers has been raised in numerous court cases and regulatory decisions during the past decade. The mechanism of Notice and Takedown (NTD) has emerged as the key tool in Internet content regulation. This model is entrenched in the co-regulatory framework outlined in the E-Commerce Directive[7] in Europe and the DMCA (Digital Millenium Copyright Act) in the United States.[8] The E-Commerce directive gives the framework of the NTD procedure in articles 14.3, 21.2 and section 46. This is a liability regime that places an obligation on ISPs to remove illegal content only when

[5] On the effects of convergence on self-regulation see: Levy, D.A.L. (1997) "Regulating Digital Broadcasting in Europe: The Limits of Policy Convergence", in 20 West European Politics 4 at pp. 24-42.
[6] The IAPCODE survey yielded 12 responses from 7 countries.
[7] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000.
[8] See also the Council of Europe's "Declaration on Freedom of Communication on the Internet", principle 6, that addresses the ISPs' limitation of liability .

the ISP "obtains actual knowledge". When ISPs have such knowledge, they must remove or disable access to the content. When the ISP receives notice, usually from a user or a hotline specifically set up for the purpose, of illegal content, then the ISP becomes responsible for taking it down if it is illegal. A similar NTD procedure has been instituted in the US, under the Digital Millennium Copyright Act. This obliges ISPs to take down material when they are notified of copyright infringement. The DMCA appears to be more stringent regarding the procedure for NTD, outlining the need for specific staff needed to run the procedure and some rights for appeal.

The NTD model has been controversial because it places a sensitive censorship role in private hands and because it is unclear whether ISPs in a rapidly changing sector,[9] have the resources or inclination to undertake the necessary review of NTD procedures and ensure full transparency.[10]The dangers of NTD are numerous: some argue that it is either under-effective, allowing illegal content to remain accessible, and others that it is administered sloppily, with legal content being removed without sufficient due process, rights of appeal or transparency. Frydman and Rorive[11] argue for the Internet industry itself to self-regulate according to international standards. Most of the research literature identifies the principal difficulty with the NTD model as fostering an environment in which there is an incentive for ISPs to act quickly at taking down material in order to avoid liability, with the result that speech may be curtailed. There seems to be no time or resources to consider putting material back on line if it had been wrongly (and often hastily as well) taken down. The fact also that the interactions in the NTD procedure take place in the realm of private law (limited to as to whether for example the "take down" violated the contract between the user posting material and the ISP rather than as regards the broader, fundamental rights implications of limiting freedom of expression) might result in chilling effects on free speech.[12]

In the absence of any basic transparency of ISPs with regard to this issue it is difficult to evaluate the effectiveness of this procedure or its likely outcomes. Nonetheless, the NTD system appears to have worked well in the time it has now been running. When the E-Commerce Directive is next reviewed, these procedures will probably come under scrutiny. Article 21.2 outlines the intention to review NTD and the attribution of liability under the Directive. In addition, the model is becoming less effective due to developments in technology. To name just one example:

[9] Rights Watch White Paper "A Way Forward for Notice and Takedown" www.rightswatch.com

[10] Some commentators have argued that strict liability should apply. See Trotter Hardy, The Proper Legal Regime for "Cyberspace", 55 U. PITT. L. REV. 993, pp. 1042-46 (1994) (in favor of strict ISP liability); Kelly Tickle, Comment, The Vicarious Liability of Electronic Bulletin Board Operators for the Copyright Infringement Occurring on Their Bulletin Boards, 80 IOWA L. REV. 391, 416 (1995) (suggesting limited ISP liability).

[11] Benoit Frydman and Isabelle Rorive, "Racism, Xenophobia and Incitement Online: European Law and Policy" http://www.selfregulation.info/iapcoda/rxio-background-020923.htm See also: Frydman, B. and Rorive, I. (2002) Regulating Internet Content Through Intermediaries in Europe and the USA, Zeitschrift fur Rechtssoziologie Bd.23/H1, July 2002, Lucius et Lucius; and Holznagel, B. (2000) Responsibility for Harmful and Illegal Content as Well as Free Speech on the Internet in the United States of America and Germany, in C.Engel and H. Keller (eds) Governance of Global Networks in Light of Differing Local Values, Nomos, Baden Baden.

