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Television Regulation and China's Entry into the WTO

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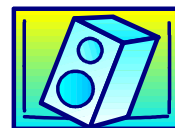
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Foreword

Comprehensive and heated academic discussions on China's legal system reform have been triggered upon China's entry into the WTO. Joining the WTO means, first and foremost, joining the international legal system, an international framework of market rules initiated and dominated by western countries. That means, a new legal system compatible with western standards must be established in China. The Chinese media, therefore, are required to transform from being under political control to being ruled by legal regulations. These must be in line with international standards, especially communicable and negotiable with those of the West.

The transformation has double implications for China's media environment. On the one hand, it means that the Chinese government will only be able to exercise its influence on the media through legal means by which, eventually, the rights of the people (including the media) are to be protected rather than merely restricted. On the other hand, it means the media themselves are required to stand the test of growing commercialism and serve the audience in a more accountable way.

The WTO agreements didn't set the exact date for China to open its television market; people involved in this field, however, have begun reviewing the status quo of television management, predicting the direction and process of television transformation and seeking the methods for the possible future changes. A generally-held opinion is that China's existing television management, characterized mainly by internal, ambiguous and changeable directives, will be replaced by that of laws and regulations made of transparent, clear and stable rules; and together with that process, many current problems existed in Chinese television will progressively find their solutions through lawful regulations.

This paper reviews the regulation transformation of Chinese television. It begins with a brief introduction to the history of Chinese broadcasting in general, and the history of television in particular, on which the traditional control mechanisms will be analyzed. Then it shows the development of Chinese broadcasting regulations against the background of China's political policy reforms (the opening up) since the end of 1970s. Next, the paper proceeds to analyze the changing regulations relating to institutions and programming of Chinese television, examining the future of regulatory reform. In the end, it concludes with a brief discussion of the prospects, as well as the problems, of regulation transformation in Chinese television, especially within the context of global communication. Far from most optimistic predictions, this paper argues, that the regulation changes are more restrictive than freeing, that the lawful transformation of China's television regulation has a long way to go, even though it has made great progress.

1. Transformation of China's Broadcasting Management

Before the political reforms, Chinese television was managed under the same paradigm as that of the other mass media, especially of news media in China. This paper introduces the management models for general news media with a focus on the management of radio and television.

1.1. Tradition of China's Broadcasting

China's television was originated from the journalistic practices of the Communist Party of China (CPC). Some communists had attempted to run newspapers even before the CPC was founded, the substantial development of CPC's journalistic cause, however, began in 1931, when a news agency (the predecessor of the current Xinhua News Agency) and a newspaper were founded in the central base ruled by the CPC. Wireless radio broadcasting was established by the CPC under the Xinhua News Agency in the end of 1940 during China's war with Japan (1937-1945). In this period, the CPC's management of news media was paramilitary, and radio broadcasting was regarded as merely a political and propagandist tool. Then China National Radio (CNR) was officially established in December 1949, soon after the founding of the People's Republic of China (PRC).

In the seventeen years from 1949 to 1966, before the Cultural Revolution,¹ radio broadcasting was used as a mouthpiece for the CPC. The two most popular programs of CNR, *News and Press Clips* in the early morning and *News Broadcast by Network* in the evening were the most powerful and effective means of coordinating the pace of the whole country. "Broadcast it tonight and print it tomorrow" was the usual directive of the Party and government leaders.² The dominating role of radio broadcasting, however, stopped in the early 1980s, when television rose as the most popular medium in China.

Chinese television's management model was copied directly from the model used for radio. Chinese television was born in the era of the "Great Leap Forward" in 1958, at a time when communism seemed to be overpowering capitalist ideals. A combination of economic and social problems meant that after 20 years of development, the growth of Chinese television was stunted.

All the Chinese media were organized in accordance with their governmental affiliations. To illustrate, there were newspaper, radio and television at national level, as well as those at the provincial level, and still further, at local level. All the news publicity, however, was directly, or indirectly, subject to the direction, instruction and supervision of Central Propaganda Department of CPC (or through the Propaganda Departments at various levels).

¹ A mass movement from 1966 to 1976, initiated and led by Mao Zedong, aimed at purging of political enemies.

² Mao Zedong often wrote this in reported files. See China Contemporary Radio and Television (volume one), p.121.



Before 1982, the agency responsible for the management of radio and television broadcasting was the National Broadcasting Bureau, which was affiliated to the State Council. The radio programs were broadcast primarily through a nationwide network with CNR in the center, including local transmitting stations. There were provincial radio stations (also those of municipals directly under the central government and those of autonomous regions), as well as city radio stations. There were cable radio networks at county level, connecting households in the countryside. The main responsibility for maintaining and managing the provincial and local radio broadcasting rested on local governments.

Television broadcasting was different in many aspects from that of radio. Television was a locally based medium before China's reform in the late 1970s. Due to the lagging behind of science, technology and economy, after 20 years' development, China's television still did not come out of its initial stage characterized by simpleness and crudeness. China Central Television Station (CCTV), the national broadcaster, changed from its predecessor, Beijing Television Station, acquired its name in 1978, when its network was made possible by the construction of a nationwide microwave web. This web was established by the Ministry of Posts and Telecommunications. At the provincial level, only capital cities had local television stations that relayed national programs, or, functioned at low cost with showing films and relaying theatre performances as the dominating programs.

Before China's reform and open-up, the social structure designed according to the political system also affected and determined the operation of the media. Politically, the media were the mouthpiece of the Party and followed the party line to such an extent that any variation of thought was impossible. Under such guidelines, the media could not develop an independent voice. At this time, the media did not have to worry about financial survival, as their funds came from the national economy. Economically, the monopolistic model of management and strictly enforced income and expenditure plans ensured a sound economic status for the media; however, this also meant they had no commercial motivation. Culturally, in its pursuit of ideological and moral purity, China's broadcasting was heading towards totalism and ascetic in line with the "cultural revolution".

