Self-regulation, Incentive Based Regulation, Co-regulation, Cross Sector Regulation in Social Media: Modes and Models

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1. Detecon – Who we are?
2. Does Self-Regulation Always Work?
3. Examples of Self- and Co-Regulation
Partner and Head of Delivery Detecon Asia Pacific: Dr. Werner Knoben

Dr. Werner Knoben
Partner

Area of studies
- PhD in Mathematics: RWTH Aachen University, Aachen

Professional Experience
- T-Com / Deutsche Telecom / Detecon – Partner: Bidding and Auction Strategies; War gaming; Regulatory strategies; Due Diligence; Scenario Analysis

Key Qualifications
- Regulatory and wholesale strategy, market liberalization, competition law, regulatory costing and accounting separation
- Auction Design, Auction Strategies, Game Theory, War gaming, Communication Strategy, Bid Strategy
- Consumer and B2B strategy, Business Cases, Scenario Analysis

Selected Project Experience
- TRA Oman: Setup of a 4G spectrum auction
- NCC Nigeria: Setup of SMS and Data Interconnection Regulation
- NBTC Thailand: Development of an Accounting Separation Framework
- SingTel, Singapore: Auction and bid strategy and 4G license valuation
- TMMK/MKT, Macedonia: Regulatory Costing
- Advisor for Deutsche Telekom subsidiaries in Croatia, Hungary and Slovakia for regulatory strategies
We are part of Deutsche Telekom Group, the number one ICT provider in Europe. Our goal is to leverage the strengths of the group in international markets.

### Key Facts Deutsche Telekom Group

- USD 75 billion net revenue
- 239,000 FTE employees
- 1,500 headcount in group innovation and partnerships
- 50.5 million fixed network lines
- 123 million mobile customers
- Number one ICT provider in Europe
- Number one cloud provider outside US
- Strong international footprint
- Group vision: *The customers’ first choice for connected life and work*
Detecon’s global presence ensures that clients get access to the knowledge and know-how of telecommunications experts worldwide.

**Key Facts Detecon International GmbH**

- **Foundation:**
  - 1954 – Diebold
  - 1977 – DETECON
- **Restructuring:**
  - 2002 – Detecon International GmbH
- **Shareholder:**
  - T-Systems International GmbH
- **Employees:**
  - More than 1,000 worldwide
- **Turnover 2012:**
  - EUR 168 million
- **Locations Germany:**
  - Cologne (head office), Dresden, Eschborn, Munich
- **International Locations:**
  - Abu Dhabi, Almaty, Ankara, Bangkok, Beijing, Jakarta, Johannesburg, Moscow, Riyadh, San Francisco, Vienna, Zurich
Detecon Asia-Pacific Ltd. is focusing on wider South East Asian markets. We can build on successful client relationships that have developed over 25 years.

Key Facts Detecon Asia-Pacific Ltd.

- Business Activities in Asia: Since 1985
- Foundation of Detecon Asia-Pacific Ltd.: 2005
- Major Shareholder: Detecon International GmbH (99%)
- Employees: 45
- Turnover 2012: EUR 7 million
- Regional Headquarters: Bangkok
- Regional Branch Offices: Jakarta, Kathmandu
- Webpage: www.detecon-asia-pacific.com

Presence in Asia

- Detecon Asia-Pacific Ltd.
- Detecon China
- Regional Head Office
- Branch Office
We combine a rich service portfolio with a unique approach to consulting and in-depth knowledge of the industry.

<table>
<thead>
<tr>
<th>Strategy and Marketing</th>
<th>Technology Management</th>
<th>Organization and Processes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Startup and Launch Support</td>
<td>Network Rollout / Launch Support</td>
<td>Business Process Management (Business Process Audits, Business Process Engineering including eTOM and ITIL), Process Optimization</td>
</tr>
<tr>
<td>Marketing and Sales Strategies</td>
<td>Technology Strategy</td>
<td>TOGAF Training and Certification</td>
</tr>
<tr>
<td>Wholesale Strategy and Implementation</td>
<td>Outsourcing, Managed Services</td>
<td>Enterprise Transformation Management</td>
</tr>
<tr>
<td>Regulatory Advisory (Regulation Frameworks, Licensing, Lobbying)</td>
<td>Vendor Selection</td>
<td>Reorganization and Merger Integration</td>
</tr>
<tr>
<td>Corporate Strategy</td>
<td>Network Performance Management</td>
<td>Human Resources Management</td>
</tr>
<tr>
<td>Corporate Finance</td>
<td>Network Operations Efficiency</td>
<td>Procurement and Supply Chain Management</td>
</tr>
<tr>
<td>Cost Optimization</td>
<td>Tool Based Network Planning, Design and Rollout</td>
<td>Financial, Risk and Compliance Management</td>
</tr>
<tr>
<td>Business Planning</td>
<td>ICT Strategy Organization</td>
<td></td>
</tr>
<tr>
<td>Business Development</td>
<td>Technology Innovation Management</td>
<td></td>
</tr>
<tr>
<td>Innovation Management</td>
<td>Green Technologies</td>
<td></td>
</tr>
<tr>
<td>Big Data Strategy</td>
<td>ICT Transformation Management</td>
<td></td>
</tr>
<tr>
<td>Due Diligence and Investment Appraisal</td>
<td>Next Generation Data Centre</td>
<td></td>
</tr>
<tr>
<td>Corporate Social Responsibility</td>
<td>Enterprise Architecture Strategy and Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Enterprise Service Management</td>
<td></td>
</tr>
</tbody>
</table>

