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Question 13/2: Methods to enhance the viability of public service broadcasting, particularly focusing on developing countries

STUDY GROUPS 1 AND 2

SOURCE: CHAIRMAN STUDY GROUP 2

TITLE: MODEL PUBLIC SERVICE BROADCASTING LAW

At the request of the Rapporteurs' Group on Question 8/2 *Public service broadcasting infrastructure in developing countries* of the Study Group cycle 1995-1998 and with the approval of Study Group 2, the BDT Secretariat prepared the attached document which is composed of three parts:

- A. Introductory Note: The Nature and Role of Public Service Broadcasting
- B. Text of Model Law
- C. Explanatory Comments on Individual Articles of the Model Law

Taking into consideration that these parts are of a policy nature, it is proposed to send this document to ITU-D Study Group 1 for further consideration.

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MODEL

PUBLIC SERVICE BROADCASTING LAW

with

INTRODUCTORY NOTE

and

EXPLANATORY COMMENTS

plus

- as a supplement -

ASPECTS OF REGULATING COMMERCIAL BROADCASTING

WORKING DOCUMENT

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This HANDBOOK has a twofold purpose:

- Firstly, it sets out to explain the nature of public service broadcasting, its leading role in a democratic society, public service broadcasting as a factor of social cohesion and of national identity, and as the country's prime promoter and reflector of culture. In tomorrow's digital world, with virtually unlimited possibilities of distributing sound and audiovisual programmes via a multitude of channels, be it over the air (terrestrial transmitters, satellites) and/or through cable or the telephone line (the Internet), public service broadcasting will be even more important and necessary. At the same time, public service broadcasting will have to adapt to the changing environment, so as to continue to serve the interests of the public in the best manner possible.
- Once the concept of public service broadcasting is embraced, it needs to be implemented in practice, and in the first place through legislation. To this end, a concrete Model Law is proposed, together with explanatory comments.

A Model Law is a model – no more but also no less. This means that it cannot be used verbatim, without taking into account the country's legal system and traditions, its geographical size and possible division into (autonomous) regions, the ethnic and religious composition of its population, the state of development and education, the economic situation, the social realities, etc. On the other hand, the model includes a number of fundamental principles which are universally valid and must be incorporated into any Law, anywhere in the world, that aims to set out the legal basis for a truly independent public service broadcasting system.

The purpose of this HANDBOOK quite naturally determines the structure of the following presentation, which is divided into three main parts:

- A. Introductory Note: The Nature and Role of Public Service Broadcasting
- B. Text of Model Law
- C. Explanatory Comments on Individual Articles of the Model Law

A Supplement, finally, sets out aspects of regulating commercial broadcasting.

Dr W. Rumphorst

March 1998

A. INTRODUCTORY NOTE: THE NATURE AND ROLE OF PUBLIC SERVICE BROADCASTING

Public service broadcasting is a unique concept. Although easy to understand, it is more often than not misunderstood, sometimes profoundly, sometimes even intentionally.

WHAT IT IS NOT

Some languages do not even have a term fully corresponding to the English word “public”, and the closest translation appears to confer the notion of state/government/official. Where this is the case in a country which has had a tradition of state broadcasting, this linguistic barrier constitutes the first obstacle to a clear understanding of the real nature of public service broadcasting (which is anything but “state”, “government” or “official” broadcasting).

Especially in countries with a long tradition of commercial broadcasting, public broadcasting is often referred to as “state-funded” broadcasting, with the underlying implication that it must be close to, if not a mouthpiece of, the government.

In former Socialist countries, there is a widespread notion of public service broadcasting being a type of broadcasting which, while continuing to be a sort of official broadcasting, is not controlled by the government (or the Communist Party), but by the democratically-elected majority in Parliament. In other words, those who hold the political power also control “public service” broadcasting, the difference being that those in power today have democratic legitimacy.

Still others consider naïvely (but sometimes also not so innocently) that public service broadcasting is a minority service, to fill the gap which commercial broadcasting – for perfectly valid economic reasons – leaves open. Whether the motive is bad conscience or the desire to marginalize a potentially powerful competitor, the resulting concept of this type of “public service” broadcasting is the same: a minority service, with emphasis on culture and religion and whatever else may be desirable for society but will not be touched upon, at least in the same serious manner, by commercial broadcasters.

BROADCASTING FOR THE PUBLIC

What, then, is public service broadcasting?

As the name itself intimates, public service broadcasting is broadcasting

- made for the public
- financed by the public
- controlled by the public.

The “public” is the entire population of the country (or region) which the public broadcaster is responsible for serving.

“Entire population” has a twin meaning:

- Firstly, in terms of *technical* coverage, it means that ideally every household in the service area should be in a position to receive the programme service. This is akin to the *universal service* concept which is familiar in other – result-oriented – public services such as water, gas, electricity, telephony and public transport.
- Secondly, it means all groups and sections of society: rich and poor, old and young (and in-between), educated and less well educated, people with special interests (whether they be cultural, religious, scientific, sporting, social, economic or anything else), but also society as a

whole. The entire population, in this sense, must be served by public service programming (even though it is impossible to please everybody all the time).

If, positively expressed, public service broadcasting is made for the public, for the entire population, it follows, negatively expressed, that it is not made for the government, parliament, or president, for a political party or a church or for any other (private) interest group or for shareholders. It must be *independent* of all of these, serving “only” the interests of the population, of people as citizens rather than as consumers.

PUBLIC FUNDING OF PUBLIC SERVICE BROADCASTING

Except where the public broadcaster is in a monopoly or quasi-monopoly position, and where furthermore the size of the national population is fairly significant, public service broadcasting cannot be funded from commercial revenue alone. An example of such an exceptional situation was Spain, where prior to the introduction of regional broadcasting and, subsequently, national commercial television in the 1980s, the national public broadcaster RTVE held a television monopoly.

In some cases, public service broadcasting has no revenue from advertising/sponsorship. Apart from relatively negligible “other income” (e.g. from programme sales and publications), the sole source of revenue is the licence fee. Under this system, a receiving licence fee must be paid for every set which is technically in a position to receive broadcast programmes. The BBC (United Kingdom) is probably the best known example of a public service broadcasting organization funded purely by the licence fee.

In most cases, there is mixed funding, i.e. both licence fee income and revenue from advertising/sponsorship, with the former generally predominant. This is the situation in the large majority of (Western) European countries.

Instead of the licence fee, there may also be public funding through an annual allocation from the state budget. However, a closer look will reveal that more often than not the broadcaster is in reality a state broadcaster, rather than a truly independent public service broadcaster.

LICENCE FEE FUNDING

Licence fee funding, as opposed to funding from the state budget, has several decisive advantages:

Firstly, it means that the broadcaster is independent of the political good-will of those who decide the amount of the state budget allocation. Programming, and particularly political coverage, does not have to please those in power as a (tacit) pre-condition for actually being granted the requested sum. However, since the amount of the licence fee, and in particular its periodic adjustment (increase), also needs to be decided upon by some official body (normally the Parliament or the Government), great care must be taken to ensure through appropriate legal means that as far as humanly possible the decision is taken in a neutral manner, solely on the basis of the objective needs of the public broadcasting organization to fulfil its public remit.

Secondly, licence fee funding, and the income to be expected therefrom over a given number of years, is considerably more predictable than an annual allocation from the state budget. This is vital for medium- and, even, long-term strategic planning and investment.

Thirdly, as long as there is funding from the state budget, the broadcasting organization is likely to be a state company, with all the constraints that that implies. In particular, the broadcasting organization is probably bound by a state salary structure, which is a critical handicap in a system where there is direct competition with commercial broadcasters. Where there is licence fee funding, it may be assumed that the broadcasting organization also has the right of self-administration (whilst naturally being subject to public control).

Another major advantage of licence fee funding is that an important psychological link is established between the licence fee payer, the citizen, and the public service broadcaster as the recipient of the payment. The citizen knows what he or she is paying for and appreciates its value. The broadcaster is continually aware of whom the programming is made for, and who ultimately has to be satisfied and pleased.

PUBLIC CONTROL OF PUBLIC SERVICE BROADCASTING

The public is not only the beneficiary of public service broadcasting, and its paymaster, but also its controller. This is only consistent, and it could not really be any other way.

What, then, does control by the public mean?

It means that representatives of the public ensure that the public broadcasting organization actually fulfils its public service mission, in the best possible manner.

BROADCASTING COUNCIL

These representatives of the public, grouped together in what is normally called a Broadcasting Council (which may either be an organ of the broadcasting organization itself or a separate independent body), play a role comparable to that of shareholders in a company. They may be appointed in different ways, with two distinct models prevailing:

- Under the first, identified institutions and groups in the civil society are authorized to delegate a representative of their own choice to the Broadcasting Council, for a fixed period (e.g. four years). Examples of such institutions and groups are churches, universities, theatres, authors, journalists, musicians, farmers, women, young people, sports federations, environmentalists, employers, trade unions, etc.
- Under the second, a fixed number of members (e.g. nine or twelve) is appointed by Parliament or by several public institutions (e.g. one-third by Parliament, one-third by the government, one-third by the President). Since the members of the Broadcasting Council are to represent the interests of the civil society, great pains must be taken to ensure that they do not in reality represent the political views and interests of those who appointed them.

A Broadcasting Council has three major functions:

- Appointment of the Director General, who is the chief executive officer of the organization and bears ultimate responsibility for all programming
- Appointment of a Board of Administration, with control- and decision-making powers in the fields of administration and finance
- Monitoring of programming, with the possibility of suggesting, and even insisting on, modifications.

If, to summarize, public service broadcasting means broadcasting for the public, financed by the public and controlled by the public, what, then, is the specific programming remit of a public service broadcaster?

THE PUBLIC SERVICE PROGRAMMING REMIT

Details of the remit vary from country to country, perhaps because of different legislative techniques and habits, but also, in particular, owing to economic, social, cultural, historical and other realities prevailing in each individual country. Even so, there is a core of common features which are universally valid.