It was simple and easy to manage broadcasting in an integrated revolutionary regime. Information was distributed hierarchically using "red-headed" documents,³ and the orders contained inside were always carried out. The consistency in ideology ensured the unity of political pace. If any inconsistency or disobedience did occur, whether due to misunderstanding or on purpose, a political decision made further up the chain of command would be sufficient to change the situation. Removal of personnel or a reshuffle of organization would be the most workable approach.

³ They were directive files released by various leading institutions. The serial number of the document and the title of the institution were often printed in the page header of the first page. The title was in red.



1.2. Transformation of the Management

The economic changes, which resulted from China's reform and open-up policies provided an environment for social transformation, and this included the media. Television broadcasting began to develop against the process of economic emancipation. Chinese television began to see tremendous changes. By the second half of 1980s, television had become the leading medium, so influential as to surpass the function of radio broadcasting and even threaten the survival of the film industry.

The exponential development showed two characteristics: Firstly, television was given more freedoms. Chinese television had a much shorter history than radio but was influenced by international factors and those of arts and literature, and the revolutionary tradition had less command on television than on both newspaper and radio. Secondly, television was much more commercial, or market-oriented. The growing up of television was paralleled with the rapid development of the market economy after China's reform and open-up. Television was energetic, flexible, full of opportunities, and sometimes confused with all kinds of teething problems, which were very different from the rigid development of newspapers and radio. Television was more entertaining and more popular among the mass. Materialism and commercialism, therefore, prospered firstly in television.

In 1982, the Ministry of Radio and Television (MRT)⁴ was established, taking over the leadership of the National Broadcasting Bureau, which had been exercising since 1949. At that time, the call for the setting up of television stations from local governments and for access to television from the people were gathering strength. In 1983, a far-reaching policy was promulgated by the Ministry in the hope of making use of local initiative, financial and material capability to spread the influence of the central government. The new policy introduced a four-tiered broadcasting system.⁵ The four tiers referred to the four levels of administration within the hierarchy of government, that is, the system of central government, provincial governments, regional (municipal) governments and county governments. Each government at four levels was allowed to set up and operate its own radio and television station. In a short time, enthusiasm of establishing television stations ran high across China. In 1982, apart from CCTV, there were only provincial television stations (29 altogether) and some municipal relay stations (less than 20). In 1996, however, when re-organizing measure was taken, there were 944 television stations and 1,285 cable television stations, each having at least one channel. Besides, there were 1,005 educational television channels and 133,634 satellite ground stations.

⁴ It was changed to Ministry of Radio, Film and Television (MRFT) in 1986, when the film industry was merged in. It then became State Administration for Radio, Film and Television (SARFT) in 1998, after re-organization.

⁵ The policy focused on television. As mentioned before, the four-tiered system had already been there in radio broadcasting.



Television coverage increased from 57.3% to 86.2%.⁶ Television audience reached 0.8 billion in 1992, nearly 1.1 billion in 1997, according to national surveys.⁷

Unlike the management of the traditional news media, however, it was very hard to control the local television stations that had been granted franchise to broadcast. And confusion arose when local stations busied themselves with seeking political and economic benefits of their own. Some local television stations turned a deaf ear to directives from the Ministry of relaying CCTV programs (relaying most programs of CCTV at first; then later relaying all of them). Instead of fully relaying CCTV programming, some local stations put in large quantity of other programs and inserted local commercials between CCTV programs. Even worse, a large number of overseas programs were aired and even pirated. The Ministry had issued many decrees to regulate, in the hope of stopping those problems; but in vain.

Moreover, the difficulty of management was intensified with the expanding of television related industries. Since the second half of the 1980s, the industries related to television were increasing both in number and scope. Audio/video products, film and movie, cable, satellite, and net broadcasting, introduced one by one, or all at once, were gradually brought into the supervision scope of the Ministry. The Ministry realized that the introduction of modern management with its own set of laws and guidelines was necessary. It was for that reason that legislation was put on the agenda. This decision was also in line with the Chinese journalism scholars' aim of establishing a legal framework for the media system in the context of regulatory reform across China.

⁶ China's Radio and Television Yearbook (1997), pp. 68, 69, 525

⁷ Data Assembly of National Television Audience Survey in 1992, p.6; Report on Current Chinese Television Audience, p.1

2. Development of China's Broadcasting Law and Regulation

Two homophonic words, “law regime” (Fa Zhi) and “law-governed”(Fa Zhi), had come into Chinese modern discourses in the 1980s. To explain briefly, “law regime”, in comparison with “administration”, refers to stable, institutionalized regulation; “law-governed”, in comparison with “man-governed”, refers to the legal rule and management that cannot be dominated or influenced by personal decisions at a leader's will. With the progress in political democracy and market economy, the diversified economic interests had brought diversified political requests. The people were calling for a society governed by laws, calling for the reform of management to emphasize on rights as well as on obligations.

The leaders of the Party and Government made positive response to the appeal. Having witnessed the catastrophes resulting from the anarchy of the “Cultural Revolution”, Mr. Deng Xiaoping, the “general architect of China's reform”, stressed his opposition against rule by person, saying “Democracy must be institutionalized and legitimized, and thus the institution and legality cannot be changed with the change of leaders, cannot be changed with the change of the leaders' opinion and attention.”⁸ The Third Plenary Session of the 12th Central Committee of the CPC put forward legislative guidelines focused on four aspects: firstly, to have laws for people to follow; secondly, to ensure that the laws are observed; thirdly, to ensure that the laws are strictly implemented and enforced; and fourthly, to ensure that law-breakers are brought to justice. During the 13th National Congress of the CPC, Zhao Ziyang, then general secretary of the CPC, proclaimed in his report that “lawful ruling must be incorporated into the process of reform.” He also said that in particular “we must speed up establishing laws regarding journalism and publication... to guarantee the rights and freedom of the people stipulated in the Constitution”. Meanwhile, China was on the road to legislation and regulation: China had re-established the legal administrations, which were discarded or demolished in the Cultural Revolution, resumed systems of notarization and pleading. In the 20 years after China's reform and open-up, there are approximately 350 laws passed by the National People's Congress and its Standing Committee, and more than 1000 administrative rules and regulations issued by the State Council.⁹

China's broadcasting regulations took shape in this period. The shortcomings and disadvantages of conventional management, however, led broadcasting administration to put emphasis only on regulations. Both the starting point and processes of regulation were focused on the people's obligations rather than rights.

