PLAYING THE GAME BY THE RULES?
TELEVISION REGULATION AROUND CHINA'S ENTRY INTO WTO

ZHENZHI GUO

Abstract

China's entry into the World Trade Organization (WTO) heated up discussions on the importance and urgency of regulatory reform in Chinese television. Entering the WTO means, first and foremost, situating China in a legal framework that is communicative, negotiable and operational within international (primarily Western) standards. For Chinese media, such reform suggests an important move on part of the Chinese government from traditional political control to legal regulation. This paper reviews the development of television regulations in China in the reform era. It begins with a brief introduction to a few Chinese key words, Fa Zhi (law) and Gui Zhi (regulation), against the background of China's legal reforms. It then proceeds to show the development of Chinese broadcasting regulations in a changed industrial environment. Next, it examines regulations of Chinese television, focusing on organizational restructuring and program disciplining. The paper concludes with a brief discussion of the prospects and problems of regulatory reform, especially within the context of globalization. Far from most optimistic predictions, this paper argues that to date regulatory changes in Chinese television are more restrictive than liberalising; and that transformation of China's television from administrative control to lawful regulation still has a long way to go.

Zhenzhi Guo is a Research Professor in the Television Department of the Beijing Broadcasting Institute, Beijing, e-mail zhenzhig@yahoo.com.

Television Regulation around China's Entry into WTO

China's entry into the WTO triggered comprehensive and heated academic debate on the reform of China's legal system. Joining the WTO means, first and foremost, complying with an international framework of market rules initiated and dominated by western countries, thus necessitating a new and compatible Chinese legal system. Thus, the Chinese media system is expected to evolve from political control, which has lasted more than half a century, to regulatory oversight within a legal framework, an option that has gained momentum in recent years.[1]

While the WTO agreements didn't require China to open its television market, industry players have begun reviewing the status quo of television management, and formulating the direction and process of television transformation. Prevailing opinion is that China's existing system of television management and control, characterised by internal, arbitrary and malleable directives, will be replaced by a transparent, clear and stable regulatory regime. This perspective optimistically expects that many current problems in Chinese television will progressively find solutions in this new regulatory regime.

This paper reviews the development of television regulations in China, beginning with a brief introduction of two key Chinese words, Fa Zhi (law) and Gui Zhi (regulation), against the background of reform. Then it will demonstrate the development of Chinese broadcasting regulations in a rapidly changing industrial environment. Next it will examine regulations in the key areas of institutional restructuring and the programming practices of local stations respectively. The paper concludes with a brief discussion of the prospects and problems of regulatory reform in Chinese television, especially within the context of globalization. Far from most optimistic predictions, this paper argues that to date regulatory changes in Chinese television are more restrictive than liberalising; that transformation of China's television from administrative control to lawful regulation still has a long way to go.

Chinese Fa Zhi and Television Gui Zhi

Two homophonic words, Fa Zhi (law regime, or institutional laws) and Fa Zhi (law-governed, or the action of legal governance), entered the Chinese lexicon in the 1980s. In late 1990s, Gui Zhi (regulation, both rules and their enforcement), came into common use in the television industry, as well as in other industrial areas.[2]

The Concept of Law Related Fa Zhi

To explain briefly, "law regime," or laws, refers to stable, institutionalised lawful rules, distinct from "administrative directive" (Xing Zheng Ming Ling); "Law-governed," or the action of legal governance, in comparison with "man-governed" (Ren Zhi),[3] on the other hand, refers to the conduct of legal rule and management that cannot be dominated by personal whims of a leader. Fa Zhi is used in this paper mostly as a noun, meaning a stable body of legal rules.

Since the reform-era began in the end of 1970s, the Chinese people have been calling for a law-based society, with legislative and judicial reform to ensure citizens' rights as well as obligations. With the progress in political democracy and market economy, diversified economic interests among the population brought diversified political demands to China.

