

Media in times of crisis - The Regulatory Response

Maria Donde

20 October 2016

EPRA Autumn Conference - Yerevan

UK Regulatory Framework

Content Regulation

Ofcom's powers and duties: Legislation

Section 319 of the Communications Act (“the Act”) requires Ofcom to produce Standards Codes.

“(1) It shall be the duty of Ofcom to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives”.

Section 320 sets out the Special Impartiality Requirements on the preservation of due impartiality as respect matters of political or industrial controversy; and matters relating to current public policy.

Content Regulation – powers and duties: The Code

“Standards objectives”

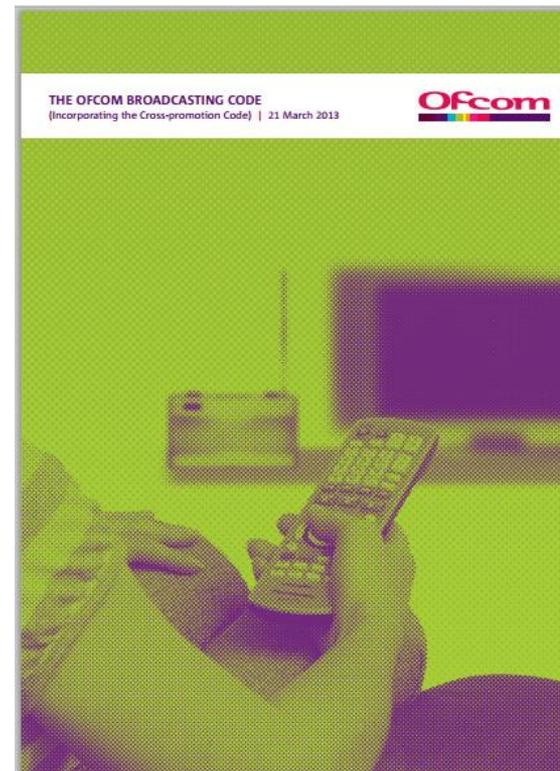
A number of specific standards objectives are set out in Section 319 (2) of the Act including that:

- “material likely to **encourage or to incite the commission of crime** or to lead to disorder is not included in television and radio services” (Section 319(2)(b)).
- “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of **offensive and harmful material**” (s.319(2)(f).)
- **news** included in television and radio services is reported with “**due impartiality**” and “**due accuracy**” (s.319(2)(c) and (d)).
- “special impartiality requirements in section 320” are complied with (s.319(2)(c)) ie. **due impartiality must be preserved when programmes are dealing with “matters of political or industrial controversy and matters relating to current public policy”**.

Setting standards

The Broadcasting Code

1. Protecting the Under-Eighteens.
2. **Harm & Offence.**
3. **Crime.**
4. Religion.
5. **Due impartiality and accuracy.**
6. Elections.
7. Fairness.
8. Privacy.
9. Commercial references in television programming.
10. Commercial communications in radio programming.



Key Issues

Section Two: Harm and Offence

Rule 2.1: “Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material”.

2.2: “Factual programmes or items or portrayals of factual matters must not materially mislead the audience.”

2.3 “In applying generally accepted standards, broadcasters must ensure that material which may cause offence is justified by the context.”

Section Three: Crime and Incitement

Rule 3.1: “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services”.

Section Five: Due Accuracy and Impartiality

Rule 5.1: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

5.5 “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved ... within a programme or over a series of programmes taken as a whole.”

New rules in Section Three

- In January 2016, Ofcom launched a consultation on amending the rules and guidance in Section Three of the Code to help broadcasters to cover topics such as extremism in a responsible manner without breaching the rules.
- In May 2016 we published a new version of Section Three. Key changes
 - The Code now defines “hate speech”: “all forms of expression which **spread, incite, promote or justify** hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation”.
 - New Rule 3.2: “Material which contains **hate speech must not be included** in television and radio programmes except where it is justified by the context”.
 - New Rule 3.3: “Material which contains **abusive or derogatory treatment of individuals, groups, religions or communities, must not be included** in television and radio services except where it is justified by the context”.

Assessing complaints through a transparent process

Ofcom receives complaints from members of the public who are dissatisfied with broadcasting standards, via the internet, phone and post.

