Appendix K: Self-Regulation

Advantages of Self-regulation
• Keeps government out
• Greater expertise
• Less lawyers, process

Examples for Cooperative Self-Regulation
• NAB - National Association of Broadcasters
• MPAA- Motion Pictures Assoc. of America
• Advertising Council
• Internet Engineering Task Force (IETF)
Company Self-Regulation

• TV networks have Program Standards and Practices on Departments (PSDs)

Problems with Self-Regulation

• Industry codes often lead to cartel behavior
• Usually requires government pressure in the first place
  – Substitution for unconstitutional can be government regulation of content
• No due process
• No public participation

Limitations of Self-Regulation

• No enforcement powers
• No due process
• Can be tool for collusion
• Often created as a PR to forstall government regulation

Film Regulation

• 1907 Chicago police pre-censorship of movies
• 1909 New York citizens group founded the National Board of Censorship
• Government licensing schemes and prior review enacted in many states
• Challenged on First Amendment violation
Early Film Regulation

• State censorship boards
• In 1934, the Roman Catholic church formed the “Legion of Decency” to review and rate movies
• For over 30 years, a “Condemned” rating led most practicing Catholics to avoid the movie
  – 1952, “The Miracle” case (Rosselini) declared film expression to be protected by 1st Amendment.

Self-Regulation by Film Industry

• Allowed the major studios to act in concert to standardize controversial content -- drug addiction, divorce, family planning, and interracial marriage.

Film Regulation (US)

• No government regulation
• Motion Picture Association of America (MPAA) - self-regulation

Self Regulation/Ratings

• G, PG, PG-13, R……..
• To give advance warnings so parents

Problems with Self Regulation

• People involved in self-regulation were working for the MPAA, which was funded by the major studios
• Self regulation’s effectiveness relies on threat of government regulation.

Self-Regulation of Advertising

–Generally accepted rating system
–Non-rated and NC-17 films have major distribution problems
The NAD/NARB

• The council has two operating arms, the National Advertising Division of the Council of Better Business Bureaus and the National Advertising Review Board.
• The NAD/NARB has become the advertising industry’s primary self-regulatory mechanism.


The NAD/NARC

• Reviews complaints from consumers and consumer groups, local BBBs, and competitors.


The NAD/NARB

• In 1996, of the 96 NAD investigations, 16 ad claims were substantiated, 5 were referred to the government, and 75 were modified or discontinued.
• In 1993, for the first time in its history, the NARB referred a matter to the Federal Trade Commission following an advertiser’s refusal to modify a commercial in accordance with an NARB decision.

Internet Self-Regulation:
Better Business Bureau, TrustE, DMA,

• Web sites must agree to disclose and be monitored for adherence –what personal information is being gathered.


Eli M. Noam, Entertainment Law and Media Regulation
–how it will be used,
–with whom it will be shared
–Dispute resolution mechanism
–Whether the user can control its dissemination
• Usually consumer needs to opt out

–“A seal a day keeps the government away.”

Self-Regulation of Newspapers

• Most newspapers have internal code, and an internal “ombudsman”
Journalistic Ethics
• To some columnists, the ends justifies any means
  –Violation of privacy, breach of trust, etc.
• Worse: falsification
• Doctoring photo
• Faking news sources and quotes
• Breaking in, eavesdropping
• Stealing documents

• Washington Post: statement of principle by owner Eugene Meyer in 1935
• Meyer published his seven principles on the front page in 1935.

7 Principles Include:
• “In the pursuit of truth, the newspaper shall be prepared to make sacrifices of its material fortunes, if such a course be necessary for the public good.”

Code of Conduct
• The New York Times’: 52-page manual
  • http://www.nyco.com/company-properties-times-coe.html
• Newsroom Integrity Statement, promulgated in 1999
• 155 situations are listed
  – protecting the newspaper’s neutrality;
  – the staff’s civic and journalistic activities outside *The Time*;
  – dealing with advertisers, marketing and production;
  – conflicts of interests in personal and professional activities;
  – dealing with contributions and gift

• Prohibits any reporter or editor from owning any stock or having any other financial interest, outside of mutual funds and similar investments outside their control, in any company or industry for which he or she writes, edits, packages or supervises news coverage.
• Their spouses also are prohibited from holding such investments.