The leaders of Communist Party of China and the Chinese government have responded positively to this appeal. Having witnessed the catastrophes resulting from the anarchy of the "Cultural Revolution," Deng Xiaoping, the "general architect of China's reform," stressed his opposition against personal rule, stating that "Democracy must be institutionalised and legitimised, and thus the institution and legality cannot be changed with the change of leaders, cannot be changed with the change of the leaders' opinion and attention" (Deng 1983, 136). The Third Plenary Session of the 12h Central Committee of the CPC put forward legislative guidelines based on four pillars: to have laws for people to follow; to ensure that the laws are observed; to ensure that the laws are strictly implemented and enforced; and to ensure that law-breakers are brought to justice. During the 13th National Congress of the CPC, Zhao Ziyang, then general secretary of the CPC, proclaimed in his report that "lawful ruling must be incorporated into the process of reform." He also said that in particular "we must speed up establishing laws regarding journalism and publication … to guarantee the rights and freedom of the people stipulated in the Constitution." Meanwhile, China was on the road to re-establishing legislation and regulation as the means of governance: China brought back the legal system which was discarded or demolished in the Cultural Revolution, and resumed systems of notarization and pleading. After 20 years of China's reform and opening , approximately 350 laws have been passed by the National People's Congress and its Standing Committee, and more than 1000 administrative rules and regulations have been issued by the State Council (Chen 2002, 20). The most notable legislation relevant to broadcasting are Civil Law, Criminal Law, Copyright Law, and a number of business laws.

The development of broadcasting regulation in China took shape in this period, though a little bit late. In the area of television, however, Gui Zhi (regulation), instead of Fa Zhi (law), became more popular among Chinese scholars and practitioners in discussing industry reform.

The Concept of Regulation Related Gui Zhi

The modern Chinese word Gui Zhi came from Japanese, though it originated in classic Chinese. It is the Japanese who translated "regulation" using the Chinese character Gui Zhi (pronounced "kisei" in Japanese). The term is commonly found in economics and legal texts, referencing administrative measures that government uses in relation to public utilities (including electricity, water, public transportation), and post and telecommunication, which possess characteristics such as natural dominance, externalities, information asymmetry, and cannot be manipulated by the invisible hand of the marketplace to obtain satisfactory efficiency through competition. (Zhang 2003) According to the above criteria, television broadcasting, similar to those public utilities, should be regulated by a system composed of administrative licensing, lawful punishments, and other means – just what China's broadcasting administration has been pursuing.

Needless to say, there are some differences between Gui Zhi and Fa Zhi, especially in the Chinese context. Gui Zhi, regulations, are mostly related to particular industries; while Fa Zhi addresses the entire society and the public. The most important difference is that Fa Zhi incorporates both the rights and obligations of citizens and the juridical person, hence being both restrictive and protective; Gui

Zhi, in contrast, is mostly restrictive and punitive. In the case of Chinese television, regulations are primarily limited to the industry and are restrictive in nature.

Development of China's Broadcasting Regulation

Transformation of Chinese Television

Before 1982, Chinese broadcasting at the national level was under the administrative authority of the Central Broadcasting Bureau affiliated with the State Council. The main responsibility for maintaining and managing provincial and local broadcasting rested on local governments. It was simple and easy to manage broadcasting in an integrated revolutionary Party state, with a limited broadcasting system consisting of one central and less than 30 provincial level television programming stations before 1978. Directives were distributed hierarchically using "red-headed" documents,[4] and the orders contained inside were always carried out effectively.

The exponential growth of Chinese television in the context of market-oriented reforms quickly rendered such an administrative system obsolete and ineffective. In 1982, the Ministry of Radio and Television (MRT) replaced the National Broadcasting Bureau as the national broadcasting administrative authority. At that time, local governments' call for the establishment of television stations to increase population coverage was gathering strength. In 1983, the Ministry promulgated a far-reaching policy in an attempt to harness local financial and material resources to spread the central government's influence through increased television access. The new policy introduced a four-tiered broadcasting system. This referred to the four levels of administration within the government hierarchy, that is, central, provincial, regional (municipal), and county governments. Each level of government was allowed to set up and operate its own radio and television stations. Quickly, enthusiasm grew across China in establishing television stations. In 1982 – a year prior to the reforms – apart from CCTV, there were only 29 provincial television stations and less than 20 municipal relay stations. By 1996, however, there were 944 over-the-air television stations, and 1,285 cable television stations. In addition, there were 1,005 educational television channels and 133,634 satellite ground stations. Television coverage increased from 57.3% of the population to 86.2% (ZGDNBW 1997, 68-69, 525). Television audiences reached 0.8 billion in 1992, and nearly 1.1 billion in 1997 (Zongbianshi 1994, 6; Luo et al 1998, 1).

Unlike the management of the traditional news media, however, it was very hard to control local television stations once they were granted franchise to broadcast. And confusion arose when local stations busied themselves with seeking their own political and economic benefits. Instead of following Ministry instructions by fully relaying CCTV programming, some local stations ran a large quantity of their own entertaining programs and inserted local commercials between CCTV programs. Even worse, a large amount of overseas programs were aired and even pirated. The Ministry had issued many decrees in an attempt to control local stations, but many simply turned a deaf ear to these directives (Zhao 1998).