Both the Council of Europe (the Prague Ministerial Conference of December 1994) and the European Parliament (of the European Union) have identified this core of common features in important Resolutions, quotations which speak for themselves:

THE PRAGUE RESOLUTION

“Public service broadcasting, both radio and television, supports the values underlying the political, legal and social structures of democratic societies, and in particular respect for human rights, culture and political pluralism”

“Importance of public service broadcasting for democratic societies”

“Vital function of public service broadcasting as an essential factor of pluralistic communication accessible to everyone”

“Reference point for all members of the public and a factor for social cohesion and integration of all individuals, groups and communities”

“Reject any cultural, sexual, religious or social discrimination and any form of social segregation”

“Forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed”

“Impartial and independent news, information and comment”

“Pluralistic, innovatory and varied programming which meets high ethical and quality standards”

“Not to sacrifice the pursuit of quality to market forces”

“Programme schedules and services of interest to a wide public while being attentive to the needs of minority groups”

“Reflect the different philosophical ideas and religious beliefs in society, with the aim of strengthening mutual understanding and tolerance and promoting community relations in pluriethnic and multicultural societies”

EUROPEAN PARLIAMENT RESOLUTION

Much similar language was used in the 1996 European Parliament Resolution. To give only a few examples:

“Public sector broadcasting is an aid to informed citizenship, an agency of representative pluralism bringing together different groups in society in a common conversation that shapes public opinion”

“Offer a wide range of quality production in all genres to the whole population”

“Set quality standards in popular programmes followed by mass audiences”

“Serve minority interests and cater for all different sections of the population”

“Provide unbiased and fully independent information, both in mass coverage and in-depth factual programming, capable of earning the audience’s trust and of representing a reference point in the rapidly expanding information market”

“Play a major role in encouraging the public debate that is vital for the proper functioning of democracy and provide a forum for debate for all groups and organizations in society”

“Ensure that the general population has access to events of general public interest, including sports events”.

As regards *funding* of public service broadcasting, the states which participated in the Prague Ministerial Conference *undertook* “to maintain and, where necessary, establish an appropriate and secure funding framework which guarantees public service broadcasters the means necessary to accomplish their missions”. Again, similar language is used in the European Parliament Resolution.

THE FUTURE ROLE OF PUBLIC SERVICE BROADCASTING

Finally, the *future* of public service broadcasting follows on from its mission, from its role within and for civil society. The more diversification and individualization of information sources there is, the more audiences become fragmented, the more important it will be to maintain at least one strong service which performs the function of a national point of reference and of national identification, and the role of the market place for public opinion. At the same time, as technology develops (digitization, compression, etc.), as additional forms of programme delivery develop (satellite, cable, the Internet), as programme offers (channels) multiply, especially through the addition of thematic channels, and as new methods of funding develop (pay-TV, pay-per-view), public service broadcasters too must be in a position to embrace all these developments so as to continue to serve the public in the most appropriate way, as demanded by the times.

CHANCES FOR ITS INTRODUCTION

In conclusion, is it realistic to assume that even if the nature of public service broadcasting has been fully understood, it will actually have a chance of being introduced where so far it does not exist? Rather than speculating on this, it may ultimately prove more promising to offer at least one major policy argument for each of the two typical situations where the introduction of public service broadcasting would come into question: countries with state broadcasting and countries which so far have only commercial broadcasting.

COUNTRIES WITH STATE BROADCASTING

In countries which still have a state broadcasting system, it may not be easy to convince those in power to give up their control over it and to transform it into truly independent public service broadcasting.

However, in such countries democratic ideas and principles may have evolved and matured over recent years, thus putting the *citizen* increasingly at the centre of attention. Democracy starts with citizens, but without broadly- and objectively-informed citizens there can be no real democracy.

Certain countries in Central and Eastern Europe find themselves in this category today, together with numerous other countries in the rest of the world.

The real difficulty here may not so much be demonstrating the virtues of public broadcasting but showing that in today's circumstances state broadcasting cannot possibly make sense any more.

Compared with the time when state broadcasting was introduced, and when it flourished, many countries have a fundamentally different environment today:

- there is global deregulation in the telecommunications field
- commercial broadcasting has been introduced, or at least tolerated, virtually everywhere, often with little (if any) regulation
- satellite broadcasting, which knows no national borders, is omnipresent today and is rapidly developing further and spreading (with no restrictions on acquiring the necessary receiving dishes)
- cable distribution of foreign programmes (often including programmes in the country's own language, or at least reasonably understood by a sizeable portion of the population) exists everywhere and is rapidly spreading
- technical developments, especially digitization and compression, offer possibilities for many additional programme channels
- the Internet, which again knows no national borders, appears to have the potential soon to carry unlimited numbers of audio and audiovisual programmes.

In this situation, it would be entirely Utopian to assume that the state, through state broadcasting, could still influence and control information, and thereby people's thinking. Only a relatively small part of the population will make up the audience of state broadcasting (with the majority of people receiving their information elsewhere). But even those who still receive their information from state broadcasting may well be expected to be rather critical and sceptical, not only as a result of experience, but also because of possible comparisons with other sources of information.

Therefore, if it is clear that state broadcasting is no longer viable, the prospects for public service broadcasting as the democratic replacement of state broadcasting should not be too bad.

It certainly takes courage for those in power to install and to live with truly independent public service broadcasting. However, those elected by citizens should remember that they were elected for the sole purpose of serving the best interests of those citizens.

COUNTRIES WITH COMMERCIAL BROADCASTING

In countries which so far have only commercial broadcasting, it will also be difficult to obtain the necessary support for introducing public service broadcasting, and, in particular, for establishing a system of obligatory licence fee funding, one of the pillars of truly independent public service broadcasting.

However, in cases where for many years broadcasting has only functioned in conformity with the laws of the market, people may increasingly feel the need for something else, for something more. Assuming that to be so (as it was, for instance, in the United States when Public Broadcasting was

introduced in the 1970s), the major obstacle may then be the receiving licence fee, since people are accustomed only to “free” radio and television.

Here, the reminder is necessary that *all* forms of broadcasting are ultimately financed by the consumer/citizen, whether it be as a tax payer (state funding), as a consumer of products and services (advertising and sponsorship), as subscriber to a given programme channel (pay-TV) or as holder of a receiving set (receiving licence fee). In each case, the consumer/citizen has no choice; he is obliged to pay.

- When he pays as a tax-payer, he finances the type of programming which the state has decided to be in the best interests of the state.
- When he pays via advertising and sponsorship (by buying products or services which are advertised on radio or television), he finances the type of programming which the commercial broadcaster has chosen to maximize its audience, so as to maximize its profits.
- When he pays as a subscriber to a given programme channel, he pays for a service which he has chosen as a *consumer*.
- When he pays for broadcasting via the receiving licence fee, he finances a public service provided to him as a *citizen*.

Once it is understood that in the end *all* forms of broadcasting are paid for by the consumer/citizen, why should the citizen be opposed to financing the type of broadcasting which is particularly conceived and made for *him*, rather than to serve the state (i.e. those in power) or private economic interests?

B. MODEL PUBLIC SERVICE BROADCASTING LAW

Once the Introductory Note on the Nature and Role of Public Service Broadcasting has been read the *ensuing text* of the Model Law should prove much easier to understand. Nevertheless, there may remain questions of comprehension with the possibility of alternatives being proposed for a certain number of provisions. Part C of this HANDBOOK therefore offers explanatory comments on individual articles contained in the text of the Model Law.

MODEL PUBLIC SERVICE BROADCASTING LAW

Article 1 - Name, Legal Personality, Seat

- §1 The existing national broadcasting organization "....." is hereby transformed into an independent non-profit public service broadcasting organization with the right to self-administration. It shall adopt internal Statutes and Bye-laws in accordance with the provisions of this Law.
- §2 The name of the new organization shall be "....." (hereinafter referred to as "PSBO").
- §3 The seat of PSBO shall be at
- §4 PSBO shall establish and operate regional studios in (at least) the following cities:

Article 2 - Objectives of PSBO, Scope of Activity

- §1 The function of PSBO shall be to provide a radio/TV programme service in the public interest.
- §2 PSBO shall provide:
 - (a) (number of) national radio services
 - (b) the following local/regional radio services: (details)
 - (c) (number of) national TV services
 - (d) the following local/regional TV services: (details)
 - (e) an international/foreign language radio and/or TV service (details)
- §3 The necessary terrestrial transmitter networks are operated by the National Telecommunications Organization. Coverage of the entire population within the geographical area for which the programme service is intended shall be sought as far as possible. The costs for the broadcast transmission services provided by the National Telecommunications Organization are borne by the State, as part of the telecommunications budget.

[Alternative:

- §3 The Telecommunications Authority shall make available the necessary frequencies for terrestrial transmission of the above-mentioned programme services. PSBO may operate its own transmitter networks. It may also assign this function to a separate entity. Coverage of the entire population within the geographical area for which the programme services are intended shall be sought as far as possible.]

- §4 PSBO shall also be entitled to transmit programmes via satellite, cable or any other technical means. It may provide teletext services and engage in any new field of broadcasting technology or service in the widest sense of the term.
- §5 PSBO may publish and distribute any printed matter related to its programming or to questions of broadcasting in general.
- §6 PSBO may exploit its archive material in any possible manner, within or outside the field of broadcasting.
- §7 Subject to the approval of the Broadcasting Council, PSBO may provide additional programme services, regardless of the method of delivery (e.g. on-line) or the mode of funding (e.g. pay-TV). It may collaborate with third parties, or acquire participation therein, for the purpose of providing additional or complementary programme services.
- §8 Subject to the approval of the Board of Administration, PSBO may establish subsidiaries and/or acquire interests in commercial or non-profit entities whose activities are related to the functions of the Corporation, particularly in the fields of programme production, exploitation and distribution.

