

## The Importance of Self-regulation and Co-regulation in the New Digital Audiovisual Market

Mercedes Muñoz Saldaña \*, Victorino Gómez-Iglesias Rosón\*\*

\*Associated Professor. Head of Public Communication Department. Public Communication Department. School of Communication. University of Navarra 31080 Pamplona. Spain (mms@unav.es)

\*\*Research Professor in Training. Public Communication Department. School of Communication. University of Navarra, 31080 Pamplona. Spain (victorinogir@gmail.com)

### Abstract

On April 5, 2013, under the Plan for Children and Adolescents 2013-2016, the adoption of new Self-regulatory codes on audiovisual content on the part of the media was announced. On January 14, 2013 the first Co-regulation Agreement applicable to broadcast advertising was signed by radio service providers. Proper assessment of instituting these codes requires previous analysis of more than one issue, one being the reason for applying these instruments to the audiovisual market, and another being an analysis and evaluation regarding the characteristics of the digital audiovisual market. This study delves deep into said aspects for the purpose of evaluating the future application of self-regulation and of co-regulation to the media sector within Spain.

Keywords: self-regulation, co-regulation, codes, audiovisual, commercial communication, media.

### 1. Introduction. The need to adopt complementary instruments to the legal audiovisual framework

The Audiovisual Media Service Directive recognizes that when taking into account the incorporation of new technology into the transmission of audiovisual communication services, the regulatory audiovisual framework should reflect "the effects of the structural changes, the diffusion of information and communication technologies (ICT), and the technological evolution of the business models". This adaptation is essential for guaranteeing "optimum conditions of competitiveness and legal safeguards for information technologies, as well as for the services and industries of the media in Europe" (DOUE L 95/1, of April 15, 2010, considering 4, p. 1).

Adaptation and change are the constants of the new Directive, a framework for the legislation and audiovisual activity in Europe, including Spain, and the foundation upon which the State Members should build and modernize their audiovisual markets (Valcke, P., Stevens, D., Lievens, E., & Werkers, E., 2008). Although this regulation leaves an ample margin in said process (and therefore, it is often criticized for being vague and imprecise), it clearly marks the boundaries for taking actions, and within these boundaries is where the legislators and regulatory authorities should define their work and competences.

The work involved in adapting the regulatory framework consists in continuous legislation updating, complying with that which has been established by Community Rights, taking into account current decisive realities such as digitalization or the development of technological convergence. However, the adaptation

which the Directive refers to goes even further as it also involves discarding the idea that an exclusive application of the law is sufficient for attaining an adequately functioning new market.

Therefore, the regulation of audiovisual activity should not be limited to applying and obeying the law. It becomes more and more evident that the order, supervision and control of this sector needs instruments which, broadening and specifying that which is marked by the regulation, transcend from the standard legal framework and are capable of responding to the needs of society, industry and political powers in a way that is flexible and practical, developing aspects which do not remain limited to that which is marked by audiovisual legislation. It can be asserted that the mere task of guaranteeing basic compliance with the legal framework actually requires the aforementioned mechanisms.

In many cases, guaranteeing the attainment and preciseness of a series of objectives surpasses the expectations assumed by Community *acquis*. Said objectives include: protecting the rights of minors, infancy, and youth, and the dignity of persons, in both the programming as well as in the advertisement contents; guaranteeing strict observance of the principles of political, social, religious, and cultural pluralism as well as pluralism in thought; safeguarding linguistic and cultural pluralism of the audiovisual system as a whole; compliance monitoring of public service missions assigned to publicly or privately managed audiovisual communication media; encouraging and promoting compliance with the constitutional rights relative to the nondiscrimination of persons based on birth, race, sex, religion or ideology; guaranteeing respect for program scheduling so as to avoid cases that could be harmful to children and youths outside the legally established protective schedules; promoting the adoption of self-regulatory norms within the audiovisual sector; gathering together the demands and complaints of the associations of average citizens and television viewers; and maintaining a continuous and fluid relationship with these sectors.

