CO-OPERATIVE REGULATORY SYSTEMS IN
THE MEDIA SECTOR OF FINLAND

Report by our correspondents
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for the
Study on Co-Regulation Measures
in the Media Sector

Study commissioned by the European Commission, Directorate Information Society
Unit A1 Audiovisual and Media Policies, Digital Rights,
Task Force on Coordination of Media Affairs

DG EAC 03/04
This report is part of the research that has been done for the study on “Co-Regulation Measures in the Media Sector”. The Study is commissioned by the European Commission, Directorate Information Society, Unit A1 Audiovisual and Media Policies, Digital Rights, Task Force on Coordination of Media Affairs (Tender No. DG EAC 03/04).

The above study aims at providing a complete picture of co-regulatory measures taken to date in the media sector in all 25 Member States and in three non-EU-countries, as well as of the research already done. The study will especially indicate the areas in which these measures mainly apply, their effects, and their consistency with public interest objectives. In this context, the study will examine how best to ensure that the development of national co- and self-regulatory models does not disturb the functioning of the single market by re-fragmenting the markets. This study started at the end of December 2004, the final report will be compiled by the end of December 2005.

Please note: This second country report is intended to give a detailed description of co-operative regulatory systems in the different media sectors in the EU-member states. Co-operative regulation is meant as a combination of non-state regulation and state regulation in such a way that a non-state regulatory system links up with state regulation. Such combination may be a co-operation of state and non-state organisations, an accreditation of a non-state regulatory organisation by the state, the incorporation of non-state regulation into state regulation, a ratification/taking-over of decision of the non-state organisation by the state, etc. Thus, it is not necessary that organisations as such are found on both, the state and the non-state level. (For more information on the definition on co-regulation in the meaning of this study, see the interim report).

The second country reports provide material for the next steps of the ongoing research. The conclusion given in this report cannot be seen as a decision of the contractor, on whether the respective system is a co-regulatory system in the meaning of the study or not. The contractor will perform the selection based on the reports. Hereafter, an impact assessment of selected systems will be conducted in autumn 2005. More information on the study can be found at http://co-reg.hans-bredow-institut.de

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If you have any questions or comments, feel free to contact the contractor of the study

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Co-operative Regulatory Systems in Finland

I. Co-operative Regulatory Systems in the broadcasting and press sector

1. Part I: The regulatory system – The Council for Mass Media

   a) Development of the regulatory system

Council for Mass Media was established in 1968. Already in 1927 the Finnish newspaper journalists had started their own Suomen Sanomalehdistön Kunniaoikeusto (“Honorary Code for Finnish Newspapers”) in which the companies and employers organisations did not participate. The first ethical code for journalists was written in 1957 as Lehtimiehen ohjeet (“Guide for Newspaperman”) In the 1960s journalism developed fast and also some scandalous elements came part of the media. To avoid legal restrictions both the journalists and media companies sought a solution which became in 1968: Council for Mass Media. Fear for legislation was not unnecessary: in 1974 the law regarding privacy was renewed and breaching privacy could be punishable up to 2 years in prison. Main arguments for the new law came after some scandalous reporting.

After 1957 Journalists Code of Ethics or Guidelines for Journalists have been renewed 1968, 1976, 1983, 1992 and 2005. First Basic agreement for the Council for Mass Media was signed 10 December 1968 and it was amended 1 January 1975. New Basic agreement is from 1998.

   b) Subject-matter of the regulatory system

The general task of the Council is to interpret good journalistic practice as well as defend freedom in regard to speech and the right to publication. The Council deals with issues on the basis of request made to the same, but can also take up a matter important as a question of principle on its own initiative. In individual cases the Council may, in addition to its resolutions as given, also prepare statements of a general nature.

The Council may deal with editorial content as well as advertising material in contradistinction to the same, as approved in the Mass Media within this basic agreement. It may also take up the procedures in the gathering of information on the part of those in the service of the Mass Media or those doing freelance work for the same. The Council may likewise address itself to any attempts on the part of the authorities or individuals to limit the freedom of speech or the right to publication.
The Council bases its decisions on its free deliberation in respect to the Journalist Guidelines and other established principles of good journalistic practice.

