# The London School of Economics and Political Science

## Television Production, Regulation and Enforcement

Reasons for broadcasters' non-compliance and a weakened state of regulatory affairs



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# Declaration

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# Abstract

This thesis examines a group of television-makers that aimed to circumvent the regulations affecting standards of content and to reshape the boundaries of permissible violent content. It also examines the regulators who, in a period of significant regulatory restructuring, were required to police those boundaries and protect viewers from 'harmful' or 'offensive' content, and programme-contributors from 'unfair' treatment.

In doing so, the aim is to offer a broader, empirically rich understanding of the individual, organisational and external factors that can lead to non-compliance and the relaxation of regulatory affairs over time; and to understand how rules or regulations can get pushed and reshaped.

My findings revealed that both regulators and television-makers were confronted by conflicting economic and public interest objectives/responsibilities, and that, due to a variety of individual, organisational and external-level factors, they tended to prioritise their economic obligations, and this led to a loosening of the standards of consumer protection.

The factors that influenced television-makers' and regulators' decision-making, and thereby this sequence of events, included, but were not limited to, the government's shift toward deregulation, technological advancements, changing politics, a competitive organisational culture and a lack of sufficient accountability for television-makers.

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# Chapter 1

## Introduction

### Research summary

This thesis examines a group of 'tabloid' entertainment television-makers who aimed to extend the boundaries of permissible violent content as a means of gaining ratings, on the one hand, and the regulators who were required to police those boundaries, on the other. My aim was to understand how the Office of Communications (Ofcom) approached the regulation and enforcement of standards affecting television content, and how television-makers responded in turn, at a monumental point in time when both the television market and the regulator were going through a period of significant and rapid change. Within this framework, I wanted to understand what factors influenced the way these actors behaved, and how their approaches, in turn, affected the state of television and regulatory affairs.

What I found ultimately enabled me to contribute to our understanding of regulatory 'compliance' and to the process of regulatory decline. It does so by addressing a current deficiency in the compliance literature by identifying not only the array of external, but organisational and particularly individual level factors that affect behaviour by regulatory actors, including, for instance, the cultures and understandings that operate within regulatory regimes. As an important, linked sub-theme, I also wished to understand how the boundaries of what is and can be shown on television have become consequently reshaped. This pertains to a wider discussion of the evolution of social, and in turn regulatory, boundaries.

To understand the process of television-making and regulation enforcement, I traced the making of a single television series throughout its life-cycle – that is, being commissioned, researched, filmed and edited by a production company; 'compliance-checked' and broadcast by a broadcasting company; and examined for regulatory breaches by Ofcom – and analysed actors' decision-making at every critical turning-point in the process.

Each of the actors involved in the creation and regulation process was confronted by conflicting economic and public interest objectives or obligations. For example, the producers and broadcasters wanted to increase audience ratings and this, in practice, sometimes interfered with their duty to comply with the 'content standards' regulations. The regulators were required by the Communications Act 2003 to develop and enforce television consumer protection policies (for example, to protect viewers from 'harmful' and 'offensive' content), yet they were also required to promote a thriving and competitive television industry; a requirement which, in practice, was sometimes at odds with consumers' protection.

My findings revealed that television-makers' response to the conflict – which varied between out-rightly breaching the rules, practicing 'creative compliance'[1] and reshaping one's interpretation of rules (what I shall refer to as 'rule reinterpretation') – was influenced by a variety of individual, organisational and external-level factors. The government's widespread free-market ideology (which encouraged deregulation), technological advancements and market forces together led to a culture of competition in which the producers and broadcasters I examined claimed that they needed to push (or breach) regulatory boundaries in order to survive financially in the market.

Further motivating their non-compliant behaviour, employees were burdened by intense working pressures, limited staff training, and tight time and budget restrictions. There was also a lack of transparency surrounding their production practices, and so producers (correctly) believed that much of their rule-breaking behaviour regarding 'unethical' production practices would go unnoticed and that they would escape penalty. Due to factors such as these, the television-makers I examined reshaped the frontiers of permitted violent content and infringed programme contributors' rights to fair treatment in order to achieve ratings and meet tight deadlines.

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[1] Baldwin and Cave define 'creative compliance' as "the process whereby those regulated avoid having to break the rules and do so by circumventing the scope of a rule while still breaching the spirit of the rule" (1999: p. 102-103).

## Setting the scene

The television industry had grown significantly in the two decades prior to this research. For instance, as a result of new technology and changes in regulation, the United Kingdom had gone from broadcasting five television channels in the early 1980s to over 400 in 2007, while the independent production sector rose to over 800 production houses. Multichannel television was launched, along with an array of digital and 'converged services' (e.g. mobile television, television over the internet or IPTV). Globalisation turned the television market into an international playing field. Competition and the birth of new technologies had forced television-makers to seek alternative revenue streams beyond that of advertising. And, the United Kingdom adopted the new regulatory requirements laid down by the European Union's 'Audiovisual Media Services Directive', a Directive that was, and still is, meant to oversee and 'harmonise' the regulation of media content across the member states.

These changes brought forth an array of challenges that the producers, broadcasters and regulators I examined had to face. For instance, regulators were presented with the task of determining how to:

- regulate television content standards in a significantly expanded market;
- regulate newly-converged services (e.g. television over the internet and mobiles);
- preserve the future of public service broadcasting amidst the growing competition from commercial operators; and
- deregulate/re-regulate the market in a manner consistent with wider political objectives.

And television-makers had to:

- gain/maintain audience share and generate new sources of revenue in the light of an increasingly competitive market;
- produce programming on a limited and sometimes reduced budget; and
- ensure the compliance of television products, including those made by external production companies.

In 2003 the UK's regulatory structure underwent a dramatic change to tackle such changes in the market. The five former media and communications regulators – the Broadcasting Standards Commission (BSC), the Independent Television Commission (ITC), the Office of Telecommunications (Oftel), the Radio Authority (RAu) and the Radiocommunications Agency (RA) – were merged into one, the Office of Communications (Ofcom). I began my examination of Ofcom just seven months after its inception to examine how it regulated the market in light of these changes.

## Research objectives and intended contribution

Regulations tend to be formed out of a demand from society – or from those who are treated as its representatives - to protect the population from social ills, such as environmental pollution, violence, discrimination and so forth (Erikson, 1966). These objectives are often cultivated into laws by government and then interpreted into practically applicable policies by regulators, who oversee their enforcement.

In the United Kingdom the television 'content standards' regulations, in particular, were developed by regulators to protect viewers from 'harmful' and 'offensive' content, and programme contributors from 'unfair' treatment. These goals reflected the protectionist, social welfare-based ideology of the government and wider culture at play.

I chose to analyse how Ofcom enforced its broadcast regulations at a unique time in history in which it took over former regulators' roles and had to devise its own regulatory approach in light of the significant changes occurring in the market. I was therefore fortunate to be able to witness first-hand how a new system of regulation was implemented. I also examined how television companies responded to the regulations and form of enforcement to examine how these provisions unfolded in detail, as to identify if there was a gap or breakdown between Ofcom's regulatory objectives and the results they achieved.

As I did detect such a gap, since I found routine acts of non-compliance while working in the television industry which went undetected by the regulator, I went on to explore *why* this breakdown had occurred by looking at what individual, organisational and external level factors influenced the decisions of television-makers and regulators, and how their decisions in turn

led to a weakness in regulatory enforcement. This thereby enabled me to add to our understanding of the features of 'non-compliance' and the nature of regulatory softening.

I also examined, as a related sub-theme, how social and regulatory boundaries can become pushed and reshaped. In particular, this included a review of how the restrictions for permissible content had become relaxed. My research therefore contributes primarily to the sociology of regulation literature, and to a lesser extent, the sociology of deviance and control literature. By way of its very nature, it also adds original work to the sociology of media literature as a study of this kind has not been done before, as it simultaneously examines media regulation compliance from the perspective of both the regulator and the regulated, and offers a rare ethnographic examination from inside a regulatory body.

In terms of my contribution to the sociology of regulation, at present the bulk of the compliance literature has focused on the external factors that shape actors' compliance behaviour (e.g. competition, changing politics, etc.). More work needs to be done to explain the organisational, and particularly the individual, level factors that influence compliance decisions. I shall help contribute to this area by outlining not only a range of external, but organisational and individual level factors that affect regulated entities' and regulators' compliance approaches.

Whilst doing so I shall compare and contrast my findings to the theoretical literature. At present there are a variety of theories used to explain individuals' compliance behaviour, including why some choose to comply with the rules and others not. As I shall outline in the literature review (Chapter Two), these theories tend to fall broadly under three categories – why some individuals comply with the rules, why some are unwilling to comply and why some are unable to comply. Under these headings lie numerous theories, such as Kagan and Scholz's (1984) 'amoral calculator', 'corporation as incompetent' and 'corporation as a citizen' ideal-types, the 'opportunity perspective' (Angenent and Geeraets, 1998), 'social bonds' theories (Huberts, 1991), 'legitimacy' theory (Franck, 1988; Tyler, 1990; Sutinen, 1999) and many more.

There are also a variety of theories that have been used to explain how regulation originates and develops over time, such as those listed under the theoretical labels of 'public interest', 'private interest', 'interest group' and 'institutional' (Baldwin and Cave, 1999: p. 18-33).

My own research was conducted inductively, therefore I saturated myself in the different social worlds I examined and then used the literature as a resource or toolbox to help explain my own findings. In doing so, I found that no one compliance or regulatory development theory perfectly reflected my own findings. Rather, my findings reflected a mix of different theories and ideas, as well as containing some original observations not extant in the standard literature. In an attempt to stay truthful to my research and to describe my findings as accurately as possible, I therefore used the theoretical literature as a sounding board and reference point for the discussion of my own work, freely pulling from different relevant concepts.

In other words, this thesis has not been designed specifically to test the effectiveness of pre-existing theories, but rather to offer a rich empirical description of regulatory activities. In the process of discussing my findings, I however found some theories to be useful for the purpose of comparison and clarification, and therefore I am not only able to contribute to the field's body of knowledge empirically but also, to a lesser extent, theoretically.

A less emphasized contribution of this thesis will be to the sociology of deviance and control, as it includes a body of work that discusses how social (which can in turn be interpreted as regulatory) boundaries get pushed and relaxed. Given that my core focus is on non-compliance and the weakening of states of regulation, this topic is an obvious and fruitful extension to my own work and therefore I will explain the step-by-step process of how the television-makers I examined managed to extend the limits of permissible content.

I shall also, as noted, contribute to the sociology of media literature by offering a candid look at regulators' enforcement decisions, and television-makers' production and compliance decisions. By adopting an ethnographic approach, I can reveal the rich complexity surrounding the factors that shape those decisions, thereby providing unique depth to our body of knowledge. The result enables me to address gaps in the media 'gatekeeping' literature.

Shoemaker, the leading scholar of the gatekeeping approach – an approach which echoed my own research method – called for additional research to: a) examine the micro- and macro-level factors that shape media practitioners' decisions about content (with the greatest need to examine environmental factors), and b) make connections between the different levels of analysis. My examination of the individual, organisational and external elements that influence media practitioners' decisions – and my method of making connections between factors across

these levels – fills this gap (Shoemaker and Vos, 2009; see also Shoemaker and Reese, 1996; Ferree et al, 2002; Benson and Neveu, 2005), (see Chapters Two and Three for a full discussion of gatekeeping).

In sum, my core objective in this thesis is to offer a broader, empirically-rich explanation of the individual, organisational and external factors that can lead to an industry's non-compliance and a weakened state of regulatory affairs. Secondarily, I will offer a reformulation of current regulatory theories to explain how limits of permissible behaviour can become extended, and to illuminate micro- and macro-level factors that shape media practitioners' decisions about content.

To make this research manageable and narrow my focus, I examined one particular area of television regulation – what is referred to in the industry as 'negative' content regulation. Content regulation comes in two forms – 'negative' and 'positive'. Negative content regulation is based on consumer protection goals and encompasses the regulatory rules which define what broadcasters *cannot do* when developing or broadcasting a programme. For instance, broadcasters cannot transmit what is held to be "harmful" or "offensive" content, or treat programme contributors "unfairly".[2]

Positive content regulations, which I shall *not* be covering in this thesis, state what broadcasters *must do.* For instance, the public service broadcasters (PSBs) have a variety of quotas about the amount of news, children's programming and independently produced content they must transmit. These quotas are imposed to ensure that the television market provides, for instance, sufficient quality, diversity, plurality and educationally-rich content.

I have selected negative content regulation in particular because the television industry, like other industries such as telecommunications and the internet, has undergone numerous large-scale changes in the last two decades (e.g. stemming from rapid growth, globalisation, technological advancement, changing politics, etc.). This placed (and continues to place) the regulator in the challenging position of determining how to address the issue of consumer protection in a widely expanded and liberalised market. It can be difficult for a regulator to adapt quickly and fully enough to address adequately these large-scale and on-going changes, and this can put it at greater risk of regulatory weakness. For instance, like the difficulty

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[2] I will outline the negative content regulations more fully in Chapter Three.

associated with protecting consumers, and particularly children, from harmful and offensive content in the online realm, the television industry has expanded to the point where monitoring all the content that enters households is rather difficult. It was as a result important to investigate how Ofcom attempted to oversee and govern the rapidly changing market and how the industry responded in its turn.

To explore this area, I gained employment at an independent television production company and at Ofcom to conduct ethnographies. I also interviewed various employees at a broadcasting company. This enabled me to carry out a three-part study which followed a single television series, and examined the step-by-step process of producing, broadcasting and regulation enforcement.

I used a procedural approach that focused on understanding the factors that influenced regulators' and television-makers' decisions at the major turning points in their enforcement and compliance processes (see Shoemaker, 1991). Those who have adopted a similar approach have argued that in order to understand an end product, one must understand the sequence of critical decisions that went into creating it (see White, 1950 and the 'gatekeeping' approach). I therefore asked in particular:

- what were producers', broadcasters', and regulators' working objectives in relation to the production and regulation of content;
- how they practically pursued these objectives;
- what factors influenced the way they pursued these objectives; and
- how their decisions and actions affected their regulatory compliance/enforcement, and the state of television and regulatory affairs.

As noted, my aim was then to compare and contrast my findings to the regulatory literature to elaborate on our understanding of the nature of regulatory compliance and decline. This accumulative material may, in turn, be of interest to students, media-practitioners and policy-makers with an interest in regulation, social control and/or the mass media.

**Chapter outline**

This thesis will flow as follows. While this first chapter offered a summary of my study and outlined my research aims, Chapter Two will review the literature which touches on these themes, on the one hand, and, on the other, suggest how it may be amended by my own work. Chapter Three will provide a background understanding of the regulations governing television and how the industry has developed over time. Chapter Four will explain the methods I used to collect and analyse my data. These chapters represent the necessary preliminaries for understanding this study and therefore prepare the way for the more original ethnographic analysis that follows.

Chapters Five to Seven represent the core chapters in the thesis – each being dedicated to a different sector in the industry and to each of my three linked case studies. The first follows the making of a television series at an independent production company. The second explains how the commissioning broadcaster dealt with the series' compliance. Finally, the third explores how Ofcom enforced its television standards regulations and reviews how it assessed the compliance of the series I followed in the previous two chapters. The last chapter, Eight, concludes this thesis with highlights of my findings.

# Chapter 2

## Literature review and theoretical framework

"Regulation refers to the use of the law to constrain and organize the activities of business and industry" (Hutter, 1997, p. 4). Those who devise and enforce regulations generally do so to implement greater political directives which are meant to achieve or prevent outcomes that might not otherwise be achieved if the market were left to its own accord. Thus, regulatory measures are used both to restrict or prevent the occurrence of socially undesirable behaviour by agencies, and to encourage and facilitate desirable behaviour.

Regulation can take various forms, from 'self regulation' which refers to an industry that is policed by its own members, to 'co-regulation' whereby a government/regulator oversees organisational conduct jointly with the industry and/or interest groups, or to a 'command and control' style of enforcement whereby legal restrictions are issued and monitored by a government or regulator.

These measures can themselves come in a variety of forms, from the allocation of specific rules that an industry must follow (e.g. directions to limit the amount of pollution a company can emit), to the introduction of means to influence business activity (e.g. the release of incentives such as taxes or subsidies, contractual powers or the deployment of resources), so as to promote the welfare of a market or the public.

I have examined the television industry in the United Kingdom and its regulator, Ofcom. At the time, Ofcom was in the throes of deregulating the industry in order to take more of a co-regulatory approach, in relation to its adoption and enforcement of the television content standards rules.

As my thesis examined the regulators' method of enforcing these rules and television-makers' approach to complying (or not complying) with them, I shall focus on three distinct areas of the sociology of regulation literature in this chapter. I shall begin by outlining the basic structure of the two main regulation enforcement models used in Britain today – the 'compliance' and the 'deterrence' models – as a precursor for understanding the field.

I shall then describe the theoretical background of two common responses found within the compliance literature regarding why the regulated can fail to comply with rules. Generally speaking, they consist of reasons for why some regulated entities are unable to comply and why others are unwillingly to comply, either due to a principled disagreement with the rules or the positioning of personal interests above regulatory interests (see for example, Kagan and Scholz, 1984; DiMento, 1989; Vaughan, 1996; OECD, 2000, etc).[3]

I shall then offer a general explanation of the 'public interest', 'private interest' and 'institutional' theories, as they attempt to explain: the reasoning behind *why regulation is imposed* (i.e. who are regulators trying to benefit when intervening in an industry and why); and *how and why states of regulation evolve in particular directions* (i.e. why do some regulatory bodies fail to meet their objectives, why do some become 'captured', etc).

Within these broad theoretical labels there are multitude of theories used to explain compliance behaviour, and the origination and evolution of regulation. I conducted my fieldwork inductively (as so-called historical institutionalists often do) and so I collected my findings, and then compared and contrasted them to the findings/theories of others to see which applied best, and thus offered the greatest assistance in helping me to describe my own research. I was therefore able to write this literature review in such a way that only those concepts that were useful to my own work are reviewed, while unrelated ideas have been excluded for the purposes of clarity and brevity.[4]

It is important to note however when reading this chapter that theories (such as the ones that I will discuss) are often generalised and simplified for the purpose of illustration and usability. In practice, social behaviour, in its complexity, rarely reflects a single pattern as every individual is different and therefore people can behave in diverse ways. Many researchers, like me, therefore rely on the literature as a starting point for describing one's own findings, freely pulling from and building on to, the ideas of others in a manner that reflects more realistically the complexity and distinctiveness of particular examples of human interaction. Therefore, one

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[3] Encompassed within these broad categories are a number of theories that have been generated to explain a variety of complex and interconnected compliance behaviours. For the purpose of brevity, I shall focus only on those theories that are most dominant in the field or that best contributed to the explanation my own findings.

[4] For those readers who have a wider interest in the subject matter, beyond that which is purposeful for this thesis, I have provided some further description in the footnotes.

should bear in mind when reading this section that the ideas discussed are not to be understood as if they were concrete rules, but rather concepts that I have drawn from loosely and pragmatically.

Finally, while the focus of my thesis is on regulation and is thereby centred within this body of literature, there are aspects of my work that cross over into the sociology of deviance and control, and the sociology of media fields. I therefore felt it important to include a description of the related sections of this work. To illustrate, my thesis is on television regulation enforcement and compliance, and how the boundaries of permissible behaviour become extended over time. The sociology of deviance and social control has offered interesting insight into the testing of social boundaries and so I will furnish a few key ideas from this literature that I will draw from in later chapters. Similarly, the regulation enforcement literature offers few examples about the television industry, and so it was useful to turn to the media literature (and specifically to the gatekeeping literature) to better understand how different factors/constraints influenced the way media-practitioners operated and shaped media content.

## **The compliance and deterrence regulation enforcement models**

Generally speaking there are two different models of rule enforcement which are used to ensure that industry players or social bodies comply with the rules – the compliance or 'cooperative' approach and the 'deterrence' approach.[5] In the following I shall review the general features of both models, as Ofcom's approach constituted a hybrid of them, and then I shall move on to a discussion of the compliance-related literature, which describes businesses' frequently used rationales towards compliance.

### Features of the compliance or 'cooperative' model

The principal objective of the cooperative approach is to secure compliance with the law "by taking action to prevent potential law violations without the necessity to detect, process and penalize violators" (Reiss, 1984: p. 23). The compliance system is therefore premonitory –

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[5] Compliance is defined as "a state of conformity or identity between an actor's behaviour and a specified rule" (Raustiala 2000, p. 388). It should be viewed as a process of interaction and negotiation between regulators and industry members whereby results are achieved over a long period of time through the use of various techniques employed to encourage conformity (e.g. negotiation, education, direction, threats, penalties) (Di Mento 1986; Hutter, 1997).

when faced with a potential violation, rule-enforcers will attempt to prevent its occurrence (Reiss, 1984).

This system is based on assumptions about the usefulness of cooperation and conciliation, and practitioners' use of means such as bargaining and incentives or awards (Reiss, 1984), restorative shaming, praise (Braithwaite and Makkai, 1991; 1994), persuasion, education and negotiation to achieve conformity (Hutter 1989). To support the monitoring of the industry, regulators in this enforcement tradition build relationships with the regulated which are premised on trust and communication (Reiss 1984; DiMento, 1989).

The system is therefore more concerned with managing people in an effort to achieve short- and long-term compliance objectives than with enforcement (Downs, Rocke and Barsoom 1996; see also Hutter 1989). Those who work in this fashion rarely impose the formal law (or sanctions); rather they use it as a threat or as a last resort to encourage compliance. If a penalty is imposed, it is typically after a long period of unsuccessful negotiations, and can be viewed by the regulator as a failure on its behalf to secure conformity.

The underlying working belief associated with the cooperative approach is that people *want* to comply with the rules. This might be due to a sense of duty, a respect for authority, a belief in the purpose of the rules or a desire to maintain a positive reputation. For example, in a study of fishermen, Sutinen (1999) found that individuals complied with the rules because of a feeling of moral obligation, and a perception that the authorities and their rules were legitimate and fairly enforced. Similarly, in their study of music piracy, Wingrove, Korpas and Weisz (2011) found that many individuals' actions were driven by a general feeling of obligation to obey the law.

When individuals are assumed to have such a rule-abiding character, it is argued that the cooperative style can prove more successful than a more penal-based approach (May, 2005). Some furthermore contend that the use of threats and legal coercion may actually be ineffective or counter-productive if companies are unable to follow the rules due to reasons such as capacity issues (because, for example, of a shortage of resources or staff) or political, social or economic limitations (that is, if they lack the needed financial capacity or have experienced organisational changes which prevent their compliance) (Tallberg 2002; Murphy, 2004). It is also thought by some that a heavy-handed approach may alienate the regulated and therefore not breed cooperation. For reasons like these, various researchers have found

the cooperative approach to yield better results than the deterrence approach (Bardach and Kagan 1982; Kelman, 1982; Scholz 1991).

Given the belief of adopters of this approach that regulated bodies essentially wish to comply with the rules, acts of non-compliance are generally deemed unintentional and thought to stem from: an ambiguity of the rules; bodies' misunderstanding the rules/lack of education; a contesting of the basis of the rules; political, economic and resource limitations; or administrative breakdowns (see Tallberg 2002; Downs, Rocke and Barsoom 1996; Chayes and Chayes, 1993; Hutter, 2001; Worsfold, 2001; Nadler, 2002; Braithwaite, 2004; Ahmed and Braithwaite, 2005, 2007; Feld and Frey, 2006; Footer 2008; Abusin and Hassan, 2011; Nguyen, 2011; Sarkheyli et al 2011; Vassiliki et al 2011).

To address these issues and encourage compliance, enforcers often help companies to understand better the rules. They promote transparency surrounding regulatory and business practices (Tallberg 2002) and offer financial and technical assistance (Downs, Rocke and Barsoom 1996).

Through such measures, the cooperative approach can: reduce expensive enforcement costs, such as high legal and monitoring fees; overcome challenges associated with ambiguous rules; and make firms more willing than they might otherwise be under the deterrence approach to share information about new problems, thereby saving on the cost of monitoring actors (Scholz, 1984).

Alongside these positive features are also the limitations associated with the cooperative approach. Scholz (1984) claimed that it is only effective when applied to companies whose staff want to comply with the law, not for those that wish to evade the rules or practise 'creative compliance' (Burby and Paterson, 2007). Veljaovsky (1983) argued that the approach can decrease a company's incentive to comply with the rules due to a diminished fear of penalties for non-conformity. Others have argued that regulators can focus so much on cooperating with businesses that they lose sight of their key objectives (as was argued about the FSA in regards to the 2007 economic recession) (Sabatier 1975; Scholz 1984; Kagan 1994).

Together this supports Hawkins' (1990) claim that the cooperative approach can give companies greater room than the deterrence approach to reduce regulatory standards. To

explain further, while there is little leniency extended towards the interpretation of rules in the deterrence approach, there is a considerable amount of negotiation and compromise associated with the cooperative approach, thereby supposedly allowing companies more room to reduce regulatory standards. Due to such issues, a more deterrence-oriented approach is deemed appropriate when overseeing individuals who are considered prone to non-compliance (Scholz, 1984; Tallberg, 2002).

Features of the deterrence model

The principal objective of the deterrence-based enforcement approach, by contrast, is to secure compliance by detecting violations and penalising offenders, so as to discourage further offences (Reiss, 1984). Monitoring and sanctions are therefore its two key aspects (Tallberg 2002). "Monitoring increases transparency and exposes possible defectors. Sanctions raise the costs of shirking and make non-compliance a less attractive option" (Tallberg, 2002: p. 612).

Unlike the cooperative approach, a deterrence-based system solely responds to violations after they have occurred. When faced with a potential issue, operators of this model, such as the police, mobilize their detection forces to await the violation and reprimand the offender (Reiss, 1984). They tend to be "accusatory and adversarial", and routinely rely on formal legal processes and punishments (Reiss, 1984, p. 13). In Scholz's words "Officials interpret regulations stringently and apply them with bureaucratic literalness" (1984: p. 387).

In contrast to those who espouse the cooperative approach, people who promote the deterrence approach believe it useful to conceive actors as rational beings who weigh the costs and benefits of compliance before acting (Tallberg 2002), echoing standard rational choice and economic models of action (e.g. Becker, 1968). Acts of non-conformity are understood to occur when actors believe that the incentives to skirt around the rules exceed the perceived likelihood of getting caught and the size of the penalty. There may also be wider punitive politics in play regarding the selection of this approach, as some would argue that the cooperative approach is too soft.

Rule enforcers who choose this approach therefore view individuals as potentially wilful violators who may infringe the rules because of, for instance, a lack of belief in the underlying

purpose of the rules or a desire to place alternative interests above compliance requirements (Tallberg, 2002).

Regulators seek typically to address such compliance problems by strengthening their detection facilities, and by threatening and invoking penalties. Some bodies also publicise the sanctions they levy to deter future offences. This method is believed to reap various benefits. The regulators' use of monitoring can allow them to stay abreast of companies' activities. If members of companies do not display evidence of an obligation to comply with the rules, the threat of sanctions can provide them with such an incentive. Sanctioning can also be an effective tool to deter future violators and save on the cost of additional enforcement (Hutter, 1989).

There are also limitations associated with a deterrence-base approach (Balch 1980; Burby and Paterson 1993). For the approach to be most effective, it requires regulators to watch continually over companies to detect violations and enforce sanctions. This can be costly and time-consuming, and "the overzealous use of deterrence can foster resentment and retaliation, leading regulated groups to apply political pressure to reduce enforcement or repeal the offending regulatory program" (Burby and Paterson 1993: p. 756; see also Hawkins, 1990; Danaceau, 1982; Shover, Clelland and Lynxwiler, 1986).

The approach can lead the offender to feel alienated and make him or her less willing to co-operate (Rock, 1973). It can also lead to a reduction in shared information, a legalistic attitude toward simply meeting minimal compliance standards, and regulatory tactics that pursue breaches that are the easiest, and not necessarily the most important, to prosecute (Hawkins, 1990).

Scholz (1984) furthermore argued that the deterrence approach does not address the full plethora of reasons for actors' non-compliance. For instance, it excludes the notion that some people are rule-abiding in nature and believe in the benign purpose of the rules (Kinsey, Grasmick and Smith 1991; Wenzel, 2002; Murphy, 2002, 2003).

<u>A mixture of the deterrence and cooperative models</u>

Given the complexity of individuals' compliance behaviour and the high costs that can be associated with enforcement administration, many rule enforcers adopt a mixture of the cooperative and deterrence enforcement models (Hawkins and Thomas, 1984). The strategy they select may be influenced by a variety of factors including: the nature (and 'seriousness') of the offences they encounter; the political atmosphere within which they operate; the formal powers they are given; their organisation's internal leadership; the constraints they face; and the resources they possess (Kagan, 1984; Hawkins, 2002; Tallberg 2002).[6]

Bardach and Kagan (1982) claimed that many regulatory officials adopt a "flexible" approach whereby compliance failures are handled on a case-by-case basis. Depending on the severity of the offence, and the apparent stance of the offender, the agency may either be accommodating and helpful or tough and legalistic. For instance, in a study of coal mine safety regulation, Braithwaite (1985) found that a mix of a flexible, cooperative enforcement approach, backed by the threat of heavy penalties was more effective than either "legally toothless or legalistic oriented methods" (p. 390). Tallberg (2002) furthermore found that the European Union successfully used a mixed model which emphasized rule clarification, forms of monitoring that promoted transparency and sanctions as a last resort.

May and Winter (1999) promoted a flexible "tit-for-tat" enforcement style, whereby regulators start by being cooperative and trusting, using incentives to encourage compliance, and turn to more punitive measures when compliance is not achieved (p. 628; see also Baldwin and Black, 2008). They suggest that sanctions be imposed frequently enough to establish that the agency will readily apply force should compliance not be achieved; however, they deemed too much coercion to be unnecessary and counter-productive. Kagan (1984) refers to this as the "welfare maximising"[7] style whereby regulators "avoid both excessive leniency and excessive stringency, considering both costs and benefits in applying regulations" (p. 389).

The underlying commonality between many of these mixed models is that regulators encourage cooperation and negotiation, wishing to provide flexibility to those who try to comply

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[6] Baldwin and Black (2008) furthermore noted that rules enforcers may be tied to a certain compliance approach because of "their own organisational resources, tools, cultures and practices and the constraints of the broader institutional environment" (p. 64).
[7] "Welfare" in this sense refers to the social good.

with the rules. However, when these methods fail, they resort to formal legal measures (Kagan 1984; Sutinen 1999).[8] They tend to reserve these sanctions as a 'last resort' for the firms who are responsible for routine and/or serious breaches (Scholz 1991; Hawkins, 2002: p. 41, 2003).

To bring further clarity to the variety of mixed models enforcers use, Hutter (1989) outlined two general types of enforcement – the 'insistent' and the 'persuasive' approach. The insistent approach possesses elements of both the cooperative and deterrence models, yet leans toward the deterrence style, while the persuasive approach places greater emphasis on cooperation, viewing the imposition of a sanction as a failure on the part of the regulator to gain conformity (p. 154, 161).

Ayres and Braithwaite (1992) offered a different perspective on the matter by outlining what they referred to as a 'sanctions pyramid' (Figure 1). This form of 'responsive regulation' is a 'tit for tat' approach whereby regulators often begin with the use of light measures to gain compliance, such as educating, advising and negotiating with regulated entities. If these measures do not achieve conformity, regulators turn to more heavy-handed measures, from sending warnings, to imposing penalties (e.g. fines) and finally to suspending or revoking companies' licences to operate.

**Figure 1: The Sanctions Pyramid**



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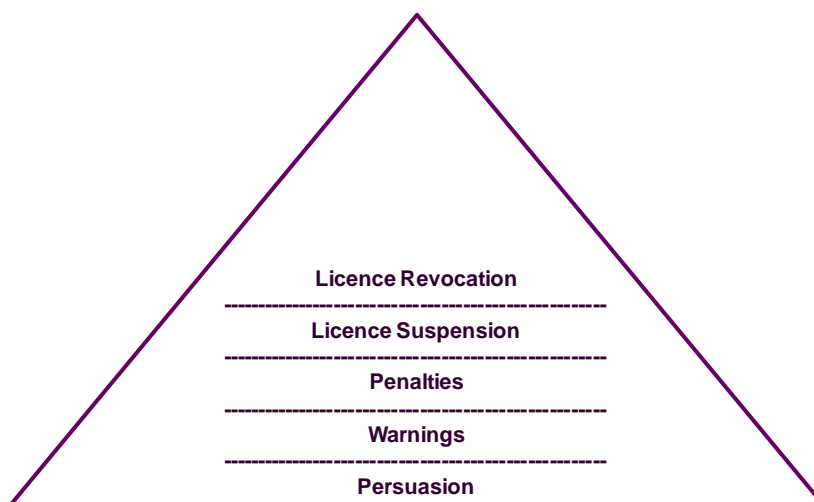
[8] Kagan (1984) stated: "A compliance system is associated with trust between the regulator and regulated where trust is necessary to carry out the principal functions of monitoring and the prevention of regulatory offence…When the process fails to build trust, however, there is likely to be greater resort to a deterrence system – the use of penalties based upon assumptions of blameworthiness" (p. 15-16).

While some individuals are considered "hard targets" who cannot be deterred by the heaviest of penalties, others are thought to be "vulnerable targets" who can be deterred by penalties, or "soft targets", who can be deterred by shame alone or the mere recognition of their failure to comply (Fisse and Braithwaite, 1993; pgs. 73, 220). The pyramid approach is useful because it ensures that less intrusive and more cooperative (and often more cost-effective) means can be used initially without compromising the possibility of employing harsher tactics for those more resistant to compliance. These benefits have led it to be used across a variety of fields including pharmaceutical safety, nursing home regulation, coal mine safety, environmental regulation, occupational health and safety, and construction industry safety (Braithwaite, 1984; 1985; Grabosky and Braithwaite, 1986; Braithwaite and Makkai, 1991; 1994; Gunningham, 1994; Rees, 1994; Haines, 1997).

Over a decade after Ayres and Braithwaite's original discussion of this form of 'responsive' regulation, Baldwin and Black (2008) added to their work by presenting the concept of 'really responsive' regulation, whereby "regulators have to respond not merely to firms' compliance responses but also to their attitudinal settings (or opinions towards) the broader institutional environment of the regulatory regime; to the different logics of regulatory tools and strategies; to the regime's own performance; and finally to changes in each of these elements" (p. 69). This included the need for regulators to take account of and adapt to: the understandings and cultures that operate within regulated agencies; the tensions, constraints and opportunities that individuals grapple with in these organisational environments; the logic surrounding different organisational tools and strategies; the regulators' own performance; and the "movements in regulatory priorities, circumstances and objectives" (p. 73). These elements are meant to feed into the regulators' choice of compliance approach.

Another extension to the sanctions pyramid came with the introduction of second and third party entities being used as regulatory tools. Rather than regulators being the sole entities used to secure compliance, second-parties (regulated entities themselves) and third-parties (commercial and non-commercial entities, including civil society, activist groups, etc.) also became used to promote compliance (Ayres, and Braithwaite, 1992).

Baldwin (2004) furthermore argued, in light of his evidence that the United Kingdom had drifted into a climate of more punitive regulation enforcement stemming from the approach espoused by the Tony Blair administration, that regulators may benefit from adopting a 'proactive'

enforcement approach. This might include, for instance, 'meta-regulation', which seeks "to link legal sanctioning to broader corporate incentive regimes and involve demands that companies themselves generate explicit assurances on how they will proceed towards compliance," (p 382). Baldwin, however, noted that such proactive approaches, again, need to be applied with due consideration given to the propensity of individual firms to comply willingly.

**The compliance literature**

Let me now review in greater depth the compliance-based literature. It explains the behavioural patterns associated with companies' rule compliance. It was a body of work that helped me to compare my findings with those of other researchers in my effort to understand what, if anything, was distinctive of the regulatory modes I had studied.

Regulatory compliance is defined as "obedience by a target population with regulatory rules or with government policy objectives" (OECD, 2000: p. 66). Various strands of social science have evaluated individuals' compliance behaviour in different ways. Law and economics scholars have undertaken cost/benefit-oriented analyses regarding compliance decisions (*e.g.* Becker 1968; Stigler, 1970), sociologists have looked at the cultures and social norms surrounding compliance decisions (*e.g.* Schwartz & Orleans, 1967; DiMento, 1989; Vaughan, 1996; Hutter, 2001; Job, Stout and Smith, 2007) and psychologists have examined how individuals' personal traits have influenced their compliance behaviour (*e.g.* Brehm & Brehm, 1981; Jenkins 1994).

In an attempt to clarify and categorise these trains of thought, Kagan and Scholz (1984) outlined three commonly used theoretical descriptions to explain what they perceived, and other researchers have found, to be companies' general attitudes towards compliance (whether that be for or against conformity) and their reasoning behind non-conformity. They also proposed ways in which regulators could respond to businesses based on their behaviour. Their typology encompasses numerous researchers' findings, and although it is a relatively simple description, it has remained applicable throughout the years and serves as a good starting point for understanding common strands of compliance behaviour.

It should, however, be noted that these behavioural descriptions are generalised for the purposes of simplification and illustration, and that it is broadly understood that regulated

entities can express a mix of behaviours which are better reflected by a hybrid model that intertwines relevant themes from each ideal-type to meet the peculiarities of individual cases.

The following outlines the three ideal-types, and as a means to show how our knowledge of compliance has advanced since these ideas were presented in 1984, it reviews more recent literature to offer a more sophisticated understanding of the subject-matter.

<u>Non-compliance related to an unwillingness to comply with the rules</u>

The first form of non-compliance that I shall discuss stems from a company's 'unwillingness' to comply with the rules. Kagan and Scholz termed companies with such a characteristic as 'amoral calculators'. In their (albeit generalised) description, they state: "Motivated entirely by profit-seeking, companies carefully and completely assess opportunities and risks. They disobey the law when the anticipated fine and probability of being caught are small in relation to the profits to be garnered through disobedience" (Kagan and Scholz, 1984: p. 67).

The idea of the amoral calculator reflects the logic behind the sociology-based rational choice theory (Hechter, 1987; Friedman and Hechter, 1988; Hechter and Kanazawa 1997; Eggert and Lokina, 2010; Ostrovskaya and Leentvaar, 2011). The one distinction is "When decision-makers' calculations of costs and benefits are tainted by self-interest, economics, or politics so that intentional wrongdoing and/or harm result, their calculation becomes *amoral*" (Vaughan, 1998: p. 1-2).

One of the most seminal works surrounding this rationale choice approach came from Becker (1968) who proposed a framework for explaining criminal behaviour. He argued that regulated entities do not comply with the regulations when the benefits of infringement are greater than the costs (see also Stigler, 1970; Ehrlich, 1972; Abusin and Hassan, 2011; Nguyen, 2011).

Such a calculus can be framed in a variety of ways depending upon how one perceives the nature of costs and benefits (Vaughan 1998). Where economic theorists have used this model to explain how money and the market have influenced the production, distribution and consumption of services and goods, rational choice theorists have employed this principle more broadly to understand how matters such as reputation (Grasmick and Bursik 1991), personal norms and organisational contexts (Li, Zhang and Sarathy, 2010) and individuals'

attitudes and sense of morality (Sutinen 1999, Braithwaite 2002) can influence decision-making in different environments. In line with this, social bonds theories have looked at gains and losses in the social sphere, such as how non-compliance can stem from individuals feeling alienated in society (Humberts, 1991). These theories have helped to extend our knowledge beyond the limitations associated with economic-based theories.

Still further, the 'opportunity perspective', which emphasizes the *features* of a compliance-related situation, argues that people will break rules when opportunities arise for them to get away with it and lend them to believe that they will not suffer negative repercussions for their actions (Angenent & Geeraets, 1998). In accordance with this concept, Coffee (1981) and the Australian Tax Office (1998) found that deterrence rates increase when the gains of non-compliance are high and the probability of getting caught is low (see also Abusin and Hassan, 2011; Khanna and Widyawati, 2011; Ostrovskaya and Leentvaar, 2011; Wingrove, Korpas and Weisz, 2011). In other words, rules are less effective if organisations' compliance is not adequately monitored (see also Gray and Scholz, 1991; US Department of Labor, 1996; Abusin and Hassan, 2011; Khanna and Widyawati, 2011; Nguyen, 2011). Similarly, organisations' rule adherence can also be affected by their awareness of other firms in the industry which have faced punitive damages for non-compliance (Baldwin, 2004).

Compliance decisions have furthermore been found to be influenced by cultural norms. The Organisation of Economic Co-operation and Development (OECD) (1997, 2000) found that compliance levels are lower when rules conflict with cultural norms and practices, or when there is an underlying social acceptance of deviant behaviour (see also Gilboy, 1998; Hutter 2001; Job Stout and Smith, 2007; Wikström, 2010).

All of these unique reasons offered to explain companies' wilful disregard for the rules are important because they help to relay my own findings.

Further to these compliance justifications, Kagan and Scholz (1984) argued that when regulators view the bodies they oversee as 'amoral calculators' they should serve as strict 'policemen'. Undeterred by companies' manipulation or excuses, regulators should aggressively inspect the firms and impose considerable penalties for non-compliance. In other words, they are encouraged to adopt a largely deterrence-based approach to rule enforcement,

which focuses on the "certainty, severity, celerity and uniformity" of sanctions (DiMento, 1989: p. 225; Friedrichs, 1996).

In support of this approach, Slapper and Tombs (1999), radical theorists who looked at the political economy of corporate crime, took companies to be powerful entities that tried to co-opt or 'capture' the regulator and thereby manipulate the regulations, and avoid sanctions, penalties and negative publicity. Following Kagan and Scholz, they advocated a more punitive, deterrence-based approach (see also Pearce and Tombs 1990; Slapper 2000).

<u>Non-compliance related to a lack of support for the rules or regulatory approach</u>

In a second line of rationale, companies are viewed as generally compliant entities. However, on occasion they may abscond from conforming when they have a principled disagreement with the rules or the regulators' approach to enforcement.

In this model the regulators view the bodies they regulate as 'good' rather than 'bad apples' (Hawkins and Hutter 1993). Kagan and Scholz (1984) argue that in such cases it can be helpful to adopt a more cooperative based approach, as depicted by their 'corporation as a citizen' ideal-type (see also Bardach and Kagan 1982; Hawkins 1990; Braithwaite and Makkai 1994).

In this formulation, the company is pictured by the regulator as a "political citizen, ordinarily inclined to comply with the law, partly because of a belief in the rules of law, partly as a matter of long-term self-interest" (Kagan and Scholz, 1984: p. 76). Such compliance-oriented behaviour is, however, contingent. "Business managers have strong views as to proper public policy and business conduct. At least some law breaking stems from a principled disagreement with the regulations or orders they regard as arbitrary or unreasonable" (Kagan and Scholz, 1984: p. 76-78). For instance, individuals might lose confidence in regulators if they are required to comply with complicated, overly legalistic rules that do not appear to hold any substantive purpose (Bardach and Kagan, 1982; Ayres and Braithwaite, 1992; Anderson, 1998). Compliance has also been shown to weaken when people feel that the regulator is treating them unfairly or when they believe that the regulator has deemed them to be untrustworthy (Braithwaite, 1985; Kinsey, 1992; Paternoster, et al 1997; Sherman, 1993; Nadler, 2002; Ahmed and Braithwaite, 2005; 2007).

The 'corporation as a citizen' ideal-type invokes two types of motivation to comply. The first is an interest in complying with the rules because of a personal sense of moral obligation. Individuals, it is held, "subscribe to the societal norms of good citizenship and lawful behaviour" (Burby and Paterson, 1993: p. 756). They behave according to what they consider to be moral and just, and abide by rules that they believe are appropriate and fair (Sutinen, 1999; see also Tyler, 1990).

How individuals develop their sense of morality and attitudes towards compliance is reviewed within the psychology literature, which uses cognitive and social learning theory to explain the socialisation process. Cognitive theory emphasizes how the stages of individuals' personal development shape their morals, and how this in turn affects their attitudes towards compliance (Sutinen, 1999: p. 179; see also Kohlberg, 1969, 1984; Levine and Tapp 1997).

Social learning theory (which is more pertinent to my research) focuses on how individuals' compliance is influenced by the features of their environment (Bandura, 1969; Akers, 1985), such as their peers' opinions and social pressures, their organisational culture, consumer response and the media's influence (Hutter, 2001; Hutter and Jones, 2007; Job, Stout and Smith, 2007). These external elements are believed to shape individuals' behaviour through, for instance, their interest in protecting their reputation (Allingham and Sandmo 1972; Grasmick and Bursik, 1990; Parker, 2002; Gunningham et al 2005), in sustaining their social bonds with their peers (Hirschi, 2002) or in gaining status and rewards (Sutinen 1999) (see also Downes and Rock, 1996). This lends itself to Kagan and Scholz's idea that conformity not only stems from individuals' belief in the rules, but also from their long-term self interest.

The second motivation for conformity stems from a feeling of obligation to obey a "legitimate" authority (Sutinen 1999; Nadler 2002; Ahmed and Braithwaite, 2005, 2007; Wingrove, Korpas and Weisz, 2011). To achieve legitimacy, and therefore compliance, it is argued that regulators must: be effective in achieving their policy aims; treat those affected by the regulatory process fairly (which is in line with 'procedural justice'); distribute the rewards or sacrifices associated with the regulatory process fairly ('distributional justice); and operate in a fast and efficient manner, quickly addressing problems as they arise (Franck, 1988; Tyler, 1990; Sutinen 1999).

These actions are believed to breed the support of regulated bodies, which will presumably adhere to the rules because their members believe in the purpose of the regulator and the rationale for the rules, and they feel that they are being treated fairly and can see the positive outcomes associated with regulatory interventions (Sutinen, 1999).

Lind and Tyler (1988) and Tyler and Blader (2000), for instance, found evidence that individuals who believe they are being treated fairly by rule-enforcers are more likely to trust them, accept their decisions and follow their directions (see also Folger and Konovsky, 1989; Levi, 1998; Tyler, 1997; Nadler 2002; Ahmed and Braithwaite, 2005, 2007). Similarly, Tyler (1990) and Koh (1998) found that individuals comply when they internalize the norms associated with the rules and believe in the underlying purposes of the rules (see also transnational legal process theory). Similarly, Tyler and Smith (1998) found that individuals are more likely to challenge authorities if they believe that their procedures are unfair.

Kagan and Scholz (1984) argued that if companies display these 'citizenship-like' qualities, then the regulator should play the role of a 'politician' and focus on reasoning with and persuading companies to agree with the rationality of the rules. Regulators, they say, should be responsive to companies' complaints and ready to adapt the rules when faced with legitimate business concerns. Cooperation, negotiation and trust should therefore take precedence over a sanction-based approach.[9]

Non-compliance related to an inability to comply with the rules

The final line of thought that I shall discuss relates to companies' inability to comply with the rules. Referred to as 'corporation as incompetent', this ideal-type focuses on businesses' inability to adhere to the requirements due to organisational and managerial inadequacies:

> The business firm is seen by the regulator as inclined to obey the law but as a potentially fallible or organisationally incompetent entity. Many violations of regulations are attributed to organisational failures – corporate managers fail to oversee subordinates adequately, to calculate risks intelligently, to establish organizational mechanisms that keep all operatives abreast and attentive to the growing dictates of the law" (Kagan and Scholz, 1984: p. 68).