Without downplaying the importance of that which is marked by the legal framework, the task of successfully attaining these goals requires instruments that specify the law and make it effective. These complementary regulatory mechanisms can be divided up into two interrelated groups: self-regulation and co-regulation. The objective of the next few pages consists in: explaining the reason behind said affirmation; rationally developing the composition of these instruments and justifying why they are needed; and justifying why co-regulation should be applied to audiovisual activities in given areas.

## **2. The reason for applying self-regulation and co-regulation to the media sector: internal and external reasons**

The reality is that the history of the audiovisual market, not only in Spain but also throughout all of Europe (and outside our frontiers), has left clear evidence that, at least up to now, the traditional legal framework alone does not appear to be capable of responding to the multiple, and sometimes incompatible, social demands implicit in this type of professional activities. And it doesn't look like the future, presided by digitalization, will simplify the context that surrounds the need to regulate this type of activities. The task of specifying what these new techniques should be is not an easy one. It requires a great deal of thought because the decisions adopted from here on in will be crucial for the future development of this market. Therefore, it is most advisable to learn from the basic lessons left to us from the history of audiovisual media over the past 50 years.

### *2.1 Internal reasons: the peculiarities of the audiovisual services market*

Even taking into account the role of the political and business interests in the election of the audiovisual legal regimen since its beginnings, it is essential to recognize that among the principal causes that have conditioned said legal framework during decades is the multifaceted nature of these services (Bakos E., 2011, p. p). This is a reality which is not too obvious on a practical level in many instances, and because of this, it is repeatedly expressed in the new European Directive which points out that "the audiovisual communication services are cultural as well as economic services and their importance for society and democracy which continues to grow –demanding guaranteed freedom of information, diversity of opinion, and media pluralism – demands the application of specific norms" (DOUE L 95, of April 15, 2010, considering 5, p. 1).

First of all, without establishing an order of importance, there is one principle that stands out. It states that the business dimension of these activities is not an additional aspect to these services, nor an issue that can be ignored in the case of public media or unnecessarily or disproportionately limited in the case of the private media for the benefit of other interests whose satisfaction can be protected in a conveniently regulated free competition regimen. The laws and political decisions that affect the media should contemplate and protect the economical aspect of these activities as well as try to make market growth compatible with the compliance of the public service functions related to the audiovisual services.

Therefore, a starting point should be that of recognizing that the arrival of digitalization and its economic viability means breaking away from the traditional application of the public service concept in the audiovisual field. The direct historical consequence of applying the public service concept to audiovisual activities consists in the *publicatio* of the activities to which it was applied; it was established due to the obligation of the States to satisfy needs that should not be left at the mercy of the laws of the market. However, if this was the legal configuration adopted in economic policies such as in the French ones, then it also follows that the same occurs in the case of the media, or regarding the Spanish aspect, direct heir of this system of state intervention in the economy; other countries, with the paradigm of the British model opted for the regulation and strict vigilance of the market with the aim of satisfying these same interests.

Many demands are derived from the commercial dimension of the audiovisual activities. Among these demands, there are two which stand out: the freedom of access to said market, and the capability of the businessman to be able to make basic business administration decisions (Sánchez Tabernero A., 2008). All of this results in the European Directive referring to the need for the new regulatory framework to prioritize a guarantee of optimum conditions of both competitiveness and legal coverage for the information technologies and for the services and industries of the media.

The audiovisual business, especially the television business, is a very peculiar business because the services that it renders, in addition to being economical, are dependent on other aspects of general interest. For this reason, even from a perspective that is more given to the liberalization of this sector, the necessary and essential involvement of the authorities in said activity is corroborated in terms of guaranteeing and promoting the common good.

Therefore, the legal recognition and practical development of the business aspect should not forget the social and cultural implications of said market. The role played by the authorities who supervise the operations of the audiovisual market is crucial in the establishment of legislative complementary

instruments (capable of avoiding the adoption of excessive or overprotective and unnecessarily restrictive legislation) in order to conciliate the freedom of business in demand with the real compliance of public interest objectives whose fulfillment is the responsibility of said market.