\textit{c) Basis of the co-operation}

The work of the Council is based on Basic agreement. First Basic agreement for the Council for Mass Media was signed 10 December 1968 and it was amended 1 January 1975. New Basic agreement is from 1998. Today the Council for Mass Media Basic agreement is signed by:

- Finnish Association of Magazines and Periodicals
- Finnish Association of Local Periodicals
- Finnish Association of Radio and Television Journalists
- Finnish Newspapers Association
- Union of Journalists in Finland
- Finnish Broadcasting Company
- MTV Oy Ltd ("MTV3" Finnish Commercial TV)
- Association of Finnish Broadcasters
- Oy Ruutunelon Ab ("Channel Four" Finnish Commercial TV)
- Finnish Urban Press Association

\textit{d) Institutions involved in the system}

The Council gets funding from the organisations that have signed the Basic Agreement. The financing of Council activities and other support shall be taken care of by the Council for Mass Media Relief Association by means of annual fees as substantiated. The relief association may accept State assistance in support of the functions of the Council.

\textit{e) Functioning of the system}

The Council is based on voluntary agreement and made up of nine members, whose term of office is three years.
A select committee consisting of representatives of the Associations shall appoint six of the members as well as personal auxiliary members for the same. Those appointed should be professionally experienced and well-grounded in ethical questions. They should in toto reflect expertise in respect to both the press and the electronic media. The decisions in regard to appointment must be rendered unanimously within the committee.

The Council shall choose, as representatives of the public, three members and three auxiliary members. The same are not permitted to be in the service of the Mass Media nor in related positions of trust.

Proposals in writing including grounds for recommendation in regard to those members and auxiliary members representing the public must be prepared for the Council, in a manner defined by the Council prior to election. After term of office has ended, the same members of Council cannot be appointed nor can they be immediately re-selected. A Council Chairperson shall be selected for a period of three years. This person shall not be allowed to be in the service of the Mass Media nor in a related position of trust. The term of office shall begin when the chairperson is selected and has assumed duties. The relief association chairperson or a person summoned from another association shall act as chairperson for the caucus. Election of the chairperson must be unanimous.

Prior to resolution, the Council must hear the formal complaint or other object of notification. The Council may hear, in addition to the parties concerned, the reports of specialists and also attempt to acquire written clarification. The hearing of interested parties and specialists may be carried out on either a written or oral basis. The Council cannot handle matters submitted on an anonymous basis nor, barring pressing reason, any matter in regard to which the time elapsed is longer than three months. If the notice-provider clearly seeks resolution of the Council in conjunction with corresponding criminal court action or compensation for damage in a court of law, the Council shall not take up the matter concerned or shall interrupt its deliberation during such legal proceedings.

The Chairperson of the Council and members thereof are disqualified from handling any issue to which they are party or in regard to which they are in such close liaison that this may affect their impartiality. The meetings of the Council are not public unless the Council in some specific case makes resolution to the contrary.
Anyone has the right to obtain information in regard to the documents in the possession of the Council to the extent that legislation in effect on public access allows.

The resolutions of the Council are final. If the resolution of the Council or presiding officers is based on incorrect information or misunderstanding, the Council may on its own initiative or at the request of the party concerned re-address the issue in question. Such request must be presented without delay subsequent to receipt of resolution.

f) Supervision of the system

The Association entering into this agreement is permitted to cancel participation therein by making written notification of its resignation to the relief association. Termination shall come into effect as of one year from notification. The Association seeking dismissal is obliged to remit its annual fee until actual date of termination. The relief association shall decide on questions of dismissal due to contract infraction or negligence in regard to annual fee. Such resolution must be carried out unanimously.

g) Impact assessment

The Council must prepare a report of its activities yearly, which is to be given to the relief association at the latest by the time of its annual meeting.

Cases handled per year:

- 84 in 1995
- 70 in 1996
- 54 in 1997
- 44 in 1998
- 77 in 1999
- 63 in 2000
- 78 in 2001
- 76 in 2002
- 66 in 2003
- 63 in 2004

2. Part II: Leading Cases
Apart from normal cases, the statutes of the Council grant the possibility to give statements of a general nature. During the decades five of these have been made.

