

CHALLENGES AND PROSPECTS OF REGULATING THE BROADCAST MEDIA IN THE DIGITAL REGIME: THE NIGERIAN EXPERIENCE

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Abstract

The rapid transformation of media technologies as given rise to new challenges of regulation. The paper, which used Marshall McLuhan's technological determinism theory, highlighted challenges facing regulation of broadcast media in the digital regime in Nigerian. It made use of the library research approach. The paper began by tracing the historical development of broadcasting regulations, emphasising the shift from traditional analogue systems to the digital age. It examined various regulation approaches such as licensing, content monitoring, sanctioning process, arbitration and among others. The paper concluded that regulating the broadcast media in Nigeria in the digital era remains a difficult task. Therefore, policymakers should ensure regulation in the broadcast industry in the digital era by balancing the importance of freedom of expression with a duty to be fair, accurate, respectful and tolerant. The broadcast sector in the world should also unite and put together a global content code which includes a set of principles designed to guide content creators around the world. Lastly, broadcast industry in Nigeria in this digital era needs to come up with a strong self-regulatory framework to ensure that all broadcast media in the country produce, disseminate or distribute accurate and legally compliant contents.

Keywords: Broadcasting, Regulation, Digital, Challenges, Prospects.

INTRODUCTION

The foundation of broadcasting in Nigeria was laid in 1932 with the establishment of the BBC's Empire service. The Empire service used the radio signal re-diffusion service (EDS). The purpose of the Empire service was to improve the economic, political and cultural relations between

Great Britain and its colonies. In 1951, the outfit became known as Nigeria Broadcasting Service (NBS).

In 1956, Ordinance No.39 gave the green light for NBS to change its name to Nigeria Broadcasting Corporation, NBC on 1st April, 1957. The same Act also gave birth to NBC's external service, The

Voice of Nigeria, which started on 1st January, 1962. The three regions established television stations as follows: West (WNTV, 1959); East (ENBS-TV: 1960); and North (RKTV, 1962). In 1979, all the regional radio stations were unified under the umbrella of the Federal Radio Corporation (FRC). The regional television stations were later harmonised and renamed Nigerian Television Authority (NTA) in 1976 (Bctiang 2006; Owuamalam, 2006, p.10).

The ownership, management, and operation of Nigerian broadcasting had always been reserved solely for the Federal, Regional and State governments (Media Rights Agenda, MRA, 2001). The Deregulation of Broadcasting Decree No. 38 was enacted in 1992 by the General Ibrahim Babangida regime. The National Broadcasting Commission (NBC) was founded by the presidential ipse dixit, which also brought competition and a new ownership and control structure to the broadcast sector.

Harvey (1999) claims that the subject of broadcasting control is an acknowledged part of media studies curriculum. We should embrace this development as it will help us to better understand the main factors that influence communication environment. It has been observed that legal academics have created the majority of the literature on media regulation since Eric Barendt's comparative research on

law" (Harvey 1999).

But in the face of globalisation and specialisation, there is the need for research to conduct investigations in certain societal segments. For this reason, media academics are compelled to examine regulation and control of broadcasting activities in the digital era.

Digitisation of information content and communication channels has brought countries closer to the point where any information or entertainment content can be delivered through a single channel. This convergence has broken down the walls which separated broadcasting, other mass media and information technology. Broadcasting has always been a subject of regulatory process. However, regulating broadcast media in the digital era remains is challenging. Therefore, examining the challenges and prospects of regulating broadcast media in Nigeria in the digital regime is the crux of this paper.

Media Regulation

Regulation refers to the whole process of control or guidance, by established rules and procedures, applied by government agencies to make media organisations perform in accordance with extant law. Thus, regulation is always a potential *intervention* in ongoing activities, usually for some stated "public interest" goal, but also to serve the needs of the market (for instance, by supporting competition) or

for reasons of technical efficiency (for instance, setting technical standards). Regulation takes many forms, ranging from clauses in national constitutions and laws to administrative procedures and technical specifications. Regulation can be *internal* as well as *external*.