Article 3 - Programming

- §1 PSBO shall provide varied and balanced programming for all sections of the population, while respecting the needs and demands of special/minority interests. Programming shall include information, entertainment and education/advice. It shall meet high professional quality standards.
- §2 Programming shall serve the public interest. It shall contribute actively to the public's free and informed opinion-forming and, as such, constitute an important element of the democratic process.
- §3 PSBO's overall programming shall reflect, as comprehensively as possible, the range of existing opinions and of political, philosophical, religious, scientific and artistic trends. It shall not unilaterally serve one party or group, association, vested interest, religion or ideology.
- §4 Programming shall have regard to the regional structure of the country. As far as possible, it shall reflect and promote the national culture in all its variety and richness.
- §5 Programming shall respect human dignity and the fundamental rights of others. It shall contribute to the respect of the opinions and beliefs of others.
- In particular, it shall not:
- (a) be indecent and, in particular, contain pornography;
 - (b) give undue prominence to violence or be likely to incite to racial hatred.
- §6 Programmes which are likely to impair the physical, mental or moral development of children and adolescents (but not falling under §5 above) shall not be scheduled except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts. PSBO may assume that this condition is met between 23.00 and 06.00.
- §7 Programming shall further international understanding and the public's sense of peace and social justice, defend democratic freedoms, serve the protection of the environment, contribute to the realization of equal treatment between men and women, and be committed to truth.

- §8 News shall be comprehensive, unbiased, independent and correct. Before dissemination, information material must be examined, with reasonable care according to circumstances, as to its content, origin and truth. Commentary shall be clearly distinguished from news.
- §9 It shall be forbidden to exert any kind of physical or mental pressure or intimidation vis-à-vis PSBO or its staff which might prevent them from carrying out their duties in an independent and objective manner.

Article 4 - Access to information, confidentiality of journalistic sources

- §1 PSBO shall be entitled to transmit parliamentary debates.
- §2 PSBO shall have access to archives, documents and information held by public authorities.
- §3 PSBO shall have reasonable free access to cultural, sporting and other events which are accessible to the general public and of general informational interest, for the purpose of producing and transmitting brief news reports. Such reports, which may be transmitted without any payment, shall not exceed the duration necessary to inform about the event in terms of news.
- §4 PSBO shall be entitled to quote in its regularly scheduled news programmes from transmissions by other broadcasters of events mentioned in §3 above. Such quotations may be transmitted free of charge. The source of the quotation shall be duly indicated.
- §5 To prevent more or less large sections of the national population being precluded from watching important major events on television, broadcasters whose programmes are *de facto* not available to virtually every national TV household shall not be entitled to acquire exclusive TV rights to the following events:
- Olympic Games
 - World and continental/regional Football Championships
 - World and continental/regional Athletics Championships
 - Any other world and continental/regional Championships taking place in ... (the country of PSBO)
 - First division football matches
 - Continental/regional football cup competition matches involving a team of ... (the country of PSBO)
 - ... (any other events of particular interest to the national audience)
- §6 PSBO shall have free access to, and be entitled to make radio reports on, events of the type mentioned in §3 above, without payment of any remuneration.
- §7 The confidentiality of the sources of information (including material researched by journalists) shall be guaranteed by law.

Article 5 - Air-time for third parties

- §1 PSBO shall grant free-air time to the Government, at the latter's request and as soon as feasible, for making official announcements. PSBO shall be free to offer a spokesman for the opposition the possibility of responding.

- §2 Political parties shall be granted an appropriate amount of air-time during campaigns for national elections in which they participate. The same shall apply to candidates for the Presidency of the Republic. The Director General may refuse to transmit party political broadcasts if they do not serve the purpose of campaigning.
- §3 Churches shall be granted appropriate air-time, at their request, for the transmission of masses and other religious services.
- §4 Anyone granted air-time in accordance with §2 and §3 above shall bear sole responsibility for the content of the broadcast. Notwithstanding the foregoing, the Director General shall refuse the broadcast of programmes whose content violates in an obvious and serious manner the applicable law.
- §5 PSBO shall be entitled to request the reimbursement of its costs in connection with air-time granted in accordance with §2 and §3 above.
- §6 Details shall be laid down in the PSBO's Bye-laws.

Article 6 - Right of Reply

- §1 A natural or legal person who is affected by a statement of fact in a broadcast shall be entitled to a right of reply.
- §2 The right of reply is excluded with regard to accurate reports on public sessions of legislative bodies and the courts.
- §3 The reply must be restricted to the facts and may not have any criminal content. It must be presented in writing and signed by the party concerned or his legal representative.
- §4 PSBO must broadcast the reply free of charge in such a way as to reach as soon as possible the public which has taken note of the contested factual statement (for example, in the next edition of the same programme, or programme category).
- §5 PSBO may refuse to broadcast the reply if
- (a) the person concerned has no legitimate interest in its dissemination,
 - (b) the reply is unreasonably long (for example, considerably longer than the contested factual statement),
 - (c) the request for a reply has not been received by PSBO within two months of the broadcast of the contested factual statement.

Article 7 - Rectifications, complaints or suggestions

- §1 PSBO shall rectify false statements of fact, following the procedure laid down with regard to the right of reply (Article 6§4 above).
- §2 Everyone has the right to submit to PSBO objections and suggestions regarding programmes.

Article 8 - Advertisements

- §1 "Advertisement" means any public announcement intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea or to bring about some other effect

desired by the advertiser, for which transmission time has been given to the advertiser against remuneration or similar consideration.

- §2 All advertisements shall be fair and honest.
- §3 Advertisements shall not be misleading and shall not prejudice the interests of consumers.
- §4 Advertisements addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities.
- §5 The advertiser shall not exercise any editorial influence over the content of programmes.
- §6 Television advertising shall be limited as follows:
- On the (first) television channel, the amount of television advertising shall not exceed ...% of the daily transmission time.
 - On the (second) television channel, ...
 - The amount of spot advertising within a given one-hour period shall not exceed ... minutes.
 - Forms of television advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services shall not exceed half an hour per day.
- §7 The amount of radio advertising shall be limited to an overall total of ... minutes per day for all national programme channels combined.
- §8 Special regulations (where applicable) with regard to local/regional programme services:
- §9 Advertisements shall be clearly distinguishable as such and recognizably separate from the other output of the programme service by optical or acoustic means. In principle, they shall be transmitted in blocks.
- §10 Subliminal advertisements shall be prohibited.
- §11 Surreptitious advertising, and in particular the presentation in programmes of products or services for advertising purposes, shall not be allowed.
- §12 Advertisements shall not feature, visually or orally, persons regularly presenting news and current affairs programmes.
- §13 Television advertisements shall be inserted between programmes. Provided the conditions contained in §§14-17 below are fulfilled, advertisements may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rightsholders are not prejudiced.
- §14 In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertisements shall be inserted only between the parts or in the intervals.
- §15 The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries) may, provided their duration is more than forty-five minutes, be interrupted once for each complete period of forty-five minutes. A further interruption is allowed if their duration is at least twenty minutes longer than two or more complete periods of forty-five minutes.
- §16 Where programmes, other than those covered by §14, are interrupted by advertisements, a period of at least twenty minutes should elapse between each successive advertising break within the programme.

- §17 Advertisements shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes whose duration is less than thirty minutes shall not be interrupted by advertisements. If they last for thirty minutes or longer, the provisions of the previous paragraphs shall apply.
- §18 Advertisements for tobacco products shall not be allowed.
- §19 Advertisements for alcoholic beverages [above ...% of alcohol] shall not be allowed.
[Alternative (where advertisements for alcoholic beverages are allowed in principle):
- §19 Advertisements for alcoholic beverages shall comply with the following rules:
- (a) they shall not be particularly addressed to minors, and no one associated with the consumption of alcoholic beverages in advertisements should seem to be a minor;
 - (b) they shall not link the consumption of alcohol to physical performance or driving;
 - (c) they shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal problems;
 - (d) they shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
 - (e) they shall not place undue emphasis on the alcoholic content of beverages.]
- §20 Advertisements for medicines and medical treatment which are available only on medical prescription shall not be allowed.
- §21 Advertisements for all other medicines and medical treatment shall be clearly distinguishable as such, honest, truthful and subject to verification and shall comply with the requirement of protection of the individual from harm.
- §22 The Bye-laws shall include guidelines on the implementation of this Article.

Article 9 - Sponsorship

- §1 "Sponsorship" means the participation of a natural or legal person, who is not engaged in broadcasting activities or in the production of audiovisual works, in the direct or indirect financing of a programme with a view to promoting the name, trademark or image of that person.
- §2 When a programme or series of programmes is sponsored in whole or in part, it shall clearly be identified as such by appropriate credits at the beginning and/or end of the programme. In sports programming, credits may also appear at the beginning and end of natural breaks.
- §3 The content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes.
- §4 Sponsored programmes shall not encourage the sale, purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services in such programmes.
- §5 Programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is prohibited by virtue of §§18-21 of Article 8 above.

- §6 Sponsorship of news and current affairs programmes shall not be allowed.
- §7 The Bye-laws shall include guidelines on the implementation of this Article.

Article 10 - The Organs of PSBO

The organs of PSBO shall be:

- the Broadcasting Council
- the Board of Administration
- the Director General.

Article 11 - The Broadcasting Council

- §1 The Broadcasting Council shall represent the interests of the general public with regard to programming and shall defend the independence of PSOB.
- §2 The Broadcasting Council shall be composed of twelve members, coming as far as possible from different groups comprising the civil society.
- §3 The Council members shall be elected by (the Lower Chamber of) Parliament, with a three-quarters majority, following a public hearing with potential nominees.
- §4 Each member is appointed for a fixed period of six years. However, as regards the initial composition of the Council, four members shall be nominated for a period of two years, four members for a period of four years and four members for a period of six years.
- §5 The starting point for the initial periods shall be the date of the constituent meeting of the Council. Re-appointment of a member of the Council at the end of his or her term of office is possible.
- §6 Members of the Council may not belong to or work for the national government or the PSBO itself, or be members of parliament.
- §7 Members of the Council may not be revoked during their term of office. However, if for whatever reason a member is incapable of performing his or her duties, or if he or she has not attended Council meetings for a period exceeding six months, the member in question shall be revoked and be replaced by another person who shall finish the revoked member's remaining term of office. The provisions of §§3 and 6 above shall apply.
- §8 The Council shall elect its own Chairman.
- §9 The Council shall set up its own Rules of Procedure.
- §10 Except where otherwise provided herein, the Council shall take decisions on the basis of the majority of the votes of members present. Where voting is equal, the vote of the Chairman shall be decisive.
- §11 The Council shall meet at least once every two months. It shall also meet in extraordinary session whenever at least three of its members request a meeting.
- §12 The Director General and the Chairman of the Board of Administration shall be entitled to participate in Council meetings, except where the Council excludes them for particular reasons. Directors and other staff members or third parties may be invited to attend for particular reasons.

