CONTENT REGULATION: PROCESS FOR DEVELOPING CODES OF PRACTICE

Consultation Document

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UTILITIES REGULATION & COMPETITION AUTHORITY

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Executive Summary

Introduction

(i) Part IX of The Communications Act, 2009 ("Comms Act") creates a new regime for content regulation in The Bahamas. The new regulations are required to cover "audiovisual media services", defined in the Comms Act as being services under the editorial responsibility of the service provider. These include traditional forms of broadcasting, namely television and radio programmes, and potentially also some kinds of online or mobile services. The content regulation provisions in the Comms Act also raise the possibility for other kinds of "content services" to be regulated, e.g. online or mobile content that is not under the editorial responsibility of the service provider.

(ii) Content regulation generally seeks to ensure that the programmes available reflect the standards expected by members of the public. It can include: prohibitions or restrictions on certain kinds of programming; rules that promote accuracy and fairness in news, current affairs and other factual programming; and information and tools that enable people to make informed choices about what they, and their families, watch and listen to.

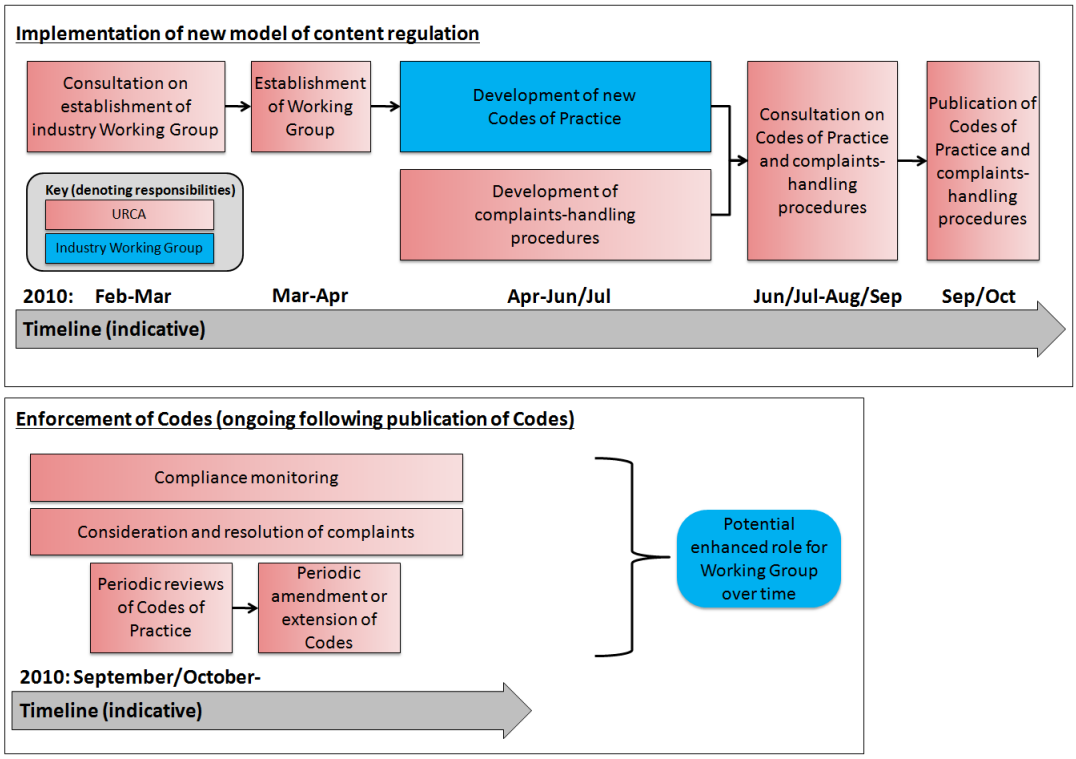
(iii) The Comms Act mandates the Utilities Regulation and Competition Authority (URCA) to issue new Codes of Practice for audiovisual media services and to develop complaints-handling procedures for dealing with complaints by the public regarding alleged breaches of the Codes. The Codes would apply to the state-owned broadcaster, ZNS, and to private radio and television broadcasters operating in The Bahamas. While the initial focus of the Codes will be on traditional forms of broadcasting, the same provisions would also potentially apply over time to new forms of TV- and radio-like services that are currently available in The Bahamas, or which become available in the future.

(iv) The Comms Act gives URCA powers to delegate to industry groups the development of these Codes of Practice and the monitoring of compliance with the Codes. URCA believes that the Codes should be developed with the maximum involvement of all stakeholders concerned. The purpose of this public consultation is to set out URCA's initial proposals to exercise its powers of delegation by establishing an industry Working Group to develop the new Codes, and potentially to play an ongoing role relating to their future development and to compliance monitoring. Industry representatives would thus be directly involved in the creation of the Codes, while all interested stakeholders would have the opportunity to participate in the formal public consultation on the draft Codes that are developed. (The Codes would only apply post-transmission: the Comms Act states that neither URCA nor any body appointed by URCA has powers to pre-censor programmes that have not yet been broadcast.)

(v) The tasks relating to the new proposed model of content regulation, indicative timings and URCA's proposals regarding the role that the industry Working Group would play are illustrated in Figure (i) overleaf.

(vi) The new Codes of Practice are intended to replace the content rules in the Broadcasting Act and its subsidiary legislation, which were repealed in 2009. The new Codes will also replace the Interim Code of Practice for Political Broadcasts, which URCA issued in January 2010. While broadcasting services in The Bahamas have historically been subject to different statutes, in practice it appears that the Rules relating to content were never monitored or enforced. The new approach to content regulation should address the limitations of the previous regulatory framework, enabling a more robust approach that better serves the needs of the Bahamian public and broadcasters alike.

Figure (i): New model of content regulation: tasks and proposed division of responsibilities



Rationale for co-regulatory approach

(vii) The establishment of an industry Working Group represents a form of "co-regulation", combining elements of statutory regulation (i.e., rules that are fully administered by the Government or regulatory body) and self-regulation (whereby the industry collectively develops a regulatory system and takes full responsibility for monitoring and administering compliance with it). Co-regulatory models are increasingly held to be the most appropriate forms of regulation in communications industries, as they permit swift and flexible responses to the dramatic changes in production and demand that have been brought about by technological change in recent years.

(viii) However, co-regulation is only effective when the incentives of the relevant parties are sufficiently aligned. In the case of content regulation in The Bahamas, it is important to consider whether the interests of the radio and television broadcasters who would be required to adhere to the Codes are aligned with each other and with the views of Bahamian viewers and listeners. A misalignment could result either in a failure of the broadcasters to agree any form of Code of Practice, or in the development of a Code that serves their purposes but fails to address the concerns of viewers and listeners.

(ix) URCA's preliminary analysis indicates that there is sufficient alignment of interests in The Bahamas between industry players and members of the public to justify the development of a co-regulatory model for content regulation. Moreover, the full or partial delegation of certain functions to an industry Working Group would be expected to bring a number of benefits: (i) It would allow the expertise of industry participants to be applied to the relevant tasks; (ii) it would encourage industry participants to "own" the Codes; (iii) it would best enable the Codes to evolve rapidly in response to changes in the marketplace; and (iv) it would potentially reduce bureaucracy and regulatory costs.

Design of co-regulatory system

(x) Industry groups play some kind of role as part of the system of content regulation in many countries around the world, although the nature of this role varies considerably from country to country, reflecting cultural, historical and institutional differences. It is incumbent upon URCA to devise a system for content regulation that reflects the range and types of TV and radio programming offered in The Bahamas, that is suited to the nature of the companies operating in The Bahamas, and that takes into account the fact that models of formal regulation are less well-established in The Bahamas than in other parts of the world. URCA has also been guided by international models of best practice that emphasise elements such as transparency and clarity in processes and structures, and the involvement of independent members in the Working Group.

(xi) URCA proposes that the core responsibility of the Working Group would initially be to develop new Codes of Practice. The Group would be tasked with determining the range of areas covered (guided by the indicative list set out in the Comms Act). The Working Group would also need to consider the extent to which provisions within the Codes should apply to different kinds of existing media, and to new and emerging services, such as online or mobile content. On the latter point, URCA's initial view is that, if considered appropriate, it might be better for provisions to be extended to such forms of content over a period of time. The development of the initial set of Codes is expected to require an intensive work schedule over a period of around 2-3 months.

(xii) The Working Group could potentially be given further responsibilities in the future relating to the review of the Codes, compliance monitoring and the consideration of complaints. URCA believes that it is not necessary to make any decisions at this time regarding the ongoing role of the Working Group, for a number of reasons. First, the Group should be given the opportunity to develop a reputation for being reliable and consistent in its operations, and for making appropriate and proportionate decisions. Second, it should not be overburdened with too many responsibilities at the outset. And third, it would be helpful to take into account the views of the Working Group members themselves as to what its ongoing role should be, if any, once it is established.

(xiii) To ensure that a Working Group operates effectively and to provide safeguards to ensure that the interests of people in The Bahamas are properly represented, URCA believes that the Working Group should include people directly representing the views of the general public as well as industry representatives, and that it should be managed by URCA. URCA proposes that, when it is first established, the Working Group should comprise no more than 9 to 10 members (excluding URCA representatives) drawn from the following companies, sectors and segments of the general public, to ensure appropriate representation and to provide sufficient checks and balances:

- ZNS as the state-owned public service broadcaster offering local TV and radio channels
- Cable Bahamas Ltd. as the largest private broadcaster and platform operator
- 1-2 representatives of private Bahamian TV and radio channels
- A representative of independent production companies supplying content to broadcasters
- A representative of mainstream public opinion
- A representative of minority views
- 2 representatives to cover the views of people in the Northern and Southern Family Islands
- A representative of the views of young people.

(xiv) URCA is mindful that it might also be appropriate to create separate sub-groups to develop specific aspects of the Codes. For example, a sub-group of broadcasters and the general public might be tasked with Codes relating to the content and scheduling of advertising, while another sub-group comprising representatives drawn from political parties and independent members of the public could focus on Codes governing political broadcasts.

(xv) The Working Group would consolidate its work and the outputs of any sub-groups into an integrated set of draft Codes, which would then be subject to a formal public consultation by URCA later in the year. Any stakeholders who did not participate directly in the Working Group (or sub-groups) would have the opportunity to comment at this stage.

(xvi) The present consultation, on the process for developing the new Codes of Practice, represents an important first step in the establishment of a co-regulatory system for content regulation in The Bahamas. It is in the interests of all stakeholders for an industry Working Group to succeed and be able to develop and enhance its role over time. URCA hopes that membership of the Working Group will be perceived as a privilege and an exciting opportunity to help shape the future of broadcasting in The Bahamas. URCA encourages all interested parties – including but not limited to potential Working Group members – to respond to the proposals set out in this document.

1. Introduction

1. This document is issued in accordance with Part IX (Content Regulation) of the Communications Act, 2009 ("Comms Act").

2. The broadcasting (television and radio) sector in The Bahamas comprises ZNS, the state-owned public service broadcaster, a small number of private television stations, and around a dozen private radio stations (Section 1.1). In terms of the programming that they provide, these Bahamian broadcasters have not historically been subject to stringent regulation – while content rules did exist in legislation, there was no active body responsible for monitoring and enforcing them (Section 1.2).

3. The Comms Act creates an entirely new regime for content regulation in The Bahamas. The purpose of content regulation is to ensure that the programmes that are available reflect the standards expected by members of the public. It can include: prohibitions or restrictions on certain kinds of programming (e.g. programmes covering explicit themes can only be shown after a certain time at night); rules that promote accuracy and fairness in news, current affairs and other factual programming; and information and tools that enable people to make informed choices about what they, and their families, watch and listen to.

4. The Utilities Regulation and Competition Authority (URCA) is required to issue new Codes of Practice and to develop complaints-handling procedures. The Comms Act also gives URCA powers to delegate to industry groups the development of these Codes of Practice ("Codes") and the monitoring of compliance with the Codes (Section 1.3). These Codes are expected to better satisfy the needs of the Bahamian public and broadcasters alike (Section 1.4).

5. The purpose of this public consultation is to set out URCA's initial proposals to exercise its powers of delegation by establishing an industry Working Group to develop the new Codes (Section 1.5). Sections 1.6 and 1.7 explain how to respond to this consultation and set out the structure of the remainder of this document, respectively.