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[9] This approach relates to Gromley's (1998) finding that regulators are less likely to punish those that they believe are behaving admirably (p. 367).

This corresponds with the thinking within the 'management school of compliance' and the organisational process model, as non-compliance is seen to stem from administrative breakdowns, rule ambiguity or capacity limitations (Chayes and Chayes, 1993; Downs, Rocke, Barsoom, 1996; Nguyen, 2011).

Genn (1987), for example, found that there was a widespread lack of knowledge about regulations among the businesses she investigated in England and Wales. Similarly, the Robens Report (1972, para 261), which reviewed British factory legislation, noted that rule infringements typically occurred "through carelessness, oversight, lack of knowledge or means, inadequate supervision or sheer inefficiency" (see also Williamson 1975; Hopkins, 1995; Ahmed and Braithwaite, 2004; Feld and Frey, 2006; Abusin and Hassan, 2011; Nguyen, 2011; Sarkheyli, et al 2011; Tabrizian, et al 2011).

Winter and May (2001), who investigated Danish farmers' compliance with agro-environmental regulations, argued that awareness about the regulations and the requirements needed to adhere to them is essential if bodies are to conform successfully (see also Genn, 1993; OECD, 1997 and 1998). They also charged that bodies need sufficient financial capacity to comply with the rules, by means such as purchasing equipment or paying for administrative costs.

Kagan and Scholz reported that if businesses appear incompetent and if non-compliance stems from organisational failures, the regulator should serve as a 'consultant'. "His responsibility would be to analyse information gaps and organisational weaknesses in the regulated firm, and to educate businessmen concerning feasible technologies and management systems that would best ensure compliance in the future" (1984: p. 68). It was furthermore noted that they should devote resources to help ensure that companies can feasibly comply (OECD, 2000: p. 66), and treat companies in an inclusive manner by educating them and negotiating 'reasonable' compliance standards with them rather than turning initially to a penal-based approach (Hawkins, 1990).

While this stance reflects the cooperative-based enforcement approach, Winter and May (2001) found that the employees who believed that acts of non-compliance would be detected were more likely to be educated about the rules than the ones that did not fear reprisal. This suggests that monitoring companies, which is associated with the deterrence approach, could also prove effective when dealing with organizationally incompetent entities. The building of

relationships which are based on consistent communication might also help to avoid situations in which companies *intentionally* fail to learn the rules (as I have found in my own study) in an effort to claim ignorance and mitigate responsibility should they be found in breach of the guidelines; this is termed 'plausible deniability' (Walton, 1996).

An important addition to this body of literature is the Dutch Ministry of Justice's report: *The 'Table of Eleven', A versatile tool'* (2004), as it has had a significant influence over governments' and regulators' legislation/policy enforcement approaches. The report, which aims to serve as a practical tool kit to help rule enforcers better understand and improve actors' compliance, pin-points 11 different areas to help one evaluate an entity's level of 'spontaneous compliance' with the rules and the degree to which they are subjected to external enforcement tactics to persuade them to comply. These points include regulated entities':

1. knowledge of and familiarity with the rules, and the clarity of the rules;
2. the financial and intangible costs and benefits of their (non)compliance;
3. their degree of acceptance of the policy objectives and resulting effects;
4. respect for 'official' and 'competing' authority;
5. perceived degree of sanctioning risk from 'non-official' or 'social' control (e.g. colleagues, competitors, the community, etc.);
6. perceived risk of being reported to the authorities;
7. perceived risk of inspection;
8. perceived risk of detection;
9. perceived risk of 'selectivity' (i.e. concerns regarding inspectors singling out and monitoring violators more closely than non-violators);
10. perceived risk of sanctioning; and
11. the severity of the sanction/s.

Upon evaluating these areas, rule enforcers are able to categorize actors' compliance approaches into the following categories (p. 24):

> *"a) Unconsciously compliant people:* those who do not know the rules very well and who unknowingly comply with them...
> *b) Unconsciously non-compliant people:* those who break the rules because they do not know the rules well.

*c) Spontaneously compliant people:* those who know the rules and would comply with them off their own accord, even if...there were no enforcement whatsoever.

*d) Spontaneously non-compliant people:* those who know the rules and would always break them spontaneously, regardless of the risk of inspection, the risk of detection, the risk of punishment or the severity of the potential punishment.

*e) People deterred by enforcement or calculatingly compliant people:* the people who know the rules and who would break them, but rather decide against it with a view to enforcement activities.

*f) Consciously or calculatingly non-compliant people:* those people who knowingly break the rules and consciously accept the risk of being caught.

g) Next to these, there is a group that will not be influenced, or is very hard to influence, this group can be either very respectful to authority (the good ones) or very disrespectful to authority (the bad ones)."

My own research will compare and contrast the relevance of these different rationales to my findings of Ofcom and the television-makers. It will also add, to a minor extent, to the Dutch Ministry of Justice's report by pointing out alternative compliance rationales that are not included above.

The compliance literature's empirical findings

In addition to the various theoretical models researchers have employed to explain people's compliance behaviour are the empirical-based findings, which focus less on theoretical patterns in decision-making and more on the specific factors that influence behaviour. For purposes of clarity and illustration, these elements can be segregated into three levels of origin – individual, organisational and external. It is this classification system and body of literature that I shall use, and in turn contribute my findings to, and therefore it is important to review.

As previously noted, the *individual level* includes the influence that an individual and his or her characteristics have on the decision-making process (e.g. the influence that a person's unique set of ethics, tastes, values, etc. has on his/her decision-making) (see Kahneman, Slovic and Tversky, 1982). The *organisational level* includes the influence of organisational norms, practices, routines and culture on decision-making (see Bantz, 1990). The e*xternal factors level* accounts for the influence of external structures and forces on decision-making (e.g.

market forces, technological advancements, political and regulatory shifts, ideology, etc.) (see Donohue, Olien and Tichenor, 1989).

In relation to external sources, researchers have found that acts of non-compliance are connected to: regulatory monitoring and enforcement; the likelihood of detection and severity of a sanction; economic and social pressures; consumer response; media influence; and market demands (Sutinen and Kuperan, 1999; Cohen, 2000; Baldwin, 2004; Kaider-Market, 2004; May, 2004; Stafford, 2006; Hutter and Jones, 2007; Abusin and Hassan, 2011; Khanna and Widyawati, 2011; Nguyen, 2011; Ostrovskaya and Leentvaar, 2011; Ostrovskaya, Leentvaar and Eizinga, 2011; Wingrove, Korpas and Weisz, 2011.

On the organisational level, a firm's size, reputation, resources, working priorities, culture, ideology, values, moral stance, managerial approach, level of regulatory knowledge/training, economic interests and constraints, the social norms at play, the social interplay between the regulated and regulator, the clarity of rules/expectations, supply chain pressures, and so forth, were found to influence actors' decision-making (Genn, 1993; Ashby and Diacon, 1996; Anderson, 1996; Sadorsky 1996; Haines, 1997; OECD, 1997; Gilboy 1998; Schwartz, 1998; Sutinen and Kuperan, 1999; OECD, 2000; Hutter 2001; Worsfold, 2001; Clayton 2002; Parker 2002; Balsevich et al., 2003; Kagan and Thorton, 2003; Gunningham, Thorton, Kagan, 2004, 2005; (Gunningham et al., 2005; Fairman and Yapp, 2005; May, 2005; Mohtadi et al., 2005; Feld and Frey, 2006; Fulponi, 2006; Havinga, 2006; Howard-Grenville, 2006; Hutter and Jones, 2006; Ahmed and Braithwaite, 2007; Garcia Martinez, et al., 2007; Job, Stout and Smith 2007; Jones et al, 2008; Boonstra and Dang, 2010; Wikström, 2010; Abusin and Hassan, 2011; Nguyen, 2011).

On the individual-level, factors such as one's reputation, personal liability and concerns regarding punishment, personal morality, lack of regulatory knowledge/education (either wilful or unintentional), subjectivity, and one's perception of justice/fairness regarding the rules and how fairly they were treated by the regulator were found to influence his/her compliance decisions (Kinsey, 1992; Genn, 1993; Anderson, 1996; Sutinen and Kuperan, 1999; Frey and Feld 2002; Nadler, 2002; Gunningham, Thorton and Kagan, 2005; Ahmed and Braithwaite, 2004, 2005, 2007; Feld and Frey, 2006; Poulter, et al 2008; Howard-Grenville, Nash and Coglianese, 2008; Crundall, et al 2010; Wikström, 2010; Abusin and Hassan, 2011; Sarkheyli, et al 2011; Tabrizian, et al 2011; Vassiliki et al 2011; Wingrove, Korpas and Weisz, 2011).

While these factors are useful to help one understand compliance behaviour, our body of knowledge can be further developed, particularly in relation to our understanding of influential factors at the organisational and individual levels, and in regard to our knowledge of how elements at different levels interplay and affect one another. I have myself employed such a multi-dimensional approach that will address these areas by examining the micro- and macro-level elements that influence regulators' and businesses' compliance/enforcement decisions, and thereby the state of regulatory affairs.

My examination also addresses a concern expressed by Pearce and Tombs that Hawkins' use of the notion of "good and bad apples" did not offer "much help" to describe businesses' compliance behaviour, as it neglected to show how organisational and environmental factors influenced actors' behaviour.[10] Pearce and Tombs examined compliance from the political economy perspective, while they argued that Hawkins and his colleagues (members of what they refer to as the "compliance school") tended to use an ethnographic approach which was too close to the ground and failed to address fully the influence of greater environmental factors (1990; Slapper and Tombs, 1999). In effect, this thesis has attempted to reconcile those two, ostensibly warring, positions by using an ethnographic approach to collect rich and detailed findings, but also to situate these findings in a context of greater external forces.

**Regulatory Development Theories**

Having noted the factors known to influence regulated entities' compliance decisions, I shall now outline some of the broad explanations researchers have used to explain regulators' intentions whilst developing rules, and the influence exercised by companies, interest groups, and the public over their shape and enforcement.

Baldwin and Cave (1999) reviewed various approaches used to describe how different forms of regulation originate and develop, which they classified under a number of theoretical labels, such as 'public interest', 'private interest' and 'institutional' theories (pgs. 18-33).

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[10] Pearce and Tombs claimed, in relation to their study of health and safety and environmental issues, that "what is important are the ways that the profit imperative encourages and indeed may virtually force executives to marginalize...issues within particular company structures and under particular market conditions" (1991: p. 418).

While none of these individual theoretical frameworks fully described my own findings, I was able to use them as a sounding board to compare and contrast my own findings, and to freely draw on complementary aspects of them as I shaped my own theoretical explanation of how and why television regulation in the United Kingdom has originated and evolved. Let me explain.

**Public Interest Theories:**

Public interest theories are often used to describe the rationales, or justifications, for regulating a sector, and it is in this sense that I shall loosely use it here. Those who promote this line of argument believe that regulation is forged and enforced to achieve publicly desirable goals when it is likely that the market would fail to achieve such aims if left alone. In this sense, regulation is intended to benefit the public's welfare.

Adopters of such theories have argued that regulation should be imposed to prevent or correct undesirable market results. The focus has largely been on economic-related results, such as the unwanted dominance of monopolies, "destructive competition", and the inefficient or unfair distribution of public goods (den Hertog, 1999; Ognus, 2004). Other researchers have used public interest theory to explain non-economic justifications, such as the desire to: reduce social subordination/exclusion; promote social, cultural and political diversity; and prevent social harm (Sustein, 1990).

In their examination of media regulation, Feintuck and Varney, two key authors in this field, used public interest theory to explain four justifications for regulating the media industry. These included: the assurance of fair and "effective communication" (e.g. freedom of expression/speech); the promotion of diversity, both cultural and political; the pursuit and protection of economic interests (e.g. the exclusion of unfair competition, such as monopolies, and the promotion of profitable services) and the proliferation of public service goals (e.g. education, effective citizenships, etc.) (2006: p. 58-59). They furthermore noted the more paternalistic justification of protecting the public from 'harmful' and 'offence' media content; a topic that will be examined in-depth in this thesis (p. 62).

These elements are important to note in this thesis because many of Ofcom's regulatory objectives were founded on public interest ideals and so it was helpful to refer to these

concepts while I explained how the regulators practically juggled their conflicting economic and public interest objectives, and what the subsequent outcome of their approach was.

Having laid down the basis for why some forms or regulation are developed (particularly Ofcom's public interest-based form), I shall now discuss two key theoretical frameworks that attempt to explain how and why regulation subsequently evolve in particular ways; these include private interest and institutional theories.

**Private Interest Theories:**

Private interest theorists argue that regulatory developments are driven by individuals' or groups' private interests and not by public interests. Various theories fall under this category, such as 'economic', 'special interest' and 'capture'. I shall concentrate on the capture theory literature because it proved to be the most fruitful in helping me to understand the situations I encountered in my own research.

Capture theory emphasizes the power that regulated bodies have over regulators. Levine and Forrence (1990, p. 169) put it that capture theory:

> ...describes actors in the regulatory process as having narrow, self-interested goals – principally job retention or the pursuit of re-election, self-gratification from the exercise of power, or perhaps post office holding personal wealth. These personal goods are acquired or cemented by using regulatory power to help others achieve similarly narrow goals. In this model, government regulation reflects the influence of special interests and is created and operated for their advantage.

The origin of capture theory can be traced back to early twentieth century politics and to Marx and the Marxists, who argued that powerful businesses controlled institutions (Laffont and Tirole, 1991). The modern interpretation of capture theory was given foundation by Downs (1957) in relation to the analysis of political behaviour. It was then later applied to regulatory behaviour by Olson (1965), who argued that "regulation is acquired by the industry and is designed and operated primarily for its benefit" (1965: p. 3). He ensued that even if regulation

is believed to be founded on public interest ideals, the industry will attack its underlying objectives until the regulators fail to meet their public interest goals (Baldwin, 1999).[11]

Baldwin and Cave (1999) outlined three general strands of capture theory that have evolved over time. Berstein's life cycle model (1955), Truman's (1951) interest group model and Posner's (1974) capitalist model. Posner's work relates most closely to my research, therefore I shall briefly outline its characteristics in what follows.

The capitalist model argues that regulation is liable to be swayed by the persuasive blandishments of the economically powerful. Posner (1974) argued that "Big business – the capitalists – control the institutions of our society. Among those institutions is regulation" (p. 341). Bernstein (1955) offered one of the most influential formulations. "He contended that the creation of a regulatory agency is characterized by a struggle between a diffuse majority favouring regulation – the public – and a powerful minority resisting regulation – the regulated group" (Berry, 1984: p. 524). At the root of this argument is a belief in an inherent contradiction between public and business needs, and the dominance that businesses have over influencing regulatory outcomes.

Some have argued, alongside other criticisms of capture theory, that this stance can present "an overly simplistic, and thus an inaccurate representation of regulatory politics" (Berry, 1984: p. 526). I shall use my own analysis to address some of the key concerns expressed about the theory. Namely, classical models of capture theory have focussed so much on the interplay between the regulators and regulated that they fail to address, as my research has done, other individual, organisational and external elements that can lead to a weakened state of regulatory affairs.

My work shall also tend to the fact that capture theory fails to address the influence that companies' culture and cultural change can have on the regulatory process. Baldwin and Black (2008), who examined theories of regulatory enforcement, argued that corporate behaviour "is often driven not by regulatory pressure but by the culture prevailing in the sector or by the far

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[11] Stigler (1971) extended this argument by claiming that it was not only big businesses, but small businesses, that influenced the content and mode of regulation. Kolko also added a unique perspective by noting that regulators can intentionally give businesses additional power as a means to stabilize and strengthen an industry. (In his book *Railroads and Regulation* (1965) he noted that the railway industry was stabilized through the Interstate Commerce Commission (ICC) by allowing for a pro-cartel based regime which shielded incumbents.)

more pressing forces of competition" (p. 63). Regulators, they say, thus need to "take account of the cultures and understandings that operate within regulated organisations" (p.70).

It may also be argued that capture theory does not address how the *shape* of rules can allow for 'creative compliance' and therefore regulatory weakness: some rules are "precise" and "transparent", and are therefore likely to be easily and consistently interpreted, while some are so widely 'scoped' that they allow business members to adjust their interpretation to benefit their own particular objectives (see also Davis, 1979; Diver, 1989; Gifford, 1989; Ofcom, 2004). This can lead some companies to follow the 'letter' of the rule, but not its 'spirit', thereby showing a weakness in the regulation.

Berry claimed that these deficiencies call "for the development of post 'capture theory' theories of regulation based on a more realistic view of the regulatory process" (1984: p. 526). I shall, in part, address these concerns in my own research as I examine a variety of macroscopic and microscopic factors that influenced the regulatory process, including (but not limited to) the relationship between the regulator and regulated, the cultures at play, and the structure and enforcement of regulatory rules. In doing so, my intention is not to add a new variant to capture theory, but rather to offer my own unique explanation of behaviours and processes that take account of a variety of concerns expressed about established theoretical renderings.

**Institutional Theories:**

The final strand of theory that I found useful when describing my own findings was from what has been called *institutionalism*. Simply put, "Institutionalists are those that think theoretically about institutions and their impact on behaviour and outcomes" (Clark and Foweraker, 2001: p. 1). 'Institutions' have been described as rules that form part of the blueprint for institutional behaviour and as such are the foundation of human behaviour. Some rules are informal, such as cultural norms, and some rules are formal, such as regulatory or constitutional requirements (Clark and Foweraker, 2001).

Institutional theorists argue that institutional structures, arrangements and social processes shape regulation (Meyer and Roward, 1977; March and Olsen, 1984; Scott, 1987; Powell and Di Maggio, 1991; Jepperson, 1995; Levy and Spiller, 1996). Individuals are seen to be influenced by their social/organisational settings and the rules with which their settings are

governed. Institutionalists therefore often examine the norms, rules, principles and procedures that reside within a social setting, along with their historical and cultural frameworks, to explain actors' behaviour.

Broadly speaking, institutional theory has been divided into two bodies of thought, 'old institutionalism' and 'new institutionalism (Rhodes, Binder and Rockman, 2006). 'Old institutionalism' originated from researchers in Britain and the United States who aimed to explain how political institutions influenced matters of the state after World War II. After the 'behavioural revolution' brought forth new methods for examining politics, such as rational choice theory and positivism, the institutional approach was abandoned due to its limited nature, and replaced with an examination of individual, not social and political, structures.

In the 1980s, institutionalism was revived by DiMaggio and Powell (1983) and renamed 'new institutionalism', following an initial formulation by Meyer and Rowan (1977). DiMaggio and Powell contested the popularly used rational-choice, economic-based models, and instead integrated sociology and organisation theory to explain how institutions' cognitive and cultural settings shaped organisational phenomena. Their work sparked a renewed interest in institutionalism, and the concept became widely used across a variety of disciplines, including sociology, economics, political science and international relations.

The work on 'new institutionalism' depicted institutions as unique constructs that were shaped by different social, political and economic dynamics. It elaborated on the old institutional literature by explaining how the elements within each construct shaped individuals' actions and thereby the shape of regulation.

Three distinct pools of thought have emerged within the new institutional literature – 'historical', 'rational choice' and 'sociological' institutionalism. Aspects of each will appear in the following chapters and so I shall outline them briefly here as I have pulled from them (as I have the other theories I have discussed here) to explain my own unique findings.

*Historical Institutionalism:*

Historical institutionalism emerged in response to the group theories of structural-functionalism and politics which were prevalent in political science during the 1960s and 1970s. Drawing from

these theories, historical institutionalists have attempted to explain how and why organisational and political practices evolve by exploring (amongst other factors such as cultural surroundings and norms), the histories of particular institutions and how they affect actors' preferences and behaviour. Adopters of this approach tend to express a commitment to chronological description, the examination of specific events over time and the importance of historical causation. Historical institutionalists uniquely define institutions as:

> ...the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy. They can range from the rules of a constitutional order or the standard operating procedures of a bureaucracy to the governing trade union behaviour or bank firms relations (Hall and Taylor, 1996: p. 6-7).

Historical institutionalists believe that these institutional settings shape actors' behaviour at various points in history and need to be understood to appreciate fully how individuals come to decisions in the present day. In terms of my research that would mean how events in history have influenced the way the television market has been regulated, and how the industry has responded to the regulations.

Rather than viewing history simply as a progression of moving from point A to point B, historical institutionalists choose to pinpoint certain instances in the timeline in which they feel that there has been a fundamental shift in behaviour – otherwise referred to by Almond (1956) as a 'historical cue' – and they wish to explain why a particular trajectory was followed and not others. Therefore, it is just as important to historical institutionalists to note the directions n*ot* taken as it is to describe those that were. For instance, the UK government has chosen to digitalise its national television system and I will show in this thesis how this decision has subsequently significantly affected the shape of content regulation.

'Path dependence' is one of the most widely used concepts in this tradition of thought. Pierson and Skocpal (2002) describe path dependence as how "outcomes at a 'critical juncture' trigger feedback mechanisms [negative or positive] that reinforce the recurrence of a particular pattern into the future". In their opinion, this is significant because "once actors have ventured far down a particular path, they are likely to find it very difficult to reverse course…The 'path not taken' or the political alternatives that were once quite plausible may become irretrievably lost" (Pierson and Skopol, 2002). In other words, in relation to this thesis, one might argue that

regulators can venture so far down a particular path of governance that it can be difficult for them to operate flexibly and change course, even if there are justifications for doing so. For example, I shall illustrate in what follows how the government's deregulation of the industry and its proliferation of digital technology have led to the expansion of the television market and the relaxation of content controls, which has led to an increase in contentious violent content. I will show how the industry has evolved so far down this path that the government is propelled to continue forward despite the negative drawbacks.

*Rational Choice Institutionalism:*

The rational choice approach (at least in its ideal form) focuses on the strategic calculations said to be associated with human behaviour and decision-making. Like Kagan and Scholz's (1984) 'amoral calculator', it assumes that individuals have a set of preferences regarding their desires or goals, and in the process of seeking to attain these goals, they calculate the costs, benefits and risks of different courses of action before taking the most seemingly advantageous approach. The theoretical focus in this respect is on how individuals calculate their options in the process of maximising their benefits.

Unlike conventional rational choice theorists, rational choice institutionalists emphasize the role that institutions play in the shaping of actors' understanding of their roles, objectives and, in particular, the likely consequences of different courses of action. Institutions, in this sense, are considered "the rules of the game in a society or, more formally...humanly devised constraints that shape human interaction" (North, 1990: p. 3). Shepsle (2005) wrote:

> An institution is a script that names the *actors*, their respectiv*e behavioural repertoires (or strategies), the sequence in which the actors choose from th*em, the *information* they possess when they make their selections, and the *outcome* resulting from the combination of actor choices. Once we add actor *evaluations* of outcomes to this mix – actor *preferences* – we transform the game form into a game (p. 2).

In relation to the topic of compliance, institutions in this tradition become the parameters of knowledge which affect how regulated entities regard potential regulatory consequences. More specifically, institutions provide businesses with information about the likely responses that regulators will have to their actions, such as the regulators' likelihood of detection or penalisation of certain forms of misconduct (Hall and Taylor, 1996). This, in turn, shapes actors' decision-making about which strategic path to take.

*Sociological Institutionalism:*

The final theoretical path that has emerged from new institutionalism has been referred to as 'sociological institutionalism', as it emanated from sociology and organization theory (Hall and Taylor, 1996: p. 13). This model came from a movement that dates back to the late 1970s which challenged traditional rational choice models in light of a more culturally-centred approach.

Unlike the rational choice perspective, where models are formed prior to analysing individuals or organisations in the market, this model is derived inductively from an analysis of society. It examines how actors are influenced to hold certain preferences and to conform to certain social norms through the interactions they have with others, which echo the social constructs and constraints embedded in their environment. Institutions in this tradition are defined as social constructs in "that they embody shared cultural understandings ('shared cognitions', 'interpretive frames') of the way the world works" (Meyer and Rowen, 1991; Zucker, 1983; Scott, 1995).[12]

*Similarities and differences between these three models:*

To help explain the three strands of institutionalism further, I shall note their similarities and differences. It is however important to note that these examples are exaggerated generalisations given for the purpose of illustration. Not everyone in the field uses such a stringent application of these models, especially as the lines between them are increasingly blurring in practice.

In all three forms of thought, institutions are important because they shape human behaviour. Each approach also takes into account that people often behave rationally and calculate costs based on personal interests.

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[12] In accordance with this, a sociological institutionalist would likely argue that organisations may rise and fall, but the culture and institutional norms present will remain relatively unchanged across time. This is because actors learn how to behave and to evaluate their situations from the world around them, replicating previously propagated rituals (DiMaggio and Powell, 1991: p. 11; Dobbin, 1994; see also Thelen, 1999).

The key difference between the analytic traditions is in their approach to the evaluation of behaviour. Historical Institutionalists (and sociological institutionalists) tend to develop theory inductively as I have done in my own research. They enter the field to understand the situations they encounter and then they compare and contrast their findings to different theories to help explain the situations they have encountered. Because theirs is not a theory in search of evidence, historical institutionalists (and myself), do not argue that institutions are the only important variable for understanding political outcomes. Quite the contrary, these scholars generally see institutions as intervening variables (or structuring variables) through which "battles over interest, ideas and power are fought" (Clark and Foweraker, 2001: p. 2). They see institutions as important because "they are the focal points of much political activity and because they provide incentives and constraints for political actors and thus structure that activity" (Clark and Foweraker, 2001: p. 2).

Conversely, rational choice institutionalists tend to work deductively. They often believe that models can be devised to help us understand and predict political behaviour. In doing so, they first devise a model and then look to the real world to test its validity rather than the other way around. For these scholars, their first priority is to create and refine theories of politics, not to generate detailed empirical work as historical institutionalists do.[13]

As I have worked inductively and have placed greater emphasis on my empirical rather than my theoretical findings, my research approach has more in common with that of historical institutionalists. However, I have also briefly reviewed the rational choice institutionalism literature because I found aspects of it useful when trying to explain my own findings (such that I have found the amoral calculator ideal-type useful).

In a similar vein, rational choice institutionalists tend to concentrate on fewer more micro-specific and generalizable themes/ideas, as they are "not as interested in a comprehensive understanding of some real institution or historical phenomenon, so much as in a deeper understanding of some theoretical principle or logic" (Clark and Foweraker, 2001: p. 2).

Conversely, historical institutionalists tend to focus on how individuals' behaviour is shaped by a sometimes larger number of complex and often macro-level factors, which extend over time

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[13] In this sense they are "almost always willing to sacrifice nuance for generalizability [and] detail for logic" (Levi, 1997: p. 1).

(Thelen, 1999). Due to this approach, historical institutionalists' research tends to be conducted over long periods of time, while rational choice institutionalists' research tends to be conducted for shorter periods. In other words, and generally put, "Rational choice institutionalists try to understand 'what is the game and how it is played?' Historical institutionalists, in contrast, want to answer more traditional questions such as 'who wins, who loses and why? (Clark and Foweraker, 2001: p. 3).

Another difference between the two traditions of thought is that historical institutionalists are less focussed than rational choice institutionalists on individuals' thought processes and more focussed on their models of wider social/cultural norms, as they believe that these aspects are most likely to shape individuals' mind frames and actions. The work done in this area therefore tends to focus on behaviour influencing factors that stem from the macro-level. Rational choice institutionalists conversely place more focus on the person and how institutional factors supposedly influence his/her perception of the costs and benefits of various courses of action. This literature, while still placing the bulk of its emphasis on macro-level factors, therefore has a greater regard for individuals' ability to affect their own outcomes.

Sociological institutionalism is distinct from other forms of institutionalism in several ways. It tends to define institutions more broadly than historical and rational choice institutionalists do to include "not just formal rules, procedures or norms, but the symbol systemic, cognitive scripts, and moral templates that provide the 'frames of meaning' guiding human action" (Hall and Taylor, 1996: p. 14; Campbell, 1995). This approach removes the conceptual divide between 'institutions' and 'culture', making them one in the same idea (Hall and Taylor, 1996). This distinction relates to my work as I (like sociological institutionalists have often done) engrossed myself in the environments I studied to understand how their cultures affected individuals' moral compasses in regards to contentious compliance decisions.

Sociological institutionalists have also progressed the way we understand actors' internalisation of social norms. In the early work of institutionalism, individuals were believed to internalise cultural norms and behave in accordance with them. In later years, sociological institutionalists recognised that "institutions influence behaviour not simply by specifying what one should do but also by specifying what one can imagine oneself doing in a given context" (Hall and Taylor, 1996: p. 15). Therefore, institutions can not only affect individuals' strategic

calculations, but they can also influence their preferences, sense of self identity and the very notion of what actions they can even conceive as possible (Berger and Luckmann, 1987).

Finally, sociological institutionalism is unique in its explanation of how institutions originate and evolve. While rationale choice institutionalists claim that institutional development stems from an organisation's ability to maximize the benefits of its stakeholders (traditionally in economic terms), sociological institutionalists claim that institutions adopt new organisational practices because of an interest in enhancing the legitimacy/reputation of the organisation and its members. This is a culturally centred interest, which can take precedence over economic interests that are emphasized by the rational choice model (Campbell, 1989).[14]

The desire to enhance one's reputation/legitimacy is also an important factor to consider when analysing regulators as I have done. This is because regulators often cannot effectively govern, or lead, an industry unless they can adequately express to its members that they have legitimate reasons for intervening in their external business affairs, and that they have sufficient authority and ability to produce positive results. In other words, the regulator needs to ensure its legitimacy in order for the regulated at large to follow its policies.

*More recent developments in New Institutionalism*

In the 1990s researchers began to mix elements of these three threads of thought, blurring the lines between them. (As noted, this mimics my own approach as I shall draw on ideas from various theories throughout this thesis to help explain the unique situations that I encountered.) For instance, rational choice Institutionalists have become far more empirical, situational and conditional in analysing preferences (Thelan, 1999). The authors of *Analytic Narratives*, for example, were not driven by theory but by an interest empirically in accounting for the events and outcomes they witnessed. Therefore they were more devoted to the detailed exploration of cases than to the cultivation of theory (Bates et all 1998: p. 11).

Rational choice institutionalists have also become less likely to view preferences as enduring and constant, but more so as factors that evolve as individuals interact with others. Norms and

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[14] Scott (1995) suggested that organisations must conform to the prevailing rules and norms that surround them in order to survive (DiMaggio and Powell, 1983), because such 'isomorphism' will earn the organisation legitimacy (Deephouse, 1996; Dacin, 1997).

culture, which have previously been at the epicentre of historical and sociological institutionalism, have been adopted within the rational choice calculus, broadening its sphere of analysis (Thelen, 1999). To illustrate, Ferejohn, a rational choice institutionalist, argued that "culturally shared understandings and meanings" are key factors that shape one's understanding of the different strategic options they assess (1991: p 285). Institutionalists are therefore fading the lines and drawing from a wider pool of thoughts, as I myself have done.

I shall end this chapter by briefly touching on two other areas of literature that also helped to inform my research; they stem from the sociology of deviance and control, and sociology of media 'gatekeeping' literature.

## Pushing social and regulatory boundaries, the sociology of deviance and control literature

My examination of producers' and broadcasters' compliance with the television standards regulations links with a broader discussion of social control, and the pushing and reshaping of social/regulatory boundaries (a topic that is covered in the sociology of deviance and control literature). This is because the television-makers I examined breached and actively tried to extend the regulatory limits, and their success in doing so is an important theme in my thesis which is fundamentally linked with the regulation literature.

Television standards were written to permit the monitoring of broadcasters' behaviour and to ensure that they did not 'harm' or 'offend' viewers, or treat programme contributors unfairly. Rules to prevent such harms have existed in society for centuries and have appeared in a variety of forms, such as rules to keep peace in a family, laws to ensure order in a society, or regulations to protect citizens from harmful business practice (Erikson 1966).

According to Kai Erikson in *Wayward Puritans* (1966), the rules or boundaries associated with a social group or community reflect the culture and values of its members. An identity is established through the exchange of a common language, and shared experiences and understandings. These understandings are then spread across the population through the mass media which have "long operated as agents of moral indignation", publicising the boundaries of acceptable and unacceptable behaviour (Cohen, 2002: p. 7).

The nature of particular rules or social boundaries frequently differs between and within communities; what may be acceptable in one setting might not be in another. People must therefore learn and adapt to the limits associated with the various milieu they encounter in order to adhere to the rules and avoid the potential social exclusion they might face from non-conformity. As with regulation and law, these limits are not always clearly defined and leave room for interpretation, and individuals must therefore rely on overt social cues to understand their meaning.

These boundaries are also often rarely fixed – "they are always shifting as the people of the group find new ways to define the outer limits of their universe" (Erikson, 1966: p. 12). Many broadcast regulations are intended to be flexible enough to reflect these shifts, as regulators attempt to interpret and enforce socially conceived boundaries over time, such as those concerning viewers' notions of what constitutes 'offence'. To do so, rule-enforcers must gain and maintain an understanding of the public's opinions in order to accommodate changes in social perceptions.

Television, as a commodity which supposedly reflects and moulds British culture, evolves as broadcasters respond to viewer ratings over time. Commercial broadcasters, like other financially-run enterprises, are influenced by their need to generate revenue in order to sustain their businesses. Such revenue primarily comes from advertisers' funding and the demand for broadcasters to generate sufficient ratings is therefore high.

The difficulty with this situation is that competition for ratings has become so intense that many broadcasters were (at the time of my fieldwork and still are), as they say, 'pushing the envelope' regarding social/regulatory boundaries. For example, scenes of violence were on the rise (BBC, BSC, ITC, 2002) and there are concerns that television content and production standards were in decline (BSC, 2000: p. 16; see also Langer, 1998; Glynn 2000). How these broadcasters were able to establish effective mechanisms to re-shape these socially conceived boundaries is therefore important if one were to address viewers' concerns about the changing nature of content.

Gatekeeping, the sociology of media literature

This takes me now to a discussion of the 'gatekeeping' literature which touches on various factors that other researchers have found to influence the shape of media content. This literature is important not only because it influenced my method of information gathering and analysis, but also because numerous studies within this *genre* have explored the media production process as I have done. The regulation literature encompasses studies about various industries, however, next to nothing has been written about the television market and content standards in particular. It was therefore helpful to enhance my understanding of my research by comparing my findings with others who have investigated the media market.

To begin, the concept of a 'gatekeeper' was introduced in 1947 by Kurt Lewin whose theory, then referred to as a concentration on "channels and gatekeepers", was used to explain how widespread social change was created in communities. Since then the gatekeeping approach has been applied to a variety of fields, including journalism, sociology, political science, information science, management and law (Barzilai-Nahon, 2007). Within the media field, it has offered scholars a framework from understanding how and why media content has been selected and shaped (Barzilai-Nahon, 2005).

Pamela Shoemaker, one of the most influential authors in the gatekeeping tradition, described it as "the process by which the billions of messages that are available in the world get cut down and transformed into the hundreds of messages that reach a given person on a given day" (Shoemaker, 1991: p.1; Shoemaker and Vos, 2009).

The gatekeeping method focuses on the various stages, or "gates", that content must pass through in order to become released to the public. This descriptive process begins when ideas about potential content are first conceived, and it continues through to their shaping, production and dissemination (Shoemaker, 1991: p.1; Shoemaker and Vos, 2009). At each stage (for instance, when a story is selected, researched and edited), the decision-makers responsible for the content must decide whether to accept, reject or reshape it. The gatekeeping process is used to identify the range of factors that influence these decisions and, by extension, the shape of media material. This stems from the belief that one must understand the circumstances surrounding individuals' decisions to gain a clear picture of events (White, 1950).

I have similarly aimed to understand how individuals at each stage of the production, broadcast and regulation enforcement process have made decisions about the selection, shape and

compliance of programme content, and the factors that influenced their decisions. I shall therefore discuss various key findings within the gatekeeping literature, and compare and contrast them with my own findings in the forthcoming chapters. Specifically, I shall note the factors that other researchers have found to influence media-practitioners' production decisions, such as expressed in the following.

In the examination of news work, researchers have found production decisions to be dictated by the requirements associated with a profit-seeking business (Bantz, McCordle and Baade, 1980; Gans, 1979; Herman and Chomsky, 1988; Shoemaker and Mayfield 1987; Soley, 2002; Price, 2003; Vettehen, Nuijten and Beentjes, 2005; Gentzkow and Shapiro, 2006). That is, news production has been driven by an intense competition between organisations eager to acquire high ratings and gain advertising revenue (see also Fensch, 1990; Alexander, 2004; Hoskins, McFayden and Finn, 2004; Lee 2005). This has led news-makers frequently to select more sensationalist, entertainment-based stories, such as those about accidents, disasters, crime and politics, as those topics were believed to hold the most audience appeal (Berkowitz, 1990; see also McManus, 1994; Beam, 2003; Gentzkow and Shapiro, 2006).

In such situations, producers' resources and time-frames have typically been tight (Epstein, 1973), however, their management expected them to turn out media products within the allocated deadlines and with the resources available (Altheide, 1976). News production was therefore found to be influenced by an organisation's power structure (Bantz, 1985; Breed, 1955; Donohew, 1967; Soloski, 1989; Chomsky, 2006; Shoemaker and Vos, 2009), and by the insistence of management that news products should be packaged in a streamlined, standardised format (Berkowitz, 1991).

Employees aimed to avoid conflict and not challenge this power structure (Bantz, 1985; MacDougall, 1988; Soloski, 1989) and they therefore adopted the routines associated with rapidly expediting packaged content (Gans, 1979; Bantz, McCorkle and Baade, 1980; Fishman, 1982). In doing so, they had to juggle various demands. In addition to ensuring that media products were delivered on time and to budget, they had to conform to standards that demanded that they would be sufficiently informative, news-worthy and entertaining (Bantz, McCordle and Baade, 1980; Bantz, 1985).

Due to the frequent emergence of extraneous challenges, workers often had to depart from the routines of the standard production process in order to complete these projects (Bantz, 1985; Berkowitz, 1990). For instance, Berkowitz (2002) found employees to be subject to tight time restrictions which sometimes prohibited them from cross-checking fully the accuracy of conflicting information before they released it to the public.

In addition to the influence that project demands and resource limitations had on the shaping of news production (Bantz, McCordle and Baade, 1980; Fishman, 1982), other factors were found to influence media-practitioners' decisions, such as: ideology (Tuchman, 1978; Gitlin, 1980; Shoemaker, 1987; Soloski, 1989; Entman and Rojecki, 2000; Turner, 2002; Warren and Vavrus, 2002); what have been called 'professional instincts' or 'personal criteria (Breed, 1955; Gans, 1979; Weaver and Wilhoit, 1986; 1996; Berkowitz, 1990; Henningham, 1997; Shoemaker and Vos, 2009); organisational socialisation and 'group thinking' (Jablin, 1982; Janis, 1983; McDougall, 1988; Kim, 2002; Entman, 2007; Mills, 2007; Shoemaker and Vos, 2009); space constraints (Gieber, 1956); professional roles (Berkowitz, 1993; Livingstone and Bennet, 2003); personal 'feelings'; advertisers (Soley, 2002; Price, 2003); sources (Sigal, 1973; Chibnall, 1975; 1981); audience dynamics (Napoli, 2003; Allen, 2005); public relations (Sallot and Johnson, 2006); governments (Kuhn, 2002; Thussu, 2002); insufficient space in the programme agenda; if a story had previously appeared (White, 1950); interest groups (Russell, 1995; Huckins, 1999); other media (Gans, 1979; Paterson, 2001; Skewes, 2007); and news consultants (Bantz, McCorkle and Baade, 1981; Berkowitz, Allen and Beeson, 1996; Allen, 2005).

It was also found that media production decisions tended to be made by groups rather than individuals (Donohew, 1967; Epstein, 1973; Tuchman, 1978; Berkowitz, 1990; Chomsky, 2006) and that the role of gatekeepers (or key decision-makers) has changed with the introduction of new production technologies (Pavlik, 2000; Gunter, 2003; Livingstone and Bennet, 2003; Salwen, 2005; Singer, 2006; Wigley and Meirick, 2008).

In an examination of entertainment-based content – the genre of programming I have examined – Lewis (1969) asked local programme-makers to rate the importance of 45 statements concerning their decision-making. Eight factors were ranked in importance: direct feedback (correspondence from individuals and groups); regulation (industry or government regulation); inferential feedback (ratings); 'conditional' (comments from critics, friends,

magazine writers); production staff (opinions of colleagues); personal (common sense, 'gut instincts', community knowledge); financial (cost, financial potential, sponsors' and sales personnel's opinions); and tactical (arrangement of schedule and programme planning) (see also Huber, 1974). Pekurny and Bart (1975) later asked local affiliates to rank the importance of five of these factors and the following order emerged: personal, direct feedback, tactical, regulatory and financial.

In a separate study of the makers of comedy, sports, news and game shows, Virts (1978), found that their decisions were influenced by local viewing behaviour (ratings, audiences' tastes, fan clubs); performance in *other* markets (demographics and ratings); the availability of alternative programmes; a knowledge of the local audience; programme strategy; financial profitability; colleagues' opinions; and a programme's compatibility with sister programmes. Interestingly, Virts (1984) also found that programme-makers believed that audience feedback, such as complaints, was not of paramount importance because it was seldom received (p. 77).

In Chapters Four and Five I will compare and contrast these findings with my own. In doing so I will address a current gap in the gatekeeping literature by offering an examination of the individual, organisational and external factors that affect media practitioners' decisions about the shape of content and their compliance with the content regulations (see Chapter Four for further detail).

**Conclusion**

In this chapter I have reviewed the relevant literature, concentrating specifically on detailing the different approaches to regulation enforcement, and regulated bodies' response to rule compliance and how this feeds into regulators' determination of which enforcement approach to use. I have also noted the different public, private and institutional theories used to explain how states of regulation originate and evolve.

I then linked this discussion to the broader topic of boundaries to help explain how social (and in turn regulatory) limits become understood, and get pushed and reshaped. I have also reviewed the relevant gatekeeping literature because it is helpful in its description of the factors that influence media practitioners' content production decisions.

Now I shall offer some background information on the UK television market and its regulation as a means to provide further context to my case studies.

# Chapter 3

## Background: Regulation and the Television Industry

Let me now explain the origin and evolution of the regulations affecting television content standards, and elaborate on how the industry developed over the three decades prior to this research. This chapter is important because I will outline the particular content standards regulations that pertain to this study. I will also draw on the information presented in this chapter throughout the remainder of my argument, as I shall explain how greater environmental factors, such as advancements in technology and changes in politics, have influenced the actions of television-makers and regulators at the ground level. The information presented here is not designed to be a current review of the UK broadcast sector and its regulatory framework, but rather a snapshot of the industry and its regulation at the time the ethnographic case studies were undertaken.

### Changes in television regulation

The television industry has changed significantly since the early 1980s when programming was limited to a mere four channels – BBC 1, BBC2, ITV1 and Channel Four – and the regulator, the Independent Broadcasting Authority (IBA), dictated what programming channels could broadcast.

During the years of the Thatcher government, 1979-1992, many Western European democracies shifted away from a model of a 'social market economy'.[15] These economies were capitalist, yet governments maintained a significant level of control in shaping their economic development (Underwood, 2003). Mrs Thatcher spurred this shift in the UK and led the drive toward a 'free market economy'[16], otherwise referred to as 'neo-liberalism'[17] – a drive that

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[15] In a social market economy the "government creates the regulatory framework in which economic and labor activities take place and withdraws more and more from the market process" (Wirtz, 2004). This includes two central aspects: "1) Decontrol to a certain degree of market processes, and 2) an institutional framework of government *Ordnungspolitik*, an orderly structure of rules for the economy, designed to steer market powers and compensate for undesirable effects of liberalization".

[16] A free market economy is "A market economy based on supply and demand with little or no government control. A completely free market is an idealized form of a market economy where buyers

called for the reduction of State intervention, the sale of government-run industries to the private sector, and a reliance on the 'free market' to manage the economy with few government restrictions (Underwood, 2003). A result was the 'deregulation'[18] of numerous sectors, including the Independent Television Commission's (ITC) loosening of regulatory restrictions in broadcasting. Mrs Thatcher was "ideologically opposed to the whole notion of public service broadcasting" and helped to introduce the 1990 Broadcasting Act which contributed to its decline (Cultsock, 1999).

The former regulator, the IBA, "was designed to foster a culture of excellence" whereas its successor, the ITC, "was a body that set minimum, rather than aspirational, standards in an industry where yardsticks for measurement are notoriously hard" (Barnett, 1998: p. 83). As a product of the Broadcasting Act 1990, the ITC heralded the deregulation of commercial broadcasting "to prevent abuses rather than promote excellence", thus monitoring "fair competition" rather than promoting television of high quality (Barnett, 1998: p. 83; see also Gibbons, 1998). It was a change that encouraged the consumerist media culture to thrive as audiences began actively to wield their power over ratings to shape the substance and packaging of television products (Barnett, 1998).

Movement down the deregulatory path was furthered by the Communications Act 2003, which instated Ofcom, the United Kingdom's first 'mega-regulator'. The Act united the five media and communications regulators to allow Ofcom to regulate the television, radio and telecommunications industries under one umbrella. As I shall illustrate in this thesis, Ofcom, like the ITC, took steps to deregulate the industry. This was done, in part, to make it easier for broadcasters to enter the market, thereby increasing competition, economic gain, and the 'diversity' and 'plurality' of content.

There were also changes at the European level which has affected the television market. The 'Television Without Frontiers Directive', later renamed the 'Audiovisual Media Services

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and sells are allowed to transact freely (i.e. buy/sell/trade) based on a mutual agreement on price without state intervention in the form of taxes, subsidies or regulation" (TheFreeDictionary.com).
[17] "Laissez-faire is short for '*laissez faire, laissez passer*,' a French phrase meaning "let do, let pass" (Wikipedia.org).
[18] "Deregulation is the process by which governments remove selected regulations on business in order to (in theory) encourage the efficient operation of markets. The theory is that fewer regulations will lead to a raised level of competitiveness, therefore higher productivity, more efficiency and lower prices overall" (InvestorDictionary.com).

Directive', published rules with which member states needed to comply. These rules introduced several important features which affected the shape of regulation in the United Kingdom. For instance, the Directive emphasized the need to protect children, to commission programmes through independent production companies, and to allow television content to flow freely between member states, as long as it adhered to the regulatory requirements in the Directive in its home country. Foreign content was therefore allowed to be broadcast in the United Kingdom without necessarily meeting Ofcom's standards. This measure was intended to promote European programming within the Union, and has led to more consistent television standards between member states and a change in content regulation in the United Kingdom.

Alongside political changes came technological advances which brought 'next generation' cable, satellite and digital transmission services, opening the door to a plethora of new broadcasting entrants. Until 1988 television had been broadcast solely through analogue technology, which used the UK's finite resource of electromagnetic spectrum (a limited resource of electromagnetic waves that are used to enable broadcasting) to transmit content. The technology allowed for only a small number of channels to broadcast simultaneously – BBC One, BBC Two, ITV1, Channel 4 and Five.

