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Regulating the Broadcasting Watershed Period

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Abstract

The broadcasting watershed period is a government policy used to protect minors from the harm and offence that could be caused by exposure to adult programs. It ensures that general exhibition programs i.e. programs suitable for all age groups are aired when children are most likely to be part of the audience. It also ensures that programs that contain adult themes are scheduled for a later time of the night when children are most likely to be asleep. A study conducted to find out the factors that influence compliance with the Watershed period among broadcasters in Kenya measured the level of compliance with the watershed period regulations within the study, respondents were asked if they found the current government regulations effective in protecting children from harmful content in broadcasts. They were also asked whether they were in support of the government regulation of program content through the watershed period or whether they preferred self regulation among broadcasters. Majority of the respondents supported government regulation as opposed to self regulation. Despite this, Kenyan broadcasters have for a long time pushed to adopt self-regulation within the sector. In many instances, audiences have turned to the government regarding inappropriate broadcast programming urging them to rid the airwaves of this content, this fact illustrates the reliance that the audiences have in the government to regulate media content. Many texts point out that the main reason throughout the world for government regulation of programme content is the protection of minors, it is perhaps because of this that citizens, parents lawmakers and regulators, should not relent on the government regulation of broadcasting content and specifically the watershed period within Kenya.

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The paper argues why the government's regulation of program content through the watershed period should be upheld.

Keywords: Watershed period; government regulation; self regulation.

1.0 Introduction

After liberalization of the airwaves in Kenya in 1991, the government sought to regulate the mass media [1], they cited reasons such as a lack of media responsibility, protection of minors and public pressure to address inappropriate content [2]. Most recently the media bill 2013 has been highly debated within parliament, the bill has sought to further solidify the governments stand to regulate the media who on the other hand have opposed the regulations time and time again stating them as 'draconian'. The government has in the past stated that there is no absolute freedom and that they have to enforce the regulations to meet the best practices which are equally embraced across the world [3].

1.1. Background of regulation in broadcasting

Broadcasting is said to be the most powerful means of communication in the world, being aware of this, governments have over the years sought ways in which they could regulate what information is transmitted through the airwaves. Most of the time, restricting what information goes on air is a means of protecting citizens – especially minors from harmful content. This is because various studies on the effects of mass media have shown that children often imitate behavior that is portrayed on television [4]. The watershed period policy was brought about by this debate. It originated from a report 'Television and the Child' at the London School of Economics published in 1958 which focused on the influence of television on children. The findings indicated that after 9pm, very few children remained as part of the television audience. The study further showed that before that time, parents could not be wholly responsible for children's viewing and suggested ways in which television producers could share in this responsibility [5]. Likewise in the United States, the watershed period known as the safe harbor was established after the viewing audience was found to be sufficiently devoid of children between 6am and 10pm. A failed judicial challenge in 1995 to the broadcast regulator - Federal Communications Commission (FCC) helped to further cement the scheme [6].

The watershed was initiated in the Kenya Communications Amendment Act (2008) section 46 (I) where the Communications Commission of Kenya (CCK) was mandated to set a watershed period. It was defined in the Kenya Communications (Broadcasting) Regulations as the time between 5am and 10pm during which a licensee shall ensure that program content which contains adult scenes and/or that are of the language intended for adult audiences are not aired during the watershed period. Hence, all programmes broadcast during this period ought to be suitable for family audiences and the transition from family oriented to a more adult programming after the watershed period should be gradual. KFCB classifies all programs aired by broadcasters into various categories namely; GE (General Exhibition): Also referred to as 'U' meaning universal, this classification/rating means the program contains nothing inappropriate for viewers of all ages. PG (Parental Guidance): Also referred to as '10'; this classification/rating means the program may contain scenes unsuitable for children under the age of ten (10) years.

However, parental guidance is recommended for children 10 years and above. 16: programs in this category will contain moderate or medium impact classifiable elements of an intensity and frequency that will be appropriate to the development of teenagers. Persons under 16 years are not allowed. 18: Also referred to as Adult: this category means the program may contain scenes suitable for persons above 18 years or adults only. Pornography does not mean adult film and is prohibited in Kenya [7]. Programs that comply with the watershed period are those that fall under the General exhibition category i.e. they are suitable for all family viewing. Below is an illustration of the watershed period policy within different parts of the world.