Regulations are formal and compulsory instructions about the structure, conduct or content of the media. Examples include limits to monopoly of ownership or media cross-ownership; limits to the amount of advertising on television; or requirements to have an operating or receiving licence for television or radio.

According to Harvey (1992), regulation refers to the state engagement in sphere of economic, social or cultural life in accordance with national political principles. In a representative democracy, regulations may be enacted via legislation, presidential proclamation, or religious injunction. Regulations can be implemented directly by the government, as was the case in prior to 1992. They can also be implemented through statutory bodies that have certain degree of autonomy from the government. For example, the National Broadcasting Commission (NBC), in the case of Nigeria; the Federal Communications Commission (FCC), in the case of USA; and Independent Television Commission (ITC), in the case of Britain are regulatory bodies which are responsible for

broadcasting in the countries.

At the fundamental stage of broadcasting, regulatory agencies grant licences to broadcasters. In many countries, such as Nigeria, licences are expensive for private organisations to obtain. Moreover, broadcasting regulation depends on cultural norms. As a result, at times, broadcasting regulation can have a major impact on programme contents. This, in turn, has an impact on the economic and governance structures of the broadcasting industry (Ihechu & Okugo, 2013).

Broadcast Media

Broadcast media electronically and simultaneously disseminate messages via audio or video signals to a vast and heterogeneous audience simultaneously. Bhasin (2023) points out that broadcast media disseminate messages to the masses in an electronic form.

Digital Era

Digital regime is characterised by technology which increases the speed and breadth of knowledge turnover among members of the society. It is a shift from mechanical and analogue technology to a less machine-technology but speedier and more stable sound quality. According to Sehovic (2017), the digital age is a time in human history characterised by the shift from traditional industry that the industrial revolution brought through

industrialisation, to an economy based on information computerisation. Collins Dictionary defines it as a time when large amounts of information are widely available to many people, largely through computer technology. It is internet-based technology which drives communication in simple but global reach within split second even within the privacy of those who are involved in the communication process (Udoudo & Nwosu, 2022).

Theoretical Underpinning

The paper is underpinned with the technological determinism theory of Marshall McLuhan. According to Griffin (200), "McLuhan pictured all of us as members of a single global village. The electronic media bring us in touch with everyone, everywhere instantaneously" (p. 319). When Marshall McLuhan (1964) propounded the theory of technological determinism, his focus was on what he saw technology lead to the kind of communication emanating from television. He then predicted that technology would determine the kind of message produced by any medium. McLuhan's "prophecy" seems to go beyond technology and television and remain even more applicable to the current digital era in which technology has indeed, determined the kind of message produced and consumed. The output of broadcast media in the current era is

significantly determined by the digital technology prevalent in the globe. In the present era of fast changing and advanced technology, the media man (the programme producer, the reporter, the presenter or even the engineer) must be ready to learn ahead of time to beat the challenges posed by the technology.

Regulating the Broadcast Industry: Examples from the US, UK and Nigeria

Reference must be made to the methods used in the UK and the USA before looking at Nigeria's approach to broadcast regulation. The explanation is that Nigeria, a former British colony, today has a presidential system of government that is modelled after that of the United States. The Independent Television Commission (ITC) was founded in Britain under the Broadcasting Act of 1990 to improve free programming. It took the role of the previous Independent Broadcasting Authority (IBA). The statute mandated that ITC should make sure "that television services are of good quality and offer a wide range of programmes tailored to appeal to variety of tastes and interests" (Harvey, 1999, p. 7). The ITC was then given the "authority to analyse applicants' programme plans and would only be permitted to proceed to the licence bidding stage" (Harvey; 1999, p.8). The sustained focus on quality and diversity should be interpreted as proof that the

regulatory body is committed to pursuing goals in the public interest.

The First Amendment of the American Constitution, which states that "Congress shall make no legislation... abridging the freedom of speech or of the press", "is the foundation of broadcast regulation in the USA" (Pember, 2004, p.294). The Federal Communications Commission (FCC) is responsible for regulating broadcasting in the US and for carrying out the Fairness Doctrine. FCC issued licences but did not establish any rules.