2.1. The Characteristics of Media Management

In the past, the management of radio and television relied heavily on administrative means such as policies, administrative rules and “red-headed documents”. The management of this kind was characterized by internal control, obscure discourse and changeable directives, in which the personal influence of leaders (and even personnel responsibility for procedures) was obvious.

⁸ Deng Xiaoping, p. 136.

⁹ Chen Guangzhong, p. 20.



Many policies in China were not made public but conveyed within the institution as internal doctrines. Both the State Administration for Radio, Film and Television (SARFT) and CCTV, for example, had compiled regular (daily or weekly) or irregular briefs to guide the programming routines. They give directives, praising some practices, criticizing others. They explain different policies according to different situations at different time. Those documents are trouble-shooting principles; usually temporary and confidential, kept inside the system. They form conventional practices such as, calamities and disasters should not be reported during holidays and critical reporting prohibited in politically sensitive times. Some directives are worded so cleverly that the real meaning might be opposite to what is announced. Some of them are embedded in high-context and can only be read between the lines. To understand those delicacies needs political sensitivity and working experience which can only be acquired after a long period of study. The guidelines for news coverage of Chinese leaders, for instance, requires careful calculation. To report or not to report? When and where to put the story? What activities of what leaders should be reported and how should they be reported? Usually the decisions are made in accordance with a person's stature, instead of a story's newsworthiness. Where to put an obituary notice, in a paper or on television? Should it be a piece of short news or a long story with a photo? All the above decisions are customary and habitual but have no written guidelines. They can only be figured out by the experienced editors, who understand the way the system works.

Many essential elements in China's journalism, radio and television broadcasting have been fundamentally unchanged. However, in the period of China's reform and open-up, the specific policies and directives are subjected to frequent changes, which have often led to contradictions and confusions. For example, the media would admire virtues of hard-working and simple life, when the Party promoted such cultural and ethical standards; while the media would acclaim, on the contrary, expensive and quick consumption, when the Party favored fast economic development. Those minor contradictions appear so frequently that most people in charge of the media adopt a prudent attitude, which prefers security to adventure, for fear of making mistakes.

Since China's reform and open-up began, however, with the declining appropriate money from the government, the mass media have been facing new challenges: to survive by themselves. Generally speaking, many forbidden areas, on both news coverage and industrial development have been broken through one by one. The liberation of entertainment has been the most obvious, where lawful regulations are most suitable.

2.2. The Development of a Broadcasting Legislation

In the nationwide legislation wave, the Ministry of Radio, Film and Television (MRFT) followed suit and began showing interest in the construction of laws and regulations. The field of radio, film and television, in the meantime, was challenged with many new problems brought about by new industrial development with expansion of business. New phenomena such as the disputes on copyrights of cultural products, the abuse of video tapes (shown without permission from the authority), the thefts of broadcasting facilities, and so on. Under new circumstances,



the administrative management was losing authority and effectiveness. The difficulties and disadvantages in traditional management had led to the discussion on the introduction of lawful regulations. Furthermore, "In the situation of opening-up to the outside world, ...regulations and laws are vital to keep the state dignity, to protect the nation's interest, and to stabilize the cooperative relations."¹⁰

In June 1985, a working plan was outlined by the Ministry and the regulations regarding radio and television were classified into three tiers: the broadcasting law promulgated by the National People's Congress, the administrative regulations proclaimed by the State Council, and the regulatory documents issued by the Ministry. More importantly, a legislative leading group and a law department were organized to enforce the establishment of laws.

The law department gave a full review on the broadcasting regulations promulgated from 1949 to 1986, only to find that there were less than 10 administrative regulations proclaimed by the State Council, and less than 90 regulations issued by the Ministry. "Those regulations are not only few in number, but also repetitive in content and non-standardized in form."¹¹ From then on, the Ministry began to draw out administrative regulations and rules, and at the same time, set out to establish the Broadcasting Act and Film Act.

Ten years later, the efforts made on broadcasting regulations had been paid off. Administrative regulations regarding audio/video industries, movie copyright, co-production of film and television programs by Chinese and foreign studios and producers were made and promulgated consecutively by the State Council and the Ministry. Other aspects regarding the implementation, monitoring and consultation of broadcasting-related regulations were enforced. By the end of 1995, there were 4 administrative regulations proclaimed by the State Council and more than 80 regulatory documents made and issued by the Ministry.¹² The law-governed broadcasting regulation was put on the right track.

While administrative regulations and regulatory documents were issued one by one, the Broadcasting Act was not drafted out, made ready to submit to the State Council, as planned. In December 1991, after several years' preparations, Minister Ai Zhisheng suggested that the procedure for regulation establishment should be changed, that is, administrative regulations and regulatory documents should be established first and then the comprehensive laws like Broadcasting Act and Film Act should be dealt with. He believed that it was not the right time to make comprehensive acts due to the fact that the Ministry did not coordinate with the Ministry of Post and Telecommunications on business and, more importantly, that the Press Act was still absent.¹³ Therefore, instead of Broadcasting Act, Broadcasting

¹⁰ Quoted from the speech made on August 13th, 1987, by Nie Dajiang, Vice Minister of the MRFT, in the Ministry's legislative work conference. Archives Department et al., (volume I), p. 30.

¹¹ Zhang Shuyi, Enhancing the Legal Establishment of Radio, Film and Television, Safeguarding the Development of the Industry, Archives Department et al, (volume I), pp. 76 - 77.

¹² Editorial Department of A Brief History of the PRC's Radio and Television, p. 381.

¹³ Editorial Department of A Brief History of the PRC's Radio and Television, p. 380. Ai



Regulations for Management was proclaimed by the State Council in August 1997, which was based on the draft of the act. The promulgation of the Broadcasting Regulations for Management was a milestone in the efforts to set broadcasting rules. It is comprehensive, many details being defined, including the set-up of radio and Television stations, the construction and maintenance of broadcasting facilities, the programming, production and distribution of broadcasting programs. The regulations are made specific and detailed, both public and plain in characteristics.