Table 1: Watershed period policy in various parts of the world [7]

Country	Time:from	Time to
Argentina	8:00 am	10:00 pm
Austria	5:30 am	10:00 pm
Germany	5:30 am	10:00 pm
Brazil	6:00 am	10:00 pm
Canada	6:00 am	9:00 pm
Italy	7:00 am	10:30 pm
Kenya	5:00 am	10:00 pm
South Africa	5:00 am	9:00 pm
USA	6:00 am	10:00 pm

However, laws on media freedom of speech and expression have made government regulation quite controversial within the broadcast sector throughout the world. The significance of freedom of expression has been reflected by its widespread protection in international law at global and regional levels, this right is reflected in Article 9 of the African Charter on Human and Peoples’ Rights, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 13 of the American Convention on Human Rights. The key principle of ensuring freedom of speech should be embodied in any system of broadcasting regulation, but this is not an unencumbered right. The European Convention on Human Rights makes it clear that everyone has the right, "to receive and impart information and ideas without interference by public authority and regardless of frontiers." However, these freedoms may be subject to such conditions and restrictions as are prescribed by law and necessary in a democratic society [8].

In Kenya, the media have many times suggested that they would like the decision on ‘*what to air when*’ to be left to market forces and editorial policies within specific broadcast stations [9]. Prior to the Media Act 2007, the Media Council of Kenya (MCK) was a self-regulatory body formed in 2004 by media stakeholders to regulate themselves and prevent the Government from creating a regulatory body. It was only after agreements between the Government of Kenya and the Media stakeholders in 2007 when it was converted from a self-regulatory to a statutory body [10]. At that time, the Kenyan government pointed to a lack of self regulation

generally regarding content, i.e. there were no guidelines on what could be aired and when, different media houses took different stands on broadcasting adult content during the family hours i.e. during the watershed period. The Kenyan Government has also defended its stand to regulate broadcasts by stating that it had been under public pressure to address inappropriate programming by some FM stations [11]. Furthermore, regulatory experts are of the view that government regulation is usually justified on the basis that market forces alone are unable to deliver required public policy objectives [12]. Non-state players attempting to guide the Kenyan media regulatory space include the MCK that lobbies for self-regulation, the Media Industry Steering Committee (MISC), formed in 1993 and comprised of various stakeholders in the media, such as the Media Owners' Association, the Kenya Union of Journalists, the Editors Guild, the Kenya Correspondents Association, media NGOs, training institutions, state media, and the alternative press. The body aims to promote and defend the freedom and independence of the media and advocates for, among other things, the establishment of an independent broadcast regulator [13]. In support of the regulation, the government contended that alleged cases of breaches of professional standards in the print or the broadcast media had gone unpunished [9] this points to the lack of government enforcement of the law. A study on the *factors influencing compliance with the broadcasting watershed period among Kenyan broadcasters* also illustrated this [14] one of the objectives of this study was to evaluate the relationship between enforcement of the law and the level of compliance with the watershed period among broadcasters in Kenya. Enforcement statistics were sought from the regulator Kenya Films Classification Board (KFCB), and the existence of five aspects of enforcement were analyzed. The study rejected the following null hypothesis - Ho4: Enforcement of the law does not significantly affect compliance with the watershed period among broadcasters.

Lack of enforcement of the law has shown to be a factor that affects compliance with various government regulations [15,16]. Three aspects that promote enforcement to government regulations are persuasion, deterrence and incapacitation [17]. Persuasion is accomplished by convincing the target group about the wisdom of compliance and explaining why compliance with a particular regulation is necessary [18]. The probability of a penalty and its amount could have general deterrence effects [19], in the US for instance, the president signed into law a legislation increasing by tenfold the maximum fine for indecency on television and radio when indecency complaints to the FCC rose from hundreds per year to hundreds of thousands. This penalty was raised from a mere \$32,500 to \$325,000 per violation. The US President stated that a maximum fine of \$32,500 was meaningless and relatively painless for broadcasters when they violate decency standards [20]. The *deterrence* theory is a rationalist theory that is traced to the early works of classical philosophers such as Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794), and Jeremy Bentham (1748–1832). Hobbes argued that to achieve compliance, the punishment for crime must be greater than the benefit that comes from committing the crime. Beccaria argued that since people are rationally self-interested, they will not commit crimes if the costs of committing crimes prevail over the benefits of engaging in undesirable acts. Bentham pointed out that nature had placed mankind under the governance of two sovereign masters, pain and pleasure. He believed that morality is that which promotes “the greatest happiness of the greatest number”. The duty of the state in Bentham’s view was to promote the happiness of the society, by punishing non compliance and rewarding compliance. This theory of deterrence relies on three individual components: severity, certainty, and celerity. If a punishment was severe, certain, and swift, a rational person would measure the gains and losses before engaging in crime and would be deterred from violating the law if the loss was greater than the gain [21].

