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'Reality Television' and Content Regulation – Perspectives and Challenges

Eliza Varney*
Lecturer in Law, School
of Law, Keele University

ABSTRACT

The introduction and popularity of new genres of 'reality television' have created significant challenges for regulation of broadcast content. The

availability of a larger number of television channels, where particular reality television shows might be broadcast live for many hours in the day, combined with the unpredictable activities of 'reality television' participants raises significant difficulties both for broadcasters and regulators. There is a significant need to consider the rationale for content regulation in this context, and the appropriate regulatory response where infringements take place, in both their theoretical and practical contexts.

This article examines the regulatory approach for offensive content in the United Kingdom and the United States of America. The study has adopted a comparative approach in order to determine whether regulators across the Atlantic are confronted with similar challenges and whether similar solutions are adopted in order to address these challenges. The examination of the regime in the United Kingdom assesses the effectiveness of the Broadcasting Code <<http://www.ofcom.org.uk/tv/ifi/codes/bcode/>> (the Code) adopted by the British communications regulator Ofcom on setting standards for broadcasting content. The discussion focuses on the application of the Code in practice, by analysing the official inquiry and ruling by Ofcom on Channel Four's response to the 2007 Celebrity Big Brother (CBB) incident. The analysis of the system in the United States of America examines the approach adopted by the American communications

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regulator, the Federal Communications Commission (FCC) in dealing with offensive content, focusing on the free speech provisions under the First Amendment of the American Constitution and on FCC's mandate to act in the pursuit of the public interest. The discussion will examine, *inter alia*, FCC's response to complaints regarding the broadcast of indecent material in the 'reality television' programme *Married by America*. A particular feature in both jurisdictions is the tension between regulatory intervention in broadcasting content and considerations for freedom of expression. Both systems are affected by the lack of adequate definitions of the limitations to freedom of expression. This study aims to determine what the current approach is in these jurisdictions for addressing this tension and what lessons might be learned for the future.

KEYWORDS

'Reality television' - Content - Regulation - Freedom of Expression – Citizenship - Values

THE REGULATION OF OFFENSIVE CONTENT AND FREEDOM OF EXPRESSION

The regulation of broadcasting content poses a dilemma between the interests of the public on the one hand, and considerations of freedom of expression on the other (Freedman, 2008, p. 124). Policymakers justify intervention in broadcasting content because broadcasting media has over our lives. Barendt (1995) perceives this as a 'significant issue', while Feintuck and Varney (2006) consider it as 'shaping our personal experience'. Furthermore, Varona (2004) argues that broadcasting is 'shaping our culture, identity and values'. According to Verhulst (2001), broadcasting is an equaliser (due to its power to act as a bridge between different social groups) but also exploitative programming that does more to pollute than to enlighten.

While some commentators see 'reality television' as a 'new form of entertainment' that challenges stereotypes and acting as an equaliser between people, others perceive this form of programming in less complementary terms. Verhulst (2001) argues that 'reality television' is here to stay. 'Reality television' (where people compete for a prize and have to perform tasks) has become a major part of the media landscape (144). For producers, part of the appeal of this form of programming is its widespread public appeal. The big audience ratings generate a 'buzz' and a 'capacity' of such programmes to 'create buzz' and to 'create a buzz' (144). The boundaries are pushed too far in these programmes, leading to a 'bad' television content. As Podlas (2007) suggests, 'it seems that as a result of the success of these shows'.

What constitutes 'bad' television content is often a matter of opinion. For regulators, it can be defined as 'politically or socially undesirable', it can be regulated (Freedman, 2008, p. 122). These measures are aimed at protecting the dignity (Harrison and Woods 2007, p. 218) and can be used to protect children from harmful content, the imposition of a watershed hour for children's content. This study focuses on this latter form of intervention.

Studies reveal that the public is generally supportive of the imposition of content standards (Millwood Hargrave 2001) and that the proliferation of 'reality television' programmes has led to a 'new language in broadcasting' (Ofcom, 2005, p. 21). Given this, regulators such as Verhulst (2001) consider that content standards should be more actively by regulators. While these arguments are compelling, Verhulst (2001) warns that this form of intervention should be the exception rather than the rule.

ensorship of content must be avoided (Verhulst 2001, p.