Moreover, the difficulty of managing television was intensified with the expansion of television-related industries. Audio/video products, film and movie, cable, satellite, and Internet broadcasting, were introduced one after another, each posing new challenges to broadcasting control. New issues such as copyright disputes

and the stealing and destruction of broadcasting facilities had also come to the fore. The Ministry, which increasingly lost its authority and effectiveness, was compelled to explore new forms of governing the rapidly expanding and diversifying broadcasting industry.

The difficulties and disadvantages of traditional administration sparked discussions about the introduction of new regulations. The Ministry realised that the introduction of modern management and guidelines was necessary. This trend was also in line with Chinese media scholars' aim of establishing a legal framework for the media system in the context of regulatory reform. So broadcasting legislation was put on the agenda. As stated in 1987 by Nie Dajiang, the Vice Minister overseeing media "In the situation of opening-up to the outside world, …regulations and laws are vital to keep the state's dignity, to protect the nation's interest, and to stabilise cooperative relations" (GDDBBDZ , I, 30).

Development of Broadcasting Regulation

Amidst the nationwide legislative wave of the mid-1980s, the Ministry exercised its responsibility for the management of the broadcasting industry by showing an interest in the establishment of laws and regulations. In June 1985, a working plan was outlined by the Ministry and regulations regarding radio and television were classified into three tiers: the broadcasting law promulgated by the National People's Congress; administrative regulations proclaimed by the State Council; and regulatory documents issued by the Ministry. More importantly, a leading legislative group and a law department were organised by the Ministry of Radio, Film and Television (MRFT), which replaced the Ministry of Radio and Television by taking control of the film industry from the Ministry of Culture in 1986. The law department was charged with the establishment of new laws and regulations.

The law department gave a full review of the broadcasting regulations promulgated from 1949 to 1986, only to find there were fewer than 10 administrative regulations proclaimed by the State Council, and fewer than 90 regulations issued by the Ministry. The review concluded that these regulations "are not only few in number, but also repetitive in content and non-standardised in form" (GDDBBDZ. I. 1994, 76-77). From then on, the Ministry began to draft administrative regulations and rules, and at the same time, set out to establish the Broadcasting Act and Film Act. Old regulations were updated; and, new regulations regarding the audio/video industries, copyright, co-production of film and television programs by Chinese and foreign studios and producers were promulgated consecutively by the State Council and the Ministry.

While administrative regulations and regulatory documents were issued one after another, the drafting of the Broadcasting Act, was deferred. In December 1991, after several years' of preparations, Minister Ai Zhisheng suggested that the procedure for the establishment of regulations should be changed. Specifically, he called for the initial establishment of administrative regulations and policy documents, to be followed by more comprehensive laws such as the Broadcasting Act and the Film Act. He believed that it was not the right time to make comprehensive acts due to the fact that the Ministry did not coordinate its activities with the Ministry of Post and Telecommunications on business and, more importantly, that there was still not yet a Press Act (ZGDJB 2001, 380). Ai Zhisheng's suggestion was per-

haps reasonable at the time, as such a law would inevitably bring up fundamental and politically sensitive issues about the nature and broad structure of the Chinese broadcasting system, including relationships between the two ministries and the issue of media freedom. Nonetheless, the fact that a leader's mere suggestion could easily deny the whole plan exemplified much of China's problems in legislative procedure and the lingering power of personal rule.

Therefore, instead of establishing a Broadcasting Act, the Regulations for Broadcasting Management was proclaimed by the State Council in August 1997, which was based on a draft of the Act. The promulgation of the Regulations for Broadcasting Management remains a milestone in the efforts to establish broadcasting rules. It is comprehensive, with clear definitions on operational details, including the set-up of radio and television stations, the construction and maintenance of broadcasting facilities, programming, as well as the production and distribution of broadcasting programs. However, the issuing of Regulations instead of a comprehensive Act not only avoided fundamental debates about the nature of Chinese broadcasting, but also underscored the emphasis on obligations rather than rights of the citizen and broadcasting organizations. As this paper indicated earlier, Gui Zhi (regulation), instead of Fa Zhi (law) is the popular and much more proper word to describe practices in legal reform of Chinese television, and in China at large for that matter. In the case of television, the primary rationale for regulation was the disciplining of local broadcasting stations and their programming practices.

