



Content regulation: 'next generation' issues and solutions

Professor Anthony Clayton & Cordel Green
Thursday, September 14, 2017

The media and communication industry is undergoing a profound transformation. In the old era, the media industry was organised, legislated and regulated by infrastructure (radio, television, telephone, print, etc), which imposed clear divisions and boundaries. Today, content flows over many different networks and technologies. News, information, entertainment, education, directions, home management and shopping, translations, and many other services can all be live-streamed to the nearest screen.

Many different services can now be handled on the same networks, and different services can be transmitted on a number of competing networks using different and combined technology platforms (eg, wired and wireless), which means that the flow of content is no longer controlled by infrastructure. In addition, it is now possible to provide media services without the need to have any local presence at all, or ownership of any infrastructure (other than access to the Internet), which makes it increasingly difficult to regulate effectively within a single jurisdiction.

These changes mean that the traditional divisions by region and infrastructure are becoming less and less relevant. In the new era, consolidated content is the heart of the media world, while infrastructure and devices are now just delivery channels.

Convergence has also taken place across industries. Technology companies like Apple, Google and Amazon have morphed into major purveyors of content, dwarfing (and in some cases absorbing) the traditional media companies. Technology firms have argued that they are platforms, rather than publishers, and so should not be subject to the same regulations and restrictions. However, a number of governments are now moving to the position that the technology firms are acting as de facto publishers, and so should be treated as such.

Germany, for example, has passed legislation for addressing illegal, racist or slanderous comments that are posted online, requiring removal within 24 hours. And the governments of Britain and France have approved a joint programme to ensure that the Internet is not used as a safe space for terrorists and criminals.

However, the scale of the task is enormous. There is an overwhelming torrent of new material every hour, criminals and terrorists switch addresses constantly, and existing laws and regulations are proving inadequate to deal with these problems.

The increasing dominance of the technology firms raises another serious challenge. The Broadcasting Commission is increasingly concerned that the media firms in Jamaica are no longer operating on a level playing field because they now are competing against technology firms that can operate in unregulated and untaxed spaces while capturing all the advertising revenue. Largely as a result, the traditional media organisations are losing both audience and income. Between 2012-2014 the audience for radio fell from 21 per cent to 19.6 per cent; the audience for free-to-air TV fell from 25 per cent to 23.2 per cent; and newspaper readership fell from 22 per cent to 20.6 per cent as people switched to the Internet (up from 22 per cent to 25.5 per cent) and international cable (nine per cent to 10.1 per cent). There are still 47 cable companies in Jamaica, but most of them are no longer profitable. Free-to-air radio and television are similarly challenged. The traditional media firms are fighting each other for a share of the shrinking market and for their survival. But their real competition is now based outside Jamaica.

There are, of course, many advantages to these profound changes. One of the most significant gains is that the shift from traditional to non-traditional platforms has 'democratised' the media and stimulated many new creative and business ideas, as many people are now both consumers and providers of content. News, information and entertainment are no longer the sole province of the traditional creators and distributors of content — the broadcast and print media. In an era of citizen journalists, Facebookers, Tweeters, bloggers, and vloggers, the average person, are all consumers and creators of content.

However, the shift to the online world has also brought many new social problems. For example, children and young adults are particularly vulnerable to cyberbullying, revenge porn, Internet addiction disorder and other forms of deeply problematic Internet use. One of the worst problems is that some gangs now record their criminal acts, including murders and rapes, which they then post on social media and share via *WhatsApp* in order to exult in their 'success', humiliate their

victims, devastate their families, and intimidate others. These posts/shares encourage imitation and retaliation, resulting in a vicious cycle of reciprocal violence.

A less obvious but equally troubling problem is that as traditional news outlets have become less profitable, they are also losing some of their primary news-gathering and fact-checking capacity. The loss of authoritative and independent sources of news means that many people now obtain their information from closed loops of like-minded people, which encourages political tribalism and increases vulnerability to fake news and manipulation via social media. A number of state agencies, criminal and terrorist organisations and mercenary hackers now have the ability to destabilise countries by penetrating their communications, compromising their infrastructure, and manipulating elections with fake news. The cost of a cyber-hack/fake news attack has fallen dramatically as the necessary skills have spread through the hacker community, which means that these attacks are likely to be much more common in the future.