Given that the spectrum these channels used was considered a scarce public resource, they were heavily regulated with content controls and broadcasting quotas (e.g. requirements to air an agreed amount of news, children's programming and so on) (Feintuck, 1999).
Having few channels also meant that each broadcaster catered to a significant proportion of the total UK audience. The regulators were very restrictive over the nature of the content in an effort to ensure that their programmes were appropriate for their diverse, multi-age audience and therefore it put checks in place to ensure that child viewers were protected. This, in turn, led to television programming that centred on 'family viewing',[19] meaning programming that is deemed suitable for children's consumption.

By the mid- to late 1980s, technology had advanced and 'next generation' cable and satellite services had been introduced, allowing operators to transmit additional channels. As the number of channels grew, so did the concept of 'niche' channels, which are services that cater

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[19] 'Family-viewing' is associated with a form of regulatory policy. 'Family-viewing policy' aims to ensure the protection of children through such measures as the 9:00pm watershed, a restriction on the use of profanity, and a limitation on the amount and nature of sexual and violent content allowed for broadcast (see also Towler, 2001).

for a specific 'target demographic' (or audience profile), such as children or young men. Understanding that some niche channels, especially in the late evenings, were unlikely to have child viewers, the ITC allowed broadcasters greater freedom to decide what content to broadcast.

As the technology behind digital transmissions evolved, it became possible to use spectrum more efficiently, alleviating many concerns about its scarcity and allowing for the influx of hundreds of new channels (Forgan and Tambini, 2000). That step led to the introduction of digital satellite, cable and terrestrial television (DTT) services operated by BSkyB, Virgin Media and Freeview[20], respectively.

By 2007, these 'multichannel' services together dominated the market with over 82% of all viewing share (Figure 2). (This proportion has increased as the government plans to turn off the analogue signal and move entirely to digital television services in 2012. All viewers in the United Kingdom will then have access to a wider array of channels than is offered by analogue terrestrial television (ATT).)

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[20] Freeview is a free television proposition started by a consortium of public service broadcasters and Crown Castle; it broadcasts roughly 40 channels and was used to drive the take-up of DTV.

**Figure 2: Take-up of multichannel television**

% of homes

| 27.2% | 34.0% | **41.7%** | 44.7% | 48.0% | 56.7% | 64.9% | 71.8% | 81.7% |

Households (millions)

Legend:
- Analogue cable
- Digital cable
- Digital terrestrial
- Free-to-view digital satellite
- Analogue satellite
- Pay digital satellite

Q1 1999  Q1 2000  Q1 2001  Q1 2002  Q1 2003  Q1 2004  Q1 2005  Q1 2006  Q1 2007
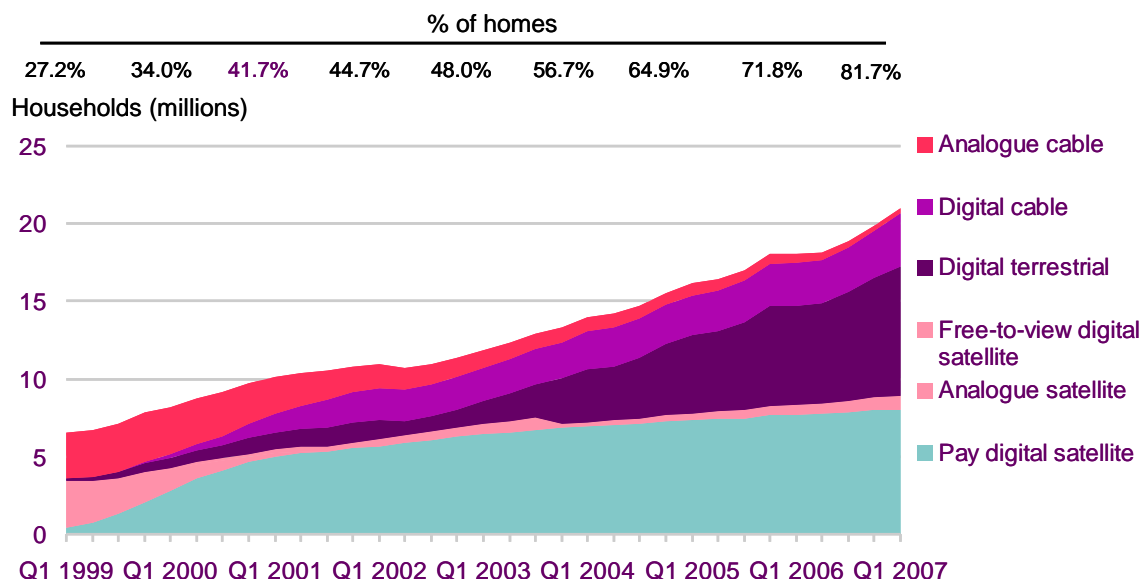
Source: Ofcom, *Communications Market Report 2007*

To address the rapid changes in the broadcasting environment, and particularly the large increase in the number of television channels, Ofcom updated the ITC's regulations governing television content standards in an attempt to maintain their relevancy. The following briefly outlines the revised regulatory structure and the key policies which will be discussed in the forthcoming chapters.

**The television regulations explained**

Feintuck and Varney (2006) outlined four key justifications for regulating the broadcast industry – "effective communication"; "diversity, both political and cultural"; "economic justifications"; and "public service":

- The need to ensure effective, or unobstructed, communication is deemed necessary to promote diversity and democracy;
- The promotion of cultural diversity is intended to prevent social exclusion, while political diversity is deemed necessary to allow for the productive exchange of political ideas;

- Economic justifications pertain to the promotion of a financially thriving industry, and the prevention of market failures relating to aspects such as monopolies and unfair competition; and

- Regulation imposed for the sake of public service pertains to the protection of educational and cultural values in broadcasting which can come under threat as a product of the industry's on-going commercialisation.

These rationales for regulation underpin the three different types of broadcast regulation that were at play in the United Kingdom – "structural", "behavioural" and "content regulation":

> In shorthand, 'content regulation' refers to limitations being imposed on what cannot, or must, be broadcast or published, while 'structural regulation' refers to limits on the extent of that which can be owned within any market by any one corporate entity and, in effect, 'behavioural regulation' generally serves to limit how property held can be used in relation to its impact on actual or potential competitors (Feintuck and Varney, 2006: p. 68).

I noted in Chapter One that this thesis looks specifically at content regulation, or 'negative' content regulation. Ofcom was required under the Broadcasting Act 1996 and the Communications Act 2003 to set, and periodically to review and revise, standards for television programmes (meaning to establish 'negative' content regulations). This task included the drafting of guidelines that broadcasters must adhere to with regard to programmes, sponsorship, fairness and privacy. The guidelines set various requirements relating to the protection of minors; the restriction of material that could incite crime or lead to social disorder; the protection of viewers from harmful and offensive content; and an assurance that news is reported accurately and with due impartiality.

In adherence with the Act, Ofcom published the Ofcom Broadcasting Code on 25 July 2005 to serve as a set of guidelines, or standards, for television-makers to follow. The two key areas of the Code that I shall focus on here (as they relate most to my own research) are 'harm and offence' and 'fairness and privacy'.

<u>Negative content regulations – 'Harm' and 'Offence'</u>

The Audiovisual Media Services Directives influenced the formation of the Ofcom Broadcasting Code, the terms 'taste' and 'decency' being replaced by 'harm' and 'offence' to assimilate the language of the Directive. The Code stated that broadcasters were required "to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material" (2005, Ofcom).

*'Harm':*

Although Ofcom stated that a broadcaster could not transmit 'harmful' material, it was difficult to interpret which material can cause harm to viewers, as studies of the effects of television violence offered conflicting findings, giving no clear guidance about if or when television violence leads to audience emulation.

Behavioural effects theorists argued that viewers of television violence learn to believe that violent behaviour is acceptable (Paik and Comstock 1994; Wilson et al 1998). When confronted with an aggressive situation, individuals who watch extensive levels of violent programming are more likely to respond with violence and aggression (Geen, 1994) and/or 'indirect' violence (bullying) (Kuntsche, 2003).

Children were believed to be most affected by television violence and so the majority of this area of research had focused on them. Research had also found that television violence has both short- and long-term effects on the violent behaviour of boys and girls (see Anderson, et al., 2003; Browne and Hamilton-Giachritsis, 2005; Huesmann, et al. 2003).

Other strands of research on media effects has claimed that television violence leads to a greater fear of violence, desensitization toward real-life violence and a decrease in viewers' willingness to act on behalf of victims of violence (American Association of Paediatrics, 2000).

These arguments have, however, faced extensive criticism from social scientists who have argued that their methodologies for data collection and interpretation were often weak and/or misdirected, and that media displays of violence do not motivate viewers to emulate such

forms of behaviour (Cumberbatch and Howitt, 1989; Paik and Comstock, 1994; Newburn and Hagell, 1994; Gauntlett, 1995, 1998).

Despite this conflicting research, behavioural effects theory has been highly influential in the design of television regulation policies, and over Ofcom's and the ITC's interpretation of harmful content (Carter and Weaver, 2003: p. 8). For instance, Ofcom worked to the belief that the 'context'[21] of violent scenes influences viewers' interpretation of them. This perception reflects the work of Morrison (1999) who found that viewers' understanding of violent content was based on what imagery was used and how it was portrayed. Most context-related concerns stemmed from scenes that showed violent acts without negative consequences, that were celebrated or were "perpetrated by heroes rather than victims" (Millwood Hargrave and Livingstone, 2006: p. 65; see also Ofcom, 2005).

The methods that television-makers and regulators used to decipher 'harmful' content will be reviewed in this thesis, along with the problems that arose from rules that were not clearly defined and were thereby loosely interpretable.

*'Offence':*

Ofcom also stated that a broadcaster cannot transmit 'offensive' material; however, there was no agreed definitive definition of 'offense'. Gibbons (1998) moved most closely towards some such characterization by stating: "Offence has been described as that which upsets, distresses, disgusts, outrages or puts out members of the public in relation to what is and is not appropriate for public as opposed to private consumption" (p. 74).

To help decipher what content viewers found offensive, Ofcom published *Programme Information Research: An investigation of current attitudes and behaviours towards programme information* in 2006. It examined the forms of content viewers found offensive and how often

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[21] The Ofcom Broadcasting Code defines the term 'context' as: ( 2006: p. 16): "Context includes (but is not limited to): the editorial content of the programme, programmes or series; the service on which the material is broadcast; the time of broadcast; what other programmes are scheduled before and after the programme or programmes concerned; the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description; the likely size and composition of the potential audience and likely expectation of the audience; the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and the effect of the material on viewers or listeners who may come across it unawares.

they were offended. The study examined over 700 television viewers from across the UK, who were 16 years and older.

Ofcom reported that roughly half of all adult viewers were concerned "about what is shown on television these days." Thirty-two percent of viewers claimed to have been offended by something they saw on a television programme, up from 29% in 2000. When respondents were asked 'What is it about programmes on television that offends or concerns you nowadays, if anything?', over half (53%) spontaneously stated that television violence was their greatest concern. This was followed by 'bad/offensive language' (50%), sexual content (41%) and graphic violence (36%) (Figure 3).

Roughly half of all parents also spontaneously stated that they had concerns about their children's viewing habits; this rose to three-quarters when prompted.

**Figure 3: Cause of offence**

| Cause of offence | Spontaneous | Prompted | Total mentions |
|---|---|---|---|
| **Violence in general** | 53 | 14 | 67 |
| **Bad/offensive language** | 50 | 14 | 64 |
| **Sex/sexual content** | 41 | 8 | 49 |
| **Graphic violence** | 36 | 27 | 63 |
| **People behaving badly** | 22 | 25 | 47 |
| **Depiction of racism** | 21 | 28 | 49 |
| **Depiction of drugs/drug taking** | 19 | 27 | 46 |
| **Bad role models** | 19 | 28 | 47 |
| **Bad taste** | 18 | 19 | 37 |
| **Immorality** | 16 | 15 | 31 |
| **Nakedness** | 15 | 12 | 27 |
| **Decline of standards (generally)** | 14 | 19 | 33 |

Source: Ofcom, 2006: 'Programme Information Research: An investigation of current attitudes and behaviours towards programme information'
Base: All UK television viewers (16+) who have ever been offended by things on television.

In terms of the frequency of offence, one-third of respondents stated that they were offended at least once a month, around 20% were offended less than once every six months and a further 20% claimed never to be offended (Figure 4).

**Figure 4: Frequency of offence**
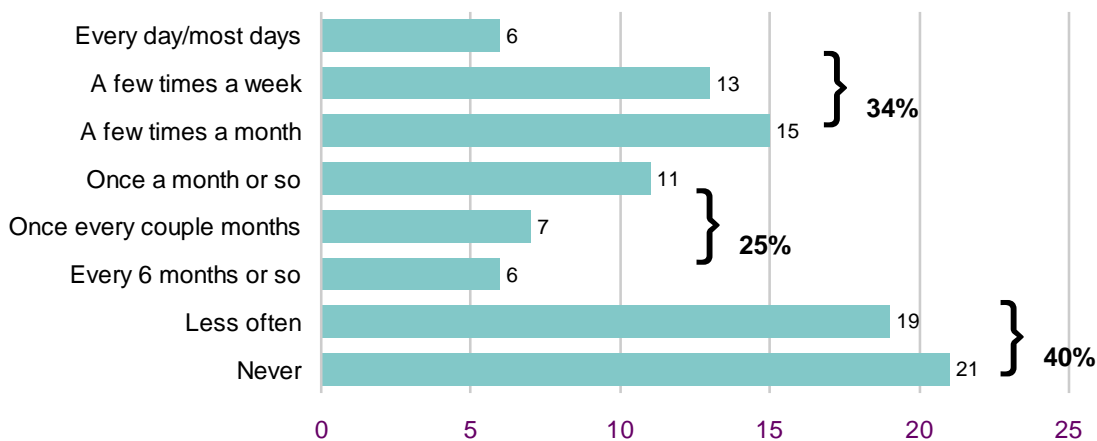


Source: Ofcom, 2006: 'Programme Information Research: An investigation of current attitudes and behaviours towards programme information'
Question: How often, if at all, do you see things on television that offend you or you feel are unsuitable for you personally to view? Base: All UK viewers aged 16+ (709)

These statistics are important to note because television content and the associated regulations were constructed with audiences' tastes in mind, so if viewers were generally offended or harmed by certain types of content, regulators and television-makers either should have or would have adapted their practices to take this into account.  It is also important to note that these statistics were – or should have been – consequential because they were commissioned and digested by Ofcom itself.

Fairness and privacy regulations

Ofcom also required broadcasters to avoid the 'unfair' treatment of programme contributors and to respect their 'privacy', as will be outlined the following.

'Fairness':

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Section 7.1 of the Ofcom Broadcasting Code (2005a) stated "Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes". Sections 7.2 to 7.14 noted the various practices that broadcasters must follow to ensure the fair treatment of programme contributors. The following notes the specific rules which relate to this research (for a fuller description of the fairness and privacy regulations, see Appendix Four).

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**Extracts from Section 7 of the *Ofcom Broadcasting Code*: Fairness**

**7.3** Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
- be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Taking these measures is likely to result in the consent that is given being 'informed consent' (referred to in this section and the rest of the Code as "consent"). It may be fair to withhold all or some of this information where it is justified in the public interest or under other provisions of this section of the Code.

**7.5** In the case of persons over sixteen who are not in a position to give consent, a person of eighteen or over with primary responsibility for their care should normally give it on their behalf. In particular, persons not in a position to give consent should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.

**7.6** When a programme is edited, contributions should be represented fairly.

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'Informed consent' is the issue most germane to this study because it is the rule that the producers I examined most often breached. The BSC defined 'informed consent' as: "Permission based on a participant's knowledge and understanding of (a) a programme's format, aims and objectives, (b) how their contribution will be used and (c) the potential consequences for them or for third parties of their taking part" (BSC, 2000).

In 2000 the BSC examined if and how programme-makers obtained contributors' consent. It found that, while most programme-makers "normally supply sufficient information to allow people to give informed consent to their participation," a minority "of participants and some of their close relatives were concerned about the treatment they had received from programme-makers" (BSC, 2000: p. 7). It found that participants were not always supplied with sufficient information about a programme's nature and objectives, or about the way in which their contributions would be used (BSC, 2000: p. 8).[22]

The authors of the report linked the programme-makers' unfair treatment of contributors to the pressures of competition, pointing out that the stress that industry workers were under to create an entertaining, and sometimes controversial, show was sometimes at odds with an 'ethical' approach (BSC, 2000: p. 16; see also British Film Institute, 1999):

> More than half (53%) of those working in factual programming felt that they had 'experienced pressures at odds with how they believed contributors should be treated'. A similar number (52%) claimed that, during the production of factual programming, they had 'experienced pressures to achieve an exciting, controversial or entertaining programme that they felt were at odds with maintaining accuracy'.

My own study offers a more probing examination of such pressures. Unlike the BSC, which examined a range of broadcasters on a general level, I examined two television companies in depth and was able to get a more intensive understanding of the behind-the-scenes practices of each.

*'Privacy':*

Section 8.1 of Ofcom's Code stated **"**Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted". The following notes the areas of this section which correlate to my research.

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[22] "Seventy-one percent of our survey respondents argued that the programme-makers should both inform participants about what is involved in making the programme and advise them about the possible consequences of transmission" (BSC, 2000: p. 7).

**Extracts from Section 8 of the *Ofcom Broadcasting Code*: Privacy**

**Consent**

**8.5** Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

**8.6** If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

**8.7** If an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue.

**Gathering information, sound or images and the re-use of material**

**8.9** The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

**8.10** Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.

**Suffering and distress**

**8.16** Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

**8.17** People in a state of distress should not be put under pressure to take part in a programme or provide interviews, unless it is warranted.

In 2002 a consortium of broadcasters and regulators commissioned Morrison and Svennevig to produce the research report, *The Public Interest, the Media and Privacy,* which found that viewers were sceptical about the motives of the media in invading one's privacy. Their scepticism was substantiated by an industry member who, after being asked if media companies would infringe individuals' privacy if the Press Complaints Commission (PCC) did not enforce protective rules, stated (p. 44):

> Yes. I mean the whole idea of the PCC was to establish a code of practice that we abide by because of the competitive nature of the business. I think people would be transgressing all the time unless we had clear boundaries.

Respondents were asked how much, if at all, they believed people's privacy was intruded on by different media sources and they replied that people working for newspapers were more likely than television-makers to intrude into people's lives, followed by radio broadcasters and internet practitioners. Focusing on the newspaper and television industries, between 77% and 90% of respondents believed that workers in these sectors were fairly, or very, likely to intrude into people's lives (Figure 5).

**Figure 5: Media intrusion**

*How likely, if at all, do you think these various media intrude into people's privacy?*

|  | Very | Fairly | Not very | Not at all | Don't know |
|---|---|---|---|---|---|
| **Television news** | 34% | 43% | 17% | 4% | 2% |
| **Television current affairs or documentaries** | 35% | 43% | 15% | 4% | 3% |
| **Other daily newspapers (Mail, Express, Telegraph, Guardian, Times, etc.)** | 31% | 47% | 13% | 2% | 7% |
| **Popular daily newspapers (Sun, Mirror, Star)** | 68% | 22% | 3% | 2% | 4% |
| **Sunday newspapers** | 52% | 33% | 7% | 2% | 6% |
| **Other daily newspapers (Mail, Express, Telegraph, Guardian, Times, etc.)** | 31% | 47% | 13% | 2% | 7% |
| **Local newspapers** | 18% | 39% | 33% | 6% | 4% |
| **Radio current affairs or documentaries** | 17% | 41% | 29% | 6% | 7% |
| **Radio current affairs or documentaries** | 14% | 42% | 32% | 6% | 6% |
| **Radio music or chat programmes** | 11% | 26% | 38% | 16% | 9% |
| **Internet chat rooms** | 18& | 15% | 11% | 5% | 51% |
| **Internet news pages** | 17% | 20% | 11% | 4% | 48% |

Source: The Public Interest, the Media and Privacy, 2000

My study examined if, when and how television-makers infringed individuals' privacy, and how the regulator responded to such acts of non-compliance.

**The growth of the television industry**

Having reviewed the regulations which are focused on in this thesis – 'harm', 'offence', 'fairness' and 'privacy' – I shall now outline the general changes that have occurred in the television industry, as a precursor to understanding the broadcaster and independent production company which I shall examine in Chapters Five and Six.

As a result of the growth of multiple channels (cable, satellite and digital services), the television industry grew substantially over the period I conducted this research. In the six years from 2000 to 2006 it grew a significant 39% from £7.7bn to £10.8bn (Figure 6). The largest beneficiaries were the satellite and cable platform operators, BSkyB and Virgin Media, which together gained £4.0bn in subscription revenue in 2006 alone.

As audiences began to migrate to non-terrestrial channels, commercial multichannel operators' revenue rose. In 2000 they made £795m and, in 2006, £1.4bn (up 82%). This meant that they accounted for 13% of the market's total revenue by 2006, up 3% from 2000.[23]

**Figure 6: Total television industry revenue by sector**
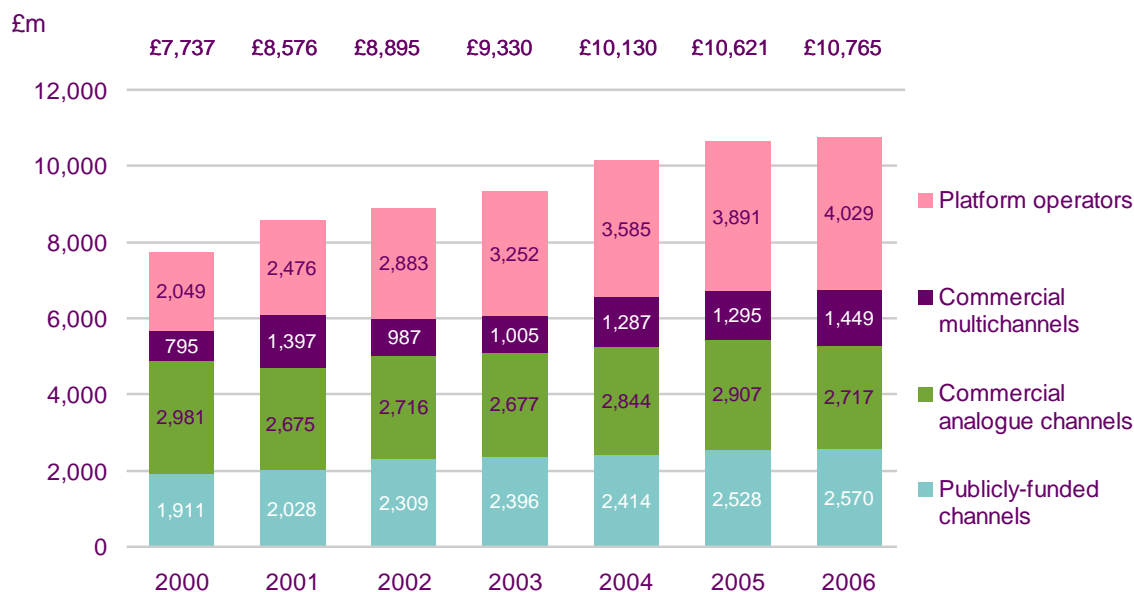


Source: Ofcom, *Communications Market Report 2007*

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[23] That trend may be compared with the commercial analogue channels, ITV1, Channels 4 and Five, which experienced a 9% decline in revenue over the period to £2.7bn. In 2000 they accounted for 39% of the total revenue and by 2006 this had fallen to 25% (Figure 2).

The growth in the multichannel operators' revenue and viewing share brought about a fragmentation of viewers across the schedule. Figure 7 shows that each of the terrestrial channels' viewing shares had declined while the non-terrestrial channels' combined share rose to 33% since 1990 (when multichannel television was introduced), showing that they had become a competitive and instrumental component in the industry. These broadcasters, labelled 'others', included hundreds of services, such as Sky One, UKTV, Living TV and the Discovery Channel.

This growing and increasingly influential segment of the market included the television-makers I shall examine in this thesis.

**Figure 7: Channel shares in all homes, 1982 – 2006**
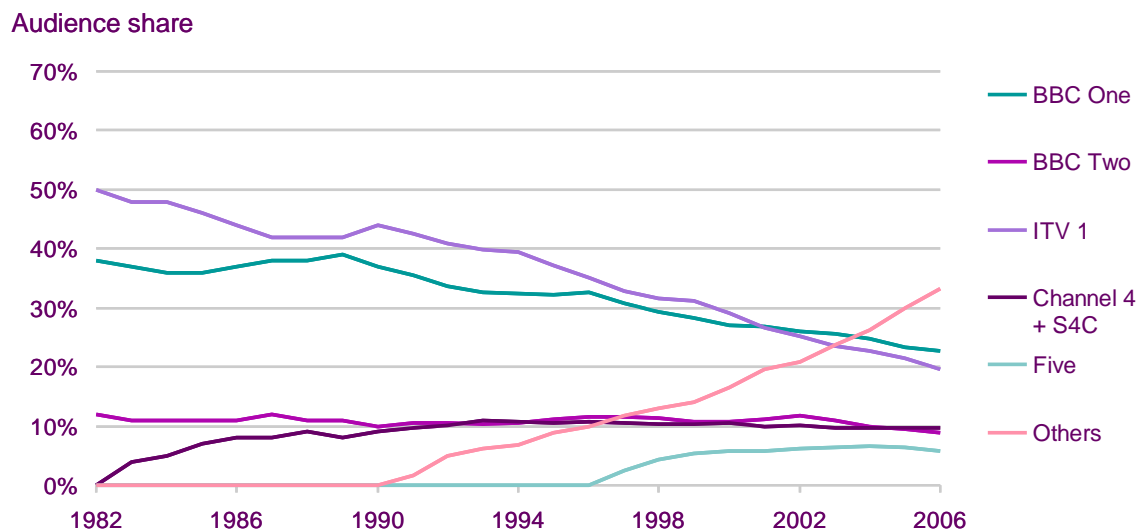


Source: Ofcom, *Communications Market Report 2007*
Note: 'Others' refers to the multi-channel operators


## Growth in the independent production sector

In addition to examining a broadcasting company, this thesis examines the inner workings of an independent production company, which was founded during a period of rapid expansion in the sector that came alongside the growth in television channels.

Prior to the establishment of Channel 4 in 1982, programmes were almost entirely produced 'in-house' by broadcasters. To stimulate the expansion of the independent production sector, Channel 4 was mandated by an Act of Parliament to rely solely on external production facilities. That development planted the seeds for the enlargement of the sector, which was later bolstered by the Broadcasting Act 1990 which required public service broadcasters to 'outsource' at least 25% of their programming to independents.

The Audiovisual Media Services Directive was also introduced; it required that Member States "ensure that, where practicable and by appropriate means, at least 10% of the transmission time of broadcasters established in the Member State is reserved for European works by producers who are independent of broadcasters; alternatively, that 10% of the broadcaster's programming budget is spent on independent productions" (Article 5(1); Ofcom, 2004d: p. 3). Given that this included all broadcasters, not just PSBs, the consequence was a promise of many additional commissions to independent producers.

With such measures in effect, by 2006 (during my examination of Ofcom) the sector had expanded to over 800 production companies which generated £1.69bn in revenue over the year. As the sector began to mature, one could see a concentration of businesses, as the largest companies expanded and consumed their competition through mergers and acquisitions. After a period of concentration, the largest companies dominated the market as their revenues soared above those of their smaller competitors.

Reflecting this trend, Figure 8 shows production companies' turnover by revenue band: the highest earners, those making £20m or more per year, experienced the greatest increase in revenue between 2005 and 2006, up 43% to £1.2bn. These few companies grew rapidly through merger and acquisition activity, and held the greatest economic share, while most small and mid-sized independents suffered financial losses which put them under greater pressure to generate revenue in order to survive the increasingly competitive market.

**Figure 8: Independent production company turnover by revenue band**

Turnover £m
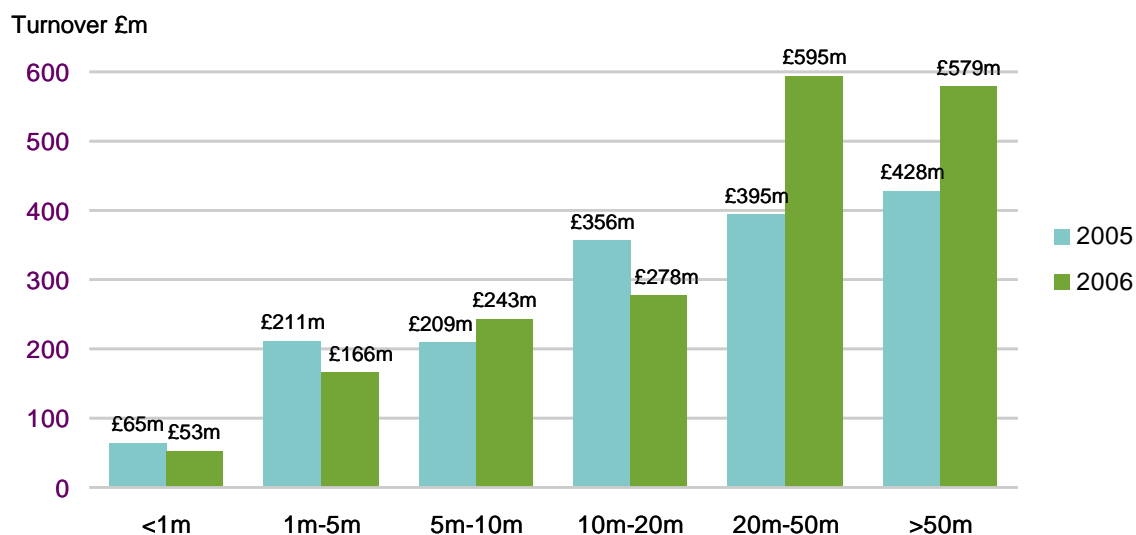


Source: Ofcom, *Communications Market Report 2007*

(It is important to flag this matter because the production company I examined was a mid-sized producer which, despite the losses suffered by its peers, grew to become one of the 100 highest-earning independent producers in the industry. How it approached the competition and carried out its business will be discussed in Chapter Five.)

This increase in competition had a 'knock-on' effect on various aspects of the industry, and the shape of the industry's employment structure and of television content in particular. An understanding of its effect is useful because it helps to explain why the production company I examined functioned the way it did.

**Changes in television's employment structure**

The rise in competition caused a shift in the television employment sector, which was readily visible in the television companies I studied. It became ever more difficult to gain employment in the sector, as an increasing number of individuals wanted to work in the field, and there was less job security, as many permanent positions had been replaced with short-term, freelance posts. It was (and still is) common to work extensive hours, without overtime pay, and salaries were often minimal for low-level employees and non-existent for interns. In other words, the sector faced an excess supply of would-be employees who were willing to accept few rewards simply to be a part of the industry. The Trades Union Congress (TUC) reported in February 2008:

The TUC has found that people working in the media, including journalists, public relations officers, photographers and broadcasters, are fifty percent more likely to work unpaid overtime as the rest of the working population, making the industry one of the worst offenders when it comes to unpaid overtime. Four in ten (40.3%) media professionals work an average of six hours 42 minutes unpaid overtime every week, worth £5,884 a year per person. Across the sector, 49,000 employees are working unpaid overtime, worth a total of £288 million a year.

Part of the intensification of work resulted from the expectation that employees would perform 'multi-skilled' jobs in which they served in multiple roles within their given position, such as a producer, editor and camera operator. Employees were able to serve in these different capacities as improvements in production technology have enabled employers to harness better the potential of workers (Ursell, 2001; see also Sparks, 1991; Bromley, 1997).

Collectively this shift led to an environment which required long working hours, while offered minimal pay, little job security, and few benefits, if any (Saundry, 2002; see also Ursell, 2001). This served to intensify the competition and working pressure within the industry.

**Changes in television content**

The shifts in the television market also led to changes in the shape of the production of media material and consumption of content. Figure 9 is a summary of the total hours of content that PSB terrestrial channels transmitted by genre between 2002 and 2006. Using Ofcom's classification system (see Appendix 2), on average, the number of hours of entertainment-based genres rose, while those of the more informative genres gradually declined.

Specifically, there was a 33% increase in the number of hours of general factual and entertainment programming. As a consequence, the hours of children's programming declined by 11%, education by 9% and sport 7%. News experienced a fluctuation in hours, as the amount broadcast in 2006 was 2% lower than that in 2002, and 12% lower than in 2005.

During peak-time (6pm – 11pm), when viewing is often at its highest, hours of general factual, entertainment and drama accounted for 70% of all output, while more education-based content accounted for a relatively small proportion of the schedule. These shifts represent what some might refer to as the 'dumbing-down' of programme content.

**Figure 9: 24-hour output for terrestrial PSB channels**

Hours

| Year | 2002 | 2003 | 2004 | 2005 | 2006 |
|------|------|------|------|------|------|
| Total | 83,965 | 84,745 | 85,294 | 85,181 | 86,156 |
| General Factual | 6141 | 6717 | 6983 | 7867 | 8189 |
| Drama | 5184 | 4934 | 4863 | 4677 | 5400 |
| Sport | 5017 | 4467 | 4747 | 4235 | 4663 |
| Entertainment | 5114 | 5600 | 5813 | 5213 | 6819 |
| Films | 5525 | 5479 | 5296 | 5533 | 3905 |
| Education | 2529 | 2350 | 2385 | 2377 | 2303 |
| Children's | 4920 | 5088 | 4984 | 4633 | 4387 |
| Current Affairs | 1526 | 1534 | 1091 | 1154 | 1536 |
| News | 5093 | 5245 | 5608 | 5663 | 4994 |

Source: Ofcom, 2007

Figure 10 shows that multichannel operators came to dominate the broadcast schedule by airing over 700,000 hours of output in 2006, up a significant 28% from 2005. This accounted for 80% of the industry's total hours of transmission.

The entertainment genre represented the largest proportion of this total. It accounted for 241,000 hours in 2006 – a significant 19% increase from 2005 – and represented 35 times more hours of programming than the five terrestrial channels combined produced. Ofcom also noted that the number of entertainment channels doubled in number between 2002 and 2007 to 31.

**Figure 10: Hours of output by multichannel operators**

Hours in thousands
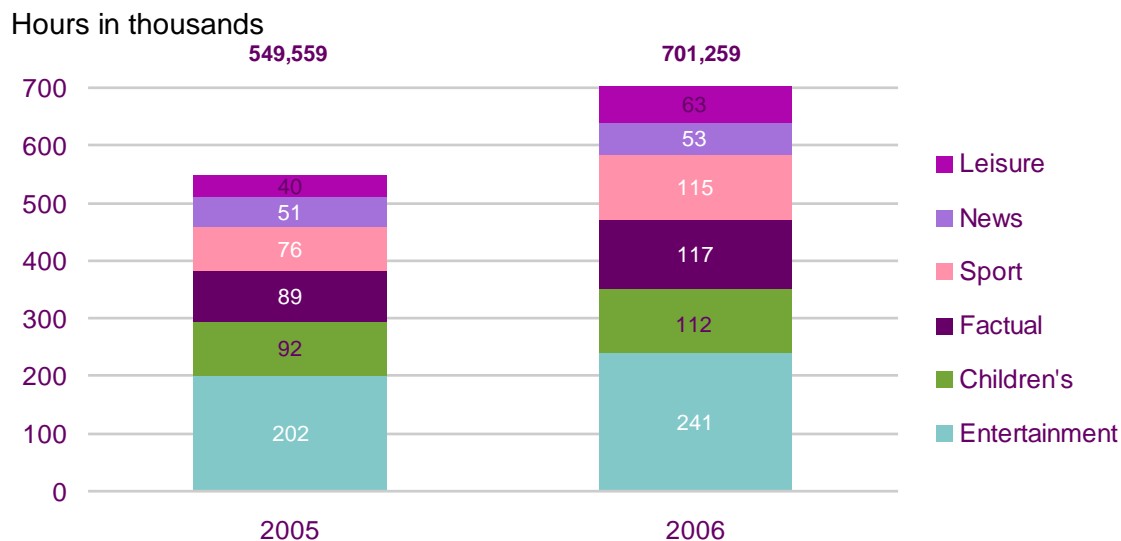


Source: Ofcom, *Communications Market Report 2007*

Figure 11 displays the viewing share of the different genres across those homes with multichannel television (e.g. digital terrestrial television (DTT), cable or satellite). Consistent with the previous chart, it shows that there was a significant increase in the share of the entertainment genre and its popularity over the other genres. The growth of this style of programming reflects the commercialisation of content, as broadcasters have (and continue to) respond to audience demand by providing more entertainment-based rather than information-based content.

**Figure 11: Aggregate share of channel genres in multichannel homes**

Audience share



Source: Ofcom, *Communications Market Report 2007*

75
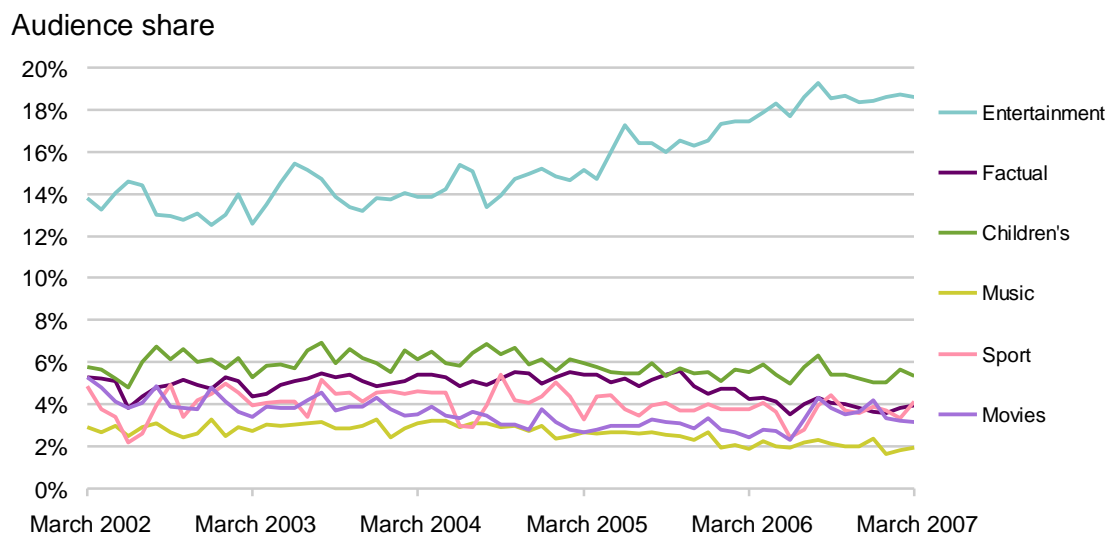
This chapter has statistically verified (using Ofcom's own data) the age old claim that content has become more commercially geared, as entertainment-based programming has increasingly dominated the schedule and viewing share in multichannel homes. Meanwhile, multichannel operators have accounted for an increasing proportion of total television revenue, viewing share and hours of output.

The television companies I examined optimised these changes in the market, as the series I followed was a low-budget, entertainment-based programme, commissioned by a non-PSB multichannel broadcaster and produced by an independent production company, which struggled to survive in the competitive market.

I chose to examine a non-PSB multichannel operator because these broadcasters had (and continue to have) an increasing level of influence over the direction of the market, the evolving shape of content, and the media messages that viewers receive. Additionally, it was important to examine television content within the entertainment genre as the majority of the analyses like mine of content production have examined the news (e.g. Elliot 1989; Borden and Pritchard 1997; Voakes 1997, 1998; Daniel 2000; Linden, 2010; Luljak, 2000; Phillips, 2010; Smith, 2011), not entertainment-based programming (such as Grindstaff 2002 did), despite its clear, and growing, dominance over all other genres in terms of audience share.

The features I have noted here have therefore laid out the organisational history and regulatory framework that underpin the central theme of this thesis. With this said, I shall now explain my methodological approach.

# Chapter 4

## Methodology

While the previous chapter provided a general background, this chapter will explain my research approach, which includes a three-part qualitative study that traced a television series throughout its life-cycle. The first part involved an ethnography of the making of the television series, *Agony II,* by the television production company, Envision. Part two consisted of interviews with staff at Entertainu, the funding broadcaster, during the transmission of the series. Part three encompassed an ethnography of the regulator, Ofcom, during the time it received and investigated audiences' complaints about the series. (The names used for the series and channels are pseudonyms to protect the identities of those involved.)

Before discussing these three segments, I shall discuss my core research method, the ethnography, along with my use of reflexive analysis and some ethical considerations that needed to be made during the study.

### **An ethnographic approach**

Ethnography is defined as "the scientific description of peoples and cultures" (*Oxford English Dictionary*, 2003). The method was first used by Malinowski in his *Argonauts of the Western Pacific*, a study of Trobriand Islanders in 1914. He stated that the goal of an ethnographer is "to grasp the native's point of view, his relation to life, to realize *his* vision of *his* world" (1922: p. 25). The ethnographic method has since been widely adopted throughout the field of sociology and has evolved to represent a qualitative approach in its various forms.

I used the ethnographic method to gain an incisive understanding of producers' and regulators' social worlds, their processes, their members' behaviours and beliefs, their relationships with their peers and with each other, and of how these elements were comprehended and experienced by those involved (Rosenberg, 1999).

Following the routines of 'participant observation', I immersed myself in production and regulation environments for extended periods to learn about the companies' cultures through participating in their activities and observing their settings, staff and procedures. Informal

conversations and interviews were also used to gather information, alongside the collection of related documents that helped to explain the groups (Graue, 1997).

I aimed to enter the field unconstrained by a predetermined "mind-set" or "goal-set", so as not to be limited by pre-existing beliefs about my data and findings (Ball and Ormerod 1999: p. 406). Rather, I sought to work with an open mind and to allow my own experience and my viewing and discussing of others' experiences inductively to shape my understanding of the social worlds (see Glaser and Strauss, 1968).

I therefore attempted, as far as I was able, to remain flexible and responsive, observing events as they unfolded and charting interesting processes over time. This shaped my research direction and the themes I selected for exploration. It also allowed for my research questions to emerge as the ethnography progressed, and the data I collected to shape my understanding of the environments. (For instance, I did not enter Envision expecting to find acts of regulatory non-compliance or even anticipating to discuss the topic of regulation. In my investigation of the production company, the topic of non-compliance, however, crept up almost daily and therefore appeared to be the most important matter to address academically.)[24]

The benefits of the ethnographic method

The benefit of the ethnographic method is that it allowed me to see the complexity and inner workings of the organisations I examined; something that was not readily visible to outsiders (Jorgensen, 1989). I was able to partake in working practices which allowed me to understand how actors operated, what factors influenced the decisions they made and how these decisions affected the shape of media content and regulation. In the process of doing this I was able to examine regulators and television-makers in their natural, unedited setting and this offered insight into their organisational culture – a factor that has been found to shape individuals' attitudes and actions, both generally and in relation to their compliance behaviour

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[24] To illustrate this point, coincidentally I bumped into one of the series producers at the production company I studied. I had not seen him since I conducted the ethnography at Envision roughly five years before. One of his peers who was with him asked me how I knew him and what I did for work. After I explained that I was doing a PhD and met the producer while conducting my fieldwork at Envision, she replied, 'I take it that you are examining illegal broadcast content then'. Surprised by what she said, I asked why she assumed that and she replied 'Well, if you were working at Envision that would be the most obvious topic to examine', indicating that she perceived the organisation as overtly rule evading in nature.

(Bandura, 1969; Vogel, 1974; Geerken and Gove, 1975; Braithwaite and Geis, 1982; Akers, 1985; Witte and Woodbury, 1985; Victor and Cullen, 1988; Hutter, 1989; Makkaira and Braithwaite, 1993; and Nie, 2008). The approach also offered insight into otherwise hidden influences, power dynamics and tensions which were likely to go undiscovered by other methodologies, such as the behind the scene influence that management had over employees' decisions (Van Maanen, 1979; Jorgensen, 1989; Snow, 1999).

As noted, I conducted ethnographies at the production company and Ofcom. In terms of the production company, I worked alongside producers, tackling the same challenges and undergoing the same struggles that they did, and so I became viewed as one of their peers rather than just as an academic researcher. This transformation enabled me to develop lines of trust with them, and open the door of communication to allow them to express sentiments about sensitive topics, such as compliance, ethics and violent imagery. It led to findings which would probably not have been revealed through more formal interviews or questionnaires alone, as participants would have been unlikely to disclose such sensitive, and rule infringing, information – and certainly not to a stranger.

I was thereby equipped to see the complex web of factors that influenced producers' compliance behaviour. Beyond simply examining *whether* they breached the regulations, I was able to explain *why* they behaved the way they did. Did they wilfully breach the rules, did they do so by accident, did they do so because they faced a number of constraints which led them to believe that non-compliance was their only option, or did they do so because of a mixture of these elements?

Like the television environment, the regulatory environment was also best examined through longstanding immersion in the field. Working at Ofcom helped me to understand the background to the enforcement of television standards. It permitted me to learn about the organisation's statutory obligations, the regulators' approach to researching the needs and dynamics of markets and consumers, and how these (and other) factors influenced their formation and implementation of policy. It enabled me to grasp the complexities and tensions associated with their decisions and procedures, and it brought to light questions and answers I could have not known existed had I not been embedded in the setting.

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XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXX          TEXT OMITTED FOR CONFIDENTIALITY PURPOSES          XXXXXXXXX
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An ethnographic approach would have also been the most fruitful approach for exploring the world of the broadcaster. However, in-depth interviews were used as a substitute due to the study's time constraints and the difficulty in obtaining long-term access to the broadcaster. I was able to conduct the ethnography at Envision because I obtained employment there. Shortly after, I gained a job at Ofcom to conduct a second ethnography. It was not feasible to obtain a third position with the broadcaster, as there were no appropriate positions available at the time and I felt that the data available at Ofcom were so useful that they outweighed the benefits of ending the research and relocating employment.

Addressing the weaknesses of the ethnographic approach

There are strengths and weaknesses in every social research method. When conducting a study, the aim is to select the method best suited to collect the desired data. The researcher should then tailor his/her approach to address and accommodate the method's weaknesses.

I selected the ethnographic method because it allowed me to probe intricate environments and social networks. But such work always trades generalisability for intensity. I was necessarily limited to examining a single production company so my findings at Envision cannot be generalized to the industry as a whole. In an attempt partially to remedy this deficiency, I also examined numerous infractions that were brought to Ofcom's attention to compare my findings at Envision with other compliance cases as to detect whether certain forms of behaviour were unique or common.

There were also inevitable difficulties in accurately understanding and reflecting different participants' perceptions. To tackle this issue I used techniques to enable participants freely to define themselves, their roles and their social settings (Stanley and Wise, 1983), by employing open-ended questions which allowed peoples' opinions to be liberally expressed without being influenced by my own opinions or statements. Interviewees' comments were often included

*verbatim* in the thesis to avoid my having to reconstruct them, with the accompanying risk of altering their meaning. Systematic checks with participants were also conducted to clarify and ensure the accuracy of statements. I furthermore took pains to pay meticulous attention to note-taking and to validating the data/findings with participants.

A final drawback of the ethnographic approach is that, because the researcher becomes a part of the environment, he or she naturally affects and influences the thoughts and actions of those under examination. Researchers' subjectivity can influence their selection of the subject matter and interpretation of data. Their presence can also have an impact on their surroundings, other individuals' behaviours and ultimately the research findings. It is therefore important that a researcher considers the impression that he/she has made on their environment – and I attempted to do so through the use of reflexive analysis.