Measures designed to prohibit or restrict broadcast expression. According to Freedman (2008), the ability how marginal, unwelcome or uncomfortable' constitute Harrison and Woods (2007) suggest that 'even shock careful balancing act is required between the protect prevent the harm that may be caused by such speech (I is a fundamental principle in every democratic society, i to Barendt (2007), the protection of free speech does r from legal restrictions'. Barendt (2007) acknowledges t can be problematic and argues that the best solution is particular facts'.

The definition of offensive content and the approach in l calls for freedom of expression can vary from count examined in the following two sections aim to explore United States of America, in the context of 'reality televi

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In the United Kingdom, the competence to regulate c communications regulator Ofcom. Under s <http://www.opsi.gov.uk/acts/acts2003/ukpga_20030C the content of television and radio services, in order to Act, these standards objectives are designed to ensure (s. 319(2)(a)) and that 'generally accepted standards' adequate protection to members of the public from the 319(2)(f)). In order to comply with its duties under Broadcasting Code. The Code, which came into force or services. By virtue of s. 325(1)(a) of the Communicati regulated by Ofcom, in order to secure that standards services (Note: In the case of the BBC, observance of 'r of the *Communications Actis* required under section 4(*Culture, Media and Sport and the British* <<http://www.bbc.co.uk/bbctrust/assets/files/pdf/regula> BBC services funded by the licence fee or grant aid are i

By bringing together the six codes inherited from the l Radio Authority and the Broadcasting Standards Comn set by Ofcom's predecessors (Foreword, *Ofcom Broadca* nature, and for the fact that it streamlined broadcastir (Grant 2005, p. 184). The Code is structured into ten s (Harm and Offence). Under s. 1, the Code maintains th children from exposure to unsuitable material through the Code, dealing with the broadcast of harmful and allows the broadcast of material that may be seen as 'generally accepted standards' (Rule 2.1). According to ensure that material likely to cause offence is 'justifie order to avoid or minimize offence. This is a move awa ensuring that 'nothing is included in its programmes wl offensive to public feeling' (s. 6(1)(a)).

While the approach adopted under the Code is designec material and to enjoy creative freedom (Foreword, *Ofca* that the Code is 'a licence for broadcasters to broadcas inform viewers' (Grant 2005, p. 184). The remainder of the effectiveness of the Code in dealing with the broad whether Channel Four complied with the Code in handli good illustration of the operation of the Code in practic television'.

Reality television' has been credited with the 'recognition' (Griffen-Foley 2008 p. 41). Since its origins in 1999 in the Netherlands, the format has become familiar throughout the world (Griffen-Foley 2008). The format is confined together in the 'Big Brother' programme where contestants are nominated for eviction each week and the winner of the show is the last contestant to remain. While Big Brother is considered to be part of the 'reality events in the real world', it is often argued that the show suggests, Big Brother 'complements' rather than 'represents' the real world.

In the United Kingdom, Big Brother is produced by Bright Star Television Corporation on Channel 4, S4C in Wales. The show ran for 26 days beginning with the 3rd of January 2001. In 2007, there were complaints about this programme, as viewers became concerned that they were subjected to alleged racist bullying by some of the contestants. Danielle Lloyd (Ofcom 2007a, para. 1.4). In addition to the communications regulator, the events in the CBB House were also criticised as well as demonstrations in India (Ofcom 2007a, para. 1.5). Channel Four launched an investigation into Channel Four's handling of the programme by the communications regulator in May 2007.

As a licensed broadcaster under Ofcom's control, Channel Four is required (s.1(1), *Communications Act*) to ensure that the programme complies with the *Broadcasting Code* (Ofcom, 2007a, para. 3.11; *Communications Act*). Channel Four's handling of the events in the fifth series of the show is subject to rules 1.3 and 2.3 of the Code. The Code provides a list of prohibited language which includes, *inter alia*, 'offensive language ... humiliation, ... language (for example on grounds of ... race)' (Rule 2.3 of the Code, 2007a, para. 2.3).

Racist terms and material should be avoided in the programme. Broadcasters should take particular care to avoid stereotyping unless editorially justified. Where necessary, account the possible effects programmes may have on viewers.