1.1 Overview of the broadcasting sector

6. Broadcasting in The Bahamas officially began in 1936. The radio station, which was initially an experiment of the Broadcasting Unit of The Bahamas Telegraph Department, used the call letters ZNS (Zephyr Nassau Sunshine). ZNS was separated from the Telecommunications Department by an Act of Parliament in 1956, establishing The Broadcasting Corporation of The Bahamas (BCB). In 1977, ZNS launched its first television service, which was provided over-the-air in New Providence. Following amendments to the Broadcasting Act (and subsidiary legislation) in 1992-93, the local broadcasting monopoly in The Bahamas was broken with the licensing of private radio, and subsequently television, stations. The launch of Cable Bahamas Ltd. in 1995 led to the provision of a much wider range of channels. Cable has become the dominant means of access for television in The Bahamas – Cable Bahamas' network now reaches more than 95% of households spread over 11 islands. The digital TV packages that it currently offers include up to around 200 TV channels, including premium sports and movie channels. However, the vast majority of these are imported channels from around the world (predominantly the United States).

7. There remains only a small number of television broadcasters operating in The Bahamas. ZNS's main channel, **ZNS TV-13**, offers a mix of local programming that includes news and current affairs, sports, educational and business programmes, and community announcements, while **The Parliamentary Channel** covers parliamentary proceedings. Three other local TV channels, provided by private operators, are available on cable: **Cable 12 Bahamas** (which offers news and other local programming), **The Jones Communications Network (JCN)** (local news, talk shows and panel discussions) and **The Bahamas Christian Network (BCN)** (church services, news and talk shows). Also, several hours of local programming from **Adventist Television** are included each week in the Bahamian feed of international Christian channel 3ABN.

8. By contrast with television, there is a wide range of Bahamian-owned radio stations offering a mix of talk, music and religious programming – although these are strongly focused in New Providence, and the range of radio stations available on other islands is substantially less. ZNS offers two AM stations (**The National Voice (1540 AM)** and **The Northern Service (810 AM)**) that together cover all islands in The Bahamas, broadcasting a mix of news and other programming. A further two FM stations from ZNS – **The Power Station (104.5 FM)** (youth-focused music) and **The Inspiration Station (107.9 FM)** (gospel and religious) – are available in New Providence and parts of the northwest Bahamas. In addition, there are more than a dozen private FM radio stations serving different parts of The Bahamas (albeit with a strong focus on New Providence), which cover a diverse range of music genres. These are listed in Appendix 2.

9. Looking to the future, The Bahamas can expect to see an increase in consumer choice and flexibility. Digital cable offers a wider range of channels than analogue platforms, and there is a growing amount of audiovisual material available online (including on-demand services offering radio and television programmes). Digital platforms provide opportunities for new local services to develop, including ones serving niche groups (e.g. people based in a particular area or those with a particular hobby or interest).

1.2 Historic regulatory framework

10. The legislative framework governing broadcasting in The Bahamas has historically been covered by the following legislation:

- **Broadcasting Act (Chapter 305 of the Statute Laws of The Bahamas)**. This Act established the Broadcasting Corporation of The Bahamas, more commonly known as ZNS. It sets out rules for the Corporation covering corporate governance, borrowing powers, and so on.

- **Subsidiary legislation to the Broadcasting Act**. More detailed rules for ZNS and other licensed broadcasters were set out in two pieces of subsidiary legislation. The **Broadcasting Rules, 1992** applied to ZNS only; while the **Broadcasting (Licensing) Rules, 1993** were applied to other licensed broadcasters in The Bahamas. These Rules, which will be replaced by new Codes of Practice (see below), are set out in greater detail in Appendix 3.

- **Public Utilities Commission Act (Chapter 306)**. This Act established the Public Utilities Commission (PUC), the utilities regulatory body that URCA replaces. Amongst the "controlled public utilities" that PUC regulated were those providing "*a service consisting of emitting, transmitting, conveying, switching or receiving messages within, into or from The Bahamas by means of any system that uses any electric electro-magnetic, electro-optical or optic-electronic means*" (PUC Act s. 2(b)). However, PUC's broadcasting remit was confined to the issuing of radio spectrum for radio and television stations, but it played no role in regulating content.

- **Television Regulatory Authority Act (Chapter 307)**. This Act sought to establish "*an Authority to advise and oversee the operations of licensed cable television operators and to make provision with respect to matters ancillary to those operations*". Its duties were to include making recommendations to the Minister responsible for relations with the BCB on regulations that might be imposed on licensees.

- **Parliamentary Elections Act (Chapter 7)**. This Act (amongst other things) established an Electoral Broadcasting Council (EBC), whose duties are to "*monitor the coverage of the election campaign being done by The Broadcasting Corporation of The Bahamas for the purpose of ensuring that there is accuracy and fairness in the reporting of the campaig*n" and to "*act as a board of review to hear any complaints made by a political party or candidate at an election in respect of the breach by the Broadcasting Corporation of The Bahamas or its General Manager of the rules relating to political broadcasts or advertisements*" (s. 31(1)).

11. Of these Acts, only the Broadcasting Act (and its subsidiary legislation) included provisions directly relating to content regulation that were legally in force. The Public Utilities Commission Act did not cover content issues at all, while URCA understands that neither the Television Regulatory Authority nor the Electoral Broadcasting Council was ever in practice operational in The Bahamas. As such, although the Minister has powers to sanction broadcasters for breaches of these Rules, no explicit mechanism has hitherto been put in place to monitor and ensure compliance, or to allow members of the public to register complaints.

12. S. 18 of the Broadcasting Act, which empowered the Minister to make Rules for the regulation of content, was repealed in 2009 by s. 120(1) of the Comms Act. Consequently, the subsidiary Rules were also repealed by implication, to make way for the new model of content regulation established by the Comms Act (see Section 1.3 below). As part of this legislative process, there was no discussion or assessment of the intrinsic suitability of the former Rules to regulate content in The Bahamas, as this was assumed not to be necessary given that an entirely new model of content regulation was being established. Given that the repealed Rules included ones covering political broadcasts, following the announcement of a bye-election in early 2010, URCA issued an Interim Code of Practice for Political Broadcasts (on 19 January 2010). The Interim Code essentially reinstated the Rules made under the Broadcasting Act that formerly applied to elections and other forms of political broadcasts. It is intended to remain in force until new Codes of Practice are published by URCA later in the year. Given the absence of a formal complaints-handling process in the past, the Interim Code established a two-stage procedure for complaints-handling, responsibilities for the implementation of which are shared between the relevant broadcasters and URCA.[1]

13. It is instructive to compare the historic regime of content regulation in The Bahamas with the approaches taken in other countries. In Appendix 1, URCA presents a series of illustrative case studies from around the world, including the Caribbean. A number of common themes emerge regarding the development and application of content regulation, which are also summarised in the Appendix. Overall, while the areas covered by the Rules made under the Broadcasting Act were similar to those covered by broadcasting Codes in other countries, it might be argued that the Rules in The Bahamas were in some respects less rigorous and thorough than the Codes developed in some parts of the world – a crucial example being the lack of implementation of any enforcement mechanism that would have enabled any person to bring breaches of the Rules to the attention of broadcasters and the regulatory authorities.

1.3 New model of content regulation

14. The Comms Act, which came into force on 1 September 2009, introduces a new regime for the regulation of the electronic communications sector in The Bahamas. Alongside this, the Utilities Regulation and Competition Authority Act, 2009 ("URCA Act") established URCA as the new regulatory authority for the sector.

15. URCA has wide-ranging powers, to be exercised in compliance with principles of good regulation. In general, URCA is required to introduce regulatory measures that are efficient and proportionate to their purpose, and to introduce them in a manner that is transparent, fair and non-discriminatory. Where URCA believes that market forces alone are unlikely to achieve policy objectives within the required timeframe, it may introduce regulatory requirements, having due regard to the costs and implications for affected parties.

[1] The Interim Code can be downloaded from the URCA website (at www.urcabahamas.bs), together with a press statement to elucidate the reasons why URCA considered issuing an Interim Code.

16. The new regulatory model introduced by the Comms Act gives URCA two sets of duties that focus primarily on "content services", the definition of which encompasses traditional forms of broadcasting (i.e. radio and television programmes) and potentially also new forms of digital media (e.g. audiovisual content delivered online or to mobile devices).

17. The first set of duties relates to public service broadcasting (PSB). URCA is required to conduct a review of the PSB needs of people in The Bahamas. As part of this, it will review the output, funding and corporate governance of ZNS, and will consider whether other local broadcast channels could play a formal role in terms of PSB delivery. URCA will be formally consulting on these issues separately later in the year.

18. Second, and regardless of the outcome of the PSB review, URCA is given new duties regarding content regulation more generally:

    i. URCA is required to issue new Codes of Practice to be observed by licensees providing audiovisual media services in The Bahamas (s. 53(1) of the Comms Act).

    ii. URCA is required to determine complaints-handling procedures as part of the Codes, to enable members of the public to register complaints and URCA to monitor compliance (s. 54).

    iii. URCA is given powers to delegate certain responsibilities to an industry group: such a group could be tasked with developing the Codes of Practice and with monitoring compliance (s. 55).

19. The Comms Act provides a list of the kinds of standards that might be included in the new Codes (s. 53(2)). These cover areas such as the protection of children, harm and offence, taste and decency, accuracy and fairness, political broadcasts, advertising and sponsorship, and guaranteed access to certain kinds of content and services (e.g. relating to national emergencies and disasters). The full list specified in the Act is as follows:

    (a) methods of ensuring the protection of children from exposure to programme material which may be harmful to them

    (b) promoting accuracy and fairness in news and current affairs programmes

    (c) preventing the broadcasting of programmes that simulate news or events in a way that misleads or alarms the audience

    (d) in the case of Codes of Practice developed for broadcasting –

        (i) time devoted to advertising

        (ii) standards requiring advertisements to be distinguished from programme content

        (iii) the kinds of sponsorship announcements that may be broadcast

        (iv) the kinds of sponsorship announcements that particular kinds of programmes may carry

    (e) captioning of programmes for the hearing impaired

    (f) teletext and ancillary services

    (g) party political broadcasts

    (h) sports and national events broadcasting

    (i) must carry regulations

    (j) national emergency and disaster conditions.

20. The Comms Act further requires the following matters to be taken into account in the development of Codes of Practice (s. 53(3)):

    (a) the portrayal in programmes of –

        (i) physical and psychological violence

        (ii) sexual conduct and nudity

        (iii) the use of drugs, including alcohol and tobacco

        (iv) matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability

    (b) the use in programmes of offensive language.

1.4 Benefits of new model of content regulation

21. By issuing a new set of Codes of Practice, alongside a clearly-defined and well-promoted complaints-handling process to address potential breaches of the Codes, URCA seeks to establish a new approach to content regulation that should address the limitations of the previous regulatory framework in The Bahamas, enabling a more robust approach to be developed that better satisfies the needs of the general public and broadcasters alike.

22. The new system of content regulation should serve to empower all people in the Bahamas. The intention is that the new Codes would ensure that the nature of the programmes that Bahamians watch or listen to matches their expectations about what should, or should not, be broadcast (taking into account the time of day, where appropriate). And the complaints-handling process will also enable people to act when they see or hear something that they believe falls foul of the Codes.

23. It should be stressed that the Codes of Practice should not create an overly censorious regime that seeks to restrict audience choice. Rather, it is important that any new Codes recognise that different kinds of audiences may want to watch or listen to different kinds of programming, and may have a range of views about what is, or is not, acceptable. The most effective Codes achieve a balance between satisfying the (sometimes conflicting) demands of different audiences whilst providing a minimum set of rules that provide adequate protection to all people, especially children. In particular, the Comms Act prohibits URCA (or any person or body appointed by URCA) from seeking ever to pre-censor programmes ahead of their transmission (s. 56).

24. The Codes should also provide benefits to industry: a clear set of regulations that are applicable to all relevant broadcasters in The Bahamas helps to ensure a level playing field. This can lead to the promotion of competition and innovation in content services. The opportunity for an industry Working Group to play an active role in the development of the Codes (the main focus of this consultation) also ensures that the views and concerns of different broadcasters can directly influence the new regulatory system.