The National Broadcasting Commission (NBC) is solely responsible for broadcasting regulation in Nigeria. The Commission was established by Decree 38 of 1992, which was later changed by Decree No. 55 of 1999, National Broadcasting Commission (Amendment) (MRA, 2001). It should be emphasised that the deregulation edict marked the end of the government's monopoly on broadcasting. As a result, private entities began to establish and own radio and television stations. Additionally, the Wireless Telegraphy Act changed the rules to allow foreign investors "to engage, for the first time, in the formation, ownership, and operation of broadcast media" (MRA; 2001, p.10).

The Constitution of the Federal Republic of Nigeria (1999) has provided for what is completely different from what the United States did in terms of broadcasting

regulations, just as the United States did with its constitutional provision. Therefore, Nigerian law is designed to uphold what the lawmakers intended; namely: the purported preservation of the interests of the country. The Constitution of the Federal Republic of Nigeria (1999) guarantees the freedom of the press and of expression. According to Section 39 (1), "Everyone shall have the right to freedom of expression, including the right to have beliefs and the freedom to seek, receive, and impart ideas and information without hindrance." In subsection 2, it spells out requirements for ownership of broadcast media, including a mandated government or agency authorization.

"No law that is substantially justifiable in a democratic society shall be invalidated by anything in this section" (Sub-Section 3, of the Constitution of the Federal Republic of Nigeria, 1999). The terms are clearly stated. In Sub-Section 1, the freedom of expression is first entrenched. In Sub-Section 2, the conditions for exercising the freedom are provided, and in Sub-Section 3, the freedom is retracted. The implication is that anyone who meets the requirements of the government and its agencies (in this example, NBC) will be granted a licence for a broadcasting station. It also demonstrates that obtaining the licences does not grant the stations the right to broadcast whatever they believe to be in the best interests of

society. Instead, the clause is written so that the stations will always follow the orders of the ruling class. The provisions of Sub-Section 3 were put in place for this reason. Who, after all, decides if additional legal permutations are reasonable and justified? The state decides and finances unpleasant plots to crack down on the broadcast stations using its machinery.

Agents of State Security Service (SSS) were there in 2006 when African Independent Television (AIT) was shut down for three days. The National Assembly's discussion on tenure elongation, which President Olusegun Obasanjo's third term ambition contrived, was broadcast live on the channel. Because some analysts claim that people were watching their representatives' faces during the debate, it was possible that the government believed that the live coverage contributed to the collapse of the agreement.

National Broadcasting Commission (NBC) was created to carry out the following duties:

- Receiving, processing, and considering applications for the ownership of radio and television stations including cable TV services, direct satellite broadcast, etc.
- Regulating and controlling the broadcasting industry;
- Receiving, considering and investigating complaints from individuals and bodies regarding content of a broadcast or conduct of a station;
- Upholding the principles of equity and fairness in broadcasting;
- Establishing and disseminating a national broadcasting code and setting standards with regards to contents and quality of broadcasting;
- Regulating ethical standard and technical excellence;
- Promoting Nigerian indigenous cultures, moral and community life through broadcasting;
- Determining and applying sanctions, including revocation of licences of defaulting stations;
- Ensuring quality manpower development in the broadcasting industry by accrediting curricula and programmes for all tertiary institutions that offer Mass Communication in relation to broadcasting;
- Intervening and arbitrating in conflicts in the broadcasting industry (MRA (2001, p. 11).

The NBC formulated the Nigerian Broadcasting Code, which is continually updated to satisfy the broadcasting goals, based on the aforementioned functions.

The National Broadcasting Commission (NBC), according to Owuanalam (2006), "outlines the objectives of broadcasting in Nigeria, structured around Chapter II, of the 1999 Constitution" (p. 126). The goals cover profit-making, as well as social, cultural, economic, political, and technological goals. As a result, the broadcasting code outlines the general regulatory strategies. The methods of control the National Broadcasting Commission has been empowered to carry out on broadcast stations are manifest in licensing, content monitoring, sanctioning, arbitration and other control loopholes.