This approach highlights the importance placed on content moderation and intervention in offensive content. As Monaghan (2007) argues, it is essential to ensure that 'everyone is treated as having value or worth'.

On the issue of 'generally accepted standards', the Guidance states that they are applied (Ofcom 2007b, p. 1). In previous cases, Ofcom has determined that an assessment of 'generally accepted standards' should be made in which controversial material is likely to arise and in which participants are likely to take place, as characters are likely to be portrayed. Nevertheless, Ofcom highlighted that viewers have a right to be offended and offence will be challenged through the use of tools such as the 'watershed' (Ofcom 2004a, pp. 5-6). Previous adjudications have found the meaning of material 'justified by context', within which the relevant factors in assessing the 'context' include, *inter alia*, the nature of the service on which the material is broadcast and the likely audience. Ofcom also noted the attitude of the potential audience (Ofcom, 2007a, para. 2.3).

The Code does not prohibit the broadcast of potentially offensive material with 'generally accepted standards' and the broadcast of material that is likely to cause offence (Ofcom 2007a, para. 2.3). Consequently, Ofcom's adjudication in the 2007 case found that the broadcast of potentially offensive or harmful material, but with the material being 'justified by context' (Ofcom 2007a, para. 1.10). Ofcom (2007a) has found that the broadcast of three events. These concerned the broadcast on the 15th of January 2007 and found in favour of the broadcast. The events were: Shilpa Shetty should 'f**k off home' (broadcast on the 15th of January 2007) and remarks by Jade Goody calling Shilpa Shetty as 'Stupid'.

breach of rule 2.3 of the Code and also broadcast pre- rules 1.3 and 2.3 of the Code) (Ofcom 2007a, para. 1.1 to have failed to apply adequately ' generally accepted by its context' (para. 1.15). Channel Four should have challenging the offending behaviour in the CBB House (j members of the public with adequate protection from off

The regulator has also expressed dissatisfaction with Code. Following a breakdown in communications between and Channel Four, the broadcaster was not informed in offensive nature, which was logged as 'racist' by the pr Channel Four to handle differently the situation in broadcasters from transmitting material which was no Channel Four should have been more proactive in ensur

In light of the serious nature of Channel Four's failure t the broadcaster (para. 1.1). Channel Four and S4C w three separate occasions: at the start of the first prog the start of the re-versioned programme and at the s broadcasts was chosen in order to reach the highest pe generally imposed by Ofcom where a broadca Code' (Legislative Background, *Broadcasting Code*). No absence of a financial penalty imposed on Channel Fou (Ofcom 2008a). This can be contrasted with later decisi decision in June 2008 to impose an aggregate finan watershed broadcast of 'extensive offensive language programmes, including the 'reality television' programr substantial financial penalty was attributed to 'the ver ensure compliance with the *Broadcasting Code* (Ofcc adjudication, in reaching its decision not to impose a f were the result of 'a serious error of judgement' regar reckless or grossly negligent action' by the broadcaster Ofcom on MTV Networks and on Channel Four could | Networks was gratuitous, while the offensive langua participants and the overall occurrences in the CBB Hc account Channel Four's prompt reaction to exercise cor of the untransmitted material, as well as the fact that programme, which led to the adoption of improved nevertheless, stressed that any future breaches of th 9.14).

The Ofcom adjudication in the 2007 CBB incident se safeguarded (Foreword, *Broadcasting Code*) and viewer be informed about events taking place in the CBB 'Hou by the broadcaster in handling content likely to cause h. entrusted to the regulator to balance concerns for freee regulating content. What is unclear, however, is w motivated by the public reaction during the broadcast wider considerations for citizenship interests, such as th

The balance between freedom of expression and the ne during the consultation process for the adoption of responding to <<http://www.radioauthority.org.uk/consult/conc> that the Code prioritises freedom of expression ove Nevertheless, given the commitment of the United King freedom of expression, embodied in Article 10 of the Eu duty as a public authority under s. 6 of the Human Convention rights, it is not surprising that the Forew heart of any democratic state' and that 'broadcasting ar