The second lesson to take into account lies in the technological implications present in the audiovisual market that have conditioned the historical course of the audiovisual media since its origin. In fact, the new European Directive defines itself as "a response to the technological evolution for the creation of competitive conditions for emerging audiovisual services" (Campos Freire F., 2007, p. 5). The immediate repercussions of digitalization include: new services, some of which introduce the interactivity character; new possibilities of selection for the consumer; and a significant increase in competition.

Digitalization demands new regulations in which, if possible, the least disputable affirmation would be that they assure that the technology applied to the audiovisual scene will never become stabilized. It is for this reason that the legal decisions should avoid being ridged solutions and opt for a flexible and basic legal framework, capable of adapting itself to future changes of the sector which, with the help of other regulatory instruments, will permit taking advantage of the potentialities of the audiovisual market and at the same time, will safeguard the general interest present in this activity whose services will multiply exponentially in a near future.

The third lesson is related to the inseparable connection between audiovisual media, freedom of speech and the right to information and, as a direct consequence, to their repercussion on the values of first order for democracy such as: the formation of public opinion; cultural diffusion, the functioning of the institutions or the awareness of their existence on the part of the citizens. In said connection, the controversial application of the public service concept to radio and television has resided and resisted, not only in Spain, but also in a great number of the other European countries, although under other less controversial formulas. In spite of being subjected to a crisis from its early beginnings, and although its application was limited in the new audiovisual legislation, the public service concept perpetuates in the legal texts that affect this communication media. Even the most opposing stances coincide in the opinion that within the audiovisual field, there is something in need of protection.

One of the unresolved historical problems of audiovisual regulations in Spain is the tension between the historical aspect and what appears to be the indispensable intervention of the public authorities in the interest of guaranteeing inalienable objectives of common interest in this market and, at the same time, the demanded and progressive elimination of governmental interferences in the exercise of freedom of speech and in the right to access information through audiovisual media (Sjøvaag, H., 2014, p. 7.).

## *2.2 External reasons: necessary evolution of the governmental systems*

The reason for the need to apply complimentary measures, such as self-regulation and co-regulation, to the legal framework of the audiovisual sector is not justified within the market alone; from a more general perspective, it is also justified outside the market for the necessary evolution of the governmental systems (Moss, D. A., Balleisen, E. J., 2010). We have before us a complex society in which services are multiplied and liberties are broadened at the same time that social demands and the need to satisfy citizen rights through alternative channels (especially in the case of certain activities that appear to be ungovernable through the usual legal and administrative channels) increase.

Over the past years, a reflection on the shortcomings of the current governmental systems and their possible solutions has been motivated by European Community institutions because of the inefficacy and limitations of legislative application and of the European policies that constitute the community documents. In July of 2001, the Commission presented the White Paper on Governance, a text which has resulted in numerous documents. The last one published, this past month of February, was the Resolution of the European Parliament, dated September 14, 2011; it dealt with matters such as more effective legislating, subsidiarity, proportionality and intelligent regulations.

The issues addressed by the Community institutions are based on a key idea: the need for an open decision-making process and for open political action so as to provide greater levels of integration, transparency, and responsibility, thereby resulting in improved efficacy. With this main objective, five principles of Good Governing can be listed (Muñoz Saldaña M., 2011):

- Opening up, which demands changes regarding the form of working on the part of the institutions and the use of a simple, easy to understand language, accessible to the general public;
- Citizen participation, from conception to the application of the different governmental tasks;
- Responsibility, which demands clarity in the commitments made by all the parties involved in all the phases of decision making;
- Efficacy, through the adoption of opportune and proportionate measures, guided by clear and feasible objectives, and by the fruits of experience;
- Coherence, which calls for the involvement of regional and local authorities and requires an adequate approach of policies within a framework of complex actions.

Under these principles, the proposed changes are related to four groups, two of which directly affect the need to search for new governmental systems capable of adapting and satisfying the needs of today's society in any given area, including the audiovisual sector: greater participation of the social actors and improvement in the policies and norms.