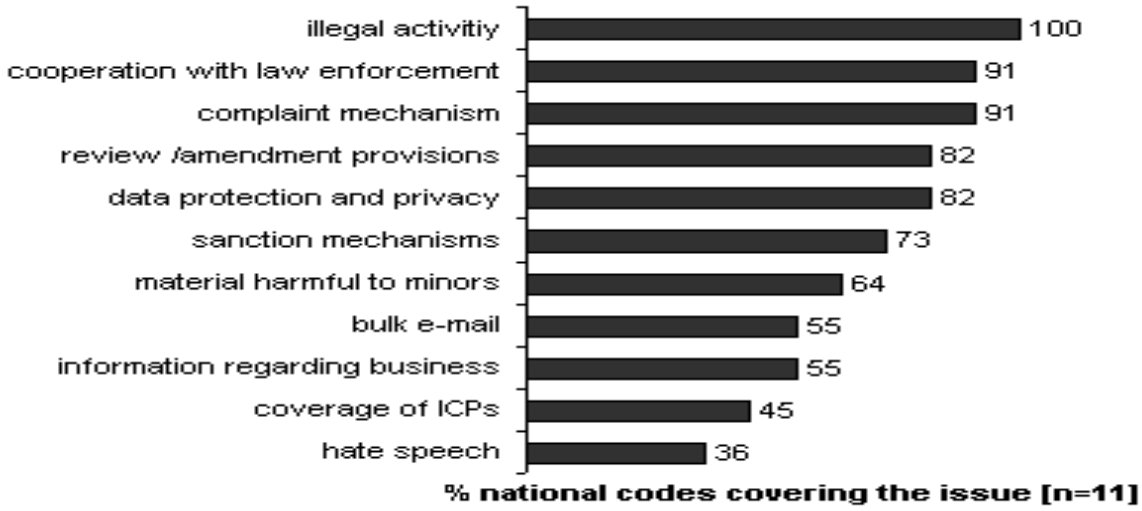
[12] Michael D. Birnhack and Jacob H. Rowbottom, "Symposium: Do Children Have the Same First Amendment Rights as Adults? Shielding Children: The European Way" in 79 Chi.-Kent L. Rev. 175, at pp. 205-207

breaches of copyright via P2P networks cannot be addressed satisfactorily with the NTD model.

What does a code of conduct contain?

Mr Leonardi then proposed to consider the content of the codes monitored by the IAPCODE research group.[13] The table below summarises the findings of the review by indicating each of the country's ISP codes coverage of 11 issues: coverage of ISPs, provisions for review and amendment, provisions concerning illegal activity, provisions limiting access to material harmful to minors, provisions regarding hate speech, provisions regarding bulk e-mail, data protection and privacy provisions, complaint mechanism, provisions that regulate cooperation with law enforcement and third parties, and sanction mechanisms.[14]

The main issues covered by ISP Codes are as follows:



[13] The IAPCODE project team mailed, both by post and by email, information about the IAPCODE survey, directing potential respondents to the www.selfregualtion.info website. In a period of several moths in 2002, 12 responses were recorded from various media organisations which were used in the study of the Internet sector. Other media sectors studied in different stages of the project range from the print media to broadcasting to gaming.

[14] The variables identified and used to compare and classify the selected Codes are covered in five broad analytical areas: by "constitution" we mean as understanding the organizational structure and governance of the code drafting and enforcing body; by "coverage," we mean the scope of application of the Code (whether to Internet Service Providers, to Internet Content Providers or to users) and its geographical scope; by "content," we refer to the panoply of concerns that are often identified as areas for concern; by "communication" we identify those portions of Code formulation and concern that involve the relationship between the industry and users (such as privacy concerns, involvement in Code formulation and consumer response) and finally, "compliance" refers to those significant aspects of the Code that determine how disputes are resolved and what modes exist for enforcing sanctions. Details about this methodology, are available on http://www.selfregulation.info/iapcoda/iapcode-meth-grid-020530.htm This IAPCODE tool of analysis is a development of methodology used by PCMLP in previous work carried out by Monroe E. Price and Stefaan G. Verhulst.