- §13 Members of the Council shall not receive financial remuneration for their work. However, they shall be entitled to a free radio and TV set and yearly global compensation for their expenses amounting to one half-month's salary of the Director General.
- §14 The Broadcasting Council shall
- (a) appoint the Director General, with the vote of at least eight of its members in favour,
 - (b) approve the appointment of the Directors and the Editors-in-Chief for radio and for television proposed by the Director General. Unless at least six members of the Council vote against, or if no vote has been taken within three months of notification by the Director General, such appointments shall be taken as approved,
 - (c) appoint the members of the Board of Administration, with the vote of at least seven of its members in favour,
 - (d) adopt PSBO's Statutes, after consultation with the Director General and the Board of Administration. The Statutes shall, in particular, lay down the internal organization of PSBO in more detail. They should also define the responsibilities of the programming staff,
 - (e) adopt PSBO's Bye-laws, after consultation with the Director General and the Board of Administration. The Bye-laws shall, in particular, regulate the matters expressly identified in this Law, as well as any other matters requiring detailed internal regulation of a binding nature,
 - (f) advise the Director General on general programming matters and assist in carrying out programming responsibilities,
 - (g) monitor observance of PSBO's programming responsibilities as laid down in this Law. It may declare, stating its reasons in writing, that certain broadcasts violate programming principles laid down in this Law, and may instruct the Director General, after hearing his or her position, to discontinue such violation or to ensure that no further violation occurs. The Council may not review individual programmes prior to their broadcast.
- §15 The conclusion of contracts concerning programming which commit PSBO to a total payment exceeding shall require the Council's prior consent.

Article 12 - The Board of Administration

- §1 The Board of Administration shall supervise the business affairs of PSBO, both internal and external, with the exception of matters relating to programming.
- §2 It shall be composed of seven members. They shall be experts in matters of administration and finance and may not in the exercise of their function represent the interests of third parties.
- §3 The Board members shall not belong to or work for the government or the PSBO itself, or be members of parliament or members of the Broadcasting Council.
- §4 The Board members shall be appointed for a four-year period. Reappointment for a maximum of two further periods shall be possible.
- §5 If for whatever reason a Board member is incapable of performing his or her duties, or if he or she has not attended Board meetings for a period exceeding three months and if at least seven members of the Broadcasting Council are convinced that he or she will not resume his or her

activity within a reasonable period of time, the Broadcasting Council shall revoke him or her and replace him or her by another person who shall finish the revoked member's remaining term of office. The provisions of §2 above and of Article 11§14(c) shall apply.

- §6 The Board shall elect its own Chairman and set up its own Rules of Procedure.
- §7 The Board shall lay down binding Rules on financial matters, in consultation with the Director General.
- §8 The Board shall take decisions with the majority of the members present. Where voting is equal, the vote of the Chairman shall be decisive.
- §9 The Board shall meet in principle at least once per month. It shall also meet in extraordinary session whenever at least two of its members request a meeting.
- §10 Members of the Board shall receive yearly global compensation of their expenses amounting to one month's salary of the Director General.
- §11 The Board shall
 - (a) represent PSBO in all dealings with the Director General
 - (b) conclude the service contract with the Director General
 - (c) advise the Director General on business matters not related to programming
 - (d) approve PSBO's budgets and yearly accounts.
- §12 The Board's consent shall be necessary for
 - (a) the conclusion of service contracts with the Directors and any other employees whose salary exceeds the highest class of the staff salary scale
 - (b) the conclusion of trade union agreements
 - (c) the acquisition and sale of companies or of shares therein
 - (d) the acquisition, sale and mortgaging of property
 - (e) the taking-up of bank credits and the granting of financial guarantees and securities
 - (f) the conclusion of contracts concerning investments, other than in programming, if the total amount to be paid by PSBO exceeds ...
 - (g) the expenditure of any money not provided for in the approved budgets.

Article 13 - The Director General

- §1 The Director General shall have final responsibility for programming , including its content, and shall ensure that programmes are consistent with the programming principles laid down in this Law and do not violate any other laws.
- §2 The Director General shall manage PSBO independently and shall be responsible for all its operations and activities.
- §3 The Director General shall represent PSBO both in court and out of court.
- §4 The Director General shall be appointed for a five-year term. Re-appointment is possible. As long as no successor has been appointed after the expiration of his or her term, the Director General shall continue in office if he or she is prepared to do so; otherwise, his or her functions shall be taken over by the Deputy.
- §5 The Director General shall not be a member of parliament.
- §6 The Director General may not be dismissed unless at least eight members of the Broadcasting Council decide to replace him or her by another person on whom they have agreed. In such a case, that other person shall finish the dismissed Director General's remaining term of office.
- §7 With the approval of the Broadcasting Council, the Director General shall appoint one of the Directors as his or her Deputy, for a period not exceeding his or her own mandate.

Article 14 - Public Funding

- §1 PSBO's main source of funding shall be the broadcast receiving licence fee, supplemented, in particular, by revenue from advertising and sponsorship.
- §2 The broadcast receiving licence fee shall be due for radio and television receivers which are in a technical state to receive radio or television programmes, whether via individual off-air reception or via community antennae or a cable system, and whether or not the receiver is portable (including receivers incorporated into cars).
- §3 Per household, only one receiver of each kind shall be counted.
- §4 Households with radio receivers only (one or more) shall be liable for the radio receiving fee alone.
- §5 Households with television receivers only (one or more) shall be liable for the television receiving fee alone.
- §6 Households which have at least one radio receiver and one television receiver shall be liable for both receiving fees.
- §7 Households whose combined total gross annual revenue does not exceed, per adult, the minimum of the yearly State pension, and 50% thereof per child, shall be entitled to request a 50% reduction, upon provision of the necessary evidence to PSBO. The resultant loss in receiving licence fee revenue shall be compensated from the State budget on an annual basis.
- §8 Hotels shall be liable for one fee per ten rooms equipped with receivers.
- §9 Any other entity shall be liable for one fee per 20 employees or other persons who are normally in a position to receive radio and/or television programmes on its premises. However, enterprises engaged in the production, repair, installation, sale or hire of radio and/or television receivers shall be liable for only one fee per shop or outlet.

- §10 Each household, hotel or other entity which is connected to electricity shall be presumed to have at least one radio and one television receiver which is in a technical state to receive radio and television programmes. Where this is not the case, a written declaration to that effect shall be made to PSBO. Such declaration shall be corrected in writing whenever it no longer holds good.
- §11 Anyone making a false declaration under §10 above, or not making the necessary correction under the same paragraph within one month of the beginning of the liability, shall be liable for retroactive payment for the entire period in question. However, the minimum amount payable shall be the equivalent of one year's receiving fee.
- §12 The amount due shall be automatically added to the electricity bill, and be collected together with it.
- §13 The electricity company shall at once transfer the collected money to PSBO, after deduction of 1% thereof as global compensation for its own expenses.
- §14 The monthly fee for the radio and for the television receiving licence shall be fixed by Parliament, having due regard to the financial needs of PSBO for the complete fulfilment of its statutory objectives as laid down in Article 2 above, and taking into account any revenue from other sources (such as advertising/sponsorship) which PSBO may reasonably be expected to obtain. It shall be valid for at least five years, subject to automatic inflation indexation.
- §15 As long as Parliament does not modify the licence fee, it shall automatically continue for one-year periods, including the automatic inflation indexation.
- §16 PSBO shall be entitled to ask for relevant information if it suspects that §11 above may be applicable. Any decision taken by PSBO in the context of §11 above may be appealed against to the competent (administrative) court.
- §17 It shall constitute a misdemeanour, and be punishable as such by a fine amounting to the equivalent of between six times and twenty-four times the value of the applicable monthly licence fee or fees
- (a) if a false declaration is made under §10 above, or if the correction under the same paragraph is not made within one month of the beginning of the liability
 - (b) if payment is not made for more than three months whilst the receiver continues to be possessed for reception.

[Alternative Article 14 – Public Funding:

- §1 Parliament shall fix, after consultation with the Board of Administration, the yearly attribution to PSBO from the State budget, having due regard to the financial needs of PSBO for the complete fulfilment of its statutory objectives as laid down in Article 2 above, and taking into account any revenue from other sources (such as advertising/sponsorship) which PSBO may reasonably be expected to obtain.
- §2 Payment shall be made in two equal instalments, on 1 April and 1 October.
- §3 As long as there is no parliamentary decision, PSBO shall receive, on the dates indicated in §2 above, the same amount as under the previous budget, augmented by the percentage of inflation that has occurred in the preceding year.]

Article 15 - Securing of Evidence

- §1 PSBO shall make complete sound and video recordings of all radio and television programmes transmitted by it. Such recordings shall be preserved for a minimum of three months. If a request for a right of reply, a demand for rectification or a request for review by the Broadcasting Council is received within this period, the recording shall be preserved until the matter is definitively resolved.
- §2 Any person who can plausibly demonstrate in writing that his or her rights may have been affected by a given broadcast may request a copy thereof from PSBO, at his or her own expense.

Article 16 - Legal Supervision

- §1 PSBO shall be subject to legal supervision by (the Supervisory Authority).
- §2 The Supervisory Authority may request from any of the organs of PSBO written information on any activities or omissions which, in the Supervisory Authority's view, violate the present Law.
- §3 The Supervisory Authority may instruct PSBO to take the action necessary to stop the violation.
- §4 PSBO may directly institute proceedings with the administrative court against any such instructions.
- §5 Measures pursuant to §2 and §3 above shall be permissible only if the competent organs of PSBO fail to carry out their supervisory duties within a reasonable period or if more extensive supervisory measures are required by the Supervisory Authority. The Supervisory Authority has the right to fix a reasonable time limit within which the organs concerned shall carry out their supervisory responsibilities.
- §6 Any measures taken pursuant to these provisions shall not violate PSBO's freedom of information and expression.

Article 17 - Transitional Provisions

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Article 18 - Entry into Force

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C. EXPLANATORY COMMENTS ON INDIVIDUAL ARTICLES OF THE MODEL LAW

As was stated in the introduction to this HANDBOOK, a Model Law must be taken at its proper value.