25. Industry players and members of the public alike will benefit if the new model of content regulation is sufficiently flexible to reflect the impact of convergence. As the range and form of content available on digital platforms expands, the boundaries between the kinds of content offered via different platforms are beginning to blur. For example, it is becoming increasingly common for TV programmes to be made available through catch-up services online, radio programmes to be offered as podcasts, video clips to be viewed on mobile devices, etc.

1.5 Objectives of this consultation

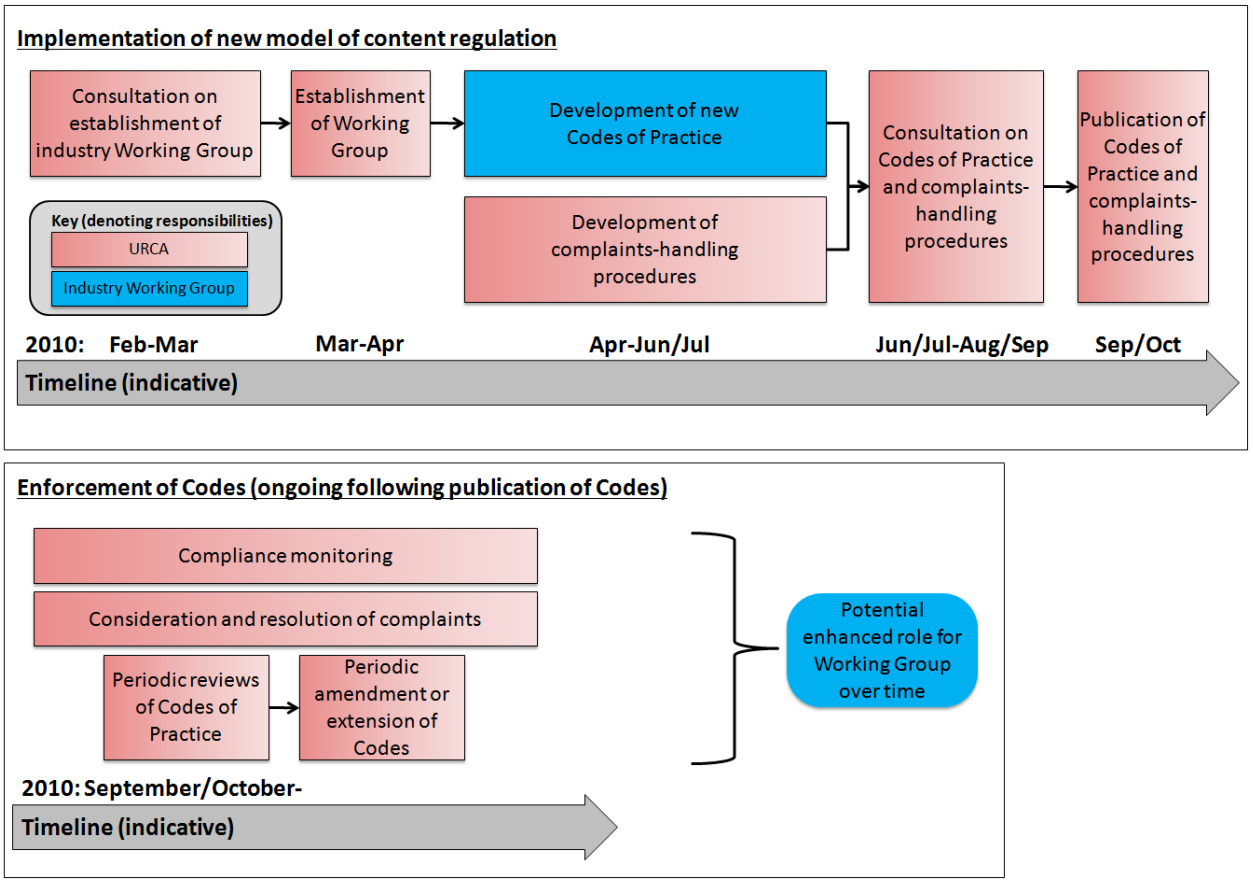
26. The primary purpose of this consultation is to describe, and explain the rationale for, URCA's proposals to use its powers in the Comms Act to establish an industry Working Group in The Bahamas to develop the new Codes of Practice. As part of its proposals, URCA has given consideration to the initial terms of reference for the Working Group, the way the Group should operate, what the composition of the Group should be, and whether its role might be extended over time to encompass other responsibilities (e.g. it could be given further ongoing roles related to reviews of the Codes and compliance monitoring).

27. The establishment of an industry Working Group represents a form of "co-regulation", combining elements of statutory regulation and industry self-regulation. URCA's review of the theoretical literature on different forms of regulation – presented in this document – shows that there are certain conditions under which co-regulation represents an appropriate form of regulation, and which ensure that a co-regulatory model functions effectively. The analysis undertaken by URCA reveals that the full or partial delegation of certain functions to an industry Working Group would be expected to bring a number of benefits. It would allow the expertise of industry participants to be applied to the relevant tasks; it would encourage industry participants to "own" the Codes; it would enable the Codes to evolve rapidly in response to changes in the marketplace; and it would potentially reduce bureaucracy and regulatory costs.

28. URCA also conducted a survey of international models of content regulation, the results of which are presented in the relevant Sections of this paper, with more detailed case studies in Appendix 1. This highlights that different forms of co-regulation have become increasingly popular around the world, but also that such models need to be developed with care. Co-regulation only works if industry participants are sufficiently committed to the process, and are willing and able to look beyond their own narrow corporate self-interests. These conclusions inform URCA's proposals regarding the possibility for additional responsibilities to be delegated to the Working Group over time.

29. URCA envisages a further consultation on the draft Codes and complaints-handling procedures once they have been developed, ahead of the final publication of the Codes. The complete set of tasks relating to the new model of content regulation is set out in Figure 1 overleaf. This Figure also provides indicative timings and illustrates the proposed role that the industry Working Group would play.

Figure 1: New model of content regulation: tasks and proposed division of responsibilities



1.6 Responding to this consultation

30. URCA invites and welcomes comments and submissions from members of the public, licensees and other interested parties on this consultation document.

31. Persons may obtain copies of the public consultation document by downloading it from the URCA Website at www.urcabahamas.bs. They may send their written submissions or comments on the public consultation document to Mr. Michael Symonette, Chief Executive Officer, either:

    a. by hand, to URCA's office at Fourth Terrace, Collins Avenue, Nassau; or

    b. by mail, to URCA at P.O. Box N-4860, Nassau, Bahamas; or

    c. by fax, to 242 323 7288; or

    d. by email, to info@urcabahamas.bs.

    The deadline for receiving submissions and comments is 5:00 PM on 12 March 2010.

32. After the consultation closes, all responses will be published on the URCA website, with the exception of any responses that are clearly marked (in full or part) as being private and confidential. Explanations should be provided to justify any information that is submitted on a confidential basis. URCA will carefully consider all submissions received, and will aim to publish its decision on the establishment of an industry Working Group to develop Codes of Practice by 12 April 2010.

33. Alongside the review of consultation responses, URCA will begin to make contact with potential participants of the Working Group, so that the Group could be fully established as soon after the conclusion of the consultation as possible.

1.7 Structure of this document

34. The remainder of this consultation document is structured as follows:

- Section 2 looks at the rationale for co-regulation. It summarises the theoretical underpinning for different kinds of regulatory models, and sets out criteria under which co-regulation is the most appropriate model. These criteria are applied to assess the suitability of an industry Working Group on content regulation in The Bahamas.

- Section 3 focuses on the design of a new co-regulatory system for content. It provides an overview of co-regulatory systems that operate in other countries, and sets out best-practice criteria governing the implementation of co-regulatory models. It goes on to detail URCA's proposals for the role and composition of an industry Working Group as part of a new co-regulatory system for content in The Bahamas.

- Appendix 1 provides a survey of Content Codes and co-regulatory models drawn from seven countries around the world: Australia, Canada, Malaysia, New Zealand, South Africa, Trinidad and Tobago, and the United Kingdom.

- Appendix 2 lists the Bahamian-operated TV and radio stations that are currently available.

- Appendix 3 lists the Broadcasting Rules in The Bahamas.

2. Rationale for co-regulatory approach

35. This Section focuses on whether URCA should adopt a co-regulatory model for content regulation in The Bahamas, and in particular whether it should establish an industry Working Group to develop Codes of Practice. Section 2.1 summarises how co-regulatory models operate, within a spectrum of regulatory models that range from self-regulation at one end through to statutory regulation at the other. Section 2.2 highlights how convergence in communications sectors, including broadcasting, is leading to changes in regulatory models, and in particular an increasing reliance on co-regulation for some kinds of content regulation. Then, in Section 2.3, URCA applies a typology that indicates the circumstances under which co-regulation is appropriate to the broadcasting sector in The Bahamas. This leads URCA to a preliminary view that an industry Working Group would be the most effective way to develop new Codes of Practice for content, subject to certain safeguards regarding its composition and management.

2.1 Characteristics of different regulatory models

36. In those sectors where some form of regulation is deemed to be necessary, a variety of regulatory approaches may be adopted. The three main forms of regulation are:

- **Statutory regulation**. This is the traditional form of regulation for utilities and other sectors where state intervention is merited. Objectives and rules are defined and enforced by the Government and/or regulatory body. Industry players may be consulted in the development of Codes and other regulatory instruments, but they play no ongoing part in regulatory oversight. Statutory regulation tends to be most appropriate when incentives between the general public and industry players, or between different parts of the industry, are not closely aligned. This may be because of the presence either of large players with significant market power (who might seek to use self-regulation to impose industry standards that act as barriers to entry or otherwise restrict competition) or of a diverse range of industry players with different interests, or because the commercial performance or reputations of the companies involved are unaffected by the matters at hand.
- **Self-regulation**. This occurs when the industry collectively develops a regulatory system that governs its member companies, and takes full responsibility for monitoring and administering compliance with it, including potentially the imposition of sanctions. The most severe sanctions are generally financial penalties or exclusion from the relevant association that has adopted the self-regulatory system. As there is no formal oversight from the Government or regulator, sanctions such as licence suspensions or revocations are not available. Self-regulation works most effectively when there is a high degree of alignment of incentives between individual industry players and between the incentives of industry and members of the public. In such circumstances, self-regulation is often considered to be more flexible and targeted, and potentially less costly to administer, than statutory regulation, in part because it can benefit from the management skills and general expertise of industry players, and also because it can promote a sense of ownership and responsibility amongst industry participants.
- **Co-regulation**. This involves a combination of self- and statutory regulation. The split of responsibilities can vary, and a wide range of approaches are possible involving different degrees of industry participation: it may involve industry and regulatory bodies working in close partnership; it may involve the regulatory authority retaining control over most issues, consulting industry bodies only on certain matters; or alternatively, regulatory oversight may be handled in the first instance by an industry body, with the regulator maintaining backstop powers.

37. These models are not mutually distinct. Rather, they may be seen as part of a spectrum of approaches representing differing degrees of formal intervention.[2]

2.2 Impact of convergence on content regulation

38. Technological developments have been dramatic in communications sectors in recent years, with convergence – whereby the distinctions between the kinds of content available via different platforms and services becomes blurred – being particularly disruptive to existing consumption habits and business models for audiovisual content.

39. In terms of content, it is important that regulatory models reflect the reality of how TV and radio programmes and other forms of content are accessed and consumed currently, and are able to respond rapidly to market changes over time. Co-regulatory models that combine elements of self- and statutory regulation are increasingly held to be the most appropriate forms of regulation. The close involvement of industry players can help to ensure that regulatory models remain fit-for-purpose. Co-regulation can potentially respond most swiftly and flexibly to changes in the sectors being regulated, helping to ensure a level playing field where appropriate, and to avoid imposing unnecessary burdens on industry players that might stifle innovation and competitiveness.

40. To illustrate this point, consider the changes that have occurred in the broadcasting sector in terms of the supply of content, and the consequent impact on consumer behaviour. In the analogue world, TV programmes were only available through linear channel schedules, and viewers could only watch the programmes that were being broadcast at any given time. TV and radio content was typically subject to statutory regulation, relying on mechanisms such as the "watershed", whereby programming of a more adult nature could only be broadcast at certain times (e.g. after 9pm).

41. In the digital world, a much wider range of content is available (e.g. via digital cable and the internet), and the development of new on-demand services and devices such as personal video recorders means that people are becoming accustomed to selecting content in more flexible ways and watching it whenever they want.

