CHAPTER TWO

Developing Television Ratings in Canada and the United States: The Perils and Promises of Self-Regulation

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I. INTRODUCTION

In Canada and the United States, the design and development of program rating systems, planned to be used in conjunction with so-called V-chip technologies, was not undertaken by public authorities or by boards or task forces representative of a variety of groups in society, but was undertaken by select parts of the broadcasting industry. In the United States, only if the system proposed by the industry was seen to be unacceptable to the regulator, would the public authority appoint a representative advisory committee to designate a system or informally pressure the industry group to try again. In Canada, no other strategy than that of seeking a voluntary ratings system from industry groups was proposed in public documents.

These cases raise a number of important questions: Why was self-regulation chosen as a strategy to achieve what was supposedly a very important public policy objective? Why did the Canadian and U.S. cases of self-regulation take such very different trajectories in 1997 after very similar industry standards were proposed? Why did Canada end up with a less detailed system than the United States, after several years of work by the regulator on this issue? In more general terms, what benefits or costs does self-regulation have as a way to achieve public goals? What elements need to come together for self-regulation to be seen as a legitimate complement to communications policy or guidance?

It is the argument of this paper that for self-regulation to "work"—that is, to be seen as historically acceptable in the face of the overwhelming conceptual contradictions of being a judge in one's own case and excluding other nonindustry knowledge and expertise—it must address, manage, and placate at least three sets of political relations and social

conflicts. Building and managing self-regulation as a social institution in a specific instance involves negotiating and balancing: (1) government-industry relations, (2) relations among different industry groups (including among the core chosen to direct self-regulation and other industry groups not included), and (3) the relations between industry and other societal and advocacy groups that might form around an issue.

The largest peril, however, remains. Self-regulation in specific instances may be a "success" and "work" as a strategy of political management. This success may occur while at the same time self-regulation may restrict speech rights and freedoms, entrench the power of capital in certain sectors, or effectively restrict and silence fuller democratic participation in decisions that concern society as a whole.

II. SELF-REGULATION

Public regulation by government-appointed boards or commissions, whether at the national, state/provincial, or local level, is one set of methods of governing the activities of private professional and industry groups to promote the public interest. Another major mechanism that has been used in market economies and especially in North America is the self-governing bodies of professional and industry groups (Rueschemeyer, 1986; Torstendahl, 1990). Self-regulation goes beyond the self-governance by individual actors or the magical self-regulating interactions of egoistic actors in market relations. It involves conscious collective effort of professional or industry groups to informally guide, regulate, or at least set norms for behavior through the development of codes, ethics, and guidelines. Professional self-governance in market economies is justified by the claim that it is inefficient and unsafe for consumers of certain services to constantly have to prejudge the ability of a provider to successfully undertake a service. After the doctor, architect, or lawyer has provided a service, it is often too late to evaluate the service. In some cases the state grants a sort of franchise or licensing authority to professional groups. In exchange for allowing professional bodies to limit entry into a profession, the public asks those bodies to ensure a minimum level of training and to police or regulate members of the profession who do not live up to certain standards (Randall Collins, 1990).

There are several promises or potential benefits, from a functional or administrative perspective, in pursuing a strategy of self-regulation to complement more direct regulation or legislation. Self-regulation may reduce the load on public officials or regulators, allowing the industry or professional groups to handle many of the administrative and operational details that a more active and attentive regulatory strategy would entail. State agencies may still have final approval or veto power over self-regulatory schemes proposed by industry groups.

Self-regulation offers a number of promises. Many industries seeking to avoid a legislative response to public complaints or preempt calls for state regulation introduce guidelines or self-regulation. In the traditional justification, self-regulation is seen as being preferable to formal regulation both by industry groups and by some groups in government. Additionally, public officials often offer the promise that self-regulation would be abandoned if in fact it did not work, and legislation or regulation would be introduced to serve society's objectives.

One example is found in a discussion of advertising self-regulation. It is claimed that "self-regulation is usually faster and less expensive, as well as more flexible and up-to-date, than government regulation because industry knows better what the problems and their realistic solutions are" (Boddewyn, 1992, p. 3). Self-regulation does not require that injury or complaints be proved with the same rigorous standards of evidence as legal procedures; it complements and assists legal processes; it promotes greater moral adhesion to codes by industry members who designed the codes; it minimizes the friction between businesses and consumers that might arise in formal legal or regulatory settings; and it may be supported by self-regulation in other industries, such as with the interaction of advertising and broadcasting codes (Boddewyn, 1992, pp. 5–6).

A general conceptual difficulty is encountered in the term itself, which runs against a basic precept of natural justice that one should not be a judge in one's own case. Thinking clearly—and setting aside for the moment the historical rationales proposed by defenders of professional and industry power—on the face of it, the idea that industries will regulate their own activities seems absurd. As well, self-regulation portrays most problems or complaints as arising on the margins, as a result of the actions of the few individuals or firms who are not following appropriate practices, rather than a whole social and political arrangement that may be fundamentally skewed in industry's favor. People who might be offended by the assumptions of self-regulation are not only the members of the general public but also the experts and advocates who deal with similar subject matter as industry groups, yet whose knowledge and experience is not consulted, acknowledged, or respected in the industry self-regulatory solution.

Self-regulation by professions and industry involves a number of problems or perils. Boddewyn, for instance, lists some criticisms of advertising self-regulation, arguing "some of which are more hypothetical than real" (p. 6). Self-regulation impairs business competition and innovation due to restraints by trade associations; it may be hampered by antitrust laws that preclude compulsory membership; it lacks effective judicial tools, rules of procedure and evidence, and penalties; it may be accompanied by little publicity and financing to make consumers aware; and industry-dominated participation in complaints processes may overwhelm the few outsiders. Boddewyn also states (hypothetically): "Self-regulation [may be seen as] a transparent device used by members of the industry (including the media) to subvert the adoption of more rigorous government standards by pretending that business will do the job when, in fact, voluntary standards might be set at minimal levels in order to avoid low membership or schism within the industry. Besides voluntary enforcement may be lax" (p. 7).