Ideally, it should cover the ground that needs to be regulated, and it should propose concrete wording which stands the best chance of being adopted. In any case, a Model Law should serve as a source of inspiration and provide guidance to the legislator.

Where a Model Law is to serve a large number of countries, from all around the world, with greatly differing legal systems and legislative traditions, this ideal may not always be achieved.

To give just one specific example: under certain legal systems, Laws tend to be introduced by concrete *definitions* of the most important terms contained in the ensuing articles. Under other legal systems, there is no such legislative tradition, or it may exist only to a much lesser degree. For three major reasons, the present Model Law offers no definitions at the beginning (although it will be noted that many of the individual Articles do include a wording which comes close to a definition and, sometimes, actually defines a key term properly):

- Firstly, it may reasonably be expected that countries intending to adopt a Public Service Broadcasting Law already have a Broadcasting Law which, where applicable, includes many of the definitions which one would expect also to find in a Public Service Broadcasting Law, and which therefore could easily be transferred into the latter
- Secondly, the more precise and detailed the definition of a relevant term (such as “broadcasting”, “advertising”, “national coverage”, “cable distribution system”, “violence”, “pornography” or “independent producer”), the more it will reflect national characteristics and sensitivities
- Thirdly, the more a Law restricts the given rights of the individual, or regulates conflicts of interests, the more, generally speaking, there may be a need for precise definitions. Conversely, it is arguable that where a Law sets out to establish a *non-profit* organization, with the general mission of serving the interests of the public in the field of radio and/or television, the need for definitions is much less pressing.

Another important factor to be noted from the very outset is that a Public Service Broadcasting Law will never stand in isolation but is part of a whole body of legislation which is partly overlapping. Thus, in addition to general broadcasting legislation, there may be legislation dealing with the press, with election campaigns, with the protection of personal honour and reputation, with refusal to give evidence, with access to public information, etc., etc. Any Public Service Broadcasting Law will have to take such legislation into account, possibly by declaring it (wholly or partly) applicable or by modifying it and adapting it to the particular case of public service broadcasting. Again, all these are purely national matters which cannot be meaningfully addressed in a Model Law.

Finally, national legislative cultures differ, sometimes considerably, not only as regards the degree of detail of regulation but also with respect to the practice, or otherwise, of delegating the regulation of certain details to a lower level which tends to be more familiar with the subject matter than Parliament itself. The path chosen in the present Model Law is, on the one hand, not to delegate legislative/regulatory powers (e.g. to the government), but, on the other hand, to empower the Broadcasting Council (which represents the public, the entire population) to regulate in the Bye-Laws certain specified matters in more detail.

There follows an article-by-article annotation of the Model Law.

Article 1

1. Where the task of the legislator is not to transform an existing state broadcasting organization into an independent public service broadcasting organization, but to create such an organization from scratch, the wording of §1 needs to be adapted accordingly.
2. The same applies where the legislative intent is to split the existing state broadcasting organization into two separate entities, one for radio and one for television (or yet another one, for the technical transmission of broadcasts).

There do not appear to be any universally valid criteria suggesting that one solution or the other is better. However, where state radio and state television have already existed as two more or less separate companies (each with its own building, its own staff, its own management), it would apparently make good sense to provide for the continuation of two distinct organizations.

3. The precise legal form of the new organization(s) is a matter for national choice, in accordance with the possibilities offered under the national legal system with regard to legal persons.

Where it exists, the category of public law corporation is certainly the most appropriate. Otherwise, the most suitable of the available categories existing under civil law (such as an association with legal personality or a stock company) will need to be chosen. This may require certain adaptations to the internal structures of the organization which are proposed in the present Model Law.

4. As regards regional studios (§4), if any, this paragraph will require more detailed regulation to be added, unless it is preferred simply to mention the possibility of setting up regional studios, subject to the approval of the Broadcasting Council (and of the Board of Administration).

Article 2

1. Under §2, the core services (i.e. the programme services which must be offered as a minimum, and which, together, must fulfil the entire public service programming remit) need to be specified, possibly including the minimum daily transmission time (duration) for each such service.
2. Instead of offering specific regional or even local programme services, the organization may be obliged to open up certain windows in its national programme services (e.g. two hours per day, between, perhaps, 17.00 and 19.00) devoted specifically to regional/local programming.
3. According to circumstances, the organization may furthermore be obliged to offer a foreign radio and/or television service. This would need to be regulated to some extent, preferably also in Article 2.

In this context, it would be important to separate such a service (and especially its funding) very clearly from the core activity of the broadcasting organization, which is to provide programming for the *national* audience, i.e. the receiving licence fee payers. Foreign programme services are provided for the government, as part of the latter's foreign policy, and against payment by the government of all costs related thereto.

4. As far as technical transmission is concerned (§3), particularly where the organization receives its basic funding from the state budget it makes obvious sense that the state finance it direct, without the money appearing in the organization's own books.

Otherwise, and especially where the organization's basic funding is from the receiving licence fee, the organization must be free to set up and operate its own transmitter network if it so wishes.

5. Since public service broadcasting has to develop over time, it must be possible for the organization to introduce additional programme services (e.g. thematic channels), regardless of the method of technical delivery (e.g. on-line) or the mode of funding (e.g. pay-TV). However, and this applies in particular when additional public funding is necessary, the prior authorization of the Board of Administration should be mandatory (§7).

Article 3

1. When considered necessary or desirable, or where the need to do so may even result from an obligation under an international Convention (such as the European Convention on Transfrontier Television), the legislator may add here a paragraph laying down quota for the transmission of national or regional (e.g. African or Arabic) programme material. This could also be limited to specific categories of works (e.g. cinema films on TV, or music on radio).
2. Similarly, where it is felt desirable to strengthen the independent production sector, a paragraph laying down a minimum percentage of overall programming which must be acquired from independent producers should be added here. However, the figures should be realistic, and it would probably be advisable to provide for a gradual increase over a given number of years.

Article 4

1. There is a *right*, but not an obligation, to transmit parliamentary debates (§1). Otherwise, there would be parliamentary broadcasting (another form of state broadcasting), but certainly not public service broadcasting as is to be introduced here under the Model Law.
2. §5 protects the viewer, the citizen, who, ever since the beginning of television, has been accustomed to following live major events (sports or other) which are of great interest to the population at large, without having to make any special (additional) payment for it. Especially where a national team is involved, where the national anthem is played and where the national flag is shown, such an interest is automatically to be assumed.

When finalizing and completing the list of sporting events given in §5, the legislator should consider legal measures to prevent circumvention of this provision by broadcasters established in a neighbouring country but aiming their programme (via satellite and cable) at the national audience. In addition to concluding an international (regional) convention or bilateral agreements with neighbouring countries, the regulation of cable distribution may provide largely satisfactory results. Thus, §5 could be supplemented by the following paragraph:

“Cable distribution of foreign (sports) programmes which would result in a *de facto* circumvention of the present §5 shall be prohibited. Cases of violation shall be subject to a fine, per hour of violation, of at least”

Article 5

1. Certain national laws give the government the right to make announcements on radio and television in relation to catastrophes or other circumstances involving acute danger to the population. For two reasons, there is no such stipulation in Article 5:

- Firstly, it is normally the government that learns about such events from radio and television, and not vice versa.
- Secondly, in such cases there is an obvious journalistic interest in obtaining as much information/comment/advice from the government as possible.

Hence, there is no need for the law to intervene here.

2. Nevertheless, if it is still felt desirable to give the government the possibility to make “official announcements”, then the broadcaster must have the possibility to offer a spokesman for the opposition the possibility of responding (§1). This will ensure a certain amount of self-restraint on the part of the government and, in particular, will exclude the risk of one-sided indoctrination.

If important public officials (in particular the President or the Monarch) request the opportunity of making a public statement on radio or television (e.g. as a New Year’s address), it will normally follow from the public service broadcasting mission that such a request will automatically be granted. Again, however, if such a statement has obvious political connotations, the broadcaster would be not only entitled, but probably even obliged, to redress the balance by offering others the possibility of expressing diverging/opposing views.

3. There needs to be a separate law dealing with the involvement of radio and television in election campaigns. It needs to ensure overall fairness and equality of chances, as well as to regulate such details as

- the first and last day of campaign programming
- the number of party political broadcasts per party per day, separately for radio and for television
- the duration of party political broadcasts
- payment, or otherwise, in return for the broadcasting of party political broadcasts
- the maximum amount/percentage which any party or candidate may be attributed within the overall amount of time devoted to party political broadcasts
- the times of day when such output for individual parties or candidates have to be broadcast (to avoid any discrimination)
- general programming (news, entertainment, current affairs, sport etc.) involving politicians campaigning for public office.

Regardless of the content and detail of regulation of such a law, the public service broadcasting organization will have to lay down further, still more detailed rules, as well as practical procedures, regarding its own involvement, in one way or another, in the campaign process. This will have to be done in the organization’s Bye-Laws (§6). It should all be done sufficiently in advance. Furthermore, the organization would be well advised to announce as early as possible its own programming intentions (e.g. regarding debates involving the major candidates, the topics to be addressed, the time available for each participant, the time of recording and/or broadcasting, etc.).

Article 6

1. The right of reply is a specific legal remedy against the media (the press and broadcasting). It concerns only statements of *fact*. The person affected by a “false” statement of fact is entitled to have the “correct” version disseminated as early as possible. Unlike the case of rectification (which is dealt with in Article 7), there is no need to prove that the statement was actually false, and still less that one’s own counter-statement, the reply, is actually correct. This is for the reader/viewer/listener to appreciate. The advantage of the right of reply is thus that it allows a combat with equal arms, at virtually the same time. By contrast, to obtain a rectification (where the broadcaster must formally admit that the statement of act was wrong) may take months, if not years, and the affair may be virtually forgotten by the time the rectification is broadcast.
2. In conformity with the purpose of the right of reply, as described above, it may be considered appropriate to add a further paragraph, stipulating that the broadcaster may not comment on the reply (e.g. by stating that “under the law, we are obliged to broadcast this reply. However, we expressly uphold our own original statement of the facts”). On the other hand, the public may not understand the difference between a rectification and a reply, and may therefore erroneously conclude that the broadcaster’s own statement of facts was actually false. A compromise would therefore be for the broadcaster to introduce the statement of reply by a brief reference to the legal obligation to broadcast it, “irrespective of whether the reply is actually correct or not”. However, there would not appear to be any need to lay this down in the Law itself.