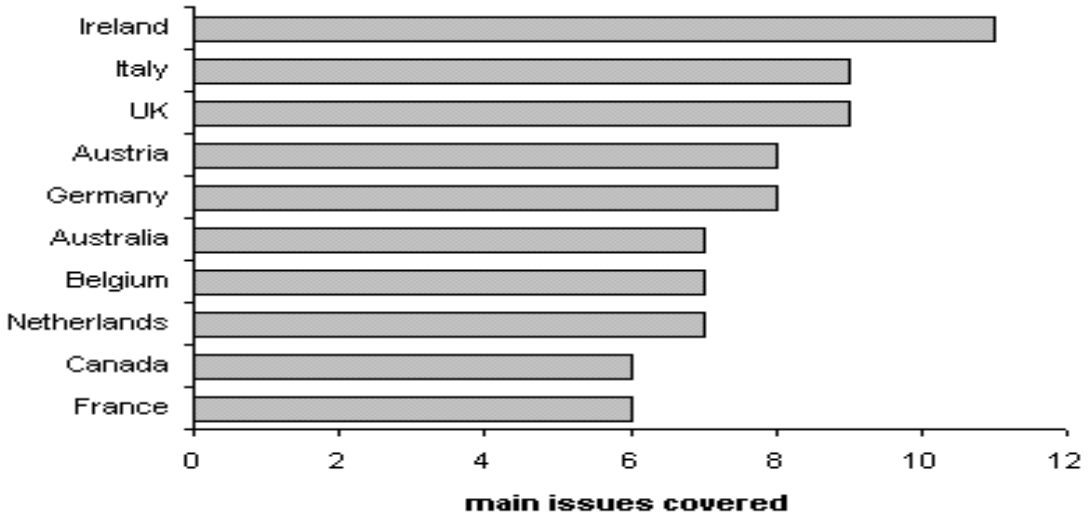
The issues least likely to be included in the code of conduct were issues of ICP (Internet Content Provider) coverage and provisions regarding hate speech online. This finding is very significant in that it shows that self-regulation as it is set up by the 11 national ISP codes of conduct monitored by the IAPCODE research group has limited reach in dealing with some of the most pressing public concerns over Internet use – namely issues of sensitive and/or illegal content such as hate speech, incitement to violence and xenophobic speech. Understanding this observation, again, requires one to consider the fact that ISPs in many of the countries analysed have legislation prohibiting hate speech. The use of self-regulation via codes of conduct is not the only "regulation" to supervise content on the Internet – self-regulation operates within a legal system. Furthermore, the fact that each of the 11 country codes had a provision for illegal activity means that in most of the countries not dealing explicitly with hate speech, this issue was covered under the provision of illegal activity.

Of all the ISPA (Internet Service Providers Association) codes analysed, the Irish code of conduct was the most stringent, or comprehensive. In the IAPCODE study, they use the word stringent or comprehensive to refer to codes that covered most of the areas of interest in self-regulation; i.e. answers to the questions on our checklist were almost exclusively positive. The French code, by contrast, was the least stringent, covering the least number of areas. In particular, the French ISPA code applied only to ISPs and not to ICPs (Internet Content Providers),[15] did not have an explicit review/amendment procedure, provided no guidance on information regarding business, provided no hate speech provisions, and had no formal sanction mechanisms specified. The observations must be viewed within the larger legal and media-regulatory framework. For example, although the French and a number of other national codes did not contain provisions for hate speech, they did refer to national legislation that makes hate speech in general illegal. This and other issues of legal and practical context are important in evaluating codes. Therefore codes that may be more stringent, or more comprehensive, do not necessarily result in a more regulated environment for ISPs in a country.

Mr Leonardi reproduced the following chart from the IAPCODE report in which there are the results of the analysis of stringency of codes (a code from Canada and one from Australia are included for purposes of comparison with the European equivalents).[16]

[15] The terms Internet Access Provider and ISP (Internet Service Provider) are often used interchangeably, though IAPs may be considered a subset of ISPs. Whereas IAPs offer only Internet access, ISPs may provide additional services, such as leased lines and Web development. In contrast to both IAPs and ISPs, Internet Content Providers provide their own proprietary content, often in addition to Internet access. See Yen. A. (2000) Internet Service Provider Liability for Subscriber Copyright Infringement, Enterprise Liability and the First Amendment 88 Georgetown Law Journal.