42. This has led to different approaches to content regulation, especially for services delivered through the internet, where the volume and range of content available is vast, where geographical borders are more porous (most online content can be accessed almost anywhere in the world without restrictions) and where user-generated content (on sites such as YouTube, Facebook or Flixster) often sits alongside material produced by major broadcasters or studios. Given these characteristics of online services, it is much more difficult to impose statutory rules, and voluntary self-regulation is more common. At the same time, technological solutions provide new kinds of tools that empower consumers (e.g. by allowing parents to control access to the kinds of content their family members may watch in their homes). Some approaches to content regulation increasingly rely on mechanisms that empower consumers, such as labelling of content and promoting awareness of parental control systems.

[2] References for this discussion include "Self-Regulation, Co-Regulation & Public Regulation", Carmen Palzer and Alexander Scheuer in "Promote or Protect? Perspectives on Media Literacy and Media Regulations, Yearbook 2003", Nordicom, University of Gothenburg

43. These different regulatory approaches can seem contradictory in a converging world. Suppose a viewer watches TV through a digital set-top box with a broadband connection that has an integrated programme guide offering a range of linear (e.g. traditional TV channels) and non-linear content (e.g. broadband video-on-demand (VOD) services). A programme watched via this device could be subject to different rules if it is viewed on a traditional linear TV channel compared to if the same programme is selected from a VOD catalogue. Such discrepancies are unhelpful and confusing to broadcasters and consumers alike, leading to pressure for more consistent cross-platform models of content regulation.

44. The European Union (EU) provides an interesting case study of how the regulation of audiovisual content has evolved, and in particular how new co-regulatory models have been adopted, in response to these challenges. The EU recently replaced its "Television Without Frontiers Directive" – which defined content rules specifically for television – with a new "Audiovisual Media Services (AVMS) Directive". The new Directive sought to establish a level playing field between content delivered over different platforms, whilst recognising that it would be inappropriate to extend rules to the majority of online content. Its solution was to extend its rules online specifically to mass media services whose principal purpose is to offer "television-like" programming. So a TV programme would be subject to a consistent set of rules regardless of the platform on which it is delivered, while all other non-TV-like audiovisual content available online would be outside of the scope of the rules.

45. After the AVMS Directive came into force in December 2007, EU Member States were required to implement it[3] into national law by December 2009, including new regulations for VOD services. The AVMS Directive explicitly recognised that "*on-demand audiovisual media services are different from television broadcasting with regard to the choice and control the user can exercise*" (Recital 42). It went on to argue that this justifies imposing lighter regulation on on-demand audiovisual services. The Directive noted that "*experience has shown that both co- and self-regulation instruments […] can play an important role in delivering a high level of consumer protection*", with public interest benefits achieved through the "*active support of the service providers themselves*" (Recital 36). The Directive encouraged Member States to consider co-regulatory approaches for VOD services.

2.3 Appropriateness of co-regulation for content regulation in The Bahamas

46. In terms of whether or not a co-regulatory model would be appropriate for content regulation in The Bahamas, and if so what kind of model would be most suitable, the overarching issue to consider is whether the incentives of the relevant parties are sufficiently aligned.

47. Focusing first only on the industry players, URCA needs to assess whether the views of the entire sector (TV and radio broadcasters and, potentially, also production companies) could be represented by a Working Group on which – for practical reasons – it would not be possible to include individuals from every organisation; and whether such a group could be expected to reach consensus. As explained in Section 1.1 above, the broadcasting community in The Bahamas is relatively small, comprising a state-owned broadcaster, three private television stations and a dozen or so commercial FM radio stations. It is not therefore so large or disparate that it would be impossible to represent all parts of the industry in a Working Group, provided certain checks and balances are in place so that the views of smaller broadcasters and those operating in the Family Islands are properly represented. This is discussed further in Section 3.3.

[3] The Directive can be found at http://ec.europa.eu/avpolicy/reg/avms/index_en.htm

48. In terms of the need to reach consensus, it should be borne in mind that Bahamian-operated TV and radio channels serve a range of different audiences. Some, like ZNS TV-13, appeal to a general audience. Others, such as some FM music radio stations (which target different age groups) or The Bahamas Christian Network, are likely to appeal to more specific audience groups. Different audiences have varied expectations about what they want to watch or listen to, and the kinds of standards that they expect, and individual broadcasters might understandably wish the Codes of Practice to closely reflect the interests of the particular audience groups that they serve. The Codes will therefore need to be sufficiently flexible to meet the diverse expectations of different audiences, while providing appropriate rules that apply universally to all services. For a co-regulatory model to be effective, it will be necessary for industry representatives on a Working Group to be willing to take into account not only their own interests but also the interests of other audiences and other broadcasters throughout The Bahamas.

49. Finally, it is also necessary to ensure that the interests of industry players are aligned with the views of Bahamian viewers and listeners. At a conceptual level, such an alignment of interests should exist, as audience satisfaction tends to lead to higher levels of viewing or listening, which is generally regarded as a key indicator of success for public and private broadcasters alike. Moreover, for private broadcasters, increased audiences tend to translate into increased revenues, so broadcasters also have a commercial interest to keep audiences happy.

50. In practice, however, this relationship is more complex. For advertising-financed broadcasters, there should be a clear alignment of the interests of audiences and broadcasters at a programme level, as advertisers are willing to pay more for higher audiences (with mass-market audiences often attracting a price premium). So there is a direct benefit to the broadcaster – in terms of increased revenues – in satisfying audience demands. But this relationship may be less robust in The Bahamas, where audience measurement data systems do not exist. Consequently, broadcasters and advertisers are more reliant on anecdotal information regarding the popularity of programmes.

51. For pay-TV channels that generate revenues from subscriptions, there should be a clear alignment of the interests of audiences and broadcasters at the channel level, as those channels that best meet the interests of audiences should generate the highest subscription revenues. However, when channels are sold in packages rather than individually, it may not be possible for audiences to signal their appreciation of single channels within the package, and individual channel operators may have weaker incentives to respond to audience demands.

52. Notwithstanding the complexities that arise from the practical matters discussed above, there remain clear incentives for commercial broadcasters to respond to audience demands in general, and specifically for them to wish to collaborate to devise Codes of Practice that respect the interests of the public. URCA's preliminary view is that there is sufficient alignment of interests in The Bahamas between industry players and the general public to justify the development of a co-regulatory model for content regulation. (The operational criteria discussed in Section 3 help determine how the model should be designed to ensure that it succeeds.)

53. This view is also supported by considering criteria developed by the UK communications regulator Ofcom to determine when co-regulatory approaches are appropriate. These criteria follow an incentives-based approach that was developed by Ofcom in 2008, building on a review of the approaches taken with regards co-regulation in different parts of the world. URCA believes the five criteria developed by Ofcom to be helpful in terms of assessing the suitability of a co-regulatory regime for content regulation in The Bahamas. The Ofcom criteria, and URCA's views on their implications for the establishment of a Working Group to develop content Codes in The Bahamas, are set out in Table 1 overleaf.

Table 1: Suitability of content regulation in The Bahamas to a co-regulatory model

Ofcom criteria[4]	**URCA's views on proposed fit for content regulation in The Bahamas**
1. Do industry participants have a collective interest in solving the problem?	Yes – co-regulation is preferable to statutory regulation (the alternative option) for industry participants, as they have the opportunity to help shape and "own" the Codes, and potentially to be given further ongoing responsibilities (e.g. for compliance monitoring). So they have incentives to make an industry Working Group succeed. All parties would benefit if broadcasters' skills and experiences (relating to their knowledge of programming and scheduling, and understanding of audiences) could be used to help shape the Codes and help adapt them over time in response to industry trends. The participation and support of industry players might also serve to reduce regulatory costs.
2. Would the likely solution correspond to the best interests of the general public?	Yes – broadcasters' incentives should be broadly aligned with those of the general public (see discussion above). The involvement of independent (non-industry) participants in the Working Group, along with URCA's oversight and management of the group, should help to ensure that the best interests of the public are served.
3. Would individual companies have an incentive not to participate in any agreed scheme?	No – all relevant licensed broadcasters would be legally obliged to follow the Codes of Practice. URCA has clear powers to sanction breaches of the Code. The costs of adhering to the Codes are expected to be small, so incentives not to participate should in any case be low.
4. Are individual companies likely to 'free-ride' on an industry solution?	No – individual companies will be given the opportunity to contribute directly to the Working Group, or to make their views known to representatives on the group. Any company that chooses not to participate in the process will in any case have a statutory obligation to adhere to the Codes.
5. Can clear and straightforward objectives be established by industry?	Yes – clear, transparent and robust Codes of Practice and complaint-handling processes are a common feature of broadcasting sectors around the world. There appear to be no *a priori* reasons why such a system could not be successfully developed in The Bahamas through collaboration between broadcasters, representatives of members of the public and the regulator.

[4] "Identifying appropriate regulatory solutions: principles for analysing self- and co-regulation", Ofcom, December 2008. Ofcom's criteria are highlighted in this document (here and in Section 3.2) as, to URCA's knowledge, no other regulatory body has published a set of incentives-based principles to assist in determining when co-regulation is appropriate which are as clear and up-to-date (in terms of synthesising international best practice), which have been publicly consulted upon, and which have been explicitly used to implement a new co-regulatory model for converged audiovisual media services (specifically, video-on-demand services).

54. Given the practical matters raised in this Section (such as channel bundling, access to audience viewing/listening data and the need for consensus on the Working Group), URCA believes that a Working Group would need to include people directly representing the views of the general public as well as industry representatives, and that it would need to be managed by URCA in order to ensure that diverse views are properly considered and consensus sought. The role and composition of the Working Group is discussed in more detail in the next Section.

Question 1. Do you agree that the criteria set out in Table 1 (above) are the correct ones against which to assess suitability for a co-regulatory regime in The Bahamas? If not, why not? Should any additional criteria be added (or any removed)?

Question 2. Do you agree with URCA's assessment that a co-regulatory model in The Bahamas would be appropriate for content regulation? If not, why not?

3. Design of co-regulatory system

55. In this Section, URCA considers how a co-regulatory model would need to be designed to ensure that it achieves the desired objectives set out in the Comms Act. In particular, URCA addresses two key questions: first, what range of activities should a Working Group participate in? And second, to what extent should URCA delegate powers to the Working Group?

56. It is important to have regard to best practice when developing a new regulatory approach for The Bahamas, and this Section begins by briefly highlighting key themes from co-regulatory models in other countries (Section 3.1). In Section 3.2, URCA applies implementation criteria that have been developed for co-regulatory models to content regulation in The Bahamas. Section 3.3 sets out URCA's detailed proposals regarding the role and composition of an industry Working Group. URCA sets out some concluding remarks in Section 3.4.

3.1 Co-regulatory models around the world

57. Industry groups play some kind of role as part of the system of content regulation in many countries, although the nature of this role varies considerably from country to country, reflecting cultural, historical and institutional differences. The range of different forms of co-regulation is evident from the international case studies that are presented in Appendix 1. Elements of these different approaches are summarised below.

- **Australia**. Private TV and radio industry groups are required to draw up their own Codes of Practice and complaints-handling procedures regarding matters other than those regarding licence conditions and certain standards, for which the regulator remains entirely responsible. Once the industry Codes have been endorsed and registered by the regulator, public complaints about programmes are made in the first instance to the relevant radio or TV broadcaster. The regulator only intervenes to investigate unresolved complaints.

- **Canada**. Most private broadcasters are members of an industry organisation, the Canadian Broadcast Standards Council (CBSC), which is formally recognised by the federal regulator (CRTC) as the body responsible for developing and administering broadcasting Codes for its members. Public complaints are referred to the CBSC, which operates at arm's length from its member companies. The regulator only intervenes for complaints about broadcasters that are not members of the CBSC, and as the appeals body for decisions made by the CBSC.

- **Malaysia**. The Communications and Multimedia Content Forum of Malaysia (CMCF) is a voluntary industry body that has been designated by the regulator as the organisation responsible for formulating and implementing Codes of Practice for the communications and multimedia industry. A Complaints Bureau established by the CMCF mediates and adjudicates on complaints and grievances relating to alleged breaches of the Code. Broadcasters are not obliged to sign up to the Code, but compliance is recognised as a defence against legal proceedings regarding matters dealt with in the Code.

