

# Self-Regulation and Policy in the Spanish Audiovisual Sector: The Catalan Code of Best Practices

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## Abstract

The regulatory framework of the audiovisual sector in Spain can be defined as huge, disperse, and obsolete. The first part of this paper provides an overview of the major challenges of the Spanish audiovisual sector as a result of the convergence of platforms, services and operators. In the second part, we will present an example of self-regulation through the future Code of Best Professional Practices of the Catalan Audiovisual Union. Fostering dialogue and bringing more stakeholders in the field may fit the new scenarios built up by the Web 2.0 and the Semantic Web.

## The Spanish Audiovisual Sector

The *EU Audiovisual Media Services Directive*<sup>1</sup> (AVMSD), as the main instrument of the European audiovisual regulatory policy, calls on Member States to reform their legislation on this field with the aim of harmonizing and reforming the different regulations covering the audiovisual sector. The Audiovisual Media Services Directive provides a more general but flexible regulation in comparison with the Television Without Frontiers Directive (TWF).<sup>2</sup> The new rules respond to technological developments and represent the opportunity to improve common minimum standards in Europe for traditional broadcasting<sup>3</sup> and emerging on-demand audiovisual media services. It is crucial, especially in order to avoid distortions of competition, to improve legal certainty, to

<sup>1</sup> Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending the Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

<sup>2</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (updated in 1997 and 2007).

<sup>3</sup> Television broadcasting includes: analogue and digital television, live streaming, web casting and near-video-on-demand.

help the internal market and also to safeguard certain public interest.

In this regard, the Directive attempts to preserve cultural diversity, protect children and consumers, safeguard media pluralism, fight racial and religious hatred and guarantee the independence of national media regulators.

In sum, the AVMSD Directive provides the key concepts on audiovisual regulation based on the objective of convergence of technologies, businesses, contents and services.

In Spain, with the exceptions considered below, there is not a general law regulating audiovisual communication services. The deadline for Spain to transpose into national law the EU Audiovisual Media Services Directive (AVMSD) was December 2009<sup>4</sup>. For the time being, the regulatory framework of the audiovisual sector in Spain may be defined as huge, disperse and obsolete. Historically, regulations concerning broadcasting have been produced under governmental control, and it is almost impossible to obtain agreements from all the stakeholders involved in order to pass a general law for the audiovisual sector.

The most important Spanish Acts covering the audiovisual sector are:

- Act 25/94 of 7 June modifying law 22/1999 on the implementation of the TVWF Directive
- Act 10/2005, on urgent measures for the promotion of digital terrestrial TV, liberalization of cable and promotion of media pluralism
- Act 22/2005, on Catalan Audiovisual Communication
- Act 17/2006, on national public radio and TV
- Act 55/2007, on the Cinema Law

<sup>4</sup> On 7<sup>th</sup> January 2010, the Constitutional Commission of the Spanish Congress passed the Spanish General Audiovisual Communication Law, incorporating the amendments proposed by different parties. The legislative process will be ended when the Spanish Senate passes the final legal text, probably during the following months.

- Decree 1/2009, on urgent measures for the telecommunications sector

For the purposes of this paper, we would like to comment briefly three of them:

**The Act 17/2006, on the national and public radio and TV.** With this regulation, the Spanish government lost the opportunity to reshape the Public Service Broadcasting (traditionally based on a public service mandate). In practice, this regulation involved a “Dismissal Program” (ERE) in RTVE, affecting more than 1.000 public broadcasting workers.

**Act 22/2005, on the Catalan Audiovisual Communication.** At the autonomous regions level, Catalonia has done its homework in terms of regulating the audiovisual sector by proposing a mixed model of public service broadcasting (public and private broadcasters coexist). Firstly, broadcasters develop their activity under provisions made by art. 20 of the Spanish Constitution (audiovisual communication freedom) and not for being concessionaire of a public service mandate (Boix 2007, Campos 2007).

Secondly, the legislation designed a public broadcasting sector based on the general interest and common values such as freedom of expression and information, the right of reply, pluralism, protection of copyright, promotion of cultural and human diversity, minors and consumers. Finally, there is an independent regulatory authority: the Catalan Audiovisual Council-CAC.

**Decree 1/2009, on urgent measures for the telecommunications sector.** The Spanish government approved this new legal instrument to manage the introduction of Digital Terrestrial Television (DTTV) and to limit media ownership. The switch-off of analogue terrestrial TV in Spain is planned at the beginning of April 2010. Apart from that, the government considered absolutely necessary to establish new limits regarding media ownership. The main objective is to set up companies which could be adapted to the new scenario built by the decrease in advertising as a consequence of the transition from analogue to digital terrestrial television.