III. SELF-REGULATION AS A TELEVISION RATINGS IMPLEMENTATION STRATEGY

The V-chip initiatives in Canada and the United States provide contrasting studies in self-regulation. At bottom, while they were similar in many respects, their technological components and configuration differed in several key characteristics (see Maitland and McDowell, 1997). The U.S. system required the introduction of hardware in television sets to detect rating signals, while the Canadian system required cable companies to offer

the blocking technologies and capabilities as part of a service package. The technologies closely parallel existing technologies to provide closed captioning for the hearing impaired (Andrews, 1996). The U.S. initiative was driven by legislators, while the Canadian changes were driven by the regulator, with no new legislative mandate or direction. The U.S. system was the first policy move in that country to reflect social concerns and the widespread and long-standing concerns arising from the findings of social science and health research regarding television violence, while the Canadian proposals were offered in addition to industry self-regulation of program content that had been in place since 1987 and that had been recognized by the regulator.

Canadian Broadcast Policy and Regulation

Differences in modes of self-regulation are imbedded in contexts. The Canadian ratings system had to be sensitive to the wide availability of programming originating in the U.S. Concern over program content in Canada is primarily about the origins of programming (Communications Canada, 1992; Ellis, 1992; Information Highway Advisory Council, 1995). The vast majority of programming available on Canadian television screens originates in the United States. Canadian cultural and broadcasting policies have attempted to use various measures to promote "Canadian content," whether through the public broadcasting network (the Canadian Broadcasting Corporation), through content requirements, or through program development funds and tax credits. The private Canadian broadcasting and cable industry exists as it does because of the national protections given to it by communications policies. These protections—such as national ownership requirements, tax laws to direct advertising revenue streams to Canadian media, and programmers' continued access to audiences through carriage by cable television distribution networks—are also supplemented by broadcasters' and cable companies' profits from reselling programs and channels originating in the United States (see Jeffrey, with McAninch, 1996). Following from this support of the broadcasting system to achieve national cultural objectives, one might surmise that the CRTC has the possibility of exercising considerable influence and authority in its relationship with Canadian broadcasters. However, the regulator and government have been very circumspect in actually enforcing many performance requirements or imposing what are seen by the industry as onerous requirements (see Babe, 1979; Richard Collins, 1990).

Throughout the last two decades, the CRTC and the Canadian government have attempted to choose and to support specific Canadian cultural "producers" as vehicles to achieve the goals of Canadian cultural policies. This term "producers" has increasingly been translated to mean a small number of nationally owned communications oligopolies, dependent on the government for protection while at the same time restricting public policy options to the tasks of promoting the "bottom line" of cultural industries (Babe, 1979; Raboy, 1990). This is seen as a way of making certain cultural goods and services available to the Canadian public. Cultural producers include Canadian book publishers, magazine publishers, the sound recording and music industries, television program producers, and film production companies. At the same time, state support for public cultural agencies, such as the Canadian Broadcasting Corporation, the National Film Board,

and the Social Sciences and Humanities Research Council, has diminished significantly in the last decade (see Dorland, 1996).

Along with a focus on production, in the last decade there has been considerable attention given to the distribution of communications and cultural services. Canadian films, it is argued, cannot reach Canadian audiences because film screens are controlled by contracts made for North American distribution. On the other hand, the Canadian cable television system offered a uniquely Canadian distribution channel for audiovisual programming, and also allowed for the introduction of a number of successful specialty cable services in the 1980s and 1990s. This has resulted in the existing distribution industry being seen as a very important partner in the Canadian cultural policy project. This has also meant that Canadian broadcasters required a ratings system that did not put them at a disadvantage compared to U.S. competitors.

The Canadian Television Industry's Ratings Proposal

Prior to the introduction of the V-chip policy, the Canadian Association of Broadcasters (CAB) had already introduced a Violence Code in 1987 (CBSC, 1997). The 1987 Violence Code, according to the Canadian Broadcasting Standards Council (CBSC), was "appropriate to its time, [but it] came to be viewed as insufficient for the public's needs in the 1990s." As a result of a number of public outcries over several cases of violence, convictions by the government and others that media was implicated in this violence, and a request from the CRTC in May of 1992, the Canadian broadcasting industry decided to rework the 1987 code. In February 1993 it created an Action Group for Violence on Television (AGVOT). A new Voluntary Code on Television Violence was proposed to the CRTC in September 1993, which approved it in October 1993 (CRTC, 1993a). This new code went into effect in 1994 without any new legislation being passed. The pay television programmers also adopted a standard in 1994 (CRTC, 1994a).

Critics, such as the Coalition for Responsible Television (1995), have noted that the CAB code defines "gratuitous violence" in its own unique way, quite differently from a dictionary definition: gratuitous violence is that which is not germane to the plot or story line. This allows television programs to tell stories that include violence if the story is about violence. The code for industry self-regulation allowed viewers to take complaints first to the Canadian Broadcast Standards Council (CBSC), and then to the CRTC if industry responses were not perceived to be sufficient.