Terrorist organisations such as ISIS/Daesh have also become skilled at recruiting disaffected youth via social media. They will invest hundreds of hours in grooming a single candidate. Many of the recruits to Daesh are alienated youth with a history of personal or psychological problems, petty crime and gang membership. Most of these youth are not pious and many are not Muslim. Daesh offers them a powerful message of glamour, violence and a sense of belonging to a great cause.

Most recent terrorist attacks in the West involved 'home-grown' jihadists, many of whom were radicalised and recruited via social media. This means that social media has become a key front for terrorism. This issue of terrorist recruitment has already become a serious problem for the Caribbean. Trinidad has now supplied ISIS with more foreign fighters per capita than any other country in the West. The Caribbean nations have to be very concerned about this trend, as a single terrorist attack could devastate the tourist industry on which much of the region depends. Recent attacks in Egypt, Bali, Tunisia, and France, amongst others, led to an immediate drop of 25 per cent to 70 per cent of tourism revenues for those countries.

The critical issue now is that our regulatory frameworks, which exist to protect the public interest against harm, can now be readily bypassed. Until recently, it was possible to maintain oversight of the bulk of media activity, but about 90 per cent of the traffic has now moved into unregulated space, while the next generation of technological bypasses will render current regulatory systems

and legal frameworks largely ineffective. This means that there are now relatively limited opportunities for mediation between potentially maligning content and vulnerable consumers.

There is a clear and urgent need to raise public awareness of these risks and to find the right balance between the right to freedom of expression and privacy, the right to information, and legitimate concerns about harm to vulnerable individuals (particularly children, adolescents and young adults), national security and the integrity of our democratic systems. A new model of regulation is clearly required. The Broadcasting Commission believes that the new model must achieve the right balance between all the factors involved, but should also be as light-touch and cost-effective as possible, because excessive regulation can reduce rates of investment and growth.

The Broadcasting Commission is committed to finding the best possible solutions for Jamaica and is well placed to play a leading role on these issues, as it is the only regulatory body in Jamaica which is experienced in media and digital literacy and content regulation across platforms. Accordingly, we have started the process of developing a new model for content regulation in Jamaica.

Some of the potential responses include making the playing field a little more level by finding ways to reduce the cost and burden of regulatory compliance in Jamaica; developing the capacity to detect media manipulation via, for example, botnet operations and to detect penetration of social media by terrorist or criminal networks; working with regulated media to encourage the development of more robust fact-checking capacity, and to promote higher standards and trustworthiness in journalism; and building public awareness about how licensed media are expected to gather and report on news (and how fact-checking standards do not necessarily apply to unregulated sources).

We will expand our media and digital literacy programme to include a special focus on disaffected and alienated youth in order to help prevent radicalisation and recruitment by criminal and terrorist organisations. We will also increase our public education on the issues of cyberbullying, revenge porn, Internet addiction, and other problematic issues to build the capacity of youth, parents, guardians, teachers, and the general public to detect and respond to these risks.

The Broadcasting Commission is strongly focused on these opportunities and challenges, but we are equally focused on other key areas that are transforming the media landscape, including the

future impact of new information technologies, artificial intelligence, robotics, virtual and augmented reality, and the associated changes in the creative industries, the nature of education and the socialisation of children. We believe that reform in the institutional framework for regulation of the communications sector must be informed by a 'next generation' conception of its purpose, nature, scope, and breadth so that the new regulatory mechanisms can effectively and efficiently address all of the profound challenges.

We believe that it is essential that there be a strong consensus on the way forward for content regulation in Jamaica as we map out solutions that will help the nation prepare for the future. This will require extensive consultation, and new models of collaboration between the Broadcasting Commission and sectors such as education, national security and public health.

Professor Anthony Clayton is Chairman of the Broadcasting Commission and Cordel Green is the Executive Director.