On 29 May 2009, the Spanish government approved a bill law on the funding scheme of RTVE. Nowadays, this is raising a wide debate within the broadcasting sector because of the new rules concerning: (1) choosing a dual funding scheme: suppression of advertising spaces on public service broadcasting and establishing economic contributions for free-to view TV (3%), Pay TV and conditional access TV (1,5%); (2) and avoiding TV operators to lose their license if they do not contribute with their taxes. They will be punished with general sanctions according to the tax system established in Spain.

Would Commercial TV Broadcasters decide to increase to the detriment of public broadcasting services some imbalances could appear.

To avoid this, the Spanish government has recently drafted a general law regulating this field and the creation of an independent regulatory authority to monitor the audiovisual area: the Spanish Audiovisual Council.<sup>5</sup> The new legislative proposal focuses on the following aspects:

- reformulating public service broadcasting and its adequate funding;
- licensing procedures for broadcasters (automatic renovation of licenses after 15 years);
- private broadcasters may sell or lease their licenses (only 50%);
- fines around 1 million € when: (1) public or private channels do not comply with the economic obligation to support Cinema without justification, (2) channels exceed the period of time established for advertising (no more than twelve minutes per hour), (3) channels modify their TV program schedule without a clear justification to do it (three days before, they should communicate TV programming changes to the public).

Looking at this broad picture, we can conclude that successive governments have approved diverse regulations to face concrete situations as a consequence of new technological changes occurred during the past years.

It seems to be clear the need to design a (still pending) Spanish audiovisual and media regulation. However, as we will state later, regulation does not involve mainly legislative drafting. We cannot forget the importance of this sector for societies, democracy, education and culture. All the relevant actors are concerned: consumers, customers, citizens, broadcasters and service servers alike. But the most sensitive areas are to be found among professional associations, namely the official guilds or unions known in Spain as *Colegios profesionales*.

## Self-regulation and professional best practices

One year ago, the Union of Audiovisual Professionals of Catalonia decided to elaborate a code of best practices. Provisions from its General Rules include as an important professional obligation “to exercise the profession in accordance with the professional ethics needed and respecting the fundamental rights of the citizens”.

Codes are basically adopted to meet different objectives: (1) avoiding liability; (2) protecting users; (3) imposing professional standards; (4) preventing or commanding

<sup>5</sup> Some Spanish political parties supported a motion proposed by ERC, IU and ICV consisting on forcing the Spanish government to present a general law on the audiovisual, especially taking in consideration the obligation to transpose the above mentioned AVMSD Directive.

control regulation; (5) building trust among users, audiences, readers, etc. and (6) raising the public image of an industry.

We may concede that growing proliferation of codes of best practices within professional groups is due to the important value of freedom in our liberal societies (respecting the right of people to their own privacy and public image), and to the development of the information society technologies (Camps 2009). This soft-regulation form of government has been adopted by the EU policies since 2000 along with target development and benchmarking (implementation by publication/monitoring/learning), voluntary accords and procedural norms (Héritier 2002).

In Spain, self-regulation in the audiovisual sector offers the following features:

- *Journalism*: Codes of Journalists are opened to any professional media.
- *Radio*: only some editorial principles can be found in the sphere of Public Regional Broadcasters (*Canal Sur Radio, Radio Castilla la Mancha, Catalunya Radio and Canal Nou Radio*). The common values collected by these editorial principles are: respect for constitutional principles; truthfulness of information, respect towards the principles of freedom of speech, protection and privacy; respect towards political and social pluralism; protection of minors and promoting identity and regional values.
- *Television*: Public and commercial broadcasters have ombudsmen to protect audience (*Televisión Española, Televisió de Catalunya...*).<sup>6</sup> With regard to content (especially minors, education, violence and fiction, anorexia, racism and immigration, human tragedies, trash TV, to mention some of the most important ones), self-regulation initiatives are taking place involving both public and commercial broadcasters.
- *Cinema and Video*: none
- *The Internet*: it is possible to find three initiatives corresponding to: (1) the code of best practices of *ASIMILEC*<sup>7</sup>; (2) the cluster of companies dedicated to electronics, communications and information technologies, and the Internet Users Association (they do not have a code of conduct although they promote *good use* of the Internet); (3) the Spanish Internet Observatory (it was created to study and disseminate issues regarding the Internet).
- *Videogames*: the Pan European Game Information Code, 2003.