**Reflexive analysis**

Reflexivity is defined by Linda Finlay (2002) as:

> [A] thoughtful, conscious self-awareness. Reflexive analysis in research encompasses continual evaluation of subjective response, in intersubjective dynamics, and the research process itself. It involves a shift in our understanding of data collection from something objective that is accomplished through detached scrutiny of 'what I know and how I know it' to recognizing how we actively construct our knowledge. 'The reflexive ethnographer does not simply report 'facts' or 'truths' but actively constructs interpretations of his or her experiences in the field and then questions how those interpretations came about' (Hertz, 1997, p. viii) (p. 532).

Although subjectivity is an indispensable feature in social life, it was also important that I attempted to enter the field with something of an approximation to an objective mind-frame and recognize the effect that my preconceived ideas may have had on my research (see also Schutz 1967; Harrington, 2000.)

I therefore tried to make subjectivity problematic and use it to my advantage. I also attempted to address my loss of analytic distance by treating data as problematic, and by periodically retiring from the field and discussing situations with others, so as to attain some distance and

perspective on the experiences I had had. I then returned to the field and discussed shared sensibilities, and common understandings and patterns of actions with members of the group.

In an effort to think reflexively, I considered my interest in and assumptions about the data, and how they may have influenced the research in particular directions (Finlay, 2002). Take my nationality as an instance. I am American and therefore upon commencing this study I was more familiar with the parameters of acceptable television content in the United States than in the United Kingdom. At the time I did not adequately understand the British population's sensitivity to television violence and did not want to make false assumptions, so I relied on social research and the judgement of experts during my examination to avoid allowing an American understanding of 'acceptable' or 'standard' broadcast content to affect the way I collected and processed data.[25] By understanding and addressing how my interpretation could affect the data, I improved my ability to generate accurate findings (see also Lather 2001).

My foreign 'outsider' perspective also brought advantages to the research. It meant that I had a fresh, uncontaminated view of the material. I had few preconceptions about the United Kingdom's television industry and its regulation, and this may have helped to illuminate practices, patterns, embedded presumptions and social structures that would not have been as readily visible to native eyes (see also Simmel, 2002).

Playing the naive outsider encouraged interviewees to explain their procedures and culture, and the industry to me in greater depth. Had I been native to the industry, individuals would have likely assumed that I was already aware of these things and glossed over them. Being an 'outsider' however meant that respondents could make fewer assumptions about my background, my knowledge, thoughts or research motivations (see also Robb, 1954).

Some individuals, particularly in the production environment, also used our time speaking as an open confessional, revealing far more about their experiences than I had expected (see also Simmel, 2002). Part of this openness stemmed from their desire to relieve pent-up work-related stress before a friendly and readily listening audience, and part related to their desire

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[25] For example, the television-makers I examined routinely had to make judgements about whether or not particular scenes of violence were permissible. Rather than relying on my own opinions, which were coloured by the television programming I watched in my home country, I asked those in the industry to explain why certain programmes were deemed contentious. I also examined the numerous studies broadcast regulators had conducted about public attitudes towards television violence. This enabled me to separate better my opinions from the more relevant opinions of those concerned.

that I, a stranger, should understand the tough realities of an industry that was often viewed by outsiders as glamorous.

As my employment at Ofcom spanned over four years, I was susceptible to losing this objective view of the setting over time, of 'going native'. To prevent this, I continually attempted to think critically about events and to return periodically to an academic mind-set. I reviewed the detailed notes I had taken of my experiences as I wrote my thesis, which enabled me to recapture my thoughts and feelings at different stages in the research process. I also made individuals aware that I was conducting an academic study and, since many people wanted to help me in this process, they were willing to discuss my research with me in an on-going manner. This enabled me to return frequently to my academic mind-frame.

Although being self-aware is an important feature in reflexive analysis, I also knew that researchers cannot be entirely aware of themselves at all times, especially when playing a participatory role. As I had obtained access to the environments by accepting posts within them, I had to divide my attention between analysing the environments and performing my professional roles. Although this situation gave me a relatively naturalistic view of events, it sometimes impaired my ability to think self-consciously about my interpretation of events and how my presence might have influenced others. I therefore took to analysing situations prospectively and retrospectively, and to checking my findings with others in the field to ensure that they received some endorsement.[26]

**Ethical considerations**

This project dealt with sensitive information surrounding companies' non-compliance, and so I was obliged to build ethical considerations into the research plan to protect the interests of participants as to ensure better their involvement. I therefore altered the description of the programmes to conceal their identities and anonymised all participants, both in the writing of this thesis and in my communication between the organisations.[27]

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[26] One's self examination can also lead to the problem of not knowing when to stop the cycle of analysing one's self analysing situations. My decision to validate my findings with a range of people helped to address this issue, and kept me from focusing unduly on reflexive analysis.

[27] For a fuller discussion of such ethical elements see Burgess, 1985; Murphy and Dingwall, 2001.

This rendered Ofcom unable to investigate the non-compliant acts of the producers or broadcasters I examined, because they did not know their identities. I also did not discuss the inner workings of the regulator with the television-makers, nor the way that they dealt with their compliance infractions, both out of a desire to retain confidentiality and to keep the data free of contamination. I was furthermore not in a position where I could have explained these matters to the television-makers, because I examined Ofcom after my discussions with them and therefore, at the time, I could not have revealed any information to them that was not already in the public domain.

In line with this, given the sensitivity surrounding regulatory matters, I kept various aspects of the regulatory process confidential, even in the writing of this thesis.[28] I made these amendments to my thesis without jeopardising the integrity of the data.

I also informed those who I worked with that I was a PhD student studying television regulation. The objectives of the research were also revealed to the producers, broadcasters and regulators upon my initial meeting with them, and they were discussed at various points thereafter as my research focus evolved. Prior to the interviews, I also explained what types of questions I was going to ask and what I hoped to gain from their contribution. I informed them that I was going to tape record the interviews so that I could turn to them at later dates for information. I also relayed that every individual was going to remain anonymous, and that all names and programme titles were going to be changed to avoid external identification. I took these measures to allow participants to feel comfortable to talk about sensitive topics that they might otherwise not discuss. In return, many of the participants were willing to disclose sensitive compliance information with me, on the basis of an understanding that I was not going to relay such information to the regulator.

Lastly, while conducting the fieldwork at Envision, I was confronted with and invited to partake in unethical practices on numerous occasions. For instance, producers were instructed by management to deceive individuals about the nature of the series in production to get them to agree to interviews. In these instances I opted to behave as I was instructed, in the belief that to have done otherwise would have compromised my employment at the organisation and imperilled the research.

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[28] For instance, I did not reveal sensitive information about specific companies which was not already in the public domain.

Individuals who investigate crime, deviance and regulation almost always confront instances of rule-breaking which, were they to report it, would likely sour relations between the researchers and researched, and bring all research in the area to an abrupt halt. It is the business of the researcher to work dispassionately, observing, reporting and analysing without judging or interfering (unless, of course, one witnesses something as deviant as child abuse for instance) (Douglas, 1970). Researchers can then, as I have aimed to do, use their findings to shed light on the deviant practices they witnessed, so that they might be addressed more widely. In this instance, I therefore believed that the contribution this research could make to the field would outweigh the cost of my actions.

## Part 1: Examining an independent production company

The first segment of my study included a five-month long ethnography of the television production company, Envision. There I was employed as a researcher, assisting in the production of *Agony II* for the broadcaster Entertainu and *Violent Rage* for VSTV (both pseudo names). The access to Envision was secured by obtaining an internship, which I found via the internet.

The internship was for one month only, so it became my objective to gain a freelance position in order to continue the research. I tried to gain employment with *Agony II* as it appeared most in need of assistance and therefore its producers seemed most likely to hire me. My strategy was to understand the employees' duties and decision-making processes to establish who had the greatest overall knowledge and the power to hire staff.

After identifying the series producer as the key figure on *Agony II*, I began spending a substantial amount of time assisting her and her staff. She noticed the long (12 to 14 hour) days I had been working and hired me within a month to work as a researcher for four to six days a week, with hours ranging between 50 and 90 per week. This allowed me to witness the programme's entire production process, as I began when it started and left when it was complete. She also served as a gatekeeper to different branches of production usually inaccessible to researchers, such as the editing, shooting and interviewing processes, and this allowed me to develop relationships with the producer, editors and camera operators. After I

had established a rapport with colleagues, I was able to question them about their work and request formal interviews.

My initial goal when I entered the field had been to examine television portrayals of violence towards women, as the two programmes I had worked on showed extensive amounts of violence. However, my research direction shifted as the topic of regulatory compliance and ethical practice emerged as a more fruitful and important subject matter. Given this unanticipated shift, I carried out the ethnography before undertaking a regulation-based literature review. This enabled me to be open-minded, allowing the environment to shape my understanding of pertinent subjects and leading me in turn to the formulation of findings based on an accumulation of data-led empirical evidence, rather than to findings influenced by pre-existing notions or theories. After examining my findings, I identified the literature that pertained to my research and reviewed it whilst I conducted my review of the broadcaster and regulator. This gave me a framework for better understanding and scoping my topic.

My questions about regulatory compliance evolved over time and became woven into a comprehensive description both of the television environment, and of the production and broadcasting processes. My knowledge of the field increased alongside my ability to become integrated into the various working communities, earning employees' trust and building social ties through the *camaraderie* of spending long hours in an office and on filming assignments with them.

I initially chose to appear friendly, conversational and unbiased, and tried not to give a strong indication of my own opinions (see also Selltiz, 1965; Sjoberg and Nett, 1968). Toward the end of the ethnography, after I had gained colleagues' trust, I did share some of those opinions and feelings to deepen my level of conversation with colleagues. This led them to express their own thoughts about sensitive issues, such as how they were treated as employees and how they felt about working with very violent content.

The combination of situational opportunities and the use of different approaches to gather data enabled me to learn about the various areas I needed to understand to engage with the topic of regulatory compliance. Broadly speaking, this included an examination of:

- the producers' programming-making and regulatory objectives/responsibilities;

- how they pursued these objectives and responsibilities;
- what factors influenced the manner in which they pursued these objectives and responsibilities; and
- what their decisions/actions revealed about the nature of regulatory compliance and weakness.

To explore these areas I: kept a detailed daily journal of my observations of the company's activities; participated in the creation of its television series through researching programme topics; observed the editing and filming of the series; and collected and analysed various documents and correspondence. As my time at the organisation progressed, I also conducted numerous informal and formal, in-depth interviews with staff at all levels, including researchers, editors, assistant and series producers, camera operators, a production manager, the production director, the head of development and the president of the company. This constituted nearly every member of staff, almost 15 people. For a description of the individuals I interviewed and an example of the types of questions I asked, see Appendix One.

**Part 2: Examining a broadcaster**

I next explored the process of commissioning programmes and enforcing regulatory compliance by the broadcaster, Entertainu. I gained access to employees of Entertainu through my relationship with Envision. The series producer recommended that I contact Envision's commissioning editor to request an interview. She agreed to meet and then arranged for me to interview the manager and programme viewer in their compliance department. Members of the compliance department reviewed all content prior to its broadcast and were responsible for ensuring that it met relevant regulations. The manager oversaw the department and handled the correspondence surrounding contentious content with the regulator, while the programme viewer examined content for compliance errors and instructed production-makers of how to remedy them. In the interviews I explored:

- the broadcasters' programme-making and regulatory objectives/responsibilities;
- how they pursued these objectives and responsibilities;
- what factors influenced their chosen approach; and
- what their decisions/actions revealed about the nature of regulatory compliance and weakness.

Furthermore, I observed the programme being edited, and formally and informally questioned the editors and producer about their discussions with the broadcasters. I monitored the correspondence between the broadcaster and the production company, which discussed the content in *Agony II* that the broadcaster asked the production company to augment or remove in order to comply with regulation.

I was also permitted to examine the previous correspondence between the broadcaster and the regulator. This included documents which discussed how the prequel to the series I had worked on, *Agony*, had breached the regulatory rules, Ofcom's consideration of whether *Agony II* may have also breached the rules, and how the broadcaster and the regulator negotiated these matters. Reading those papers gave me insight into the compliance process and the dynamics of the relationship between the broadcaster and the regulator. The information I found in the correspondence, along with the supporting interviews, was particularly helpful in allowing me to determine what impact the reprimand relating to the first series had had on the compliance measures taken in the second.

**Part 3: Examining the regulator, Ofcom**

This section has been omitted for confidentiality purposes.

**Data analysis**

This takes me now to a discussion of how I analysed my data. As noted, my research attempted to understand how individuals at each stage of the production, broadcast and regulation enforcement process made decisions about the selection, shape and compliance of programme content; what factors influenced their decisions; and what the subsequent effects of their decisions were.

In order to analyse the data that I collected, I reviewed my journal notes (which outlined my daily observations), my interview transcripts and other key documents that I found to be useful tools to explain the situations I examined (e.g. company documents, compliance case literature, etc). I also reviewed the relevant media/regulation literature to understand the external factors that helped to shape the dynamics of the environment (e.g. changes in politics, advancements in technology, etc.).

I categorised my findings under themes which helped me to understand the television-makers' and regulators' common forms of behaviour. Once I was able to establish patterns in their behaviour, I examined the data to identify what factors appeared to shape their conduct. (For instance, I noted the different ways in which the producers commonly breached the regulations and the variety of reasons that they used to explain why they behaved the way they did.)

To confirm the accuracy of my findings, I arranged formal and informal interviews with participants at each organisation to review the data and cross-check colleagues' statements.

In a manner resembling the approach of Shoemaker and Reese (1996), users of the gatekeeping method, I then arrayed my findings into a hierarchal model which outlined the elements that influenced actors' decisions (see also Shoemaker and Vos, 2009). While Shoemaker and Reese's model included five levels, I used a simplified version, based on three levels. The first was the *individual level* - which included the influence of an individual and his or her characteristics on a decision-making process (e.g. the influence that a person's unique set of ethics, tastes, values, etc. had on their decision-making) (see also Kahneman, Slovic and Tversky, 1982). The second was the *organisational level*, which included the influence of organisational norms, practices, routines and culture on decision-making (see also Bantz, 1990). The third, the *external factors level,* accounted for the influence of external structures and forces on decision-making (e.g. market forces, technological advancements, political and regulatory shifts, ideology, etc.) (see also Donohue, Olien and Tichenor, 1989; Kuhn, 2002; Skewes, 2007) (Figure 12).

**Figure 12: Hierarchical model of the levels that influence decision-making**
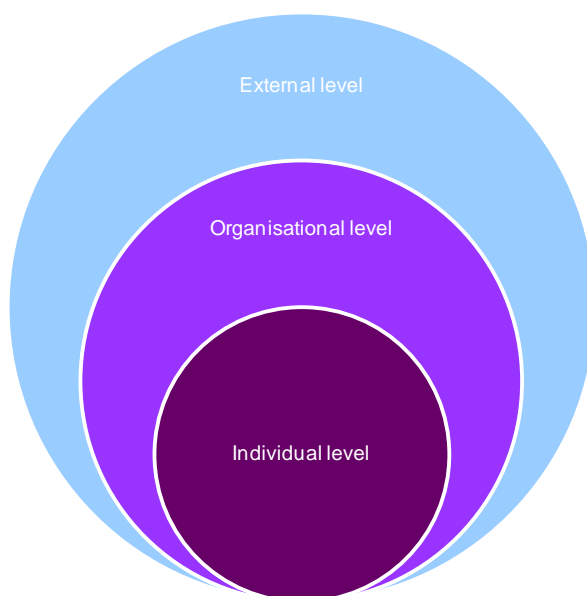


While various researchers have adopted a similar model and analysed situations on single levels of this spectrum, my own work identified influential factors across the spectrum and made links between them.[29] This has allowed me to reveal how factors at one level have influenced decision-making at other levels, thereby explaining better the source and working of influences. (For instance, it shows how environmental factors (e.g. changes in regulation, politics and technology) have filtered down and influenced television-makers' day-to-day decisions about content and regulatory compliance.)

My identification of aspects across the hierarchical model and my method of making connections between them, answers the call from Shoemaker and Vos (2009) for such work to be done to fill a gap in the media gatekeeping literature (see also Ferree, 2002; Benson and Neveu, 2005; Shoemaker and Reese, 1996). It also fulfils their request for further research to examine how environmental factors shape media-practitioners' decisions about content.

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[29] This highlights the benefit of the ethnography method, which enabled me to be saturated into the environments I studied for nearly five years to learn their 'ins and outs' in detail.

**<u>Conclusion</u>**

In summary, my research method was an amalgam of observational, documentary and interview techniques targeted at three organisations. The first part included a five-month ethnography of a production company. The second involved interviews with members of the compliance and commissioning teams at the sponsoring television channel. The third involved a long-term ethnographic study of the regulator.

I shall now move on to the next chapter, which introduces the first segment of the research, the ethnography of the production company. Through my exploration of a television series throughout its production life-cycle, I shall explain how programme-makers pushed the boundaries of permissible graphic content and skirted around regulatory rules when faced with intense work-related pressure stemming from, amongst other things, an increasingly competitive market.

# Chapter 5

## The Independent Production Company

This chapter discusses the findings from a case study of one independent production company which had aimed to circumvent the 'content standards regulations' and 'push the boundaries' of permissible violent content.[30] While Ofcom was established to develop and enforce guidelines (or limits) to protect citizens from 'harmful' and 'offensive' content and 'unfair' treatment, the producers working in the company aimed both to bypass and extend those limits.[31]

The chapter has been laid out as a step-by-step analysis of the process of television production, from commissioning, to story-gathering, filming, editing and compliance checking. Analysing this process revealed the employees' practical understanding of their roles and responsibilities, and allowed for a greater awareness of how individual, organisational and external factors, such as the company's organisational culture and technological advances in production technology, influenced the way content was created and regulatory compliance was managed. My intention is to describe the micro and macro level factors that influenced the producers' compliance decisions, how they interlinked and what the subsequent regulatory effect was.

Theoretically speaking, I shall also show how the producers were faced with conflicting economic/programme-making objectives and regulatory responsibilities, and how, given these variety of factors, they felt compelled to prioritise their economic/programme-making objectives, and collectively practice non-compliance, 'creative compliance' and 'rule reinterpretation'. These acts were widespread and routine, as the producers frequently treated programme contributors in a manner that would likely be deemed 'unfair' by the regulatory rules. They also developed techniques to circumvent the content standards rules and effectively extend the limits of permissible graphic content.

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[30] The organisation's claim to 'push the boundaries' or permissible content was stated by its production director, who oversee the creation of all television series produced within the company.
[31] To protect the confidentiality of those involved, the names, titles and identifying details of all individuals, organisations and programmes have been changed with the exception of the organisational identification of Ofcom. This has been done without compromising the integrity of the analysis.

Producers made these choices much as the rational choice-based theories, rational choice institutionalism and the 'amoral calculator' typology, would suggest they might, by loosely weighing the presumed costs and benefits of different courses of action, and pursuing the most advantageous option (Kagan and Scholz, 1984; Hechter, 1987; Shoemaker and Vos, 2009).

The 'costs' in this equation equalled their anticipated likelihood of getting caught and penalised by the regulator, a likelihood which they presumed to be either low or impossible. The 'benefits' included completing the series on time and to budget, which enhanced the individuals' and the organisation's reputations for successful project delivery and thereby their economic positions. These decisions were also made within the context of an institutionalised organisational culture which not only condoned, but promoted, regulatory non-compliance (which relates to sociological institutionalism).

Individuals' rule infringements also stemmed from, amongst other things, an insufficient, sometimes calculatedly insufficient, knowledge of the rules and an inability to calculate regulatory risks effectively, which reflected an interesting mix of Kagan and Scholz's 'corporation as incompetent' and 'amoral calculator' ideal types.

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 **An introduction to the production company**

Chapter Three described various macro level changes which had occurred over the last several decades and dramatically altered the shape of the television industry, such as advances in technology and shifts in politics. This led to the rapid growth, diversification and deregulation of the television market. With this came a rise in multichannel operators, such as Entertainu, and independent producers, such as Envision, along with a significant increase in competition pressures. These pressures encouraged television-makers to pursue ratings by commercialising content and making it more entertainment-based, exemplified by the rise in 'tabloid' and 'reality' television; the type of programming discussed in this chapter (Grabe, et al 2000).

Envision was a small to mid-sized independent producer with roughly seven permanent and 15 freelance staff. It was founded in 1999, alongside numerous other similarly sized producers, and filled a niche in the television industry by creating low-cost so-called 'tabloid' programming which often revolved around sexual, violent or 'humorous' content delivered through what was conceived to be an 'alternative', boundary-pushing style.

The programmes Envision created frequently resembled *Jackass*, *Dirty Sanchez* and *World's Wildest Police Videos*, all of which targeted a young adult male audience. (*Jackass* and *Dirty Sanchez* were programmes that were intended to amuse and shock audiences through their display of individuals performing 'humorous' or harmful stunts, such as nailing one's genitalia to a piece of wood or piercing one's buttocks together. *World's Wildest Police Videos* was about police chases: the programme used real-life footage of police officers in pursuit of suspected criminals.)

Envision grew appreciably in the early 2000s as the commercial demand for reality television's 'caught on camera' programming such as *COPS* and *American's Funniest Home Videos* increased in popularity. It was a trend that had begun in the 1980s as technological developments, coupled with deregulation, began to diminish the exclusive power of strong terrestrial networks and brought "new patterns of production and distribution that further encouraged the tabloid trend in news and also prompted the rise of reality-based programming" (Grindstaff, 2002: p. 50; see also Raphael, 1997). This growth led Envision to become one of the top 100 ranked independent production companies in the United Kingdom (*Broadcast,* 2006).

I reported that my ethnographic work at Envision, which spanned a five-month period between December 2003 and March 2004, captured the behind-the-scenes practices of production-makers in the midst of this 'tabloid' trend. Access to the company was gained through my acceptance of a work experience position, which allowed me to participate in and observe the production of two tabloid series which I have entitled *Agony II* and *Violent Rage*. After the first month of serving as a trainee, I was hired as a researcher for *Agony II* and that led to a concentration of my ethnographic focus.

In this chapter, I shall primarily describe *Agony II*, although information from my participant observation of the making of *Violent Rage* and interviews conducted with employees from a third series that was in production entitled *The 10 Worst* will also be included where applicable.

*Agony II:*

*Agony II* was an entertainment-based 'tabloid' series (as its producers referred to it) which examined pain in its various forms and contexts. On its website the broadcaster described *Agony*, its prequel:[32]

> *Agony*, a suffering stuffed half hour of other people's pain for your entertainment. From torture to gun-shot wounds, flesh hanging to whipping. You want pain, we've got it in spades.
>
> The science of pain. The history of torture. Real footage of Yakuza severing their fingers. The man who survives an eight inch serrated commando knife stuck in his brain. Pain for pleasure. Pain for religion. Pain for beauty. *Agony* pushes the boundaries of human experience. You may want to look away from the screen, but you'll keep getting drawn back to it.
>
> Merrily pissing on electric fences or getting bullwhipped, we put pain to the test. Which nation is the hardest? Who can survive ice torture best, chefs or bouncers? What's worse, thumbscrews or water torture? Who will stop the pain first, your girlfriend, your sister or a stranger? Does everyone get off on being spanked by foxy chicks? You've never seen anything as extreme as this. *Agony*, so good it hurts.

Because the series was said by Envision's staff to be one of the most graphic programmes ever to be aired on British television – one that aimed to 'push the boundaries' of permissible content – *Agony II's* production environment offered a rich setting for the exploration of the social and regulatory limits of acceptable violent content and how those limits can become extended.

Producers' use of the phrase 'pushing the boundaries' referred to the programme-makers' intention to redefine the perimeters of acceptable graphic footage by making programmes with violent imagery that had not previously been broadcast. Such scenes would have been deemed too contentious to transmit in previous years, as the IBA placed greater restrictions over the nature of content broadcasters could transmit, and its regulators (unlike Ofcom's regulators) reviewed and approved all content prior to broadcast to ensure that it complied with the regulations.

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[32] The website link is not provided as to maintain confidentiality.

Ofcom presided over public complaints cases which accused both *Agony* and *Agony II* of infringing the regulatory code. Its verdict on the first series, which I shall discuss later in this chapter, found it to be in breach of the regulation controlling the display of 'imitable violence', while the second series was deemed permissible. Numerous other, arguably non-compliant, acts which will also be discussed in this chapter were not brought to the attention of Ofcom and therefore its staff did not assess whether they had breached the regulations. I shall therefore describe these acts and suggest what regulatory rules they would likely have been judged against should a viewer have complained.

*Violent Rage:*

The second production I studied, *Violent Rage,* was produced for a prominent, widely-watched British broadcast network. It was a six-part tabloid-style documentary which examined "Violent and threatening behaviour in all its forms, from tribal aggression and road rage, through to armed robbery and the brutality of international terrorism."[33] The programme displayed 'caught on camera' footage of highly graphic scenes (for example, individuals being attacked and beaten), alongside interviews with the individuals involved who explained where and why the violent outbursts occurred.

*Violent Rage* was a significant addition to the case study, as its producers also actively pressed regulatory limits.

**Phase 1: The commissioning process**

Having described the programmes being examined, I shall examine the step-by-step production process. Envision's first step in the production of *Agony II* was to secure a commission from the broadcaster, Entertainu.[34] In this case, securing a commission was simple, as Envision had produced its prequel, *Agony*, which had become the highest rated series in the broadcaster's history.

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[33] This description of the programme was provided in an online television guide. The reference is not supplied to ensure the programme's confidentiality.
[34] Commissioning typically involved a broadcaster hiring a production company to produce a programme to an existing specification. Alternatively, a production company can develop a programme layout to present for sale, otherwise referred to as a 'pitch', to a broadcaster.

To mimic the structure of the first series, the television-makers agreed that *Agony II* should consistent of 15 episodes, 30 minutes each in length. Every programme would explore acts of injury from a different angle, such as 'Pain for Pleasure', 'Suffer to be Beautiful' and 'Pain for Fame'. The specified layout and subject matter of the series were created to appeal to a male audience between the ages of 18 and 34 years old.[35]

As noted in Chapter Three, the early years of television concentrated the medium in a small number of networks which provided commercial 'airtime' to the advertisers who wanted to reach a wide 'demographic' (that is, an audience of men, women and children of various ages). Britain's significant expansion in channels has, however, caused audiences to fragment. While the largest channels such as BBC One and ITV1 still reach rather diverse audiences, there has been a shift amongst smaller channels, such as Entertainu, towards targeting more specific groups. These operators were referred to as 'niche' channels.[36]

Series Objectives

Broadly speaking, the producers of *Agony II* had two key objectives – to ensure that the series was successfully produced (meaning that it achieved high ratings and was completed on time and within budget) and to ensure that it was not found by Ofcom to be in breach of regulations.

It was the role of the seasoned series producer to develop a feeling, format and narrative style for *Agony II* which would feed the broadcaster's need for audience appeal. When questioned about her approach, she stated that her experience had showed her that "A successful programme had three elements: Something to make people laugh, think and cringe." In essence, this translated into the pursuit of three programme-making objectives:

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[35] The selection of an audience 'demographic' is dictated by the interests of advertisers whose commercial funding supports the costs of the network. This has often translated into the creation of programmes that are intended to appeal to particular groups based on their age, gender or socio-economic status. Since advertisers want to market their products or services alongside television shows directed at their particular customers, this better enables them to reach those specified groups without the unnecessary expense of advertising to uninterested populations.

[36] The population segment they aim to reach is dictated by the interests of advertisers whose commercial funding supports the costs of the network. Since advertisers want to market their products or services to specific groups, niche channels allow them effectively to do so.

1. to provide viewers with shocking stories that had increasingly graphic images of violence which viewers had never seen before, such as individuals cutting off their fingers in political protest or a man removing his testicles with a scalpel for the purpose of personal fulfilment. This was intended to make people 'cringe', which meant to make them recoil from the surprise of looking at such uniquely gruesome imagery;

2. to amuse audiences over the surprising nature of many of the stories; and

3. to provoke thought by educating viewers with related medical or statistical knowledge about the form of injury, such as how much pressure must be placed on a knife to sever one's finger. (This ostensibly educational element was used to contextualise the content and to offset regulatory intervention by claiming a higher purpose.)

The television-makers also wanted to ensure that *Agony II* was not found to infringe regulatory requirements, as the ITC had informed Entertainu that its prequel, *Agony,* was in breach of Section 1.7(c) of the code (imitable violence[37]) and came "extremely close" to breaching sections 1.7(a) and 1.8 of the Code (offensive violence and respect for humans' dignity and treatment of minorities). When the ITC reprimanded Entertainu, it stated (2003):

> There is recent evidence of broadcasters' 'upping the ante' as to the pain and injury elements in these programmes. The ITC has obvious concern about the portrayal of violence – in which we include the infliction of pain – particularly in a primarily entertainment context…The portrayal of such extreme scenes requires very careful consideration as well as strong editorial justification.
>
> …as the commentary puts it, 'other peoples' agony for your entertainment' hardly squares with the [ITC] Code requirement not to make the audience mere voyeurs of others' distress, (Section 1.8)…In its presentation of one 'painful' image after another, this seemed to us gratuitously extended. Accompanied by a commentary frequently flippant in tone, both sequences seem to us to be seriously questionable...

To address the consequences of the regulatory infringement and attendant warning, the television-makers decided to bring an educational element to *Agony II*, so as to re-contextualise the graphic imagery and make it more editorially justifiable. That meant to make

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[37] "Imitable" violence meant forms of violence content that had the potential to influence viewers to act violently.

the violence appear less "gratuitous" and therefore compliant with the regulatory code (ITC, 2003).[38] They therefore stated that conceptually their mission was to create a series to appeal to a "lad with a PhD".[39]

Envision's intention to target "lads" stemmed from the channel's perceived niche in the industry as a 'boy's channel'. A series producer at Envision stated, "If [Entertainu] were a newspaper it would be the *Daily Star*…It is like a slightly cheaper version of *The Sun.* Basically, there are a lot of explosions and breasts."[40] The television-makers' interest in including an educational theme, otherwise referred to as "PhD", was intended to allow the series to bypass regulatory intervention. One employee stated:

> *Agony II*, 'seeing other people's suffering', needs to be editorially justified. It needs to be almost as if you are learning something from it. It shouldn't be for pure titillation…*Agony* had crossed the line between informative, educational television into pure violent titillation.

I shall show that the programme-makers' professed desire to be genuinely informative was, however, superficial, as their aim was to repackage images as graphic as those of the first series. They thereby intended to create techniques to follow the "letter" of the regulatory Code, but not its "spirit", enabling them to practise 'creative compliance'.

## **Phase 2: The hiring process and organisational culture**

With the thematic foundation of *Agony II's* layout having been developed in the commissioning stage, the next step of programme-making involved hiring a production team. I shall describe Envision's employment criteria, as a precursor to understanding the industry's competitive culture. Most importantly, I shall explain how the dynamics of its culture made employees more susceptible to adopting non-compliant practices.

*Agony II* required a staff of three permanent and 12 freelance employees, including producers, directors, researchers, editors, a production manager, a graphics specialist and a narrator. (Its high number of freelancers reflected the shift in the market away from permanent staff which I discussed in Chapter Three.)

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[38] 'Gratuitous violence' referred to violent scenes that were overly graphic and unjustified by their context within a programme.
[39] Series Producer, *Agony II*, 2003
[40] Interview with a Series Producer at Envision, 2004

The environment was one in which employees worked as a tight-knit team, in close proximity to one another, for extensive hours. It was critical for workers to function in a collegial manner as the production environment was highly pressurised and employees needed to work together effectively to reach targets within tight deadlines.

The structure of the environment led to the development of close working relationships and friendships. There was a norm of reciprocity in which it was common for workers to help one another find and secure new jobs to ensure that they had a continuous flow of work. This often resulted in employees shifting onto new projects together. The assistance workers provided to each other stemmed from a common understanding that it was difficult to sustain steady employment in the competitive freelance environment. When one series producer was asked about the amount of pressure television-makers were under to find their next project, he stated, "Massive pressure. There are times when I'm just so stressed out… It's massive stress; it really is. But it's all the way up – it is the industry."

This pressure led employees to maximize the use of their connections and to covet new job openings, which led to a sense of insularity and exclusivity in the production environment. It was widely noted amongst staff that such exclusivity was common throughout the industry, making the possession of inside contacts a critical factor in one's ability to maintain a successful career in programme production. Granovetter noted in *'Getting a Job: A Study of Contracts and Careers'* that such a use of recruitment networks was very common (1974; 1995).

In addition to having contacts, a strong reputation for successfully completing projects appeared to be an essential ingredient to maintain employment. Together, these factors proved more valuable than formal experience alone. The series producer of *The 10 Worst* stated: "If someone I trust[41] recommends me to someone I will take that person every time over someone with a really good CV… it's all on reputation; the whole thing." He explained that the reasoning for this was that individuals' *curricula vitae* could not illustrate their level of commitment to projects, their talent for successfully completing programmes in spite of the numerous

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[41] His use of the word "trust" in regard to those that he could elicit recommendations from for potential candidates included those he had previously worked with and knew to perform to a high standard.

obstacles and pressures brought by the hectic environment, nor their ability to fit in socially with the team.

Given these barriers, it was common for new entrants to the field to find it difficult to secure paid employment. It was a difficulty reflected in a study of 79 UK production companies which found that over one-quarter (29 per cent) of organisations surveyed "used or were made up of unpaid workers" (Pollard et al., 2005: pg. 28).

An illustration of the type of atmosphere many newcomers experienced was offered by *Violent Rage's* assistant producer who claimed that he had worked for free for six months, then for a year on a salary of £100 per week before he was promoted to the role of researcher. Similarly, the series producer of *The 10 Worst* claimed to have originally competed against approximately 400 people to get an unpaid internship in television. He was then promoted to a low level position after nine months, working 90 hours per week on a salary of £8,000 a year before gaining a more financially secure post.

The producers I examined, all of whom had passed the gruelling and financially draining internship phase, expressed a great appreciation of the opportunity to work within an admired industry, and a great determination to work hard to remain in the field. The series producer from *The 10 Worst* stated:

> One thing you need to keep reminding yourself after the first two years onwards is that I'm still very lucky to be working in this industry and I still have to work my ass off to keep going in this industry…Last year I was on the road for three months and we had maybe one day off work in three months. By the time we got back we were knackered, absolutely shot to pieces. You are working and when you are not working you are stressing about items that dropped out.[42]

These individuals' desire to enter the industry and the challenge that many of them faced when trying to stay a part of it, led those at Envision readily to accept and adapt to the company's distinctively heavy working pressures, competitive organisational culture and approaches to regulating compliance.

After all, Envision was relatively small in size and did not hold enough market power to command costly, high-end commissions, such as those the BBC or ITV funded. Its

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[42] The 'dropping out' of an item means that one of the segments in a series was found to be unusable and therefore the producers had to create a segment to replace it.

management therefore frequently sold their content to multichannel broadcasters for low prices. This brought it about that projects were typically understaffed, as management did not have enough funds to hire an adequate number of workers.

In turn, numerous unpaid and inexperienced interns were hired and the remaining team members often had to assume multiple roles (for example, researcher, interviewer and camera operator) and to work long hours on minimal pay. Researchers worked roughly 11 hours a day and often overtime on weekends, and made between £250 and £500 a week. This would amount to between £4.55 and £9.10 an hour for a 55 hour working week (see also Grindstaff, 2002).[43]

The result was a strenuous working environment, and, to add to the pressure, the series producer, who had overall control of the production, often shouted derogatory comments at employees when they made mistakes or failed to achieve their project goals. For instance, she angrily referred on one occasion to an employee as "stupid" in front of his peers and on another she declared that 'his work was alright so long as he did not have a job where he needed to think'.[44] Although these remarks may have reflected her generally short-tempered personality, the stress of the working environment served to exacerbate the situation and her behaviour. She claimed, along with the series producer of *Violent Rage*, that the years of continued pressure they experienced led them to develop physical ailments, and so the environment not only led to psychological, but also to physical strain.

Compounding the problem, Envision lacked many of the refined organisational practices often associated with larger, more mature organisations. For instance, it offered no production or regulatory training sessions to staff, it lacked workers who were dedicated to compliance checking, and it did not have a human resources team which could deal with official forms of hiring and firing, and with employee grievances (therefore workers did not have a mechanism to complain formally about the way in which they were treated).

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[43] Their salaries, however, increased as they gained experience, shifted into roles of greater authority or transferred into companies with more financial resources. Like many industries, it was a small number of members at the top that made disproportionately higher incomes than the remaining staff.
[44] The latter statement is paraphrased from the series producer's comments to staff, 2004.

It will become apparent throughout this chapter that this heavily pressurised set-up helped to create an environment and organisational culture in which employees felt compelled to prioritise their economic and business objectives before their regulatory commitments.

**Phase 3: The story formulation process – the importance of the 'money shot'**

This section will discuss the importance that the producers placed on graphic imagery as a means to attains ratings. It will also explain how they re-contextualised scenes of violence to make them appear more 'comical' or 'entertaining', as to keep viewers from experiencing empathy with those who were wounded and reduce their likelihood of disapproval or offence, which could render the programme impermissible under the regulatory code.

It will furthermore examine how viewers' and journalists' expressed disappointment of the content resulted in public dialog which served to produce further ratings and motivate the television-makers to test the limits of acceptable content even further. Lastly, the section will describe how the television-makers were offered greater freedom than their competitors to test these limits, as the channel, Agony II, was being broadcast on the cable and satellite platforms, and targeted young men – both of which were aspects that were considered less likely to generate public offence.

To begin, the first thing the producers did when identifying potential stories was to look for graphic imagery. The storylines were then built around it. This is in line with the argument of Laura Grindstaff, who said in The *Money Shot: Trash, Class and the Making of TV Talk Shows,* "What matters is the money shot and virtually all production efforts – choosing topics; finding, interviewing, and rehearsing guests; coaching audience members – are geared toward maximizing the probability of its display" (2002: p. 21).

The producers I examined reported that *Agony's* success with ratings stemmed from its ability to keep audiences' attention by "shocking" them with highly graphic images that they had never seen before – the "money shots", as they were referred to, drove the ratings.

I remarked that the series producer had claimed that a successful storyline made audiences "laugh, think and cringe". The 'money shot' could be translated into the "cringing" point of the programme. It was the climatic thrust of each story which created the intended effect of what

were called "water cooler moments", which staff described as the "shocking or amazing" scenes that were supposed to leave viewers talking about them the next day.[45]

I asked the production director about the aim of *Agony II*:

>(Production Director): To get people to watch it – to shock.[46]
>
>(Interviewer): What makes people watch it then, shock?
>
>(Production Director): Yes.
>
>(Interviewer): From the graphic images?
>
>(Production Director): Yes. Footage they've never seen before. What makes viewers flock to this kind of screen is 'agony'; is the footage. Because you are seeing things that you've really never seen.

The producers believed that the key to making a scene 'shocking' and 'memorable' was to ensure that the storyline and the imagery were different or more extreme than others shown on television. This argument was not only made about content within the entertainment genre, as I and Grindstaff (2002) have illustrated, but also within the news genre. For instance, Galtung and Ruge (1973) found that stories that were unusual, unexpected or particularly violent were more likely to be included in news reports than 'common occurrences', as they contributed to the on-going 'drama' of the 'segment' (a story within a series of stories).

To illustrate Envision's approach, in one instance the producers wanted to create a piece about body piercing, but piercing in itself was not deemed unusual enough to attract a high level of viewers because it was considered publicly acceptable. The company therefore added an unusual spin on the topic and produced a segment about a man attempting to beat the Guinness World Record for the greatest number of piercings. This tactic allowed viewers to see footage which had never been seen before of a man piercing himself with a record number of needles.

The belief that one needed to broadcast new forms of graphic imagery to gain ratings led the producers to push the limits of television content. When I asked *Agony II's* producers if the

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[45] Series Producer of *The 10 Worst*, 2004
[46] The need to shock audiences to attain ratings is consistent with Grindstaff, 2002.

series was designed to extend the boundaries and if producers would do whatever they could get away with to gain ratings, she commented, "Yes, you are only successful if you do that. It is the only way of making people watch because the sort of audience we attract has seen it all and so you have to go a step further… I think every channel tries to do this because this is what sells so well". [47] Envision's production director further stated, "TV has changed because it is more ratings-driven. Now that you have got more channels, you have to chase the ratings or people won't watch it; it is a bit sad."[48]

The producers' heavy reliance on such imagery was further confirmed when I counted the number of graphic scenes in one random 24-minute episode of *Agony* (commercials were discounted): there were 84, a display of approximately one graphic image every 17 seconds. [49]

As these images were taken to be the most important aspect of the series, the storylines were written around them. A series producer said, "Always write to your pictures. You do not write a story and then put your pictures into it; your story is what you've got to show."

Yet, without the contextualisation provided by the storylines, the images would have appeared as no more than a rolling screen of violent shots, and this would not have been editorially justifiable or deemed permissible by Ofcom. In turn, and given the regulator's warning about 'offensive violence' from the first series, the producers sometimes went beyond simply reporting the facts surrounding pictures, and reconstructed the storylines to avoid audience 'offence'. (In doing so, they often reported the facts surrounding individuals' stories incorrectly and this could have been deemed impermissible under Ofcom's 'fairness' guidelines.)

The following examples illustrate this point. In one instance, producers found material of a 45-year old South American who was voluntarily crucified as part of a protest to force his government to recognize the region's prevailing issue of poverty and homelessness. The demonstration was enacted before the annual celebration of Good Friday where a mock

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[47] Interview, March 2004.

[48] Interview dated March 2004. This concept relates to Grindstaff's finding that as competition increased in television talk shows, there was a drive for guests to "make something happen," leading to a shift in content and style, making programmes even "…faster, louder, more visual, and, in the words of one producer, 'full of attitude'" (Grindstaff, 2002: p. 51).

[49] In a second series I observed, *Violent Rage,* similarly relied on 'money shots' as I was informed that the series needed at least three graphic images per episode. The scenes were more violent in nature than those in *Agony II* as they held 'caught on camera' footage of individuals being attacked, beaten, mauled by dogs, and more.

crucifixion of Christ took place. Envision wanted to use the images, but were concerned that they might offend audiences given their context and so they reported the story without any mention of the protest against poverty. They framed it instead around one man's anger about being evicted from his home, because they believed that that appeared more entertaining and unusual given his extreme act.

This slant not only removed the original message of the story but also the emotional sentiment that may have been felt by the audience had they better understood the man, his community's plight, and the great lengths to which he had gone to plead for governmental assistance.

In another instance, a man who was medically diagnosed with 'body identity integrity disorder' (BIID) agreed to an interview. BIID is a psychological condition in which a person experiences "the persistent desire to have their body physically match the idealized image they have of themselves" (BIID.org, 2004). To achieve this image, such individuals may try to have one or more of their limbs or body parts amputated. In this particular instance, the man amputated his fingers and toes, and viewed what he had done as a form of body art. The producers, in their turn, placed his story alongside other segments which discussed body art, such as piercing and tattooing. The producers did not, however, report that the man's actions and mentality were shaped by his illness. They also failed to explain how his amputations affected his daily life.

This approach was intended to lead audiences to view the amputations as potentially 'freakish' or 'artistically eccentric', not as the act of a mentally-ill individual. It denied audiences the opportunity to understand the man and sympathize with him, reducing the likelihood that they would complain to Ofcom on the man's behalf. The producer justified doing this by arguing that *Agony II* was not the type of series suited to discuss a topic as serious as BIID, nor did the programme's format allow enough time adequately to explore the subject matter.

Two additional approaches designed to prevent viewers from acquiring a sense of empathy when watching scenes of violence were to introduce 'comedy' to the segments and to dehumanise the people captured on film.

Various techniques were used to impose a supposedly comical, light-natured slant on events. As a programme's narrator coloured the lens through which stories are told and thereby

interpreted by audiences, the producers inserted humorous narrative remarks and sound effects into storylines. They also broke up sequences of more serious and dramatic stories by introducing segments which were intended to be comical in nature, such as scenes of "dwarves wrestling" and people playing in a sado-masochistic game show.

Producers also at times showed victims in a manner that dehumanised them by focusing solely on their injuries and not their stories, feelings or even faces. For instance, one segment entitled *Top Ten Tortures* listed various forms of torture used around the world, such as electric shock treatment, scalping and the boiling alive of detainees. I was given the role of researching the segment and was instructed to locate images of torture devices and victims' wounds.

When I questioned the production director about the treatment of victims' footage, he explained that Envision would show 'close-ups' of the injuries but not the victims' faces, preventing them from being identified and allowing them to be objectified. He further stated:

> (Production Director) - In a sense you're desensitizing it because you are not showing the person; you are showing this *thing* as an inanimate object. You are dehumanizing it… The programme is called *Agony II* and torture is painful. And one of the segments in the series is that we are going to show you the torture of what people do to other people. But, we are not going to show you who did it and who it was done to. We are just going to let you know what was done.
>
> (Interviewer) - But isn't it [the pictures of the victims' injuries] for the point of viewing pleasure? For entertainment?
>
> (Production Director) – Yes, but this isn't a serious show.

All in all, these forms of repackaging content were intended to reduce audiences' sensitivity to, and sense of offence about, content.

I retrieved conversations in online chat rooms that viewers of *Agony II* had had about the series, and they suggested that the producers' attempts to desensitize its young adult male audience to the imagery they saw had proved to be effective. One conversation went as follows:[50]

> Person 1 - There's folk doing nasty things to themselves on [Entertainu] – worth a look.
>
> Person 2 - Yuck! Not nice - those people are just a bit strange!

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[50] Web links are not provided to preserve confidentiality.

Person 3 - Damn [I] missed it, but ultimate fighting…is on so [I] can get to see people in pain still.

Person 4 - Lol [laughs], the guy sticks a couple of daggers into the top of his mate's head, and you notice that he's not wearing gloves.

Person 1 - It's on quite a lot! I'll post [the time] when I find out when it's on next.

Person 3 - Now that would have been good to see.

Person 1 - [There] was a funny scene where this posh-boy prick got crucified and slid off his nails, lol (laughs).

Person 6 – [Entertainu] is one of my favourite channels.

Not all individuals, however, appeared to be amused by *Agony II's* content. It seemed from my review of online conversations that young men (who were the series' target demographic) found the programme entertaining, while women and older individuals sometimes appeared upset and offended by the content. For instance, one female viewer stated, "One particularly horrific segment showed a fire-blackened victim next to a burning car…The images still haunt me."[51]

Despite the emergence of differing opinions about, and reactions to, the programme, the fact that it had generated conversation meant that the producers had achieved their goal of generating publicity. This sentiment underwrote the production director's clichéd statement, "no publicity is bad publicity". The significance of his statement was illustrated after an article by a television critic who reviewed *Agony* (*Agony II's* prequel) had stated (2003):[52]

> …Why were we repeatedly shown footage of a Bavarian's arm snapping with an audible crack (nothing humorous about that), and of a Japanese man's little finger being ritually severed from his hand with a knife? Equally prurient were scenes of Thai adepts piercing their cheeks with daggers, swords and television aerials (to them it has religious significance, to [Entertainu] it's a freak show)…This programme breaks the ITC Code so flagrantly that the channel's licence remit should be examined without delay…

Soon after the article was released, the ITC published a finding that the series had been in breach of the regulatory Code. Envision was concerned about the breach. However its staff generally claimed that the publicity resulting from the article served only to increase the series' ratings, thus making it the most successful programme ever broadcast on the channel. The

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[51] Web links are not provided to preserve confidentiality.