What should be noted is that the issuing of a bylaw instead of a law embodied the emphasis on obligations rather than on rights of the citizen, both those of the common people and of the mass media. Since, regulations (Gui Zhi), instead of laws (Fa Zhi) has become popular among Chinese scholars and practitioners.

The Chinese word Gui Zhi, the equivalent of the English word regulation, stems from Japanese, though its origin is Chinese. According to a textual research,¹⁴ Gui Zhi means administrative measures that government takes to control those industries such as broadcasting, post and telecommunication, which have got such market failures as natural dominance, externalities, information asymmetry, etc., and cannot be manipulated by the unseen hand in the marketplace to obtain the satisfactory efficiency through competition. Regulation system is composed of administrative licensing, lawful punishments, etc. These are what Chinese broadcasting administration has been pursuing.

In 1998, the Ministry of Radio, Film and Television was reorganized as State Administration for Radio, Film and Television (SARFT). With the approaching of China's entry into the WTO, connecting China's regulations with international rules has been put on China's legislative agenda.¹⁵ Television management entered a new period of "making laws and regulations, and making their improvement". The regulations for Chinese broadcasting are beginning to take shape.

Zhisheng's suggestion was reasonable; but the fact that a leader's suggestion could easily deny the whole plan reflected to some extent the Chinese problems in legislative procedure and the rule of person rather than law.

¹⁴ Zhang Zhi, An Economic Deliberation on Japanese Broadcasting System, *Journal of International Communication*. 2003.1. p. 40

¹⁵ See, for example, "the Law Publicity and Education Plan for Radio, Film and Television System in 2001", Regulation Department (annual, 2001), pp. 66 - 67

3. Institution and Programming Regulations of Chinese Television

The regulations for Chinese television are comprehensive, dealing with many problems, ranging from pure technology to culture and morals. Since the Broadcasting Act has not yet been established, the regulations serving as the guidelines for television broadcasting activities mainly consist of administrative regulations (less than 10) promulgated by the State Council, and many regulatory documents (among which, there are about 70 that refer to television) issued by SARFT or its subordinate departments.¹⁶ Due to the mindset of “putting efforts in administration”, these regulations and documents have two administrative emphases: one is regulation of media institutions, the other is regulation of programs. Both have something to do with control.

3.1. Media Institutional Management

Since the “four-tiered television system” was set in early 1980s, China’s television had expanded on large scale. As it was shown, the “four-tiered television system” policy had brought a boom to China’s television. In the beginning, however, local television stations did not relay CCTV programs regularly, let alone relaying provincial programs. They preferred broadcasting entertaining programs, mainly overseas television dramas that brought in profits to stations. Unlicensed broadcasting and selling pirated programs caused not only a lowering of taste, but also disputes on copyright. Meanwhile, the local news focused on conferences, in which local leaders appeared so frequently that the audience complained a lot. As a result, the prosperity of China’s television was accompanied by the indiscipline of television institutions and chaos of television programs.

3.1.1. Institutions’ Disciplining

The disciplinary measures taken by the broadcasting administration were becoming stricter in time. Document No. 37, which was issued by the Central Committee of the CPC in October 1983, not only raised the “four-tiered television system” policy but also added: “Besides relaying programs from CCTV and provincial television stations, all the cities or counties with necessary facilities can broadcast their own programs to cover the whole city or county based on the local needs.” Having witnessed the consequences of indiscipline, however, the Ministry of Radio and Television made a decision in 1984 saying “Temporarily, production of entertaining programs by city and county television stations is forbidden.”¹⁷

Since Ai Zhisheng (1985-1994 in office) succeeded Wu Lengxi (1982-1985 in office) as minister, there had long existed controversies concerning “four-tiered tele-

¹⁶ The number of regulations is primarily based on Radio Film and Television Regulations Assembly, including the 2001 version (Regulation Department, 2001) published by China’s Radio and Television Press and internally-used annual version (Regulation Department, annual). Many repetitious and invalid ones are scored out.

¹⁷ The MRT’s Tentative Stipulations concerning City and County’s Establishing Radio and Television Stations, Radio, Film and Television Regulations Assembly (1949-1987), p.24



vision system” policy within broadcasting system, both inside and outside of the Ministry of Radio, Film and Television. In 1994, applications for the establishment of county television stations were no longer approved; and in 1995 all the applications for setting up new stations were refused. By that time, however, the media environment had changed greatly. Although the confusion caused by local stations had been brought under control, new problems arose and were entangled with those unsolved.

In the 1980s, VCR appeared in China, with which was the hit of video products. In the late 1990s, VCD (video compact disc) became popular in cities. Almost overnight, however, VCD was replaced by DVD (digital versatile disc). In 1995, China decided to import 10 of the biggest box office films from the United States annually. The economic impact of these films on the Chinese film market cannot be underestimated. Privileges formerly enjoyed by state broadcasters also began to diminish when rules were made following international standards around China’s entrance to the WTO.¹⁸

In 1990 and 1994, “Asia” and “Asia and Pacific” Satellites launched successively. As a result, cross-border television programs in Chinese language came into being. Since 1990, the SARFT has issued a series of regulations to regulate the receiving of foreign satellite programs. According to the administrative regulations set by the State Council, only the approved institutions can receive limited programs; and the license system shall be applied to the production, importation, sale, installation and usage of the ground receiving facilities. Due to China’s policy and also the limited consuming capability of Chinese people, the satellite television programs are received through cable systems. As a result, the control of the cable television has become stricter and more regular.¹⁹ The cable systems originally scattering all over China began to form regional networks in the mid 1990s, according to the hierarchical structure of administration.

In November 1995, two scrambled channels -- sports and movie -- were inaugurated by CCTV and went on air. For China has adopted the 5-day week system since May 1, 1995, people’s weekend has doubled. This has resulted in an increase of demand for entertainment services. Since the late 1980s, remote areas such as Yunnan, Guizhou, Xinjiang, and Tibet have tried to transmit programs through satellites. Other provinces followed suit. By the end of 1999, all the provincial television stations had gone on air. They became the potential rivals of CCTV.