<sup>6</sup> As an example of ombudsman protecting the audience, see the official web of the Spanish Television :

<http://www.rtve.es/television/20090326/cual-papel-defensora-del-espectador/254209.shtml>;

<sup>7</sup> ASIMILEC code of good practices is available at: <http://www.asimelec.es/>

Quite surprisingly, there is nothing concerning cinema and video. It seems difficult to find how to regulate the audiovisual sector without damaging the right of freedom of speech. We believe that we should review the relationship between the future content of the code of conduct and the existing regulations regarding that content. The schedule of the future code for the audiovisual will contain five parts —constitution, coverage, content, compliance and communications— following the 5C+ approach (Tambini et al. 2008).

In particular, the content of the code should cover the following domains: (1) audiovisual content: this part will focus on establishing best practices linked with human dignity, respect towards human rights, protection of minors and youth, deontological norms, protection of pluralism and norms concerning truthfulness of information; (2) labor relationships; (3) compliance of the code; (4) and editorial relationships.

For instance, if we pay attention to the production of digital contents, we observe that, in Spain, almost two thirds of the population currently access to it, as stated by the White Paper on Digital Content in Spain 2008. New ways of using network contents are performing new business opportunities beyond the traditional models.

Industries generating digital content in Spain: evolution of sales, 2003-2007 (€M)

	Billing 2003 (€M)	Billing 2004 (€M)	Billing 2005 (€M)	Billing 2006 (€M)	Billing 2007 (€M)
Video games <sup>1</sup>	465	500	537	576	719
Films/Video <sup>2</sup>	1,052	1,096	927	911	916
TV/Radio	4,677	4,532	5,028	5,346	5,767
Music	457	406	399	368	284
Publications	6,965	7,286	7,377	7,722	8,237 <sup>3</sup>
<b>Total</b>	<b>13,616</b>	<b>13,820</b>	<b>14,268</b>	<b>14,923</b>	<b>15,923</b>

<sup>1</sup> Does not include hardware.

<sup>2</sup> Including box-office takings and sale and rental of films.

<sup>3</sup> Due to the absence of official data, estimates for 2007 publication sales based on previous growth rates and industry forecasts

Source: ONTSI based on various sources (see detailed analysis by sector)

Figure 1: Industries generating digital contents in Spain: evolution of sales, 2003-2007 (€M). Source: White Paper on Digital Content in Spain 2008.

Figure 1 shows how a general growth in relation to the evolution of sales occurred from 2003 to 2007 regarding industries generating digital content in Spain. In general, foreign multinational companies are dominating the digital content industry in Spain. There is an international uncertainty with regard to new digital business models in the future as it is unpredictable to determine how patterns of use and consume will take place, especially linked with the use of the Internet. As a consequence, it is difficult to identify clearly which ethical values and good professional practices should be preserved and defended as a professional group.

The principal features concerning audiovisual digital content are:

- The DTT development process is modifying the audiovisual market considering the extension of the technical distribution possibilities of television and the extension of contents and services that are accessible free of charge.
- The content of broadcast on the Spanish television is home-produced. The growth of foreign series and the migration to the Internet are affecting Spanish production. It has to deal with new online media and cheaper foreign products.
- The audience fragmentation is expected as soon as more channels are available to citizens. This situation will affect public operators on the market, as we mention above.
- A strong growth is expected in television via mobile modality.
- The migration to the Internet is affecting TV companies that are aware of the interest of this channel and its possibilities. TV companies are increasing offers of specific Internet services (theme videos and TV series broadcast via specific portals).
- There are important challenges regarding infrastructure developments (extension of broadband, HDTV, the interoperability of devices...)
- Consumers are expecting easy access and cross-platform availability.

Another example of the new challenges of audiovisual sector is peer-to-peer technology. During the last years, file sharing of copyright protected material, particularly peer-to-peer networks, has been an important threat to the established business models of the content industry. An increasing civil and criminal pressure against users of the Internet seems to be the strategy of the traditional content industry to face copyright issues as a consequence of new technological changes resulting from the digitization process and the convergence of information technologies and telecommunications.