Incapacitation is implemented by putting an offender ‘out of action’ to prevent further harm, for example by withdrawing a broadcasting license from a broadcast station.

Table 2: Summary of enforcement measures of the watershed period among Kenyan broadcasters

Question	Which of following enforcement measures has been undertaken on broadcasting stations by the regulator	Stations (%)
i	Persuasion	73
ii	Warning letter	57
iii	Criminal penalty	0
iv	License suspension	0
v	License revocation	0

Table 3: T-tests on enforcement of the law

variable	Compliance index	n	mean	Std deviation	S. E. mean	p-value
	a	10	0.30	0.42	0.13	0.10
Enforcement	b	14	0.61	0.45	0.12	0.10

Compliance score: $a \geq 3.40$, $b < 3.40$

1.2 Self regulation and government regulation in various parts of the world

Self regulation requires that rules are specified, administered and enforced by the regulated organizations. It typically involves a group of economic agents, such as firms in a particular industry or a professional group, voluntarily developing rules or codes of conduct that regulate or guide the behaviour, actions and standards of its members [22]. According to [23] self regulation preserves independence of the media and protects it from partisan government interference. In Britain and elsewhere self regulation is increasingly being promoted as an important instrument of regulation. The Communications Act 2003 specifies a duty on the communications regulator OFCOM, to promote it. It is also often associated with the ‘better regulation’ agenda which has influenced debates and new regulatory policies in a wide range of sectors [24]. In Italy, public and commercial broadcasters agreed to a self regulatory code of conduct on television regarding minors to protect minors from harmful content. However, a supervisory committee was later set up to ensure compliance and to refer non-compliance cases to the statutory regulator. Here, the self regulation system works within the statutory control in

place. In Sweden, the Council on Media Violence supports the industry's efforts regarding self-regulation however in Germany, the Voluntary Television Review Body was founded in 1993 by the largest German commercial broadcasters as a response to a public outcry about the depiction of violence and sex on television [9]. In Canada, the Canadian Radio-television and Telecommunications Commission (CRTC) solicited comments from stakeholders on self regulation by the broadcasting industry, broadcasters, cable companies and networks overwhelmingly supported self regulation and the continued use of the current complaints process to address violence code violation. Most agreed that broadcasters should adopt some code governing television violence and cited the Canadian Association of Broadcasters (CAB) voluntary violence code as an appropriate one. Broadcasters opposed increased government regulation and the involvement of groups outside of the industry in the regulation and complaints arbitration processes, citing increased censorship and differing morals as possible threats to a broadcaster's freedom of expression. On the other hand, parents, advocacy and special interest groups largely supported increased government regulation. They claimed that the broadcasting industry will not reduce television violence because of its use of violent programming to earn profits and broaden viewer markets. They also argued that the public must be involved in the regulation and complaints arbitration processes. Many claimed that this would ensure that those working on behalf of children are able to influence nature of children's programming [25].

Self regulation grew during the 1990's to be the remedy of choice; national, regional and international documents stressed that media should take greater responsibility for protecting children and young people. The idea was that self regulation would make it possible to reduce reliance on laws and public regulation, which quickly become outdated due to the rapid pace of innovation in media technology. But for obvious reasons the degree of self regulation varies between media, it is a well-established fact that left to their own devices, media companies themselves will not change their ways, unless it returns a profit [26]. This view is supported by [23], he states that self regulation could be a more efficient system of regulation as the media understand their own environment better than the government, though he reiterates that the media may use that knowledge to further their own commercial interests rather than the public interest. Studies within the Kenyan media sector have confirmed this fact, that media owners have been largely driven by the profit motive and often ignore social responsibility roles [27]. Nevertheless, the Kenyan media has still been persistent on the issue of self regulation [28]. Similarly, the study by Githige, confirmed this [14], one of their studies objectives was to evaluate the relationship between the cost of complying with the watershed regulations and the level of compliance among broadcasters in Kenya. Various media stations were asked what the primary source of funding these were government funding, advertisers and others. It was found that the stations who stated advertisers as the primary source of funding flouted the government regulation the most. The study rejected the following null hypotheses follows;- Ho2: The cost of compliance does not significantly affect compliance with the watershed period among broadcasters.