Program Management, Project Management, Interim Management
We support regulatory authorities and operators since 1977 with our deep regulatory and sector reform knowledge and experience worldwide.

<table>
<thead>
<tr>
<th>Sector Reform and Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sector Reform Strategy</strong></td>
</tr>
<tr>
<td>- Review of given market situation</td>
</tr>
<tr>
<td>- Analysis and benchmarking of liberalization experience in other countries</td>
</tr>
<tr>
<td>- Examination of political, legal and economic implications</td>
</tr>
<tr>
<td>- Elaboration of guidelines and policies for sector reform</td>
</tr>
<tr>
<td><strong>Communication and Competition Legislation</strong></td>
</tr>
<tr>
<td>- Analysis of existing legal situation</td>
</tr>
<tr>
<td>- Primary and secondary legislation</td>
</tr>
<tr>
<td>- Regulations and calculation models (price squeeze, margin squeeze, predatory pricing)</td>
</tr>
<tr>
<td>- Anti-competitive conduct (ex-ante and ex-post)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Regulatory Policies / Procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Regulatory market definition and analysis</td>
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<tr>
<td>- Competition policy, SMP designation and remedies</td>
</tr>
<tr>
<td>- Licensing and Authorization</td>
</tr>
<tr>
<td>- Universal service policy</td>
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<tr>
<td>- Tariff policy and tariff regulation</td>
</tr>
<tr>
<td>- Interconnection and Access Regulation</td>
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<tr>
<td>- Numbering</td>
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<tr>
<td>- Dispute resolution</td>
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<td>- Market Monitoring and enforcement regulation</td>
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<td>- Consumer, Data and Privacy Protection</td>
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<td>- Frequency spectrum allocation and management</td>
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<td>- Standardization and type approval</td>
</tr>
</tbody>
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<tr>
<th>New Regulatory Challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Fix-mobile convergence regulation (e.g. pricing of mobile termination, national and international roaming, MNP, SMP evaluation, digital dividend, spectrum trading, re-farming, auctioning, …)</td>
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<td>- Legal framework for eCommerce, eHealth and eGovernment</td>
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<td>- Media, IT, telecom convergence regulation (e.g. for content and applications, IPTV, PPV, …)</td>
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<td>- Technical and economic regulation in an NGN environment, e.g.</td>
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<td>- VoIP regulation,</td>
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<td>- Net neutrality and QoS,</td>
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<td>- NGA industrial policies,</td>
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<tr>
<td>- Next Generation Data Centre,</td>
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<td>- Network Resilience and QoS,</td>
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<td>- OTT</td>
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Our Asian client base includes donor institutions, regulatory bodies, industry suppliers and telecommunications carriers across the whole region.
A country view on completed projects proves that we are industry experts capable of dealing with strategic challenges as well as detailed implementation tasks.
A country view on completed projects proves that we are industry experts capable of dealing with strategic challenges as well as detailed implementation tasks.
1. Detecon – Who we are?

2. Does Self-Regulation Always Work?

3. Examples of Self- and Co-Regulation
Rapid technological developments and globalization set out new challenges in the area of data protection. The risk to privacy and data protection increases with online activity.

New Challenges for the Protection of Personal Data
- Consumers can share information easily e.g. with social networking sites and cloud computing
- Data collection activities become difficult to detect
- International data transfers

Example of the new challenge caused by technological development:
Increasing usage of online applications enables automatic data collection e.g. electronic transport ticketing, geolocation services which enables location tracking based on mobile connection.
The EU initiated Data Protection Reform to counter with technological changes. This will strengthen individual’s rights and facilitate businesses via consistency mechanism.