- *Statement of the right to reply and correction* (1978). The purpose for the statement was to establish more universal practices concerning reply and correction. Today reply and correction are mentioned also in the Act on the exercise of Freedom of Expression in Mass Media (460/2003)

- *Statement on interviews* (1981). The purpose for the statement was to establish more universal practices concerning interviews and stated that the interviewee should know where the interview would be published. The statement also clarified the practices of checking the interview.

- *Statement on the right to privacy* (1980). The statement pointed out that the right to privacy is universal for all citizens as was also written in Criminal Law in 1974. The sphere of privacy could vary. If a person was in public office, his/her privacy is more restricted than an ordinary citizen’s.

- *Statement on the use of names in stories reporting on crime* (1981). In the first code of journalist ethics (1958) it was already mentioned that journalists should carefully consider when it is necessary the mention individual names. The Council stated (1981) that the basic principle is to avoid names in criminal stories. The use would be acceptable only when a significant public interest demands it.

- *Statement on hidden advertisement* – advertising should be clearly distinctive from journalistic material
### 3. Part III: Assessment according to the criteria for determining which types of regulation are covered by the study

**Table: Criteria / Council for Mass Media**

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<td><em>Council for Mass Media decisions lead the way of interpretation of Code of Conduct with the intention of proper and universal conduct in the branch.</em></td>
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<td><em>The members are from media[organisations] and the public</em></td>
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<td>There is a legal basis for the non-state regulatory system</td>
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*In “Sananvapaus” (Helsinki 2004, p. 98) Dr. Riitta Ollila interprets that as the Data Protection Ombudsman checks that practices of individual branches comply with the...*
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<th>Personal Data Act (523/1999), the self-regulation in media branch is in fact co-regulation</th>
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a) The non-state regulatory part of the system

The Council for Mass Media is independent without any state involvement.

Conclusion: The Council for Mass Media is a self-regulatory system.

II. Co-operative Regulatory Systems in the advertising sector

1. Part I: The regulatory system - The Council of Ethics in Advertising

a) Development of the regulatory system

The Act on Equality between Women and Men came into force in Finland at the beginning of 1987. The law proposal included a statement that advertising sector should organize self-regulation for achieving equality in advertising. The negotiation body for advertising established the Council for Equality in Advertising. This council was in operation 1989-2001 and dealt only with cases concerning equality. The Council of Ethics in Advertising was established in 2001 and has a broader remit.

b) Subject-matter of the regulatory system

The Council of Ethics in Advertising issues statements on whether or not an advertisement or advertising practice is ethically acceptable. The Council mainly deals with requests from consumers and with issues that are deemed to have public significance. The consumers may request the Council to give a statement of a certain advertisement. The Council can also take a separate case into consideration without outside request.

c) Basis of the co-operation


d) Institutions involved in the system

The Council is financed by the agreeing parties. Some fees may be issued with cases of decisions which the Council is asked to consider in advance (at the moment c. 600 euros per case) and also, if the case is exceptionally large.

Codes of conduct in good marketing issued by the Council (12.12.2003)

\textit{e) Functioning of the system}

The participation is voluntary. Interested parties, i.e. consumers, entrepreneurs, organisations involved with advertising and state organisations can write and ask for a statement of the Council. The Council focus is on the cases that have large public significance and therefore selects the cases, which it takes in consideration. But the Council does not give statements on the legality of advertisements (market law cases belong to Market Court).

\textit{f) - g) Supervision of the system and Impact assessment}

There is no supervision system in place. Annual report on activity in 2004 states: 42 cases, 26 statements, 6 reprimands, 7 mild reprimands. Summary of cases in 2005: in total 15 cases were handled by the Council, of which ten cases have concerned sexual equality, one has concerned the representation of children in advertisements, three cases have fallen in the category of misleading advertisements and one case has dealt with the responsibility to act within the limits of the code and the regulations.

\textbf{2. Part II: Leading Cases}

The Council of Ethics in Advertising has published (in Finnish) the cases from the whole period 2001-2005 on its website. As an example find hereafter one case of 2005.