Article 7

1. As regards the difference between the right of rectification and the right of reply, see comments under Article 6 above.
2. §2 is self-explanatory. However, since the public finances public broadcasting, and programming is made for the public, it seems appropriate to lay down an express right for the public to object to programming or to make suggestions for future programming. While it would obviously go too far to stipulate a formal obligation on the broadcaster to give a more or less detailed reply to any such objections or suggestions, it should go without saying that the broadcaster will study all such submissions and, where considered justified or helpful, take them into account or implement them.

Article 8

1. At first sight, it may come as a surprise that the longest Article in a Public Service Broadcasting Law should be the one dealing with advertising. However, this is due to the complex matter which needs to be regulated here and which includes such major issues as the protection of the public (in various respects), the avoidance of influence by advertisers over programming, the avoidance of any disturbing interruptions of programming, the avoidance of over-dependence by the public broadcaster on advertising revenue, or, again, the desirability of excluding altogether advertising from certain types of programming or from certain hours of the day and, in general, of ensuring that there remains a perceptible difference between public service broadcasting and commercial broadcasting in this field too.

2. In the light of the foregoing, and taking into account the overall economic situation in general and the advertising market in particular, as well as, ultimately, the overall amount of revenue which the public service broadcasting organization needs, in addition to the foreseeable revenue from public funding, to fulfil its public service remit, the legislator will have to make the necessary choices, especially under §§6, 7, 8 and 19, to ensure that the overall objective will be achieved. In this context, the state broadcaster's present (and, in particular, the public service broadcaster's likely future) audience market share will be an important element.

3. As regards the amount of television advertising (§6), the first deciding factor should be the number of programme services provided by the broadcaster.

Where there is only one national channel, there is not much choice. All the advertising needs to be concentrated on this channel. However, the *absolute maximum* should be 10% of the daily transmission time, with not more than nine minutes within any given (clock) hour. Furthermore, if at all possible, there should be some further limitation to distinguish public service programming from commercial programming. Thus, the list of programme categories given under §17 could be extended. Another possibility could be to prohibit advertising after 20.30, except for sports programming, where advertising could be shown in blocks immediately preceding and immediately following the sports programme, as well as in natural breaks therein. This would be justified by the fact that, firstly, people are accustomed to advertising in connection with sport, so it is not felt to be particularly disturbing and, secondly, the ever-increasing rights fees demanded by the sports event organizers make this additional revenue indispensable; otherwise, the public service broadcaster could not really compete with its commercial competitors, with the result that it would fail in its duty to provide programming which is of major interest to the entire population.

4. As regards radio (§7), it may be advisable to limit advertising to one channel, with a maximum of, for example, 150 minutes per day (24 hours) and nine minutes per any given (clock) hour. Quite naturally, the broadcaster would then concentrate mass appeal programming on that channel, while offering cultural, educational and other programming predominantly on the other channel(s).

5. As regards local/regional programming (§8), the legislator will have to invent appropriate rules, bearing in mind the general philosophy expressed under 1-4 above.

6. With respect to advertising for alcoholic beverages (§19), the alternative offered under §19 should be self-explanatory. This includes the possibility for the legislator to ban, for instance, only advertising for "hard liquor", while permitting it for beer, wine and similar drinks below a given percentage of alcohol content.

7. Depending on the country, the legislator may wish to ban advertising for certain other products or services. Such bans exist in numerous countries, and they have numerous different motivations. Thus, matrimonial agencies, matches department stores (to protect newspaper advertising), condoms or whatever else may be added to the ban expressed under Article 8.

8. §22 refers the regulation of further details to the Bye-Laws. A particular area where such regulation is indispensable is so-called product placement (which falls within the scope of §11). The borderline between products appearing as a natural part of the action (e.g. a car or a street advertising placard), without the camera unduly focusing on the brand name or trade mark, and products which are artificially/unnecessarily placed within the field of action, and are given excessive attention by the camera, is sometimes not easy to draw.

Article 9

The Bye-Laws, which are to include guidelines on the implementation of this Article, will have to specify, in particular, what “appropriate” credits are (§2).

Article 10

On the one hand, the public service broadcasting organization is a non-profit organization, serving the public rather than shareholders, using money to make programmes rather than using programmes to make money.

On the other hand, the public service broadcasting organization lives in a highly competitive world (for exclusive sports rights or film packages, for popular stars or news presenters, for qualified staff in general), where the need to take very quick decisions may mean that considerable sums of money are indispensable.

Therefore, the organization needs internal structures which allow it to compete on a level playing-field with its commercial competitors. A precondition for this is, of course, the right to self-administration (Article 1§1).

With one Chief Executive Officer (Director General), who has far-reaching decision-making powers, together with the customary Board of Administration and the Broadcasting Council, the proposed internal structure of the organization should correspond to this need.

Article 11

1. The Broadcasting Council, as proposed in this Model Law, is one of the organs of the broadcasting organization itself. In a way, it plays the role of a general assembly of shareholders in a stock company, and its competences are comparable.

Another, quite different, concept would place the Broadcasting Council *outside* the broadcasting organization, as a separate independent authority with supervisory and regulatory powers over all broadcasters (public and commercial ones).

Should that approach be preferred, then §§1 and 2 should be reworded as follows:

“§1 A Broadcasting Authority is hereby established as an independent legal entity, with the right to self-administration, to regulate and supervise broadcasting.

§2 The Broadcasting Authority shall be composed of twelve members, who should have experience in the field of the media or in other areas which are relevant to the Authority’s scope of activity.”

Furthermore, the competences specified under §14 would need to be reviewed. In particular, §14(c), (d) and (f) should be deleted. At the same time, another organ should be established to take over these functions and possibly a few other programme-related functions as well. This organ, a Programme Advisory Board, could still be composed and appointed in the same manner as the Broadcasting Council provided for in the Model Law. As regards the Bye-Laws (§14(e)), the fields to be regulated therein should then probably come within the competence of the Broadcasting Authority.

In addition, the Law would, of course, have to define the role and powers of the Authority with regard to commercial broadcasting (granting of licences, supervision, enforcement, regulation), and this would have to be done in considerable detail. In fact, the normal course

of action would be either to have a separate Law dealing exclusively with the Broadcasting Authority, or to include the Broadcasting Authority in the Commercial Broadcasting Law, with a small sub-chapter referring to the Authority's role and power with regard to public service broadcasting.

For the reasons explained in the Introductory Note to this HANDBOOK, however, it is suggested that the solution proposed in this Model Law, *viz.* that the Broadcasting Council, representing the interests of the general public with regard to programming, should be one of the organs of the public service broadcasting organization itself, is more consistent and should therefore be adopted.

2. Numerous provisions, taken together, guarantee the independence of the Broadcasting Council:
 - the Council represents the *interests of the general public* with regard to programming (§1)
 - the Council members should come from different groups comprising the *civil society* (§2)
 - the Council members may *not* belong to or work for the national government or the public service broadcasting organization itself, or be members of Parliament (§6)
 - the Council members are elected by Parliament with a *three-quarters* majority (§3)
 - every two years, *one-third* of the Council is *renewed* (§4)
 - Council members *cannot be revoked* during their term of office (§7).
3. The requirement of a three-quarters majority (§3) necessarily means that a broad consensus within Parliament, beyond political boundaries, needs to be brought about, with the likelihood that candidates with a pronounced political tendency will not stand a strong chance of being elected.

It should be remembered in this context that, when appointing the members of the Broadcasting Council, Parliament does not act in its constitutional role as a legislative body. Therefore, any rule to the effect that Parliament decides with a given majority does not apply here. The Public Service Broadcasting Law needs to be approved by the majority required under the Constitution. With this majority, Parliament is free to stipulate anything it considers appropriate, including a specific method to ensure the independence of a Broadcasting Council.

4. The fact that every two years four of the twelve members of the Council are renewed (with the possibility of reappointment), not only contributes to a balanced composition of the Council, and thus to its political independence but also ensures continuity, which is a vital pre-requisite for the successful functioning of any collective body.

Article 12

1. The function and powers of the Board of Administration correspond to what would normally be expected here, and therefore do not call for any particular comment.
2. Nonetheless, the practical importance of §12(a) deserves to be stressed here.

On the one hand, it is absolutely vital for the Director General (§11(b)), the Directors and certain other key employees to be paid realistic, *market-oriented* salaries. Otherwise, it would be impossible for the organization to retain or to attract highly-qualified staff, not only a pre-requisite for any organization to operate properly but also indispensable in an environment where the organization is exposed to fierce competition from powerful commercial

broadcasters. Furthermore, market-oriented salaries for key executives constitute the best remedy against attempts at corruption.

On the other hand, the public must have strict control over this, to avoid excesses. Hence the express requirement for the Board's consent to the conclusion of such contracts.

Article 13

1. The Director General is the key figure in the organization. He or she is the *chief executive officer*, with ultimate responsibility for everything and with sole decision-making power. While in practice much of the decision-making power will need to be delegated, and sub-delegated (matters which should be dealt with in the organization's Statutes), the Director General retains ultimate sole responsibility.

This function and role determines the profile to which candidates for this important post need to correspond.

2. Once appointed for a five-year term, the Director General must feel free to act in the best interests of the organization, without the fear that he or she might risk being dismissed. In particular, grounds for dismissal such as "violation of the law", "action against the interests of the organization" or "grave professional fault" lend themselves to abuse. Therefore, the principle should be that the Director General cannot be dismissed during his or her term of office (§6).

On the other hand, in exceptional cases there may be valid objective reasons for dismissing a Director General. Whatever such reasons may be, they need not be spelled out, and hence cannot be contested in court by the Director General. If two-thirds of the members of the Broadcasting Council find it desirable to dismiss the Director General, for whatever reason, they may therefore do so at any time, by simultaneously appointing a new Director General with the same qualified majority.