[52] Reference is not provided to preserve confidentiality.

success of the series gave production-makers additional incentive to extend the limits of permissible content. This concept is in line with the findings of other researchers who claimed that ratings were a key factor in most media practitioners' decisions about content (Lewis, 1969; Virts, 1978); and that producers use unique, graphic and/or dramatised imagery as a means to gain ratings (Galtung and Ruge, 1973; Grindstaff, 2002; Moss, 2009).

What further encouraged the producers was the fact that the programme was destined for broadcast on cable and satellite television, and they held that the regulators were less strict about the nature of content shown on these platforms than on terrestrial television. A producer stated "I think it is pretty much accepted in the industry that it is a lot easier to get stuff [diverse content] through on cable [and satellite] than it is on terrestrial."

The producers also claimed that that they could broadcast more 'edgy' content because their programme was transmitted after the watershed on a niche channel that catered to young men, and research had shown that this demographic was less frequently offended by such content than were women and older individuals.[53] Basing their style of programming on what was deemed suitable or acceptable to their specific audience profile, broadcasters claimed to have more leeway to broadcast new, 'challenging' forms of content with less concern about complaints than channels with different audience profiles might have had. And in fact, the broadcasters did not receive a single public complaint about the series.

This suggests that the broadcast platform and the dynamics of consumers on that platform (and their likelihood of complaining) were influential factors in the producers' decision-making process. Given that the commonality between these elements was the influence that the designated audience had over actors' decisions about content, I shall label this factor 'audience profile' and place it under the organisational level within my hierarchical model of influential factors.

In summary, I have shown that graphic images were considered the most important feature of the series, and that storylines were used not only to engage and entertain audiences, but to

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[53] Prior to this in 2002 the ITC conducted a study which found that young individuals were far less likely to be offended by content than older individuals (75+ years) (17% versus 75%), and that men were less likely to be offended than women (33% versus 51%) (Towler, 2002: p. 47). This meant that young men were the least likely demographic to find content offensive, and therefore one could assume that they were also the least likely group to complain about such content.

contextualise content in a manner that would reduce the chance of a programme being found in breach of the rules.

I have also suggested that the images may have not appealed to all audience 'demographics', but they did serve to stimulate viewers' curiosity and thereby the possibility of additional ratings. In this sense, the series attended to one of the producer's statements – "I don't care whether they like it or whether they hate it, as long as they have an opinion". This publicity (which aided one's drive for economic gain), along with the dynamics and positioning of the audience, shaped producers' willingness to test regulatory limits.

**Phase 4: The process of obtaining violent content**

I shall now turn to an explanation of the producers' procedures for securing graphic footage, the character of the relevant regulation and the way in which employees' responded to that regulation. In order to illustrate how employees responded to the regulation, I shall provide an example of an instance in which the regulation concerning a programme contributor's 'privacy' was seemingly breached.

This example will reveal that individuals evaded the rules when they were constrained by tight time and resource restrictions, and when their perceived likelihood of detection was low (due to the ease in concealing their unruly acts), and when their chances of penalisation were nil (due to the structure of the regulation's enforcement that was in play). These constraints and perceptions were, in part, a product of widespread external changes in the industry, such as advances in technology and the deregulation of the sector, and therefore I shall also describe how these macro-level factors had a knock-on effect on the production process at the organisational level.

I shall begin by explaining how images were found and secured. *Agony II* presented four general types of graphic imagery – images of accidents, and of individuals harming themselves, others and animals. Several research techniques were employed to locate these images: researchers referred to search engines to find publicly-owned images; they scrolled through purchasable footage archives such as Reuters and APTN; and they contacted individuals, groups and organisations who had an association with injuries, such as surgeons or members of a sado-masochism group.

The production team worked on a minimal budget and so they either purchased the content they found from inexpensive footage houses, received it as donations from programme contributors or filmed the imagery themselves. They were knowledgeable about the regulator's requirement to gain consent for all content gathered through secondary sources[54], such as footage archivists or individuals who owned the rights to photographs or videos, and they typically abided by this requirement. However, there were exceptions when employees did not comply.

Take one case. For an episode entitled *Head Cases*, which featured stories about individuals' who had suffered head traumas, such as facial burns or puncture wounds, staff agreed to interview a construction worker in the United States, John Grey, who had survived a fall from a ladder onto a drill which punctured his skull (See Figure 13).[55] They also agreed to interview Grey's surgeon.

**Figure 13: Grey's skull x-ray**

*This image has been removed as the copyright is owned by another party.*

To conduct the interview, Envision agreed to fly to California to meet with Grey. Interviews such as this were grouped together to save time and money. For international trips a single employee would manage the filming for all interviews, serving as a camera operator, an interviewer and a travel organiser (I have already noted that the assuming of multiple roles was

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[54] See Chapter Three for a description of this requirement.
[55] The reference is not included to ensure the confidentiality of the victim. Also, John Grey, as are the other names used in this thesis, is a pseudo name used to protect the identity of those involved.

a common feature in the industry, particularly among companies with small budgets; see Sparks, 1991; Cottle, 1999.)

At Envision, this approach led to highly pressurized interviewing arrangements which sometimes resulted in disorganisation and errors. In this instance, a producer had travelled across the United States to conduct a series of interviews, visiting between one and two cities per day. Although the majority of the interviews had been arranged prior to his departure, he was expected later to confirm the arrangements himself. This responsibility was in addition to his duty to serve as a camera operator, filming the interviews and various scenes to accompany the segments; an interviewer, ensuring that he was briefed on the circumstances of the story; and a travel planner, organising his travel details.

In this case the producer claimed that his hectic schedule prevented him from being able to confirm all of his interview times. He subsequently flew to California to discover that the contributor, Grey, was unaware of the impending interview because his manager had failed to inform him of the arrangement. Once the situation had been resolved and the interview had taken place, the programme-maker, unaware of all of the circumstances surrounding Grey's story, did not confirm Grey's willingness to allow Envision to broadcast the images of his injuries. The producer received these images from the surgeon, who had incorrectly assumed that Grey had consented for them to be broadcast.

After the producer returned to the United Kingdom, I contacted Grey to request permission to broadcast the images. He refused and stated that the images were too graphic for television and for children to view, and that he would feel exploited if they were broadcast.

When I relayed his refusal to the series producer, she said in a concerned tone that we needed to get his permission to use the photographs or the segment would have to be cancelled. She repeated the claim that the 'money shots' drove the ratings and that segments were unusable without them.[56] Given the dwindling budget and limited timeline (the series needed to be completed in two weeks), she expressed frustration that Envision had paid for a trip to California to interview individuals for a segment that was potentially unusable. At this stage in the production, employees were under great strain, working nearly 11 hour days in addition to some weekends. Several of the most capable staff had also left before the completion of the

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[56] Comments paraphrased from a conversation, 2004.

series to begin work on their next productions, leaving the project short-handed. This meant that there was no one readily available to produce a new segment to replace this one.

Given these constraints, the series producer instructed me to telephone Grey again to offer financial compensation for broadcasting the images. Grey did not answer the telephone nor did he respond to my voice message. I was then expected to contact Grey repeatedly until he was reached. After over a week of contacting him every day without a response I asked the series producer to handle the situation. She too attempted to contact him repeatedly and received no response.

After two weeks of effort, I commented to the series producer that it was obvious that Grey never intended to grant Envision permission to use his photographs. She replied in a frustrated tone, "Let's just say, I didn't hear that." After I repeated the comment, she reiterated her statement, signifying that she decided to use the photographs without Grey's permission, as if she was unaware of his refusal.[57] Grey's photographs were broadcast shortly thereafter. The series producer took it that *Agony II* was only to be broadcast in the United Kingdom. Grey, who resided overseas, was unlikely to see the programme, and was thus unlikely to complain, and Envision itself would not face negative repercussions.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXX        TEXT OMITTED FOR CONFIDENTIALITY PURPOSES        XXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Grey's experience with Envision illustrated two issues surrounding the fair treatment of programme contributors. The first involved media practitioners repeatedly contacting a potential contributor after he/she had rejected their proposition. The second involved the broadcast of a person's photographs without permission. This case with *Agony II* was never brought to Ofcom's attention, but it can be conjectured that, if it had been, it would have been considered under section 15 of the BSC *Code on Fairness and Privacy* (1997: p. 7):

> Section 15, Privacy:

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[57] Paraphrased from a working conversation, 2004.

> Privacy can be infringed during the obtaining of material for a programme, even if none of it is broadcast, as well as in the way in which material is used within the programme.

This example is broadly in line with the BSC's finding that over half of those who worked in factual programming "felt that they had experienced pressures at odds with how they believed programme contributors should be treated" (2000: p. 16).

It also reveals three influential factors that had contributed to what seemed to be an infringement of the regulatory rules and of Grey's privacy – time constraints, capacity issues and a belief that non-compliant behaviour would go undetected and unpenalised.

These factors, which affected the producer's compliance decision, reflected those of other researchers. While Chayes and Chayes (1993), Tallberg (2002), Hutter and Jones (2006), Footer (2008) and Nie (2008) found that 'capacity issues', such as budget constraints, can lead to non-compliant behaviour in various industries, Bantz, McCordle and Baade (1980), Fishman (1982), O'Sullivan and Heinonen (2008) and Russial (2009) found that project demands and resource limitations can influence, more specifically, the media production process and the shape of content (see also Chayes and Chayes, 1995; Winter, 2001).

I have explained that Envision was more susceptible to experiencing budget constraints than larger producers because it was a relatively small to mid-size company and subsequently less equipped to deal with challenging production schedules. Echoing the argument of Hawkins (2002), its staff were, in turn, shown to be susceptible to adopting non-compliant practices as a means to achieve their production targets.[58]

The challenge producers faced to meet their production target was further exacerbated by tight time constraints, which Berkowitz (2002) also found to impair media practitioners' ability to work effectively. In his case, however, he found that journalists, who were burdened by tight deadlines, sometimes released information to the public before they had cross-checked its accuracy; and the reporting of inaccurate information can, in certain situations, be considered

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[58] Hawkins (2002) noted that small firms are more sensitive to financial constraints and the costs of compliance, and this leads some of them, through a lack of resources and capacity, to breach the regulations. Winter (2001) also argued that a company cannot comply with the regulations unless they have sufficient financial capacity to do so.

an act of 'unfairness' (see also MacGregor, 1995; Cottle, 1999; Arant and Anderson, 2001; Ursell, 2001; O'Sullivan and Heinonen, 2008; Russial, 2009; Valentine, 2009).

When linking these organisational-level concepts with those at the external level, one can see how the producers arrived at this particular situation: technological advances coupled with deregulation led to the rapid expansion of broadcast platforms and channels, and the independent production sector; the rise in television companies and services increased the competitive pressure amongst producers and broadcasters; and the independent production sector, in particular, became populated with a large number of small to mid-sized new market entrants, such as Envision. These players tended to hold little market power and therefore agreed to produce content at highly competitive prices, which in turn meant that they had to work within tight budgets.

The outcome was that programmes were often produced to difficult deadlines, so as to reduce the cost associated with hiring staff long-term. It also brought it about that management did not have the resources to hire an adequate number of sufficiently experienced workers, and so staff had to assume multiple roles, and unpaid interns and new-comers to the field were frequently hired. These individuals' inexperience also served to intensify the issue of working to tight deadlines, as they often did not work as quickly or efficiently as did those with more experience. These factors, in turn, helped to lead to the situation that I just described at Envision, suggesting that the pressures that led employees towards non-compliance were both organisational and external.

The final factor that influenced the producer's compliance decision over Grey's photographs was a perception that her act of 'unfairness' would go undetected and unpenalised. This was a perception that was reflected across the organisation and led to routine acts of non-compliance.[59]

In line with Kagan and Scholz's (1984) concept of an 'amoral calculator' (and rational choice institutionalism which will be discussed shortly), the producers appeared knowingly to behave in an impermissible manner where they perceived the benefit of broadcasting the imagery to be

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[59] In fact, Envision had a policy never to send contributors copies of the series, so unless they lived in Britain and had access to satellite/cable television, they could not view the programme and thereby not complain if the content revealed that they were treated unfairly.

greater than the likelihood of being caught by the regulator (*i.e.* greater than the cost) (see also Becker, 1968; Footer 2008). This corresponds with the work of other researchers who have found that actors' perceived risk of detection is an important factor in influencing their compliance behaviour (Gray and Scholz, 1991; Burby and Paterson, 1993; Abusin and Hassan, 2011; Chiarini, Marzano and Schneider, 2011).[60] In this equation, if the rules required individuals to "forgo substantial benefits, the predicted rate of evasion [was] high" (Diver, 1989: p. 225). This situation also reflects the 'opportunity perspective' which argues that people will break the rules when opportunities arise for them to get away with it (Angenent and Geeraets, 1998).

In the case of Grey, the likelihood of detection was small because he lived overseas where the programme was not broadcast, and so he was not in a position to see the episode and thereby to complain. (The act of getting footage from oversees was common in television, as globalisation made foreign travel and production feasible.) The ease of concealing the producer's act of non-compliance therefore became an instrumental factor in motivating her to evade the rules; a finding that is on all fours with the argument of Diver, who claimed that "The likelihood and magnitude of non-compliance...depends on the ease or difficulty of concealing prohibited conduct" (p. 225; see also Mills, 1940; Sutinen 1999; Schuetze, 2002; Abusin and Hassan, 2011; Chiarini, Marzano and Schneider, 2011).[61]

Another instrumental factor in the producer's calculus pertained to the likelihood of getting penalised by Ofcom, which in this case was zero. Ofcom was only granted the power by the Communications Act 2003 to penalise broadcasters. It could not penalise independent producers for acts of non-compliance. It therefore appeared in the case study that this gave them less incentive than broadcasters to abide by the rules, and so they conformed to simple utilitarian maxims of conduct and evaded them (see also Sutinen and Kuperan, 1999: p. 179).

This finding is opposite to, yet compatible with, the arguments of Farrington, Langan and Wikstrom (1994) and Langan and Farrington's (1998) examination of crime and punishment

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[60] While I have contended that the producers' non-conforming acts were also fuelled by the unlikelihood of their detection by Ofcom, Hawkins argued this was because small companies, such as Envision, were less publically visible than large firms, and thereby less likely to encounter regulatory intervention (2002: p. 268).
[61] This is in line with Mills who noted that "Individuals confronted with 'alternative acts' perform one or the other of them on the basis of the...anticipation of named consequences" (1940: p. 905-906).

trends in England and the United States, as they found an association between an increased likelihood of conviction and a decline in crime rates. Studies such as these and my own help to confirm that "known penal threats can have a deterrent effect" (Hirsch et. al. 1998: p. 3), while, as I have pointed out, the absence of them can have the opposite.

While this section has explained how graphic imagery was shaped and secured, the following section will explain the next stage in the production process – the interviewing of programme contributors.

## Phase 5: The interview process

What follows will illustrate how interviewees' statements were used to contextualise graphic content in a manner that would enable producers to bypass regulatory intervention. It will also review employees' procedures for securing interviews, which would likely be deemed by Ofcom to be non-compliant under the regulatory rules.

### The purpose of interviews

Once programme-makers uncovered a promising story, they contacted the participants involved to request interviews. Interviewees acted as the storytellers, knitting together sequences of events and adding personal accounts of their experiences. They further contextualized and added space between the graphic imagery to avoid a mere 'gratuitous' repetition of 'money shots'.

Interviewees were selected and used to underscore the so-called educational element of the series, otherwise referred to as the necessary "PhD" or the 'thinking' aspect denoted in the producer's objective to make viewers "laugh, think and cringe".

While interviews with victims were used to explain the circumstances surrounding their injuries, conversations with their doctors and surgeons were added to provide the series with the educational element the producers felt necessary to justify the graphic content. These interviews offered viewers bits of medical information, such as how a knife can be successfully removed from a person's skull without causing further cranial damage, or how a person's legs can be surgically extended by several inches to increase their height.

*Violent Rage* was intended to take a more serious look at violence than *Agony II*; and there were therefore greater restrictions placed on the characteristics of their 'expert' interviewees. For example, the producer of *Violent Rage* informed me that the experts had to be male and between the ages of 30 and 45 years. It was reasoned that the intended audience was primarily male and that men were more likely to view middle-aged males as more authoritative sources of information than females.

For *Agony II*, the producers preferred to include female experts who were young and physically attractive. They claimed that this was because the series was light entertainment television aimed at titillating rather than educating its young male audience. Its producer remarked that it was "sad to hear" but the difference between the two series was that "*Violent Rage* is being journalistic. *Agony II* is being entertaining."

Producers from both series also wanted the interviewees to communicate in an uncomplicated, non-academic style because they believed that their audience would have difficulty relating to and understanding experts who used professional jargon or complicated vocabularies. "Television," they said, "is the stupid medium".

Entertainu's effort to turn *Agony II*, a light entertainment programme about human injury, into an educational piece was evidently only superficial and in fact was actually a tool used to practice 'creative compliance'. Securing young female experts aimed at entertaining rather than educating viewers; the need for experts to speak in simple, uncomplicated terms; the broadcast of supporting statistics which frequently lacked legitimacy (which will be discussed later in the chapter); and a sensationalistic approach to displaying graphic imagery, suggested that the series was geared less towards educational enlightenment than the broadcaster might have argued. To support this claim, the production director stated:

> I don't think the actual premise of the programme is to educate. It's not to educate. I think you might have those little bits to break it up, to go away from the gore, to say we've made this programme, it is full of gore, but we've added some [education]… Maybe it could be that the regulation board says, 'okay you can show this gore, but give us some wine with our bread'…Because I think people who are watching it, they might take these little facts but if they are there, they are there, and if they are not, [they are not].

It does not follow that the second series was entirely unsuccessful in increasing its educational content. It does nevertheless reveal that the television-makers used tactics to manoeuvre their business practices past the obstacles of regulatory compliance, as has been found to be common with other regulated bodies (Baldwin and Cave, 1999); and that they intentionally commercialised (or 'dumbed-down') aspects of the series to appeal better to audiences (see McManus, 1994; Glynn, 2000, Towler, 2002, Beam, 2003; Clarke, 2004 for similar accounts). And all of this was because, in essence, the series, referred to by one programme-maker as "trash television", was intended for entertainment, not education.

Gaining consent for interviews

I have now examined the attributes producers looked for in interviewees and how they used their statements to contextualise graphic imagery. The next step in the sequence of producers' decisions and actions was to gain contributors' consent to be interviewed, so as to serve as the story-tellers to give context to the graphic images. It was a process framed by an organisational culture which condoned, and at times promoted, non-compliance, and a culture that was itself framed by forces relating to economic/project demands, tight time and resource constraints, incompatible business and regulatory responsibilities, and the influence of management over subordinates.

In the words of a producer, *Agony II* epitomised "trash television" and so it was assumed that many programme contributors, especially experts, would not want to participate in it. Programme-makers were therefore instructed to provide potential interviewees with limited information about the series, including information about its actual nature or title. They were requested not to lie but to word their statements carefully in order to leave contributors with falsely positive impressions.

Let me illustrate. In the final stages of production, staff found the series was short by several feature stories; one being in the episode *Suffer to be Beautiful*. The episode was about the extreme lengths individuals went to in the pursuit of 'beauty', such as having 'full body' cosmetic surgery, one's foot surgically altered to fit into designer shoes[62], or practising

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[62] This includes the removal of bone within the toes to better allow patients to fit in the narrow confines of shoes.

scarification, a form of body art that consists of scarring designs into one's skin. (For examples see Figures 14 through 17).

**Figure 14: Full body cosmetic surgery**
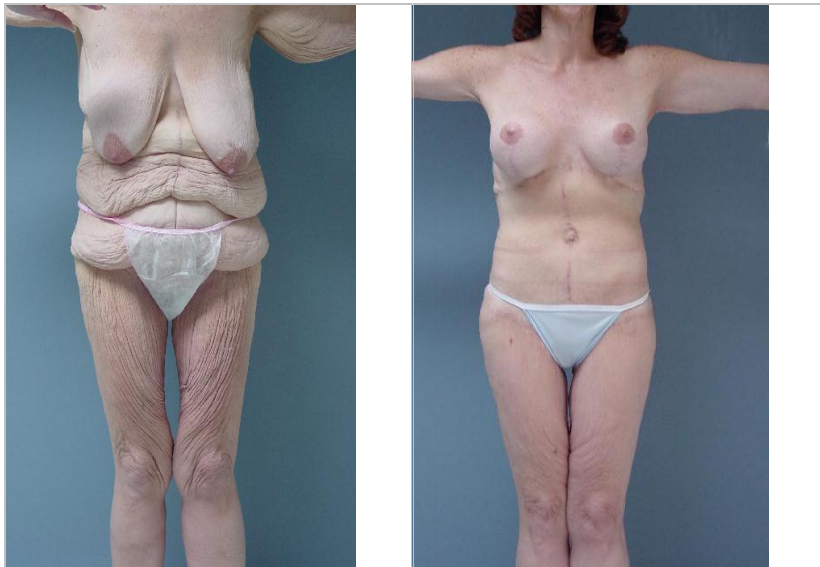


Source: www.southfloridaplasticsurgery.com

**Figure 15: Cosmetic foot surgery to address bunions**



Source : Bradly Drawn Dad:
http://www.flickr.com/photos/dhedwards/249661028/sizes/n/in/photostream/

**Figure 16: Male scarification**
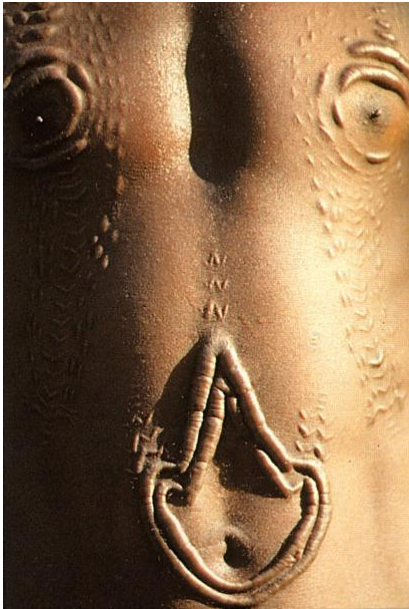


Source: artlex.com


**Figure 17: Image of scarification**



Source: Polentafria:
http://www.flickr.com/photos/polentafria/3581874937/sizes/m/in/photostream/


In an effort to secure an interview for a segment, I contacted a surgeon in Egypt who performed a procedure to lengthen legs. It was a form of cosmetic surgery intended to add between two and three inches to one's height (See Figure 18).

**Figure 18: Leg lengthening procedure**



*This image has been removed as the copyright is owned by another party.*
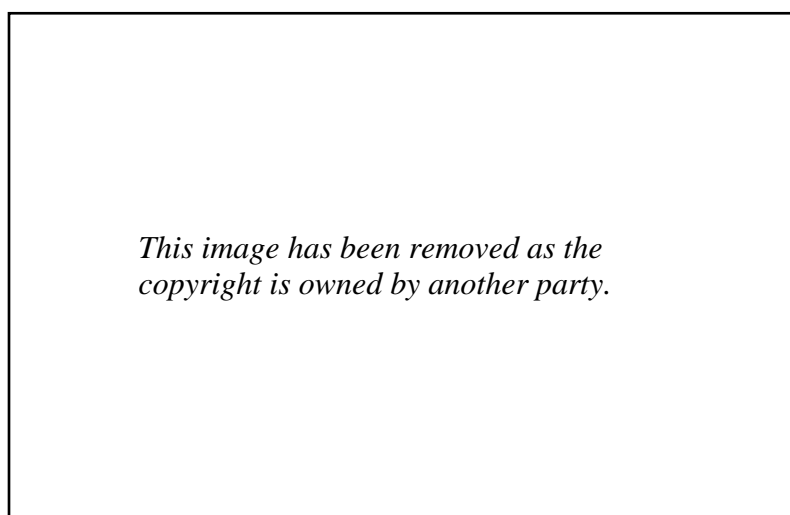
When the surgeon requested that Envision send a letter to the hospital to explain the programme's subject matter and his desired contribution, the correspondence did explain the purpose of the interview yet failed to include full details about the programme's topic, tenor and nature. It stated the programme segment was "…about individuals that have had the lengthening procedure for cosmetic reasons, such as with patients that do it for shortened stature". The hospital and surgeon were given no further information about the programme's "nature" and "purpose" as was required by the BSC *Code on Fairness and Privacy* (1997: p. 4).

The surgeon expressed great interest in being featured in the segment, assuming that it was for a medical programme which would discuss leg lengthening in a serious manner. He thought that it would pose the surgery as a viable option for those facing shortened stature and could thereby improve his business prospects. He commented that another broadcaster had already done a positive feature about his medical work.[63]

At no time did the producer or cameraman/interviewer correct his misinterpretation by informing him about the programme's actual nature, or telling him the series and episode titles, *Agony II* and *Suffer to be Beautiful*. I also did not inform him of these factors as I attempted to behave in a manner which was consistent with my colleagues so as not to jeopardise or contaminate the research.

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[63] Fieldwork journal: Paraphrased telephone conversation with the surgeon had on 18 February 2004.

Envision's interview consent form also omitted the title and details of the series. One of the reasons was that titles are often good indications of a programmes' topic and nature. Their removal, along with the trick of asking contributors to sign consent forms when there was little time to read them, better enabled employees to skirt past the issue.

A series producer revealed in an interview that it was also a trick (not used in this series) to list a different, less revealing, programme title on the consent form alongside the phase, 'subject to change', so as to further mislead contributors. The correct title would then be inserted just before the series is released. He stated, "It is occasionally practised to go in with one working name shown and in your release form it will say 'provisionally titled xxx' and then of course the name changes 'bizarrely' just before it goes to transmission to something completely different". He also stated, "If you have socially conscious journalists you'd get sod-all made. There would be no tabloid industry."

The producers' approach to deceiving programme contributors is not unlike a hustle, and it is reminiscent of Ned Polsky's remarks about pool hustlers. In his 1964 paper, 'The Hustler' he found that hustlers coaxed their 'victims' into participating in pool matches by luring them with the false possibility of winning money. This is similar to programme-makers' tactic of persuading individuals, such as the cosmetic surgeon, to contribute to *Agony II* by falsely presenting it as opportunity to get positive media coverage or to help a worthy cause.

In addition to approaching the surgeon, the producer obtained permission from his patient to be interviewed and to allow his surgery to be filmed and broadcast, and the patient was also made insufficiently aware of the programme's subject matter and purpose. Unlike most participants who did not receive financial compensation, Envision agreed to pay the patient $500 Australian dollars for his contribution. After the agreement was made, the surgeon mentioned that he had a second patient who was also interested in partaking in the programme. The patient however declined the interview upon discovering that Envision had no additional funds to compensate him financially for the interview.

I asked the cameraman/interviewer to re-invite the second patient to an interview once he had arrived at the filming point, a medical centre in Egypt. Upon the cameraman's return, he commented that he was able to secure the second patient's interview by approaching him

directly after he had left the operation table whilst heavily sedated and not fully aware of the situation.[64] Had this act been reported to Ofcom, it might well have been judged a potential infringement of privacy under sections 28 and 29 of the BSC Code on Fairness and Privacy, as the man was arguably not in a medically sound position to give his consent at the time (1997: p. 10).[65]

This example helps to illustrate that staff were faced with conflicting project (or economic-related) and regulatory (or social) responsibilities, and that they would often break the rules when they believed that it was necessary to achieve their organisational objectives (see also Makkai and Braithwaite 1993; Parker 2000; Nie, 2008; Nelson, 2011).

More specifically, producers would deceive programme contributors about the nature of the series when they thought that they would be unwilling to participate in the programme once aware of the truth. The rules were followed only when producers thought that individuals would agree to participate in the programme despite having accurate knowledge of its nature. If, for example, a story centred on a dominatrix practising sado-masochism or a contributor wilfully injuring himself or herself, it was assumed that the individuals would want to appear in *Agony II*. If, however, the story was about a tragic accident or the contributor was a doctor, expert or business person who may not have wished to be associated with or represented in the style of *Agony II*, it was often assumed that he or she would not want to contribute. The programme-makers' honesty thus became quite instrumental and pragmatic.

These deceptive practices were so widespread and taken for granted that programme-makers rarely reflected upon them. And, the absence of reflecting upon one's deviant behaviour might be motivation in itself to continue acting unlawfully (see Sereny, 1995).[66]

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[64] Fieldwork notes: Paraphrased from a conversation had in February 2004.

[65] Section 28, Suffering and Distress: Broadcasters should not add to the distress of people caught up in emergencies or suffering a personal tragedy. People in a state of distress must not be put under any pressure to provide interviews… Section 29, Suffering and Distress: Programme-makers should also be sensitive to the possibility of causing additional anxiety or distress when filming or recording people who are already extremely upset or under stress, for example at funerals or in hospitals. Normally, prior consent should be obtained from the family of their agents…No attempt should be made to enter wards or other places of treatment in hospitals without clear and informed authorization from the medical staff and the individuals concerned or those acting on their behalf.

[66] This is reflected in the work of Sereny (1995), who examined Albert Speer, Adolf Hitler's right-hand man, and his denial and lack of self-reflection regarding the events surrounding the Holocaust.

On occasion a programme-maker would express feelings of guilt if an interviewee was not portrayed sympathetically or the programme-maker developed a rapport with a contributor. Those moments of guilt were often brief though, as programme-makers appeared to be generally dispassionate because of the urgency surrounding the production process and their belief that they were easily disposable if they did not produce immediate results.

In an attempt to assess whether this finding was unique or common, I turned to the media literature and found that researchers, such as Luljak, have claimed that acts of deception in media production are "routine" and "occur without much discussion or reflection" (2000: p. 188). This suggests that the problem spreads beyond Envision. The Society of Professional Journalists, an organisation that aims to uphold high standards of ethical practice in journalism, also found, as I did, that deception "can take many forms from outright lying, to deceiving, or misleading, or misrepresenting, or merely being less than forthright" (Black, Steele and Barney, 1992: p. 109).

After asking a production coordinator how he felt about his use of deceptive practices, I was told that he had recently been contacted by angry participants whom he had misled and that he had felt bad about his behaviour. When they approached him, distraught about how they had been portrayed, he stated that he was no longer working on the production and was not in control of the segment's editing. He claimed that he felt guilty about telling them this because he knew throughout the production how the segment was going to be angled and edited, yet he had nonetheless intentionally withheld such information from participants.[67]

In this instance the coordinator appeared pleased that his job, which required him to shift between different production houses, often allowed him to avoid confrontation with disgruntled contributors, and therefore responsibility for his actions, as he had generally left an organisation by the time a programme was broadcast (since he was a freelancer) and a contributor had an opportunity to complain.

The employee's conflicting stance between feeling guilty, yet still behaving in a less than forthright manner, is reminiscent of the criminologist, Cohen's, description of how workers within an organisation or culture take on "collective false selves" and show two faces. One is truthful – in it a worker describes to trusted individuals (e.g. spouses or friends) the sometimes

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[67] Fieldwork notes from paraphrased conversation in February 2004.

dark realities of the workplace and its members. The other is a false version created for the 'public domain' or for individuals who are not trusted, and depicts the working environment in a 'glossy' manner, noting how it is 'inspiring' and 'stimulating' (p. 61).

So it was that, if the producers were speaking with a programme contributor, they would attempt to put them at ease and create a falsely positive image of the programme and their desired contribution. Conversely, if they were speaking with co-workers they would talk more honestly about the unflattering manner contributors would be portrayed in. In this sense, they also showed two faces (see also Scott and Lyman's work on 'face games', 1970: p. 97-102). This stance also reflects what Goffman (1971) referred to as "dramaturgy", which describes the different roles that people play when in front of different audiences. He used the analogy of a theatrical performance to describe how individuals who are on stage will act in a polished and carefully scripted way to portray a certain message to a particular audience, and when they are backstage their masks will come off and all of the activity that must occur to ensure the competent performance of the actors will end.

While the employee in this instance expressed a momentary sense of guilt, other producers adopted an attitude which defended, or neutralised, their actions. They asserted that, following the doctrine of *caveat emptor*, programme contributors should be wary of the media, and that it was their responsibility to ensure that they had sufficient understanding of the series before agreeing to contribute.

This form of 'responsibilisation', as criminologists have referred to it, is the act of endowing people with responsibility for protecting themselves. Adopters of this label claim that individuals must avoid risky situations, become knowledgeable about the circumstances surrounding them, and prepared to protect themselves from the harm of others (Wells 2007: p. 3; see also Hunt, 2003; Garland, 2003; O'Malley and Hutchinson, 2007). 'Responsibilisation', as with 'victim blaming', enables rule offenders to avoid accountability for their actions by assigning blame to their victims (Lamb, 1996). In doing so, these individuals transform their victim into a "wrong-doer", who is deserving of the treatment they received. This enables offenders to avoid viewing their victim's injuries as actual injuries, but rather as suitable "punishment" for their naivety, lack of cautiousness and/or wilful involvement (Sykes and Matza, 1957).

*The influence of the organisation's culture on compliance behaviour:*

Given the nature of production at Envision, producers' acts of deviance need to be examined within the context of the greater organisational culture, and how this influenced their perceptions of their roles and their subsequent actions (see also Breed, 1955; Manning, 1977; Jablin, 1982; Pfeffer, 1982; Punch 1985; Kim, 2002).

Social learning theory argues that people's decisions are shaped by the encounters they have with the individuals within their group (Akers, 1985; Bandura, 1969). For instance, individuals' view-points and reactions to situations may be moulded by their peers' opinions or by social pressures.[68]

Sociological institutionalism too acknowledges the influence that social groups, and particularly the cultures within them, have on the shaping of individuals' perceptions and thereby their behaviour. It reasons that people have shared cultural understandings and interpretive frameworks which not only influence their preferences and beliefs regarding what they should or should not do, but rather what is even possible or comprehensible to do (see also Zucker, 1983; Berger and Luckmann, 1987; Meyer and Rowen, 1991; Hall and Taylor, 1994; Scott, 1995). Within this model comes the assumption that individuals tend not to deviate from the cultural norms within their group for fear of alienation, even if they oppose wider social norms which counter mainstream culture.

With this in mind, one must consider the organisational culture (or ideology) of the programme-making environment as a prerequisite for understanding employees' compliance behaviour. At Envision there was a general perception that programme-makers faced remarkable challenges while attempting to meet production goals deemed generally to be unachievable without bending the rules. Due to the various macro-level factors noted previously (e.g. technological advancements, and changes in politics and regulation) coupled with Envision's organisational

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[68] The process by which individuals' perceptions and attitudes are influenced by their interactions with others is also discussed within the social constructionist literature. Hawikins and Thomas (1989), for instance, discuss the "shared meanings" that people ascribe to acts and events which emerge from patterns of interaction" (p. 10). Similarly, Blumer's (1969) notion of 'symbolic interactionism' contends that "Human beings act toward things on the basis of the meanings they ascribe to those things"; "The meaning of such things is derived from, or arises out of, the social interaction that one has with others and the society"; and "These meanings are handled in, and modified through, an interpretive process used by the person in dealing with the things he/she encounters" (p. 2).

characteristics, employees had little time, money or resources to produce content, and so the creativity and persistence required to accomplish tasks, despite the use of deception, were viewed as commendable and better enabled employees to advance their careers.

Acts of deception were therefore often not viewed by employees as deviant, but as reasonable decisions given the constraining circumstances, and thus as requirements of the job.[69] Individuals tended not to identify themselves as deceitful characters because others did not see them to be behaving improperly; the 'do what it takes' mentality was condoned and encouraged as a product of the employees' collective drive to work within a single, narrow vision to produce a hit series.

This is an important point as Gilboy noted that for a regulatory body to develop effective enforcement techniques it needs to understand whether non-compliant individuals "are deviating from the dominant culture or conforming to some subculture that contradicts the dominant culture" and approves of non-compliance (1998, p. 149). She noted that organisations which condone deviant behaviour need to be dealt with differently than organisations which condemn it.

The producers' content and compliance-related decisions were also largely shaped by Envision's power structure, which gave management substantial control over the organisation's priorities and methods of pursuing them. This point is reflected by Iggers, who studied journalists and found that their approach to cultivating news reports was "shaped by the relations of power and by the institutional priorities within the organizations that employ them" (1999: p. 1). It also corresponds to the words of Shoemaker and Vos who said, "News content should thus be expected to reflect the instrumental goals of those in charge...news media are driven by the profit-seeking goals or greed of management (2009: p. 74; see also Donohew, 1967; Herman and McChesney, 1997; Chomsky, 2006). This stance is furthermore in tune with

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[69] This finding did not relate significantly to Kagan and Scholz's (1984) 'corporation as a citizen' description, as the producers I examined did not express a general inclination to comply with the rules. Some claimed to see the logic in the social welfare benefitting purpose of the rules and argued that competition would drive businesses to negate the rules should enforcement procedures not be present, however, these very individuals also claimed that they fell into this category and aimed to circumvent the rules when it helped them to meet their business needs. Their attitudes towards compliance were therefore more reflective of Kagan and Scholz's (1984) 'amoral calculator' description, as will be discussed later in the chapter.

the arguments of Makkai and Braithwaite (1993), who found that management's control over staff affected their compliance with the regulations (see also Jones et al 2008).

At Envision, upper-level management not only condoned non-compliance, but it educated its employees how to evade the rules and instructed them to do so, as a means to survive in the competitive market. Employees were particularly influenced by the series producer, who controlled her staff's actions by publicly reprimanding those who failed to meet her expectations or questioned the compliance of content.

To illustrate, and returning to the example I offered earlier about the images of tortured victims, I approached the series producer at the time and questioned her about the appropriateness of using these images in a satirical, light entertainment programme. She sharply retorted that 'researchers were not paid to have opinions'.[70] This response was reflective of her general behaviour and representative of the programme-making atmosphere, as it was uncommon for employees to object to or question their superiors about the ethics surrounding the production.[71]

If employees did not act in accordance with the company culture and failed to meet their working targets, they risked damaging their reputation and their ability to find future employment, removing whatever security they might have had in an already competitive industry. These individuals therefore tended to conform. This relates to Hutter's description of individuals who conformed to peer group pressure to avoid the negative effects on career progression that individuals who do not conform can face (1989).[72]  Reflecting this, a personal note from my fieldwork journal stated:

> I see myself starting to fudge the truth to potential interviews, experts and film-
> owners because the pressure of getting the project done is so great. I worked for
> 10 hours on Sunday, my Christmas vacation, on Monday I left the office at 8:00pm
> only to work from home until midnight, and now I'm working until midnight again
> tonight.

This illustrated how even I, as an academic researcher, experienced the pressure to 'do what it takes to get the job done', for if I had not followed the working practices of my colleagues and

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[70] Fieldwork journal - This statement is paraphrased from an office conversation in 2004.
[71] Their non-response, in effect, also helped to exonerate them from moral complicity.
[72] While Hutter related this concept to regulators, I will show how it also applies to regulated bodies.

the directions of my manager, I would have not been employed long enough to conduct my fieldwork.

The influence that a group's culture and ideology has on its members' decisions about content and regulatory compliance has been documented by numerous researchers (Tuchman, 1978; Gitlin, 1980; Braithwaite and Geiss, 1982; Punch, 1985; Shoemaker, 1987; Victor and Cullen 1988; Soloski, 1989; Makkai and Braithwaite 1993; Entman and Rojecki, 2000; Hutter, 2001; Turner, 2002; Warren and Vavrus, 2003; Job, Stout and Smith, 2007; Nie 2008; Aaronson, 2010; Harris-White, 2010; Wikström, 2010).[73] This is particularly important among those who found that individuals are less likely to comply with the rules the more their community or peers do not comply (Vogel, 1974; Geerken and Gove, 1975; Witte and Woodbury, 1985; see also Reno, 1993; Paterson 1993; Wikström, 2010).

I found the most interesting of these to be the research Maurice Punch conducted on deviant behaviour within police forces in Amsterdam. In *Conduct Unbecoming: The Social Construction of Police Deviance and Control* (1985), he noted that issues of deviance are concerns for virtually all organisations.

Punch found that the majority of the police officers he examined believed they had to "cut corners" and "bend rules" to achieve needed results (p. 202). It was generally accepted amongst officers that the most successful were those who could 'make things happen by breaking, bending, and twisting rules and cutting through red tape' (Marx, 1982: p. 174).[74] Successful members were also those best able to "cope with uncertainty and prepared to innovate within the constraints placed upon them (Pfeffer, 1981)" (Punch, 1985: p. 204).

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[73] This influence that one's culture and ideology have on their compliance behaviour is also reminiscent of Merton's 'anomie' theory (1938). Among the five factors that Merton outlined to describe how individuals adapt to the conflict between socially desirable goals and an insufficient means to achieve them, 'innovation' is the element that relates most closely to this research, as innovators, like the producers I examined, were confronted with structural obstacles which inhibited their ability to achieve their goals. In response, they broke the rules to meet their objectives. Their peer group, which valued their achievement more than their means of achievement, praised them for their success, and so the cycle of non-compliance continued.

[74] Unlike Grasmick and Bursik's (1991) finding that people's motivation to comply with the rules comes from a desire to earn the respect and approval of the powerful individuals with whom they interact (this is termed "social motivation"), I found that producers' earned respect from their peers by completing successful projects, even if it meant breaching the rules. This too is a form of social motivation, but one that opposes compliance-based objectives (see also Murphy, 2004).

Punch claimed that when officers were accused of deviant acts they argued that they were simply doing their jobs as required. The general consensus of opinion from the force was that such behaviour was either "actively condoned" or "passively accepted" (1985: p. 202; see also Klockars, 1980). The similarity in the two environments was summarized in Punch's statement:

> "…occupational and organisational deviance is generated and sustained by the nature of the work which may be seen as impossible without short cuts and rule bending; by an occupational culture that condones illicit practices and that legitimates techniques of subterfuge and deception which undermine control; by an organisation that implicitly stimulates deviancy as a solution to getting results..." (Punch, 1985: p. 208)[75]

The producers' assertion that they were confronted with difficult challenges and needed to push regulatory limits to survive the market (as they argued other television-makers did), also reflects their denial of responsibility for their actions and their belief that these actions were somehow mitigated if their competition used equally deviant practices. This is reflective of one of the forms of 'denial' that Cohen (2001) presented in his book "States of Denial"[76], which claimed that individuals or perpetrators will deny accountability for their actions by claiming that if they did not do the 'dirty work' someone else would have. There is an element here of surrender, of treating oneself as effect rather than cause, of object rather than subject, which was broached by Sykes and Matza (1957), who argued:

> It may also be asserted that delinquent acts are due to forces outside of the individual and beyond his control such as unloving parents, bad companions, or a slum neighbourhood. In effect, the delinquent approaches a "billiard ball" conception of himself in which he sees himself as helplessly propelled into new situations (1957: p. 667).

This claim, along with Parsons and Bales' (1955) description of a 'sick role'[77], coincides with the actions of producers, as they appeared to believe that they needed to opt out of regular social responsibilities because of limitations beyond their control. [78]

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[75] The social constructionist perspective also helped to highlight issues within the environment, including how the interaction of employees served to generate shared objectives and practices. For example, when judging permissible content, the editors were guided by their previous experience of compliance and their understanding of the programme objectives. Their insights, reactions to scenes, and personal sensibilities influenced their editorial decisions. The interaction between the editors also contributed to the shaping of the series as they made decisions together, influencing one another's interpretation of the regulation. To communicate effectively, employees constructed a common meaning to terms such as 'shock', 'money shot', and 'boundary pushing'.

[76] Cohen argues that "Statements of denial are assertions that something did not happen, does not exist, is not true or is not known about" (2001: p. 3).

[77] Parsons and Bales argued that individuals who are ill sometimes enter into a role of 'sanctioned deviance'. In this image, it is socially perceived that these individuals are not responsible for their illness, and so long as they do what is expected of them, which is to work with medical professionals to

This understanding of Envision's organisational culture gives force to the thinking behind sociological institutionalism, as employees' perceptions of what they should do, and even more importantly what they *could* do and *had* to do, was shaped by their social environment. This stemmed from the various socially conceived barriers that were established, which guided the team along the same course and persuaded them to make like-minded decisions (with as I noted, management leading the way, yet also being bound by the same perceived constraints).

This culturally-centered guise places a different slant on the 'rational choice' perspective I have, and will continue to, discuss here. The simple rational choice-based calculus, option A is better than option B, fails to take account of how individuals come to perceive behavioral constraints, to view costs and benefits, and to reconcile social acts of 'illegitimate' conduct. It also ignores such important factors as context, beliefs and culture. In other words, rational choice institutionalism tends to focus on individuals' preferences at any given point and how they manage their pursuit of them. Conversely, sociology institutionalism tends to take a greater look at how and why their preferences were formed, and the factors that contributed to their development. Given the benefit of each approach, it is in the culmination of ideas from both theoretical traditions that my findings are best expressed.

## Phase 6: The filming process

I shall now turn to a review of the filming process and explain how graphic scenes were captured. In doing so, I shall reveal some of the techniques that producers used to contend with regulations and how they enabled them to press skilfully the confines of acceptable content.

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try and get well, they are exempt from the normal social responsibilities that are associated with being a productive member of society (see also Davis, 1961).

[78] Car Klockers, author of 'The Dirty Harry Problem' (1980), had similar findings in research on police enforcement. Klockers said that police officers sometimes felt the need to break the law in order to catch and punish criminals which would otherwise go unpenalized. Termed the 'Dirty Harry' problem or 'noble cause corruption', rule breaking is done for the greater good, and colleagues and the public often support the officers for the prosperous outcome (see also Greene, 2006). Similarly, programme-makers at Envision sometimes broke the regulatory rules by deceiving contributors to produce *Agony* and through doing so they produced the highest rated series in the broadcaster's history and benefited from the acknowledgment that they received for a job well done. This suggests that in some situations television-makers, like police officers, could not meet the public's demands (for safety or for entertainment) unless deviance or rule-breaking was used in some form.

Various scenes were filmed for *Agony II*, including individuals running nude in the snow, a dominatrix inflicting pain on her subject and a man using an electric baton on a woman as a device for intercourse. It was important to shoot particularly graphic scenes in a fashion that would not breach the regulation surrounding 'taste' and 'decency' (Section 1.1 in the ITC Programme Code, 2002).[79]

There was therefore a reliance on techniques which 'masked'[80] the contentious elements of the footage. It enabled scenes to be suggestive of sex or violence yet not be too visually revealing. Camera operators' tactics often included shooting a scene out of focus, inserting an object to obstruct the contentious elements of the scene or capturing the scene from an angle that did not expose its sensitive areas (see Figures 19-21 for examples.)

**Figure 19: Masking technique: blurring image**



Source: www.inmagine.com

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[79] Section 1.1, General Requirement: Section 6(1) of the Broadcasting Act 1990 requires that the ITC does all it can to secure that every licensed service includes nothing in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or lead to disorder or be offensive to public feeling.
[80] This is my own term, rather than a term of art.

