



BRITISH
ACADEMY

e-GAP 2

Executive Summary

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Name of employing organisation: University of East Anglia

Proposal

Department: UEA Law School

Project Title: Complaints, content regulation and media convergence in the UK

Abstract: Despite the changes brought about in relation to technological convergence, the proliferation of television channels and the availability of content on the Internet, content regulation remains an important issue for much of the UK media. The point of entry for legal scholarship in this area tends to be the overarching statutory controls (e.g. the passing of the Communications Act 2003) or human rights law (the consequences of licensing or prior scrutiny, the impact of controversial decisions on freedom of expression). This study is an attempt to consider, with a particular view to the apparent changes in the media industries and in audience behaviour, the real impact of content regulation in situations where it is more routine (and less dramatic) than the occasional but well-scrutinised times when Parliament assesses principles or a court reviews a particular determination. At a time when diverse laws are under review, this work would contribute, through analysis of decisions in particular, to a debate of wider public interest, informed by scholarship in media/cultural studies.

The project has three aspects; each is considered to be of interest and relevance in its own right, but designed to 'fit' with one other and to contribute to the overall objective of gaining a greater and more nuanced understanding of content regulation today and in the past in order to provide enhanced guidance for the near future.

1. Analysis of decisions. The bodies engaged in content regulation generate a certain amount of information regarding complaints, occasionally mentioned in press reports when a particularly unusual matter is addressed or a well-known programme is considered, but this material is rarely encountered in academic legal writing. Nonetheless, with the Human Rights Act in particular in mind, these decisions now tend to be quite detailed, with Ofcom's fortnightly series of Broadcast Bulletins and the British Board of Film Classification's selective Enhanced Classification Information service being particularly rich. A database of Ofcom decisions will be developed, which will facilitate a range of research outcomes during and after the proposed period of funding. Particular questions will include the factors and evidence that are relied upon in determining whether the Broadcasting Code has been violated, the provisions of the Code that are frequently the subject of complaints and of findings of breach or no breach, and the relationship between the genre or provider and the number and type of breaches. Selective analysis of decisions on related matters across media will also form a part of this topic (e.g. the BBFC in respect of cinema, video and video games, the Pan-European Games Information (PEGI) self-regulatory system for games, the emerging Association for Television on Demand (ATVOD) for non-linear services, the Press Complaints Commission for print media, and others as appropriate.

2. Emerging technologies and relationship between services. The issue here is of what happens when a particular text may fall between two (or more) possible regulatory models; an audiovisual clip in a video game, a website associated with a TV service, a live broadcast relay shown in a cinema. As well as consideration of legal provisions and regulatory decisions regarding current services, this will also involve a discussion of similar 'moments' of transition or conflict from earlier periods (e.g. the emergence of multimedia gaming, or the introduction of different genres and styles for multichannel television). This is also informed by the first aspect of this project, particularly where there can be seen to be 'advantages' of self-identification with one particular definition and thus regulatory system.

3. Interviews with regulators and with content providers affected by regulation regarding their dealings with the system. Here, the intention is to try and provide information on the little-known question of how a particular provision (e.g. in the Broadcasting Code) might affect the commissioning and production process, as well as the question highlighted in aspect 2 of how to choose between regulatory systems (where this is available). Particular attention will be paid to smaller or specialist content providers, noting that while major broadcasters such as BBC/ITV have already been the subject of analysis, from media historians in particular, some broadcasters with small audiences represent a large share of Ofcom decisions; non-UK-facing broadcasters who have chosen to be licensed in the UK will also be considered.

Planned research outputs:

Mixture of journal articles, resources and contribution to (separate) monograph; see below for further information. Policy briefings would also be prepared for an audience of regulators/parliamentarians.

This application has been constructed with a tight focus on necessary primary research, although with a further consideration of building capacity for subsequent writing up, additional applications and collaborative work. The bulk of the costs relate to the proposed appointment of a research assistant, with the second largest component supporting travel for interviews and (limited) archive work. Each are justified here.

A. Research Assistance. The main task of the research assistant (grade 7, scale point 30, which reflects the level of the proposed work) will be the analysis and formatting of regulatory decisions. With this work being carried out by the assistant, the applicant will be able to spend more time on the other components of this project and on analysing the decisions which have been prepared for this purpose. It is expected that the appointed research assistant would have (a) a qualification in law and (b) an interest in or knowledge of the media, as well as the formal computer skills to carry out the work correctly. With this in mind, it is likely that the assistant would be pursuing a Masters degree or a professional qualification in the area of media law; supervision would be provided through short weekly meetings, longer reviews every 4-6 weeks, and regular updates and discussions through email. The period of employment would be an average one day per week for 20 weeks, loaded towards the start of the research (so as to allow some time for analysis and consideration by the applicant towards the end). An informal pilot suggests that 50 decisions could be processed in a 10-hour period, meaning that a year's worth of decisions (approximately 250 in 2010) could be the subject of first processing (download, classification/keyword, upload) within under half of the RA's allocated time. The research assistant would also have the important task of assisting the applicant through identification of decisions for thorough reading, analysis and consideration, of supporting the analysis of interviews carried out by the applicant, and of contributing to the review of relevant literature.

B. Travel and Resources. A certain amount of persuasion will be necessary to gain access to the appropriate individuals. On that basis, travel to the place of employment of the interview subjects should make this a little easier. There are certain concentrations either within an organisation (e.g. a number of broadcasters owned by a single enterprise located in the same premises) or externally (i.e. clustering of broadcasting and others in particular districts in London). This should lead to some efficiencies. Where it is not possible (within the available funds or time) to interview in person, alternatives (voice/video call, or written questions) will be considered and deployed as appropriate. Regarding archives, four particular locations of interest to this project have been identified, namely Bournemouth (archives of the Independent Broadcasting Authority and the Independent Television Authority), Essex and Hull (archives of relevant NGOs such as the National Council for Civil Liberties and the National Viewers' & Listeners' Association) and the National Archives at Kew (public records such as the Williams Committee (obscenity). Other sources will be explored through conventional libraries and through Freedom of Information requests. The applicant does envisage some difficulties with the FOI law (as the Communications Act provides strong protection for confidentiality, and bodies such as the BBFC are not subject to it at all), and the disclosure of particular records is desirable but not essential.

In general, the research will be carried out at the University of East Anglia at the existing facilities of the applicant, with the research assistant generally working at the campus (library, computer lab, etc).

The cost for consumables represents an estimate of costs for photocopying, printing, postage and similar (particularly from archives and in respect of interviews), and any possible overrun will be managed through the use of electronic resources where possible.