In case 1/2005 the advertisement is situated in a farm. THE STORY:
The Farm-owner's daughter is alone and preparing the meal. A Boy from the neighbouring farm arrives and sits down eating the food, which has been prepared by the daughter, who serves him dish after dish. The boy looks at the girl's cleavage, which is shown very well. The evening comes and the parents of the girl are coming home, so the boy leaves the farm. The Girl stays in the yard, looking very disappointed. From the "off" a male voice starts to tell a story: "Once upon a time at the home farm between two great hills a boy and a girl meet each other. To turn the head of the boy, the girl has prepared many delicious dishes. And the boy likes them. And he likes them very much. And it ends as always with Kariniemi food. That is the end of the story."

THE ADVERTISER'S STATEMENT: The advertisement is representing the fact that the products are delicious and one can prepare several different meals using these products. The values of the brand - ethics, quality and good-nature humour are shown in the advertisement. The classical "boy meets girl" situation is featured. The girl wants to make impression with the food, because she knows that the way to a man's heart goes through his stomach. The plan fails, because the food is so good, that the boy almost doesn't notice the girl. The advertiser states that this advertisement does not depreciate, defame or diminish women. The girl of this advertisement is not presented as an object, but a subject who has made a plan to turn the boys mind.

STATEMENT OF THE COUNCIL OF ETHICS IN ADVERTISING: According the 4th article 1st paragraph of the International Code of Advertising Practice advertisements should not condone any form of discrimination, including such based upon sex. According to the principles of good marketing conduct, issued by the Council of Ethics in Advertising, in the 2nd paragraph, an advertisement is against good marketing conduct if a woman or a man is used as a sex object or improperly to catch attention and if this way of representation has no connection to the product or service advertised. The Council states that in this case the woman is used as an eye-catcher with no connection to the product. However in an advertisement which is planned to be humoristic, the woman is active as opposed to the passive man and this style diminishes the misconduct. Based upon previous and the whole impression of the advertisement, the Council states in this case that the advertisement does not comply with the 4th article 1st paragraph of the International Code of Advertising Practice nor with the 2nd paragraph of the principles of good marketing conduct.
Three members of the Council disagreed with the majority of the Council and published their DISAGREEING OPINION: According the 4th article 1st paragraph of the International Code of Advertising Practice advertisements should not condone discrimination based upon sex. In this humoristic advertisement the woman plays an active part compared to the man and is not just an eye-catcher. The whole impression given by this advertisement is not generally offensive or sexually discriminating. Based on this, we state that this advertisement doesn' infringe the 4th article 1st paragraph of the International Code of Advertising Practice or the 2nd paragraph of the principles of good marketing conduct.
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<td><strong>The predecessor of Council of Ethics in Advertising, the Council for Equality in advertising, was established because during the preparation of the Law of equality between men and women (609/1986) it was proposed that the advertising branch should self-regulate the equality aspect in advertising. This purpose continues with Advertising Council.</strong></td>
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Conclusion: The Council of Ethics in Advertising is a self-regulatory body.

III. Co-operative Regulatory Systems in the copyright - sector

1. Part I: The regulatory system – The Copyright Council

a) Development of the regulatory system

After Finland became independent in 1917, the first law “on copyright of intellectual products” (Laki tekijänoikeudesta henkisiin tuotteisiin) was from 1927 (174/1927). A new Finnish Copyright Law was then from 1961 (404/1961). After that it was revised several times. In revision 442/1984 the Copyright Council was established and the Council started in 1985. In detail the functions of the Council were written in Copyright Decree (495/1985). As Finland joined European Union several changes were made in legislation. The Copyright Decree (574/1995) also was revised accordingly. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society has been written into Finnish law with a slight delay. Government proposal for new Copyright Law (HE 177/2002) was already in parliament, which could not go through it before regular election and the proposal according procedural regulation came to nothing. New government proposal (HE 28/2004) is in the final stages in the Parliament.

b) Subject-matter of the regulatory system

The Copyright Council assists the Ministry of Education in copyright matters and issues opinions on the application of the Copyright Act.

c) Basis of the co-operation

The legal basis is provided by the Copyright Decree (574/1995, hereafter translated by the correspondent):