In the environment of open-up, and also under the pressure of competition, local stations had less scruples. They not only broadcast programs easily obtained from the cross-border satellites, but also set up facilities and channels without authorization. So lucrative was the TV market that some industries outside the broadcast-

¹⁸ For Example, a revised Copyright Law passed in October 2001 by the Standing Committee of the National People’s Congress makes a change stipulating that radio and television stations should pay for the broadcasting use of music. Before that radio and television stations could broadcast any music at will without paying right owners, saying it was only reasonable use.

¹⁹ The Tentative Management Methods of the Cable Television issued in 1990, the Management Methods of the Cable Television issued in 1994



ing tried to get in on the action. Some stations went so far as to jointly run TV channels and cable networks with privately-owned enterprises, taking domestic and foreign investments from the private sector,²⁰ which, apparently, were forbidden by the existing broadcasting policies.²¹ The administrative task became more and more difficult and complex.

Compared with cross-border satellite programs, China's television programs were more like lectures than entertainment, lacking in information in news stories. If CCTV as the nation's voice were not protected, it would surely be engulfed by both domestic and foreign satellite channels. Meanwhile, in the journalism and communication area at large, the orderly situation of planned economy was gone.²² Hence, in December 1996, the General Office of Central Committee of CPC and the General Office of the State Council of PRC made the notice that the state should strengthen the control of the press and broadcasting.²³ The document stressed that the regulation of the broadcasting industry should focus on licensing television stations and channels, and on censoring broadcasting programs. The document ascertained that the SARFT should standardize the approval of institutions, frequencies and channels, setting the key tone for the SARFT on how to manage broadcasting industry by rules.

In 1997, the Ministry began disciplining and reconstructing the system of broadcasting, especially of television. Non-broadcasting industries were not allowed to operate the broadcasting media; foreign programs were limited; and the management of the production, distribution and broadcast of the domestic programs were strengthened.²⁴ A year later, the Ministry was able to have the improper broadcast of TV programs, unauthorized establishment TV stations, channels and networks and many other unsatisfied phenomena under preliminary control.

When MRFT was changed into the SARFT in 1998, its functions stressed on evaluation of institutions and supervision of contents. Regulations has become the main tool of broadcasting management. Because the technological management

²⁰ There were some refused, criticized, or even punished cases, see Important Work Documents Assembly of Radio, Film and Television General Office, 1993-1994, pp.71-72, 89, 316, 345; 1996, 174; 1997, 110-111

²¹ Article Ten of Cable Television Management Regulations, issued on February 3, 1994, stipulates, "individuals shall not apply for the establishment of cable television stations; any institution shall not jointly set up cable television stations or construct and run cable television networks with foreign companies and individuals; the cable television networks shall not lease channels and broadcasting hours to any institution or individual". (General Office, 1993-1994, pp.71-75)

²² For example, the weekly, supplement and tabloid papers had increased greatly, which forced the State Journalism & Publication Bureau to stop the approval of new periodicals.

²³ Notice of the General Office of the Central Committee of CPC, the General Office of State Council on Strengthening the Management of Journalism, Publication and Broadcasting Management, General Office (1996), pp. 13-17

²⁴ Plan of carrying out the Notice of the General Office of the Central Committee of CPC, the General Office of State Council on Strengthening the Management of Journalism, Publication and Broadcasting Management, General Office (1997), pp.103-109



and infrastructure construction had been transferred to the Ministry of Information and Industry, both of them had the right to tap the new media, such as multimedia and Internet. New problems arose between them.

Nearing the end of the 20th century many media companies began to merge on a large scale. It had become a global trend. In 1996, the first press group – Guangzhou Daily Press Group – was founded in China. And the establishment of the Broadcasting and Film Group had been put on the agenda.

3.1.2. Media Integration and Reconstruction

The integration and Reconstruction of television media was stimulated entirely by administrative power. However, different from before, the integration and Reconstruction was fulfilled through legal regulations.

In 1994, the Ministry found that the cable television systems of some areas had transmitted radio and television programs together through one cable line, which was both effective and cheap. Hence, the Ministry decided that all the newly established cable stations should be named as “cable radio and television stations”. The integration of cable industry was carried out with television as its centre.

In 1997, when disciplining the broadcasting industry across the country, the Ministry re-organized local radio and television institutions. It specified that all radio, television, and cable television at county level, including education stations and relay stations, should be integrated into one station. All cable systems should be integrated into regional cable networks.²⁵ Two years later, the SARFT assessed the work, and found it effective, “ the number of the broadcasting institutions has decreased by 68%.”²⁶

The SARFT was so encouraged that it decided provincial and city stations should also be integrated. At the end of 2000, it decided that cable television stations should be integrated into terrestrial television stations of the same region, making assignments of both channels and programs in a package deal. Provincial cable television stations have no longer existed since July 1, 2001.²⁷

Since then local stations have changed their role from programming providers to networking services. While city stations are allowed to run only one channel of their own, county stations are not allowed to keep their own channels, only to insert local programs in certain time slots in each public channel operated by provincial television stations. The policy is called separating stations from the network, by which programming is controlled by former terrestrial television stations, mainly

²⁵ Suggestions on the Integration of Broadcasting Institutions in Counties and Cities, Suggestions on Changing the Enterprise and Institution Cable Television Stations into Cable Radio and Television Stations, Regulation Department (2001), pp. 214-216

²⁶ Suggestions on Improving Further the Re-Organization of Broadcasting Outlets, Regulation Department (2001), pp. 232-234

²⁷ Notice of the Integration of Cable Radio and Television Stations into Terrestrial Television Stations, Regulation Department (2001), p.289; Notice of the Speeding up the Integration of Cable Radio and Television Stations into Terrestrial Television Station, Regulation Department (annual, 2001), p. 65



at central and provincial levels, while local stations are functioning as nodes in the national distributing networks.

After the stations' integration, the SARFT made the conglomerating plan of trinity: "combination of radio, television and film industries; integration of cable, terrestrial and educational stations; penetration of provincial, city and county levels".²⁸ On December 6, 2001, based on the SARFT and its subsidiary media and industries, China Radio, Film, and Television Group (CRFTG) came into being.