**Data Protection in EU**

- The 2 Pillars of Data Protection are still applied to the data protection scheme today.
  1. Protection of fundamental rights (personal data) and freedoms of individuals
  2. Achievement of the internal market – the free flow of personal data
- The EU proposed a reform of the EU’s data protection rules in January 2012 and is now under discussion.

**The EU’s Initiatives on Data Protection Reform**

- **What does it mean for Consumers?**
  - The Right-to-be-Forgotten: Data shall be deleted if an individual wishes for it, and data can be kept only as long as it needs to fulfill legal obligation.
  - Privacy by Design and Privacy by Default: Data protection safeguards should be built into P&S from the earliest stage of development.
  - Privacy-friendly default settings should be the norm.
  - Data Portability aims to facilitate transfer of personal data.

- **What does it mean for Business?**
  - Consistency Mechanism is to streamline cooperation between data protection authorities.
    - One Continent, One Law promotes pan-European law for data protection (reducing 28 laws 1 common law)
    - One-Stop Shop allows companies to report to 1 supervisory authority
  - Same rules are applied to companies established outside of the EU but operates business in the EU single market.
Facebook introduced Privacy Policies that hand over basic data protection responsibilities to their users.

The Privacy Policy of Facebook – A frontrunner in Self Regulation?

Facebook hands over responsibility of Data Protection to its users. Facebook users have the total control of their data and are able to indicate which data shall be publicly available and which not. Furthermore, Facebook introduced the “Right to be Forgotten” by giving users the chance to permanently delete all their data.

Privacy by Design and Privacy by Default: “Privacy Checkup” is easily accessible on user’s starting page.

Privacy by Design and Privacy by Default: Facebook users are given user-friendly tools to control their personal data.

Right to be Forgotten
1. Detecon – Who we are?
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3. Examples of Self- and Co-Regulation
Digitalization comes with an increased amount of media content. Regulators face the challenge of balancing freedom of expression with strict control over harmful content.

The online world today has enabled information-sharing on a global scale as well as encouraged new forms of journalism.

Individuals become active participants – from receiving content to create or co-create content.

The Internet has further promoted the freedom of expression – leading to an increased amount of media content. However, these content may also include harmful, inappropriate content.

Hence, there is a call for the rule / regulation that can govern online content internationally as content is now published on a globally open environment.

The important question is, should online content be regulated and if so, how?
Confronting the Social Media Regulatory Challenge

Media content including online reviews is to be regulated to ensure that media professionals as well as end-users are accountable for their actions.

<table>
<thead>
<tr>
<th>What to regulate?</th>
<th>Whom to regulate?</th>
<th>Why regulate?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Media Content</strong></td>
<td><strong>Owners and controllers of media and communications organisations</strong></td>
<td>Protection of individual and sectional rights</td>
</tr>
<tr>
<td>■ Information-sharing on social media</td>
<td>■ Print Media</td>
<td>Protection of public order and support for instruments of government and justice</td>
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<tr>
<td>■ Online reviews</td>
<td>■ Broadcasters</td>
<td>Promotion of accountability and social responsibility</td>
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<tr>
<td>■ Online prints</td>
<td>■ Internet service providers</td>
<td>Promotion of the efficiency and development of the communication system,</td>
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<tr>
<td>■ Prohibitions</td>
<td>■ Internet content hosts</td>
<td>The promotion of freedom of expression</td>
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<td>■ Labelling</td>
<td>■ Telecommunication carriers</td>
<td>Maintaining conditions for effective operation of free markets in media services – competition and access, protection of consumers, stimulating innovation and expansion</td>
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<tr>
<td>■ Guidelines</td>
<td>■ Telecommunication service providers</td>
<td></td>
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<tr>
<td>■ Ethics</td>
<td>■ Creators and producers of content</td>
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<tr>
<td><strong>Consumer Protection</strong></td>
<td>■ Search engines and web portals</td>
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<tr>
<td>■ Minimum standards for equipment</td>
<td>■ Individual end-users</td>
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<td>■ Service provider behavior</td>
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<tr>
<td>■ Personal data protection</td>
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Confronting the Social Media Regulatory Challenge – Self-Regulation

State-regulation relies on the power of laws for control, commonly adopted in broadcasting. This may not be the best form of regulation for Internet, online media.

### State- / Direct-Regulation Overview

**State Regulation or Direct Regulation** is a strict form of legal control where the regulated bodies e.g. industry members, consumers, are to obey by the laws. There is an idea of control by a superior body with directive function.