Peer-to-peer networks allow millions of users to share their music and film files through the Internet. Most of these files are copyright protected material and their authors (music and film creators, software developers, publishers...) cannot protect their property from piracy. Governments from several countries have taken different types of measures in order to fight piracy.<sup>8</sup>

The US Congress Committee put Spain on its 2009 Piracy Watchlist of countries with “alarming” levels of illegal file-sharing.<sup>9</sup>

The Spanish Courts have ruled repeatedly that free music and film downloading is not illegal if it is not for commercial use. Music downloads for personal use are permitted. Spaniards pay special taxes on CDs, DVDs and

<sup>8</sup> In Spain, the government worked out a code of good practices regarding piracy in the Internet and offenses against intellectual property law. Available at: <http://www.mcu.es/propiedadInt/MC/Mbp/index.html>

<sup>9</sup> Available at: [http://schiff.house.gov/antipiracycaucus/pdf/IAPC\\_2009\\_Watch\\_List.pdf](http://schiff.house.gov/antipiracycaucus/pdf/IAPC_2009_Watch_List.pdf)

memory cards to compensate the music industry for its losses. The debate on that issue is performed by powerful collecting societies led by the *Sociedad General de Autores* (SGAE) or PROMUSICAE, and service providers (Telefónica, Vodafone...). Spanish collecting societies keep asking for a set of measures related to the effective protection of the intellectual property. They especially claim for: (1) legislative changes to protect intellectual property against piracy; (2) an agreement with service providers to fight piracy; (3) respect for intellectual property from users using media educational campaigns; and (4) governmental action leading piracy fight.

On the other side, interesting questions regarding the neutrality of the Internet and privacy are pointed out by users in order to preserve freedom. The perception that all the information available in the Internet is in the public domain and that everyone should be allowed to copy and use these materials—even when they are copyright protected—is a well known challenge. To deal with it and other similar situations, professionals would need to define the content of their best practices. However, the first obstacle comes from the heterogeneity of the target itself: cinema directors, producers, scriptwriters, camera operators, actors, makeup artists and other professional people belonging to the same union.

## The projected Code

The UAB Institute of Law and Technology (IDT)<sup>10</sup> is the research center that carries out the research on this project.<sup>11</sup> From an interdisciplinary perspective, the research team is formed by professional researchers, legal experts, audiovisual professionals and associations of users related to audiovisual issues.<sup>12</sup>

The project is divided into three phases. The first stage consists of producing three technical reports addressed to obtain: (1) comparative studies regarding ethical media codes in Europe and the United States; (2) identification of the key aspects of the European and Spanish intellectual property law; (3) a concluding report.

The second stage focuses on collecting qualitative and quantitative data on members’ profiles, experiences and needs. A SNAP questionnaire is being distributed among the Union’s members (see Fig. 2).

In parallel, a preliminary map of problems and functional domains has already been obtained from the first exchanges between professionals and researchers (see Fig. 3). Dissemination of the final results will come at the end.

<sup>10</sup> <http://idt.uab.cat>

<sup>11</sup> <http://www.codibonespractiquespac.com>

<sup>12</sup> <http://www.cpaudiovisual.cat>

22. Segons la seva experiència, indiqui quins tipus de conflictes són més habituals en el seu entorn professional?

- Societats de gestió de drets d'autor
- Manipulació no autoritzada d'una obra pròpia
- No liquidació dels beneficis generals per una obra, segons contracte
- Falta de definició de les seves competències professionals
- Falta de valoració de la seva tasca professional per part dels seus caps immediats
- Manca de transparència en els socis de coproduccions
- Altres
- Entre companys
- Impossibilitat de cobrar el valor de la seva feina, i per tant vendre-la per sota del seu preu
- Falta de valoració de la seva tasca professional per part de seu entorn professional
- No reconeixement del treball realitzat en els títols de crèdit
- No liquidació econòmica dels seus honoraris
- Invasió de competències professionals per altres professionals
- Manca de formació específica per a realitzar una feina
- Falta de valoració de la seva tasca professional per part dels seus col·laboradors

<< Enrere | **Desa respostes** | Següent >>

Figure 2: SNAP questionnaire on current conflicts and emergent issues

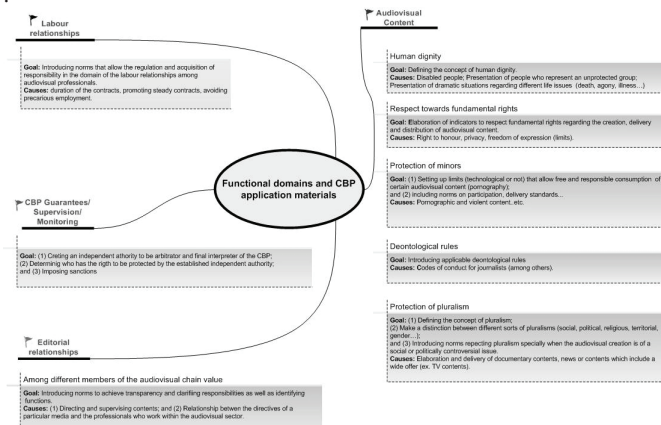


Figure 3: Mapping of problems and functional domains of the Code of Best Practices.