**Figure 20: Masking technique: Blocking contentious imagery**



Source: www.aatrevue.com

**Figure 21: Masking technique: Angled shot**



Source: Ambro: http://www.freedigitalphotos.net/images/view_photog.php?photogid=1499

In addition to masking techniques, some employees adopted a filming process which allowed them interchangeably to edit hard and soft versions of scenes. The series producer of *The 10 Worst* (2004) explained it:

> Normally when you shoot you have two cameras…You shoot essentially a soft-core version and a hard-core version like they do with porn films. When people make porn films they shoot a soft-core version which goes out on television and a hard-core one which you buy from under the counter.
>
> …You have to bear in mind that if the ITC or the broadcaster says no to this item - that it is too strong for broadcast - you'll need to be able to tell the same story with softer shots. So, we deliberately shoot a lot of it hard, like with the autopsy which is a classical example where [the mortician] saws the top of the head and cracks it and the brain comes out. But then I got him to…shoot it twice. So, the first time he cracked it, I got it full on. The second time I had it from behind him so you could sort of see an edge of it but you could not see all the gory details. So, if I need to use the second shot then I have got it.

This strategy allowed programme-makers easily to adjust content to accommodate broadcasters' requests and to work in and beyond the boundaries of acceptable imagery without a great loss of time or money. Producers could try to submit 'hard' versions of the imagery to the broadcaster for review. If the broadcaster argued that an image was too graphic, softer images were available for replacement. Equally, if a regulator upheld a complaint over a graphic scene, it could be edited without greatly affecting the broadcast schedule.

These filming techniques better enabled producers to broadcast content on the border of impermissibility whilst adapting to regulatory restrictions. More generally, this example suggests that actors who wished to extend social boundaries developed strategies that would allow them to test those boundaries and also to protect themselves from reaping negative consequences should the regulator intervene. Such an approach minimized the 'costs' of non-compliance in their cost/benefit analysis, thereby incentivizing them act in a non-abiding fashion.

Now that I have explained the various stages actors underwent to produce segments, I shall review how the editors pieced the content together in an attempt to create coherent and engaging stories.

## Phase 7: The editing process

The seventh phase of the production process entailed the editing of the series. This was a particularly significant phase because it was where producers made compliance decisions about what content could and could not be included in the programme. Given this responsibility, the editors were also required to have the greatest understanding of the regulatory rules.

### The editors' objectives

The editing phase took roughly six weeks, and involved the collaboration of the editor who operated the computer equipment and the producer who arranged the packaging of the story, advising on the appropriate edits.

The producer's aim was to create concise and engaging stories, each about four minutes in length, to total four stories per episode. Interviews with the central characters were used to explain harmful events and the feelings of suffering they produced. Secondary interviews with onlookers, relatives or friends were then introduced to recount the shocking experience of witnessing the incidents and the feelings it conjured up. Interviews with experts, such as medical practitioners, were then added to explain the injuries in medical terms.

Tying the footage together were narrative comments that ensured the sensible flow of the storylines. Narration was also used to set the programme's mood, provide audience warnings, and insert related facts and statistics to contextualize the segments, adhering to the regulator's advice to make the violent scenes appear less voyeuristically gratuitous. Entangled throughout the segments were also background music and dramatic sound bites consonant with the light entertainment nature of the series.

The focal point of a story was to feature the 'money shots' since all narrative comments and interview segments were used to elaborate on the graphic imagery. The desire to broadcast this graphic imagery needed to be balanced against the associated regulatory restrictions. Since *Agony* had been found to be in breach of the rules, the editors attempted to ensure that *Agony II* would not be similarly at risk.

## Why the regulation was previously breached

Previously the ITC held *Agony* in breach of Section 1.7(c) of the regulatory code, 'imitable violence' (meaning, violent scenes that could lead to viewers' emulation).[81] The television-makers claimed that the rule was breached for two reasons – they did not believe in the reasoning behind, and thus the purpose for, the rule and they had an inadequate understanding of the regulation and of how to calculate risks effectively.

More precisely, the producers generally claimed to believe that television violence does not lead to violent social behaviour. High-level employees, who had greater authority over the inclusion of violent imagery, were more aware of the media effects research than their lower-level colleagues, yet they too declared themselves unconvinced about the negative effects. For example, the producer and editor of *Agony II* stated, "I don't believe that violent movies make kids or people violent… I think the media is a lot less influential then we think".[82]

This stance was problematic, as the regulatory code prohibited content that incited violence, and so the holding of a belief that the media was unable to incite violence left producers with few reservations about broadcasting even the most contentious forms of violent imagery. That is part of the reason why, as I noted, they breached the regulations concerning 'imitable violence' in *Agony*.

This situation revealed a more general point about actors' compliance behaviour, which is that rule-breaking can stem from what purports to be a "principled disagreement with the regulations", as Kagan and Scholz' 'corporation as a citizen ideal-type would suggest (1984: p. 76-78).[83]

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[81] Footnote omitted for confidentiality purposes.

[82] The only employee who insinuated that there was a potential negative effect was the series producer of *Violent Rage* who declined to answer questions about his stance on media effects as he claimed that he was at risk of endangering his job if he responded honestly.

[83] However, unlike this ideal-type (described in Chapter Two), the producers were not 'good apples', generally willing to comply with the rules, but rather 'bad apples, who aimed to circumvent the rules.

The producers' self-serving stance about violent content can also make some question whether they made these claims as a means of avoiding accountability for the potential negative effects of their actions.[84]

Producers' adoption of a rationale which argued, "no one really got hurt", is a variant of Cohen's (2001) and Sykes and Matza's (1957) concepts of a perpetrator's "denial of injury" or "denial of responsibility" ('I did not know what I was doing'). This justification, or "rationalization", as Sykes and Matza stated, protected actors from blaming themselves or their peers for their actions, thereby allowing the group to continue breaking the rules without individual or organisational objection. They stated:

> It is our argument that much delinquency is based on what is essentially an unrecognized extension of defences to crimes, in the form of justifications for deviance that are seen as valid by the delinquent but not by the legal system or society at large. These justifications are commonly described as rationalizations. They are viewed as following deviant behaviour and as protecting the individual from self-blame and the blame of others after the act. But there is also reason to believe that they precede deviant behaviour and make deviant behaviour possible (Sykes and Matza: p. 666).

The producers' stance furthermore allowed them to reject the legitimacy of a 'deviant' identity, which is another form of denial of responsibility. This concept is otherwise referred to as 'deviance disavowal', which is defined as "A refusal, on the part of those who have been labelled deviant, to accept this characterization (Oxford Dictionary; see also Davis, 1961).[85]

Falling under the pool of theories that explain why organisations *cannot* comply with rules, the producers' breach of the regulations also stemmed, as the 'corporation as incompetent' ideal-type would suggest, from an inadequate knowledge of the regulation, which led to miscalculations in their decisions over the form and extent of violent imagery they could broadcast (Kagan and Scholz, 1984; see also Chayes and Chayes, 1993; Downs, Rocke and Barsoom, 1996). As knowledge about the regulatory rules is a "prerequisite to compliance", this

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[84] This is reminiscent of a statement made by Miss Rice-Davis, an escort who was found to be servicing one or more of the third Viscount Astor, William Waldorf Astor's, house guests. When Miss Rice-Davis was told that Viscount Astor denied having met her, she replied, "Well they would, wouldn't they?", suggesting that he would obviously deny any responsibility (Banyard, 2004).

[85] The concept was originally developed with reference to so-called social deviants, such as the physically handicapped, who had a strong interest in attempting to minimize the stigma of deviance in order either to appear normal or to normalize their interactions and relationships with the able-bodied. It is now used more widely, notably within the labelling perspective, to apply to all forms of deviant behaviour" (Oxford Dictionary; see also Davis, 1961).

was a handicap which inhibited the producers' ability to work effectively (Winter, 2001: p. 679; Robens Report, 1972).

Part of the reason that the producers were insufficiently aware of the rules was because the series was produced on a minimal budget, and so managers hired staff with less experience (typically five years or less) who commanded lower wages than more experienced staff (see also Diver, 1989). The tight budget and time-scales also meant that no resources were put towards improving their skills and knowledge.

Yet it must also be noted that the producers seemingly *willed* their ignorance. They expressed little interest in learning about the media effects literature and about the formal regulations.[86] This was perhaps because a lack of knowledge about committing illegal or inappropriate acts could be somewhat mitigated by a claim that one had *unintentionally* breached the rules.

The possession of a university education, such as a degree in media studies, which can familiarize television-makers with the media effects literature, was not held to be a necessary qualification to work in the industry. One employee, who had worked in television for three years, even noted that he had removed the education section from his *curriculum vitae* because he felt that it did not enhance his prospects of attaining work.

When the company's production director was asked if he thought programme-makers should be required to attend classes about regulation and media violence effects he stated:

> No, because I think it just puts up barriers. Because I think if you go to a course
> and it says that 'this is our guidelines', you are always going to be thinking within
> the guidelines. I think when you get too wrapped up in the ITC you might get stuck

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[86] To make compliance decisions more objective, producers can review the extensive public research about 'taste and decency' and the media's potentially harmful effects (see Millwood Hargrave 1993; Morrison 1999; Anderson et al. 2003; Cumberbatch and Howitt 1999; Huesmann et al. 2003; Kuntsche 2003; Savage 2004; Browne and Hamilton-Giachritsis 2005; Millwood Hargrave and Livingstone, 2006, etc.). The evidence is, however, divided. Some researchers have found that television violence has no adverse effect on audiences while others have argued that it can have both short- and long-term effects, and can lead to violent behaviour and bullying, an increased fear of violence, and desensitization towards the harm of others. These effects are believed to be most significant amongst children (generally primary school age), youths (typically secondary school age), and other 'vulnerable' audiences (see American Association of Paediatrics, 2000; Anderson et al., 2003; Carter, 2002; Huesmann et al., 2003; Millwood Hargrave and Livingstone, 2006). Shoemaker and Vos (2009) also noted that, like the producer I examined, "studies have found that news reporters and editors generally ignore or reject market research on audience taste or interest and rely instead on their own stylized versions of audiences (p. 53; see also Gans, 1979; Jacobs, 1996).

> in a box. Your box might be that you can't really show this because of, because of, because of. That means that you won't try to push it, which is what TV journalism is all about.

This statement not only confirms my argument that producers had a general disregard for the rules, but also underscored how that disregard shaped their non-compliant behaviour.

## How editors learned about the boundaries of permissible content

While, when asked, the producers I examined could not recall any of the specific rules which guided their industry, they did share an informal, common understanding of what content they could not show on television and this served as a codified or folk understanding of the rules.

Let me proceed to explain how producers developed this understanding, and how their encounters with peers, and personal opinions and instincts (otherwise referred to as their "gut instincts") shaped this process. I shall also reveal how their understanding of the regulatory boundaries helped them to develop more effective techniques to bypass the rules, especially when dealing with those which were ambiguous or 'widely-scoped' and allowed for a variety of interpretations.

Erikson (1966) argued that the cultivating and sharing of information about social boundaries (or in this case regulatory boundaries) commonly takes place through an exchange of shared experiences and understandings. The production process served as an example of this very point.

The producers learned about the boundaries of acceptable content by way of a 'grapevine' – not through reading books or instructional manuals, but by staying abreast of what was on television[87] and constantly communicating with their peers about their opinions about the content.[88]

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[87] As television in itself is a unique medium because it is used to spread social messages (Cohen, 2002), producers established their sense of boundaries by watching the screen. Over the course of their lifetimes they saw how different forms of content were introduced and made permissible, and this developed their sense of what was and was not acceptable to broadcast in their day-to-day activities. In the case of the producers I examined, each time an increasingly graphic scene was broadcast without causing a regulatory intervention, they took it as a sign that they too could transmit similar content.

[88] This is redolent of Lewis (1969) and Virts, 1978 who found that 'community knowledge' and the opinions of peers influenced one's decisions about content.

In order to communicate effectively about the nature of television production, producers adopted and cultivated a common language which was specific to their industry. For instance, they talked about 'water cooler moments', 'context', 'audience demographic' and 'gratuitous violence' because they served as important aspects in the production process and were cultivated to get across messages which were integral to this field.

Thus, while television violence was acceptable, 'gratuitous violence' was not, and the phrase was used to mark a social (or regulatory) boundary. The term 'context' too was very important, and as the amount of available content in the industry has expanded, its role in the interpretation of regulatory boundaries has risen. Whether or not an image of violence is deemed permissible by the regulator is dependent on its context. Did the offender hurt someone and get away without negative repercussions? If so, this might be deemed unacceptable because it could teach viewers that they can get away with crimes. Did a news story show the face of an adolescent rape victim? If so, it might be deemed inappropriate because society at large is held to believe that children should be protected from undue stress and harm.

Television-makers also pooled their experiences of which tactics they and their peers had used and which had proved to be successful or unsuccessful in the past. Practical information and advice were therefore constantly passed between employees to keep them abreast of issues affecting their work, and over time they used this trial and error-based approach to develop their understanding of the industry and their attitudes towards compliance (for an interesting example see the footnote).[89] One of the editors explained, "…if you know somebody that has got into trouble for leaving something in, you make sure the next time you take it out".

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[89] For example, the series producer of *The 10 Worst* stated that he was the first producer to broadcast in-depth autopsy footage in Britain. He claimed to be anxious when submitting the segment to the commissioning editor to preview as he was certain that it would be deemed impermissible. By chance, however, the commissioning editor had hoped for a career as an undertaker before he had shifted into television. He therefore found the footage interesting and allowed it to be broadcast. In the end, the programme was aired without regulatory intervention. Since television-makers base many of their decisions about permissibility on whether previous content had been found to be in breach of regulations, this precedent may have encouraged other broadcasters to produce similar programming thereafter. An instance in which autopsies were later broadcast without regulatory infringement included the educational series *The Autopsy* (2005). Interestingly, *The Autopsy*, like *Agony II*, took an ostensibly educational approach to legitimising its inclusion of highly graphic content.

The editor and numerous other producers stated that this accumulated understanding congealed into what they referred to as a "gut instinct" which guided their decision-making and helped them to determine which content to prohibit.

This process of learning by way of a 'grapevine' and practical apprenticeship was a product of the continually changing television environment. Since programmes possess different forms of content there is a continually shifting context within which judgements about permissibility may be made. It is only through long exposure to television and regulation compliance, and the sharing of professional knowledge, that a recognition of the nuances between acceptable and unacceptable programming can emerge.

Let us now turn to an examination of how programme-makers interpreted the regulatory guidelines in practice. As some of the rules were broadly scoped (e.g. 'do not broadcast 'offensive' content') and because television programming was diverse in content and context, the makers of *Violent Rage* and *Agony II* were rarely able to provide clear, practical guidelines for their editorial decisions. It did nevertheless become apparent through my interviews with the producers that certain guidelines were in play, and they indicated that the producers believed that if violent content met a number of requirements (specifically in relation to the series I examined), it could be permissibly broadcast if:

- the scenes did not result in a person's death;
- sexual scenes appeared consensual and did not show penetrative sex or a penile erection;
- scenes were appropriately contextualized and in alignment with the nature of the programme, schedule and channel;
- scenes were appropriately filmed and edited to ensure that the contentious elements of graphic scenes were concealed, and that their display was not overly repetitious;
- with few exceptions, those harmed were adults not children;
- the audience was given sufficient warning about the nature of the content and the potential harm if audience members were to re-enact the violent scenes;
- the programmes were aired reasonably late after the watershed (9pm); and
- the content was appropriately aimed toward the audience 'demographic'.

Some particularly revealing marginal cases demonstrate how editorial decisions were made about death and children – two key areas of concern for regulators. These case examples show how the rules were interpreted in practice.

The first case touches on the prohibition of broadcasting a person's death, which relates to Section 1.7 of the ITC's code:

> 1.7(ii) (c) Violence in News and other Programmes:
> Whether in news, current affairs or other programmes, actuality footage of executions or other scenes in which people are clearly seen being killed or about to die require exceptional justification.

*Violent Rage* aired a story about Thomas Johnson, a young African-American man from Mississippi, who fled from the police after an incident of reported reckless driving. The police pursued Johnson for five miles before he stopped his vehicle in a convenience store parking lot and fled on foot for several yards before submitting by putting his hands into the air. He had no weapon and posed no serious threat to the police, but the police mistook a mobile phone in Johnson's hand for a gun and repeatedly shot him at point blank range in the back, killing him.

The event was caught on a camera attached to one of the police vehicles. When determining the permissibility of showing the content, the editor decided to broadcast the video up until the point before Johnson was shot. If Johnson had survived the shooting, Envision would have likely broadcast the entire clip, but because the shooting resulted in his death, the scene was deemed too violent for transmission. This marks the operation of a regulatory-enforced boundary at the extreme edge of violent imagery.

It is, however, interesting to note that if two broadcasters aired identical scenes in identical circumstances, and one involved a narrator stating that the victim had died, the scene would probably have been deemed unacceptable, whereas if the other narrator had stated that he had survived, it was more likely to have been deemed acceptable.[90] The regulator was responsible for developing evidence-based policy, and this guideline likely originated from research which revealed that the public finds non-fictional scenes of death distressing. It was a concrete restriction unless there was 'exceptional justification'. Near-death, however, fell within

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[90] To substantiate this point, on 6 March 2009 BBC One aired a news report which showed a scene in which a train flew off the tracks and ran over a man. From viewing the scene, one would have assumed that the man had died. The news anchor, however, declared that the man miraculously survived, and because this statement was made, the scene was likely allowed to be broadcast.

a grey area of regulation where aspects surrounding contextualization could have been used to allow content to be shown.

A second issue of concern, marking another stark regulatory boundary, related to the treatment of children. Programme-makers were advised to be very cautious when considering the inclusion of scenes which showed children being harmed. Most stories with children were therefore excluded in the early stages. One that was given significant consideration was about a Russian community which dipped their male babies into ice-cold water because they believed it toughened their spirits. The broadcaster decided to exclude the story because audience members might have viewed it as a form of child abuse.

While these examples generally illustrated cases which were rather clear-cut, the following example will show that some scenes needed greater contextualisation to ensure that they could be successfully broadcast.

How the editors used their understanding to navigate around the rules

Apart from such explicitly prohibited boundaries, programme-makers believed themselves to be reasonably capable of broadcasting what many thought were some of the most violent scenes on British television, once they had been appropriately packaged in a fashion intended to circumvent regulatory intervention. These constituted some of the techniques the actors used to practice 'creative compliance' and what I will refer to as 'rule reinterpretation'.

To explain, in one *Violent Rage* episode about the abuse of authority, there was a graphic scene which displayed a man in a foreign country held in police custody. A policeman instructed the man to run into a field, only to command a police dog to chase and attack him. When the man tried to defend himself against the dog's vicious and repeated biting, the police officer beat him severely.

The segment was contextualized, albeit not in depth, by a narrative discussion of violence as a societal concern that needed to be addressed, it contained audience warnings, placed on a 'suitable' non-terrestrial channel, aired after the watershed and targeted toward an audience of young adult males.

Despite these factors, intended to allow for its permissibility by regulatory standards, the production director described the programme as clearly "gratuitous". In his words:

> If this were Channel 4, it might have gone a bit deeper into when and why it happened, whereas with *Violent Rage* it is not really a hard hitting documentary as such. It is just showing gratuitous violence, because you can. So there's nothing in-depth about it.

It is evident that the director purported to believe that it was acceptable to broadcast 'gratuitous' violence for the sake of ratings, when in fact 'gratuitous' violence was explicitly prohibited by the regulation. He did however make three things clear:

- he was inadequately educated about the regulatory Code;
- he intended to broadcast 'gratuitous' violence; and
- in his eight years of experience, he found that when 'gratuitous' violence was appropriately packaged, it could successfully be broadcast without regulatory consequences.

And in fact, the violent imagery *was* broadcast and the regulator did not find the series in breach of the Code.

The producers' ability to circumvent the rules and ultimately reshape the media's landscape concerning violent content lends itself to one producer's statement – "I think TV is being watered down. Like the rules and the morality of it are slowly eroding a little bit, and a little bit, and a little bit on what you can get away with. I don't necessarily think it is a good thing."[91]

This situation adds to our understanding of compliance behaviour. This chapter, along with the forthcoming two chapters, offer examples of regulatory 'non-compliance' and 'creative compliance'. This situation, however, offers a third perspective on compliance behaviour – one that I shall refer to as 'rule reinterpretation'. While 'non-compliance' refers simply to the infringement of rules, and 'creative compliance' to an actor who follows the letter of rules but not their 'spirit' (as to avoid penalisation), 'rule reinterpretation' refers to those who flexibly reformulate the way that rules are interpreted so as to benefit their own purposes (and to evade penalisation).

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[91] Interview, February 2004

In this situation the producers practiced both 'creative compliance' and 'rule reinterpretation'. They followed the letter of the regulatory rules, but not their spirit, as a means to avoid regulatory intervention, thus practicing creative compliance. In the process of doing so, they also successfully reconfigured the practical interpretation of the rules on 'offensive' and 'gratuitous' violence, thereby extending the limits of permissible graphic imagery (See Chapter Three for an elaboration of these rules, and Chapters Six and Seven for a further discussion of 'rule reinterpretation').

Phase 8: The final moments

In the final stage of the editing process, the producer needed to ensure that each segment was complete and that the storylines were seamlessly connected and contained a sufficient level of background information. Such work was done in a hectic fashion that was made even more fraught by the departure of two-thirds of the staff prior to the completion of the series, leaving the remaining third to finish the project within a tight deadline. This led to the broadcast of seemingly inaccurate information.

Two producers worked simultaneously to complete the editing, frequently contacting the two remaining researchers to locate supplementary information and statistics to substantiate the stories. The researchers had very limited time to find information which was often elusive because of its 'random yet specific' nature. For example, a researcher might have been asked to find out how many houses in a remote area of South America were burned down by cigarettes each year, although such statistics were never recorded.

Some of the information was obtained through questioning relevant experts. Other information, namely statistics, was obtained through general internet searches where data were taken indiscriminately from random websites. Many of these links typically lacked the authority of, say, the American Medical Association's website. Given the significant pressure to meet urgent deadlines, researchers did not check the statistics' validity or sources, making the accuracy of the broadcast information highly questionable.

The association between time constraints and the release of inaccurate information has been discussed by a number of researchers including MacGregor (1995), Cottle (1999), Arant and Anderson (2001), Ursell (2001); Berkowitz (2002); Rao, Zmikly and Tyree (2007), O'Sullivan

and Heinonen (2008), Russial (2009) and Valentine (2009). Ursell, for example, conducted a study of broadcasters at the BBC, ITN and Yorkshire Television and found that errors in accuracy resulted from their not having had the time or resources to ensure that their material was properly developed and substantiated. She stated "Journalists complained of 'no time to think, no time to check'; 'I've never time to get out of the studio and dig out better information'" (2001, p. 193).

Once this background information was in, despite its accuracy in question, the editor deemed the 'off-line' version of the series ready for the broadcasters' review.[92]

*Submitting the series to the broadcaster:*

*Agony II* was then submitted to Entertainu's compliance department and commissioning editor who reviewed the series to ensure that it abided by the regulations, that the stories were well constructed, and that they met the expected entertainment standards.

Entertainu's compliance and commissioning departments worked separately, in part because their objectives were at odds with one another and management wanted to impose a *cordon sanitaire* between them to insulate their engrained conflicts. The commissioner's goal was to guarantee that the series received high ratings, while the compliance team's objective was to guarantee that it met the relevant regulatory requirements. The commissioner therefore had a greater incentive to extend the limits of acceptable content than the compliance team.[93]

After their review, the compliance team contacted Envision with several requests for changes such as the removal of a segment that appeared harmful to children; a limitation of the number of repetitions of graphic imagery; and the removal or augmentation of graphic content thought to be gratuitously extended.

Entertainu's commissioning editor requested changes to the storylines to ensure that they were adequately comprehensible, included a sufficient level of background information, provided a reasonable flow between segments, and carried the appropriate music, narration and sound

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[92] 'Off-line' referred to the series prior to the broadcaster's changes and approval; 'on-line' referred to the series post approval, marking its preparedness for broadcast.
[93] The next chapter will explain further how Entertainu's departments operated.

effects. (These changes, and the broadcasters' role in the shaping of the series, will be discussed further in the forthcoming chapter.)

Having received Entertainu's suggestions, programme-makers then worked quickly to implement the corrections and the series went 'on-line', ready to be broadcast to the public.

## The producers' relationship with broadcasters and regulators

It is important to examine Envision's relationship with, and view of, the broadcaster and the regulator. In what follows, I shall explain how the producers' opinion of Entertainu served to motivate them further to test regulatory limits, and how their relationship (or lack thereof) with Ofcom translated into a lack of accountability for their non-compliant actions and a disengagement from the regulation.

Envision's relationship with Entertainu was that of an employer/employee, with the broadcaster holding the final decision-making power. Some broadcasters gave the production companies they hired substantial creative freedom while others did not. Such an arrangement would have been agreed in the commissioning phase of the project. The parties' understanding set out whether the programme was to be produced to the broadcaster's particular specifications or if the production company itself was intended to make the majority of the decisions about the programme's nature and content.

In the case of *Agony II,* the series producer had a clear understanding of the production plan for the series as she had produced its prequel, *Agony*. Given that the broadcasters were confident about what to expect, they offered her a significant level of creative freedom. Little communication was therefore thought to be required between the organisations during the production process.

The producers' approach to compliance was however influenced by their view of the broadcasters. The producers saw Entertainu as a broadcaster that was "chasing the money",[94] an entity which intentionally pushed the boundaries, yet would not intentionally and blatantly breach those boundaries out of fear of potential punishment. In other words, it was viewed as a

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[94] Interview with production director, March 2004

company that would place its pursuit of ratings above its duty to comply with regulation whenever it felt capable of getting away with it.

When the production director was asked if he thought it would be a good idea if Ofcom were to place more regulatory control into the broadcaster's hands, he stated, "Not really – they will push it, and push it and push it until they get sued."[95] This perception of Entertainu led the producers to have few reservations about forcing regulatory limits themselves, as the broadcasters, their employers, appeared to support this approach.

The producers, however, claimed that when the broadcasters' actually breached the regulatory Code, their act flowed from a failure of judgment resulting from an inadequate understanding (whether wilful or not) of the regulation in question. The claim that the broadcasters were inadequately knowledgeable about the rules echoes Kagan and Scholz's notion of 'corporations as incompetent' entities (see Chapter Two). The relevant factor here was Entertainu's ability to 'calculate risks intelligently'. The organisation admittedly pressed the limits of graphic content. Its ability to exist on the line of permissibility, slowly extending its reach, yet not blatantly breaking through its borders, was a continual measure of its success at calculating risks.[96]

In judging how decisions about this balancing act were made, the production director criticised Entertainu's compliance team, noting that it primarily made minor changes to the programmes, not changes that were significant, "intellectual" or justified. The series producer of *Agony II* further stated that the compliance team had no apparent or rational reason for their regulatory decisions and that they too frequently relied on their 'gut instinct'.

The producers' perception of broadcasters lacked a full understanding of how they operated in relation to compliance. They assumed that the broadcaster lacked a sophisticated strategy for decision-making. Yet, I shall show in the next chapter that the broadcaster *did* have a relatively thorough compliance process which relied on having a keen understanding of previous and current programmes broadcast across the collective networks. The producers' own lack of

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[95] Interview, March 2004
[96] This again relates to the amoral calculator theory as employees weighed the benefits of gaining footage and interviews against the costs of being caught.

understanding about this process, and compliance in general, simply led them to adopt their own somewhat misleading views.

In my attempt to understand whether the relationship I examined between the producers and broadcasters could be generalised more widely, I asked one series producer how he and his peers tended to negotiate their position on compliance with other broadcasters. His reply suggested that they often saw themselves as autonomous creative directors who wanted their programmes to be broadcast exactly the way they had created them. They therefore viewed the commissioning broadcasters, who had the final say in approving the content before it was released, to be individuals who could stand in the way of this interest, and so the series producer explained that they sometimes employed crafty techniques to outmanoeuvre the broadcasters and keep them from changing a programme.

The producer said, "The first layer of censorship is what the person that is buying it, the commissioning editor, personally finds offensive. If he doesn't like it he will say something. So even if you can legally show it on television, but it offends his sensibilities and is too much, then that's the way it goes." He stated that most directors therefore "deliberately put in a couple of shots that they know will never make it into television; that are so ghastly and over the top." They do so because they believe that commissioning editors feel the need to augment the programme in some form to put their mark on it – even if no change is necessary. Altering material allowed them to 'imagine' that they have made a difference and legitimises the need for their roles. The directors' approach to adding shots that they knew the commissioning editors would remove allowed them to broadcast the series in the way that they had originally intended. The series producer stated:

> If you give them too much, give them shots you know they are going to take out, that will save them from touching the stuff that you really like. If I put it in straight, as I want it to go out on television, I'm guaranteed it won't be out on television the way I want it to be because they would have felt that they have to change something. But if I put in a couple of glaring, horrible shots which are ghastly, they will say 'there's no way that can go in', which then means that he psychologically is thinking, 'oh brilliant, I've changed it; I've done something'. In fact, I know that he is going to change that so I've put it in deliberately so it goes back to what I wanted it to be. This is an unspoken trick that everyone does here.

In relation to the producers' relationship with the regulators, it is important to note once again that Ofcom only had the power to oversee the compliance of broadcasters, not of production

companies.[97] The regulators therefore could not penalise production companies in any way for acts of non-compliance. In turn, they had practically no contact with independent producers, regardless of whether or not they infringed the rules.

Rather, the regulators held the broadcasters responsible for all breaches of compliance, including those which were caused by external production houses. This was intended to encourage them to ensure that the independent producers they employed complied with the regulations.

The producers' incentive to comply rested on the presumption that in a highly competitive market they would not generate enough commissions to sustain their business if they were found to breach repeatedly the rules. Production companies were apparently further motivated as they signed contracts with the broadcasters promising to abide by the regulatory code.

But I have already noted that the broadcasters did not keep close watch over the producers' actions and did not penalise them in any way when they *were* found to be in breach of the regulation for *Agony*. To the contrary, after the programme's success with ratings, they commissioned a second series, which provided the producers with additional work. This, coupled with producers' belief that the breach from the first series only served to generate additional press and thereby ratings, motivated them further to test the regulatory limits, as they lacked an adequate system of accountability and suffered no negative repercussions for their non-compliant acts.

When I asked the series producer of *Agony II* if the regulators had any particular faults, she said that their compliance decisions were inconsistent at times. For example, she asserted that *Agony* was reprimanded for broadcasting images of self-harming stunts while the footage was simultaneously being broadcast on other channels without regulatory interference. She claimed that this oversight occurred because the regulators did not watch the market closely enough to detect the full breadth of non-compliant acts that occurred. The producers therefore aimed to

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[97] Broadcasters were granted licences enabling them to broadcast once they had met the relevant qualifications and had signed a binding agreement to comply with Ofcom's television regulation. If the broadcaster breached the agreement, the regulator had the power to enforce a series of penalties, from warnings and fines to ultimately revoking the licence, which would have effectively ended all business activity.

benefit from this oversight and extend the regulatory borders where they felt they could fall under the regulators' scope of detection.

In sum, the producers I studied had virtually no relationship with Ofcom at all; they did not even have a regulatory code book in their office. All forms of communication, negotiation and compliance-handling occurred solely between the broadcasters and the regulators.

The result was that they were disengaged from the regulatory process. Their understanding of the regulations and of broadcasters' and regulators' compliance procedures was sketchy, inaccurate and prone to error (perhaps by design). And so, with little fear of reprisal, they placed their business needs above their regulatory duties. (This finding suggests that one's involvement in the regulatory process, and with the regulators, is a necessary prerequisite to their compliance.)

As noted, this compliance rationale was in tune with rational choice institutionalism and the amoral calculator typology. Like Kagan and Scholz's (1984) 'amoral calculator', rationale choice institutionalism assumes that individuals have a set of preferences regarding their desires or goals, and in the process of seeking to attain these goals, they calculate the costs, benefits and risks of different courses of action before taking the most seemingly advantageous approach (see also Eggert and Lokina, 2010; Nguyen, 2011; Ostrovskaya and Leentvaar, 2011, Ostrovskaya, Leentvaar and Eizinga, 2011).

Rational choice institutionalists' emphasize the role that institutions play in this calculation. Institutions in their framework are "the rules of the game in a society" (North, 1990: p. 3). When applying this model to my research, institutions can be understood as the parameters of knowledge that affect how television-makers regard the potential consequences for their non-compliance. These rules provide them with information about the likelihood that regulators will detect and penalise them for their misconduct (Hall and Taylor, 1996). In turn, they influence their strategic decision-making.

There are two strands of thought within this tradition. The first views institutions and their rules as concrete exogenous constraints "or as an exogenously given game form" (Shepsle, 2005: p. 2). In this view:

An institution is a script that names the *actors*, their respective *behavioural repertoires* (or *strategies*), the *sequence* in which the actors choose from them, the *information* they possess when they make their selections, and the *outcome* resulting from the combination of actor choices. Once we add actor *evaluations* of outcomes to this mix – actor *preferences* – we transform the game form into a game.

The actors in this vision therefore do not have the independence or authority to change the rules of the game of the terms of engagement – these factors are externally set.

The second strand of rationale choice institutionalism perceives institutions more fluidly by assuming that actors have the power to rewrite the rules of the game as it is played. "A group of children, for example, might take the official rules of baseball as a starting point to govern their interaction, but then adapt them to specific circumstances or tastes" (Shepsle, 2005: p. 3). One day a ball that lands in the creek might be considered out of bounds, while the next day the children choose to consider it a homerun. "In this view of institutions, there is nothing exogenous about the rules of the game...They do not compel observance, but rather reflect the willingness of (nearly) everyone to engage with one another according to particular patterns and procedures (nearly all the time)" (Shepsle, 2005: p. 3). Institutions in this perception are therefore fundamentally important because they are the focal points with which rules of engagement and socially acceptable conduct are formed.

In application to my research, Ofcom's lack of involvement with the producers, and consequentially their lack of management over them (in a punitive sense) served to diminish the television-makers' appreciation for the 'external' barriers of permissible conduct. This made the 'costs' in the cost/benefit analysis appear small in relation to the benefits.

The structure of this dynamic or 'institution', which put the broadcasters at the forefront of all regulatory activity, often overshadowing the independent producers, meant that the producers I examined had minimal regulatory involvement. This appeared to reduce their access to, and interest in, learning about the regulations. This was because they did not have an adequate system of accountability to ensure that they would be penalised if they infringed the rules, a relationship with the regulators whereby they felt that they could readily ask them questions, nor a forum in which they could discuss and debate the complaints viewers made about them with the regulators.

In other words, the independent producers had far less power in shaping the broader institutional parameters (or rules) than the broadcasters and regulators, and so they made a weaker commitment to conform to their external normative ideals. In turn, the producers created their own sense of 'institution', devised their own rules (and interpretation of rules) and developed their own counter-culture that only abided, in-part, to the dominant social construct.

In a broader theoretical sense, the producers' rationale towards regulatory compliance did not reflect what one might refer to as the 'exogenous constraints' model of institutions, but rather to a more fluid interpretation of institutions. While there were certainly more formal ways of conduct or 'game play' at the external level, particularly between the broadcasters and regulators, the independent producers appeared to exist and operate on a plain that was somewhat distant from these actors, and because of this, they appeared to (sometimes rightfully) believe that they had more freedom to dictate their own course of action with fewer external interventions.

## Conclusion and summary

Let me now review my key findings, apply them to my overarching themes and note how they will contribute to the sociology of regulation and sociology of media literature.

Throughout this chapter I have documented the producers' wilful non-compliance in a variety of ways. I have also reported that producers' decisions about regulatory compliance and the negotiation of boundaries were influenced by a number of micro- and maco-level factors (see Figure 22).

**Figure 22: The factors which influenced producers' compliance decisions**

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **External level** | Competition pressures / market growth | Technological advances | Globalisation | Deregulation | Rule ambiguity | | | | |
| **Organisational level** | Conflicting objectives and duties | Economic interests and demands (drive for ratings) | Organisation's culture and ideology | Capacity issues | Insufficient regulatory training / lack of knowledge | Managers' power over subordinates | Perceived likelihood of detection and severity of penalties | Time constraints | Audience profile |
| **Individual level** | Disregard for the rules and their purposes | Encounters with peers | Reputation / job security | Personal opinions and instincts | | | | | |

These factors are summarized in the following.

*External level factors:*

- *Deregulation:* The television industry has undergone extensive deregulation since the 1980s and this has allowed for the rapid proliferation of channels and the relaxation of content controls, giving broadcasters greater freedom to transmit new forms of content.[98]

- *Technological advances:* Technological advances supported the expansion of the market and led to an improvement in production equipment which enabled producers to improve their productivity. This made it possible for workers to perform multiple roles and this brought various effects, unwelcomed by staff, such as the added stress and rule infractions that flowed from producers being unable to juggle multiple responsibilities.[99]

- *Competition pressures / market growth:* The rise in the number of television services led to a heightened increase in competition, and a culture of competition at the production company.[100]

- *Globalisation:* The globalisation of media content meant that producers frequently collected and dispersed content outside of the United Kingdom. This influenced producers' compliance-related decisions, as they believed that they could breach the 'fairness' rules in other countries and the actors involved would not be in a position to inform Ofcom and therefore no penalty would be levied.

- *Rule ambiguity:* Many of the regulatory rules were widely-scoped and this gave employees room to interpret their meaning in different ways and therefore to practice 'creative compliance' and 'rule reinterpretation'.[101]

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[98] Thussu's (2002) and Kuhn's (2002) work also discusses how the government/regulator effects media production.

[99] See also Pavlik (2000), Gunter (2003) and Salwen (2005)

[100] See also McManus (1994) and Beam (2003)

[101] For additional comment on rule ambiguity, see Chayes (1993), Downs, Rocke and Barsoom (1996), Tallberg (2002) and Footer (2008).

*Organisational level factors:*

- *Conflicting objectives and duties:* The producers' need to achieve ratings, and in turn sustain their company financially, was sometimes at odds with their duty to comply with the television standards regulations. This led to compliance failures in instances in which both objectives could not simultaneously be met.

- *Organisation's culture and ideology:* In line with the previous statement, there was a culture of competition at Envision, whereby the perceived need to gain ratings and meet production targets exceeded the need to abide by the rules. The regulation was viewed as an obstacle that stood in the way of meeting one's core objectives and therefore employees who met their goals, even if it took breaching the rules, were deemed respectable and were rewarded.[102]

- *Management's power over subordinates:* Upper-level management held significant power over the cultural values and practices adopted by the organisation, including a strong influence over lower level employees' production of content and their compliance with the regulation.[103]

- *Economic interests and demands (and a drive for ratings):* The formation of the company's cultural values was influenced by economic constraints, as the president claimed that revenues were oftentimes dangerously low and therefore making money in order to survive had to be producers' first priority.[104]

- *Capacity issues:* As producers were eager to gain new commissions, they often agreed to produce programmes within tight budgets. Due to this lack of funding, the

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[102] Howard-Grenville, Nash and Coglianese (2008) too argued that one's organisational culture and personal identity shapes its residents' compliance decisions. Meanwhile, Breed (1955), Jablin (1982), MacDougall (1988), Kim (2002) and Marcellus (2005) found that an organisation's values/culture shape individuals' decisions about media content.

[103] Entman and Rojecki (2000), Turner (2002), and Warren and Vavrus (2003) similarly found that management's power over their staff affected their decisions about media content.

[104] This is in line with numerous researchers who found that ratings and the dynamics of a profit-seeking business dictated the shape of media practitioners' production decisions (Gans, 1979; Lewis, 1969; Virts, 1978; Bantz, McCordle and Baade, 1980; Herman and Chomsky, 1988; Shoemaker and Mayfield 1987; Beam, 2003; Alexander, 2004; Hoskins, McFadyen and Finn, 2004; Gentzkow and Shapiro, 2006).

company had limited staff and few highly experienced workers. This led to greater working pressures and affected the type of content television-makers produced and their ability to meet regulatory requirements.[105]

- *Tight time constraints:* The tight budget led management to agree to produce programmes within short time scales, as to avoid the cost of hiring staff for prolonged periods. Having a short production schedule also appealed to the broadcasters, as it allowed them to air the content sooner.[106]

- *Insufficient regulatory training:* Upper-level management did not train their staff about the regulations. Employees' knowledge was therefore sketchy and prone to lead to compliance errors. The managers' actions were rationalized because of tight time and budget restrictions, and a general lack of interest in regulatory training.[107]

- *Perceived likelihood of detection and the severity of sanctions:* The increase in the number of channels made it difficult for regulators to watch them (as the IBA once did). They also regulated solely the broadcasters, with the expectation that they would in turn supervise the independent producers (which, in this case, the broadcasters did not). These factors led to a lack of transparency surrounding producers' practices, leading them to believe that their non-compliant acts would go undetected and unpenalised. This, in turn, further motivated them to infringe the rules.[108]

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[105] Related to this, Chayes and Chayes (1993), Tallberg (2002), Hutter and Jones (2006), Footer (2008) and Nie (2008) found that 'capacity issues' can lead to non-compliant behaviour, while Bantz, McCordle and Baade, (1980), Fishman (1982), O'Sullivan and Heinonen (2008) and Russial (2009) found that project demands and resource limitations can influence the media production process and the shape of content (see also Chayes and Chayes, 1995; Winter, 2001).

[106] Similarly, the association between time constraints and the release of inaccurate information has been discussed by a number of researchers including MacGregor (1995), Cottle (1999), Arant and Anderson (2001), Ursell (2001); Berkowitz (2002); Rao, Zmikly and Tyree (2007), O'Sullivan and Heinonen (2008), Russial (2009) and Valentine (2009).

[107] Fairman and Yapp (2005) noted that small- and medium-sized enterprises (SMEs) had little knowledge about the regulations and of regulators enforcement of the rules on other companies, and the regulator's enforcement was therefore sometimes ineffective (p. 506) (see also Genn, 1993; Dawson et al 1988). This was because they did not have the needed systems in place to both establish and monitor compliance (p. 516). They also noted that SMEs (like Envision) did not seek out information about regulations to improve their compliance. Rather, they simply reacted when the regulator intervened in their businesses practices (p. 506).

[108] See also Becker, 1968; Sutherland, 1983; Kagan and Scholz, 1984; Hechter, 1987; Friedman and Hechter, 1988; Hawkins, 1990; Pearce and Tombs, 1990; Hechter and Kanazawa 1997; Footer, 2008;

- *Audience profile*: *Agony II* targeted young men and this demographic was believed to want to see images of violence, as was indicated by *Agony's* success with ratings. They were also the least likely demographic to become offended by content and this encouraged producers to press the limits of graphic imagery.[109]

*Individual level factors:*

- *A disregard for the rules and their purposes:* Many of the producers expressed a blatant willingness to breach the regulation. This stemmed, in-part, from their (self-benefiting) disbelief in the basis for the consumer protection-based rules, as producers claimed that the media had no harmful effects.[110]

- *Encounters with peers:* Individuals' selection of content and their understanding of the boundaries of permissible imagery were influenced by the way they were trained to perform their roles. This was similar to an apprentice-like style whereby individuals learned from their peers as they progressed.[111]

- *Reputation / job security:* The producers' behaviour was also shaped by their personal desire to maintain a positive reputation amongst their peers for being able to complete projects on time and within budget, as this helped to ensure their future employment.[112]

- *Personal opinions and instincts:* Producers' decisions were further influenced by their personal opinions (referred to as their "gut instincts") about what was appropriate content to broadcast.[113]

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Abusin and Hassan, 2011; Khanna and Widyawati 2011; Nelson, 2011; Ostrovskaya and Leentvaar, 2011; Ostrovskaya, Leentvaar and Eizinga, 2011

[109] Napoli (2003) and Allen (2005) also note that the size and composition of audiences influence media practitioners' decisions about content (see also Shoemaker and Vos, 2009).

[110] See also Kagan and Scholz, 1984

[111] For a similar account see Breed (1955), Jablin, (1982), McDougall (1988) and Kim (2002).

[112] Similarly, Shoemaker and Vos (2009) stated, "...the employee suppresses dissident values in order to keep the job or perhaps even to work behind the scenes to further a goal" (p. 72).

[113] See also White (1950), Bissell (2000) and Shoemaker and Vos (2009)

How these factors connected, affected compliance and led to regulatory weakness

Now that I have outlined the various factors that I found to influence producers' decisions and where these factors fall within my hierarchical model, I will attempt to paint a brief picture of how the industry has changed and how aspects at one level have influenced decision-making at other levels.

Macro-level changes stemming from deregulation, globalisation and technological advances reshaped television's oligopolistic environment, and allowed for the influx of hundreds of new television channels, and broadcasting and independent production companies. This proliferation in channels/companies made it difficult for the regulator to monitor the market as fully as the IBA once had. This resulted in television-makers gaining more control and autonomy, and in turn led them to allow audience ratings greater room to shape the evolving character of media content. It also diffused audiences across networks, allowing for the influx of 'niche' channels (like Entertainu which did not have to adhere to policies aimed at 'family viewing'), and intensified the competition between broadcasters, thereby forcing them to make increasingly strenuous efforts to attain ratings.

These changes had various knock-on effects. The increase in competition and reduction in the barriers to entry for new market entrants led to a rise in small to mid-sized production companies which, in the process of trying to survive in the highly competitive market, faced difficult resource and time constraints. This led the producers I examined to cut corners by hiring inexpensive, minimally skilled workers, not adequately training those workers about the regulations, and by implementing a strict managerial approach which placed the business's economic objectives over its regulatory obligations. As a result, employees were faced with great job insecurity, which generated a 'do whatever it takes' attitude to fulfil their assignments and a subsequent disregard for the rules. This helped to breed a culture of non-compliance which was reinforced by producers' perception that the likelihood of detection or penalisation was low.

Collectively, these findings add to the sociology of regulation's 'compliance' literature. In addition to the fact that the compliance literature offers next to no studies on television production, the current work on 'compliance' focuses heavily on the external factors that

influence actors' compliance decisions, and not fully enough on the numerous influential organisational and particularly individual level factors. Similarly, this research adds to the sociology of media's gatekeeping literature by answering a call for more research to be done to understand the elements that affect producers' decisions about the shape of content (particularly environmental level factors), and to understand where these elements fall and how they inter-relate on a hierarchical model.

The theory behind producers' compliance behaviour

The research also adds, to a lesser extent, to the compliance literature through its contribution of findings which can be compared to the theoretical literature.

The producers appeared not to possess a sense of "normative commitment" or "civic duty" to comply with the rules, as would those who figure in Kagan and Scholz's 'corporation as a citizen' model (see also Tyler, 1990; McGraw and Scholz, 1991; Burby and Paterson, 1993; Levi, 1997; Winter, 2001; Wingrove, Korpas and Weisz, 2011).