In accordance with documental stipulations, the CRFTG "is established by broadcasting administration organs", and "is state-owned (noncommercial) institution and run as a (commercial) business."²⁹ After the setting up of the CRFTG, its founding method of "binding small sampans to produce an aircraft carrier" has experienced many criticisms. It is cited as "surgical suture"; "Monopoly is strengthened while competition is crippled"³⁰; the group was "a pile of tomatoes in a gunny-bag"; "neither fish nor fowl – not corporation, not enterprise, not commission, and not institution"; "like a cross-industry association under a government department".³¹ There were also comments on its validity that "the corporation is the product of red-headed documents", "administrative binding", "neither on the basis of property ownership nor on the contract", "administration with an organization mantle", "very probably it will be engulfed in morass of ageing, redundancy and low efficiency".³² In reality, the movements taken towards the conglomeration were not so conspicuous.

3.2. Program Market Management

Compared with news of a more political nature, film and television are more entertaining and popular media of social nature. It is proper and easier to apply regulations to entertainment.

3.2.1. Management of Film and Television Programs

Though there are hundreds of television stations and dozens of satellite television channels in China, Chinese television market is still rather monopolistic. The program regulations show a stance of protecting national media and domestic programs.

²⁸ Notice of the Trial Principles of the Conglomeration of the Radio, Film and Television, Regulation Department (2001), pp. 282-285

²⁹ Detailed Implementation Rules of Speeding up the Reform of Radio, Film, Television (Tentative), Regulation Department (annual, 2001), p.118

³⁰ Lu Di. Decoding of China Television Industry in 2001. South China Television Journal, 2002, No. 1, p.10

³¹ Wang Qingchuan & Shen Hui. Conglomeration of Radio and Television, the Cool Thoughts on the Heated Issue. South China Television Journal, 2002, No.6, p.5

³² Bao Jinhu., Legal Aspects concerning Conglomeration of Radio and Television. South China Television Journal, 2002, No.6, p.13



First of all, the Ministry set a key task for the local institutions to fully relay the programs of CCTV: “radio stations, television stations, relay stations and cable radio and television stations (sub-stations) shall fully relay programs of the first channel of CCTV and CNR through specially-set channels; if possible, they shall also relay other programs of CCTV. While relaying the programs, they shall not insert their own programs and commercials.”³³

The local television stations should fully relay not only the programs of CCTV, but its commercials as well. The Ministry stipulated that “the local stations shall not switch off the commercials of CCTV; and shall not disturb the fully relaying of programs either in the form of moving captions or others.” The infringed CCTV could “ask the infringers to make compensations.”³⁴ The Broadcasting Regulations for Management also set principles of relaying national programs.

Then in order to protect the national media’s privilege of content control, the MRFT stipulated that local stations should broadcast international news only from official sources. All practices such as relay of cross-border satellite television or broadcast of international news obtained through other (than official) means are forbidden.³⁵

Besides, the MRFT has adopted a method of collectively supplying programs to local television stations since October 1992, and believed that it was effective to solve the problems of lacking in programs and of improper broadcasting.³⁶ Since 1995, the management of programs had become more standardized. All the imported cable television programs approved by the Social Bureau of the Ministry should be notified with an approval number at the beginning of the program. Importation of movies and television programs could only be managed by one authorized corporation³⁷ – China International Television Corporation, an immediate subordinate of CCTV.

As to domestic television dramas’ production, they were usually planned by the MRFT. The China Television Arts Committee has been responsible for the coordination of subjects planned by television stations and film studios.

Around 1999, the separation of the production sector from broadcasting media³⁸ became a hot issue in the Chinese television field. The reform of the television

³³ See Notice of Requirements on the Local Radio, Television Stations Fully Relaying Programs of CNR and CCTV, issued on December 8th, 1993, Regulation Department (2001), p.173. This is a typical notice. There are many others, requiring cable and other TV outlets to relay national programming.

³⁴ Notice on Forbidding Local Televisions from Cutting out the Commercials of CCTV”, General Office (1996), pp. 95-96

³⁵ Notice On the Strengthening the Management of Radio, Television and Cable Television Broadcasting, Regulation Department (2001), pp.194-195

³⁶ Notice on Further Strengthening the Supply of the Cable Television Programs, General Office (1993-1994), pp. 59-60

³⁷ Social Bureau of the MRFT’s Notice on the Forbidding Cable Television Station from Broadcasting Cross- border Video Programs, China Radio and Television Association et al, pp.289-290

³⁸ Namely, except for limited kinds of programs, such as news and current affairs programs, all other television programs shall be produced by non-broadcast companies.



system took shape in no time. The production of television dramas and variety shows are dominated by market forces now.

3.2.2. Management of Production Institutions

Among all the television programs, television drama was the first to be thrust into the market. Since "four-tiered television system" was established, many television drama production studios have emerged. Among these studios, some were regular production units developed from film, theatre or other arts institutions, and they became TV production branches of those institutions. Some were independent producers that got investments to produce TV dramas, of which most were shabby production units run by temporary teams to make profits. The good and the bad were intermingled in this market. After ten years some companies have stood out, occupying much better positions in this market.

In 1993, the MRFT pronounced that the principle of "good quality, good price and good position" should be applied to the programs on CCTV-1. The television drama market experienced a boom. Before 1993, however, television drama transactions were conducted as free exchange, or at low price, which was a far cry from the market operations.

With more and more foreign and domestic satellite channels went on air, the increased demand of films and television programs, again, paved the way for the rapid development of program. Production companies with various economic resources began to emerge. The television culture has been largely enriched, and also, diversified. With more and more contact with foreign markets, some Chinese institutions lacking in production capacity (especially lacking in capital) began to seek ways of co-operation from abroad. Co-production or assistant production increased. Foreign capitals have crept into China's television program market.