[16] See the Final Report of IAPCDOE http://www.selfregulation.info/iapcoda/0405-iapcode-final.pdf



Of all the issues examined, the main issue covered by codes examined was illegal activity. All codes made explicit reference to a series of measures (from hotlines to fair practices to national legislation to cooperation with authorities) in condemning and/or otherwise strictly discouraging ISPs from engaging in conduct that was illegal mainly under national law. Cooperation with law enforcement and complaint mechanisms also ranked high on the list of issues included by national ISP codes.

A standard for transparency of regulation, particularly regarding sensitive issues that impact on speech freedoms, is the publication of basic regulatory data on websites. The IAPCODE research group survey shows that there are many examples of good practice in this regard, but there are also areas of the European Internet self-regulatory regime that remain intransparent and therefore it is difficult to gain an accurate picture of the overall level of self-regulatory activity. There is a great variety of levels of creativity in Internet 'hotline' self-regulation, particularly where the size of the market is taken into account.

Alongside the general ISP codes that have been the subject of this study, a great many websites carry a privacy code, though this trend has been in some decline in recent years. Several studies of privacy codes and compliance have been carried out, by the OECD, by the UK Information Commission, and others. [17]

In addition, Mr Leonardi felt that it was important to mention that an important use of the Internet is for access to news, and the "traditional" media such as print and broadcasting are currently providing much Internet content. In this indirect way some elements of the press tradition are increasingly coming into the Internet in Europe (and elsewhere) via the press councils and the codes of journalistic ethics. The revolution in digital media meant that publishers acquired the ability to put their publications online, and in turn the new medium introduced changes to the way work is carried out, for example, the fact that a publication can now be updated online several times a day in ways in which traditional technologies would not normally allow. It is not only the print media who made newspapers available on line. Broadcasters also started offering online news services. There are news aggregators as well. The challenge for the press councils was to respond to complaints made on

[17] Global Report, Selfregulation.info 2003 at p. 28, available at www.selfregulation.info

the basis of alleged breaches of their codes by online news services, and the need to place limits on the potential workload. The German Press Council adopted a decision in 1996 by which it extends its jurisdiction and its code to complaints which "relate to published material containing journalistic or editorial contributions which is circulated by newspaper or magazine publishers or by press services solely in digital form or also in digital form."[18] The Swedish Code (applied by both the Ombudsman and the Council) applies to the print versions of newspapers, and to any Internet publication if the company who publishes the web edition is a member of The Swedish Newspaper Publishers' Association or The Swedish Magazine Publishers Association.[19] Similarly, the UK PCC (Press Complaints Commission) put limitations in place when it extended its code to cover online publications.[20]

Conditions for successful self-regulation

A review of the literature on self-regulation and the empirical investigation carried out by the IAPCODE team allowed us to identify some likely conditions for successful self-regulation applied to this sector of the industry.[21]

Self-interest of the industry and protection of the consumer

Self-regulation works best where there is a degree of coincidence between the self-interest of the industry and the wider public interest; i.e. Industry self-regulation is more likely in those situations where self-policing can increase the overall demand for the industry's product. The existence of an industry-wide decision-making system (e.g industry association) increases the probability of effective industry self-regulation. Industry self-regulation is more likely in those situations where the externally imposed costs from not undertaking self-regulation would be greater than the cost of undertaking self-regulation. (And where there is a consensus regarding these costs,)

Relationship with the state

The generation of self-regulation often has its foundation in the possibility or fear of state regulation.[22] Therefore where industry representatives are able to point to a credible threat, they are most likely to sustain self-regulatory institutions. It is a commonplace to assert that there is no clear division between state and private self-regulation, though there has been little research on the legal consequences of this in the field of regulation of the media.