Complaints procedure:



Sanctions

Ofcom can impose statutory sanctions if there are breaches of the Broadcasting Code or Licence Conditions are:

serious

deliberate

repeated

reckless

Possible penalties

- Direction not to repeat a programme/advertisement.
- Direction to broadcast a correction/statement of Ofcom's findings.
- Shorten or suspend a licence (only applicable to certain types of licence).
- Financial penalty.
- Revocation of licence (not applicable to the BBC, S4C or Channel 4).

Special powers: suspend licence

Ofcom can suspend a licence immediately for hate speech in very serious cases (section 239 Communications Act 2003).

Conditions

- Broadcast of material likely to encourage crime or disorder
- Breach of rule 3.1 justifies revocation of the licence

Effect of notice

- Broadcaster has opportunity to make representations against revocation
- Ofcom will revoke licence if in the public interest

Case Studies

Incitement – Rule 3.1

DM Digital – published 5 July 2013



- Channel aimed at Asian UK audience.
- Islamic scholar said all Muslims had a duty to kill or attack those seen to have insulted the Prophet.
- Ofcom fined service £85,000.

Incitement – Rule 3.1

Noor TV – published 21 August 2013

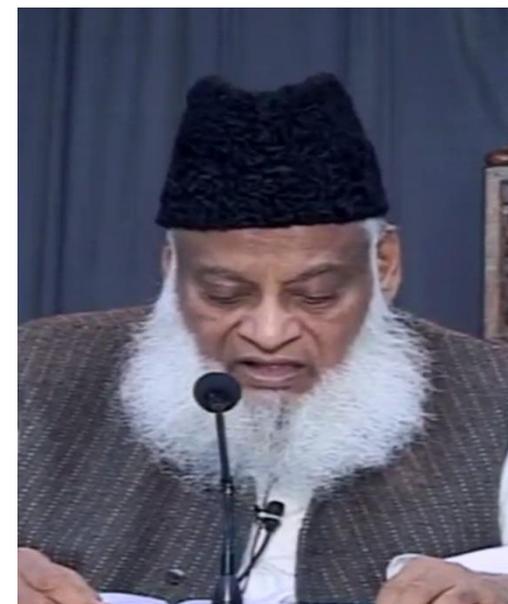


- Channel broadcasts programmes about Islam in various languages.
- Islamic scholar stated it was acceptable even a duty of Muslims to murder any one thought to have shown disrespect to the Prophet.
- Ofcom fined service £85,000.

Harm – Rule 2.1

Peace TV Urdu - published 22 February 2016

- Channel broadcasts in Urdu from an Islamic perspective.
- Two lectures by cleric who died in 2010.
- Anti-Semitic language: Jewish people referred to as: being *“this cursed people...this cursed race”* and having filled Europe during history *“with their poison”*.
- He did not directly encourage or incite the audience to take any violent action against Jewish people.
- This case is being considered for the imposition of a statutory sanction.



Harm – Rule 2.1

Noor TV – published 9 May 2016

- Speaker talking at religious festival in Pakistan.
- He recounted parable which suggested that religious obedience within the Islamic faith could be demonstrated through murder of Jewish people.
- He did not directly encourage or incite the audience to take any violent action against Jewish people.
- But his comments had the potential to harm community cohesion.
- This case is being considered for the imposition of a statutory sanction.



Due Accuracy and Impartiality – Section 5

NTV Mir Lithuania – published 27 July 2015 (CLIP)

- An item in this news programme on 28 January 2015 stated that Ukrainian military forces had used “barrier troops” and “anti-retreat troops” **against its own forces**, killing 20 and injuring many others.
- An item in this news programme on 30 January 2015 stated **that the Ukrainian Government had committed “atrocities” in south-eastern Ukraine** and had been deliberately firing on civilians.
- The viewpoint of the Ukrainian Government and/or armed forces was **not adequately reflected in these programmes**.

Breaches of Rule 5.1 (News must be duly impartial and duly accurate).