Regulation of Television Stations

Based on the imperative of strengthening broadcasting management, the disciplinary measures taken by the broadcasting administration were becoming more and more comprehensive, detailed and meticulous. Document No. 37, which was issued by the Central Committee of the CPC in October 1983, not only proclaimed the "four-tiered television system" policy but also allowed cities and counties to broadcast their own programs to meet "local needs" (Bianzhe 1988, 24). Having witnessed the consequences of liberalization and insubordination, however, the Ministry of Radio and Television decided in 1984 that the "production of entertainment programs by city and county television stations is forbidden provisionally" (Bianzhe 1988, 24). Of course not every station followed the decision, and city stations' involvement in production was permitted soon after. National, provincial, city and county programming were all competing for the limited space within the only channel under the control of the county-level stations. Not surprisingly, county-level channels ignored the ministry's requirements and cut off central programming, while completely neglecting provincial TV. This annoyed CCTV and the central broadcasting administration, resulting in disputes between CCTV and local stations.

Since controversies concerning the "four-tiered television system" policy existed within the broadcasting system, both inside and outside of MRFT, applications for new county television stations were no longer approved as of 1994. In 1995 all applications for setting up new stations were turned down. The media environment had changed greatly by then. New problems associated with the arrival of the VCR, VCD, DVD, as well as cable and satellite television, compounded

existing problems of decentralization and market fragmentation. Local cable channels, provincial satellite channels, as well as Hong Kong-based satellite channels such as Phoenix TV all threatened CCTV's monopoly of the national market. Unruly local stations not only broadcast programs easily obtained from cross-border satellites, but also set up facilities and channels without authorization. So lucrative was the TV market that some industries outside broadcasting tried to get in on the action. Some stations went so far as to jointly run unauthorised TV channels and cable networks with private enterprises, taking domestic and foreign investments from the private sector, thus violating current broadcasting regulations. If CCTV's national voice was not protected, it risked being engulfed by both domestic and foreign satellite channels.

In 1997, the Ministry began disciplining and reconstructing the broadcasting system, especially television, through administratively mandated mergers and conglomeration. When the MRFT was changed into the State Administration for Radio, Film, and Television (SARFT) as part of the reorganization of the Chinese state bureaucracy in 1998, its regulatory role over broadcasting institutions and supervision of content was strengthened. Since then, SARFT has implemented a campaign to re-centralise broadcasting through administrative decrees. It specified that all radio, television, and cable at the county level, including education stations and relay stations, should be integrated into one station. All cable systems, meanwhile, were to be merged into regional cable networks. (GGDDZF 2001, 214-216) Two years later, SARFT assessed the work, and found it effective, as "the number of the broadcasting institutions has decreased by 68%"(GGDDZF 2001, 232-234).

SARFT was so encouraged that it decided to integrate provincial and city stations. At the end of 2000, it made a decision that cable television stations should be merged with the terrestrial television stations of the same region. Provincial cable television stations ceased to exist as of July 1, 2001.

Since then local stations have changed their role from programming providers to networking services. While city stations are allowed to run only one of their own channels, county stations are not allowed to keep any. Instead, they are merely allowed to run local programs in certain time slots in each public channel operated by provincial television stations. This policy is called separating stations from the network, by which programming is controlled by former terrestrial television stations, mainly at central and provincial levels, while local stations function merely as nodes in the national distribution networks.

Soon afterwards, SARFT began to establish national and provincial broadcasting conglomerates through a three-legged policy aiming at "combining radio, television and film industries; integrating cable, terrestrial and educational stations; and penetrating provincial, city and county levels" (GGDDZF 2001, 282-285). On December 6, 2001, SARFT established the China Radio, Film, and Television Group (CRFTG) by merging CCTV, China National Radio, China Radio International, and other national broadcasting and film production and distribution companies under its control. According to SARFT's proclamations, the CRFTG "is a state-owned institution but will be run as a business" (GDDZF 2002, 118). As a number of observers have pointed out, by pursuing a policy of conglomeration in the Chinese media industries, the Chinese state is not only trying to reinforce domestic control, but also building national industrial champions to strengthen the competitive position of the domestic industries in the global marketplace after China's WTO en-

try (Zhao 2000; Keane 2002). However, SARFT's method of "binding small sampans to produce an aircraft carrier" in the founding of the CRFTG has been the subject of much domestic criticism. It is cited as "surgical suture" whereby "monopoly is strengthened while competition is crippled" (Lu 2001, 10), with the CRFTG called "a pile of tomatoes in a gunny-bag," "neither fish nor fowl – not corporation, not enterprise, not commission, and not institution" (Wang and Shen 2002, 5). There were also comments that "the corporation is the product of red-headed documents," "administrative binding," "neither on the basis of property ownership nor on a contract," and that "very probably it will be engulfed in morass of ageing, redundancy and low efficiency" (Bao 2002, 13).