[18] German Press Council http://www.presserat.de/index.shtml
[19] See http://www.jmk.su.se/global03/project/ethics/sweden/swe2e.htm
[20] The UK PCC will take complaints about the on-line versions of newspaper and magazines provided that the publication subscribes to the Code of Practice and the material is something that is covered by the terms of the Code. However, its website informs readers that they should note that the UK PCC is not equipped to deal with complaints about all the services - such as interactive chat rooms - that a newspaper or magazine website may offer. See http://www.pcc.org.uk/complaint/faq.asp
[21] See the study of advertising self-regulation Boddewyn, J. J. (1989) Advertising Self-Regulation and Outside Participation: A Multinational Comparison. New York: Quorum and Richard Thomas's report to the UK's National Consumer Council at www.ncc.org
[22] T. Gibbons, Regulating the Media (1991); second edition, 1998, at pp.275-285.

The IAPCODE research group survey refers to “pure” self-regulation, whereby industry sets standards and polices them merely to increase product trust with consumers. We could call this enlightened self-interest. Clearly, the negotiation is complex and sensitive and there are no pure forms. It may not be necessary for “the state” to “do” anything, as long as part of the calculation of industry bodies involve an awareness that the state might do something or be compelled to do something. Schulz and Held have investigated co-regulation in the German context with a focus on the protection of minors.[23] They suggest that self-regulation in the Anglo-American debate is concerned with “reconciliation of private interests” whereas their own formulation – regulated self-regulation[24] – means indirect state regulation based on constitutional principles. It is the combination of “intentional self-regulation” – the actions of industry, consumers, etc. – with the state sanction in reserve which results in self-regulation which is “regulated” by the possibility of state intervention. Similarly, the French term ”co-regulation” also gives a sense of the joint responsibilities of market actors and state. The latter expression has been used by the UK’s telecom regulator to suggest a state role in setting objectives which market actors must then organize to achieve – with the threat of statutory powers invoked in the absence of market self-regulation.[25]

Most attention to self-regulation and its accreditation by statutory bodies or government departments has focused on the issues of effectiveness, transparency and sanctions i.e with features of the self-regulatory institution and code. These aspects of the self-regulatory regime remain very relevant, but accreditation must also involve other dimensions relating to the broader context such as financial sustainability, implications for freedom of speech and industry sector.

Volume of complaints

Does a large number of complaints indicate a healthy and effective self-regulatory body of which large numbers of the public are aware, or does it rather indicate either a rent-seeking body or a failure to prevent harm? Such questions must be answered on a case by case basis but the IAPCODE research group recommends that trends in complaints should be monitored by an accreditation agency:

- an effective self-regulatory agency will maintain records of the number of complaints logged against which article of the code is held to be breached. Full reports of both upheld and refused complaints should be recorded and published.
- records of complaints and adjudications should be maintained, where possible according to a comparable categories, over time and made publicly available via a website

[23] Schulz and Held (2001) Regulated Self-Regulation as a Form of Modern Government, Hamburg, Verlag Hans Bredow Institut.
[24] See Hoffman Reim, Wolfgang (1996) Regulating Media.
[25] See further the UK’s OfCom consultation on self-regulatory body ”certification” and the development of the telecoms ombudsmen in the UK, under Oftel “patronage” and reinforced by the Universal Service Directive (2002) Article 34.

Sustainability of self-regulation

Here, it is necessary to separate initial feasibility studies, which are carried out by regulators with a view to moving from regulation to self regulation, and the ongoing monitoring, which will have different criteria and tests. With regard to conducting initial feasibility reviews, attention must be paid to industry sector. In particular the following factors will be relevant in determining if a sector is likely to be successful in developing self-regulatory schemes:

- Number of players in market
- Proportion of players committed to self-regulatory scheme
- Possibility of free-riding by rogue suppliers in the same market

Competition Oversight

Many commentators argue that there are fundamental contradictions between the aims of promoting rigorous competition and the aims of building collective action and institutions for self-regulation. This is because self-regulatory institutions offer increased possibilities of collusion and can in themselves constitute higher barriers to market entry and impose standards. Where regulatory authorities have responsibilities for both competition and standards, it may be appropriate to incorporate some competition issues in the accreditation scheme. Self-regulatory schemes are often accused of being fronts for market foreclosure, therefore audit should:

- monitor whether the scheme as a whole is proportionate
- outline the costs of regulation and whether they constitute an unreasonable barrier to entry
- monitor where there are complaints.