At first sight, this would seem to suggest that in the regulatory intervention in broadcasting content, freed Ofcom, any limitations to freedom of expression are acc to achieve a legitimate aim' (Ofcom 2007a, para. 3.7). practice and are the limitations to this freedom clearly sufficiently well equipped to deal with the difficult balar such as dignity? These issues will be explored in more focus on the manner in which the balance between the wider considerations for freedom of expression is achiev

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The American system of broadcasting regulation is all to broadcasting content and considerations for freedom a strong commitment to free speech, embod Constitution <<http://www.america.gov/media/pdf/books> make no law ... abridging the freedom of speech, or of <<http://www.fcc.gov/Reports/1934new.pdf>>:

'Nothing in this Act shall be understood or const radio communications or signals transmitted by ; promulgated or fixed by the [FCC] which shall in communication' (47 U.S.C. 326).

On the other hand, the American communications regul acting in pursuit of the public interest (Feintuck, 2003, broadcasting stations and is entrusted with the enforce para 4). Broadcast licensees enjoy a 'uniquely privileg FCC. In exchange for the right to broadcast over a cha agree to 'broadcast in furtherance of the ' public i (*Communications Act*1934, as amended, 47 U.S.C. 301 broadcast licensees and the American people (Varo programming was left to be defined by the regulators (j failed to put forward a coherent definition of the 'public

While the FCC's competence in overseeing broadcastin and by s. 326 of the Communications Act1934 (47 U.S.C) entitles the regulator to control the broadcast of offensi (Varona 2004, p. 39). According to s. 1464 of Title Code <<http://www.gpoaccess.gov/uscode/browse.html>> by means of radio communication shall be fined under FCC has been entrusted with enforcing this provision (C that 'appeals to the prurient interest' and depicts sex merit' (Freedman 2008, p. 128) (Note: see *Miller v Cali* prohibited under s. 73.3999(a) of Title Regulations <<http://law.justia.com/us/cfr/index.html>>. S under the First Amendment of the American Constitu considered to be 'utterly without redeeming social imp 354 U.S. 476 (1957)). Unlike obscene material, offens entitled to the protection of free speech under the Firs be broadcast between 10 p.m. and 6 a.m. (47 C.F.R. 'words that are so highly offensive that their mere utter 'nuisance"' (FCC, 2007). Indecent material is defined as terms patently offensive as measured by contemporar sexual or excretory organs or activities' (Varona 2004, 654 (D.C. Cir. 1995) at 657).

The assessment of the context in which indecent m assessment focuses on 'contemporary community stanc as 'patently offensive' when measured against these s itself, looking at 'the degree of graphicness involved, tl

or repeated and whether the material aims deliberately on a case by case basis (Freedman 2008, p. 128). How vague and too wide (Coates 2005, p. 789). As Coates (the test for obscenity put forward by the Supreme Court degree of confusion among broadcasters as to what is Furthermore, commentators have pointed towards the standards' by an FCC panel of five political appointees (J

The FCC has been criticised in the past for advising broadcasters, opting for regulatory intervention only when in recent years, the communications regulator has imposed its rules on indecency (Rosenblat 2006, p. 167). In 2003 following 159 complaints about the broadcast of indecent television' programme Married by America (FCC, 2003) adjudication in the broadcast of this controversial episode practical operation of the FCC rules on offensive content

'Reality television' programmes have 'flooded' the American reality television' programme in which single adults who potentially get married (FCC 2004a, para. 2). The episode was broadcast before 10 p.m. on the 7th of April 2003 and the remaining two couples (para. 2). The broadcast featured cream from strippers' bodies (para. 8). Fox defended the descriptions or depictions of sexual or excretory organs as 'offensive' (para. 3). Fox also argued that the broadcast was in the participants' character development' (para. 12). The FCC determined that the broadcast was 'patently offensive to the broadcast medium' (para. 10). In reaching its decision which the material was broadcast and concluded that the broadcast was of a sexual and gratuitous nature' (para. 10). The FCC also found that it 'titillate the audience' due to the prolonged appearance of a sexual nature' (paras. 11 and 12). Consequently, FCC found that at a time when there was a 'reasonable risk' that children