Regulation of Television Content, Production, and Distribution

Regulation of Broadcasting Programs

Though there are hundreds of television stations and dozens of satellite television channels in China, the domestic market remains rather monopolistic. The programming regulations show a stance of protecting national media and domestic programs. First of all, the Ministry set a key task for local institutions to fully relay the CCTV programming: "radio stations, television stations, relay stations and cable radio and television stations (sub-stations) shall fully relay programs of the first channel of CCTV and China National Radio through specially-set channels; if possible, they shall also relay other programs of CCTV. While relaying the programs, they shall not insert their own programs and commercials" (GGDDZF 2001, 60, 173, 186, 214).

The local television stations are commanded to fully relay not only the CCTV programs, but its commercials as well. The Ministry stipulates that "the local stations shall not switch off the commercials of CCTV; and shall not disturb the full relaying of programs either in the form of moving captions or others." If such rules are infringed upon, CCTV can demand the payment of fines" (GGDDZB 2000 No.1996, 95-96). The Regulations for Broadcasting Management also set principles for relaying national programs.

In order to protect the national media's privilege of content control, the MRFT stipulated that local stations should broadcast international news only from official sources. All practices, such as the relay of cross-border satellite television or the broadcast of international news obtained by another means are forbidden (GGDDZF 2001, 194-195).

In addition, since October 1992, the MRFT has adopted a method of collectively supplying programs to local television stations, believing it to be effective in solving the problems of a lack of programs and unauthorised broadcasting (GGDDZB, 2000, No. 1993-1994, 59-60). Since 1995, program management has become more standardised. All imported cable television programs, approved by the Ministry's Social Bureau, must be notified with an approval number at the beginning of the program. Although the production of domestic television drama has been partially taken over by the private sector, a single authorised state corporation – China International Television Corporation, a subsidiary of CCTV – has the exclusive right to import foreign films and television programs. The Corporation not only con-

trols imports and exports, it also distributes domestic programs to provincial corporations for them to sell to local stations. In short, it operates as both a syndicated distribution system, and a monitor of the Chinese market in which most products are television dramas.

Regulation of Program Production Institutions

The television drama was the first kind of program to be thrust into the market. Since the "four-tiered television system" was established, many drama production studios have emerged. Among these, some were regular production units developed from film, theatre or other arts institutions, that became television production branches. Some were independent producers that got public and/or private investments to produce television dramas. Many such independent producers were shabby units run in an ad-hoc manner by temporary units seeking to make a quick profit. After ten years of chaotic competition, some companies prevailed and now occupy dominant positions in this market. Some are state-owned companies, and some are private. The latter had to initially affiliate themselves with some public institutions; with the loosening policies, (GDDZF 2002, 154-156) however, they were finally allowed to stand alone.

The proliferation of foreign and domestic satellite channels paved the way for the rapid development of programs. Production companies with various economic resources began to emerge. Television culture has been significantly enriched and diversified. Some Chinese companies, lacking not only production capacity but also capital, began to seek ways of co-operation with foreign companies, as have been the case in other sectors of the Chinese economy. Foreign capital has crept into China's television program market through various arrangements.

The MRFT's management focused on non-broadcasting institutions that intended to provide television services or private and overseas enterprises which co-produced television content or invested in TV production. The Social Bureau was officially authorised to evaluate and issue licenses to various film and television programs and production agents. The bureau stipulated in 1995 that "individuals or private enterprises shall, in principle, not set up film and television program production agents; foreign or overseas enterprises or individuals shall not either jointly or independently establish film and television program production agents in China"(GGDDZF 2001, 79).