We are confident that the future code will help to achieve ethical values within the profession. Nevertheless, according to the work already done, the first effect being produced is adding some internal consistency to the profession itself.

The main purpose is favoring a stakeholders' identity (members and representatives of the union) that could be able to deal with new forms of governance and law based on dialogue and a relational way to deal with problems; that is to say, putting aside traditional corporative values and favoring a more open attitude.

Especially Internet users are not only consumers, but *prosumers* of audiovisual content. This means that conflict scenarios and working frameworks are not only defined by governments, but also by a multitude of stakeholders (Casanovas 2009).<sup>13</sup>

<sup>13</sup> *Relational Justice* may be defined as the substantive and formal structure that allows end users, in the broader sense (as citizens, consumers, customers, clients, managers, officials...), to participate in the making of their own regulation and legal outcomes through all the mixed and plural strategies that the Semantic Web framework allows (ibid.).

The Web 2.0 and Web 3.0 links allow new kinds of communication that the existing codes in the broadcasting field do not take into account yet.<sup>14</sup> The so-called “social web” and the emerging “web of contents” (the Semantic Web) are interwoven, and allow users to move from traditional roles to more complex ones (Hendler 2009).

## Final remarks on privacy

The audiovisual sector in Spain continues reshaping public broadcasting and it is also implementing the digital transition process according to the convergence of technologies, platforms and services (traditional TV, Internet TV, IPTV, web TV, TV on mobile phones and other mobile devices).

A strong control exerted by the state or government alone on the audiovisual sector will not work. Moreover, we should keep in mind that the system of public broadcasting is directly related to democratic, social and cultural needs, and to the need to preserve media pluralism.

As regards to digital content, the main issue is the lower cost of online distribution. Hard copy distribution, management of copyright online, piracy, protection of minors and cultural diversity are some of the main challenges.

Internet has become the meeting point where the users of the net are fighting for their civil rights. Protection of privacy, free software, suppression of patents, exchange of files through the net and the opposition to the current ruling copyright laws are the most common users' claims.<sup>15</sup>

Some countries such as Sweden, France and UK have reinforced their legislations to pursue the exchange of files protected by copyright. However, downloading files protected by copyright is allowed in Spain. This happens under the legal umbrella of the “private copy” and, consequently, the lack of commercial profit.

Spanish entertainment and telecommunication industries are not close to reach an agreement concerning the users' claims. On the one hand, entertainment industries warn about the growing decrease of sales. Some companies are asking for penalties for those users who download protected copyright material, suing downloaders and

<sup>14</sup> British Broadcasting Corporation: Producer's Guidelines <http://www.bbc.co.uk/info/editorial/prodgl/index.shtml><http://www.google.es/>

CBC Radio-Canada Journalistic Standards and Practices <http://www.cbc.radio-canada.ca/accountability/journalistic/conflict.shtml>  
Deontological Code. Federation of the Spanish Press Associations, 1993. [http://www.fape.es/index.php?option=com\\_content&task=view&id=101&Itemid=120](http://www.fape.es/index.php?option=com_content&task=view&id=101&Itemid=120)

Código de Autorregulación sobre contenidos televisivos e infancia, 2004 TVE, Antena3, Telecinco, Sogecable <http://www.tvinfancia.es/Textos/CodigoAutorregulacion/Codigo.htm>

<sup>15</sup> The Pirate Party, with representation in the European Parliament, has on its agenda these claims. See the Pirate Party Declaration of Principles 3.2, available at: <http://www.pirartpartiet.se/international/english>

blocking websites.<sup>16</sup> On the other hand, telecommunication industries are against penalties and focus on the need of data protection and privacy issues.<sup>17</sup>

Therefore, privacy is at the center of a political crossroad and it is being used to ground the discussion on public policies in the legislative and governmental arenas.

Fostering dialogue through codes of best practices will not solve all the problems that the audiovisual sector shows. Nonetheless, it may help to reshape them and enlarge the field to all the stakeholders involved, including Internet users' associations, service providers, professional unions, institutions and companies.

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<sup>16</sup> Creators and Content Industry Coalition (*Coalición de Creadores e Industrias de Contenido*) is a lobby formed by cultural industries, especially collecting societies (EGEDA, SGAE, FAP, ADIVAN, Promusicae and ADICAN) in 2008.

<sup>17</sup> Redtel (<http://www.redtel.es>) is the association of the most important industries (ONO, Orange, Telefónica and Vodafone).

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