First of all, updating the governmental systems and regulatory instruments requires more involvement on the part of the social actors, with the belief that democratic maturity depends on the capability and possibility of the citizens to be able to participate in the debates and in the execution of public issues. Therefore, the authorities have the obligation of creating spaces in which said participation would be possible; in order to meet this objective, it is essential to strengthen the democratic processes of the regional and local sectors because the majority of the policies are applied at this level.

On the one hand, the involvement of these social actors requires greater efforts regarding information and education in public aspects on the part of the citizens, and therefore, greater importance and involvement of the regional and local authorities due to their responsibilities and effective power in the application of policies. These measures are integrated into the principal objective of strengthening a culture reinforced with consultations and dialogue, therefore making it essential that the civil society organizations rationalize their internal structures, guaranteeing transparency and representation and permitting structured dialogue with the parties involved, "open, transparent and periodic" (DOUE C51 E/11). The success of social participation includes involving civil society through structures capable of offering them an organized route

for channeling their demands, reactions, criticisms, or proposals. However, said involvement should also generate responsibility and transparency of the processes.

The second area in which structural government changes are proposed addresses the need for elaborating better policies and norms that lead to better results. The growth of markets and their operational structures generate more complex legislative acts and policies, leading to an excessive number of specific norms that are temporary in nature and incapable of adapting to technical progress, the evolution of the market, or the specific aspects of each area of decision. In other words, we are speaking of a defect in flexibility which inevitably triggers a large degree of inefficacy and noncompliance with the rules that are adopted; the end result is a large degree of skepticism and mistrust regarding how the system functions.

This situation could be solved by means of two routes: 1) a greater degree of collaboration from experts (in the adoption and execution of the legal framework) and 2) improved legislative quality, striving for better application and greater control. These measures are integrated into the urgent need to simplify and improve the European legal framework at all levels. Two big issues must be reviewed. The first matter concerns the improvement of the processes of elaboration and application to the laws. The express recommendation that says that legislation should not exceed the strictly necessary aspects for reaching the pursued objectives is very important. The European institutions admit that many of their regulations involve excessive stipulations and are quite costly while others are incoherent, confusing and obsolete. For these reasons, together with the improvement of the legal framework, it is recommended that complementary mechanisms to the legislative formula be launched.

This necessary search for complementary instruments to the legal framework directly affect the matter being discussed here in that, in the very words of the European Commission, a series of tools exists which, in clearly defined conditions, can be used to help simplify the legal framework and whose application principally depends on a firm commitment on the part of the State members. Among other aspects, this last challenge involves the recognition that "the legislative route is often only part of a broader solution" that combines formal norms with other non-binding instruments such as self-regulation and co-regulation. Resorting to these complementary instruments is principally done in order to:

- Avoid an unnecessary overload of legislative documents by simplifying and reducing the volume. Simplification does not mean deregulation; its objective is to help the citizens and economic operators understand the regulatory framework;
- Make the application of certain norms more efficient;
- Modernize the normative framework;
- Adapt the regulation to the peculiarities of diverse activities;
- Take advantage of the experience of both parties, especially that of the social agents and representatives (this latter advantage specifically exists in the case of co-regulation).

True to the objectives of opening up, citizen participation, responsibility, efficacy and coherence, the self-regulation and co-regulation processes specify the basic principles of Good Governing: proximity and interdependence. The decisions are made in a context that is close to the area being regulated and in direct collaboration with the agents that participate in the area in question.

### **3. Self-regulation and co-regulation: conceptual delimitation**

Once the internal and external causes that demonstrate the need for setting up and reinforcing these complementary processes have been established, it is advisable to define these processes with accuracy, specifying the areas that they can be applied to and stating the initiatives through which they should be carried out. In addition, in this regard, the European texts that compile and analyze the initiatives of the State members have placed special emphasis on the need to give greater importance to this type of complementary instruments.