All TV dramas broadcast in China were the product of licensed production units. As early as 1986, in order to regulate the market which was already overrun by temporary television drama production units, the MRFT began to adopt a drama production license system. The license could be divided into two types – long term licenses and temporary ones. Film, television or artistic institutions were typically awarded long term production licenses. The temporary television drama production license was issued on a case-by-case basis. Producers with a temporary license could only make a specific drama approved by the Ministry. Non-broadcast institutions were strictly limited in getting a license, while those jointly owned by Chinese and overseas or foreign partners were forbidden. Without a license, no producer could make television dramas or video programs in China. The lease, sale, and transfer (directly or indirectly) of various licenses were forbidden. On November 1, 1998, the Social Bureau of SARFT began to issue Broadcasting Program

Production Licenses and Television Drama Production Licenses to different applying agents (GGDDZF 2001, 226-227). Since January 1, 2000, Television Drama Distribution Licenses have been issued to all the reviewed and approved television dramas (including domestically, jointly produced and imported television dramas) (GGDDZF 2001, 265-266).

While officially, private companies were not allowed to make any programs, they have used connections within the government to get around the regulation. Thus the private sector was never totally driven out.

Regulation of Cross-border Content

Hong Kong, Taiwan, and foreign programs had always been a major problem for administrators. According to a survey, the number of imported programs in 1989 was double that of 1988. Television stations were competing with each other to purchase cross-border programs, which resulted in the increase of prices. Imported television dramas comprised 35 to 55 percent of dramas broadcast on average, sometimes even as high as 65 percent (GDDBBDZ 1994 I, 241). Hence, in 1990 the MRFT limited cross-border television dramas to 20 percent of total broadcast dramas; and the ratio was set to 15 percent in prime time, but not including 19:00 to 21:30 (GDDBBDZ 1994 I, 280). To avoid imbalanced importation, in 2000, SARFT required the importation of programs in different subjects and formats and from different countries and regions (GGDDZF 2001, 252).

Because China prohibits individuals and institutions from receiving satellite programming without permission or license, citizens can only get access to limited satellite TV programs through cable systems. Consequently, the regulation of the cable system has assumed critical importance. The MRFT and SARFT not only issued a number of regulations limiting the transmission of overseas satellite programming, but also promoted the integration of scattered cable systems into regional networks in the mid and late 1990s. In 1997, the MRFT set up the Satellite Television Examination Centre and Audio and Video Program Appraisal Body to regularly report inspection outcomes and announce appraisal results of programs (GGDDZF 2001, 219).

As to foreign investment, the existing Chinese policy is prohibitive. According to the agreement for China's entry into the WTO, broadcasting falls into the category of "forbidden" industries. In reality, however, there have been overt or covert infringing operations. At the same time, SARFT uses a licensing system to regulate co-productions by specifying the qualification of co-production partners, the forms and formats of co-production, and overseeing co-production content (GGDDZF 2001, 67-73, 73-78, 240-241, 252). Although the MRFT and SARFT have tried to fight against "fake co-production," "fake domestic product" and other covert means of foreign involvement, by increasing exchanges with foreign countries, their control had been loosened gradually nonetheless. Now TV drama producers can receive state, private and foreign capital, according to a contemporary decree issued by SARFT on December 20, 2001, after China's entry into WTO. This document, entitled "Detailed Financing Rules Implemented by the Radio, Film and Television Groups (Provisional)" still stipulates that radio and television stations, frequencies, or channels, as well as other news media, as state-run enterprises, shall not absorb foreign or private capital. At the same time, however, it stipulates that

broadcasting stations can absorb capital from other news media and communication companies or corporations to produce programs and conduct co-projects. It also stipulates that television production, the film industry, broadcasting and press distribution, news websites, broadcasting networks, can, up to a certain amount, absorb capital from private and foreign sources. That, of course, leaves considerable leeway in implementation.

In 1996, the MRFT began to review applications of cross-border satellite channels distributed in China. Since February 1, 2001, applications have been processed annually. In 2002, Phoenix TV, Star TV and Time-Warner's Mandarin channels, as well as other satellite television channels were approved to operate in some parts of Guangdong Province, China. This signals further involvement of global media in China.

Conclusion: Problems and Prospects in Chinese Television Regulation

With the development of a market economy and the reform of the political system, and with growing contact with other countries, China is striving to move toward a law-governed society. The status of law has been established as an essential and primary component of the national governance. The belief of "rule by law" has taken root in the hearts of the people. At present, at least in theory, laws and regulations have become the principal basis for forming judgments or making decisions. Legal validity has also become the premise of all regulations. The authority of law is beginning to be respected. Traditional models of governance are on the decline. No other authority but law is above question – whether a government document or speech by a senior official. This will undoubtedly contribute to the democratization of modern China.

The progress made in the legal regulation of television has been significant. Firstly, regulations are open to the public. Concerned parties and the general public can handle affairs in accordance with rules and regulations. Secondly, the articles of regulations are clear with the wording more standardised. Hence, it is easier for the public to understand regulations, and to supervise implementation.