The subsequent formation of television violence policy in Canada was guided more directly by the regulator. While no new legislation was introduced as a mandate for these significant changes in the broadcasting industry and in communications policy, they did take place in the context of a number of other political developments. In 1992, the CRTC's stated goal was to make "violence on television socially unacceptable." The approach, the CRTC stated, was to work by building "cooperation and consensus" and was to be guided by several principles, including:

1. abandon an ideological, legalistic, and therefore combative approach in favor

of a cooperative strategy recognizing TV violence as a major mental-health problem for children;

2. adopt the goal of protecting children, not censoring adults, in order to strike a balance between the right to freedom of expression and the right to a healthy childhood;
3. stick to a focused agenda on gratuitous or glamorized violence, not diffusing efforts by adding on sex, foul language, family values, specific feminist concerns, or other distinct, more controversial issues;
4. bring all players to the table—broadcasters, advertisers, producers, parents, teachers, psychiatrists, and the regulator;
5. have both a short-term and a long-term perspective. (CRTC, 1996c)

The CRTC commissioned background studies summarizing the research on the effects of television violence (Atkinson et al, 1991; Martinez, undated). Concerns about violence in society and violence in the media were also expressed in a number of other governmental forums in the early 1990s. A committee of Parliament looked into violence on television and issued a number of nonbinding recommendations encouraging greater control (Canada, Standing Committee, 1993). As well, Heritage Canada prepared a summary report (Josephson, 1995). These reports all concluded that violence in Canadian society, and violence on television, were serious problems that needed immediate and concerted action.

One high profile case testing the adequacy of industry self-regulation involved the *Mighty Morphin Power Rangers*. The Canadian Broadcast Standards Council (1994a; 1994b) required the removal of the program from the listing of a Toronto station following two separate complaints by parents. This CBSC decision also claimed that Canadian choices of this sort would be futile because a Buffalo station continued to broadcast the program, and that this broadcast was distributed on Canadian cable television distribution systems (CRTC, 1994b). Hence, despite the Canadian regulator's and industry's seeming willingness and ability to require content codes, the supposed openness of the Canadian distribution system to foreign programming was seen as limiting the effectiveness of these policies. This led to efforts to consider a ratings system that would be compatible with that being developed in the United States.

In April 1995 the CRTC (1995) called for written submissions on the problem of television violence, and announced that regional hearings and public hearings in Ottawa/Hull would be held that September. Only 232 written comments were received, and the hearings allowed, according to the CRTC, 141 individuals and organizations to "make oral submissions and discuss their views with CRTC Commissioners" (CRTC, 1996c). At the hearings, the Canadian Association of Broadcasters pointed to the problem of foreign programming, arguing that cable carriage of foreign signals and specialty channels would have to be addressed, and that any proposed solution should maintain an "equality of responsibility":

> Without assurance that other elements of the broadcasting system will classify the programming they carry—particularly programming on foreign signals

> carried by cable companies and other distributors—it is not appropriate to require Canadian programming services to adopt a formal classification system.
>
> Canadian programming services already adhere to approved violence standards that include scheduling and advisory provisions far in excess of anything that US services now [have] or are likely to have in the future. To leave foreign services unrated would deny Canadians information where they need it the most. (Nordicity, 1995, p. 25)

Public interest advocates argued that the consultation process had a very short time frame between the call for comments and the actual hearings. As well, to participate in the hearings, groups had to submit comments and agree to be available at some unspecified future date and place, at their own cost. The hearings themselves demonstrated the very significant imbalance in resources between industry groups (with large staffs of lawyers and representatives), and other groups and persons concerned about television violence. (In Canada, while telecommunications hearings allow for cost awards for public interest representation before the CRTC, these are not provided for in hearings concerning broadcasting matters [Canada, 1979].) These hearings also showed a very close relationship between the CRTC agenda and that of the largest cable television operator, Rogers.

The CRTC issued an order in March of 1996 (CRTC, 1996a) that mandated the development of a V-chip technology and a ratings system. In charging the industry group with both tasks, it noted, "the development of a classification system should involve input from the public, programmers, and distributors" (CRTC, 1997, p. 4). Following the March 1996 order, AGVOT began to work to develop a specific ratings systems and to test out the V-chip technology in Canadian homes for introduction in September 1996. AGVOT requested an extension of time from the CRTC in summer of 1996, in part because the U.S. ratings proposals were scheduled to be released in February of 1997 (CRTC, 1996b). It finally produced a report at the end of April 1997. The report proposed a ratings system that would designate the levels of violence that would be found in specific programs. This system, containing age-based categories, would not contain information about language or sexual behavior, although such features had been included in earlier tests and in public discussion of V-chip capabilities.

The AGVOT (1997) report also outlined the results from tests of proposed systems and the difficulty that AGVOT had in signing up households to participate in the tests. The Canadian Cable Television Association (1996) had noted in a January 19 report to the CRTC that the costs of introducing ratings after the program origination or production point (that is, introduction by the operators of cable systems) would be costly and involve many technical and administrative problems. It was also noted that various provincial film boards existed and that Quebec television used its own system (see Howell, 1997). Combined with the development of a ratings system in the United States that was anticipated to be a simple age-based system, the difficulties that Canadian households were having with new technology, and the pervasiveness of U.S. programming on Canadian cable distribution systems, the industry recommended an age-based program ratings system in its report of April 30, 1997.

The CRTC accepted the report on June 18, 1997 without any further public comment (CRTC, 1997), indicating that the industry group had, in its view, provided a ratings system that met the requirements the regulator had laid out in March of 1996. The report was presented as representing a consensus among the different elements of the Canadian industry. The CRTC noted that AGVOT had developed its ratings system "with the participation of representatives from both public and private broadcasters, specialty channels, the cable industry, and the independent production community" (CRTC, 1997, p. 5). The CRTC was also encouraged that the industry group, the CAB, had been expanded to include other industry sectors, such as specialty providers and cable distributors. One puzzling aspect of the report was the extent to which other types of information about program content had disappeared. An article in *Maclean's,* a national weekly newsmagazine, noted this shift and speculated that it was negotiations among the Canadian and U.S. industry groups while they were both developing standards proposals that were responsible for this drastic change in direction (McDonald, 1997).