Article 14

1. In addition to public funding, there are naturally other sources of revenue, such as advertising/sponsorship, programme sales, publications, merchandising, gifts/donations, etc. When the licence fee is fixed, the revenue likely to be expected from such other sources will of course be taken into account.
2. Whereas the receiving licence fee is a simple and easy-to-understand concept, when it comes to the details numerous options are available, and different choices can be made. Therefore, several paragraphs contained in Article 14 will need to be modified so as to correspond to the economic reality of the country.
3. Thus, §3 could be widened into two directions:

Firstly, it could be stipulated that where two or more people with their own individual income live in one household, each such person with his/her own receiver has to pay a separate licence fee (with married couples nevertheless counting as only one person for this purpose).

Secondly, a separate licence fee (possibly at a reduced rate) could be introduced for second homes as well as for cars.

4. Formulas for reductions in, or even total dispensation from, the licence fee can be designed in numerous ways. §7 offers just one example. However, whatever formula may be chosen in

the end, it is for the state to compensate the broadcasting organization for the resultant loss of revenue. If the state offers subsidies to poor people to pay their rent, health insurance, clothing or whatever else, or subsidizes them in a global way through a monthly welfare allowance (which also pays for the cost of a radio or TV set in the first place), then the same reasoning should apply to subsidizing them to pay for the enjoyment of radio and or television programmes.

5. The proposal that the licence fee should be collected together with the electricity bill (§12) would seem to be pragmatic, but there are also other solutions (including the broadcasting organization doing its own billing and collecting).
6. §13 assumes that the electricity company is a state company. Otherwise, it would appear difficult to justify imposing a fixed rate for the service of collecting and transferring the licence fee.
7. Automatic inflation indexation (§14, as well as §3 of the Alternative Article 14) is not sufficient of itself, at least not over a longer period, since costs in broadcasting increase faster than inflation. A more appropriate index could be the increase in labour costs in the private service sector, or the national retail price index plus, for example, 0.5% per year.
8. The alternative Article 14, which provides for public funding via the state budget, would not appear to call for any particular comment.

Article 15

This Article is self-explanatory.

Article 16

1. There are two internal control bodies (*viz.* the Broadcasting Council and the Board of Administration), each with specified powers of control and supervision. These two control bodies are organs of the broadcasting organization itself. As such, they are supposed to represent and defend the best interests of the organization. Theoretically, it cannot be excluded that in doing so the Council or the Board violates any other provisions of the Broadcasting Law. Therefore, a control mechanism is necessary to ensure that such violations of the Law can be stopped. This control over the controllers, strictly limited to *legal* supervision, is carried out by the government.
2. What is already clearly implied by the term “legal supervision” is spelled out specifically in §2, *viz.* that any supervisory measures taken by the government shall not violate the organization’s freedom of information and expression. In other words, the government cannot intervene in programming matters, or intervene in such a manner that the effect would have a direct impact on programming.

Article 17

Depending on circumstances, transitional provisions will have to deal with such questions as the transfer of rights and obligations, of property, of staff, of archives, of technical equipment and facilities, etc.

SUPPLEMENT

ASPECTS OF REGULATING COMMERCIAL BROADCASTING

This HANDBOOK is devoted to public service broadcasting. For a number of reasons, it would make little (if any) sense to try to propose a parallel - likewise universally valid - Model Law on Commercial Broadcasting. Apart from the fact that the diversity of issues to be dealt with, under quite different economic, social and cultural situations as well as under varying legal systems and concepts, would at best lend itself to some form of check-list, the major reason is that unlike genuine public service broadcasting commercial broadcasting already exists in most countries around the world. This means not only that there will normally already be some regulation (meaning that the issue would be improving certain aspects of it), but, in particular, that the legislator would not generally be inclined (or strong enough) to change the existing situation radically.

Nevertheless, a reminder of the rationale for regulating commercial broadcasting, and of some of the major aspects to be considered in this context, would appear appropriate here. In other words, the focal point of this supplementary chapter will be not so much the "how" but rather the "why" of regulation.

The rationale of regulation

It is often said, especially by those directly concerned (i.e. those whose activity is to be regulated), that commercial broadcasting does not need regulating. Indeed, it is sometimes even claimed that regulation would be incompatible with freedom of expression.

The latter argument is easily refuted by the very texts of those articles under international human rights agreements which guarantee freedom of expression in the first place, *viz.* Article 19 of the International Covenant on Civil and Political Rights (1966) and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Both provisions expressly provide for the possibility to make restrictions, prescribed by law, on the exercise of freedom of expression, in the interests of other high-ranking community values (public order, health, morals, reputation or rights of others, etc.). The European Convention is more explicit in that it also expressly authorizes "the licensing of broadcasting, television or similar enterprises", recalls that exercising the freedom of expression "carries with it duties and responsibilities", and specifies that any restrictions must be "necessary in a democratic society".

Especially in Europe, where there is a European Convention on Transfrontier Television (1989), the next line of argument is frequently that national regulation should not go beyond the scope and content of the Convention. Apart from the fact that the European Convention does not deal with radio at all, this overlooks the fact that the sole purpose of the Convention is to regulate *transfrontier* television. Once it is neither technically possible, nor legally permissible under the Convention, to prevent the reception and simultaneous distribution (in particular via cable and community antenna systems) of TV programmes from neighbouring countries, it is desirable for such programmes to correspond to a minimum commonly acceptable standard. This has nothing to do with how a country may wish, and is entitled to, regulate commercial broadcasting at the national level, for its own national purposes.

If, therefore, regulation is permissible, within the boundaries of the quoted human rights provisions, the following can be cited as the major arguments for demonstrating that regulation is not only desirable but also indispensable:

- At least for the time being, broadcasters use a scarce and highly valuable national resource for their activity, i.e. telecommunications frequencies. Since this resource belongs to the entire nation, it is only natural for the population to expect that it should be used in its own true interests. Broadcasting being a *merit good* (just like education, health or social welfare), i.e. a good where inherently, by definition, the market alone cannot produce the desirable comprehensiveness and quality, positive intervention by the regulator (legislator) is necessary to bring about the desired result.
- Broadcasting plays an important role in a *democracy*. Competition law alone, or indeed any other type of law not specifically related to the media, cannot possibly bring about the desired result that (a) programming should provide comprehensive and unbiased information and that (b) the different programme services taken together should present a true plurality of opinion.
- *Culture* is yet another legitimate preoccupation for any national legislator. Broadcasting not only disseminates culture from all around the world but may also legitimately be expected to reflect the national cultural life (concerts, theatre, exhibitions, festivals, etc.) and, furthermore, actively contribute to the national audiovisual culture by producing, coproducing or commissioning radio and TV productions which are a true expression of national culture.
- Independently of the content side of broadcasting, at least as long as there are technical bottlenecks which do not allow everyone so wishing to provide a broadcasting service (limited frequency spectrum, limited cable carriage capacity, proprietary decoder systems, etc.), *licensing* is a prerequisite for broadcasting. That being so, a neutral and transparent licensing system and procedure needs to be set up which ensures not only non-discriminatory selection but thereafter also a strict control of the chosen licensee's respect of the licensing conditions and, where necessary, effective - predictable - sanctions in case of violation thereof.
- Commercial broadcasting being an economic activity, pursued with the purpose of making a profit but requiring a more or less substantial investment and involving constant entrepreneurial risks, every investor needs not only to know the precise rules of the game (what he may do, what he must not do, where the limits lie), including the grounds for a possible termination of his activity, but, in particular, to be sure that the same conditions will apply to his competitors, and, furthermore, that respect of those conditions will be both monitored and, in case of violation, sanctioned. In other words, the guarantee of a *level playing-field for competition* in the competitors' own best interests, and only media-specific regulation can bring this result about.

The scope of regulation

Leaving aside the fact that the national Constitution may predetermine certain aspects of regulation, that other aspects may already have been regulated in other, more general laws (such as penal law, competition law, commercial law, electoral law, etc.), and that the applicable international law (such as the above-mentioned human rights articles or, in Europe for instance, the Transfrontier Television Convention) will need to be taken into account and respected, the scope of broadcasting regulation essentially covers two areas: procedure and content. Procedure covers every aspect of licensing, from beginning to end, in the widest sense. Content regulation deals with what programming must and must not contain, i.e. obligations and prohibitions.

Procedure

The United Kingdom Broadcasting Act of 1990 is almost 300 pages long. It is quite detailed, more detailed in fact than the laws of most other countries. However, when one realizes that, for instance, in the United States the FCC regulation on election campaign broadcasting alone is approximately one-third of the length of the UK Act, it may be considered that the more developed and sophisticated a commercial broadcasting market is, the more recognition there is of the need for detailed regulation.

"Procedure" necessarily occupies the major part of any such regulation.

In the present context, only the major items which could be grouped together under the term "procedure" can be listed, and in each case only the major points to be dealt with will be highlighted.