Rather, their compliance behaviour reflected a hybrid form of the 'amoral calculator' ideal-type and the philosophy behind rational choice institutionalism and sociological institutionalism – all of which appreciate the act of rational calculation. The producers', who were confronted with conflicting economic and programme-making/regulatory objectives and obligations, weighed the costs and benefits of different courses of action, including their assumed likelihood of detection and penalisation, and selected the most advantageous option. This made them willing to practice 'creative compliance' and 'rule reinterpretation' in certain instances, and to test or breach the regulatory limits in others, as and when it appeared beneficial for them to do so (Kagan and Scholz, 1984: p. 67; see also Becker, 1968; Sutherland, 1983; Hechter, 1987; Friedman and Hechter, 1988; Hawkins, 1990; Pearce and Tombs, 1990; Hechter and Kanazawa 1997; Footer, 2008; Abusin and Hassan, 2011; Khanna and Widyawati 2011; Nelson, 2011; Ostrovskaya and Leentvaar, 2011; Ostrovskaya, Leentvaar and Eizinga, 2011).[114]

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[114] This finding echoes, amongst others, the work of Nelson (2011) who wrote: "Due to the effects of market forces, news is seen as a commodity and owners of media organizations are more concerned with financial gains rather than with the ethical aspects of news production", (p. 188-189).

Their calculus was also framed, as sociological institutionalists (and social learning theory) would suggest, by an organisational culture that not only condoned, but promoted, acts of non-compliance (see also DiMaggio and Powell, 1983; Hall and Taylor, 1996; Hutter 2001; Job, Stout and Smith 2007). It encouraged the producers to conform to the deviant social norms and constraints embedded in the sub-culture, and to become indoctrinated by shared understandings of what was acceptable conduct within their unique social world (see also Zucker, 1983; Meyer and Rowen, 1991; Scott, 1995).

While the 'benefit' of financial gain was certainly an alluring factor which figured in to their pursuit of ratings, their decisions were also influenced by other elements, such as their desire to maintain a positive reputation amongst their peers (see also Grasmick and Bursik, 1991; Parker 2002; Gunningham et al 2005) and their moral position on media ethics (again which was an element that was shaped in-part by their organisational culture) (Sutinen, 1999; Braithwaite, 2002).

The producers' failure to abide by the regulations also stemmed from what appeared to be a wilful ignorance of what was required of them, not from ineptitude, reflecting an 'amoral' version of the corporation as incompetent ideal-type. The producers furthermore claimed to disagree with the rationale for the rules, which is considered a part of the corporation as a citizen notion (see also Nadler 2002; Ahmed and Braithwaite, 2005, 2007). Their beliefs, however, appeared to stem from an interest in mitigating responsibility for their rule-evading actions rather than from a genuine disagreement with the rationale of the regulations, thereby again putting an 'amoral' slant on their positions. It is therefore due to these multi-faceted reasons that the producers' (non) compliance motivations stemmed from a blend of rational choice and institutional cultural influence.

These findings also contribute to the Dutch Ministry of Justice's 'Table of Eleven' compliance model (2004), as the model does not take account of:

- actors who practice 'creative compliance' and deliberately create strategies to follow the letter of the rules, but not their 'spirit', thereby avoiding penalization whilst not complying with the underlying aims of the policy;

- actors who are uninformed about the rules *by choice,* as to mitigate responsibility for their non-compliant acts should they come under regulatory scrutiny;

- actors who claim strategically to disagree with the principles of the rules, as a means to justify their infringement of them;

- the organizational/industry *cultures* at play which shape actors' compliance behaviour;

- and the breadth of limitations/constraints an organization and its members face which can hinder their ability to comply.

In sum, these accumulative findings are important because regulators must understand the variety of factors that can inhibit the effectiveness of their policies and their enforcement of them if they are going to put policies in place which can ensure that their public interest objectives get met.

Now that I have explained my key findings from the production company, I shall turn to an examination of the broadcaster which commissioned the series I investigated.

# Chapter 6

## The broadcast environment

The second stage of the research included an investigation of the broadcasting environment through an examination of *Agony II's* funding channel, which I shall call 'Entertainu'. The broadcaster's role included commissioning the series and ensuring that it complied with the regulations. This chapter will explore each of these areas, setting them alongside an understanding of the broadcasters' programme-making objectives/obligations and what factors influenced the way they pursued these objectives/obligations, and in turn negotiated their compliance decisions with the production company and with Ofcom.

My key findings were that the broadcasters, like the producers, were faced with conflicting economic and regulatory responsibilities, and that, due to a variety of individual, organisational and external-level factors, they generally opted to prioritise their economic objectives. The broadcasters' frequently attempted to manoeuvre their television content past the regulations by developing crafty techniques to practice 'creative compliance' and 'rule reinterpretation'. This led them to extend effectively the boundaries of permissible graphic content, and thereby reveal and exploit a weakness in the regulatory structure.

### **An introduction to the broadcaster**

Entertainu was an entertainment channel which was launched first in the 1980s on cable television. It operated under a relatively large parent company which owned various channels across different genres. Its choice of programming reflected the growth of the 'entertainment' genre,[115] which accounted for greater audience share between 2002 and 2007 than any other genre. The popularity of these channels led them to double in number over the period from 2002 to 2007 (Ofcom, 2007).

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[115] The entertainment (or 'light entertainment and contemporary music') genres includes: "All Entertainment, including situation comedy, other comedy, chat shows, variety, popular contemporary music, cartoons and animation (except children's cartoons and animation), quiz shows, game shows and family shows" (Ofcom, 2004c).

Entertainu underwent various transformations in its lifetime in an attempt to gain ratings by adapting its programming to various niche audiences. It has transmitted classic films, horror, science fiction and adult programming. More recently it broadcast a mix of sports, crime, action, drama and adult entertainment to target young men aged 16-34. In an online blog one writer stated "I think it changed in about 1995 to "TV that offends" (their tagline not mine) with loads of horror films and the like, which then in turn evolved into the laddy [Entertainu] that we know today" (August, 2004).[116]

One of the reasons that Entertainu may have selected this younger 'demographic' is that it broadcasted via cable and satellite, and Ofcom's research suggested that these platforms attracted younger audiences than analogue and digital terrestrial television (2007). Ofcom also found that these pay-television services accounted for a slightly more affluent 'demographic', as more than one-quarter of their viewers came from the 'AB' socio-economic group. This young, economically-advantaged group was attractive to advertisers, offering Entertainu an incentive to tap into it (Figure 23).

**Figure 23: Platform demographics by age and social grade**
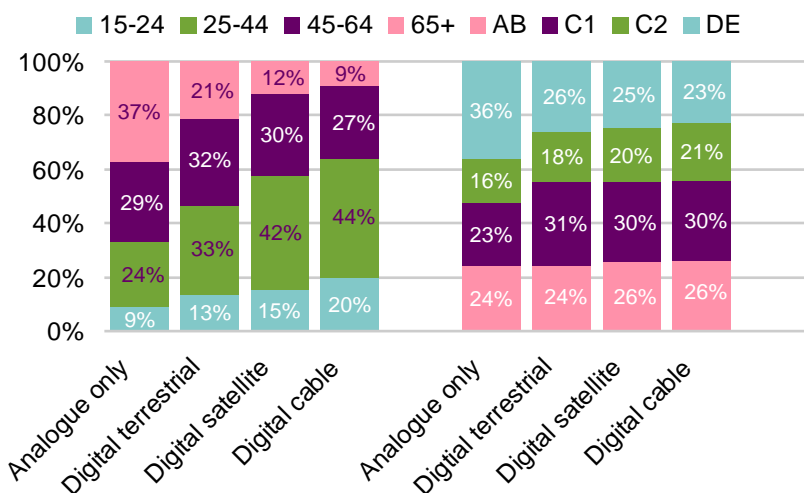


Source: Ofcom, The Communications Market Report 2007

The following will address how the broadcasters went about developing content to appeal to this population segment, alongside a discussion of their compliance behaviour. First, however, I shall note their objectives when commissioning *Agony II*.

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[116] The reference has been omitted to protect the broadcasters' confidentiality.

**The commissioning of the series**

As the commissioning process was explained in the previous chapter, I shall focus here only on the commissioner's role in making the series, including her initial programme-making objectives and the factors she considered when approving the series for broadcast. Given their interconnected nature, understanding the commissioner's role serves as an important precursor to understanding the compliance team's regulatory approach.

Entertainu's commissioning objectives

Entertainu produced *Agony II* after the successful release of the first series; the commissioner believed that a sequel would garner similarly high ratings. She stated that she wanted the new series to be "intelligent, witty and irreverent" – the three key words she believed to embody Entertainu's programming.

These terms echoed a remark made by the series producer who stated that a successful programme made people "laugh, think and cringe" (as discussed in Chapter Five). Both statements related to the need to be humorous, intellectually stimulating and graphically "shocking". The formation of these ideas came from industry research and the television-makers' years of experience, which helped them to contend that they understood what content did and did not generate ratings. Each of these areas will be explored in turn.

*"Irreverent":*

The term "irreverent" related to the commissioner's belief that her young male viewers liked "graphic in your face, blood and gore". She stated "The reason I think that [*Agony II*] works is because it is sensationalistic, it stands out, it is graphic and it is in your face." The commissioner wanted *Agony II's* violent imagery to be as 'cutting-edge' and extreme as possible. She said: "we will push it as far as we can push it, because that is what people like to watch". In other words, she claimed that her young male target demographic was a key reason that she aimed to push the regulatory limits.

In line with this, Ofcom published a report in 2005 entitled, *A Safe Environment for Children: Qualitative and Quantitative Findings*, which examined viewers' perceptions of programme-makers. In it "Respondents argued that programme-makers would always try to make a situation much more dramatic in order to try to increase ratings" (Ofcom, 2005e: p. 28).

The commissioner charged that, due to the changing nature of the cable and satellite platforms and the increase in channels (competition), in order to gain ratings she needed to grab viewers' attention within a few seconds of them turning on a programme by broadcasting repeated shots of graphic footage. Based on her experience in the field, she explained that while female viewers often made an "appointment to view" programming, meaning that they plan ahead to watch certain shows, Entertainu's male viewers were "zappers" and "remote fanatics", meaning that they 'channel surfed' (flipped through various channels) until they found content that interested them. She remarked:

> They are not going to sit there and think 'I'm going to turn on *Agony* at 10pm'. They know that something is on at 10pm that is good for men. It will be dip in and dip out. If they don't like that, they know that there will be something else that they pretty much would like.

The commissioner's statement was consistent in part with observations made by the Broadcasting Standards Commission (BSC), which in the same year found that individuals in general who adopted pay television services were more likely to 'surf' and 'browse' channels than terrestrial viewers. The 2003 report, *Dramatic Licence: Fact or Fiction?*, noted that this led "to fewer programmes being watched all the way through" (Gatfield and Millwood Hargrave: p. 30). It also reflects the findings of Langer (1998) and the BSC report which stated:

> Multichannel television seems to have affected audiences' viewing habits of television itself. Due to the number of channels, participants suggested that broadcasters may feel that they have to engage or interest the viewer from the start or heavily advertise the programme. If not, the audience may move to another channel.

Following this reasoning, Entertainu also introduced *Agony II's* graphic imagery at the beginning of episodes rather than at the end, while terrestrial broadcasters, who had fewer channels to compete with, often aimed to retain an audience throughout a programme by keeping them waiting with anticipation to see the 'money shots' at the end of segments.

The commissioner further showed the graphic footage in the commercials which advertised the series. While it was often irregular to show such content in commercials due to the lack of

contextualisation that can be provided in a 30 second spot, *Agony II's* commercials were intended to lure in audiences by showing them the content 'upfront', so that they would know exactly what to expect from the series. The commissioning editor stated:

> With multichannel programming there has to be a tease. So at the top of the show you'll see those great moments, whereas on terrestrial [television] you will tease [or suggest] that you know that something is going to happen, but you wouldn't give it away in the menu. But in multichannels you are in such a competitive market that you almost have to show the knife going into the back and show the gruesome photos. You have to really go, this is what you are going to see, but you'll want to see it again in the programme, because it is that good and that juicy.

This approach to "shock-based" television-making is important to the topic of compliance because the commissioner wanted to "push" the limits as far possible to get ratings. She also provided less context surrounding violent scenes than broadcasters (both terrestrial and multichannel) typically supplied, and how an image is contextualised is a key factor in whether or not a scene has the potential to 'harm' or 'offend' audiences and thereby to breach the regulatory rules.

The commissioner did this, in part, because of the resulting competition she experienced on the pay-television platforms. Competition is a key factor noted by other researchers to affect both content and compliance-based decisions, as are the requirements associated with a profit-seeking business (Bantz, McCordle and Baade, 1980; Gans, 1979; Shoemaker and Mayfield, 1987; Herman and Chomsky, 1988; Fensch, 1990; Slapper, 2000; Alexander, 2004; Hoskins, McFayden and Finn, 2004; Lee 2005; Gentzkow and Shapiro, 2006; Shoemaker and Vos, 2009).

*"Intelligent":*

"Intelligent" was also a term that the commissioner used to define Entertainu's style of programming. She claimed that although its male audience liked graphic imagery, they were also intelligent and enjoyed learning interesting facts that they could discuss with their peers. This was not to imply that the programme needed to be highly intellectual, as she believed that viewers wanted to relax and not concentrate in the late evenings when *Agony II* was broadcast. Rather she wanted the service to offer interesting "tit-bits" of information that could be used to generate conversation or "water-cooler moments".[117] She remarked:

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[117] It may have been that the commissioner based her belief that males enjoy learning 'interesting facts' on her own acquaintance, and that she extrapolated from personal experience as well as research.

Males like graphic in-your-face blood and gore. But they are intelligent as well, so we need to give them that 'oh, I didn't know that' factor. And blokes are very much 'I know, well I knew that, I knew that and oh I didn't know that'… And for males, they don't want to sit there and concentrate, so it just gives these little cool facts that they can talk about in the pub, 'oh my god, did you know that this freaky gang in China chop off their fingers.'

As noted in the previous chapter, it was the use of this educational theme that allowed the television-makers to justify the showing of highly graphic content by contextualising it in an informative manner that helped it to bypass regulatory intervention. The commissioner's additional explanation of why the television-makers added education to the series illustrated a second reason it was included – because they thought it would prove interesting to their viewers.

Her omission of the compliance-based purpose, which I came to understand at Envision was the paramount reason an educational theme was introduced to the series, also shows that the commissioner may have not been entirely open and honest in our interview. In this sense, she seemingly edited some of her statements to offer me more sanitised and politically correct answers. This supports my original claim that I would not have uncovered what actually happened in the making of *Agony II* had I only interviewed the producers formally, and not worked on the series and saturated myself in the production environment.

*"Witty":*

The final term the commissioner used to embody Entertainu's content was "wit". This was consistent with the words of *Agony II's* series producer who stated that the show needed to make people "laugh". As noted in Chapter Five, narration was the filter between the images viewers saw and their interpretation of them. The voice-over framed the stories in an attempt to convey a particular emotional response. Sometimes the narrator sadly noted the anguish and pain individuals suffered, but most often she made comical remarks to bring humour to the programme. For instance, in one episode the narrator said "In many religions the ultimate sacrifice is blood and although it might seem a long way to the painful side of two choruses of 'Yes Jesus Love Me', Christianity is right up there with the bloody best of them…" This shows how the narrator introduced and discussed imagery to give the series what purported to be a light-hearted, humorous tone.

This tactic of introducing humour was used by the producers and endorsed by the broadcasters as a means to re-contextualise the content to bring a light-hearted slant to scenes to prevent viewers from empathising with the characters and thereby from becoming offended by what the production director referred to as "gratuitous violence".

After the commissioner conveyed these three aims to the producer of the series, the producer constructed the series' theme and layout. After the commissioner agreed to her ideas, production began and the commissioner was absent from the production process until she was sent the 'off-line' version for her approval.

This version was also sent to the compliance team for review. They watched the series independently, but shared their comments and corrections with the commissioner to ensure that they agreed with one another about the changes they wanted made. In this instance the commissioner informed Envision that she was generally satisfied with the series. She solely wanted the repetition of 'money shots' in some segments to be reduced and additional context to be added in others to ensure that the stories could be easily followed. The compliance team requested further changes and I shall now discuss their part in the making of the series.

## The compliance process

The compliance team was responsible for handling the compliance of the various channels managed under the parent company. The unit consisted of five programme viewers and a manager. The programme viewers watched content to ensure that it was compliant with the regulatory code. The manager oversaw the team, handled the more difficult compliance decisions and dealt with the regulator when more serious complaints issues arose.

Compliance members' understanding of the regulation came from on the job training, just as it had for employees within the production company. The programme viewer I interviewed had earned a degree in media and performing arts, and then worked as a video technician at her university before accepting a role at Entertainu. She said that it was important to have an understanding of the market and to follow television programmes; however, the key to her training was in the "hands on experience" she had received at Entertainu.[118]

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[118] Compliance team members did not have legal backgrounds although lawyers were available at the company should advice have been needed.

To understand Entertainu's compliance procedures, I asked her to explain what she and her colleagues did in a typical working day. She said that each day a viewer examined various programmes for contentious content and for elements that needed to be reformatted (e.g. if a programme was acquired from the United States it had more commercial breaks than if it was produced in the United Kingdom and the gaps required editing, which she specified to the editor).

Whilst doing this, viewers examined where the programme sat within the daily broadcast schedule to ensure that it was sensitively placed and would be less likely to cause harm or offence to the audience. To illustrate, she stated:

> One Ricki Lake[119] [episode] looked at teen bonfires and the content was too much to put in day-time [6:30am – 6:30pm slot] so we had to put a time restriction on it…It's all about how the whole day will look programming-wise. So if you have a bit of chat shows, then you have a bit of soaps, then all of a sudden you have a chat show that is all about blood-sucking teenagers and you know that would not fit [in the schedule] and that it will draw a lot of attention - the wrong kind of attention, i.e. complaints - you have to work out the whole feel of the programming for that day.

Viewers watched between 20 and 25 hours of programming a week. In their remaining time they assessed the layout, story ideas and 'voice-overs' in scripts to ensure that they did not include anything that was libellous or that breached the regulations. They were obliged to have a strong grasp of the regulations, and unlike the producers, they appeared to do so.

When a viewer felt that a programme had problematic elements, he/she would often discuss them with the production team to gain a range of views about the content before determining an appropriate approach to take. Particularly contentious cases were referred to the manager for assessment. If he thought it was necessary, he would instruct his staff to look out for the areas of concern in the series' remaining episodes.

## Entertainu's compliance approach – rationale for, and approach to, rule evasion

While the compliance team was originally established to ensure that television programmes complied with the regulations, its manager held that he and his peers needed to "*push the*

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[119] Ricki Lake was an American daytime talk show that discussed social life in its various forms. It can be compared to Donahue, Montel Williams, Oprah, Trisha and other such daytime shows.

*boundaries"* of permissible content to gain ratings and effectively contend in an increasingly competitive market. He noted that *Agony* was successful because it offered more shocking and graphic imagery than other programmes: "I think it has done well because it is kind of car crash TV. You will see things that you won't see anywhere else".

It is here that one can see the organisation's competitive culture and rationale about compliance, and how it allowed the company's business/economic interests to over-shadow, in part, its regulatory responsibilities. Rather than simply fulfilling its core role – to ensure that programmes were compliant with the rules, like the commissioner, team members responded to the competition by challenging regulatory limits (see also Slapper 2000). The compliance manager stated:

> We try and push the boundaries. We are more into programme facilitation than programme prevention… We have had feedback from the channels that we are a compliance department that do listen and do try and get them the programmes they actually want rather than saying 'you cannot do that'. We have the reputation that we will try and facilitate all of their needs, so my view is not, 'you can't do that because it's in the rules', but I think, 'okay, is there a way that we can do it'. So, we always try and push because we know the nature of the market is so competitive.

The manager's approach also appeared to be shaped somewhat by a disregard for the rules, as he expressed an interest in airing controversial content and in the regulatory dispute that sometimes followed. He remarked:

> I think some of the people that work in TV quite like the fight. I love the fight… I think that channel editors and channel controllers quite like the idea of putting something out that is going to be controversial. And it will all spread by word of mouth and there will be complaints reports before it is even aired. And I think they like that and that it's good for other broadcasters. I don't think you get anywhere without taking chances. I think it wouldn't allow for creativity and potentially you would kill commercial TV, because there wouldn't be that 'okay, well, Sky did this, so we want to do a show like this' one-upmanship. I think that would get rid of one-upmanship. It would make a lot of similar programmes even more similar than they are.

This comment suggests an element of competitiveness which goes beyond a simple desire to propagate controversial content and it is redolent of what Michael Josephson, writer for the TTNL Sports Network, refers to as the gamesmanship model (2000):

> Under the gamesmanship model, all that matters is winning. Gamesmanship approaches adopt the values of the marketplace, encouraging and sanctioning clever and effective ways of bending, evading and breaking the rules in order to gain a competitive advantage. This is considered part of the game…

> Gamesmanship coaches and athletes often believe that they have no ethical or sportsmanship obligation to abide by rules because it is the official's job to catch violations and impose penalties. The operational standard of gamesmanship are: "If it works it's right" and "it's only cheating if you get caught".

In alignment with this model, the broadcasters devised strategies to extend regulatory limits and gain a competitive edge over their rivals. The manager claimed that their strategy included closely watching other channels' actions and, when one pushed against the content restrictions – and managed to escape regulatory intervention – they would follow suit in order to protect their channels' own market shares. Whether or not content had been found to be in breach of the rules on other channels was therefore instrumental in shaping the broadcasters' compliance decisions.

When a piece of content appeared potentially contentious they tried to develop a defence for why it would not be considered in breach the regulatory rules. If they believed that their defence was adequate enough, they would broadcast the material. When confronted with content that they believed was on the borderline, they discussed it with their colleagues to gain a variety of opinions before determining whether or not to transmit it. As a part of their 'cost-benefit' analysis they also spoke with the commissioning editor to evaluate how essential he/she thought it was to the success of the programme.

They claimed that most often they took the commissioning editor's opinion on the matter, but only when they believed they could provide an adequate defence if confronted by the regulator. For instance, if the content included graphic scenes of violence they examined if: it was likely to encourage audiences to replicate the acts; it showed real-life violence towards children; it was scheduled for broadcast after the watershed; and if the programme included warnings. (These elements will be discussed in greater depth later in this chapter and the next chapter.) The manager explained his approach to calculating risks:

> If I think that I can defend it, as I'm viewing stuff I'll think of potential conversations with a complainant of how I can defend it, and if I can defend it to myself and if it is robust enough [I will air it]… I think, if I defend this, *will I get away with it?*

This approach centered more squarely on whether or not the team could "get away with" pushing the regulatory borders, rather than on a willingness to abide by the rules due to a belief in their underlying consumer protectionist purposes.

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This compliance rationale showed that the channel did not resemble Kagan and Scholz's (1984) 'corporation as a citizen' ideal-type, as the broadcasters did not express a normative sense of commitment to protect viewers from harmful and offensive content (see also Winter, 2001), nor did they appear to want to comply with the rules to avoid damaging their public reputation, as Murphy (2004) found in her study of tax avoiders in Australia. It would therefore have seemingly little effect if the regulators were to appeal to the broadcasters "law abiding" selves and attempt to nurture trust in exchange for voluntary compliance, as Braithwaite and Makkai's (1994) work noted (see also Feld and Frey, 2002; Murphy, 2004).

Rather, their approach, along with their organizational culture, conformed to Kagan and Scholz's (1984) model of an 'amoral calculator' and to sociological institutional theory, as the broadcasters would do a fairly crude cost/benefit analysis of the potential gain in airing specific content versus the perceived likelihood of getting caught and penalized. They would then select the most beneficial option; an approach found by a variety of researchers, including Stigler (1970), Ehrlich (1972), Slapper (2000), Footer (2008) and DeMuth and Ginsburg (2010).

In their analysis, potential 'gains' were understood in terms of positive economic results, job security, and an improved reputation for ensuring high audience ratings and for outmanoeuvring the regulator, which was seen to be an entity that sometimes obstructed the broadcasters' pursuit of ratings. These factors not only reflected the pursuit of financial benefits as economic theorists would note, but they also reflected gains in the social sphere as social bonds theorists would note, as these theorists have claimed that

individuals' reasoning is often coloured by their desire to fit in within a group and to earn their peers' respect (Humberts, 1991).

The broadcasters' perception of 'costs' in their calculus was understood in terms of their potential for getting caught by the regulator, fined, forced to publish a public apology/correction, or on a personal front, a potential loss in job security and respect from their peers should they incorrectly calculate compliance risks and thereby invoke external intervention. In other words, they risked being perceived as individuals who were not proficient at 'playing the game' and were therefore a liability.

This equation, as with economic theory, was frequently void of moral reasoning, and put an 'amoral' slant on what would otherwise be an approach that mimicked a rational choice model (e.g. see also Becker, 1968; Cornish and Clarke, 1986; Vaughan, 1998; Murphy, 2004; Fairman and Yapp, 2005; Li, Zhang and Sarathy 2010).[120] In taking this approach, members would frequently bend and twist the rules to accommodate their own businesses interests, and if the regulator failed to catch them, they felt successful and justified in their actions.

This approach also reflected arguments within sociological institutionalism, as the broadcasters' compliance decisions were largely shaped by their institutional culture which embedded certain shared social constructs and constraints in their minds (see also Zucker, 1983; Meyer and Rowen, 1991; Scott, 1995; Baldwin, Cave and Lodge, 2011).

This is particularly visible by the fact that even the compliance members, whose primary job it was to avoid regulatory infringements, were so deeply entrenched in the competitive organizational culture that they too conformed to deviant social norms.

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[120] While the rational choice model typically asserts that individuals have sufficient information to weigh accurately the costs and benefits of different courses of action, my analysis of the broadcasters revealed that they did a fairly crude analysis of costs and benefits. This was because the industry they were in did not allow them to project precisely the likelihood or cost of a penalty, nor the potential gain in ratings a particular piece of content might generate. This runs somewhat counter to Procter's description of the rational choice model, "An act is rational if the agent has ordered preferences, has perfect information about how to achieve preferences and what the costs are, and correctly calculates the relationship of preferences and costs and thus maximizes the benefits to be achieved" (Procter, 2000; see also Hollis, 1987; Becker, 1996).

Brinton and Nee (1989) argued that it is through structuring and confining social interactions that group performance emerges. In other words, it is through employees monitoring one another's behaviour, and encouraging 'acceptable' acts and criticizing 'unacceptable' acts that the group comes to work in a cohesive and like-minded manner (p. 19).[121] This is why the commissioning editor would challenge the compliance team if they tried to stifle the organization's competitive approach. It is also why community-related factors, such as the desire for respect from one's peers, shaded actors' compliance behaviour.

As a product of this approach, it appeared that the compliance team's rationale had become so akin to that of its sister commissioning team that its members needed little encouragement to test the regulatory restrictions. Rather, their approach to challenge the regulation became so ingrained in their psyche that it seemed to be almost self-generated (see also Ruggie, 1998). This falls in line with March and Olsen's (1989) argument that social norms and rules are of key importance in shaping organisatonal behaviour, and with Granovetter's assertion (1985) that behaviour is nearly always modified to some respect by personal connections and interactions.

Despite compliance members' willingness to extend the regulatory parameters, those instances in which they were found to be in breach of the rules often stemmed from their miscalculation in the extent that they could push the boundaries, because their goal was to widen them slowly overtime as to avoid unnecessary detection and penalization. Their failure to calculate related risks intelligently resonates with the 'corporation as incompetent' ideal-type, showing how their behaviour reflected a mix of Kagan and Scholz's models. This form of non-compliance, which stemmed from organizational failures, is echoed widely across the regulation literature, suggesting its centrality in the field (see Williamson, 1975; Chayes and Chayes, 1993; Genn, 1993; Hopkins, 1995; Downs, Rocke and Barsoon, 1996; Van Snellenberg and Van de Peppel, 2002; Braun, 2003).

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[121] This approach is also in line with aspects of social exchange theory (Homans, 1958; 1961; 1974). Through his case studies, Homans showed how individuals within a group establish, monitor and enforce social norms, and how these informal norms shape individuals' incentives and confine their behaviour to certain socially accepted practices. "The great bulk of controls over social behavior are not external, but built into the relationship themselves, in the sense that either party is worse off if he changes his behaviour towards the other" (March and Olsen, 1989: p. 24).

The end result of the broadcasters' competitive nature and reliance on violent imagery was that the rules governing the safeguarding of viewers were trumped, as content- and compliance-related decisions were often dictated by the pressures associated with a profit-driven industry (see also Slapper 2000). This finding can be related more widely, as Langer, who studied television news journalists, discovered, (1998: p. 1):

- "Television news is primarily a commodity enterprise run by market-oriented managers who place outflanking the 'competition' above journalistic responsibility and integrity…

- Television news has set aside the values of professional journalism in order to indulge in the presentation of gratuitous spectacles."

<u>Ensuring the permissibility of content</u>

To illustrate further how team members' dealt with compliance issues, I shall review the details of Entertainu's breach of the rules in *Agony*. As noted, *Agony* was found to have infringed the ITC's regulation on 'imitable violence' and nearly infringe the regulation on 'offensive violence'.[122]

This case illustrates how issues of permissibility were understood and debated between the broadcasters and regulators. It shows how the broadcasters aimed to package content in a manner that would enable it to bypass regulatory intervention and the factors that influenced their compliance decisions, including: their target demographic; whether they believed that they could successfully navigate around the rules; the severity of the penalties they received for previous breaches; competition; ratings; conflicting objectives; and whether certain content had been shown on another channel without regulatory intervention. Lastly, it will examine the effect that the breach from the first series had on the broadcasters' compliance approach in the making of the second, *Agony II*.

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[122] Section 1.7(c), Imitable violence: "Violence portrayed on television may be imitated in real life. Portrayals of dangerous behaviour, capable of easy imitation, must always be justified by the dramatic and editorial requirements of the programme. Unfamiliar methods of inflicting pain and injury capable of easy imitation should not be included."
Section 1.7(a), Offensive violence: "At the simplest level, some portrayed acts of violence may go beyond the bounds of what is tolerable in that they could be classified as material which, in the words of the Broadcasting Act, is 'likely to be offensive to public feeling'. Licensees must consider the editorial justification carefully, including the context of the violence portrayed, the time of the broadcast, any warning provided and the likely audience. There can be no defence of violence shown or heard for its own sake, or for the gratuitous presentation of sadistic practices. Research indicates that viewers are most likely to be offended by explicit images of distress and injury, and of blood, particularly if they occur suddenly or unexpectedly."

*Agony breach case review:*

I remarked earlier that a television critic had written an article about *Agony* stating that it "breaks the ITC Code so flagrantly that the channel's licence remit should be examined without delay."[123] Directly after the article was published, the ITC regulator contacted Entertainu's compliance team.

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The ITC concluded that some scenes were in near breach of the Code and other scenes were in actual breach of the Code. The scenes that were in near breach of the rule on 'offensive violence' were thought to be on the brink of depicting violence in a 'gratuitous' fashion, which was prohibited by the Code. The regulators gave the broadcasters a warning to persuade them to comply with the Code in the future.

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After these findings were delivered to Entertainu, the regulators published a summary of the case on their website, as a means of informing other industry members about the breach and of educating them about where the lines of permissibility had been drawn. The breach and the subsequent negative publicity served as a warning to Entertainu; no other form of penalty was imposed.

This case raises interesting points about how the shape of rules can lead to compliance failures and how the complaints process can affect regulatory decisions.

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[123] The reference for this article is not cited to preserve the broadcaster's confidentiality.

*How the shape of rules affected compliance:*

Some of the rules discussed were 'widely-scoped', leaving programme-makers with significant room to interpret their meaning and this not only led to unintentional compliance errors, but also gave them greater room to navigate around them, and practice 'creative compliance' and 'rule interpretation'.

For instance, the broadcasters were required to understand what their audience would deem to be, for instance, 'distasteful', 'indecent', 'harmful' or 'offensive'. These terms were largely undefined, subjective and difficult to measure. Millwood Hargrave and Livingstone, authors of 'Harm and Offence in Media Content: A Review of the Evidence' argued:

> …'harm and offence' is often used as a single phrase, with little clarity regarding the difference between the terms or how they may each relate to legal and regulatory frameworks. Similarly, these terms are little discussed or distinguished in relation to the research evidence. It is suggested that harm is widely (though not necessarily) conceived in objective terms; harm, it seems, is taken to be observable by others (irrespective of whether harm is acknowledged by the individual concerned), and hence as measurable in a reliable fashion. By contrast, offence is widely (though not necessarily) conceived in subjective terms; offence, it seems, is taken to be that experienced by and reported on by the individual, and hence is difficult to measure reliably.

This had the potential to confuse broadcasters, increase the likelihood of compliance errors, and lead to inconsistent decisions about programme standards. Entertainu's programme viewer stated:

> It is really frustrating because they [the rules] are so woolly and loose. [For instance,] there is a part in the Code…that says that scenes which show someone's actual death require exceptional circumstances. But then what is your definition of 'exceptional circumstances'?

In relation to the regulatory assessment of *Agony*, the broadcasters were not allowed to transmit material that was "likely to be offensive to public feeling". The compliance manager, however, claimed that Entertainu had not received a single complaint about *Agony* from its viewers and therefore he had no evidence that the series caused offence, and he subsequently believed that the content fell within the rules. Meanwhile, the regulators argued that the content nearly breached the rules. The issue that became evident is that there were often no precise guidelines

to help the broadcasters assess clearly whether or not they had crossed the line prior to broadcast.[124]

The rules on 'imitable violence' posed a similar problem.

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I have therefore included 'rule ambiguity' as a factor that affected the broadcasters' compliance with the rules under the category of external forces. This finding has also been aired by Chayes (1993), Downs, Rocke and Barsoom (1996) and Footer (2008) who noted that rule ambiguity can lead to regulated bodies' non-compliance, and Tallberg (2002) who found that compliance failures can stem from businesses' misunderstanding of the rules.

This example also indicates how broadcasters packaged violent content in a way that allowed them to avoid regulatory intervention and extend the limits of permissible graphic content. While the inclusion of widely-scoped rules had the ability to generate some confusion, it also gave the broadcasters greater room to argue their compliance cases (see also Davis, 1979; Diver, 1989; Gifford, 1989). This led those I examined successfully to practise 'creative compliance' and 'rule reinterpretation', highlighting a weakness in the regulation.

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*How the complaints process affected compliance decisions:*

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[124] The broadcasters' therefore relied heavily on watching what others transmitted and whether or not they were found in breach for it. They also sometimes complained anonymously to Ofcom about a competitor's content to see if the regulators would find it in breach of the rules and subsequently to see if they too could transmit similar material. Lastly, they had tried previously to ask the regulators for their guidance about certain content prior to airing it, however, the regulators tended to not offer guidance on material prior to transmission because they did not want to promote censorship or make a decision prematurely.

To better understand the lines of permissibility, the broadcasters could have turned to audience research, as there were a variety of reports which attempted to explain audiences' general offence to content (e.g. Independent Television Commission, 1998; Cupitt, 2000; Broadcasting Standards Commission, 2000; Ofcom, 2005).

The broadcasters, however, preferred to learn about this area from the complaints process, which in turn served as another factor that influenced their compliance decisions.

Complaints allowed the broadcasters to interact directly with their audience to understand their evolving attitudes and sensitivities towards content. There were, however, two drawbacks to relying on such complaints as a guide to making compliance decisions. The first relates to the compliance manager's statement "it is a very small minority [of people] that complain". And in fact, as I have noted, there were no complaints made about *Agony*, even though it was found in breach of the regulations and discussed in negative terms in online public forums.

Entertainu's broadcasters interpreted the viewers' complaints-related silence as a form of acceptance of the material and used it as an artful defence or justification for the permissibility of their content. This indicated that not only the act of complaining, but also the act of *not* complaining, influenced the broadcasters' compliance approach by providing them with an additional route for navigating around the rules.

Audiences' paucity of response also indicates that they might have been averse to complaining, which is consistent with other researchers' findings. Virts (1984) conducted a study of programme-makers and found that viewers seldom complained and that the outcome was that little of their input went into the making of production decisions. Similarly, Pritchard (2000) examined newspaper journalism and found that individuals were unlikely to complain when incorrect information was reported about them.[125] Lastly, Ofcom conducted a study which found that viewers tended to change channels or to turn off the television when seeing 'offensive' or 'inappropriate' content rather than complain to broadcasters or the regulator (2005c).

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[125] Pritchard found that these respondents often believed that only they themselves could mend the resulting damage to their social status, by speaking with those around them to correct the false statements made. For example, if a journalist had reported that a man had one child when in fact he had two, the man believed that only he could remedy the hurt the other child felt through speaking with him or her.

This is an important issue because much of Entertainu's compliance process rested on the receipt of complaints. This approach reveals a weakness in the compliance structure, as it can lead to rule infringements that go undetected. (It would therefore be fruitful if more research could be done to explain why many viewers do not complain.)

The second issue relating to the complaints process is that *Agony II* gained its ratings by extending the parameters of graphic imagery, and so it was not in the broadcasters' interest to soften their content to cater to complaints.[126]

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To better understand Entertainu's position on complaints, the compliance manager stated that although routinely offending many viewers would alienate them and eventually drive them away (thus diminishing ratings), "You don't want to pander to the minority necessarily, but you just need to be aware that some people will not like it". In other words, the manager recognised that Entertainu's "laddy" type of programming would not appeal to everyone, however, it would attract enough viewers to keep the channel successfully in business.

The manager's argument for not "pandering" to small numbers of complainants also suggests that ongoing complaints from numerous viewers might have had more effect on the shaping of television content standards decisions than sporadic complaints from a few viewers, as the broadcasters did not want to alienate a significant proportion of their audience. This appears to emphasize the importance of organised consumer groups.

The manager's statement also illustrated how he employed what Sykes and Matza (1957) referred to as a 'technique of neutralization'. This is an act that temporarily neutralizes individuals' values or moral positioning which might otherwise prevent them from committing acts of wrong-doing. In

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[126] Interestingly, I uncovered statements from viewers in online blogs which expressed that they did get offended by the content. Rather than taking their concerns to the broadcasters, these viewers publicised their concerns more widely online. While this form of user-generated journalism removed traditional modes of interaction between the viewers and the broadcasters, it was important because it forged relationships between audience members, who ultimately held the power over the series' ratings.

other words, it is a way in which people justify their 'improper' behaviour to both themselves and to others. In this instance, the manager used the defence 'you cannot make everyone happy' to justify not accommodating some complainants.

Sykes and Matza (1957) noted various forms of neutralisation, such as one's 'denial of responsibility', 'of another's injury' or 'of another as a victim'. This particular example reflects the broadcasters' denial of responsibility, as they claimed that they could not adhere to all of the complaints and that the situation was therefore beyond their control. In other words, they claimed that their personal limitations prohibited them from following the rules.

The broadcasters' assertion that viewers were evidently not harmed or offended by *Agony's* content because they did not receive any complaints represents a further form of denial. In this instance their defence was 'no one really got hurt', and this falls under the 'denial of injury' category, which explains that some people insist that their actions have not resulted in any harm of damage. This stance is problematic, as I noted that viewers' were often found not to complain, even when they had been offended by content (see also Virts, 1984; Pritchard, 2000; Ofcom, 2005c). One can therefore not assume that a lack of complaints always equates to a lack of problems.

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Remedying the compliance problems in *Agony II*

As will be discussed in the following, after *Agony* was found in breach of the regulatory rules, Entertainu adjusted its compliance approach for the making of the second series, *Agony II*. The breach did encourage the broadcasters to take greater measures to ensure that the series complied with the regulation – by re-contextualising some of the graphic content and removing other content to safeguard minors more fully – however its effect was only moderate. This could have been, in part, because the breach carried no penalty, which might have had a greater deterrent effect than the warning Entertainu received. As noted earlier, the breach also led the

series to receive more press coverage, which the television-makers argued served to bolster its ratings, rather than to drive audiences away.

*Regulating for context:*

To ensure that *Agony II* complied with the Code, the broadcasters needed to contextualize more appropriately its graphic imagery, as non-contextualized violent imagery increased the risk that viewers would emulate the harmful acts and become unsympathetic to others' pain.

To address this issue, as noted, the compliance team gave *Agony II* an ostensible educational theme and used experts to contextualize the imagery with background medical and psychological information. I discussed in the previous chapter how this was referred to as gearing the programme toward "a lad with a PhD". The compliance manager stated "I think the images in the second series were probably as strong as the first series - what changed was the tone of the programme."

The programme's narration and sound effects were also adjusted as to appear (somewhat) less comical, as the regulator had claimed that they set a flippant tone in the first series when discussing victims' injuries. Entertainu's compliance manager stated:

> Now the problem for the regulators was that they found the voice over [of *Agony*] a bit flippant. And I thought, for Entertainu, it was very *Entertainu*. On another channel, it could come across as being very flippant…[For example, seeing] someone falling into a cement mixer and then hearing a quirky sound effect like a burger being squashed…it kind of undermines it. So it's those things, the juxtaposition between images and sounds…if you put those together it could cause offence.

The manager also reduced the repetition of 'money shots' in *Agony II* as he asserted that the initial level was too high and appeared gratuitous: "We saw the [violent] image and then we saw it again, and we saw it again, and then we saw it again. That for us gets to the point where it becomes a bit gratuitous." (Despite this reduction, the programme still contained, on average, one violent/graphic shot every 17 seconds.)

*The protection of minors:*

Laws and policies were formed in the UK to protect young people from potentially damaging or offensive television content. In research carried out by Ofcom, 77% of participants believed that the primary purpose of television regulation was to "protect children and young people" (Ofcom, 2005a: p. 270). In accordance with this view, five of the ten sanctions Ofcom imposed between December 2003 and October 2006 related, at least in part, to the protection of minors. Ofcom's revised Broadcasting Code also placed greater emphasis on the protection of minors than the 2002 *ITC Programme Code* had done.

Given that emphasis, and the fact that *Agony* was found in breach of the regulation relating to 'imitable violence' (a rule that generally applies to the safe-guarding of youth), Entertainu's compliance team was particularly cautious about approving any content that related to children in *Agony II*.

The most significant rule associated with the protection of minors was the watershed. Broadcasters had to transmit programming that was suitable for children until 9pm, after which time they could gradually show more 'adult' content. *Agony II*, with its highly graphic material, was broadcast at 10pm or later. The manager stated:

> Something which is quite strong like [*Agony II]* shouldn't go out at 9 o'clock, so we had it going out at 10 o'clock or 10:30pm because we thought, on the cusp of the watershed is probably too much. Watching something with your family at 8:50pm and then seeing [*Agony II]* at 9 o'clock is a bit of a sea change.

In addition to the watershed, staff tried to ensure that their programming did not unduly offend audiences with scenes of children being harmed. For instance, in one episode a group of Russians dunked their male babies into ice cold water because they believed that it would toughen their spirits. The commissioning editor wanted to include the segment, but the manager feared that it looked too much like child abuse to justify its presence in the programme. After he failed to construct what he believed was a sufficient defence should Ofcom contest the piece, he removed the segment to avoid a potential regulatory infringement:

> [In one episode] we had Russians who dunk their babies into frozen water, which was a fantastic piece of TV and it is that real, 'fucking hell, look at that' kind of reaction. But there is a thing in the Code, cruelty to children, and which ever way we looked at it, we thought, I don't know how we would defend showing this footage if we had a complaint about it…
>
> It's more of a fact that it looked like child abuse. I think the argument would be that we are showing images of child abuse and whichever editorial stamp we could have gotten the

narrator to take in the voice over we didn't think that we could have defended complaints about why we were showing this baby, in effect, being abused. The channel wanted it in, we tried to work it out, but at the end of the day we couldn't come up with a defence that we'd be happy with standing by. Especially because it was the second series and we had [the breach from] the first series, and knew we had to try and be proactive to stop from getting any complaints.

After the first breach, the compliance team also removed programming that they thought could lead to viewers' imitation of harmful acts. *Agony* included material from *Dirty Sanchez* and *Jackass,* two programmes which showed young men performing dangerous stunts for their audiences' entertainment. These programmes had gained a reasonable degree of popularity in the United Kingdom and material from them was being shown on a variety of channels. The regulators disapproved of some of this type of content because they believed it could lead to audiences' emulation, particularly amongst children, so they found the content in breach of the rules to deter broadcasters from airing similar material. In response, the manager removed various scenes from *Agony II* that came from these stunt-oriented programmes.

These examples reveal that the breach from the first series had some positive effect on the broadcasters' approach to compliance in the second series. However, it was apparent that this effect was only moderate as the compliance manager admitted that he attempted to evade the regulatory guidelines in *Agony II* and that the violent scenes were as strong in the second series as they were in the first.

Potentially part of the reason that his compliance approach was only moderately affected is that his team had been found to breach the regulations on numerous occasions, yet they had never been penalised.[127] Rather, the (current and former) regulators only repeatedly warned them.

In fact, in Ofcom's first three years of operation it had levied a mere ten sanctions (penalties), indicating a reluctance to practice heavy-handed enforcement.

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[127] In 2003, Entertainu's compliance manager claimed that he was contacted by the regulator to review approximately 15 complaints, up from ten complaints the previous year. He also stated that Entertainu was found to be in breach of the Code on multiple occasions.

Entertainu's compliance manager claimed that he had come close to getting fined, yet avoided it by rapidly adhering to the regulators' warnings when they found him to be stretching the limits too far. This responsiveness was seen to indicate to the regulators that he was willing to comply with the Code and therefore they only went as far as to publish the breaches and not levy financial penalties.

When the 'dust had settled' so to speak, the broadcasters would again slowly try to press the regulatory borders. They therefore attempted to press the limits of acceptable behaviour in small increments over-time, pushing when they thought that they could "get away with it" and pulling back when they got caught. This 'two steps forward, one step back' approach was more likely than an abrupt or forceful approach to generate warnings from the regulator than it would penalties.

While in some cases Ofcom's cooperative enforcement style (which is based on communication, trust and a presumption that broadcasters want to protect their reputation), has been found to be effective in other industries (e.g. Winter, 2001; Murphy, 2001, 2004), it appeared that it was not as effective with Entertainu, as its broadcasters' actions more accurately resembled Kagan and Scholz's 'amoral calculator' than their normative 'corporation as a citizen' ideal-type. According to the amoral-calculator ideal-type, a regulator should respond to such a company with a firmer enforcement approach, which actively escalated on-going warnings into financial penalties. This is in line with Jenny (2006), who found that sanctioning positively influenced actors' compliance behaviour and Sutinen (1999) who argued that regulators should levy harsher penalties to repeat offenders. In other words, other researchers' findings would suggest that Entertainu's compliance approach would be better addressed by a model that employed more 'deterrence-related' tactics.

The Fairness and Privacy Regulations

As I noted previously, Ofcom's negative content regulations fell into two categories, the 'programme standards' rules, which dictated what content could not be shown on television, and the 'fairness and privacy' rules, which governed how programme contributors should be treated in the making and broadcast of programmes. The aspects that I have discussed thus

far relate to Entertainu's compliance with the programme standards regulations, not the fairness and privacy (F&P) rules.

Although Envision produced *Agony II*, Entertainu was accountable to Ofcom for all compliance failures, including those made by Envision. This was because Ofcom regulated broadcasters and not independent producers, thereby requiring them to ensure that the producers they hired abided by the rules.

In my time working at Envision and interviewing individuals at Entertainu I, however, never once witnessed or heard of the broadcasters discussing the fair treatment of programme contributors with the producers to ensure that compliance was being achieved. As I detected the producers practicing routine acts of deception, this suggests that the broadcasters did not fulfil this regulatory requirement.