The AGVOT report also made reference to the consultation process with nonindustry groups that it undertook in the development of the proposed ratings system. The CRTC acceptance of AGVOT's recommendations noted:

> The proposed system has been also evaluated by the public through a national public opinion survey, and through the cooperation of some 340 families who participated in the field trials. . . . Furthermore, community groups and professional associations concerned about violence on television were also consulted regarding the structure of the ratings system and the language of the descriptive and guideline information. (CRTC, 1997, p. 5)

However, some representatives of advocacy organizations depicted these "consultations" as appointments that AGVOT would call to inform other groups of what they were doing and give the results of selected surveys and studies it had prepared. Limited opportunity was given to others to participate in the design of studies, to conduct independent studies, or to check the methodology of the AGVOT studies. It is also notable that there was no further consultation with public interest groups by the CRTC between April 30, 1997 when the AGVOT proposals were offered and their formal acceptance on June 18. In fact, the last public input on this question was in the summer and fall of 1995, almost two years before any specific ratings system was proposed.

In general terms, the proposed use of a ratings system in Canada moved away from depending solely on broadcast standards to limit the depiction of violence at certain times of day and toward introducing the use of V-chip technology to allow parents to block out certain categories of programming. The ratings/V-chip option adopted by the CRTC and the industry was seen by many as, at best, a complement to existing, or even stronger, television violence codes. This approach was also seen by those supporting better quality children's television and an overall reduction of levels of violence in media and society, as quite possibly the beginnings of a diversion from more directive and positive anti-violence guidelines meant to keep certain types of programming off the air at certain times. Ratings systems, it was also argued, were like "media literacy" programs, in that

they placed the responsibility for dealing with television violence with individuals and parents, rather than addressing more directly the responsibilities of the production and distribution industries. Despite these criticisms, it should be noted that the CRTC did reiterate the broadcasters' commitment to the Voluntary Code of 1993 in its acceptance of the AGVOT program ratings system.

Industry Proposals in The United States

The inclusion of the V-chip provisions in the Telecommunications Act of 1996 renewed debates about the appropriate role and meaning of self-regulation in the U.S. Self-regulation in broadcasting was long pursued "to limit or prevent regulation by the government," or "to prevent more stringent regulation by Congress or the FCC." In the 1920s, Commerce Secretary Herbert Hoover tried to let the radio industry solve the problem of radio-magnetic spectrum interference on its own, but Congress regulated radio when this was unsuccessful. The National Association of Broadcasters introduced a Radio Code in 1929 and a Television Code in 1952 (both were discontinued in 1982 following an antitrust suit initiated by the Department of Justice that was designed to address advertising rate setting). While companies neither had to belong to the NAB nor follow the codes, these were recognized as "standards of good practice" by the FCC, which also did not establish public rules in areas covered by the codes (Smith, Meeske, and Wright, 1995, pp. 107–8).

Television networks also had their own "standards and practices" divisions to monitor and remove potentially offensive or indecent dialogue or parts of programs. These offices were reduced in size because of network budget cutbacks in the 1980s and a changing regulatory climate. Cable television programmers made efforts in 1993 to discuss plans to curb violence and to provide advisories of violent content in programs (Smith, Meeske, and Wright, 1995, pp. 108–9). The Children's Television Act of 1990 was a more direct legislative and regulatory effort to improve the provision of quality programming for children (ibid., p. 281).

In the United States, from 1993 to 1997 the main focus of efforts to introduce television program violence ratings was the provisions in what became the Telecommunications Act of 1996 (Markey, 1996). Section 551 of this act introduced requirements that V-chip technology be included in new television sets with screens thirteen inches or greater in size sold after 1998. A program ratings system would not be required by law, but if programmers decided to rate their programs they should make use of the system as developed under the provisions of the act. The language of the section mandated the FCC to prescribe a ratings system for video programming, based on the recommendations of an advisory committee. The FCC, however, would only strike this committee if the industry had not voluntarily provided a ratings system within one year after the law went into effect, or if the FCC did not find that "such rules are acceptable to the Commission." Self-regulation was an important aspect of congressional debates. The fact that the industry would design the ratings system on a voluntary basis was repeatedly mentioned, as was the fact that the government would not take the lead in developing a ratings system. Even at this stage, many argued that "self-regulation" was a not very subtle cover for state intervention.

The proposed composition of the two types of committees designated by the legislation is notable. An industry proposal was to arise from "distributors of video programming," while the advisory committee to be struck by the FCC was to be "composed of parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups, and other individuals from the private sector and is fairly balanced in terms of political affiliation, the points of view represented, and the functions to be performed by the committee." The narrowly constituted industry group, operating "voluntarily" only under the coercion of the provisions of the act, was seen as less of a threat to open communication than a broadly representative advisory committee constituted by the FCC.

In the debates in 1995 over the telecommunications bill, the broadcasting industry initially opposed any sort of ratings system or V-chip requirement, arguing that it would be an unacceptable infringement on their freedom to broadcast as a form of speech. After the passage of the bill in the Senate and the House of Representatives in the summer of 1995, and negotiations in conference committee in the fall of 1995, it became Public Law 104-104 on February 8, 1996. After meeting with administration and other officials in a White House summit on television in February 1996, the industry agreed to pursue the voluntary development of a ratings system (Andrews, 1996). The industry proposal for a ratings system was developed through 1996, made public in a press conference and White House briefing on December 19, 1996, and was formally submitted to the FCC on January 17, 1997 and amended in July 1997.

The Implementation Group and the Proposed Industry System

In the first phase, the development of the ratings system entailed much negotiation of different approaches and views among industry groups. The implementation committee was headed by Jack Valenti of the Motion Picture Association of America (MPAA), along with Decker Anstrom of the National Cable Television Association (NCTA), and Eddie Fritts of the National Association of Broadcasters (NAB). The implementation group also "represented all segments of the television industry: the national broadcast networks; affiliated, independent, and public television stations nationwide; cable programmers; producers and distributors of cable programming; entertainment companies; movie studios; and members of creative guilds representing writers, directors, producers and actors" (FCC, 1997).