1. *The Licensing Authority*

- 1.1 It should be an *independent body*, rather than a branch of the government. Article 11 of the Model Public Service Broadcasting Law could largely serve as a precedent. Its members should be experts in media-related matters. It should have the necessary equipment and, in particular, qualified staff to carry out all its tasks and obligations in a satisfactory manner.
- 1.2 It should be entirely *financed* by those for whom it exists and functions, i.e. those who have chosen the business of exploiting the frequency spectrum which belongs to the nation. Accordingly, a key needs to be established under which all commercial broadcasters together share the annual financing of the Authority, taking into account prospective other revenue (especially fees from concrete administrative acts, such as the granting of new licences).
- 1.3 It should be given the power, and the obligation, to adopt *binding regulations* in certain specified fields regarding which the law itself indicates only the general regulatory purpose and intent (e.g. election broadcasts, sponsorship, product placement, protection of minors, etc.).
- 1.4 It should publicize possibilities for obtaining *broadcast licences*, grant and, where necessary, withdraw such licences. Relevant points to be dealt with here in more detail include the following:
 - Broadcast licences for national, regional, local or transnational programme services should be tendered, from time to time, on the basis of available frequencies, as advised by the national Telecommunications Authority, provided that the Authority is satisfied, on the basis of a market study, that the licensing of additional services will lead to an overall improvement in the programming offer to the public, rather than causing an overall reduction in and impoverishment of the existing programming offer.
 - The tender should specify in particular
 - (a) the geographical area and the duration of the licence
 - (b) the type of programme service (radio, television; general, specialized programming) and the minimum hours of daily/weekly transmission
 - (c) the technical parameters for transmission
 - (d) the mode of financing (advertising/sponsorship, pay, pay-per-view, or a combination thereof)

- (e) the deadline for starting the programme service
 - (f) the content and supporting documents of applications for a licence
 - (g) the form and deadline for submitting applications
 - (h) the administrative fee which will be due upon the granting of the licence, and the annual licence fee to be paid by the licensee as a contribution to the Authority's operating budget
 - (i) in cases where the licence is in principle awarded to the highest bidder, a call for making such a bid.
- Applications for a licence should include
- (a) the name and address of the applicant
 - (b) the applicant's nationality in the case of a physical person
 - (c) details on the legal form, management structure and personnel, and ownership of the legal entity applying for the licence
 - (d) details regarding the applicant's or its owners' or shareholders' ownership of, or participation in, broadcasting organizations which were licensed by the Authority, or of foreign broadcasting organizations aiming their programmes (also) at the national audience
 - (e) the proposed structure and content of programming, including the number and duration of daily news bulletins
 - (f) any voluntary undertakings regarding minimum or maximum levels for certain types of programming, and of origin and production of works, such undertakings to be made an express condition of the licence by the Authority.
 - (g) a detailed description of existing and planned facilities, especially in the production field
 - (h) a precise business plan
 - (i) documents confirming the guaranteed funding of the business plan
 - (j) an express confirmation that all the requirements of the Broadcasting Law can and will be met
 - (k) any other information, documentation or undertaking which the applicant may consider helpful as a basis for the Authority's decision.
- The Authority should be obliged to grant the licence if all formal and substantive conditions are fulfilled.
- If there are two or more applicants for the same licence, the Authority should give preference to the applicant who or which, on comparison of all relevant factors, can be expected to provide the best service for the public living in the licence area.
- Licences should be granted for a maximum of [...] years, with different terms possibly applying to different types of programme services (taking into account, in particular, the amount of investment needed in each case).
- A licence should not be granted if

- (a) the candidate is not more than [50%] owned and controlled by nationals of the country
 - (b) according to the applicable Law on Media Concentration, or, as the case may be, to the Regulations on Media Concentration, to be issued by the Authority, the candidate does not qualify for the licence.
- Renewal of licences should be possible. If the comparisons among candidates for the same licence lead to no clear conclusion, preference should be given to the current licence holder.
 - Transfer of licences should be expressly ruled out.
 - A licence should be withdrawn if
 - (a) the licensed service is not started by the deadline indicated, and the Authority is satisfied that the full service will not be in operation within the next [3] months
 - (b) the licence was obtained on the basis of false information and would not have been granted otherwise
 - (c) the licensee dies, goes bankrupt or goes out of business
 - (d) the programme service does not comply, or no longer complies, substantially with the terms of the Law or the specific licensing conditions, and the licensee has not, within the set time-limit, complied with a demand by the Authority for the situation to be remedied.
- 1.5 It should constantly *monitor* the compliance of licensees with all the terms of their respective licensing conditions, as well as with the Broadcasting Law and any other relevant laws.
- 1.6 It should be empowered to take all necessary measures to *stop the transmission of broadcasting services operated without a licence*.
- 1.7 It should be empowered to take *sanctions*, at its own reasonable discretion, in accordance with the following scale:
- (a) oral or written warnings
 - (b) concrete demands for action or cessation, to be complied with either immediately or within the set time-limit
 - (c) fines not exceeding [3%] of the preceding year's gross turnover in case of deliberate or negligent violation of individual provisions of the Law or of conditions specified in the broadcasting licence or in the binding guidelines and regulations issued by the Authority. The level of the fine should be commensurate with the gravity of the infringement and, where applicable, with the gross financial benefits derived from the infringement. In case of repeated violations, the fine may be doubled. To the extent feasible, a fine should be preceded by a warning which has remained fruitless
 - (d) orders to interrupt broadcasting for a period not exceeding [one week].

Before applying any sanction, the Authority should grant the licensee a reasonable opportunity for explanation and comment.

The Authority's sanctions under (b)-(d) above, or indeed any other decisions, should be subject to judicial control.

- 1.8 Finally, the Authority should be subject to supervision by the government only as regards the legality of its activities. The Court of Auditors should audit the annual statement of accounts and determine whether the budget of the Authority has been properly and economically managed.

2. *Media concentration*

This is a very complex and difficult matter to regulate, the ultimate purpose being the avoidance of undue influence of any particular person, organization or group on public opinion-making in the broad sense of the term. This concerns ownership/shareholding/ cross-ownership in the same medium (radio, television, the press) or in a combination thereof, generally referred to as horizontal concentration. But equally it concerns the different forms of vertical integration, whether it be on the programme supply side (production companies, sports or film rights agencies, record companies, football or other sports clubs, etc.) or on the technical side (telecommunications, cable systems, proprietary decoders, electronic programme guides, etc.).

Horizontal concentration may also take the form of organized or tacit synchronous or parallel programming with other local or regional broadcasting organizations, so that in reality a national programme service is provided for which no licence had been granted, whereas the local/regional character of the programme services concerned is bound to be sacrificed.

3. *National ownership*

In view of the importance of broadcasting for democracy and for national identity, it is normal for Broadcasting Laws to limit foreign ownership. However, it must be borne in mind when regulating in this field that a foreign organization or group seeking political influence on the national level may also do so via a straw-man or another form of hidden participation.

4. *Other issues*

Other subject matters falling into the broad domain of "procedure" (as opposed to "content") are for instance the right of reply, access to information, protection of journalists' sources or the securing of evidence.

To that extent, the relevant provisions in the Model Public Service Broadcasting Law may also serve as a model for commercial broadcasting.

Content

Content regulation is in fact the major neuralgic spot for anyone opposed in principle to regulation of commercial broadcasting. However, it has already been shown that content regulation too is perfectly legitimate within the boundaries set by the previously mentioned international human rights provisions on freedom of expression and information.

Concerning restrictions and prohibitions, these may be both of a universally recognized nature (e.g. child pornography or racial discrimination) and, more frequently, based on national religious, ethical or any other type of considerations.

As regards positive programming obligations, the justification for these has also been given above. It would normally follow on from the above-mentioned considerations that, when there is a genuine public service broadcasting system in the country, the better public service broadcasting fulfils its

remits in terms of both programming content and, as a consequence, acceptance by the population ("market share") the less there may be a need for positive content regulation.

1. *Restrictions and prohibitions*

- 1.1 As regards indecent programming, violence and incitement to racial hatred, Article 3§§5 and 6 of the Model Public Service Broadcasting Law should normally apply to public and commercial broadcasters alike.
- 1.2 Other restrictions and prohibitions, if any (e.g. regarding religious beliefs or symbols, or "language") will be of a more national character and depend on the value judgments of each society.
- 1.3 Still other restrictions and prohibitions (e.g. respect for the honour or reputation of a person, the personal image or voice, the private sphere in general, the national flag or other symbols, copyright, protected business interests, etc, etc.) will normally already be laid down in other laws.
- 1.4 In the field of advertising and sponsorship, there is usually a whole series of restrictions and prohibitions (e.g. regarding products or services for which advertising/sponsorship is not allowed, the timing of advertisements and in particular the interruption of programmes, the total permitted duration of hourly/daily advertising, etc.). It is of vital interest to any commercial broadcaster that, firstly, such restrictions should be well defined and, secondly, compliance by all the competitors should be carefully monitored and enforced by the Authority.

In principle, the conditions should be identical for public and commercial broadcasters (see Articles 8 and 9 of the Model Public Service Broadcasting Law), since both compete directly on the same market. However, as is pointed out in the Explanatory Comments on Article 8, where there is public funding of public service broadcasting the overall volume of permitted advertising should be lower than for commercial broadcasting.

2. *Content obligations*

These may cover a more or less wide range of issues such as

- national language (including dubbing/subtitling of foreign programmes)
- programmes for ethnic minorities
- local/regional programming to cater for the specific interests of the people living in the area for which the programme service is licensed
- minimum percentage of national productions, specified according to programme categories (documentaries, drama series, children's programmes, etc.) to be broadcast during specified hours (e.g. 17.00-23.30)
- minimum percentage of "national" music in radio programmes
- minimum amount of programming (hours per month) in certain specified categories of programming (religion, opera, national theatre, environment, children, etc.)
- at least one full daily news bulletin (of at least [...] minutes' duration) covering both national and international news in a comprehensive and unbiased manner

- minimum programming (debates, round-table discussions, party political broadcasts) during electoral campaigns
- etc., etc.

The future

Turning now to the future, a final word should be said about the evolution of the audiovisual scene, and the possible implications of such developments on the regulation of commercial broadcasting (as we know it today). "Convergence" and "information society" are fashionable terms in this context, conveying sufficiently well the kind of development and the more or less radical changes that are likely to occur sooner or later in our global village.

It would be a grave mistake if this scenario were to be used as an excuse for doing nothing today, on the grounds that satellites, and especially the Internet, escape national regulation and control but compete directly with national broadcasting. Therefore, to give national commercial broadcasting a fair competitive chance, it should not be regulated either.

By definition, regulations are made at a given time, and they cover what is there and exists then. As things develop, regulation will follow and react with the necessary amendments and adjustments. In fact, as developments speed up, so does regulation, with the result that many countries nowadays modify their broadcasting regulation at very short intervals. Digital radio and TV services, thematic channels, multiplexes, electronic programme guides, application programming interfaces, pay-TV or pay-per-view services, decoders, protection of the national sports heritage; even just two or three years ago hardly anyone would have spoken of these, whereas today regulators in a number of countries are deeply occupied, and preoccupied, with these new developments. To quote the United Kingdom once again, following the 1990 Broadcasting Act which was mentioned earlier, another Broadcasting Act (almost 200 pages long) was passed in 1996 to regulate, in particular, digital terrestrial broadcasting as well as a number of other points which it had become necessary to modify or which had come to the fore as new subject matter to be regulated since the 1990 Act.

In conclusion, therefore, regulation should cover what exists today, mindful of what may come tomorrow and prepared to adapt and to adjust whenever the concrete need may arise in the future.

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