The fine imposed by the communications regulator is illustrated by the number of complaints about the broadcast of 'reality television'. Such examples include a fine imposed on the transmission of the 2003 Golden Globe Awards (FCC 2003) where the lead singer of U2, who employed the words 'f***it' and 'consider these words to be indecent, it eventually gave Viacom imposed a fine of \$550,000 on Viacom, after the communications regulator fined the televised Super Bowl 2003, following the live half-time alleged 'wardrobe malfunction', one of the singer's breaches

In light of these fines, Freedman (2008) points towards a 'sustained assault' on the broadcast of 'bad language' and the First Amendment. This was motivated, *inter alia*, by concerns over indecency (Freedman 2008, p. 131). The current campaign against former FCC chairman Newton Minow's approach put pressure on Broadcasters. Minow (1961) stressed that he was 'unwilling' and 'there will be no suppression of programming which does

In 2006, following the adoption of the Broadcast Decency Code, the FCC imposed increased fines on broadcasters that fail to comply with the 'no censorship' in which broadcasters adopt the precautionary principle that could potentially trigger a fine from the FCC (Freedman 2008). The current campaign against indecency has led to 'an unconstitutional and inappropriate' (2008) argues that it is difficult to feel too sympathetic towards the 'capitalised from broadcasting 'a highly sensationalist and

The American broadcasting map seems to be dominated by self-censorship, for fear of attracting fines from the FCC. This raises significant concerns for the protection of free speech and the value of free speech in the context of a discussion of the value of free speech in the context of questions regarding the justifications and the extent of government intervention. It warns us against perceiving the concern for media self-censorship. Coates suggests, the media is much more than just a conduit for information. Censorship could extend to informative programmes such as news and current affairs.

The FCC has been faced with the 'difficult and delicate task of balancing its obligations, while at the same time preserving the First Amendment' (Varona 2006, p. 163). The Supreme Court has intervened with calls for protecting free speech, the *Sys. Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 117 (1967). In the context of the First Amendment, the Supreme Court has in the past upheld the regulation of broadcasting content in the pursuit of the public interest. *National Labor Relations Board v. Electrical Workers Union*, 369 U.S. 190 (1962); *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 269 (1969); *Foundation*, 438 U.S. 726 (1978), the Supreme Court has held that the government's interest in preventing offensive materials could intrude into the privacy of people. The government's interest alone plainly outweighs the First Amendment rights of a broadcaster.

In any assessment about the balance between free speech and the public interest, the focus must be on identifying the wider values that are at stake. The examinations of broadcasting policy in the United States have been framed by the First Amendment. One potential interpretation is that of a 'marketplace of ideas', which is free from state interference. This metaphor has been attributed to Justice Holmes in *Whitney v. California*, 339 U.S. 682 (1951), and is associated with 'an exercise in consumer sovereignty' (Varona 2008, p. 61, quoting Sunstein 1990). An alternative interpretation focuses on considerations such as equality of citizenship and participation in the political process. This approach is much closer to the vision put forward in the American Constitution (Varona 2004, p. 53). Unfortunately, the current perception of free speech seems to have the predominant voice (Free Speech is a commodity). A commodified perception of free speech, in which the ratio of free speech to other values is illegitimate to question how much weight is actually given to free speech principles (based on values such as equality of citizenship and participation in the political process). Regulatory intervention in broadcasting content and content is discussed in depth in Part Four of this study.

LESSONS TO BE LEARNED?

Content has been considered to be 'the most controversial' (Varona 2008, p. 61). As was seen in the previous sections, the regulation of broadcasting in the United Kingdom and the United States has attracted significant attention. Both systems in the United Kingdom and the United States have played an important role in influencing the content of broadcasting (Varona 2008, p. 222). It is, therefore, reasonable to question how the balance between calls for intervention in broadcasting has been struck. Before addressing this issue, it is important to consider the differences between the United Kingdom and the United States. The United Kingdom are confronted with a number of common law principles. In the United States, the protection of free speech, the approaches adopted by the two countries are different. These differences are rooted in the different legal cultures of the two countries (Glendon, Carozza and Picker 2008). Barendt (2008) has argued that the degree of protection to free speech from Government intervention in the United Kingdom is the balancing of free speech against other rights. Content regulation in the United States is influenced by the incorporation of the ECHR into domestic law. The balance between freedom of expression and other rights is a key issue. The balance of free speech 'may be necessary in order to ensure the protection of other rights' (Craig (1990) suggests that the American and British

Lawyers in the United Kingdom have much to

the most fundamental level, this serves to re-
end of constitutional controversy...[L]awyers i
experience in the United Kingdom...[UK] :
obligations...can embrace a wider spectrum
courts.