The implementation group proposed an age-based system that contained only six categories. It did not provide specific information about "sexual, violent, or other indecent material," but referred to the age of the audience for which programming was designed and the types of content that the program "may contain." The small number of categories, rather than a series of scales for intensity of sexual, violent, or language content, was justified in that it "gave parents a simple, easy-to-use guide for deciding what programs are appropriate for children to watch" and that a simple system could be printed in television guides. The proposal also established an Oversight Monitoring Board, composed of six members from the broadcast television industry, six from the cable industry, a chairperson, and six members from the program production industry but with no non-

industry representation. Nonindustry views regarding the usefulness of the system to parents were to be solicited through focus groups and periodically commissioned quantitative studies.

In December of 1996, after the proposed system was announced, Mr. Valenti was being hailed as a lobbying genius, a masterful political magician who had pulled the solution out of the crosscutting industry interests and approaches, the pressures from legislators, and had bowled over the concerns of advocacy groups. On the day that the proposals were informally released, several senators and representatives wrote to the FCC in favor of the ratings system. President Clinton said that the system needed to be given time to work (Shogren, 1996; Mundy, 1997).

By law, effectively a check on self-regulation, the industry proposals had to meet the requirement of being "acceptable" to the FCC. The FCC would also, by law, make this determination "in consultation with appropriate public interest groups and interested individuals from the private sector." The key question was whether the industry had "established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children," and had "agreed voluntarily to broadcast signals that contain ratings of such programming." Hence, a key element of the industry-regulator relationship at this point was industry attempts to convince the regulator that the industry proposal was acceptable.

The industry proposal included a section arguing for a narrow definition of the term "acceptable," and also arguing that legislation had been primarily intended to let the industry develop a ratings system itself. The legislative history, the industry group claimed, and "Congress' use of the term 'acceptable' also confirmed that Congress did not intend for the Commission to demand that an industry-developed system conform to the Commission's own or anyone else's vision of an ideal program." The industry argued that "satisfactory" or "barely satisfactory or adequate" were among the dictionary meanings of "acceptable" that should be considered in the absence of specific legislative language about what acceptable meant (FCC, 1997). References to an age-based system similar to that used by the MPAA were included in Congressional debates about the legislation, while no one had specifically said that such a system would be unacceptable.

The development of the industry proposal had also involved consultation with "scores of parental, medical, religious, child advocacy and educational groups to get their views on how the parental guidelines should be structured," according to the background paper presented by the industry. The proposal also attempted, based on the legislative history of Public Law 104-104, to restrict any criticisms that it had not engaged in adequate consultation by noting that in the act the proposed composition of the industry group and the composition of the advisory committee were not similar: "No such requirement was proposed upon the industry in its development of guidelines, which shows that Congress did not intend the two processes be interchangeable." However, as became apparent rather quickly in the public comment process, many nonindustry groups thought that the age-based system in the industry proposal did not provide sufficient information and that there should have been more consultation in the development of this system.

The responses that arose in the months following the formal submission of the

proposal undermined the quiet certainty of December 1996 that the proposed ratings system was a done deal. A sampling of the comments submitted to the FCC in the matter demonstrate concerns about the ratings systems itself and the process whereby it was developed. For instance, the submission of the Public Broadcasting Service indicated that more information about program content should be provided and that the rating system, "as currently implemented is too vague and unevenly applied to accomplish its professed objectives. The rating categories lack clarity; viewers are not provided with sufficient content-specific information; programs of particular value to children are not identified; and the 'TV-PG' rating appears to have become a catch-all category" (Public Broadcasting Service, 1997, p. 3). The submission continued:

> PBS chose not to implement the Proposed Industry System when it was launched by the commercial networks and some cable services for several reasons: (i) the industry system appeared to serve mostly the interests of networks themselves, and did not reflect the concerns of parents' groups and other public interest advocates who had attempted to participate in devising the system; and (ii) PBS was not convinced that the Proposed Industry System represented the best that could be achieved, and believed that PBS viewers and member stations would be better served by further efforts to improve the system. (Ibid., p. 4)

The comments of the Presbyterian Church (U.S.A.) also echoed these same themes. The industry proposal:

> fails to provide adequate and timely information about the nature of upcoming video programming, and thereby fails to assist parents in determining whether such programming would be harmful to their children. The industry guidelines are overly broad as they include violence, language and sexual content in each category, but do not explain why a program falls within a particular category. The industry guidelines have excluded any description of the program's content, an omission which seriously limits a parent's ability to determine whether a program is suitable for children. The industry guidelines do not address the underlying social and public policy issue which has led to the need for a ratings system: i.e., the public awareness of the detrimental effects of exposure to programs containing violence, foul language and the exploitation of sexuality as well as an awareness of a lack of programs which contribute to the wholesome, fulfilling development of children. Finally, the structural mechanism proposed by industry to monitor the implementation and consistency of the ratings lacks sufficient input from non-industry organizations, and cannot be trusted to amend the industry guidelines in a timely or adequate manner. (Presbyterian Church, 1997)

Other comments addressed the issue of industry consultation with other social groups. The submission of the American Medical Association stated:

> The AMA is exceedingly concerned that the Industry Rating System was developed without adequate input from America's parents and other parties interested in and knowledgeable about limiting children's exposure to harmful programming. We would recommend that whatever rating system is ultimately approved be required to consult parents and other interested parties for their opinions and recommendations.
>
> A system developed entirely by the television industry is not likely to address all of the critical issues that television violence involves. Without the valuable input of parents and other children's advocates, a television rating system cannot accomplish the task intended by Congress—to serve the compelling governmental interest of empowering parents to limit the negative influences of video programming that is harmful to children. (AMA, 1997)

The Benton Foundation argued that the industry monopoly over the design and administration of a ratings system could and should be broken. Rather than accepting the industry-proposed ratings system or that of an FCC-appointed advisory committee, there was room in the vertical blanking interval for a number of ratings systems:

> Benton proposes that any alternative rating codes gain guaranteed rights of carriage on television broadcasts. Many parents may not feel comfortable with *any* ratings system devised by broadcasters and others with a commercial interest in the outcome. A ratings system devised by a Commission-appointed committee may not pass a constitutional test. The Commission should encourage noncommercial interests such as the National Parent Teacher Association, the American Academy of Child & Adolescent Psychiatry, and others to devise their own ratings systems. The Commission should then insist that broadcasters, cable operators, and other programmers include these ratings in the vertical blanking interval. Such rules for these codes will allow parents to choose the rating system they are most comfortable with. These codes would remain invisible in households that choose not to see them just as closed captioning does not appear in households that do not choose to use it. (Benton Foundation, 1997)

The advocates of a ratings system that included more information were assisted by the scheduling of Senate hearings in February 1997 by Senator John McCain (R-N.Mex.). These hearings provided a public forum for advocacy and industry groups at a time when the specific ratings proposals were made public and when comments were being prepared for the FCC. The hearings, which were held only in the Senate and not in the House of Representatives, allowed the legislators to shape additional input into the actual implementation of the 1996 Telecommunications Act by the FCC.

Following the initial round of comments, reply comments were also solicited so that groups could respond to the arguments made by other groups in the initial round. As the possibility that the system proposed by the industry might not be seen as acceptable

became greater, a number of groups reiterated their opposition in principle to the FCC appointing an advisory group. The ACLU (1997) stated that it "believes that government-prescribed 'ratings' systems that single out sex, violence, or other controversial subjects for adverse treatment conflict with the fundamental principles of free expression enshrined in the First Amendment. The ACLU accordingly urges the Commission to resist the pleas of those dissatisfied with the television industry's new labelling system," though it took no position on the wisdom or efficacy of the industry's system.

The American Library Association stated that it "strongly opposes a government rating scheme. In our view, any such rating system is squarely at odds with longstanding First Amendment principles that 'foreclose public authority from assuming a guardianship of the public mind'" (American Library Association, 1997).

The reply comments of the industry group sought to clarify what was really at stake in the FCC decision, and also noted that the system that had been proposed in Canada in April 1997 subsequent to the announcement of the proposed ratings system in the United States was actually very similar:

> For the first time in the history of U.S. television, an industry-wide system has been implemented with the goal of providing parents easy-to-use, widely available information concerning the level and kinds of content in a program. The TV Parental Guidelines permit parents to quickly decide which categories of programming they wish their children to watch unsupervised, and they can also use the guidelines to help them decide which programs they should watch with their children. The TV Parental Guidelines are designed to be readily usable with the "V-chip" to give parents another tool to help control their children's television viewing. . . .
>
> Additional support for the Guidelines developed by the American television industry is contained in the May 5, 1997 announcement by the Canadian Action Group on Violence on Television of a rating system quite similar to the TV Parental Guidelines. The Canadian system is supported by extensive research and actual field testing. (NAB et al., 1997)

The FCC had initially scheduled a hearing for June 20. In the meantime, direct negotiations began between the main industry representatives, a number of key advocacy organizations, and central political actors. The industry groups included the NAB, the NCTA, and the MPAA, the joint proponents of the age-based ratings system. The advocacy organizations included the National Education Association, the National Parent Teacher Association, the American Medical Association, and the Center for Media Education. The legislative group included Representative Edward Markey (D-Mass.) and Senator John McCain.

The public advocates gained support as the first half of the year progressed (Fritz and Hall, 1997; Mifflin, 1997a). Negotiations broke down with much public attention on June 19 (just before the FCC hearing and after a press announcement supportive of the advocacy groups from Vice President Al Gore), and again on June 24 (just as an agree-

ment was to be announced). Only on July 9 was an agreement on a ratings system concluded, and this was presented in a press conference on July 10.

This agreement would see the age-based system augmented by specific labels for sexual content, violence, language, suggestive dialogue, and fantasy violence. The industry, in return, sought and received pledges from individual legislators not to seek changes to the system for three years. Senator McCain prepared a letter to this effect which was signed by nine senators, Rep. Markey prepared a similar letter signed by four House members, and Rep. Billy Tauzin (R-La.), Chair of the Telecommunications Subcommittee in the House, sent a separate letter.

The process of developing a ratings system entailed direct negotiations and bargaining between the industry and advocacy groups, without the formal intervention of the FCC. Although the FCC mandate allowed for public comment, the intervention of legislators in the bargaining was not specified in the formal process outlined in the law or by the FCC. The FCC put off its hearing in order to allow the negotiation of a proposal that would be more acceptable and to avoid having to make a decision regarding acceptability of the industry proposal in the absence of an agreement.

The modified ratings system was not, however, acceptable to all involved. Industry groups that were not proprietors—specifically the guilds of writers, actors, and directors in Hollywood—"denounced the new system as a threat to their creativity and First Amendment rights" (Mifflin, 1997c). The NBC television network also broke with the industry and said it would not use the revised ratings system, as did Black Entertainment Television (Mifflin, 1997d).

Other legislators who wanted more than program labeling, that is, even tighter restrictions on program content, criticized both the modified ratings system and the agreement by others in Congress to allow three years for the system to be tried before introducing any new legislation or supporting any other legislation on television ratings or content.

This case of self-regulation under the public eye is instructive in the extent to which private, behind-closed-doors bargaining took the place of public hearings and procedures. One report noted that hearings and bills introduced in Congress in 1997 served as "leverage." However, "advocacy organizations have essentially served as Congress' proxy," and "Congress . . . deputized the PTA and others to work out a deal with broadcasters" (Farhi, 1997).