<table>
<thead>
<tr>
<th>Industry members have low flexibility.</th>
<th>Regulatory interventions are negatively perceived.</th>
<th>Regulation is limited to national scope.</th>
<th>Freedom of Expression is limited.</th>
</tr>
</thead>
</table>

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<thead>
<tr>
<th>Basic Models of Media Regulation</th>
<th>Focus of Regulation</th>
<th>Broadcasting (Radio and Television)</th>
<th>Print Media</th>
<th>Online Media</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structure</td>
<td>High</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
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<tr>
<td>Infrastructure</td>
<td>High</td>
<td>None</td>
<td>None</td>
<td>High</td>
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<tr>
<td>Distribution</td>
<td>High</td>
<td>Low</td>
<td>None</td>
<td>None</td>
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<tr>
<td>Access</td>
<td>High</td>
<td>None</td>
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<tr>
<td>Conduct</td>
<td>High</td>
<td>Low</td>
<td>None</td>
<td>None</td>
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<tr>
<td>Content</td>
<td>High</td>
<td>None</td>
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<td>None</td>
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Internet is an international medium – not owned solely by any country or fall under any single jurisdiction. Thus, it is difficult to make accountable. This calls for a rule which could govern this internationally.
Freedom of expression is the basic human rights which shall be protected. Here, a regulatory mechanism that has high flexibility is more favorable than state-regulation.

Why should Freedom of Expression be protected?

- **Constitutive Rationales**
  - “These are based on the recognition that freedom of expression matters because human beings matter, irrespective of whether or not their views are correct, true or valuable in any ultimate sense.”

- **Instrumental Rationales**
  - “These are based on the recognition that freedom of expression leads to something valuable – that having freedom of expression advances important goals.”

State-regulation imposes strict controls without much flexibility which limits the freedom of expression.

Source: The Role of Media and Press Freedom in Society
Self-regulation encourages industry members to voluntarily take responsibility with the flexibility of being independent from government control.

Media Self-Regulation

**State- / Direct-Regulation**

- Transitions from more state-controlled to liberal free market regimes as technological changes remove the rationales for state-regulation.

**Self-Regulation**

is a regulatory system that operates, on some level, independent of government control.

Example: MEAA Code of ethics for journalists, Advertising Standards Board hears complaints about advertisements

1. **Industry members are independent of government control.**

2. **Industry members are involved in the regulation.**

**Self-Regulation Promotes Online Media Freedom**

- Legislation may put limitation on media freedom e.g. suppressing opposition and critics.
- Self-regulation can prevent government from interfering extensively with media content.

**Self-Regulation without Government’s Intervention**

- Government, in general, does not have a role in self-regulation unless it is recognized by law or entitled to funding from the government.

**Self-Regulation does not mean that there is no regulation!**

- This regulatory mechanism is usually adopted together with some legislations to set the appropriate boundaries.

Media companies show that there is a **conscious balance** between freedom (to act independently of government) and responsibility.

“We must therefore balance our presumption of freedom of expression with our responsibilities, for example to respect privacy, to be fair, to avoid unjustifiable offence and to provide appropriate protection for our audiences from harm.”

- BBC guideline
The UK Internet Watch Foundation is a successful case of self-regulation where industry actively participates in taking down illegal content from UK servers within one hour.

### The Successful Case of the UK Internet Watch Foundation (IWF)

#### How the IWF operates

- **Illegal content taken down within 1 hour**
- **Potential criminal content detected by industry**
- **Industry shares content information with police**
- **Police collects all data required for investigation**
- **Industry immediately removes content**
- **Police organizes criminal investigation and next steps**

#### Accomplishment

- Had 5 funding members and about 1,300 reports processed in 1st year
- Had 100 members and nearly 42,000 reports were processed in 2011
- Significant reduction in content hosted in the UK (from 18% in 1996 to under 1% now)

#### Reasons why self-regulation work for IWF

- Able to react to changes in the online environment very fast
- Extensive support from industry - allowing IWF to operate with only 20 staff
- More trusted than the police
- Self-regulation protects industry’s self-determination - arbiter between state objectives and user demands

### IWF Background

- The IWF was set up in 1996 by the online industry to deal with child sexual abuse content (CSAC) or child pornography.
- The IWF operates as an independent body with responsibilities to receive, assess and trace complaints from the public about child sexual abuse content.

© Detecon Consulting
Self-regulation can effectively support freedom of expression while reinforcing sense of accountability without high regulatory costs. However, it still faces some compliant risk.