There was significant difference in the compliance mean for those broadcasters who thought compliance was costly and those who did not think it was costly. The overall p-value for the cost variable was 0.07, and therefore the null hypothesis Ho2 was rejected. Various media stations were asked what the primary source of funding these were government funding, advertisers and others. Chi square analysis was performed on

categorical data relating to the sources of funding, it was observed that the stations which stated advertisers as the primary source of funding flouted the law the most.

Table 4: Cost of compliance t-test analysis

<i>variable</i>	<i>Compliance index</i>	<i>n</i>	<i>mean</i>	<i>Std dev</i>	<i>S. E.</i>	<i>p-value</i>
Cost of compliance	<i>a</i>	10	2.28	1.01	0.32	0.07
	<i>b</i>	14	2.99	0.77	0.21	0.08

Compliance index: $a \geq 3.40$, $b < 3.40$

Table 5: Cost of compliance correlation matrix

Compliance	Cost
1.0	-0.38
	0.07
24	24

The cost of compliance can discourage compliance with government regulation and harm the working relationship between business and government. This fact gives those who do not comply with government regulations a competitive advantage over those who do [29]. In the broadcasting industry, competition drives the industry to segment its audience where broadcasters target a particular audience, most broadcasters target the adult audiences as they are highly valued by advertisers usually because of their purchasing power [30, 31]. Many advertisers seek to run their advertisements during adult programming to gain a large audience as possible for the purpose of marketing their products. During prime time hours, broadcasters face competitive market pressures to attract and maintain the audience they deliver to advertisers, and this produces revenue to pay bills and to be profitable [32]. Driven by pressures from the competitive environment, managers violate the law to attain desired profits. A limes Mirror poll showed that the majority of local station managers said there was excessive violence in the programs networks send them, but they made profits by passing on to their local viewers the programs that they say they do not prefer [31] 1997). Nevertheless, while offensive or indecent programming may receive high ratings and result in an increase to advertising dollars in some markets, in others it may lead to protests and boycotts [33]. HSE also states that one economic rationality informing businesses attitudes towards compliance is the ability to pass on costs, that is, where business could transfer the cost of compliance to third parties e.g. consumers, that compliance was more likely to arise[19].

2. Conclusion and recommendations

In the United Kingdom, a survey and a series of 18 workshops conducted on issues relating to the watershed period revealed a strong support for the watershed by the participants when they were asked to assess its importance [34]. Likewise, a survey conducted in the United States revealed that a strong majority of the respondents supported the use of government regulations to determine the amount of inappropriate media content aired during the early evening hours [35]. Many concerns are focused around the child audience as it is alleged that children are increasingly being exposed to a growing range of harmful broadcasts. Social learning theorists have argued that children acquire attitudes, emotional responses, and new styles of conduct through exposure to these broadcasts. There is an increasing number of television and radio channels and programs in Kenya and a growing concern about what goes on air, this makes it is hard for parents to continually monitor what their children are exposed to and therefore depend on the government to play their role in the regulation of broadcast content. The rise in the number of media activity and the increase in the number of practicing journalists has grown over the years, and media policy, law and regulation in Kenya remains a bone of contention. The government has attempted to introduce new laws giving it greater power over media conduct, but bodies such as the Kenya Union of Journalists (KUJ) and MCK insist on a dispensation characterized by self-regulation [13].

A survey among audiences was conducted to measure the level of compliance with the watershed period regulations among Kenyan broadcasters. Respondents were asked whether they were in support of the government regulation of program content through the watershed period or whether they preferred the broadcasters to adopt self regulation, 82% of the respondents supported government regulation rather than self regulation.

In many instances, audiences have turned to the government regarding inappropriate broadcast programming urging them to rid the airwaves of this content, this illustrates the confidence the audiences have in the government to regulate the media content appropriately. Many texts point to the fact that the main reason throughout the world for government regulation of programme content is the protection of minors, it is perhaps because of this that citizens, parents lawmakers and regulators, should not relent on the government regulation of broadcasting content and specifically the watershed period within Kenya.

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