Due Accuracy and Impartiality

– Section 5

RT (Russia Today) –Published 21 September 2015 (CLIP)

- *The Truthseeker (Genocide of Eastern Ukraine)*: episode of investigative current affairs series focused on the conflict in eastern Ukraine.
- Alleged that the Ukrainian Government and its supporters had a policy of genocide against the Russian-speaking population in eastern Ukraine.
- Very serious accusations about atrocities being committed by the government and its supporters.
- The programme did not adequately reflect the viewpoint of the Ukrainian Government.
- In the decision we also expressed serious concerns that RT included allegations and statements that did not appear to be supported by the sources that they sought to rely on.

Breach of Rule 5.5 (Due impartiality must be preserved on matters of political or industrial controversy and matters relating to current public policy).

Note: Due to the seriousness of this breach, Ofcom directed TV Novosti to broadcast a summary of its Decision.

(<https://www.youtube.com/watch?v=rKfAZSjCSZg&feature=youtu.be>)

Materially Misleading – Rule 2.2

Fox News – published 21 September 2015 (CLIP)

- Weekly current affairs programme “*Justice with Jeanine Pirro*” providing Judge Jeanine’s legal insights and critical analysis on current news events, following the attack on Charlie Hebdo.
- Assertions in the programme that areas of Paris were “no-go zones” and that the English city of Birmingham was an example of a city “where non-Muslims simply don’t go”.
- Interviews with “experts” on radicalisation of Europe’s Muslim population and on terrorism.