- **New Zealand**. Content Codes are developed by broadcasters in consultation with the regulator. Public complaints regarding breaches of the Codes are made in the first instance to the relevant broadcaster. If it is not resolved satisfactorily, the complainant may refer the matter to the regulator for consideration.

- **South Africa**. All broadcasters that are members of an industry trade association (the National Association of Broadcasters) are regulated by an independent body established by the trade association. This body is formally recognised by the broadcasting regulator as an independent judicial tribunal that can adjudicate complaints from the public.

- **Trinidad and Tobago**. The regulator is responsible for enforcement of its Code (currently in draft form). However, when reviewing potential breaches of the Codes, broadcasters may request that the regulator seek the opinion of an industry body (the Media Complaints Council). The regulator may ask the Media Complaints Council whether it believes a breach has been committed and what sanctions are appropriate, and must then take these opinions into account when reaching its decision.

- **United Kingdom**. While the regulator is entirely responsible for monitoring and enforcing its Broadcasting Code for television and radio programmes, separate Codes for advertising and for premium rate telephone services (used for TV competitions and voting) are administered through designated industry-funded bodies, and co-regulation is also expected to be used to regulate video-on-demand services from 2010.

3.2 Principles of best practice

58. Given the range of alternative models of co-regulation that exist around the world, it is important to devise a system for content regulation in The Bahamas that is fit-for-purpose:

    - It must reflect the range and types of TV and radio programming that are offered in The Bahamas

    - It must be suited to the nature of the companies operating in The Bahamas

    - And it must take into account the fact that models of formal regulation are less well-established in The Bahamas than in other parts of the world. Consequently, local companies may in some instances be less experienced and less well resourced than those operating in other countries (where the largest broadcasters have teams of people devoted entirely to regulatory affairs).

59. Criteria developed by Ofcom in the UK to assess when co-regulatory models are appropriate were presented in Section 2.3 of this consultation document. Alongside these assessment criteria, Ofcom developed a further set of best-practice criteria to guide the establishment of new schemes.[5] URCA believes these best practice criteria to be helpful as it develops a co-regulatory model for content regulation in The Bahamas. URCA's views on the implications arising from the criteria for content regulation – some of which are relevant to the industry Working Group, some to complaints-handling procedures and some to the overall regulatory structure – are set out in Tables 2 and 3 (on the next two pages). These criteria are also reflected in URCA's specific proposals for a new Working Group in Section 3.3 below.

Question 3. Do you agree that the criteria set out in Tables 2 and 3 (below) are appropriate to ensure a fit-for-purpose Working Group in The Bahamas that adheres to best practice? If not, why not?

[5] See Footnote 4 above

Question 4. Do you agree with URCA's assessment of how its proposals for content regulation in The Bahamas, including the establishment of an industry Working Group, address these criteria? If not, why not?

Table 2: Application of best practice criteria to URCA's proposed industry Working Group

Ofcom best-practice criteria	**URCA assessment of implications for industry Working Group**
Relevant to proposed industry Working Group	
Involvement of independent members. Systems that involve independent members (e.g. members representing consumers or groups) alongside industry members in the Working Group helps build credibility amongst stakeholders.	URCA agrees that it will be important for independent members to be represented on the Working Group (see Section 3.3.3 below).
Non-collusive behaviour. Participants in a scheme (e.g. members of a Working Group) must not engage in anti-competitive behaviour.	This must be avoided at all times. The presence of URCA and independent representatives on the Working Group, and the involvement of industry participants drawn from all parts of the sector (see Section 3.3.3), should avoid any possibilities of colluison.
Adequate resource commitments. Adequate resource should be in place to operate any industry-managed groups, and the distribution of costs amongst members should be proportionate.	This will not be of immediate relevance during the development of new Codes, but may become relevant if the Working Group is given an ongoing role.
Audit of members and scheme. Key Performance Indicators (KPIs) should be used to assess the extent to which the objectives of any co-regulatory body are being met.	Should the Working Group be given an ongoing role, it may be appropriate to incorporate operational audit and governance processes.
Regular review of objectives and aims. Schemes should actively review market trends and changes in consumer needs, to assess whether their remits and operations need to evolve.	URCA will keep the new Codes procedures under regular review. Future reviews may involve audience research (referenced in the Comms Act). The role of the Working Group has the opportunity to evolve over time – potentially gaining greater powers if URCA is satisfied that it is functioning well.

Table 3: Application of best practice criteria to content regulation in The Bahamas

Ofcom best-practice criteria	URCA assessment of implications for proposed framework in The Bahamas
Relevant to overall regulatory framework	
Significant participation by industry. The scheme (i.e. Codes of Practice) must represent a very high proportion of participants in the market.	There will be a legislative requirement for all relevant licensed organisations to adhere to new Codes of Practice (non-participation could result in sanctions, see "Enforcement measures" below).
Transparency. There should be public accountability in the operation of the scheme.	This should be built into the operation of any new co-regulatory mechanisms.
Clarity of processes and structures. Terms of reference, structures and funding arrangements should be clarified at the outset.	This is important – this consultation document represents a first step in achieving this objective.
Relevant to complaints-handling procedures	
System of redress in place. There should be an adequate complaints-handling process, with an independent appeals mechanism.	It is an explicit duty of URCA in the Comms Act to develop a complaints-handling process alongside new content Codes.
Enforcement measures. There need to be clear sanctions that can be legally imposed for non-compliance with Codes.	The complaints-handling process needs to include the ability for URCA to impose sanctions where necessary that are proportionate to the nature of the breach.
Public awareness. Members of the public should be aware of their rights under the scheme (e.g. their right to complain and how to do so).	As Bahamian broadcasters will be given additional rights under a new model, new complaints-handling procedures will need to be well publicised. This may include on-air promotion by broadcasters of new complaints procedures and/or publication in local newspapers of phone numbers and email addresses for how and where to submit complaints.

3.3 Proposed terms of reference and composition of industry Working Group

60. In this Section, URCA sets out its proposals regarding the role and composition of an industry Working Group. The first part of the Section covers the initial terms of reference for the Working Group, focusing on the development of the new Codes. The second part moves on to consider the potential broader role that the Working Group could potentially play over time. The third part sets out URCA's proposals to ensure a balanced composition of members of the Working Group.

61. A fundamental objective of establishing such a Group is to ensure the direct involvement of industry participants and of people representing the views and interests of the Bahamian public. URCA encourages all relevant organisations to review these proposals and to respond to the consultation.

3.3.1 Initial terms of reference – development of new Codes

62. URCA has emphasised in this document the potential benefits of involving industry participants in the development of new content Codes: (i) it enables their direct experience and knowledge of programming to be harnessed, (ii) it provides them with a sense of "ownership" of the Codes, and (iii) if they were to be involved on an ongoing basis, this could help the nature of the Codes to evolve flexibly over time in response to market changes. URCA proposes that the core responsibility of the Working Group would initially be to develop new Codes of Practice for broadcasting and potentially other kinds of content.

63. In terms of the substance of the content Codes, it will be the responsibility of the Working Group to determine the range of areas covered and the details of the specific standards. The Working Group will be expected to be guided by the areas listed in the Comms Act (see Section 1.3) and also by international best practice.

64. URCA's case studies of Content Codes from around the world (presented in Appendix 1) highlighted the following areas (these headings encompass the standards listed in the Comms Act):

- Protection of young people
- Law and order
- Taste and decency
- Harm and offence
- Discrimination and denigration
- Crime and violence
- Religion
- Accuracy and impartiality
- Elections and referendums
- Fairness and privacy
- Contests and promotions
- Listed events
- Advertising and sponsorship (amount, scheduling and restrictions e.g. on alcohol or gambling)
- Advisory assistance and programme classifications
- Cross-promotion between services.

65. In developing new Codes of Practice, the Working Group will need to pay attention to the varying demands of different audiences, and will need to avoid rules that might contribute to the creation of an overly censorious regime that restricts audience choice. As noted above in this document, the Comms Act sets out clearly that neither URCA nor any body appointed by URCA has powers ever to pre-censor programmes ahead of their transmission.

66. Turning to the scope of the Codes (i.e., the range of programmes and services that would be covered by them), the Comms Act indicates that they "*are to be observed by licensees providing audiovisual media services in The Bahamas*" (s. 52). "Audiovisual media services" are defined as services "*comprised in signals conveyed by means of a network*" for which the service provider has "*editorial responsibility*" (s. 2). As such, Codes of Practice would apply to all programming on local (Bahamian) television and radio stations. The legislation implies that Codes would also be applicable – wholly or in part – to services that originate overseas (e.g. in the United States) that are offered by platform operators in The Bahamas.

67. While URCA envisages that new Codes would focus primarily on Bahamian-operated radio and TV services, the Working Group would need to consider how they should apply to overseas services (e.g. US television channels) that are available in The Bahamas. The Group would need to be pragmatic about this, given that there is generally no practical means for Bahamian operators (such as Cable Bahamas) to impose any form of editorial control over programmes on overseas channels, or to be able to review programmes on those channels ahead of transmission to monitor compliance.[6] The Codes should also reflect viewers' expectations in this area: it seems likely that Bahamians are aware that the overseas channels that they watch are subject to the rules and standards that apply in the country where they originate, which may be different from those in The Bahamas. An effective solution, therefore, may be for new Codes to require platform operators in The Bahamas to make available programme guidance and ratings information for programmes on overseas channels. This would enable viewers to make informed choices about which programmes they, and their families, choose to watch. (Such an approach would be consistent with one of the key themes that emerges from the review of content Codes around the world, presented in Appendix 1, namely that pay-TV services – such as the bundled packages offered in The Bahamas that include overseas television channels – are generally subject to lighter rules than free-to-air services, and typically make use of ratings and parental control mechanisms.)

68. The definition of audiovisual media services implies that Codes would also apply to services provided through other networks, e.g. online or via mobile devices, if the content is under the editorial responsibility of the service provider in question. The Working Group would need to consider how the Codes should apply to such services, and more generally whether similar rules should also be applied to online or mobile content that is not under the editorial responsibility of the service provider. URCA's initial view is that it might be more appropriate for Codes to be extended to such services over a period of time.

69. Bearing in mind the range of areas that the Codes would cover, URCA is mindful that it might be appropriate to create separate sub-groups to develop specific aspects of the Codes. For example, a sub-group of broadcasters and the general public might be tasked with Codes relating to the content and scheduling of advertising, while another sub-group comprising representatives drawn from political parties and independent members of the public could focus on Codes governing political broadcasts. There would need to be close coordination between any such sub-groups and the main Working Group in order to ensure consistency in the overall approach to the Codes.

70. URCA anticipates that the development of the new Codes will require an intensive work schedule over a period of around 2-3 months, involving a combination of regular Working Group meetings and work between meetings for individual members and their colleagues in the actual drafting of new Codes. From the outset, the Working Group will need to agree clear procedures to ensure that it operates in a transparent and accountable manner, covering timings, decision-making rules, agreements of individual responsibilities relating to the drafting of Codes, etc. To facilitate a swift resolution of such matters, URCA would present a draft set of operating guidelines for discussion at the first meeting of the Group.[7] At the end of the process, the Working Group would consolidate its work and the outputs of any sub-groups into an integrated set of draft Codes, which URCA would then submit to a formal public consultation.

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[6] This does not apply to (non-live) overseas programmes acquired for transmission on Bahamian-operated television channels, which Bahamian broadcasters would be expected to have the opportunity to review before transmitting them.

[7] The operations of the Working Group should reflect international best practice, such as through the principles for co-regulation set out in Tables 2 and 3. The Australian Competition and Consumer Commission's "Guidelines for developing effective voluntary industry codes of conduct" (February 2005, see www.accc.gov.au) provide detailed practical steps to assist the drafting and administration of industry Codes.

Question 5. Do you agree with URCA's proposals regarding the initial terms of reference for the Working Group, with a specific focus on the development of new Codes of Practice? If not, why not? Should any other tasks be included (or any removed)?

3.3.2 Ongoing role of Working Group

71. The development of new Codes forms one part of the overall model of content regulation that is defined in the Comms Act. The tasks relating to content regulation, along with URCA's proposals regarding the division of responsibilities, were set out in Figure 1 above.