Licensing

Obtaining initial licences for private broadcasters has been a fairly covert process ever since the Commission was established (MRA, 2001). This is one of the NBC's most significant responsibilities. Licences are frequently delayed or denied for unexplained reasons. NBC has, however, always made the conditions and process for obtaining a licence public. For instance, according to NBC (2009), "A potential applicant must have a limited liability firm established with the corporate affairs commission in which Nigerians hold the majority shares. Its memorandum of association and article of association must include broadcasting"(p.1). The actual processes

of considering the applications are not readily ascertained. Following the Commission's processing of applications, suggestions are presented to the board, which then sends them to the President for ultimate approval via the Minister of Information and Communications. The procedure is closed in this description. Everything about it is "in contrast to South Africa, where the entire process for giving permits is required by law to be open and transparent and allows for public debate" (MRA; 2001, p.20).

Since the NBC is not impartial, the Minister or President may choose to disregard its recommendations. Again, Section 9 (3) of Decree No. 38's stipulation that "Compliance with the standards listed in Sub-Section 1 of this section shall not entitle an applicant for the issue of licence led to ambiguity in the licensing procedure" (Nwanze, 2003, p.250). The clause allows for the manipulation of licensing regulations, as well as the use of political motivations in granting licences.

The cost of licences is still another issue. It is easy to conclude that the prices are designed to make it extremely difficult for a private broadcaster to be commercially viable because the costs are outrageous. In effect, this undermines the citizens' ability to obtain information from a number of sources. Additionally, it goes against the pluralism idea. The

Commission may increase fees at any time without regard to organisations' capacity. MRA (2001, p. 18) states that many broadcasters, including significant ones, have been unable to keep up with the new schedule of payments because the current licence fees in Nigeria represent a 300 percent increase over the former rates.

Additionally, it cannot be assured that the organisations would be able to recover their investment within the five-year licensing length. According to Okunna (2005), quoting Popoola (2004), the broadcast media in Nigeria are shying away from their primary responsibilities of educating, informing, and enlightening the citizenry and violating the fundamental rights of people to receive the right type of information. This always results in an overdependence on commercialization of broadcasting.

Government-owned stations do not follow the rules therefore, the equation is not yet balanced. This contradicts NBC's argument (2009) that "the air wave is being held in trust for the public, therefore the stations are accountable to the public" (p.4). This is because the laws seem to be put in place for only the private broadcast media. If the aforementioned argument were to hold true, it would have been provided to check both government and private stations with an equal opportunity to serve public interest.

Content Monitoring

Every licence must comply to a minimum of 60% local broadcast material for open television and an average of 80% local broadcast content for radio (NBC, 2009). It is required that the cable and satellite rebroadcast stations reflect at least 20%. The requirement for Nigerian content stipulates that family belt programmes and advertisements must be free of explicit sexual content, nudity, violence, bloodletting, smoking, drinking, abusing drugs, demeaning words towards women, lewd or vulgar expression, etc. The same clause specified that family belt should be worn daily between 7 and 10 o'clock (a period when the family as a unit is presumed to be together to watch television). The content provision is welcome, but its implementation is uncertain. The Nigerian private stations appear to be the target of NBC's sanctions, while the public stations and the influx of international free-to-air channels are ignored. The majority of channels do not require a subscription from the viewer in order to access them.

For instance, the Nigerian Broadcasting Code forbids religious broadcasting, but the free-to-air stations continue to produce religious programmes that frequently portray cults. In addition, the NBC has downgraded its obligations by remaining mute on "Big Brother Nigeria" despite the numerous protests, either by

commission or omission. "The continual method in which these convicts are monitored is reminiscent of the way children go to watch caged animals in the zoo" (Egbunike, 2008, p.1). According to Abati (2007), Big Brother Nigeria included pornography and cash. According to Uzo (2008), Nigerians are not interested in Big Brother III. The performance was denounced by the House of Representatives as well. Despite these, NBC has delayed taking action, and the show has continued to dominate TV screens. Regarding a matter that has raised concerns about cultural integrity, NBC has remained silent, leaving one to wonder where the Commission's searchlight beams. Alternative explanation is that "Perhaps they are not yet aware of the broadcast, but I really doubt that" (Egbunike, 2008, p.2).