This was the case despite the compliance manager's assertion that production companies were often unknowledgeable about the regulation, alluding to the fact that they were potentially, or even likely, fallible. The compliance manager stated:

> A lot of production companies and a lot of people that make programmes have no idea about the rules that they are supposed to be working to. And that is one of the major frustrations. Even basic things about language and 'taking the piss out of people'; they have got no idea…[In relation to] the feedback we've given on previous off-line versions of programmes for the production companies, you get questions where they say, 'well why can't we do that' and on some of the things you think, 'you have never picked up the programme Code in your life' - you have no idea which rules you are supposed to be working to, yet you sign a contract saying that you can deliver a compliant programme when you seem as if you don't know what you are doing'...
>
> They [producers] want to make programmes. I think sometimes they get so impassioned about what they want to make that regulation is secondary, and I completely understand that. I also realistically do not think that anyone that is that impassioned about making programmes would really be that interested in the research about the effects of TV. My personal view is that people think 'well, that's not really my job, I am making a programme, you can comply it, and just give us some advice.' I don't think it interests people. I think it's a bit short sighted because I think it would facilitate people making better programmes.

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The broadcasters' approach of 'turning a blind eye' to the producers' contentious acts may have been tactical, as it enabled them to deny any knowledge, and thereby mitigate responsibility, for the acts should Ofcom have intervened. This form of wilful ignorance or what is referred to by Walton (1996) as 'plausible deniability', was similarly used by the producers, who could avoid blame for their compliance failures by claiming ignorance about the rules, while simultaneously making few efforts to learn about them (see also Sykes and Matza, 1957).

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The fact that the broadcasters failed to ensure, or seemingly even attempt to ensure, that the producers followed the F&P rules furthermore suggests that they were insufficiently motivated to do so and lacked an adequate system of accountability which would serve as a mechanism to gain their compliance.

There also appeared to be an insufficient level of transparency surrounding the producers' production practices and transparency is considered a key factor in enforcing companies' compliance (Tallberg, 2002). This lack of transparency was not only an issue between the broadcasters and regulators, but also between the broadcasters and producers.

As was common in the industry, the broadcasters made the producers sign a legal agreement to comply with the regulations whilst creating the series. The broadcasters could not, however, watch over the producers to ensure that they were enforced, as they operated from different locations. This separation appeared to reduce broadcasters' perceived responsibility for ensuring that F&P regulations were adhered to. They seemed to be more concerned with content standards decisions, as they reviewed and approved material, and therefore became personally accountable for it.

There were also next to no complaints from the programme contributors[128] and therefore the producers' questionably contentious F&P-related actions were generally not brought to light and the broadcasters faced no negative consequences for their inaction.

Collectively this suggests that an insufficient system of accountability, a lack of transparency and a lack of complaints influenced the broadcasters' compliance approach (see also Virts, 1984; Tallberg, 2002).

**Conclusion**

In conclusion, from the offset it appeared as if the commissioner and the compliance team had innately conflicting economic/business and regulatory-based objectives and obligations – to produce a highly rated series with boundary pushing violent content and to ensure that the content complied with the relevant regulations.[129]

In practice, this chapter has shown that the company's business/economic interests took precedence. Rather than serving as an independent party as the compliance team was intended to be, it was seemingly swayed by competition pressures, and often tested the regulatory confines and devised schemes to defend its actions should it come under regulatory scrutiny.

While a significant reason for this approach was economic-based, there were a variety of other factors that played a part in both the broadcasters' non-adherence with the rules and their approach to 'creative compliance' and 'rule reinterpretation' (Figure 24).

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[128] Footnote omitted for confidentiality purposes.
[129] This is in line with various other researchers who have pointed to the conflict between organisational goals and regulatory responsibilities, such as Hawkins and Hutter (1993), Parker (2000) and Nie (2008).

**Figure 24: The factors that influence broadcasters' compliance decisions**

| | | | | | | |
|---|---|---|---|---|---|---|
| **External level** | Competition pressures | Technological advances | Deregulation | Rule ambiguity | If content was found in breach elsewhere | |
| **Organisational level** | Conflicting objectives and duties | Economic interests and demands (drive for ratings) | Organisation's culture | Severity of penalties | Target demographic | Complaints received |
| **Individual level** | Disregard for the rules and their purposes | Personal opinions and instincts | Encounters with peers | | | |

While external elements, such as technological advances and deregulation, helped to further competition pressures (as I have previously noted), this chapter has shown that the way the rules were sometimes ambiguously written also had an impact on broadcasters' compliance (see also Chayes, 1993; Worsfold, 2001; Tallberg, 2002). This not only led to broadcasters' confusion over how to interpret the rules and thereby to unintentional compliance errors, but it also gave them additional room to navigate the rules to their own advantage (see also Davis, 1979; Diver, 1989; Gifford, 1989).

The broadcasters' willingness to test regulatory limits was also a product of individuals' personal opinions towards the validity of the rules and what were frequently subjective content decisions. Individuals' opinions were often reinforced by their colleagues who appeared to hold similar views and this collectively fed into the formation of their organisational culture, which appeared to condone the placement of profit-driven objectives ahead of regulatory responsibilities and the safeguarding of viewers from potentially harmful and offensive content (see also Sutinen, 1999; Jenny, 2006; Job, Stout and Smith, 2007; Nie, 2008).[130]

The broadcasters were also influenced by their viewers (young men) and their competitors. Viewers tended to engage with broadcasters in two ways, by watching content (which generated ratings) and by contacting the broadcaster with feedback (e.g. by complaining). In this instance, Enertainu had received its highest ever ratings for *Agony* and no viewer complaints for its graphic content. The broadcasters were therefore encouraged to continue to transmit such

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[130] Nie (2008) also found that compliance can be weakened by an agency's culture, while Jenny (2006) noted that personal morals and social norms affect compliance, and Sutinen (1999) argued that individuals are more non-compliant the more their community is non-compliant.

material. They also emulated their competitors' content decisions and chose to "up-the-ante" when others "got away with" displaying what they considered to be contentious forms of imagery.

When comparing the broadcasters' compliance approach to that of the producers', it seemed that the producers were less knowledgeable, seemingly by design, about the regulatory rules and more willing to breach them outright. The broadcasters, who, unlike the producers, were accountable to Ofcom for acts of non-compliance, were generally knowledgeable about the rules and did not aim overtly to breach them, but rather to worry away at their limits over time. They were more sensitive to rule-evasion due to the potential regulatory repercussions they could face if they were seen to flaunt the rules blatantly and/or repeatedly.

This suggests that the inclusion of a system of regulatory accountability proved to be an important factor in the overall effectiveness of the compliance process. More broadly speaking, it also suggests, in this instance, that a 'command and control-oriented' enforcement system would likely have been more effective at governing these regulated entities than a self regulatory system.

As noted, the system of accountability that the broadcasters worked under also had its limitations. The broadcasters did little to ensure that the producers followed the rules governing 'fairness' and 'privacy', and due to the lack of transparency surrounding the production process, the regulator remained unaware of this and therefore no enforcement action was taken (see also Tallberg, 2002; Phillips, 2010).

The broadcasters also developed savvy techniques to skirt around the rules and, although the regulators repeatedly warned them about their programme tactics, they never penalised them and so the broadcasters were only motivated to adjust moderately their compliance approach. They were thereby able to broadcast new forms of violent imagery, widen the limits of permissible behaviour and, in turn, weaken the regulator's control over this area of the market.

They did this by changing the way that rules were interpreted over time and by relaxing previous concepts of unacceptable forms of conduct. As previously discussed, this use of 'rule reinterpretation' offers a unique perspective to our understanding of compliance behaviour. It can also serve as an extension to the concept of 'creative compliance'. While 'creative

compliance' refers to an actor who follows the letter of rules but not their 'spirit' (as to avoid penalisation), this perspective shows how one can gain further power over rules by also reinterpreting the 'letter' (or meaning) of rules, as to benefit their own purposes.

As I have shown, this reconfiguration was most easily done in regulatory settings in which rules were written in a widely scoped manner so as to remain loosely interpretable and thus relevant over time. This afforded actors the ability to apply the rules to a variety of contexts and to allow for evolving interpretations, which in turn allowed regulated entities greater room to manoeuvre their meaning to their advantage.

This is a useful addition to our understanding of compliance because as Black said, "The battle for interpretive control in regulation is a critical one...Control over interpretation is thus control over a central power resource" (2002: p. 194). As I was regularly informed that broadcasters often follow their competitors, this approach in turn opened the door for others to follow suit and make a more widespread impact on the television landscape.

*How social boundaries become pushed and reshaped – the social control literature:*

This dialogue regarding the pushing and reshaping of social (regulatory) boundaries naturally links with the social control literature. This represents a sub-theme in my research and the following summarizes my generalised findings in relation to how the actors I examined learned about the social boundaries which prevailed in their industry and how they, in turn, managed to reshape them. This constitutes my contribution to the sociology of deviance and social control literature.

As noted, regulation is often instituted out of a demand from society to protect the population from social ills (Erikson, 1966). Once such rules are established, is it important that the 'regulated' population clearly understands the contours of permissible behaviour in order to comply with them. The producers and broadcasters I examined learned about regulatory boundaries through: the television content they watched; their conversations with colleagues; the mistakes they made in the past which were caught by the regulator; and the language they used to describe their environment.

Once their folk understanding of the guidelines was established, I found that they pushed and reshaped the limits of the tolerable over time through a process by which:

1) they became motivated to extend the rules or limits of permissible behaviour to benefit their own private interests;

2) they assessed the lines between permissibility and impermissibility, and worried away at these limits over time through the practice of 'creative compliance', 'rule reinterpretation' and 'non-compliance'. This practice was done in small increments rather than large increments, because large shifts were more likely to be noticed, complained about and penalised than small shifts, which were less likely to be detected and, if detected, more likely to receive a warning than a penalty;

3) the body that was intended to police those boundaries (the regulator) did not, or could not, effectively monitor the actions of the regulated and so rule infringements occurred without detection or penalty. The regulator's enforcement was also inflexibly bound by the letter of the rules and therefore it was outmanoeuvred by regulated entities' use of 'creative compliance' and 'rule reinterpretation';

4) the public (or consumers), which often turned to the media for an understanding of social boundaries, rarely complained, and when they did complain, the rule enforcer often did not take sufficient action to ensure future compliance;[131]

5) other regulated entities noticed that these individuals/organisations acted beyond the understood limits of permissibility and did not face negative consequences, and so they copied their behaviour;

6) and this repeated cycle led to the extension of accepted forms of behaviour.

This simplified addition to our understanding of how social/regulatory limits can become extended is important because regulators must understand such processes so that they can put effective means of social control in place should the population at large demand it.

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[131] This is consistent with Virts (1984) who said that viewers' feedback (i.e. their complaints) was not a significant factor in influencing the production process.

Now that I have explored the production company's and broadcaster's procedures, I shall examine Ofcom's regulation enforcement process to offer a more holistic understanding of the regulatory process.

# Chapter 7

## The regulatory environment: inside Ofcom

This chapter has been omitted due to confidentiality purposes.

# Chapter 8

## Conclusion

Through the analysis of regulatory compliance and enforcement, this thesis has attempted to explain how and why the regulator's grip over the television market has loosened over time, and how producers and broadcasters have gained an increasing level of control over the shape and character of content. The aim in doing this was to employ a single detailed case study so as to provide an empirically rich, ethnographic account of how and why a state of regulation and its enforcement can become weakened, and to set these findings within a broader historical context.

To examine this process of regulatory decline, I have explained how the television industry and its regulation historically evolved. I then used in-depth, ethnographic analysis to explore what the working objectives and responsibilities of the regulators and television-makers were. I further examined how their pursuit of these elements was shaped by an array of forces at the individual, organisational and external levels, and how the consequences of this interplay subsequently led to the relaxation of the television standards rules and their enforcement.

In this concluding chapter I shall summarize these findings and outline the contribution this work has made to the analysis of regulation.

### Empirical findings - the factors that shaped actors' regulatory approaches

My core contribution is intended to be to the literature in the sociology of regulation and, in particular, to an examination of the reasons that can lead industry members to breach rules and regulators to relax their rule enforcement.[132] It aims to address a deficiency in the existing empirical literature by outlining various forces at the organisational and

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[132] For examples of other justifying arguments given to describe the process of regulatory weakening see: Truman, 1951; Bernstein, 1955; Stigler, 1971; Posner, 1974; Mitnick, 1980; Sappington and Stiglitz, 1987; Levine and Forrence, 1990; Baldwin and Cave, 1999; Black, 2002; Feintuck and Varney, 2006.

individual levels which affect regulated entities' compliance behaviour. While this study is principally empirical, it also adds, to a limited extent, to the theoretical literature by comparing my research to existing relevant theories and offering a reformulation of certain concepts which assisted in the description of my findings.

It is hoped that my results may help regulators practically and academics conceptually to better understand what types of flaws can arise in systems of enforcement and how they can, in turn, lead to a reduction in the effective oversight of a market or group.

This work also adds, again to a limited extent, to the sociology of media's 'gatekeeping' literature (Shoemaker and Mayfield 1987; Soley, 2002; Beam, 2003; Price, 2003; Barzilai-Nahon, 2005; Lee, 2005; Vettehen, Nuijten and Beentjes, 2005; Gentzkow and Shapiro, 2006; and Barzilai-Nahon, 2007).[133] Pamela Shoemaker, a leading scholar of gatekeeping, has called for more research to be done to explain the environmental factors that shape media practitioners' decisions about content production, and how these factors correlate with other organisational and individual level influences (Shoemaker, 2001; Shoemaker and Vos, 2009). I hope that I have served this aim.

I should note that the regulatory compliance literature offers few studies on the television market and on content production in particular, tending to focus instead on other sectors such as the environment, railways and fisheries. I would therefore encourage more work to be done on the media market. I would also encourage researchers to conduct further in-depth ethnographic analysis of regulatory institutions, as regulatory decision-making is often veiled under a layer of confidentiality which is otherwise inaccessible to outsiders and thus unavailable for learning or critical comment.

Finally, I believe that the regulation literature would benefit from more research that simultaneously looks at states of regulation from the perspective of both the regulator and the regulated. This approach would offer valuable insight into regulatory mechanics and into how, in practice, regulators' actions can be interpreted and responded to by industry

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[133] As noted previously, as a minor theme, my findings also inherently build on the sociology of deviance and control literature, as they explain how forms of permissible behaviour can become pushed and extended. For the purposes of needed brevity, I shall not review these findings again here, but will instead direct readers to my summary of them on pages 205-207.

members. This is a useful, but to date rarely used, way of identifying which regulatory tactics are effective and which fail.

My key findings are summarized in Figures 34 through 36. For purposes of brevity, I shall review only the most significant factors here. A fuller description of these elements can be found in Chapters Five, Six and Seven.

**Figure 34: The factors which influenced producers' compliance approach**

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **External level** | Competition pressures / market growth | Technological advances | Globalisation | Deregulation | Rule ambiguity | | | | |
| **Organisational level** | Conflicting objectives and duties | Economic interests and demands (drive for ratings) | Organisation's culture and ideology | Capacity issues | Insufficient regulatory training / lack of knowledge | Managers' power over subordinates | Perceived likelihood of detection and severity of penalties | Time constraints | Audience profile |
| **Individual level** | Disregard for the rules and their purposes | Encounters with peers | Reputation / job security | Personal opinions and instincts | | | | | |

**Figure 35: The factors which influenced broadcasters' compliance approach**

| | | | | | | |
|---|---|---|---|---|---|---|
| **External level** | Competition pressures | Technological advances | Deregulation | Rule ambiguity | If content was found in breach elsewhere | |
| **Organisational level** | Conflicting objectives and duties | Economic interests and demands (drive for ratings) | Organisation's culture | Severity of penalties | Target demographic | Complaints received |
| **Individual level** | Disregard for the rules and their purposes | Personal opinions and instincts | Encounters with peers | | | |

**Figure 36: The factors which influenced Ofcom's enforcement approach**

*This chart has been removed for confidentiality purposes.*
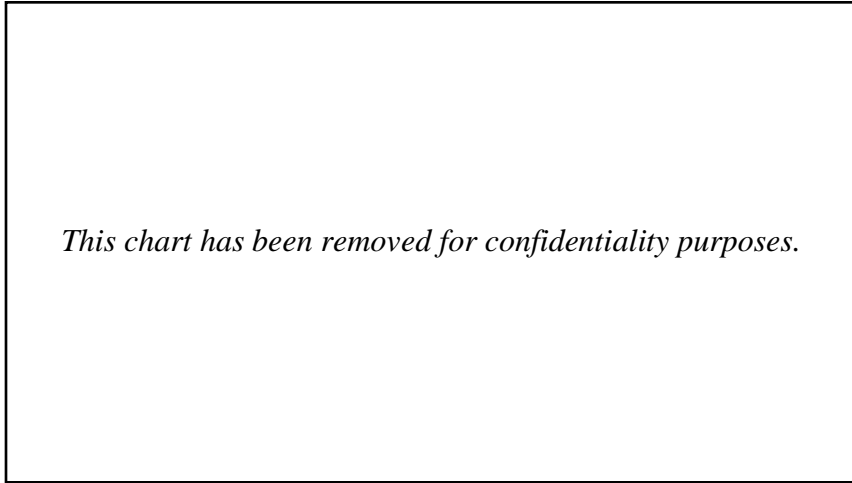
**<u>External level influencing factors</u>**

Macro-level changes stemming from evolving politics, globalisation and technological advances have dramatically reshaped the television industry over time, introducing an influx of hundreds of new television channels, and broadcasting and independent production companies. They have led to a shift towards deregulation and, in turn, a relaxation of the standards of television content, together with their rules and enforcement.

The UK television industry, in parallel to many other industries, has been moving towards deregulation since the 1980s. The television sector was previously regulated by the Independent Broadcasting Authority (IBA), which was government-run and had ultimate pre-monitoring control over the nature of programme output. The Independent Television Commission (ITC) subsequently came into force in 1990, relaxing many of the regulations and shifting to a post-monitoring system. The Office of Communications (Ofcom) was then established in 2003 and adopted the powers of the previous regulators and continued to further the passage of the industry down this deregulatory path.

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These actions were the result of a variety of influential macro-level, or external, factors, including:

**Changing technology:** Technological advancement and, in particular, the introduction of cable, satellite and, most importantly, digital television, enabled the market to shift from just a handful to hundreds of channels. It also made it more feasible to distribute broadcast content globally. In doing so, the justification for imposing burdensome content standards regulations declined in the UK.

Such regulatory softening was justified by the argument that when there were only a few channels in operation they needed to cater for the whole UK population and therefore centred on what was referred to as 'family viewing'. When the number of channels broadcast rose, audiences dispersed across them as 'niche' channels flooded the market.[134] These channels uniquely targeted specific audience 'demographics', leading regulators to adapt their rules so that they could be flexibly applied to what were assumed to be the particular sensitivities of different audience members, with what were deemed to be more 'vulnerable' viewers, such as children, being given tighter content restrictions than less vulnerable ones, such as young men. The result was the reduction of restrictions on the content destined for certain groups.

**Economic incentives:** A desire to maximise the industry's economic gain also led regulators to embrace the 'digital revolution'. The consequential growth of numerous new broadcasters and producers led to a reduction of the market's barriers to entry and the relaxation of the more socially protectionist regulations of content standards. In turn, there was to be a shift in focus from the regulation of content to that of market competition (Feintuck, 1999).

**Changing politics/globalisation:** Political shifts brought on, in part, by globalisation and technological advancement similarly spurred the shift towards government deregulation. This move began during the years of the Thatcher government (1979-1992) when Margaret Thatcher moved the UK towards a 'free market economy', with the sale of

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[134] 'Niche channels' are services that cater for a specific 'target demographic' (or audience profile), such as children or young men.

government-run industries to the private sector and a reliance on the 'free market' to manage the economy with a lessening of government restrictions (Underwood, 2003).

The resulting deregulation and re-regulation of numerous sectors included, for instance, the ITC's loosening of regulatory restrictions in broadcasting and the introduction of Channel 4 in 1982, which initiated the widespread take-up of external production facilities. The government also decided to grant the ITC only the power to regulate broadcasters and not independent producers, which were set to operate under a system of self-regulation. Such changes, as I have shown, were significant factors in the sector's regulatory erosion.

Later, in 2005, the European Union's Audiovisual Media Services (AMS) Directive led Ofcom to publish a new broadcasting code which was in line with the codes used in other European Union (EU) Member States. This changed the language used in Ofcom's code and one could argue led to a further reduction of the content standards rules.[135] The AMS Directive also encouraged the ongoing growth of the independent production sector, as it required broadcasters across the EU to allocate a proportion of their television production commissions to independent producers.

**Increased competition:** The outcome of the above changes was the opening of over 800 independent production companies and the launching of more than 400 television channels, which produced in excess of two million hours of programming every year. The immense increase in content made it no longer feasible regulators to monitor everything that was broadcast and they, in turn, relaxed their enforcement monitoring approach even further.

## Organisational and individual level influencing factors

These external changes brought forth consequences at the organisational and individual levels, which had additional effects on regulation and the industry.

### The regulatory level

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[135] E.g. the rules governing 'offensive' content.

*This section has been removed for confidentiality purposes.*

The industry

Just as had been the case with the regulators, the producers and broadcasters also faced conflicting economic and public interest objectives and obligations, which were simultaneously to comply with the socially protectionist regulations and to make a successful television series on time and within budget.

Reflecting the logic behind rational choice theory, the television-makers loosely weighed the costs and benefits of different courses of action and selected the most advantageous option. The 'costs' in this equation equalled their anticipated likelihood of getting caught and penalised by the regulator; a possibility which they presumed to be either low or nonexistent. The 'benefits' included completing the series on time and to budget, which enhanced the individuals' and the organisations' reputations for successful project delivery and thereby their economic positions.[136]

The television-makers therefore practiced 'creative compliance' and 'rule reinterpretation' in certain instances, and tested or breached the regulatory limits in others, as and when it appeared beneficial for them to do so (Kagan and Scholz, 1984: p. 67; see also Becker, 1968; Sutherland, 1983; Hechter, 1987; Friedman and Hechter, 1988; Hawkins, 1990; Pearce and Tombs, 1990; Hechter and Kanazawa 1997; Footer, 2008; Abusin and Hassan, 2011; Khanna and Widyawati 2011; Nelson, 2011; Ostrovskaya and Leentvaar, 2011; Ostrovskaya, Leentvaar and Eizinga, 2011). And, as my findings reveal, the benefit of deviating from the rules *routinely* outweighed those of complying with them. Accordingly, instances of non-compliance were commonplace.

To comprehend *why* the television-makers were so prone to regulatory infringement, I shall review the various inter-related factors that shaped their working environment and thus their compliance decisions. I have already outlined the different external factors, such as advances in technology and changes in politics, which led to a rapid rise in broadcast

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[136] Individuals' acts of non-compliance also stemmed from, amongst other things, an insufficient, sometimes calculatedly insufficient, knowledge of the rules and an inability to calculate regulatory risks effectively, which reflected an interesting mix of Kagan and Scholz's (1984) 'corporation as incompetent' and 'amoral calculator' ideal types.

channels and production houses, and a loosening of the regulations. Here I shall explain how these factors had a knock-on effect on the television-makers that I examined and affected their commitment to compliance.

**Economic interests and demands (drive for ratings):** The rise in the number of channels and production houses led to a steep increase in competition, and the opening of hundreds of small- to mid-sized operations, such as those I investigated in this study. These television-makers needed to compete fiercely to survive in the market and their economic interests (that is, their drive for ratings, thus advertising revenue) were their core priority. In turn, the safeguarding of their financial welfare often took precedence over their public interest (or regulatory) duties, with most of their resources being devoted to ensuring their economic sustainability rather than their regulatory compliance.

**Resource constraints:** In a similar vein, the rise in competition also meant that individual organisations often operated on tight budgets with limited resources. This led the producers that I examined to cut corners by hiring inexpensive, minimally skilled workers and not adequately training those workers about the regulations. This tactic again placed the business's economic objectives over its regulatory obligations. It is a finding which echoes that of other researchers including, for instance, Arant and Anderson (2001), Hutter and Jones (2006), Russial (2009) and Valentine (2009).

**Insufficient regulatory training and lack of knowledge:** As a result, the producers failed to abide by the regulations because they lacked the knowledge needed to comply. Hutter (2001) once argued that one needs to understand rules in order to abide by them. The producers did not seek to understand them because their wilful lack of education bred non-compliant behaviour (see, for example, Ahmed and Braithwaite, 2004; Feld and Frey, 2006; Furnell and Thomson, 2009; Sarkheyli et al, 2011; Tabrizian, et al 2011; Vassiliki et al 2011).[137]

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[137] It should, however, be noted that producers' ignorance of the rules was sometimes wilful, rather than solely the bi-product of limited resources, as they understood that 'boundary pushing' content spurred ratings and thus enhanced their economic positions. Their resistance to learn about what was expected of them therefore reflected an 'amoral' version of Kagan and Scholz (1984) 'corporation as incompetent' ideal-type, as it was not only due to a simple lack of knowledge about the rules that led to acts of non-compliance, as this ideal-type would suggest, but rather a deviant and purposeful ignorance used to mitigate responsibility should their actions come under external scrutiny. The producers also claimed to disagree with the rationale for the rules, which is a reason for

**Reputation and job security:** The pressurised working environment that employees faced, together with the shift in the industry to employ freelance (i.e. not permanent) staff, also brought it about that employees were faced with great job insecurity. It was a situation that generated a 'do whatever it takes' attitude to fulfil assignments and so enhance one's reputation for successful task completion, resulting in a disregard for the rules.[138]

As I have shown, it was common for new market entrants to find it difficult to secure paid employment. In turn, people often accepted internships and worked long hours with little (if any) pay in order to secure paid roles in the sector. And, once they were formally employed, the level of pressure continued, as they were often expected to work extensive unpaid overtime, to assume multiple roles (e.g. camera operator, interviewer, researcher, etc.), to complete difficult tasks in short timeframes while operating on greatly restricted budgets – and to do all of this with little financial compensation.

This resulted in workers often bending or breaking the rules in order to meet tight deadlines, and generating various forms of justification to mitigate or explain their deviant behaviour. These techniques of neutralisation included, for instance, their claiming that they could not do their jobs without breaching the rules, denying that their actions caused anyone harm and blaming their 'victims' (i.e. programme contributors) for allowing certain unruly incidents to occur. (This adds to similar work from: Parsons and Bales, 1955; Skyes and Matza, 1957; Klockars, 1980; Pfeffer, 1981; Punch, 1985; and Cohen, 2001.)

The outcome was the formation of a 'deviant' sub-culture which condoned and perpetuated acts of non-compliance.

**Non-compliant organisational culture:** The producers' approach to compliance, together with their cost/benefit analysis, was framed by an organisational culture that not only condoned, but promoted, acts of non-compliance (see also DiMaggio and Powell, 1983; Hall

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non-compliance given within the 'corporation as a citizen' ideal-type (Kagan and Scholz, 1984; see also Nadler 2002; Ahmed and Braithwaite, 2005, 2007). Their beliefs however appeared to stem, again, from an interest in mitigating responsibility for their rule-evading actions rather than from a genuine disagreement with the rationale of the regulations, thereby again putting an 'amoral' slant on their positions.

[138] Reputational issues were also found to influence compliance behaviour by Parker (2002) and Gunningham et al. (2005).

and Taylor, 1996; Hutter 2001; Job, Stout and Smith 2007).[139] It encouraged members to conform to the deviant social norms and constraints embedded in their sub-culture, and to become indoctrinated by shared understandings of what was acceptable conduct within their unique social world (see also Zucker, 1983; Meyer and Rowen, 1991; Scott, 1995).

This competitive culture was unique and interesting because it led producers, and particularly management, not only to tolerate acts of non-compliance, 'creative compliance' and 'rule reinterpretation', but actively to promote them. For instance, management trained its staff both how to circumvent and breach the rules without getting caught or penalised.

Like the producers, the broadcasters that I examined aimed to extend the limits of permitted conduct. However, they were better educated about the rules than the producers and so took more calculated risks in their compliance management. They were also directly regulated by Ofcom and so at risk of being sanctioned, and therefore their aim was to push slowly the regulatory limits over time, without blatantly breaching them; a tactic that was thought to be less likely to incite the awareness and intervention of the regulator than one resulting from a more bullish approach.[140]

**Perceived likelihood of detection and severity of penalties:** The producers' culture of non-compliance was reinforced by the fact that they were not regulated by Ofcom and therefore could not be penalised by it. They had little incentive to comply.[141] Instead, the system in the UK held broadcasters responsible for all compliance breaches – even those made by producers. The rationale that followed from this tactic was that broadcasters were supposed to be incentivised to ensure that producers complied with the rules in order to protect themselves from negative regulatory intervention.

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[139] The influence that a group's culture and ideology has on its members' decisions about content and regulatory compliance has been documented by numerous researchers (Tuchman, 1978; Gitlin, 1980; Braithwaite and Geiss, 1982; Punch, 1985; Shoemaker, 1987; Victor and Cullen 1988; Soloski, 1989; Makkai and Braithwaite 1993; Entman and Rojecki, 2000; Hutter, 2001; Turner, 2002; Warren and Vavrus, 2003; Job, Stout and Smith, 2007; Nie 2008; Aaronson, 2010; Harris-White, 2010; Wikström, 2010). This is particularly important among those who found that individuals are less likely to comply with the rules the more their community or peers do not comply (Vogel, 1974; Geerken and Gove, 1975; Witte and Woodbury, 1985; see also Reno, 1993; Paterson 1993; Wikström, 2010).
[140] Due to this approach, the broadcasters considered it an inability to calculate risks effectively when the regulator found them to be in breach of the rules.
[141] For related accounts see Van Snellenberg and Van de Peppel (2002); Carmichael et al (2005); Chiarini, Marzano and Schneider (2011); Khanna and Widyawati (2011); Nguyen (2011); Ostrovskaya and Leentvaar (2011).

However, I have revealed that the broadcasters I examined, like the producers, aimed to extend the parameters of what could be shown on television, and that they did not monitor the producers' compliance with the 'fairness and privacy' rules to any perceptible extent. Furthermore, when the prequel to the particular series that I examined *was* found by the regulator to have breached the rules, the negative publicity only served to win the series more ratings than any other in the channel's history. This gain, coupled by the fact that the regulators let the broadcasters off with a warning and no penalty, meant that the 'benefit' of deviant practice routinely outweighed the 'cost' of full compliance.

So it was that, when the television-makers I examined were confronted with conflicting economic and regulatory obligations, they often preferred to prioritise their financial interests.

Both producers and broadcasters therefore appeared not to possess a sense of "normative commitment" or "civic duty" to comply with the rules, as would those who feature in Kagan and Scholz's 'corporation as a citizen' model (1984; see also Tyler, 1990; McGraw and Scholz, 1991; Burby and Paterson, 1993; Levi, 1997; Winter, 2001; Wingrove, Korpas and Weisz, 2011).

Rather, their compliance behaviour reflected a hybrid form of the 'amoral calculator' ideal-type and activity in accordance with rational choice institutionalism. As noted previously, no one theory I found in the literature could fully explain the television-makers' compliance behaviour. However, I was able to draw on useful aspects of a handful of concepts to write my own explanation of their conduct. It is the similarities that I drew from each of them that I shall briefly outline below.

The core argument behind Kagan and Scholz's (1984) 'amoral calculator' and rational choice institutionalism is that actors rationally weigh the costs and benefits of different courses of action, and then select the most advantageous option. In other words, the two concepts are bound by a philosophy couched in the language of rational choice theory.

Rational choice institutionalists, however, place a distinctive slant on rational choice theory by emphasizing the role that institutions play in the shaping of actors' understanding of their

roles, objectives and, in particular, the likely consequences of different courses of action. Institutions, in this sense, are considered "the rules of the game in a society or, more formally...humanly devised constraints that shape human interaction" (North, 1990: p. 3; see also Shepsle, 2005). In relation to the topic of compliance, institutions in this tradition become the parameters of knowledge which affect how regulated entities regard potential regulatory consequences, such as the likelihood of detection or penalisation of certain forms of misconduct (Hall and Taylor, 1996). This understanding, in turn, shapes actors' decision-making about which strategic path to take.

I have demonstrated that the producers and broadcasters that I examined loosely weighed the costs and benefits of different courses of action before determining which compliance approach to take. Similar to the model of rational choice institutionalism, the producers' calculus, in particular, was also heavily influenced by the institutional setting in which they resided. As noted, they were not regulated by Ofcom (only broadcasters were) and this led them to believe that their acts of non-compliance would likely go un-detected and un-penalised; and this encouraged them to infringe the rules.

The 'amoral calculator' ideal-type also puts a unique and useful slant on the standard rational choice cost/benefit equation. Thus, "When decision-makers' calculations of costs and benefits are tainted by self-interest, economics, or politics so that intentional wrongdoing and/or harm result, their calculation becomes *amoral*" (Vaughan, 1998: p. 1-2). Echoing this statement, the producers' decision-making was greatly influenced by their deviant organisational culture which not only tolerated, but promoted, acts of non-compliance.[142]

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[142] The importance of this culture further reflects the concept behind sociological institutionalism, as it emphasizes, as I have done, the role that one's culture and peer group can play in influencing members' behaviour. Sociological institutionalists examine how actors are persuaded to hold certain preferences and to conform to certain social norms through the interactions they have with others, which mimic the social constructs and constraints embedded in their environment (Meyer and Rowen, 1991; Zucker, 1983; Scott, 1995). I too have explained how the producers were encouraged to conform to the deviant social norms within their sub-culture which promoted non-compliance and the mitigation of responsibility for such misconduct. I have also shown how aspects of the broadcasters' behaviour reflected Kagan and Scholz (1984) 'corporation as incompetent' ideal-type – a concept that attributes non-compliance to inadequate education. This was the case because the broadcasters believed that their rule infringements stemmed from an inability to calculate risks effectively which is similarly the product of insufficient education and training.

Taken together, these concepts support my explanation of the television-makers' compliance approach, which again could be best described as a loose 'cost/benefit' calculation, which was tainted by a deviant sub-culture that promoted regulatory non-abidance and the mitigation of such rule infringing behaviour.

**<u>Key messages – adding to our understanding of regulation and compliance</u>**

Before I conclude, I shall note a few of the key messages or generalised findings that one can take away from this research. This study has shown that:

- Both regulators and regulated entities can be presented with conflicting public interest and economic objectives and obligations. And, due to an array of individual, organisational and external forces, they can be drawn to prioritise their economic interests.

- Regulated entities' decisions to breach rules can often be dictated, or coloured, by the overarching views found within the culture (or sub or counter culture) which their members bear. This culture can perpetuate acts of non-conformity and the development of reasons to justify or mitigate such behaviour so as to reinforce such conduct. It can also lend to the alienation or punishment of those who choose to deviate from the culture by acting in accordance with more normative or principled ideals (see also Vogel, 1974; Geerken and Gove, 1975; Punch, 1985; Witte and Woodbury, 1985; Reno, 1993; Paterson 1993; Wikström, 2010).

- Bodies which are directly regulated can better support management which is more likely to ensure that their employees are educated about the rules and compliant with them. This is in contrast to those bodies whose actions are not overseen by a regulator and thus operate under a system of self regulation. Therefore, regulatory oversight can be critical in the achievement of compliance (see also Carmichael et al 2005; Abusin and Hassan, 2011; Khanna and Widyawati 2011; Chiarini, Marzano and Schneider, 2011).

- Regulated entities are more likely to breach the rules in circumstances in which they can conclude that their actions will go undetected, unpunished or when the

form of penalty presented (or anticipated) is outweighed by that of the potential gain found in non-conformity (see also Schuetze, 2002; Van Snellenberg and Van de Peppel, 2002; Baldwin, 2004; Carmichael et al 2005; Abusin and Hassan, 2011; Chiarini, Marzano and Schneider, 2011; Nguyen, 2011; Ostrovskaya, Leentvaar and Eizinga, 2011).

- Traditionally, compliance or 'cooperative' regulation enforcement approaches rely on warnings or techniques of negotiation as a means to achieve compliance, rather than a punitive approach. However, regulated entities whose underlying objective is to breach or extend the rules can often not be effectively coaxed into compliance via such means. Therefore, they may be better managed through a more penal (or 'deterrence' based) approach which aims at ensuring that the 'costs' of non-compliance do not outweigh the 'benefits'.

- Regulated entities can weaken states of rule enforcement not only by breaching the rules or practicing 'creative compliance', but also by what I have described as 'rule reinterpretation', so as to reconstruct the interpretation of rules to use to their own advantage. Widely-scoped rules are particularly at risk here, as they can be vague and non-descriptive and thereby open to a wider range of interpretations than narrowly defined rules (see also Davis, 1979; Diver, 1989; Gifford, 1989).

- Regulated entities can also weaken regulatory guidelines by eroding rules little-by-little over time, rather than making obvious or abrupt infractions. This interventionist approach can be less likely to be detected by regulators. And, if detected, regulators (particularly those who adopt a 'cooperative' rather than 'deterrence' approach) can be more likely to levy a warning rather than a sanction, as they may view the regulated entity as sufficiently cooperative to gain their forthcoming compliance.

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- Regulatory decisions can be dictated or shaped by historical precedents which can lead to cognitive structures which inform actors of not only how they should act, but also what forms of actions are even feasible. This, in turn, can lead to what historical institutionalists refer to as 'path dependence' and the formation of certain patterns of behaviour from which it can be difficult to deviate (see also Thelen, 1999; Pierson and Skocpal, 2002).

**<u>Conclusion</u>**

These cumulative findings go beyond traditional 'capture' theory-related assumptions regarding regulatory softening simply being the product of the industry outmanoeuvring the government, so as to take account of numerous other issues, such as the influence that one's culture and the shape of governing rules can have over regulatory outcomes (see also Berry, 1984; Levine and Forrence, 1990; Baldwin and Black, 2008).

I hope that my findings may have helped to broaden our understanding of the ways in which regulation can decline (or evolve in favour of economic over public interests) by invoking the raft of interrelated factors that can cocoon and constrain regulators' and industry members' actions, often regardless of their formal normative positioning.

It is an understanding that may prove useful because regulators must understand the plethora of factors that can inhibit the effectiveness of their policies if they are going to put systems in place which can ensure that needed public interest objectives are met.

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# Appendix

## Appendix 1: List of interviewees and examples of interview questions

**At the production company I formally interviewed 15 people, including:**

1) The founder and president of the company

2) The production director

3) Head of development

4) Human resources manager

5) Series producer for *Agony*

6) Producer/editor for *Agony*

7) Assistance producer for *Agony*

8) Production coordinator for *Agony*

9) Researcher/interviewer/camera operator for *Agony* (two individuals)

10) Editor for *Agony*

11) Intern for *Agony*

12) Series producer for *Agro*

13) Producer for *Agro*

14) Researcher/interviewer/camera operator for *Agro*

15) Series producer for *The Top Ten*

**At the broadcasting company I interviewed three people, including:**

1) The commissioning editor for Agony

2) Manager of the compliance department

3) Member of the compliance team who worked closely on *Agony*

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XXX     OFCOM RELATED TEXT OMITTED FOR CONFIDENTIALITY PURPOSES     XXXX

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**The following includes an example of some of the questions that I asked television-makers:**

1. What is your background?  Where have you worked and for how long?
2. Do you enjoy your career and role as a producer?  What are the positive and negative aspects?
3. What is the aim of the series you're producing?
4. What is your role in the making of the series? Can you please explain your step-by-step procedures?
5. Why do you feel that people watch the series? What do they get from it?
6. Would you watch the series if you didn't work on it?
7. Do you think that the series extends the boundaries for what we currently understand as permissible content?  If so, do you intend to do that?
8. Specifically, where is the line drawn for what you can and cannot show on television? Do you have examples? How have you responded to these limits in the making of the series? And why?
9. How often do you collaborate with the broadcasters?  How much input do they have?
10. What is the process for getting final approval for the series?
11. Does the commissioner/lawyer make many changes?  What is the rationale behind their decisions?
12. What is your understanding of the regulations?
13. What elements do you think are deemed unacceptable to show on television? How has this played a role in your decision-making?
14. Do you believe in the current regulations?  If not, why?  If you do, where do you think the line should be drawn in relation to depictions of violence, pain and sex?
15. Has any interviewee ever complained about being treated unfairly? If so, why? And what did you do about it?
16. Have you ever felt badly, or regretful, about anything you've done or anything you've produced? Why?
17. What are the essential elements of a successful TV show? Of this TV show?
18. What are your requirements for the characteristics of programme contributors? Their age, looks, education, etc.
19. How do you believe violence is depicted in TV? Is it accurate? Sensationalised? Why?
20. Do you feel TV's depiction of violence/pain effects viewers' consciousness (sense of fear, motivation to commit violence)?
21. As competition in the market increases and sensationalism sells, how do you believe violence will be depicted in the future? Is this a good or bad thing?
22. How do you feel about Ofcom and the commissioning broadcasters? How does this influence the way you produce programmes?
23. What would you like to see improved in the industry?

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# Appendix 2: Ofcom's classification of television programme genres

**Ofcom's definitions of some of the main network genres (Ofcom.org.uk):**

**Light Entertainment and Contemporary Music:** All Entertainment, including situation comedy, other comedy, chat shows, variety, popular contemporary music, cartoons and animation (except children's cartoons and animation), quiz shows, game shows and family shows.

**Factual:** Includes any form of Factual or documentary programming, including features and coverage of special events, for example parliamentary proceedings, party conferences or coverage of royal events. Hobbies/leisure programmes, consumer programmes and reality shows are also included. Drama documentaries are included in the Drama genre. Documentaries on the Arts, or covering religious topics are included in the Arts or religion genre. Coverage of Sports events are included in Sport.

**News:** A Newscast or News bulletin providing network News coverage. News magazines are also included which may contain a range of items related to News stories, with comment and elements of general interest. Separate weather reports and forecasts are also included.

**Current affairs:** A programme which contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with public policy. Consumer programmes and special events are included under 'General Factual'. Party Political and Election Broadcasts are excluded completely.

**Drama:** Drama productions including Drama series and serials, Soaps, mini-series and single plays, Drama documentaries and TV movies.

**Children's:** Programmes designed for a children's audience - Drama, Entertainment (including children's animation and cartoons), Factual and pre-schools. Schools programmes are included within the education genre.

**Film:** All feature films that have had a prior theatrical release. TV movies are included in 'Drama: Mini-series and single plays'.

# Appendix 4: The fairness and privacy regulations

**The 'fairness' regulations:**

The following was Ofcom's own summary of its guidelines for the fair treatment of programme contributors (as quoted in the *Ofcom Broadcasting Code 2005).*

**Principle: To ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes.**

**Rule**
**7.1** Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

**Practices to be followed (7.2 to 7.14 below)**
Dealing fairly with contributors and obtaining informed consent

**7.2** Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise.

**7.3** Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
- be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Taking these measures is likely to result in the consent that is given being 'informed consent' (referred to in this section and the rest of the Code as "consent").
It may be fair to withhold all or some of this information where it is justified in the public interest or under other provisions of this section of the Code.

**7.4** If a contributor is under sixteen, consent should normally be obtained from a parent or guardian, or other person of eighteen or over in loco parentis. In particular, persons under

sixteen should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.

**7.5** In the case of persons over sixteen who are not in a position to give consent, a person of eighteen or over with primary responsibility for their care should normally give it on their behalf. In particular, persons not in a position to give consent should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.

**7.6** When a programme is edited, contributions should be represented fairly.

**7.7** Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured.

**7.8** Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness. This applies both to material obtained from others and the broadcaster's own material.

**Opportunity to contribute and proper consideration of facts**

**7.9** Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that:
- material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and
- anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

**7.10** Programmes – such as dramas and factually-based dramas – should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation.

**7.11** If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

**7.12** Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.

**7.13** Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

**Deception, set-ups and 'wind-up' calls**

**7.14** Broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or recording.) However:

- it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means;
- where there is no adequate public interest justification, for example some unsolicited wind-up calls or entertainment set-ups, consent should be obtained from the individual and/or organisation concerned before the material is broadcast;
- if the individual and/or organisation is/are not identifiable in the programme then consent for broadcast will not be required;
- material involving celebrities and those in the public eye can be used without consent for broadcast, but it should not be used without a public interest justification if it is likely to result in unjustified public ridicule or personal distress. (Normally, therefore such contributions should be pre-recorded.)

## The 'privacy' regulations:

The following was Ofcom's summary of its guidelines for the assurance of individuals' privacy in the making of programmes.

## Principle

**To ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.**

## Rule

**8.1** Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.
Meaning of "warranted":

In this section "warranted" has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

## Practices to be followed (8.2 to 8.22)

## Private lives, public places and legitimate expectation of privacy

Meaning of "legitimate expectation of privacy":

Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy. People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest.

**8.2** Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

**8.3** When people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events.

**8.4** Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted.

**Consent**

**8.5** Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

**8.6** If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. (Callers to phone-in shows are deemed to have given consent to the broadcast of their contribution.)

**8.7** If an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue.

**8.8** When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required.

- However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required.

**Gathering information, sound or images and the re-use of material**

**8.9** The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

**8.10** Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.

**8.11** Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places.
(See "practice to be followed" 8.15.)
Meaning of "doorstepping":

> Doorstepping is the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning. It does not, however, include vox-pops (sampling the views of random members of the public).

**8.12** Broadcasters can record telephone calls between the broadcaster and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case) unless it is warranted not to do one or more of these practices. If at a later stage it becomes clear that a call that has been recorded will be broadcast (but this was not explained to the other party at the time of the call) then the broadcaster must obtain consent before broadcast from the other party, unless it is warranted not to do so.
(See "practices to be followed" 7.14 and 8.13 to 8.15.)

**8.13** Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme.

(See "practices to be followed" 7.14, 8.12, 8.14 and 8.15.)

Meaning of "surreptitious filming or recording":
Surreptitious filming or recording includes the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end.

**8.14** Material gained by surreptitious filming and recording should only be broadcast when it is warranted (See also "practices to be followed" 7.14 and 8.12 to 8.13 and 8.15.)

**8.15** Surreptitious filming or recording, doorstepping or recorded 'wind-up' calls to obtain material for entertainment purposes may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. The resulting material should not be broadcast without the consent of those involved. However if the individual and/or organisation is not identifiable in the programme then consent for broadcast will not be required.
(See "practices to be followed" 7.14 and 8.11 to 8.14.)

**Suffering and distress**

**8.16** Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

**8.17** People in a state of distress should not be put under pressure to take part in a programme or provide interviews, unless it is warranted.

**8.18** Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.

**8.19** Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.

- In particular, so far as is reasonably practicable, surviving victims, and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past.

**People under sixteen and vulnerable people**

**8.20** Broadcasters should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools.

**8.21** Where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from:

- a parent, guardian or other person of eighteen or over in loco parent is; and
- wherever possible, the individual concerned;
- unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

**8.22** Persons under sixteen and vulnerable people should not be questioned about private matters without the consent of a parent, guardian or other person of eighteen or over in loco parentis (in the case of persons under sixteen), or a person with primary responsibility for their care (in the case of a vulnerable person), unless it is warranted to proceed without consent.
Meaning of "vulnerable people":

This varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people with brain damage or forms of dementia, people who have been traumatised or who are sick or terminally ill.