While self-regulation was a mechanism for moving the legislative mandate forward, in the process industry groups attempted to redefine the whole purpose of the ratings. The industry used two justifications to limit the amount of content in the ratings and attempted to shift the focus of the policy debate. First, the industry claimed that their system gave parents a simple guide for deciding which programs are appropriate for children to watch. However, the ratings system's primary purpose in the legislation was to work in conjunction with the V-chip to identify and potentially block programming with certain characteristics rather than deciding on specific programs. Second, the printing of program ratings is not mentioned in the act, which deals with a ratings system to be used with the V-chip technology. However, the space required to print ratings in television guides was presented by the industry as a limiting factor on the complexity of the ratings system. Both of these reasons were made less credible because cable television services had a detailed program

advisory system in place which had been operating for many years, something with which the public was familiar.

IV. CONCLUSIONS

The use of self-regulation as a governance strategy involves a very careful process of building and managing consensus at a number of levels. Self-regulation is being promoted in the U.S. as a way to control minors' access to indecent Internet content, following the Supreme Court decision overturning the Communications Decency Act provisions of the 1996 Telecommunications Act. As well, a proposed Television Improvement Act of 1997 (S. 539) would provide the television networks with an antitrust exemption so they could engage in consultation and efforts to improve the quality of programming.

Government-Industry Relations

Does self-regulation actually serve the public interest and adequately respond to public concerns, or is it just a way of protecting an industry sector or for governments to avoid choices and actions that would be difficult politically? The relations between government and industry can easily be emphasized in accounts of the formation of self-regulation, in part because agents in both groups have reasons to portray this relationship as the central conflict. Regulators, legislators, and public officials act to be seen as responding to public concerns about industry actions and behavior, and do not try to emphasize conflicts between governments and nonindustry social groups. Industry officials, similarly, try to portray regulatory initiatives as those of power hungry and arrogant bureaucrats out of touch with common people and trying to build empires and make names for themselves, rather than as responsible actions of governance. However, focusing only on this part of the story would miss elements of what transpired in the development of ratings systems for television in Canada and the United States.

Rather than being a conflictual relationship, the interaction between the CRTC and the Canadian broadcasters and cable television companies was perhaps typified by too much "cooperation and consensus." As noted in the introduction, advocates of stronger policies limiting television violence to protect children, or at least a more detailed ratings system, were very disappointed at the CRTC's quick acceptance of industry proposals. The CRTC's ties to teachers, labor unions, parents' groups, and antiviolence groups were shown to be much weaker than its linkages with the cable television industry and Canadian broadcasters. The initial round of hearings in 1995 took place before specific proposals had been given a full public review. There was no open comment period after the industry proposed a ratings system in which these groups could formally register their views of the adequacy of the system.

Many Canadians might grudgingly admit that the CRTC and the Canadian government have difficult tasks in promoting the production and distribution of Canadian programming while sitting beside the world's largest film, television, and sound recording industries. Similarly, many in government and in the public have come to accept the claims that policy liberalization and economic globalization reduce the scope of commu-

nications policies (Comor, 1990). At the same time, the CRTC could always claim to have the objective of building and supporting a communications system that reflected a range of Canadian cultural values, these often being defined in opposition to some cultural expression and products originating in the United States. What therefore seems especially disappointing both about the process and the outcome in this case, is that when a clear difference between the views of members of the Canadian public and the communication industry representatives became apparent, the CRTC pursued the industry line and agenda. Given the perspective allowed by viewing a longer sweep of time, it appears that the CRTC worked to manage the potential social crisis created by shootings in Montreal and other emotion-stirring events. It deflected the attention away from Canadian television violence and toward media literacy and American programming, rather than take the concerns of Canadians seriously. This might be seen as deft crisis management, typified by: an early expression of support by the CRTC with the concerns and objectives of the public, the government, and Parliament in order to get out ahead and gain control of this policy initiative; referring repeatedly to cooperation and consensus rather than exercising the legally mandated powers and responsibilities of the regulator; the setting of ambitious goals, which are only later abandoned because they are no longer seen to be feasible; and making claims to open consultation while at the same time limiting public and nonindustry professional groups' consultation in decision making.

Although the industry group has met its objectives without any significant costs, the cost to the CRTC has been a further reduction of a directive role in shaping Canadian broadcasting in the public interest. The CRTC's legitimacy among public interest groups in forming telecommunications policies had already been undermined by its acceptance of telephone industry proposals to increase prices for local telephone services. Self-regulation has served as a vehicle for further reducing the public role in decision making about Canadian broadcasting content. The development both of stronger public interest groups and more open and effective formal processes of public regulation seem to be called for in the face of this successful case of self-regulation.

The relationship between the regulator and the broadcasters in the United States was characterized by a greater level of conflict over basic goals of the broadcasting system. FCC Chair Reed Hundt has long been an advocate of better quality television for children, and the reduction of violence levels in television programming. In a number of issues, the broadcasting industry has seen Mr. Hundt as a Commissioner less sympathetic to their concerns than others. The legislation that required the V-chip also specified the role that the FCC would play in determining the acceptability of the industry ratings system, and FCC procedures of public comment allowed the venue and adequate time for groups who opposed the proposed ratings to build alliances and prepare submissions. These elements of the government-industry relationship allowed for more effective and continuous public shaping of the self-regulatory solution.

Relations Among Industry Groups

The management of differences among industry groups in approaching specific problems must also be conducted effectively for self-regulation to be a viable option. Not

all industry "players" may agree that a problem is serious enough to warrant a voluntary industry response or that a particular approach or solution is appropriate. Similarly, the core group that is selected as the "industry" for self-regulation may exclude other groups who believe that they have knowledge claims and membership in a profession or industry that is just as valid. Do property ownership and management control become the criteria for the selection of the core industry group, or do professional credentials also count?