Sanctioning Process

For licensed stations that violate either Decree 38 or the National Broadcasting Code, the NBC maintains three levels of sanctions. The first class includes licence revocation, station or transmitter closure or sealing up, equipment seizure or forfeiture, and licence suspension (MRA; 2001, p.22). Another type involves issuing a written warning with a deadline to correct a violation or face a fine. For failing to adhere to earlier sanctions, the final category of punishments comprises

finer and more severe penalties.

It is not explicitly stated what offences fall under certain kinds of sanctions. For instance, the Code stipulates that if there is a major violation of either the technical or non-technical component of the Code, a licence may be revoked. It is difficult to define what constitutes a "severe violation". This emphasises even more the idea that the Commission was established to represent particular interests, and that these interests are what determine whether a station is sanctioned or not. This predicament typically occurs when the Commission acts arbitrarily or contravenes its own guidelines.

In October 24, 2005, advocacy groups protested, through a letter to the Director General of the NBC, over the closure of AIT and Ray Power FM. The position of the group as contained in Omoyele (2005), states that:

As the justifications provided by the Commission do not support the measures taken, there was an imbalance between the alleged offence committed by the stations and the sanctions imposed on them. The Nigeria Broadcasting Code's prohibitions, in particular, were broken by the Commission's procedure (p.1).

In accordance with the foregoing argument, the NBC's action violated the 1999 Constitution's guarantee of a fair trial. It also violated a number of international human rights treaties. The

Bellview Air Crash coverage by Africa Independent Television (AIT) and Ray Power on October 23, 2005, led to their closure. Establishing their dissatisfaction with the sanction, the advocacy group stated that:

- (1) AIT and Ray Power were the first to locate the crash site.
- (2) The coverage helped search and rescue teams.
- (3) The report helped the appropriate authorities to access the situation because they did not know where the accident occurred.
- (4) The Nigerian Television Authority, NTA, put out misleading information that there were survivors at the crash scene.
- (5) The stations complied with requirements under paragraph 3.8.7 of the Nigeria broadcast code.

The phrase "Excessive portrayal of physical agony and misery or dead corpses or blood, unless for the purpose of delivering a message, which must be accompanied by a caution, shall be avoided" is highlighted in paragraph 3.8.7. Notably, the cases of AIT and Ray Power were reopened as soon as the advocacy group made their letter to NBC public. That demonstrated how carelessly the Commission's sanction procedure was carried out. In a related development, the NBC suspended the licence of Adaba FM, a private radio station, for failing to abide by an earlier punishment of a fine of

N500,000,000 (MRA, 2009). The suspension materialized due to complaints and insinuations by the Peoples Democratic Party (PDP) about the focus of election coverage in Ondo and Ekiti States. The implication was that, it took the ruling party for the NBC to perform any action – that is, obey the directives from government and its agencies.

Arbitration and Other Control Loopholes

The NBC's umpire position is another controversial approach to broadcasting regulation. The Commission seems to favour public broadcast stations in the country to the detriment of private stations. Analysts claim that although claiming to support the idea of media diversity, it is only a lip service. MRA (2001) alleges NBC's apparent indifference to NTA's efforts to subjugate its private rivals as a federally controlled TV station.