Regardless of these advancements, it is evident that television regulation in China remains administrative management in legal disguise. Namely, television is governed by laws in appearance but by old-fashioned administration in practice. The regulatory agency, the M RF T and its current incarnation, SARFT, is not an independent regulatory authority in the Western sense. It remains an arm of the government. Moreover, it retains the traditional mindset of regarding the broadcasting industry and the public as the subjects of restriction and control. Thus, a number of problems are apparent.

First, the regulatory regime is still one-sided and inadequate. Traditionally, the Chinese legal system took people's obligations seriously while ignoring their rights, something manifested in Chinese television regulation. The industry is regulated by Gui Zhi (regulations), not Fa Zhi (laws). The recognition of public rights in the Constitution does not serve as effective protection for the specific rights of citizens. Most broadcasting regulations are restrictive norms of "obligation" rather than protective stipulations of "right." For example, to date there is no specifically established broadcasting law which clearly stipulates freedom of expression or free-

dom of the press – that is, the citizen's right to communicate, or the broadcaster's right to relative autonomy. More specifically there are no stipulations to effectively protect the citizen's right to know, to oversee government activities, to criticise officials, not to mention the media's right to interview or report without bureaucratic interference, so as to make constitutional principles actual practice. Most of the present regulations are restrictive and punitive. Also, these restrictive measures are conservative in a global context, such as prohibiting people from accessing information outside of China through the direct reception of satellite television broadcasting. Consequently, in practice people have shown little respect to certain regulations.[5]

Second, there is a lack of clear procedures in making regulations. Among the stipulations of regulatory procedures set by the Ministry (Bianzhe 1988, 20-22; GGDDZF 2001, 384-388) only technical steps, such as draft, revision, modification by the regulatory department, have been required. There are no proper procedures for general practitioners to attend, or the public to participate. Informal decisions dominate both the process and outcome of formal decision-making. The public and social groups of all kinds have no opportunity to express their opinions on draft regulations. Nor do they have any chance to attend hearings. That is, public policies and regulations are made without public participation, and subjected to constant revisions in accordance with short-term institutional and bureaucratic self-interests, be it the bureaucratic self-preservation interest of SARFT, or CCTV's interest in retaining its monopolistic profit margins in the national television market. Even worse, such malleable regulation undermines its authority, rendering it less trustworthy – people do not pay attention to them, and are ready to see them changed. With the trend of media liberalization in the global context, the centralization of Chinese television under administrative command will surely bring conflicts. Society will sooner or later question the validity of the policy-making process, even the legitimacy of the law-making procedure of Chinese television.

Third, there are shortcomings in the implementation of television regulations. Due to the fact that the regulating stipulations are still made out of obsolete ideas, many traditional problems still exist. For example, the administrative protection of a hierarchical communication system has been strengthened, which supports the monopolistic operation of "central" media establishments such as CCTV. Frequent administrative interference, elusive journalistic practices and changeable propaganda tones still plague and increasingly frustrate professionals who have got new ideas from an international context, especially after China's WTO entry. Similarly, since authorities still have to resort to repeated administrative orders to enforce relevant regulations, a low level of efficiency remains. The situation is worsened by arbitrary measures, which are most evident in the establishment of the conglomeration of radio, television and film. Although it is justified to protect less competitive national media such as CCTV for a certain period, media groups established and protected by the Chinese government will not foster a competitive national television system, let alone media which can compete with transnational media corporations. When China has to open the domestic television market to the world, a poorly prepared national television industry will inevitably pay a higher price.

Notes:

1. I would like to thank Yuzhi Zhao and Wanning Sun for their very useful comments and editorial assistance in preparing this article.

2. The original words in Chinese are 法制 (Fa Zhi, law regime), 法治 (Fa Zhi, law-governed), and 规制 (Gui Zhi, regulation).

3. Administrative directive is Xing Zheng Ming Ling (行政命令); man-governed is Ren Zhi (人治).

4. They were directive files released by various administrations. The serial number of the document and the title of the office were often printed in the page header of the first page in red.

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

References:

Ai, Zhisheng. 1997. *Guangbo yingshi gongzuo tan (Speech on Radio, Film and Television Work)*. Beijing: China Radio and Television Press.

Bao, Jinhu. 2002. Legal Aspects concerning Conglomeration of Radio and Television. *Nanfang Dianshi Xuekan (South China Television Journal)* 6, 13.

