

In the age of convergence, major challenges have emerged for content regulation of electronic media. The conventional framework which discriminates between different types of carrier technologies, namely Medium discrimination approach, is generally seen as unfitting for the converged platform through which electronic media operate. Media convergence has enabled content to circulate on different platforms: television, Internet, and mobile phone. Pay-TV, defined as subscription-based as well as fee-imposing audio-visual services, is facing major regulatory test.

Put in the Thai context, Thailand has just succeeded in organizing an independent broadcast regulator (NBTC) by October 2011 after a decade of regulatory vacuum. Despite the regulatory vacuum, new spheres of broadcast services have emerged and rapidly expanded. New small and medium-sized entrepreneurs have become potent players in the broadcast scene, which used to be dominated by the state and the military. While developing at a fast pace, pay-TV services via cable TV, encrypted Satellite TV, encrypted Mobile TV, IPTV and Digital terrestrial TV are still without a proper regulatory framework in Thailand. Meanwhile, Thai pay-TV are plagued with the following problems --- poor program quality, harmful content, hate speech, political exploitation, and unethical advertisement.

The preliminary study by researching into existing models for content regulation of overseas experience aims to map out a plausible content regulatory framework for Thai pay-TV. The findings are composed of 2 features of the framework.

## FEATURES OF THE FRAMEWORK

The 1<sup>st</sup> : The content regulatory framework of pay-TV should be based on platform neutrality regime, together with three preferable factors to differentiate audio-visual media for regulating its content including degree of choice, user control and media literacy of target audience.

The 2<sup>nd</sup> : Self- and Co-regulation are more applicable to regulate content on pay TV in order to achieve the regulatory objectives, namely protection of minors and protection of consumers.

## JUSTIFICATION

### **The content regulatory framework of pay TV should be based on platform neutrality regime.**

From overseas experience, existing models for content regulation under media convergence yields three major approaches: 1) Medium Discrimination Approach, which has been employed in the early 1990s of the ubiquity of the internet and with simple structure of communications market. The approach differentiates each medium by its the ability to reach audiences (reach), the number of people or households exposed to any media during a particular time

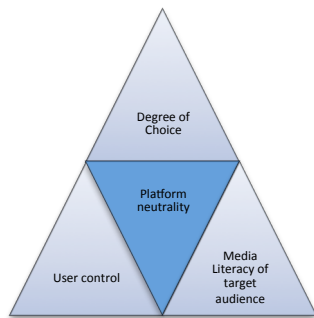
(accessibility). USA and Japan formerly applied this approach. 2) Technology or Platform Neutrality Approach, used as a basis to regulate all audio-visual media in EU member countries and Australia, consider two important factors including Degree of choice and User Control and 3) Multi Factors Approach, which features an innovative approach combining several regulatory concerns including media influence on public discourse, audience's ability to condition reception, and media literacy of target audience.

First of all, it can be said that the Medium specific approach is not

appropriate for Thai Pay TV especially in media convergence condition where there is a choice of multiple device and multiple distribution platform. Thai pay-TV service in the near future when analog broadcasting system will switch into digital will provide a variety of content distribution platforms such as digital terrestrial TV, cable TV, IPTV, satellite TV, and mobile TV, etc. Thus, the regulatory rules specific to each platform by considering the reach and accessibility would not be flexible enough under 'on-demand' environment of media convergence.

### 3 preferred factors

According to Platform Neutrality Approach, the first two preferred factors in differentiating pay-TV services are 'degree of choice' and 'user control' over the services because these factors are compatible with the 'demand-pull' not 'supply-push' nature of pay TV as well as the nature of audience segmentation of pay TV.



The 3<sup>rd</sup> factor is media literacy of target audience. This factor is now increasingly a priority for media and communications regulators seeking new regulatory tools that respond to complex communications environments. While ACMA, a regulatory body of Australia, is trying to map out 'Digital media literacy', UNESCO aims to undertake a Media and Information Literacy (MIL) study to measure media and information literacy at the international level and create a methodology countries can use to carry out national-level studies themselves. Media and Information or Digital media literacy is needed as a regulatory tool in the 'on-demand' environment of pay TV business. Thus, media literacy index in Thailand is called for studies by both communication academics and NBTC .

### Self- and Co-regulation are more applicable to regulate content on pay TV in order to achieve the regulatory objectives, namely protection of minors and protection of consumers.

To consider which regulatory regime is appropriate for Thai pay-TV business, its current status should be concerned. Currently, the pay TV business is growing steadily especially cable TV both household penetration and revenue from advertising. It is due to growing demand of viewers both urban and suburb for clear TV signal, a variety of choices, and premium channel. Apart from these factors, an upcoming new independent regulatory body, NBTC, is a very significant factor to open pay-TV market with free and fair competition. Other platforms of pay TV, other than current cable TV and encrypted satellite TV, will be able to operate such as terrestrial digital TV, IPTV, and mobile TV. The development of pay-TV business will be seen in a near future.

Among the condition of choices of multiple device and multiple distribution platform in media convergence environment, centralized state regulation is not preferable as while self- and co-regulation are generally perceived to be more applicable to Pay TV which encompasses these attributes – multi-channel, conditioned access, and audience segmentation.

Additionally, EU member states and Australia have shifted in preference from pure state and pure self regulation to co-regulation in order to

achieve regulatory objectives, that is, protection of minors and protection of consumers. Some empirical impact assessment of co-regulatory model among EU member states shows some agreement of experts that the shift to co-regulation makes the regulation even more effective than rule-making, implementation or enforcement lying completely in the hand of member state.

However, it is found that self regulatory body of Thai pay-TV is still in its infancy and without viable enforcement of self-regulation based on promulgated body of ethics. Thus, NBTC, together with the pay-TV operators, should encourage self-regulation by broadcasters. Another possibility is to set up an independent self-regulatory body to cooperate between state regulators and industry, as in German and Netherland, that need further studies. Moreover, Co-regulation mechanism have to be more studied and decided whether to set a legal connection between NBTC and non-state regulatory system and to establish a system in achieving public policy goals targeted at social process. Lastly, due to difficulties to rate the growing number of content on an ex-ante basis, an ex-post method with efficient consumer complaint mechanisms of pay-TV should be emphasized.

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