The right to broadcast the 2000 Europe Nations Football Tournament, or Euro 2000, which NTA was also requesting, was acquired by Channels Television from TV Africa in 2000. In an amusing display of bias, NBC claimed that the signals shouldn't be broadcast in Nigeria because TV Africa was not registered in Nigeria. Since there is no legal requirement for international stations to

register with NBC in order for their programmes to be broadcast in Nigeria, that command was questionable. Also, in September of that same year, NBC in a press release announced that the Union of Radio and Television Nations (URTNA) and their affiliates had been granted the rights to broadcast the Sydney 2000 Olympic Games. Only NTA and FRCN are URTNA members in Nigeria. That was a blatant attempt to block private stations. In 2009, FIFA granted AIT the privilege of broadcasting the Nigeria 2009 Youth Championship. AIT purchased modern technology for the coverage based on that right only for NBC to decide that NTA had the right to cover the event. FIFA's Local Organizing Committee had to step in to get AIT to cover the event. According to the aforementioned, NBC's behaviour and attitude have weakened its position as an impartial regulator that was created to step in and settle disputes in the broadcast business.

Challenges of Regulating the Nigerian Broadcast Media in the Digital Era

Perhaps, the biggest challenge facing national policymakers in regulating the broadcast industry in the digital era comes from the convergence of media as made possible by the Internet. History has shown that mass media have been subjected to all forms of regulations. According to Cummings (2018), part of

the challenges facing regulation of broadcast media in the digital era is that there is a clash of interest because digital space is largely private and therefore, can make their rules. Cummings adds that some of the broadcast corporations that own digital media platforms support free speech though have embarked on one form of self-regulation or another. Similarly,

Ghosh (2021) notes that part of the challenges in regulating broadcast media in the internet time is that it is fundamentally different from the traditional media forms – a thing that complicates untangling of the platforms. Bond (2020) notes that among many other problems of regulating the broadcast media in the digital regime is that of vagueness of language. According to Bond, it is possible that such vagueness in the regulatory language could be exploited by government agencies saddled with enforcement to behave in manners that may be considered repressive. In the same vein, Amnesty International (2019a) holds that the Nigerian internet regulation media bills are somewhat open or susceptible to vague interpretations and poses serious danger to free speech. Crews (2020) points out that certain policies could be vague and are most times, not interpreted in their ordinary forms giving rise to varied forms of interpretation and

misunderstanding. Zibwel (2021) explains that the line between freedom of expression and the regulation of broadcast media in the digital period is the major implication. According to Zibwel, there are certain laws that support free expression, adding that limits on such freedom must be justified as well as reasonable. The balance between free expression and infringement on the people's right to enjoy it is a delicate one – as one can easily cross to the other.

Thus, in summary, the biggest challenges that confront regulation of the broadcast industry in Nigeria in the digital era include:

- Protecting the citizens from broadcast contents that tend to cause harm to them while ensuring that content creators in the broadcast industry have the freedom they need to produce and disseminate what they have created.
- The digital era has changed the way broadcast industry in Nigeria and elsewhere packages and disseminates messages. The Internet is a tool that gives space to people and organisations air their views anytime and anywhere. With this, it is difficult for regulators to control the broadcast media arbitrarily.

Conclusion and Recommendations

The thrust of the paper is on the challenges of regulating the broadcast media in the digital regime in Nigeria. It is against democratic principles if citizens' free expression is unwarrantably checked in any given society. Democracy holds free expression as one of the ways through which all citizens can participate in the process of governance through the use of the mass media. Whenever and wherever free expression is muzzled through unlawful means, it paints a picture of dictatorship. The digital era has further brought a challenge to regulators of broadcast industry in Nigeria because free access to online media provided the user has been able to acquire the appropriate gadget and the accessories. Thus, the paper concludes that regulating the broadcast media in Nigeria in the digital era remains a difficult task.

Therefore, policymakers should ensure regulation in the broadcast industry in the digital era by balancing the importance of freedom of expression with a duty to be fair, accurate, respectful and tolerant. The broadcast sector in the world should also unite and put together a global content code which includes a set of principles designed to guide content creators around the world. Lastly, broadcast industry in Nigeria in this digital era needs to come up with a strong self-regulatory framework to ensure that all broadcast

media in the country produce, disseminate or distribute accurate and legally compliant contents.

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