Challenges and Alternatives

Challenges



The Refreshing Side

Content regulation: not too far

Reliable processes

Independence and cooperation

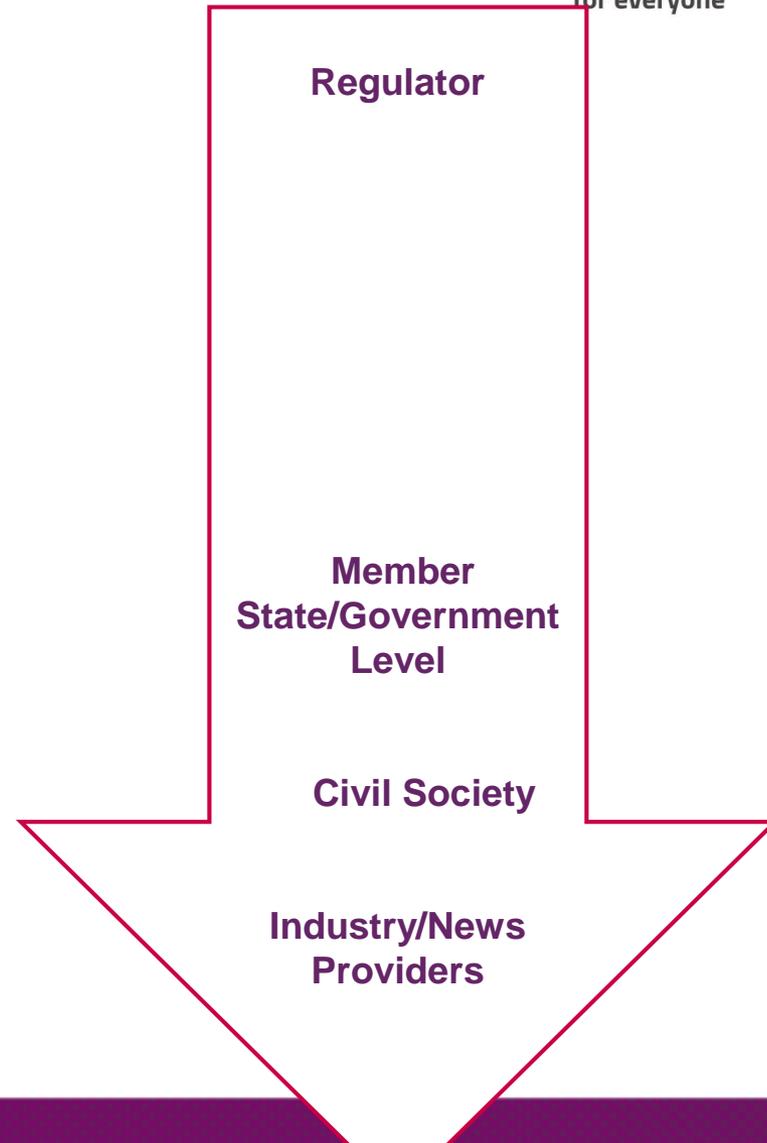
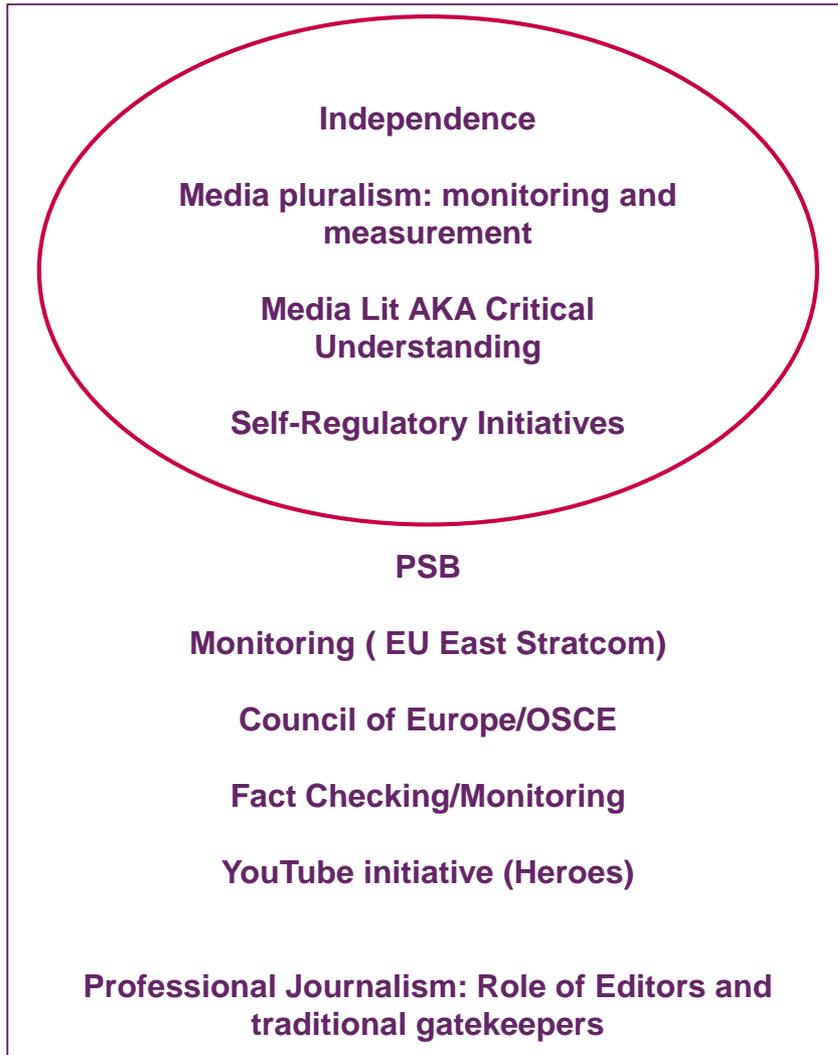
The Parts Wot Regulation Cannot Reach

Content regulation: not far enough

Political pressure

Cross-border content/New Media

Alternative Focus – Role for Regulation?



Fact Checking & Critical Understanding

“

Google

News

As Donald Trump Stumbles, Hillary Clinton Watches Her Step
New York Times - 46 minutes ago

Donald Trump is facing an apocalyptic election scenario, thanks to women voters Washington Post

Opinion: Why Donald Trump's politics are likely to live on MarketWatch

Highly Cited: Trump recorded having extremely lewd conversation about women in 2005 Washington Post

Fact Check: Donald Trump says ICE endorsed him PolitiFact

In Depth: Three Men Come Up With A Jaw-Dropping Plan For Donald Trump To Win Over Millennial Women Huffington Post

[See realtime coverage »](#)

DISINFORMATION DIGEST

ANALYSIS ★ RUSSIAN MEDIA ★ PRO-KREMLIN NARRATIVES

Every Friday #DisinfoReview @EUvsDisinfo

- [Syria: What about the Americans?](#)
- [European Parliament: Propaganda seeks to divide](#)
- [Not based on a true story](#)
- [Friday fun: Unlikely new US President](#)



Struggle against fake information
about events in Ukraine