#### *3.1. Self-regulation*

As pointed out earlier, the fact that the protagonists of a sector establish a system of norms specifically for themselves so as to govern their activity is not something new. However, the review of this system in light of the unsuccessful application to certain sectors, such as the audiovisual sector, and in view of the current needs is indeed novel. Self-regulation is a permanent topic of discussion (information; fiction and entertainment; and publicity and public relations). Taking into account the limited operativity of the laws in the solution of problems related to the rights and responsibilities involved in exercising freedom of speech and the right to be informed through the media, self-regulation was presented as a necessary tool for guaranteeing compliance with professional standards in different aspects of communication (Muela Molina C., Perello-Oliver S., 2014).

Although there is no commonly accepted definition ( Prosser, T., 2008), the European institutions, in the Interinstitutional Agreement "Better Lawmaking" ratified in 2003 and assumed by the new Directive regarding audiovisual media services, pointed out that: "the term self-regulation is defined as the possibility for the economic agents, the social representatives, non-governmental organizations or associations to adopt common guidelines (especially codes of conduct or sectorial agreements)".

With regard to the governing of the Community institutions, this text points out that said initiatives do not necessarily mean that institutions need to take a specific standing, especially when said agreements take place in areas that are outside the legal framework. However, reference is made to the need that said agreements or codes conform to the legislative principles. In fact, the text states that "the Commission will inform the European Parliament and the Council of the self-regulating practices that it believes contribute to meeting the objectives of the EC Treaty and which are compatible with its regulations and, which are satisfactory with regard to representivity of the parties involved, coverage of the sector and geographical coverage and the value added to the commitments that have been made. Nevertheless, it will examine the possibility of presenting a legislative proposal, especially when requested by the appropriate legislative authorities or in the case of noncompliance with these practices".

In other words, the specific aspects of self-regulation consist in the following: 1) they have resulted from a voluntary commitment of the parties affected or involved in the sector and 2) they do not necessarily imply the existence of a legislative act regarding the area affected, although they are not left outside the legal regulations currently in force, in the case that there are any. Theoretically speaking, a large degree of importance has been given to this because it has been stated that there is a possibility that the institutions might not feel the need to present legislative proposals in matters whose fixed objectives are met by alternative routes such as this one, or that said institutions might even suggest attainment by the

recommendations route, suggesting self-regulation steps instead of adopting legal procedures, without dismissing the possibility of legislating in the case that the self-regulation solution turns out to be insufficient or ineffective (Xuemei, B., Kitchen, P., Cuomo, M., 2011).

In fact, an increasingly uncontrolled content of the Code of Ethics can turn the application of this type of tool into something banal. For this reason, the new Law of Unfair Competition, in its modified version of 2009, states that "unfair by misleading will be considered when there is noncompliance with that which is stated in a previously accepted Code that complies with the requirements established by law" (art. 5). Basically, there are two requirements: the use of independent control associations and systems which are effective regarding extrajudicial resolutions for conflicts (art. 37). These measures attempt to strengthen the efficacy of self-regulation. However, this integration of self-regulation within the legal framework and its characteristics might distort the traditional definition of self-regulation as a voluntary tool, unaffiliated with the mechanisms of the law.

### *3.2. Co-regulation*

While self-regulation is a mechanism known within the Spanish environment and applied to diverse activities with more or less success, co-regulation is a tool that is currently in the process of being adopted. Setting up this co-regulation mechanism "combines legislative or regulatory measures together with other measures adopted by other agents and based on practical experience." In other words, unlike the procedure followed for setting up of self-regulation measures, in the case of co-regulation, the existence of a legislative action is essential; this consists in inserting the following into legislation: a framework of general objectives, fundamental rights, mechanisms for application and appealing, and conditions for compliance control. Therefore, it is a process that goes farther than just being supported by a legal framework. This process must be directed by an authority outside the area to which it is being applied, but with the obligation of involving all the affected parties. Hence, co-regulation has been defined as follows:

"The mechanism by which a legislative act (...) enables the interested parties and parties involved in the area in question (especially the economic agents, social representatives, nongovernmental organizations and associations) to carry out the objectives defined by the legislative authorities. This mechanism could be used based on the criteria defined in the legislative act for guaranteeing the adaptation of legislation to the problems and sectors involved, reducing the legislative work, focusing on the essential aspects, and taking full advantage of the experiences of the interested parties" (DO C 321 section 18, p.3).