• Discourages anonymous sourcing, sets rules
• The NYT manual: “Staff members must obey the law in the pursuit of news.”

• In many countries, Press Boards self-police newspapers
Press Self-Regulatory Organizations
These organizations function alternative dispute resolution services, almost like industry-wide Ombuds offices. They are intended as alternatives to litigation, not as complementary to the court system.

Examples:
1) Press Complaints Commission (UK)
2) Australian Press Council

Press Complaints Commission
- An independent organization created to regulate the UK press.
- Services are free to complainants.

Functions:
1) Investigates complaints about content (accuracy, etc.)
2) Regulates and enforces press activity with its Code of Practice.
http://www.pcc.org.uk/
Press Complaints Commission  
Code of Practice  
- Stipulates reasonable privacy expectations of individuals that ought not be violated.  
- Defines protected groups whose anonymity must be preserved (e.g. victims of sex crimes, especially children; hospital patients; individuals who may be discriminated against.)  
http://www.pcc.org.uk/

Press Complaints Commission  
Code of Practice cont.  
- Prohibition of payment by press to witnesses or potential witnesses in criminal trials.  
- Prohibition of payment by press to criminals or their associates.  
- Exceptions made to many prohibitions when the information gained is in the “public interest.”  

PCC Funding  
Funded by:  
Payments by newspapers and magazines.  
Zero government funding.

PCC Sanctions  
Though the PCC cannot impose fines on member publications, it requires that all breaches be publicized by editors, which, PCC claims, is a greater deterrent than a fine.  
http://www.pcc.org.uk/faqs/index.html#faq1_18
Australian Press Council
Functions:
1) Investigates complaints about conduct of press and editorial content.
2) Publishes Statement of Principles.

Australian Press Council
Functions cont.
3) Publishes Code of Privacy, which regulates the sort of personal information that may be published and means of acquiring such information.

Australian Press Council
Unlike the Press Complaints Commission, the Australian Press Council does not enforce the Guidelines of Reporting, understanding the guidelines as “advisories.”

Australian Press Council
Unlike the Guidelines for Press Reporting, the Code of Privacy has been agreed upon by APC member groups and is expected to be adhered to.
### APC Sanctions

APC has no power to enforce adjudications. Rather, it attempts to mediate disagreements and, when unsuccessful, issues adjudications that are expected to be published by the publication in question.


### U.S. Press Self-Regulation

Failed Self-Regulation experiments:
- Nationwide Press Councils
- Ombuds at individual publications (most papers have dissolved their Ombuds offices)

[http://usinfo.state.gov/usa/infousa/media/files/media3cd.htm](http://usinfo.state.gov/usa/infousa/media/files/media3cd.htm)

### U.S. Press Self-Regulation

Some state press councils still exist, modeled on the European press council model, such as the Minnesota News Council.


[http://usinfo.state.gov/usa/infousa/media/files/media3cd.htm](http://usinfo.state.gov/usa/infousa/media/files/media3cd.htm)

### Media Self-Regulation

The UK Press Council was renamed the Press Complaints Commission in 1990.
Newspaper Ombudspersons

In 2004, only 30 to 40 of 1,400 major US papers had ombudsmen, citing financial reasons for not retaining ombudsmen.


Newspaper Ombudspersons

After years of resistance, the New York Times finally hired an ombudsman (titled a Public Editor, who also writes a column) after the Jayson Blair scandal.


Case Discussion: Self-Regulation at Comcast

• Collaborating with other cable companies in order to create ‘standards’ of behavior
  –On customer privacy
  –On billing practices and disputes, etc.
• Reason: to avoid bad business and public image for cable industry as a whole
• To avoid government regulation due to the actions of a few companies
• To serve customers better
• To reduce competition in service quality
Self-Regulation of Newspapers

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