Bianzhe. Ed. 1988. *Guangbo Dianying Dianshi Fagui Guizhang Huibian (Radio, Film and Television Regulations Assembly), 1949-1987*. Beijing: China Radio and Television Press.

Chen, Guangzhong, ed. 2002. *Faxue gailun (A Panorama of Laws)*. Beijing: China University of Political Sciences and Laws Press.

Deng, Xiaoping. 1983. *Deng Xiaoping Wenxuan (Selective Works of Deng Xiaoping), 1975-1982*. Beijing: People's Press.

Guanbo Dianying Dianshi Bu Bangongting Dang-anchu, Zonghechu (GDDBBDZ), eds. 1994. *Guangbo Yingshi Gongzuo Wenjian Xuanbian (Selective Documents on Radio, Film and Television Work), 1984-1992*. 2 vols. Beijing: China Radio and Television Press.

Guangbo Dianying Dianshi Zongju Faguisi (GDDZF), ed. 1998-2002. Guangbo Dianying Dianshi Fagui Huibian (Radio, Film and Television Regulations Assembly, annual, 1997-2001). Unpublished.

Guo, Zhenzhi, 1991. *Zhongguo Dianshi Shi (A History of Chinese Television)*. Beijing: Renmin University of China Press

Guojia Guangbo Dianying Dianshi Zongju Bangongting (GGDDZB), ed. 2000-2002. Guanbo Yingshi Gongzuo Zhongyao Wenjian Huibian (Selective Assembly of Important Documents on Radio, Film and Television Work) (Nos.1993-1994, 1995, 1996, 1997, 1998, 1999 printed in 2000; No. 2000 printed in 2001; No.2001 printed in 2002). Unpublished.

Guojia Guangbo Dianying Dianshi Zongju Faguisi (GGDDZF), ed. 2001. *Guangbo Dianying Dianshi Fagui Huibian (Radio, Film and Television Regulations Assembly)*. Beijing: China Radio and Television Press.

Keane, Michael. 2002. Facing off on the Final Frontier: The WTO Accession and the Rebranding of China's National Champions. *Media International Australia* 105, 130-47.

Lee, Chin-Chuan. 2003. The Global and the National of the Chinese Media: Discourses, Market, Technology, and Ideology. In C. C. Lee (ed.), *Chinese Media, Global Contexts*, 1-31. London: Routledge.

Lu, Di. 2002. Decoding of China Television Industry in 2001. *Nanfang Dianshi Xuekan (South China Television Journal)* 1, 4-10.

Luo, Ming, Hu Yunfang, and Liu Jianming, eds. 1998. *Zhongguo Dianshi Guanzhong Xianzhuang Baogao (Report on Current Chinese Television Audience)*. Beijing: Social Science Literature Press.

Wang, Qingchuan and Shen Hui. 2002. Conglomeration of Radio and Television, the Cool Thoughts on the Heated Issue. *Nanfang Dianshi Xuekan (South China Television Journal*) 6, 5.

Wei, Yongzheng. 2002. *Xinwen Fa Xinlun (New Theories on Journalism Law).* Beijing: China Custom Press

Zhang, Zhi. 2003. Economic Deliberation on Japanese Broadcasting System. *Guoji Xinwenjie (Journal of International Communication)* 1, 40; also his email (June 9, 2003) and mail (June 10) letters.

Zhao, Yuezhi. 1998. *Media, Market, and Democracy in China: Between the Party Line and the Bottom Line*. Urbana: University of Illinois Press.

Zhao, Yuezhi. 2000. From Commercialization to Conglomeration: The Transformation of the Chinese Press Within the Orbit of the Party State. *Journal of Communication* 50, 2, 3-26.

Zhongguo Guangbo Dianshi Jianshi Bianjibu (ZGDJB). 2001. *Gaige Kaifang Zhong de Guangbo Ddianshi (Radio and Television in Reform and Open-up), 1984-1999.* Beijing: China International Broadcasting Press.

Zhongguo Guangbo Dianshi Nianjian Bianji Weiyuanhui (ZGDNBW), ed. 1986-2002. *Zhongguo Guangbo Dianshi Nianjian (China Radio and Television Yearbook), 1986-2002*. Beijing: China Radio and Television Press.

Zongbianshi, ed. 1994. *1992 Nian Quanguo Dianshi Guanzhong Chouyang Diaocha Ziliao Huibian (Data Assembly of National Television Audience Survey in 1992)*. Beijing: China Radio and Television Press.