In a more systematic definition, co-regulation may be understood as being:

"The combination of processes, mechanisms and instruments set up by the competent public administrations and other agents of the sector, related to establishing and implementing a framework adapted to the normative, equidistant between the interests of industry and those of the citizens, and which are specific and effective practices in such a way that the agents involved are co-responsible for its correct functioning" (Mora-Figueroa Monfort B., Muñoz Saldaña M., 2008, p.125).

Therefore, co-regulation and traditional regulation share the direct involvement of the authorities in the creation of norms and in their application and in imposing penalties in the case of noncompliance. Both co-regulation and self-regulation processes involve active collaboration on the part of the operators as well as the rest of the parties involved.

A legislative act, acting as a legal base for a co-regulation mechanism indicates the scope of said mechanism and the corresponding legislative authority assumes the obligation of defining the measures to be adopted in said act for the follow-up of its application or the measures that will be adopted in the case of non-compliance or failure to reach an agreement. The objective of co-regulation is to better identify with the policies in question. This objective is met by involving those most affected by the application of the norms in their preparation and effective execution. In this way, a higher degree of compliance is attained, even when the norms for development are not binding. The exact form of co-regulation, the way in which legal and non-legal instruments are combined, and the initiative's origin will depend on the sector involved. Nevertheless, in their application to the Community environment, the European texts put forth pre-conditions to co-regulation, warning that:

1. It should be based on a legislative act and all the proposals should be submitted to legislators.
2. It will only be used within the framework of a legislative act insomuch as it offers real added value to the service of general interest. Its use can be considered appropriate when flexible or urgent measures are needed.
3. Within this regulatory framework, the legislator establishes the essential legislation aspects: objectives, time periods, mechanisms for putting it into effect, control methods, and possible penalties in order to guarantee the legal safeguards.
4. The legislator determines to what degree the definition and execution of the application measures can be delegated to the interested parties in terms of their recognized experience.
5. In the case that the use of this mechanism does not give the expected results, a traditional legislative proposal can be considered.
6. The principle of transparency is also applied to the co-regulation mechanisms; the citizens should have access to the legislative act and application regulations; the sector's agreements and application methods should be made public.
7. The interested parties and those participating in the process should be considered representatives, and they should be organized and responsible.
8. Responsibility requirement: demands commitment on the part of the institutions.

Among the virtues of this new regulatory mechanism, halfway between traditional legislation and self-regulation, two aspects should be pointed out. First of all, it appears to be the best mechanism for adapting to the demands of the audiovisual sector due to the special nature of this market. Co-regulation contributes to overcome the tension between the historical and presumably essential intervention of the governing authorities and the demanded, progressive elimination of administrative interference in exercising freedom of speech and the right to be informed by radio or television.

Second of all, it appears to have been demonstrated that this is a tool which, applied to the media, actually functions well. This fact was corroborated by the Study of Co-regulation Measures in the media sector, a study which was ordered by the European Commission; the study itself was carried out by the *Hans-Bredow Institut* for Media Research at the University of Hamburg and by the Institute of European Media Law, carrying out an exhaustive analysis of co-regulatory measures in countries belonging to the European Community as well as in other representative countries for the purpose of examining and assessing the impact and effectiveness of co-regulation measures in different countries and sectors.

Among other issues, their analysis confirms that: co-regulation is an effective tool for meeting the required objectives stated in the legal framework (p.6.1.1); the protection of minors and the regulation of publicity contents are two aspects that are especially appropriate for the application of co-regulation measures (p. 6.1.3); it is necessary to periodically assess the instruments that are adopted (p. 6.1.4); it is advisable to copy good co-regulation examples (p. 6.3), such as in the cases of Holland (with regard to the protection of minors) or the United Kingdom (with regard to publicity regulation).