The relations among different companies in the television broadcasting industry were also important in building self-governance. In Canada, AGVOT included almost all network and specialty service broadcasters. The group also made contact, and had extensive consultations, with other elements of the television broadcasting industry. The Canadian Association of Broadcasters also indicated that it would broaden its base and allow membership by other industry parties that were not members in order to allow for implementation of the television program ratings.

In the United States, trade associations were chosen to make up the implementation group, and they selected the MPAA chief Jack Valenti as their head. Valenti's credibility with the industry was reportedly essential in putting together the industry agreement on ratings proposals. However, the networks had less contact with other parts of the television industry. They also had serious disagreements among themselves regarding the appropriate strategy to pursue in dealing with the V-chip legislation, as shown by NBC's opting out of the final agreement.

Two chief problems with self-regulation emerge when considering intraindustry relations. Firstly, the debate and the reasoning used in deliberation were private and in forums that were not open even for observation by the broader public. We do not know what factors or arguments were considered to be important in making certain recommendations. Why, for instance, did printing ratings in television guides become such an important issue in the United States? Like private dispute resolution, this lack of knowledge and lack of a record of reasoning and precedents severely restricts the democratic palatability of self-regulation as a form of governance. Secondly, we do not know about the nature and extent of transnational negotiations between industry groups in Canada and the United States, between Canadian broadcasters and a group led by Jack Valenti, their long-time nemesis in Canada-U.S. trade disputes over film and television.

Industry Relations with Public Interest Groups

Self-regulation narrows the scope of consultation from all interested parties in a nation-state to a smaller group based on professional credentials or ownership and control of certain enterprises. Self-regulation may have been chosen as a way of managing conflicts between industry groups and societal groups, with less formal governmental or regulatory intervention. What is the nature of political, social, and economic conflicts that have led to this particular form of compromise? How adequately have industry groups consulted with and considered the views of other social groups? Does self-regulation as a form of social management reflect a practical historical bargain, a defense of market dynamics in face of possible incursions by the state, or a corporatist limitation on demo-

cratic participation? Is self-regulation indicative of aspects of unresolved social conflicts and social crises held in stasis?

The relations among industry and societal groups were most important in comparing the experience with self-regulation in Canada and the United States. In Canada, the industry body engaged in extensive consultations with most of the parties that had been involved in public consultations in earlier phases of the television violence proceedings. The Action Group on Violence on Television cited the comments and responses of these same groups and individuals in its report to the CRTC that presented the proposed Canadian Television Ratings Standard. It asked the Canadian Broadcast Standards Council, a group with a track record of regulating the broadcast industry's codes regarding violence in programming and in handling complaints for the Canadian public, to take responsibility in monitoring and handling complaints about the application of the ratings system to particular programs. This process was significant in that the recommendations of many analysts, health and education professionals, social science researchers, and advocates—who would in most instances be seen as holding expert knowledge on the issue of television violence—were largely ignored in the industry design of its ratings system. Public interest groups who did not speak the language of Canadian broadcast regulation were unwelcome and uncomfortable participants.

The Canadian case also showed the limitations of relying on self-regulation when neither the regulator nor the industry groups seem willing to consider public interest groups' input. Self-regulation in such a case becomes a cover for what has been seen as "regulatory capture" in more explicit and direct regulatory processes (Mahon, 1979). The CRTC structuring and definition of the problem of television violence narrowly channeled and limited the ability of public interest groups to become involved. The industry was successful in marginalizing nonindustry groups. The resource imbalance and weakness of the public interest groups suggest that the CRTC could make more provisions to include and support their participation.

In the United States, the report and proposal of the industry group tried to obscure and gloss over the weak support of public interest and advocacy groups for the age-based ratings system by referring to groups that had been consulted in designing the ratings system, without mentioning them very specifically. It also noted that the law did not require full consultation in developing the industry proposal. This was, however, a legalistic interpretation that did not carry much water practically. As mentioned above, by June 1997, the weaknesses of this strategy of nonconsultation became apparent as various groups that had been working for several months to modify the industry's proposed ratings scheme were able to shift media coverage of the story and persuade Vice President Al Gore to speak out in their favor, despite the administration's earlier support for the industry proposal. Whereas the industry groups had been able to manage a weak consensus-building process, the various interventions listed above show a strong agreement among diverse parents' and children's advocacy groups about the types of information that they wanted from a ratings scheme and the inadequacies of the proposed scheme. The FCC put off its public hearings in hopes that the industry and children's television advocates would arrive at some sort of agreement.

Implications for Other Countries

As more and more governments privatize broadcasting operations and seek policy mechanisms that are less interventionist than traditional broadcast licensing as practiced in North America, self-regulation may seem to be a strategy that can be applied in the new broadcasting environment with lower costs than formal legislation or regulation. The first question that must be asked is whether self-regulation is an appropriate institutional and policy response in the historical, political, and social conditions of a country. Will it actually achieve stated public policy goals, or will it prove to be an inadequate response to deal with certain types of questions? Would legal and regulatory measures be more useful and effective in serving important public goals, rather than the cooperation and consensus sought through self-regulation? Or, does self-regulation actually allow legislators and regulators to escape difficult decisions to protect certain constitutional principles and basic values in the face of short-term political gain?

This case has shown that for self-regulation to be seen as legitimate and effective, there are a number of difficult consensus building processes that remain. Policymakers and the public will have to assess the extent to which a responsible industry group can be formed that can mediate among various national and international firms and professions, such as those mentioned in this account. Since self-regulation is—more so than legislation or regulation—essentially a historical bargain, there are no guarantees that it will be a useful guide to policy in every nation-state.

Even if self-regulation of some form is used, the state still has a number of important roles. Public bodies should support the process of self-regulation, promoting and allowing consultation with other interested parties outside the industry, and ensuring that the intellectual resources and knowledge and political and social concerns of all groups in society are called upon and considered. The state does not whither away but serves as an important referee and forum for appropriate self-regulatory practices, and in maintaining the proper parameters and directions for the framework of self-regulation.

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