While both the British and the American systems er
limitations to free speech in certain circumstances. The
regulator to intervene in regulating offensive broadca
(United Kingdom); 47 C.F.R. § 73.3999 (United States o
refers to the power of broadcasting to intrude int
Foundation 438 U.S. 726 (1978)) (Feintuck and Varney 2
regulation of offensive broadcasting content are not c
America. In Ofcom's adjudication in the 2007 CBB inc
limitations to freedom of expression are acceptable or
aim' (Ofcom 2007a, para. 3.7). Unfortunately, the con
practical application of these limitations. In the United
speech provisions under the First Amendment of the (3
26). However, the American communications regulat
content, particularly obscene, indecent and profane i
indecenty has been criticised for being too vague (Coat
of any assessment of terms such as 'contemporary cc
2008, p. 129). This has led to a certain degree of conf
on indecenty (Coates 2005, p. 778) and in order to avc
self-censorship (Freedman 2008, p. 127). It is interesti
the United States of America has been stricter than
attributed to the dominance of conservative views in the

Particular concerns are posed by any abstract inter
lessons could be learned from the Australian system,
determine what constitutes offensive content. The con
in the regulation of broadcasting content under the Clas
Television Industry Code of Practice (ACMA 2007, p
standards' can pose a number of challenges, as 'such s'
'a pluralistic society such as Australia will necessarily
Australian approach relies on the development and r
community attitudes as to what constitutes offensive co
the Australian Communications and Media Authority
programming on commercial free to air television, ACM
focus groups in order to determine whether the Comr
standards (p. 1). This report revealed that the Code ge
surveyed considered that they should have the free
guardians should have control over what their children
'reality television programmes exploit the people wh
inappropriate attitudes towards women' (p. 45). In ligh
of a clause in the Code to prohibit 'the broadcast of ma
a highly demeaning or exploitative manner' (p. 3).
'contemporary community standards' by regulators (Co:
process in which the community is given a say in wh:
intervene in responding to such content.

Whilst acknowledging that the balance between reg
expression should not be conducted on abstract terms
to what constitutes 'offensive content', it is importan
which upholds the importance of free speech, which pro
framework and to the circumstances when limitations t
broadcasters are left unsure as to what can be broadca
while a self-censorship attitude could have devastatin
the entertainment genre (Coates 2005, p. 778). The ulti

The examination of the British and American approache

of a clearly defined framework of principles that would and the protection of freedom of expression (Heyman regulation in 'the public interest': the FCC is entrusted p. 122) and licensed broadcasters agree to 'broadcast (Varona 2004, p. 4). According to Feintuck (2003), the ultimately be enforced by the Supreme Court and could, media'. Nevertheless, the 'public interest' notion is ill de points out, the FCC has so far failed to put forward a context. Furthermore, Thierer argues that the 'public special interest influence' and that, in practice, it is ofte 441 and 451). In the British system, the absence of a Act2003 has led to the criticism that this system lacks citizenship values (Feintuck 2003, p. 107). According to opportunity' for providing the basis for regulatory interv

The term 'public interest' is elusive, being open to a meaning of this term (determining some scholars to be commentators seem to agree on the difficulty of asso exact definition (Feintuck, 2004). An analogy has been different content' (Feintuck, 2004, p. 3). The ambiguity private ends or to be associated with the short-term p calls for a definition of the 'public interest' that compris particularly equality of citizenship. This is hoped to red powers, in the pursuit of their own interests (p. 58). Th comprise the 'democratic imperatives that underlie our s

The Communications Act 2003 does make reference to ci 3(1) of the Act, it is the 'principal duty' of Ofcom to matters' (s. 3(1)(a)) and to 'further the interests of c functions under section 3(1) of the Act, Ofcom's duties radio services, designed to 'provide adequate protectio harmful material in such services' (s. 3(2)(e)). The e: positive step in the protection of democratic values. protecting citizenship and consumer interests, overloo The concept of citizenship comprises wider democratic acting as citizens, people tend to take into account the self-interests (*Sunstein 1990, p. 58*). On the other har public, as people tend to act in the pursuit of indivi broadcasting content, the Act makes reference to re public', without specifying whether it is referring to the | the range of values protected, the Act should have p (Feintuck 2003).