- § 18: Members of the council are appointed by the Government after a proposal of the Ministry of education for a three year period each: chairperson, vice chairperson and not more than fifteen members and also for each a deputy member.
• § 19: 1) *In the Council there have to be represented most important in the Copyright Law mentioned copyright property holders and users.* 2) *The Chairperson, vice chairperson and at least one member and their deputies must have Bachelor degree in Law and they must also have knowledge on copyright issues and these can not represent the interests of holders or users mentioned in the previous chapter.*

• § 20: *The Council can delegate some issues to specialist divisions. For these subdivisions the council appoints chairperson from those mentioned in 19 § 2 and then as many members as necessary.*

• § 21: *Copyright Council has the power of decision with chairperson or vice chairperson and at least five members. Subdivision has the power of decision with the division chairperson and at least one member.*

• § 22: *Compensations for their input and travel costs are paid according to the state committee norms to the chairpersons, members, secretaries and those experts the Council hears.*

• § 23: *In detail the work of the Council can be organised in a procedure accepted by the Ministry.*

d) *Institutions involved in the system*

The Council is composed of representatives of the major right holders and users of protected works. The chair, vice-chair and at least one member represent other interested parties. They are obliged to have a university degree in law. The Council is funded by the State Budget.

e) *Functioning of the system*

The Finnish Government appoints the Council for three year periods. The participation is voluntary, but necessary if right holders and users of protected works will give their point of view for the decisions. Interest groups nominate candidates for the appointment. At the moment the members represent different sectors: Movie and Video, Performing Arts, Commerce, Literature, Publishing, Architecture and Design, Museums, Broadcasting, Copyright Holders Associations, Industry, IT, Photography and Music publishing. The other sectors are represented by deputy members: Journalists, Newspapers, Composers, Libraries, Advertising, Art and Recording Industry.
Anyone can request in writing an opinion from the Copyright Council concerning his/her copyrights. If there is another party involved, the Council invites their reply. The opinions are given either in Finnish or in Swedish. The Finnish opinions are published by the Association of Finnish Lawyers and are also available in the Finlex database maintained by the Ministry of Justice.

\( g \) Impact assessment

In 20 years the Council has given over 200 expert opinions pertaining to the interpretation of the Act.

2. Part II: Leading Cases

In 2003 the Council stated that a unique photo could be considered as normal news photo. In 1952 Helsinki Olympic Games only one photographer managed to take a photo of the moment when Paavo Nurmi lit the Olympic flame in the stadium. In 2002 this photo was used as a basis for an advertisement. The photographer asked the Copyright Council to consider if the advertisement was in violation of his copyright. The council stated that it was a normal news photo and thus the cover of the copyright had expired. (Tekijänoikeusneuvoston lausunto 2003:6, not in English).
3. Part III: Assessment according to the criteria for determining which types of regulation are covered by the study

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<td>Explanation</td>
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<tr>
<td>The system is established to achieve public policy goals</td>
<td>Measures to meet individual interests</td>
<td>The fields for potential implementation of co-regulation in the media are restricted to public policy goals (protection of minors or similar), so research can also focus on those forms of regulation.</td>
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<td>Copyright Council decisions intent to lead the interpretation of the Copyright legislation</td>
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<tr>
<td>There is a legal basis for the non-state regulatory system</td>
<td>Informal agreements without any legal criteria to judge the functioning of non-state regulation</td>
<td><strong>Copyright Decree (574/1995)</strong> If there were no limits on the link to non-state regulation all forms of interaction would come to the fore.</td>
<td></td>
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<tr>
<td>The state/EU leaves discretionary power to a non-state regulatory system</td>
<td>Traditional regulation</td>
<td><strong>Copyright Council is independent in its decision, although in principle it acts as a negotiative body for the Ministry of Education</strong> Innovative forms can only be found if there is real “division of labour” between non-state and state actors; pure execution of state/EU-set rules does not promise innovation.</td>
<td></td>
</tr>
</tbody>
</table>
| The state uses regulatory resources to influence the non-state regulatory system | Incorporation of codes set by the industry without influencing the regulatory process within the non- | **Innovative forms can only be found if there is real****

(22)
| Appointment of members, financing by state | state-regulatory system | “division of labour” between non-state and state actors; pure incorporation of non-state rules does not promise innovation. |

**Conclusion:** The Copyright Council can be considered as a co-regulatory system.