72. While there are some duties which URCA is required to undertake, the Act provides some flexibility for URCA to delegate other tasks to the Working Group. The duties that URCA is required by the Comms Act to undertake itself, and which cannot be delegated to a Working Group, are:

- Publication of the Codes of Practice and maintenance of a register of Codes of Practice (s. 53(1), 55(2) and 57 of the Act)
- Determination of complaints-handling procedures (s. 54)
- Issuing of any regulations on the procedures licensees must follow regarding the retention of audiovisual content (so any programming may be reviewed following a complaint) (s. 58).

73. URCA will develop new complaints-handling procedures at the same time as the Working Group develops the Codes of Practice. URCA proposes that it should consult with the Working Group as it develops its complaints-handling procedures – although final decisions on the nature of the new complaints-handling procedures will rest entirely with URCA (in line with URCA's duties set out in the Comms Act).

74. When the new content Codes and complaints-handling procedures have been developed, URCA will simultaneously publish both of them, thus defining and implementing the new model of content regulation in The Bahamas. It is likely that audiovisual media service providers will then need to establish or strengthen their internal processes to ensure compliance with the new Codes and also to fulfil any responsibilities relating to the complaints-handling procedures (for example, as the international case studies showed, in many countries complaints are made in the first instance to the relevant broadcaster, and it may be that elements of such a system would also be adopted in The Bahamas).

75. Once the new Codes and complaints-handling procedures are in place, a number of subsequent ongoing regulatory tasks will need to be undertaken, and the Working Group could potentially be given further responsibilities in these areas:

- First, the Codes will need to be kept under regular review (and possibly extended to new sectors, such as online or mobile content)
- Second, independent of consumer complaints, it may be appropriate to undertake additional compliance monitoring responsibilities
- And third, complaints themselves will have to be considered and adjudicated.

76. An industry Working Group could potentially play an ongoing role in some or all of these tasks. In particular, there are good reasons for the Group to play an active ongoing role in the development of the Codes themselves.

77. However, URCA believes that it is not necessary to make any decisions at this time regarding the ongoing role of the Working Group. Given that this would represent the first time a co-regulatory approach involving an industry Working Group is adopted in The Bahamas, it is important that any new Working Group gains the credibility of all stakeholders if the new approach is to succeed. The Group will need to earn its reputation for being reliable and consistent in its operations, and for making appropriate and proportionate decisions.

78. Also, URCA is concerned not to overburden the Working Group with too many responsibilities at the outset. Rather, it should be given time to become established and familiar with its new role. URCA's view is that the Working Group's duties could expand over time as its credibility and reputation grow. URCA also believes that it would be appropriate to take into account the views of the Working Group members themselves, by asking them collectively to form a view as to what the Group's ongoing role should be, for consideration by URCA once the Codes have been published.

Question 6. Do you agree with URCA's proposal that the Working Group should be given the opportunity to establish itself, and to form its own view as to its future responsibilities, before URCA makes decisions regarding the Working Group's ongoing role? If not, why not?

3.3.3 Composition of Working Group

79. In determining the composition of a Working Group, it is important that there is sufficient representation of different industry sectors, alongside a range of independent views drawn from the Bahamian public. At the same time, for practical reasons, it will be necessary to keep the Group manageable in size – URCA's view is that it should comprise no more than 9 to 10 members (excluding URCA representatives). This means that trade-offs will have to be made in terms of determining the composition of the Working Group.

80. In terms of industry participation, it will not be possible to include every Bahamian broadcaster on the Working Group. The best-practice criteria set out in Section 3.2 above highlight the need to prevent the risk of dominance by individual organisations, and to ensure that there is sufficient involvement of independent members. Different parts of the industry will need to be properly represented, and no one organisation or sector should dominate the debate. For the Working Group to function effectively, it will also be essential for each member to be willing and able to act on behalf of the interests of the sectors that they have been asked to represent, rather than just looking after their own corporate self-interests.

81. In order to manage and support the set-up and operation of the Working Group, URCA intends to appoint the chairperson of the Group (to facilitate its operations), while an URCA representative would also sit on the Group (to ensure the objectives in the Comms Act are being properly fulfilled). URCA proposes that the first Working Group should comprise members drawn from the following companies, sectors and segments of the general public, to ensure appropriate representation from industry and from independent voices, and to provide sufficient checks and balances:

- **ZNS** as the state-owned public service broadcaster offering local TV and radio channels
- **Cable Bahamas Ltd.** as the largest private broadcaster and platform operator
- 1-2 representatives of **private Bahamian TV and radio channels**
- A representative of **independent production companies** supplying content to broadcasters
- A representative of **mainstream public opinion**

- A representative of **minority views** (reflecting the role that broadcasting can play in catering to the interests of diverse groups)

- 2 representatives to cover the views of **people in the Northern and Southern Family Islands** (to reflect the geographical dispersion of The Bahamas and to counter potential metropolitan bias)

- A representative of the views of **young people** (who often have different consumption habits from older people, and tend to be amongst the first to take up new technologies).

82. The views of young people could be included through the participation of someone drawn from a youth organisation, student union or a public body responsible for youth matters. Minority views could potentially be provided by including representative(s) from individual minority groups. However, as different minority groups are likely to have a variety of contrasting perspectives and concerns, it is unlikely that a single member drawn from a particular group would represent the full range of minority views. A challenge for the Working Group will thus be to ensure that the views of all Bahamians – whether they belong to mainstream or minority groups – are taken into account when developing new Codes.

Question 7. Do you agree with the proposed composition of the Working Group? If not, why not? Are there any other people, sectors or organisations that you believe should be represented? Are there any people, sectors or organisations proposed by URCA that you do not think need be represented on the Working Group?

Question 8. Do you have any suggestions for how best to ensure that the full range of interests of the Bahamian public – including people on different islands, those who belong to minority groups, and young people – are properly represented on the Working Group (or any sub-groups that are formed)?

3.4 Conclusion

83. As was noted above, this would be the first time that an industry Working Group is established in The Bahamas, and it will only work if members are fully committed to the Group. Given its duties and the timetable for publication of new Codes (URCA suggested above a 2-3 month period for deliberation by the Group), members will need to devote considerable time and effort to the Group while the Codes are being developed. They will need to be reliable (in terms of presence at meetings and completing their individual duties in a timely fashion) and willing to participate openly and constructively in discussions. In order to properly represent interests of the sectors they are representing, they will need to seek the views of other broadcasters, organisations or individuals in their sectors throughout The Bahamas.

84. Candidates for membership of the Group should be aware of their responsibilities, and the amount of work likely to be involved, before agreeing to participate. URCA hopes that, for those people who go on to join the Working Group, membership will be seen (by them and by the wider public) both as a privilege and an exciting opportunity to help shape the future of broadcasting in The Bahamas.

85. Nonetheless, URCA does not underestimate the challenge involved, and it would need to keep the composition of the Working Group under constant review. URCA reserves the right to replace Group members who do not act appropriately (for example, in terms of their commitment to the Group or their willingness to properly represent sectoral interests). At the extreme, URCA also reserves the right to disband the Group and revert to a statutory regulation model.

86. In practice, URCA is confident that such an eventuality would not arise. It is in the interests of all parties – representing industry, the general public and the Government – for an industry Working Group to succeed and, as it grows in stature, to be in a position to be granted greater powers over time. URCA believes that this consultation represents an important first step in the establishment of a co-regulatory system for content regulation in The Bahamas. URCA encourages all interested parties – including but not limited to potential Working Group members – to respond with comments on the proposals in this document.

Question 9. Do you have any further comments to make on the proposals in this consultation document that are not covered or raised by the other consultation questions?

Summary of consultation questions

Question 1. Do you agree that the criteria set out in Table 1 of this document are the correct ones against which to assess suitability for a co-regulatory regime in The Bahamas? If not, why not? Should any additional criteria be added (or any removed)?

Question 2. Do you agree with URCA's assessment that a co-regulatory model in The Bahamas would be appropriate for content regulation? If not, why not?

Question 3. Do you agree that the criteria set out in Tables 2 and 3 of this document are appropriate to ensure a fit-for-purpose Working Group in The Bahamas that adheres to best practice? If not, why not?

Question 4. Do you agree with URCA's assessment of how its proposals for content regulation in The Bahamas, including the establishment of an industry Working Group, address these criteria? If not, why not?

Question 5. Do you agree with URCA's proposals regarding the initial terms of reference for the Working Group, with a specific focus on the development of new Codes of Practice? If not, why not? Should any other tasks be included (or any removed)?

Question 6. Do you agree with URCA's proposal that the Working Group should be given the opportunity to establish itself, and to form its own view as to its future responsibilities, before URCA makes decisions regarding the Working Group's ongoing role? If not, why not?

Question 7. Do you agree with the proposed composition of the Working Group? If not, why not? Are there any other people, sectors or organisations that you believe should be represented? Are there any people, sectors or organisations proposed by URCA that you do not think need be represented on the Working Group?

Question 8. Do you have any suggestions for how best to ensure that the full range of interests of the Bahamian public – including people on different islands, those who belong to minority groups, and young people – are properly represented on the Working Group (or any sub-groups that are formed)?

Question 9. Do you have any further comments to make on the proposals in this consultation document that are not covered or raised by the other consultation questions?

Appendix 1: Content regulation around the world

87. In this document, URCA highlighted aspects of different models of content regulation around the world. These reviews drew on seven illustrative case studies covering:

- Australia
- Canada
- Malaysia
- New Zealand
- South Africa
- Trinidad and Tobago
- United Kingdom.

88. These case studies are presented below. Each one highlights the areas covered in broadcasting Codes in that country, summarises the complaints-handling procedures that accompany the Codes, and describes the nature of co-regulation in those instances where industry bodies play a role. While elements of co-regulation in the implementation of content Codes are widespread, there are significant differences in their nature in each country, as the case studies illustrate. These case studies are drawn in part from a detailed review conducted for the European Commission in 2006, which highlights the increasing prevalence of co-regulatory models in Europe and around the world.[8]

89. In some countries, there are a variety of content Codes for different sectors – with Codes for pay-TV services often less wide-ranging and detailed than those for free-to-air services. This Appendix does not present an exhaustive list of these in the case studies. Where different content rules exist for different services in any given country, the examples presented below focus on the more detailed sets of rules that apply to free-to-air television. Furthermore, in those countries where separate Codes exist for radio and television, the Codes that apply to television are presented, as they tend to cover a wider range of areas than the equivalent ones for radio.

90. This Appendix begins by highlighting a number of common themes that emerge across the case studies regarding the development and application of content regulation.

Common themes in content Codes

91. A review of the seven case studies presented in this Appendix reveals a number of common themes in the development of content Codes around the world.

[8] "Final Report Study on Co-Regulation Measures in the Media Sector: Study for the European Commission, Directorate Information Society and Media", Hans Bredow Institut for Media Research, University of Hamburg, June 2006. See http://ec.europa.eu/avpolicy/info_centre/library/studies/index_en.htm

92. First, notwithstanding the trends towards deregulation and lighter-touch oversight in communications sectors in recent years, broadcasting Codes have tended to become more thorough, detailed and rigorous. Thus, the most recent version of the Ofcom Code in the UK is over 100 pages long, while the Code being developed in Trinidad and Tobago (currently in draft form) is around 60 pages long. These Codes aim to provide as much clarity and transparency as possible to reduce the regulatory burden. They will often set out not only the rules themselves but also the principles that underpin the rules, alongside guidelines and/or illustrations to assist broadcasters and the public in interpreting them.

93. Second, the range of issues covered in the content Codes overlap considerably, including some or all of the following themes in each country:

- Protection of young people
- Law and order
- Taste and decency
- Harm and offence
- Discrimination and denigration
- Crime and violence
- Religion
- Accuracy and impartiality
- Elections and referendums
- Fairness and privacy
- Contests and promotions
- Listed events
- Advertising and sponsorship (amount, scheduling and restrictions e.g. on alcohol or gambling)
- Advisory assistance and programme classifications
- Cross-promotion between services.

94. Third, pay-TV services are often subject to lighter content rules than free-to-air services, reflecting the fact that viewers must actively "opt in" to pay-TV services, and that such services cannot be freely accessed by any person who does not make a conscious decision to consume (and pay for) them. Pay-TV services tend to have more freedom to show more explicit programming, in the knowledge that people who might be offended by such content have the choice of not subscribing to these services, and there is no risk of non-subscribers accidentally coming across such content (as might be the case for someone flicking through the free-to-view channels on their TV). As a result, Codes for subscription services often include less detailed content rules, and tend to focus to a greater extent on parental controls and programme classifications, providing information and tools that enable people to make informed decisions regarding their own viewing and that of others in their household.