Regulators can assess effectively the balance between expression only if guided by a framework of principle: never going to be an easy task for regulators, especia and the protection of dignity. In the American context, and dignity has been affected by the fact that ' the ind such as dignity and equality'. As Heyman (2008) sugge rights and societal interests', as these involve '[a] coll adopting a rights-based approach for free speech and for self-determination' (Heyman 2008, p. 2).

Both freedom of expression and dignity constitute impo in ensuring equality of citizenship, due to its ability to er an important role in ensuring equality, due to its em (2001, p. 155). This value is inherent in every human l everybody 'is treated as having value or worth' (Free speech should always prevail over dignity or *vice vers* faced with the 'tragic choice' of protecting either dignit 1). Instead, speech should be 'reconciled' with other

framework of principles based on equality of citizenship of intervention in broadcasting content.

Some commentators question whether regulators should impact free speech. Coates (2005), for example, asks what they want to watch. Viewers who are dischannel or switch off the television set, and if enough content accordingly. In this manner, content is determined inevitably this approach will open the door to 'tasteful ideas, unhindered by regulatory intervention, which is similar to the dissenting opinion of Justice Brennan in should have the ultimate control over what is broadcast. protection of freedom of expression is fundamental in a system which would leave content regulation exclusively marketplace is not best positioned to act as the exclusive viewers as consumers rather than citizens. As discussed they would as citizens (Rooder 2005, p. 902), and if citizenship concerns such as the need to safeguard human

In the context of 'reality television' programmes, Brennan that reaches all segments of society' and if 'reality television social costs that burden society'. While acknowledging an idea, image or word (which) may offend someone is not 2005, p. 805), it would be impractical to leave all the regulation clearly defined framework of principles based on citizenship could assist regulators in the difficult balance between broadcasting content.

CONCLUSION

Regulators are often faced with dilemmas between content explore the dilemmas faced by the communications regulator when balancing the need for intervention in regulating content. The discussion focused on the regulation of offensive Channel Four's broadcast of CBB in 2007 and FCC's action on Fox network. The discussion was aimed at raising wider broadcast of offensive material.

The analysis of the British and American systems reveals when balancing the rationale for intervention with concerns by the lack of adequate definitions of the limitations of adjudication on the 2007 CBB incident, Ofcom (2007a) acceptable only if 'required by law' and 'if necessary'. communications regulator did not provide any guidance. United States of America, the limitations to free speech are vague (Coates 2005, p. 789). This has left broadcasters fear of attracting fines from the FCC has led them to exercise fear that this trend will extend beyond the entertainment p. 789). Potential solutions in determining what content assessing whether the communications regulators should by the Australian system. Rather than adopting subjective relies on actual consultations with the community in (2007).

The examination of the British and American jurisdictions principles to assist regulators in the difficult balance between expression. While the FCC is entrusted with acting in a communications regulator has failed to put forward a clear broadcasting content (Varona 2004, p. 151). Furthermore 'coherent concept of the public interest' in the Commission regulatory intervention in the pursuit of citizenship interests

the 'public interest' notion can play an important role broadcasting content.

In any assessment about the balance between free speech and the public interest, the outcome should be influenced by a framework of principles clearly defined in the regulatory framework, the decision dominated by commercial and political pressures. It is, I think, a principle that is not likely to be a panacea for all the difficulties. (Feintuck 1996) suggests, 'the public interest is made up by market forces. To protect the public from offensive content, the same concept could be used. In the face of these difficulties, it is legitimate to question whether it is. Nevertheless, as Feintuck (2004) points out, a definite potential to reduce the risk of misuse of this concept by a framework of principles can ensure that important citizens are empowered in citizenship and the need to protect human rights. In dealing with complaints from the public about offensive

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