The MRFT's management focused on non-broadcasting institutions that intended to provide TV services or private and cross-border enterprises, which joined or invested in TV content production. The Social Bureau was officially authorized to evaluate and issue licenses to various film and television programs and program production agents. The bureau stipulated in 1995 that "individuals or private enterprises shall, in principle, not set up film and television program production agents; foreign or overseas enterprises or individuals shall not either jointly or independently establish film and television program production agents in China."³⁹

As early as 1986, in order to regulate the market which was overrun by temporary television drama production units, the MRFT began to adopt drama production license system. The license could be divided into two types: long-term licenses and temporary ones. Those which acquired a long-term license were mainly film, television or artistic institutions. The temporary television drama production license was issued on a case by case basis. Producers with a temporary license could only make a specific drama approved by the Ministry. Non-broadcast institutions

³⁹ "The Temporary Management Stipulation of Film and Broadcasting Institutions", Regulation Department (2001), p. 79



were strictly limited in getting a license, while those jointly owned by Chinese and overseas or foreign partners were forbidden. Without a license no producer could make any television dramas or video programs in China. The lease, sale, and transfer (directly or indirectly) of various licenses were forbidden. On November 1, 1998, the Social Bureau of the SARFT began to issue Broadcasting Program Production License and Television Drama Production License to different applying agents.⁴⁰ Since January 1, 2000, Television Drama Distribution License has been issued to all the review- and- approved television dramas (including domestically, jointly produced and imported television dramas).⁴¹

Official private companies were not allowed to make any programs; but they used connections within the government to get around the regulation. The private sector had never been totally driven out; on the contrary, things were changing in time.

Although the MRFT and later SARFT have established strict standards for the qualified television drama production agents, and managed to control the subject, length and format of television dramas, and also tried to fight against “fake co-production”, “fake domestic product” and other undisciplined phenomena, with growing exchanges with foreign countries, however, the control had been loosened gradually.

3.2.3. Management of Cross-Border Involvement

Cross-boarder programs had always been one of the main problems for the administrators. According to a survey, the number of imported programs in 1989 was twice of those in 1988. Television stations were competing with each other to purchase cross-boarder programs, which resulted in the increase of prices. The imported television dramas were 35 or 55 percent of drama broadcast on average, sometimes even as high as 65 percent.⁴² Hence, the MRFT limited the cross-border television dramas to 20 percent of the total broadcast dramas; and the ratio was set to 15 percent in prime time.⁴³ Meanwhile, the Ministry decided that annually run international television festival, alternatively held in Shanghai and Chengdu City, Sichuan Province should function as the main channel of program importation.

After the appearance of satellite television, in February 1994, the Ministry stipulated clearly, “programming broadcast by each channel of each station shall not contain imported TV dramas more than 25 percent of the total drama hour; during prime time (18:00 to 22:00) no more than 15 percent.” At the same time, broadcasting of unauthorized imported dramas, unauthorized cooperatively and jointly pro-

⁴⁰ “On Issuing Broadcasting Program Production License and Television Dramas Production License”, Regulation Department (2001), pp. 226-227

⁴¹ “Notice on Issuing Television Drama Distribution License”, Regulation Department (2001), pp. 265-266

⁴² Notice on the Domestic Television Drama Subject Planning and the Importation of Foreign Television Dramas (1990), Archives Department et al, (volume I), p. 241

⁴³ MRFT’s Temporary Stipulations of Importing Foreign Television Dramas (1990), Archives Department et al, (volume I), p. 280



duced television dramas, and unauthorized video products were forbidden; and receiving through satellite ground facilities of programs from foreign countries and areas of Taiwan, Hong Kong and Macao was forbidden as well.⁴⁴ In 1997, the MRFT set up the Satellite Television Examination Center and the Audio and Video Program Appraisal Organ to regularly report inspection outcomes and announce appraisal results of programs.⁴⁵ From January 1, 1998 on, Beijing, Shanghai, Fujian, Guangdong, and Sichuan lost the privilege of importing foreign movies and television dramas they once enjoyed.⁴⁶ To avoid imbalanced importation, in 2000, the SARFT required importing programs of different subjects and formats, from different countries and areas.⁴⁷

In 1996, the MRFT began to review applications of cross-border satellite channels distributed in China. Since February 1, 2001, the applications have been processed annually. In 2002, Phoenix, Star TV and other satellite television channels were approved successively to land in some parts of Guangdong Province, China.

As to foreign (as well as overseas) investments' into Chinese broadcasting, the existing Chinese policy is prohibitive. According to the agreement for China's entry WTO, broadcasting falls into the category of "forbidden" industries. In reality, however, there have been overt or covert infringing operations. While some local institutions were punished, some were legalized eventually, due to loosened policies.⁴⁸

The latest document of Detailed Financing Rules Implemented by the Radio, Film and Television Groups (Tentative), issued in December 2001, stipulates still that

⁴⁴ MRFT's Notice on the Importing and Broadcasting of Foreign Television Programs", Regulation Department (2001), pp.48-50

⁴⁵ The Management of Radio and Television Programming Broadcast through Satellites, Regulation Department (2001), p. 219

⁴⁶ Notice on Strengthening the Management of Radio, Television, Cable Television's Broadcasting, Regulation Department (2001), pp.194-195; Notice on the Termination of Privilege of Beijing, Shanghai, Fujian, Guangdong, Sichuan's Importing and Broadcasting Cross-border Dramas, General Office (1997), p.130

⁴⁷ Notice on the Strengthening Management of Introduction, Co-Production and Broadcasting of Television Dramas, Regulation Department (2001), p. 252

⁴⁸ For example, television programs' being named after sponsors', once was illegal, has already been legalized



radio and television stations, frequencies, or channels, as well as other news media, as state-run enterprises, shall not absorb foreign and private capitals. At the same time, however, it can absorb capitals from other journalism and communication companies or corporations to produce programs and conduct co-projects. It also stipulates that television production, film industry, broadcasting and press distribution, news websites, broadcasting networks and so on, can, in a certain amount, absorb capitals from private and foreign sources. That leaves leaks.