95. Fourth, the Codes in each country tend to be accompanied by clear complaint-handling processes. These generally aim to be fair and proportionate, with significant sanctions – such as fines or revocation of broadcasters' licences – available for the most serious breaches of the Code. In Trinidad and Tobago, for example, there are six tiers of sanctions depending on the seriousness of the offence, ranging from a private written warning, through requirements to broadcast public apologies, and on to suspension and ultimately revocation of the licence.

96. And fifth, in many of the case studies, industry groups play some kind of formal role as part of the regulatory system, although the nature of this role varies considerably from country to country.

Australia

97. The Australian Communications and Media Authority (ACMA) is directly responsible for enforcing regulations regarding licence conditions and specific standards for private broadcasters. These cover the following areas:[9]

- TV captioning for the deaf and hearing-impaired
- Tobacco advertising
- Political advertising or election material
- Advertising or excessive sponsorship announcements on community radio or TV
- Advertisements about therapeutic goods
- Children's Television Standards (quotas for the volume of children's programmes)
- Australian Content Standard (quotas for domestically-produced programming)
- Anti-siphoning rules (listed sports events that must be shown on free-to-air TV)
- Commercial radio standards (covering requirements such a separation of advertisements from programmes)
- Anti-terrorism standards (prohibiting attempts to recruit people or solicit funds for terrorist organisations).

98. For other content standards, TV and radio industry groups are responsible for drawing up their own Codes of Practice (including complaints-handling procedures). Individual Codes of Practice have been developed by the following broadcasters and sectors:

- Public service broadcasters (ABC and SBS)
- Commercial free-to-air television
- Commercial radio
- Subscription TV, open narrowcast TV and subscription narrowcast radio
- Open narrowcast radio
- Community radio and TV.

99. These Codes are included by ACMA in a register once it is satisfied that they provide appropriate safeguards for the matters covered, that they have been endorsed by the majority of broadcasters in that section of the industry, and that members of the public were given an adequate opportunity to comment.

100. The Code developed by Free TV Australia for commercial free-to-air television covers the following:[10]

- Proscribed material (e.g. simulating news, inducing hypnotic state in viewers, provoking contempt or ridicule)
- Advertising (volume, scheduling and content)
- Disclosure of commercial arrangements
- Closed captioning for hearing-impaired viewers

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[9] See www.acma.gov.au (Australian Communications and Media Authority)

[10] See www.freetv.com.au (Free TV Australia)

- Premium rate telephone services
- Broadcasts of emergency information
- Classifications, consumer advice and scheduling rules
- News and current affairs programmes
- Children's programmes
- Privacy
- Portrayal of cultural diversity (particular rules for Aborigines and people with disabilities).

101. Public complaints about programmes are made in the first instance to the relevant radio or TV broadcaster (including public service broadcasters ABC and SBS). Anyone who is dissatisfied with the response from any broadcaster may then refer the complaint to ACMA.

Canada

102. The Canadian Broadcast Standards Council (CBSC) is an independent, voluntary organisation funded by its members, which include the majority of Canada's private radio and TV broadcasters. The CBSC was created to administer the broadcasting Codes established by its members, and operates with the approval of the federal regulator, the Canadian Radio-television and Telecommunications Commission (CRTC).

103. The CBSC oversees the following content Codes:[11]

- Code of ethics
- Violence Code
- Equitable portrayal Code
- Sex role portrayal Code for television and radio programming
- Code of (journalistic) ethics
- Journalistic independence Code
- Pay TV programming Code (for pay, pay-per-view and video-on-demand services)
- Pay-TV violence Code (for pay television and pay-per-view programming).

104. By way of illustration, the Code of ethics has 18 clauses covering the following issues:

(i) General Programming (serving all audiences)
(ii) Human Rights
(iii) Sex-Role Stereotyping
(iv) Children's Programs
(v) News
(vi) Full, Fair and Proper Presentation
(vii) Controversial Public Issues
(viii) Religious Programming
(ix) Radio Broadcasting (avoiding offence, sexually explicit or violent material)
(x) Television Broadcasting (pre-watershed programming restrictions)
(xi) Viewer Advisories
(xii) Contests and Promotions
(xiii) Advertising (General Principles)
(xiv) Advertising (Details)

[11] See www.cbsc.ca (Canadian Broadcast Standards Council)

(xv) Prohibition of Subliminal Devices
(xvi) Community Activities
(xvii) Education (promotion of media literacy)
(xviii) Employees (professional standards).

105. Complaints made by members of the public to the CRTC are referred to the CBSC for resolution when they concern CBSC members. Complaints about broadcasters that are not members of the CBSC are dealt with by the CRTC. The CRTC also acts as an "appellate" body for anyone who wishes to appeal a decision made by the CBSC. The CBSC operates at arm's length from its member companies.

Malaysia

106. The Malaysian Communications and Multimedia Commission (MCMC) is the state regulator in Malaysia.[12] The Communications and Multimedia Act (1998) permits MCMC to designate an industry body for the purpose of creating a Code for the regulation of all forms of content, including traditional broadcasting, telecommunications and online services, as well as the facilities and networks employed in providing such services.

107. MCMC must first satisfy itself that any candidate body fulfils certain conditions: membership must be open to all relevant parties, the body must be capable of performing as required under the Act, and the body must have a written constitution. The Communications and Multimedia Content Forum of Malaysia (CMCF) was designated by MCMC in March 2001 as the body responsible for formulating and implementing Codes of Practice for the communications and multimedia industry.[13] It has a broad membership comprising advertisers, audiotext service providers, broadcasters, civic groups, content creators and distributors, and internet access service providers.

108. A Content Code covering these sectors was subsequently registered with MCMC on 1st September 2004. The programming guidelines in the Code cover the following areas:

(i) General Requirements
(ii) Indecent Content
(iii) Obscene Content
(iv) Violence
(v) Menacing Content
(vi) Bad Language
(vii) False Content
(viii) Children's Content
(ix) Family Values
(x) Persons with Special Needs.

109. A Complaints Bureau established by the CMCF mediates and, if necessary, adjudicates and makes rulings on complaints and grievances relating to alleged breaches. The Bureau comprises a Chairman (usually a retired judge or judicial officer) and six members of the Forum representing different sectors. As well as investigating complaints brought to its attention, it also undertakes its own compliance monitoring.

[12] See www.skmm.gov.my (Malaysian Communications and Multimedia Commission)

[13] See www.cmcf.my (Communications and Multimedia Content Forum of Malaysia)

110. In response to a complaint, the Bureau initially attempts to mediate an amicable resolution between the relevant parties. If this fails, the Chairman will review the nature of the alleged breach and take a view as to whether to instigate an inquiry (to be agreed by the Chairman and the members of the Bureau). As part of the inquiry, the Bureau may consider written submissions and hearings from the complainant and respondent, and evidence from relevant independent parties. Its final ruling is decided by a majority of votes amongst the Bureau's members. Sanctions range from reprimands up to fines of up to 50,000 RM. For serious breaches, the offending party may also be referred back to MCMC for further action.

111. The Communications and Multimedia Act states that compliance with the Code may be regarded as a defence against prosecution, actions or other legal proceedings regarding matters dealt with in the Code. However, the Code remains voluntary: membership of CMCF is not compulsory. As such, the overall system in Malaysia is closer to the self-regulation end of the spectrum of regulatory options discussed in Section 2.1 than the other case studies presented here.

New Zealand

112. In New Zealand, the Broadcasting Standards Authority (BSA) has four Codes of Practice covering:[14]

- free-to-air television
- pay television
- radio
- election programmes.

113. Each Code contains a series of "standards" setting out the broadcasters' obligations. The standards each have a number of associated guidelines to assist broadcasters and the public in interpreting them. The Codes were developed by broadcasters in consultation with the BSA. During the development process, the public are given an opportunity to comment on the draft revised Code.

114. The free-to-air Code, for example, covers the following 11 standards:

i. Good Taste and Decency
ii. Law and Order
iii. Privacy
iv. Controversial Issues - Viewpoints
v. Accuracy
vi. Fairness
vii. Discrimination and Denigration
viii. Responsible Programming
ix. Children's Interests
x. Violence
xi. Liquor.

[14] See www.bsa.govt.nz/codesstandards-intro.php

115. Viewers and listeners may submit a complaint in writing or online within 20 working days of the broadcast. Complaints are initially received and responded to by the relevant broadcaster. Within 20 working days of receiving a complaint, the broadcaster must conduct an assessment and decide whether or not the complaint should be upheld. The complainant must be notified of the outcome and informed of their right to refer the complaint to the BSA. Where the complaint is upheld, the broadcaster must take appropriate action.

116. Complainants may, if dissatisfied with the broadcaster's response, refer the matter to the BSA, who will request a recording of the programme and invite the broadcaster to comment. The BSA then invites both parties to respond to each other's views. If the BSA decides to uphold the complaint, it will seek the views of both parties on the appropriate order, which can range from a requirement to broadcast a corrective statement through to a temporary ban on broadcasting. The BSA then issues its final decision. Decisions by the BSA may be appealed to the High Court and are subject to judicial review.

South Africa

117. In South Africa, the industry plays a significant role in the administration of broadcasting Codes, including complaints handling. The Broadcasting Complaints Commission of South Africa (BCCSA) is an independent body that was established by, and is funded by, the National Association of Broadcasters (NAB). NAB is a non-profit organisation that represents (and is funded by) its members drawn from the broadcasting industry. The BCCSA is formally recognised by the broadcasting regulator in South Africa as an independent judicial tribunal that can adjudicate complaints from the public against those broadcasters that are members of NAB.[15]

118. The BCCSA has two Codes of conduct: one for free-to-air licensees and one for subscription service licensees. The Code for free-to-air licensees covers the following areas:

- Violence and hate speech (against women and other groups)
- Children
- Programmes that must be shown after the watershed
- Language
- Sexual conduct
- Audience advisory assistance and programme classifications
- News
- Comment
- Controversial issues of public importance
- Elections
- Privacy
- Paying criminals for information.

119. The BCCSA hears complaints that are adjudicated by the Commission's members (who are appointed by an independent panel consisting of the chair of the BCCSA, the chair of the NAB, plus two external appointees under the chairmanship of a retired Judge of the Appellate Division of the Supreme Court). Sanctions include reprimands, fines and directions to broadcast a correction or summary of the finding.

[15] See www.bccsanew.co.za and www.nab.org.za

120. Broadcasters that are not signatories to the BCCSA are required by law to adhere to the broadcasting code issued by the Independent Communications Authority of South Africa (ICASA) – the content of which is similar to the BCCSA code. ICASA's Complaints & Compliance Committee has jurisdiction for complaints against non-signatories and also for all election broadcasts.

121. Advertising regulation is also undertaken by an industry body in South Africa. Under the Electronic Communications Act, all advertising on electronic broadcast media must comply with the Code of Advertising Practice. This is administered by the Advertising Standards Authority (ASA), an independent body set up and financed by the marketing communications industry (advertisers, agencies and the media that carry advertising). Its code is reviewed annually by a committee, which puts forward its proposals to the ASA Annual General Meeting for approval.[16]

122. Complaints against broadcasting service licensees who are not members of the ASA are adjudicated by ICASA (otherwise ASA makes the determination). All licensees, both ASA members and non-members, found to have breached the code are dealt with in accordance with the provisions of the ICASA Act.

Trinidad and Tobago

123. The Telecommunications Authority of Trinidad and Tobago (TATT), the independent regulatory body for telecommunications and broadcasting, is currently developing content codes to be applied to broadcasting in Trinidad and Tobago.

124. Its most recently-published draft Code, from March 2009, is a 60-page document covering the following topics:[17]

- Protecting children
- Harm, abuse and discrimination
- Crime
- Race
- News and public affairs
- Elections
- Fairness
- Privacy
- Information and warnings
- Advertising and sponsorship
- Religion.

125. Each section includes objectives and rules, along with guidelines to assist broadcasters in interpreting and applying the Code. The rules apply to free-to-air radio and TV services, while a subset of them is applicable to subscription services.