Accreditation of "self-" regulation: by whom?

The IAPCODE research concentrated on two distinct questions with regard to accreditation. On the one hand, they are concerned with the accreditation of self-regulatory regimes in themselves as a form of co-regulatory oversight.[26] This refers to the light-touch monitoring and audit of self-regulation by bodies such as an independent regulatory authority. On the other hand they conducted research on accreditation of individual services such as websites by a self-regulatory body with reference to agreed standards or a code of conduct. Accreditation of self-regulation is another complex form of co-regulation. If handled correctly it can lead to more effective and legitimate self-regulation, but when handled wrongly could amount to the re-imposition of heavy handed regulation and government interference. Their team also outlined a scheme for accreditation of quality marks, which can be seen as a key building block in the Internet self-regulation regime, but one that is underdeveloped.[27]

[26] On self-/co-regulation see: Schulz and Held (2001) Regulated Self-Regulation as a Form of Modern Government, Hamburg, Verlag Hans Bredow Institut.

[27] See Petra Wilson; European Commission, JRC, "Health web sites – quality criteria". Paper presented to PCMLP/EC workshop: 27th February 2003, available on www.selfregulation.info

Conclusions

The IAPCODE research group made a number of recommendations as regards self-regulatory approaches in Internet content regulation and concerning the use of codes. Some of these conclusions are capable of being extended to other sectors:

1. A wide variety of models of self-regulatory tools exist. Some of these are based on adequate standards of transparency, inclusion, due process, resources and so forth, and some clearly are not. As a result there is some concern with the development of codes as a self-regulatory tool. It is very important that self-regulatory regimes allow for sufficient standards both of law enforcement and child protection and on the other hand of protection of freedom of expression rights. If these self-regulatory mechanisms improperly balance those opposing goals we can expect public harm to result in the medium term.

2. There is no universally acceptable recipe for successful self-regulation. It is clear, however, that policy on self-regulation must take into account a broader view of the sustainability, effectiveness and impact on free speech of self-regulatory codes and institutions. A tool for doing this would be a co-regulatory scheme that contemplates an auditing procedure for self-regulatory institutions. Some pan-European groupings such as EuroISPA (the pan-European association of the Internet services providers associations) and INHOPE (Internet Hotline Providers in Europe Forum) are spreading best practice effectively.

3. Technological progress brings about constant innovation and change. The expectations of consumers and those of the state also change over time. Self-regulation can adapt to those challenges more rapidly and efficiently than state regulation.

4. Self-regulation of content on its own cannot fully address the regulatory challenges posed by inappropriate and harmful content that often threatens the integrity of communications on Internet - unsolicited adult content, unsolicited commercial communication (spam) and unsolicited (computer) code (including malicious code - viruses and spyware). Halting harmful and inappropriate content calls for a multiplicity of strategies that combine ordinary law, self- /co-regulation schemes and the use of technological methods, such as filtering. Self- and co-regulatory schemes have an important role to play in the combination of strategies that address the problems.

5. The IAPCODE research group recommends a “national resource audit of ISP and content sectors” - to answer essential questions of effective and sustainable ISP self-regulation:

a. Who is engaged in the NTD regime?
b. What is the dedicated legal resource in each ISP?
c. Who ensures that freedom of expression be protected in each ISP?

6. They also recommend that “put back” be seriously considered as a policy option when the E-commerce Directive is reviewed.

7. Finally, in order to strengthen the role of codes of conduct our research group recommends a broader procedure for audit of self-regulatory activity, incorporating assessment of market structure and interests in self-regulation and an assessment of impact on fundamental rights. This could take place within a dynamic and pragmatic (co-regulatory) framework which encourages rather than discourages self-regulatory activity where it is appropriate.

After a discussion the Workshop adjourned.

Report written by Andrei Richter,
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based on the written presentations of the speakers, transcripts and translations provided by the Moscow Media Law and Policy Center and Inna Barmash of the Cardozo School of Law, New York City.

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