**Benefits of Self-Regulation**
- **Benefits**
  - Freedom of expression and information
  - Fundamental human right
  - Media accountability
  - “Public Watchdog”
  - Drive up professional standards as organizations are required to be accountable for their actions

- **Drawbacks**
  - Lack of procedural fairness and portioning for fundamental rights – that are encouraged by independent and parliamentary scrutiny
  - Possibility of raising barriers to entry within an industry
  - Unintended monopoly power gained by players that could restrict competition

**Industry**

**Regulator**

**Benefits**
- Mitigate much of the bureaucratic hassle of government regulation
- Alleviate financial and administrative pressure
- Promote positive regulatory intervention
- Encourage cooperation from industry members

**Drawbacks**
- A danger of regulatory capture
- Possibility of increasing government compliance and enforcement costs
- Regulation is not inclusive – only a small segment of public is prepared to make a complaint
Co-regulation provides a balance between having the strict control from government enforcement and having the freedom and flexibility from self-regulation.

Co-Regulation is a combination of non-government regulation and government regulation. It involves industry members and government in developing and enforcing regulatory measures such as code of practice.

Unique characteristics of co-regulation:
- Strong partnership between industry and government
- Overlapping set of relationships – involving government, independent regulatory agencies
- Decentralized private/public system of public policy management
The Optimal Conditions framework provides preliminary indication whether self- and co-regulation will be effective. Online media, in general, is suitable for such regulation.

### Optimal Conditions for Self- and Co-Regulations

<table>
<thead>
<tr>
<th>2 Main Groups of Factors for Assessing Optimal Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Environmental conditions</strong></td>
</tr>
<tr>
<td>• Small number of market players with wide industry coverage</td>
</tr>
<tr>
<td>• High level of competition with few barriers to entry</td>
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<tr>
<td>• Homogeneous products</td>
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<tr>
<td>• Common industry-regulatory interest</td>
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<tr>
<td>• Incentives for industry members to participate and comply</td>
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<td>• Strong public concerns</td>
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<td>• Dynamic, fast-changing environment</td>
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<thead>
<tr>
<th><strong>Features of regulatory scheme</strong></th>
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<tr>
<td>[This factor is not examined here as it is country-specific]</td>
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- **Clearly defined regulatory objectives and desirable outcomes**
- **Regulator’s cooperation and ability to pursue action and to advise on industry proposals**
- **Existence and operation of transparency and accountability mechanisms to enforce compliance and penalize non-compliance**
- **Stakeholder participation in development of the scheme – here, success depends on consumer organizations and industry having a shared level of understanding of the objectives and deliverables**
- **Consumer awareness of the regulatory protection mechanisms**

**Sample Assessment for Photo-Sharing Platform:**

- **Environmental Conditions**
  - Small number of market players with wide coverage
  - Homogeneous product
  - Strong public concerns
  - Dynamic, fast-changing environment

**Features of regulatory scheme**

1. **Environmental conditions**
   - Clearly defined regulatory objectives and desirable outcomes
   - Regulator’s cooperation and ability to pursue action and to advise on industry proposals
   - Existence and operation of transparency and accountability mechanisms to enforce compliance and penalize non-compliance
   - Stakeholder participation in development of the scheme – here, success depends on consumer organizations and industry having a shared level of understanding of the objectives and deliverables
   - Consumer awareness of the regulatory protection mechanisms

**Preliminary Results: Fit for Self- and Co-Regulation**

Source: ACMA
The case of YouTube indicates that video-sharing websites have the right conditions for self-regulation scheme. Common interest and incentives to cooperate exist.

### Checking Feasibility of Self- and Co-Regulation – YouTube

**Self-Regulation**

- **Context**
  - Social media platform for video-sharing
  - Regulation of online content

- **Key Assessment Factors**
  - Industry interest and incentives to participate and comply
  - Transparency and accountability

#### Actions Taken by YouTube

- YouTube faces issues relating to inappropriate content e.g. violence, sex, drug use
- YouTube has taken self-regulatory mechanism and require users to agree to its guideline upon signing up to the service.
- YouTube developed tools for users to notify inappropriate content or to flag content which is to be reviewed by YouTube for compliance

#### Why is this successful?

- There is an alignment between public interest and self-interest in managing content of YouTube.
- YouTube has commercial interest which incentivizes it to promote appropriate online content on its website to maintain a good reputation.
- Video-sharing websites are in a fast-changing environment – self-regulation is more favorable than state-regulation

#### Outlook

- The global coverage level of Internet still causes regulatory challenge as the content issues become multi-jurisdictional.
- This causes challenges in implementing standards for appropriate content assessment.
- Online content can be easily and rapidly duplicated and shared, making it difficult to control the distribution and access.
Thanks for your attention

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