[16] See www.asasa.org.za

[17] See www.tatt.org.tt

126. TATT has powers to impose sanctions for "material breaches", which are defined as breaches that are both serious and deliberate or reckless; or that are committed repeatedly in a short period of time; or that threaten national security. TATT administers a tiered system of sanctions to ensure they are fair and proportionate. In order of escalation, these are: first written warning (private), second warning (published on TATT website), public warning (broadcaster directed to broadcast a notice of the warning), suspension (up to two weeks), further suspension (up to six weeks) and termination of concession (licence).

127. The Media Complaints Council is a body formed and funded by the media industry, including publishers and broadcasters. As part of a co-regulatory system, TATT may consult with the Media Complaints Council in relation to potential breaches of the Code. Such consultation is at the discretion of TATT. TATT also has the right to object to the involvement of any of the members of the Media Complaints Council on matters where their affiliations might lead (or be perceived to lead) to bias.

128. The complaint-handling procedures in the Code work as follows. In the first instance, members of the public must complain directly to the relevant broadcaster. All broadcasters must publish an Internal Policy that sets out how it will respond to complaints. As part of this, it must notify TATT of the complaint within seven days. If TATT believes that a breach may have occurred, it will initiate an investigation, and request programme information from the relevant broadcaster. The broadcaster is entitled to make representations in writing and, for higher-tier breaches, it may also request a hearing. The broadcaster may also request that TATT seek the opinion of the Media Complaints Council. If TATT chooses to do so, it will ask the Media Complaints Council whether it believes a breach has been committed and what sanctions are appropriate. These opinions are to be taken into account by TATT, along with other representations made and the steps taken by the broadcaster through its Internal Policy.

United Kingdom

129. In the UK, the communications regulator Ofcom develops and administers the Broadcasting Code, which applies to all radio and television content in services licensed by Ofcom (with some exceptions for the BBC, which in some areas is regulated separately by the BBC Trust). The most recent Code, published in December 2009, is a 106-page document covering the following areas (with clear definitions, principles, rules and practices to be followed):[18]

- Protection of under-18s
- Harm and offence
- Crime
- Religion
- Due impartiality, due accuracy and undue prominence of views and opinions
- Elections and referendums
- Fairness
- Privacy
- Sponsorship
- Commercial references and other matters
- Cross-promotion (between services).

[18] The Ofcom Broadcasting Code can be found at www.ofcom.org.uk/tv/ifi/codes/bcode

130. A number of further Ofcom Codes accompany the Broadcasting Code, covering:

- the Scheduling of Television Advertising (covering the amount and scheduling of advertisements)
- Sports and other Listed and Designated Events (the designation of key sporting and other events as "listed events", which are required to be made available to all television viewers free-to-air)
- Television Access Services (rules on subtitling, signing and audio description)
- Electronic Programme Guides (ensuring appropriate prominence for public service channels, fair and effective competition, and features that help people with disabilities).

131. Members of the public are entitled to complain directly to the broadcaster or to Ofcom itself. Ofcom will review all suspected breaches of its Code, and publish the results (along with the nature of the initial complaint, the details of its investigation and the relevant broadcaster's response) in a monthly Broadcast Bulletin. For deliberate, serious or repeated breaches of the Code, Ofcom may impose sanctions against the broadcaster, including fines and revocation of the licence.

132. While the Codes listed above are all fully administered by Ofcom, certain elements of content regulation in the UK are subject to co-regulation:

- **Advertising**. Ofcom has contracted out the regulation of broadcast advertising to the Advertising Standards Authority (ASA), which is the UK's independent regulator of advertising across all media, including TV, internet, sales promotions and direct marketing. The ASA is an industry-funded body that operates a mixture of self-regulation (for non-broadcast advertising) and co-regulation (for broadcast advertising). It administers the regulation of broadcast advertisements through an industry committee, the Broadcast Committee of Advertising Practice (BCAP), which was established in 2004. BCAP writes and updates the Advertising Codes for TV and Radio with the aim of preventing ads from being misleading, causing harm or offence, and breaching boundaries of taste and decency (this Code on the content of adverts thus complements the separate Code on the Scheduling of Television Advertising, see above). Complaints about apparent breaches of the Code are considered by the Advertising Standards Authority, through its broadcasting arm ASA(B).
- **Premium rate telephone services**. Premium rate telephone services involve a form of payment for content, data or other value added services that are subsequently charged to the consumer's telephone bill. TV and radio broadcasters typically use premium rate phone services for competitions and votes in their programmes. Ofcom has recognised PhonepayPlus – an independent industry body – as its co-regulatory agency, designated to deliver the day-to-day regulation of the market, by approving the PhonepayPlus Code of Practice. Regulatory strategy, scope and policy are developed by Ofcom in dialogue with PhonepayPlus, while final decisions rest with Ofcom.
- **Video-on-demand**. In 2009, Ofcom consulted on new regulations that would cover programming ("editorial content") and advertising delivered via VOD services. It argued that both these functions could be undertaken on a co-regulatory basis, and proposed designating industry body ATVOD, the Association for Television on Demand, to act as the co-regulatory body for VOD editorial content, and the ASA as the co-regulator for VOD advertising. By the end of 2009, Ofcom was under discussions with ATVOD and the ASA over the appropriate terms for designation.

Appendix 2: Bahamian TV and radio stations

133. An overview of the broadcasting sector in The Bahamas was provided in Section 1.1. This Appendix provides more detail of the Bahamian-owned TV and radio stations that are currently available.

134. ZNS (the Broadcasting Corporation of The Bahamas) is the longest-running broadcaster in The Bahamas. It is state-owned, with a public service remit covering the provision of original Bahamian-produced programming on its radio and TV channels.

135. Its main TV channel, **ZNS TV-13**, is transmitted free-to-air in New Providence, and is also available throughout The Bahamas via cable and satellite. It offers a mix of local programming that includes news and current affairs, sports, educational and business programmes, and community announcements. ZNS also provides a separate TV channel, **The Parliamentary Channel**, covering parliamentary proceedings.

136. A small number of private operators also provide local TV programmes via cable in The Bahamas:

- **Cable 12 Bahamas** offers news and other local programming
- **The Jones Communications Network (JCN)** provides local news, talk shows and panel discussions
- **The Bahamas Christian Network (BCN)** includes church services, news and talk shows
- **Adventist Television** provides several hours of local programming each week via the Bahamian feed of international Christian channel 3ABN.

137. Turning to radio, ZNS currently offers two AM and two FM stations:

- **The National Voice** (1540 AM) and **The Northern Service** (810 AM) together cover all islands in The Bahamas, broadcasting a mix of news and other programming
- **The Power Station** (104.5 FM in New Providence and parts of the northwest Bahamas) is a youth-focused music station
- **The Inspiration Station** (107.9 FM in New Providence and parts of the northwest Bahamas) offers gospel and religious programmes.

138. Private FM radio stations serve different parts of The Bahamas (albeit with a strong focus on New Providence). These are primarily music-based, and include a diverse range of genres, including pop, urban, R&B, gospel, jazz, Caribbean and golden oldies. At the end of 2009, there were 16 operational FM radio stations licensed by URCA:

100 JAMZ	GEMs	Mix 102.1	Splash FM
Bahamas National Library Service	Island FM	More 94	STAR 106.5FM
Coast 106 FM	Joy FM	Radio Abaco	The Breeze FM
Cool96 FM	Love 97 FM	Spirit Gospel	Y-98

Appendix 3: Historic broadcasting Rules in The Bahamas

139. Detailed content rules for ZNS and other licensed broadcasters were set out in two pieces of subsidiary legislation to the Broadcasting Act. The **Broadcasting Rules, 1992** applied to ZNS only; while the **Broadcasting (Licensing) Rules, 1993** were applied to, and applied the Broadcasting Rules 1992 to, other licensed broadcasters in The Bahamas. The areas covered by these Rules are summarised in Table 4 overleaf.

140. In terms of positive content rules (i.e., rules about kinds of programming that should be made available), the Broadcasting (Licensing) Rules, 1993 stated that:

- "*As far as possible, programmes with a Bahamian flavour are developed and broadcast on a regular basis, Bahamian interests and concerns being taken into account*" (r.12 (a))

- Regarding broadcasters' duties with respect to news programmes, "*the fundamental purpose of such broadcasts [is] to present objectively facts concerning what is happening throughout The Bahamas and in countries overseas*". Also, news broadcasts should be "*presented with fairness, accuracy and good taste*" and news should be "*selected and presented in a manner to ensure that it is factual and free from bias*" (r.13).

141. In terms of negative content rules (i.e., rules about kinds of programming that are not permitted), the Broadcasting (Licensing) Rules, 1993 set out prohibitions in the following areas (r. 10):

a) matters in contravention of written law
b) abusive or derogatory statements or comments on race, colour, creed, religion or sex
c) malicious, scandalous or defamatory matters
d) obscene, indecent or profane matters
e) false or deceptive advertising
f) false or misleading news
g) offensive descriptions of disturbances of the human body
h) offensive descriptions of mutilated disfigurements of the human form
i) inducements for enrolment to colleges, schools, institutions or agencies
j) advertising of matrimonial agencies
k) claims regarding future-telling by supernatural or psychic means
l) matters which may incite violence or crime or lead to a breach of the peace
m) descriptions of violence which offend against good taste, decency or public feeling
n) advertising of firearms or ammunition
o) advertising of gambling services.

Table 4: Content rules in the Broadcasting Act applying to ZNS and other licensed broadcasters

Content	Provisions in Broadcasting Act and subsidiary legislation
General programming	**Broadcasting Act** The Minister may make Rules "to control the character of any and all programmes broadcast or televised by the Corporation or any other person" and to ensure compliance with any international regulatory bodies [Ref: s. 18(1)(a) & (h)] **Broadcasting Rules, 1992 (ZNS only):** - Provisions for free religious church broadcasts **Broadcasting (Licensing) Rules, 1993 (other licensees):** - Station identification broadcasts - Types of content that are prohibited (see paragraph 141 above) - Bahamian content rules (see paragraph 140 above) - Rules on news programmes (see paragraph 140 above)
Political broadcasts	**Broadcasting Act** The Minister may make Rules "to prescribe the proportion of time which may be devoted to political broadcasts". Such time should be assigned "on an equitable basis to all parties and rival candidates". Such Rules are subordinate to the rulings of the EBC [Ref: s. 18(1)(c), 18(2)] **Broadcasting Rules, 1992 (Part III) (ZNS) and Broadcasting (Licensing) Rules, 1993 (s. 20) (other licensees):** - Rules on the content of political broadcasts - Identification rules for political broadcasts - Number and duration of party political broadcasts and advertisements permitted during election period - Number and duration of political broadcasts and convention broadcasts permitted outside election period
Advertising	**Broadcasting Act** The Minister has the power to make Rules to prescribe the amount of advertising time and the character of such advertising [Ref: s. 18(1)(b)] **Broadcasting Rules, 1992 (ZNS only):** - Rules on the content of advertisements - Identification rules for advertisements - No advertisements for spirits - No solicitation for funds in religious programmes - Advertising minutage allowances **Broadcasting (Licensing) Rules, 1993 (other licensees):** - Advertising minutage allowances - No advertisements for spirits or tobacco - No solicitation for funds in religious programmes
Sanctions	**Broadcasting Act** The Minister may impose certain sanctions for contravention of these Rules. The sanctions may be "a fine not exceeding one thousand dollars or imprisonment for a term not exceeding six months or both such fine and imprisonment" [Ref: s. 18(1)(g)] **Broadcasting (Licensing) Rules, 1993 (other licensees):** - Provisions for Minister to require licensees to rectify breaches and revoke licences

142. While the new Codes will replace the provisions in the Rules enumerated in Table 4 above, the following key elements relating to content will continue to apply (these elements below will be assessed as part of the public service broadcasting review that is separately being undertaken by URCA):

- **Duty of Corporation (s. 8(1))**. The overarching public service remit of the Corporation (ZNS) is "*to maintain broadcasting and televising services as a means of information, education and entertainment and to develop the services to the best advantage and interest of The Bahamas*"

- **Provision of time free of charge to the Minister (s. 12)**. The Minister may provide programming (up to six hours per week up to 6pm and up to three hours after 6pm) to be broadcast by ZNS free of charge, and without any editorial input or control by ZNS

- **General programming (s. 19)**. The Minister has the power to prohibit ZNS from broadcasting "*any matter or matter of any class*" on public interest grounds

- **Advertising (s. 10)**. ZNS is permitted to generate income through advertising. It is required to publish tariffs that are subject to the approval of the Minister.