#### **4. Some conclusions regarding the application of the new Codes of self-regulation and co-regulation for the audiovisual sector in Spain**

In its application to the audiovisual market, the new Directive accurately specified all the aforementioned regarding self-regulation and co-regulation. The regulation states that the most appropriate regulatory measure for the audiovisual field should be thoroughly analyzed and in particular, it points out that it is necessary to study each specific problem in order to decide if a legislative response is needed or if it is better to find alternative self-regulation or co-regulation responses (point 36). Nevertheless, it points out the need to apply said agreement measures in accordance with the different legal traditions of the State members and with the collaboration and direct implication of those that lend their services. More specifically, it points out the obligations on the part of the State members to:

“Encourage and improve the co-regulation and self-regulation regimens on a national level in the areas coordinated by the present Directive to the degree permitted by the legal system. These regimens should receive widespread acceptance among the principally interested parties in the member States involved and should provide measures for their effective application” (art. 3.7).

One significant example of the current application of these recommendations in Spain is the fact that this past April, within the “Children and Adolescents Plan” 2013-2016, new self-regulation codes on television content and children were adopted by the media. In addition, on the 14<sup>th</sup> of January, the first Co-regulation Agreement applicable to commercial communication broadcasting was signed by the radio services.

With regard to the new self-regulation codes on audiovisual content and children it can be recalled that, up to now, self-regulation has not had the expected results with regard to minors. In the Spanish case, in 1993, the television channels that operated in Spain signed the “Agreement on principles for self-regulation of television channels related to certain program contents with regard to children and adolescents”. The text was useless due to its brevity, its low degree of practical application, and the

nonexistent procedures for safeguarding compliance. In 2004, in a second attempt, the Spanish channels, accused of not having taken into account the minors in their television programming and of systematically failing to comply with that which had been previously signed, endorsed the "Code of self-regulation on television contents and children". This measure had similarly poor results. In 2008, a study revealed the ineffective application of this agreement. The lack of awareness regarding its content on the part of the viewers (together with the failure to diffuse the content, a definite noncompliance of the assumed commitments); abandonment of the webpage (tvinfancia.es), a principal tool for filing complaints and posting suggestions; and the noncompliance of its content were just a few of the data provided by the investigators (Ruiz San Román, J.A., Salguero, M., 2008).

Four years later, the situation was similar. The last report regarding application of the Code, published in 2011, affirms the high degree of noncompliance on the part of the television channels that had signed the agreement (with the exception of channel 2). Television repeatedly breaks the rules regarding the time slot limits that have been set for child protection and they even "broadcast more adult programs in the reinforced protection evening time slots than during the rest of the time blocks" (Perales Albert A. Ed., 2011). The report has detected a very scarce volume of complaints, proof of the mistrust and unawareness on the part of the viewers with regard to the compliance of said Code and in addition, the report revealed the refusal to assume said noncompliances on the part of the television channels.

Among the insufficiencies in the application of this code and of other self-regulation codes, there are two which are directly related to each other: on the one hand, the lack of awareness on the part of the viewers with regard to the commitments made by the operators as well as insufficient knowledge regarding the procedures for filing complaints; and on the other hand, the absence or scarce development of external procedures capable of making the rules of said codes effective.

Therefore, it can be concluded that the announced application of future self-regulation codes on television contents and children remains subject to:

- The existence of independent associations capable of supervising the compliance of said Code and equipped with a system for extrajudicial resolution of conflicts. Therefore, the involvement of institutions, such as Self-controlled Publicity, in the application of the codes of ethics appears to be essential for guaranteeing the effectiveness and recognition of this type of tool.
- Effective awareness on the part of the viewers with regard to the commitments assumed by others in said Code as well as awareness regarding the procedures established for demanding code compliance.

In any case, the Spanish institutions do not appear to have followed the recommendations made by the *Hans-Bredow-Institut* for Media Research of the University of Hamburg and by the Institute of European Media Law which advise that, in regard to the protection of minors, co-regulation is especially appropriate. It can be assumed that, in the Spanish case, the absence of an independent National Audiovisual Regulation (essential for the supervision of co-regulation, as exemplified by the English case and the role of Ofcom in the supervision of this type of tool) has made the development of co-regulation applied to the protection of minors in Spain very difficult.