4. Conclusion:

Regulating Chinese Television by Laws and Regulations

With the development of the market economy and the reform of the political system, and with the growing contacts between China and foreign countries, China is moving toward a fully law governed society. The status of laws has been established as an essential and primary component of the nation. The belief of “ruled by laws” has struck root in the hearts of the people. Law is no longer dispensable. At present, at least in theory, laws and regulations have become the principal basis for making decisions or judgments. Legal validity has also become the premise of all regulations. At the same time Traditional management models are on the decline. No other authority but law is unquestionable – whether it is government document or the speech of senior government officials. There is a decline in the effectiveness of traditional administration and a definite rise in that of the lawful regulation. The authority of laws is highly respected. The society is becoming more rational. This will undoubtedly contribute to the democratization of the China.

The progress made in lawful regulations for television has been great. Firstly, the administrative regulations are open to the public. Concerned parties and general public can handle affairs in accordance with rules and regulations. Second, the articles of regulations are clearer; the wording of regulation is more standardized. Hence, it is easier for the public to understand regulations, and to supervise their fulfilling, while in the past, rules were only shared inside. Due to the hierarchical nature of the television system, the people at the sharp end of the triangle always had the last word to change the rules at their will. Communication inside or outside were high cost and low efficiency, owing to slow circulation, and inaccurate meaning transferred step by step. These, however, are changing.

However, observing the legal progress of Chinese television, there is an evident feature: television regulation is actually administrative management in disguise. Namely, it is governed by laws in appearance, but by old fashioned management in nature. Regulation agencies, such as the Ministry of Radio, (Film) and Television or the SARFT, have still hold traditional mindset of regarding the public as the objective of restriction. Hence, some problems arise.

1) One-sidedness and inadequacy of law and regulation itself. The tradition of the Chinese law system took people’s obligations seriously while ignoring their rights, which has affected the Chinese television regulation. Most of the broadcasting regulations are restrictive norms of “obligation” rather than protective stipulations of “right”. For example, up to date, there is no specially established broadcasting law, which might clearly stipulate freedom of expression, freedom of the press, that is, the citizen’s right to communicate. More specifically there are no stipulations to effectively protect the citizen’s right to know, to watch the government’s activities, to criticize officials, and the media’s right to interview, to report without bureaucratic interferences. Most of the present regulations are restrictive, punitive. The recognition of public rights in constitutional principle does not serve as an effective protection of the specific rights of citizens. Also, most restrictive measures are conservative in global context, such as prohibiting people from accessing to information outside of China. Besides, most punitive regulations had defects, which were recog-



nized even by the authority.⁴⁹ While, in reality people have shown little respect to some regulations.⁵⁰

2) Lack of legislation procedures in making laws. Among the stipulations of the legislation procedure set by the Ministry,⁵¹ only technical steps such as the draft, revision and modification by the regulation department have been required. There are no proper procedures for the public to follow. The public and social groups of all kinds have no opportunities to express their opinions on bills or even chance to attend a hearing. That is, the public policies and regulations are made without public participation. The regulations not allowing the public to access have many building loopholes, such as those in television conglomeration. The public policies and regulations have to change, and they did change along with the changing situation and changing ideas of the society. In fact some bold activists often predict that some regulations are not suitable and will be altered soon. Hence under the temptation of profits, they attempt to make breakthroughs in advance. Even worse, the easily altered regulation loses its authority and becomes less trustworthy – people do not pay attention to them, and they are ready to see them changed. With the trend of media liberation in global context, the centralization of Chinese television under administrative command will surely bring conflicts. The society sooner or later will question the validity of the policy-making process and even the legitimacy of the law-making procedure of Chinese television.

3) Shortcomings of applying stipulations to television regulation. Due to the fact that the regulating stipulations are still made out of obsolete ideas, many traditional problems still exist. For example, the administrative protection of the hierarchical communication system has been strengthening, which supports monopolistic operation. Frequent administrative interference, elusive journalistic practices and changeable propaganda tones have not been altered completely, and this has increasingly frustrated professionals. The regulation can be workable or effective

⁴⁹ For instance, Sun Jiazhen (Minister, 1994-1998 in office): "Among 19 regulations there is only one-Satellite Television Ground Receiving Facilities Management - conform to the legal system and can work effectively, other 18 shall be altered." General Office, (1996), p.384

⁵⁰ Apart from some infringing broadcasters, some viewers established their home satellite dishes without permission from the government.

⁵¹ The Broadcasting and Film Legislation Stipulation (tentative), Radio, Film and Television Regulations Assembly (1949-1987), pp.20-22; "The Legislation Procedures of Broadcasting and Film", Regulation Department (2001), pp.384-388



only after repeated directives issued from the administrations, which causes low efficiency, as usual. The situation is worsened by retrogressive measures that are most evident in the establishment of the conglomeration of radio, television and film. Although, in a certain period, it is justified to protect the less competitive national media, such as the Chinese television service, and their products, which can be seen in precedents all over the world, media groups established and protected by the Chinese government will not foster a competitive national television media, let alone media which can compete with trans-national media corporations. When China has to open its domestic television market to the world, a poorly prepared national television industry will inevitably pay a higher price.

Abstract

China's entry into the World Trade Organization (WTO) saw a warm discussion of the importance and urgency of a regulatory reform in Chinese television in the context of WTO membership. Connecting with the world means, first and foremost, to put China into a legal framework that can and must be communicative, negotiable and operational with the international standards, especially those compatible with the West. For Chinese media, such reform promises an important move on part of the Chinese government from the traditional political control to the regulatory management, which emphasizes more on protecting the rights of the people and media organizations rather than being simply restrictive. The legal transformation, on the other hand, will make the media more accountable under an increasing pressure of profit-driven commercialism.

This paper examines the process and prospect of transforming China's existing regime of television regulation, characterized largely by internal, ambiguous, and changeable command, into a new regime of open, explicit, and more stable law and regulations. It begins with a brief overview of the history of Chinese television and the evolution of its political and administrative control mechanisms, followed by a short description of the broadcasting regulatory reform. It then proceeds to analyze the development of broadcasting related regulations, focusing on two areas –Television institution and programming regulations, which are the most recent and most conspicuous changes of broadcasting reform. Finally, the paper concludes with a brief discussion of the prospects for Chinese regulation transformation. Far from most optimistic predictions, this paper argues that the regulation changes hitherto in Chinese television are more restrictive than freeing, that they change more superficially than substantially, that Chinese television reform has a long way to go to reach lawful regulations.

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