



Regulatory Forbearance in Operation

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Alternative regulatory models

- **Alternative regulatory contexts**
 - State regulation
 - Co-regulation
 - Self-regulation
 - The regulatory vacuum

- **Why regulate?**
 - to correct distortions or imbalances in the marketplace
 - to enhance safety
 - to help achieve wider social, economic or political goals
 - to promote competition
 - in the traditional, linear content world, to:
 - prevent harm and offence
 - protect privacy
 - uphold fairness, accuracy and impartiality

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Pros and Cons

- **The case against state and co-regulation?**
 - costly to tax payer and industry
 - bureaucratic
 - inflexible, slow moving
 - anachronistic
 - reactive, not pro-active
 - geo-political

- **Self-regulation: the favoured approach**
 - The European Commission encourages self-regulation by Internet Service Providers, through its Decision 2761999
 - Self-regulatory schemes have typically been designed in response to regulatory crises and technological developments

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The benefits of self-regulation



- Self regulation:
 - enables stakeholders to identify and adopt common standards for services and products
 - can be proportionate, bespoke, flexible and dynamic
 - can respond more rapidly and efficiently than state regulation
 - provides regulatory and legal certainty
 - supports investment
 - supports innovation
 - can be used to build consumer confidence and public trust
 - the trustmark regime signifying a common set of standards
 - is an alternative to – and can prevent - direct state regulation
 - should be less costly for its stakeholders than the alternatives

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The Stakeholder Commitment



- Self-regulation requires
 - stakeholder involvement
 - constant dialogue between those stakeholders
 - adequate resourcing
 - a clear and shared sense of purpose
 - code drafting skills
 - credibility
 - consumer trust and confidence

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Self-regulation: a case study



- **ATVOD: The Association for Television On-Demand**
 - a self-regulatory body
 - a manifestation of the UK Government's wish for light-touch regulation
 - established to regulate the provision of on-demand programming
 - Its emergence during the passage of the UK Communications Bill in 2002 arose through the twin appreciations that:
 - on-demand broadband services were based on a **one-to-one connection** between the viewer and the service provider, in contrast to the relationship between a broadcaster and its viewers; and
 - in consequence, the world of linear broadcast regulation was **not best suited** for emerging on-demand services.

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ATVOD's Creation



Five operators and service providers who had actively promoted the emergence of on-demand services were mandated by the UK Government in 2002 to establish a self-regulatory organisation.

Those operators were

- Video Networks (*HomeChoice*)

HOMECHOICE

- Kingston Communications (*Kingston Interactive*)



- The On Demand Group (*Front Row*)



- NTL



- Telewest



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ATVOD's Code of Practice



To fall outside the ambit of Ofcom (i.e. State) regulation, the service providers had to prepare and sign-up to a code enshrining two **Core Principles**:

- **The provision of Access Controls to protect children**

ATVOD's Members have a "responsibility to assist Subscribers in their efforts to protect Children and Young People from unsuitable material" (s3.1(ii), the ATVOD Code of Practice).

- **The provision of clear information**

ATVOD's Members have a "responsibility to provide accurate, timely and reasonably prominent guidance in relation to their offerings of (a) content reasonably expected to cause significant offence or upset to some Customers and (b) commercial services" (s3.1(i), the ATVOD Code of Practice).

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ATVOD's Regulatory Framework



ATVOD's regulatory framework is based on three pillars

- ATVOD's **Code of Practice**
- ATVOD **Practice Statements**
 - identify regulatory points of difference to the linear content world
 - but the Core Principles may not be changed
- the **Ofcom Codes**, including the Programme Code
 - "historical legacies matter in regulatory design"

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ATVOD's Purpose and Dividend



- ATVOD is a regulator first and foremost.
 - provides a set of bespoke common principles and standards
 - watches over the provision of on-demand programming to the television
 - ensures, in particular, its members put in place and maintain adequate means of protecting children
 - provides consumers of television on-demand with an independent body to whom they can complain; and
 - sanctions members who do not uphold its Code of Practice and Practice Statements
- ATVOD's broader dividend
 - it is proportionate, bespoke, flexible and dynamic
 - it offers its members and their consumers a trustmark
 - it has created an environment of regulatory stability
 - and, it is value-for-money

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ATVOD's future



- Our Codes will change
 - as we develop our understanding of our consumers' needs
 - as we research, build and offer new services
 - as our consumers develop their understanding of our services
 - as cultural norms and public understanding evolve
 - as we see the convergence of national, regulatory and corporate cultures
- Our membership will grow
 - Blockbuster became ATVOD's sixth member in 2004
 - A number of other organisations are currently seeking to join ATVOD
- The brand strength of our Trustmark will increase
 - We will build consumer confidence and public trust
- Our members will operate in an environment of regulatory certainty and be better able to innovate, develop and deploy



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The self-regulation of broadband



- ATVOD successfully regulates one aspect of broadband content delivery
- Broadband is not a lawless environment
- A worrying trend: the increasing appetite for State regulation.
 - Television Without Frontiers
 - FCC
 - Governments competing with one another for investment should be cautious about placing regulatory burdens on broadband
- Self-regulation the way forward.
 - There are market incentives for self-regulation
 - There is coincidence between the self-interest of the industry and the wider public interest
 - Self-policing can increase the overall demand for the industry's products and services

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