The Directive of Audiovisual Communication Services defines co-regulation as a “legal link between self-regulation and the national legislative power”. In other words, it considers this technique to be an instrument that is capable of giving legal effectiveness to a self-regulation technique that is scarcely effective in its application to the media. Similar to that which occurs with self-regulation, co-regulation should preserve the possibility of intervention on the part of the State in the case that the objectives are not met. The Directive, without stating the specific governmental intervention for each possible case, explicitly encourages the development of said initiatives.

In Spain, co-regulation was set up by two institutions: the now extinct “Consejo Audiovisual de Navarra” (CoAN; Audiovisual Council of Navarra) and the “Asociación para la Autorregulación de la Comunicación Comercial” (Association for the Self-regulation of Commercial Communications), both in collaboration with different Administration sections.

In the case of Navarra, on November 17, 2009 the Agreement signed between Audiovisual Council of Navarra and the regional television operators was made public. The objective of this agreement was to promote and apply the co-regulation practices of television broadcasting in the autonomous community of Navarre. The first result of this Agreement consisted in the acceptance of the “Co-regulation Code for the Quality of Audiovisual in Navarra content in 2010”. Among other aspects, this norm addressed the following issues: The audiovisual users’ rights; Media literacy; Protection of minors; Pluralism; Electoral processes: Judicial processes and Immigration. Without a doubt, this was a tool with the necessary general and flexible aspects for defining broad objectives and for updating its contents in the light of the changing needs and professional practices, and also with essential specificity for guaranteeing its correct and effective application. In fact, it was updated just one year later by an active follow-up system provided within the Code itself.

In the case of commercial communication, the association for self-regulation of commercial communication, called Autocontrol, has been very important in the implementation of self-regulation for this sector. The most recent example is the signing of an agreement on the 14<sup>th</sup> of January; it was the first Co-regulation Agreement specifically applicable to commercial communication broadcasting by radio services. The objective of this agreement, signed by Autocontrol, the State Department of Telecommunications and for the Society of Information (SETSI), and the principal agents of the radio market, is to promote the application and compliance of the publicity normative in radiobroadcasting and more specifically, that which is stated in the General Law of Audiovisual Communication insofar as that which affects the provision of radio services. As announced by the signing parties, this Agreement establishes mutual cooperation for ceasing and correcting publicity, sponsors and promotions that are illicit in radio services, within the area of the competence of SETSI.

Management of this Agreement belongs to Autocontrol, the association in charge of applying the Ethics Code, whether it is through the Service of Prior Consultation, or Copy Advice, or by means of the resolution of complaints by the Publicity Jury. With its system for resolving controversies, this is the only private Spanish association that has been recognized by the European Commission because it meets the “requirements and principles of independence, transparency, contradiction, efficacy, legality, freedom of choice, and the right of representation on the part of the consumer”, established in the Commission Recommendation 98/257/CE. Autocontrol has formed part of the EJE (Red Extra-judicial Europea) network of the Commission since the year 2000.

The number of agreements that can qualify as co-regulation agreements, signed by both the Administration and the principal agents in the world of commercial broadcasting, is continually increasing. Starting from that which is stated in the legal norm, there are various areas in which the Administration reaches agreements with Autocontrol of Publicity, as an independent entity of self-regulation, and other agents who are involved in order to further develop that which is included in the legal framework or to make it more effective with the use of complementary tools. Proof of this is the food and beverages publicity directed to minors, publicity for gambling or television publicity, all of which have specific Co-regulation Codes that have been adopted over the past decade.

An increasing application of co-regulation to the regulation of audiovisual market is a fact; however, so as not to repeat past errors committed in the traditional application of the legal framework or in the unsuccessful attempts of self-regulation, it would be advisable to review the characteristics of this tool, such as their degree of openness, flexibility, coherence, efficacy and closeness; all of these are very important aspects in applying good governing to the regulation of this complex market.

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