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COMPARATIVE ANALYSIS OF INTERNATIONAL CO- AND SELF-REGULATION IN COMMUNICATIONS MARKETS

Research Report

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Executive Summary

Globalisation, liberalisation and convergence of communication markets have triggered intensive debates about the options for regulatory reform, including the growing role of alternative modes of regulation (self-regulation, co-regulation). These alternatives or supplements to traditional statutory regulation are marked by the involvement of non-governmental actors in regulatory processes. Both industry and policy makers consider alternative regulation to have great potential for solving problems in communication markets.

Regulators are increasingly required to assess the potential and limitations of alternative regulatory institutions to inform or improve regulatory systems. As part of this, they are examining how existing alternative regulatory schemes work and what improvements can be made to them. Regulatory authorities are seeking to identify best practice in other countries in relation to self- and co-regulation and regulatory innovation. Empirical evaluations are intended to contribute to a better understanding of alternative modes of regulation and increase the knowledge base for decisions on whether various types of co- and self-regulatory solutions might be preferable to full statutory regulation.

This report is intended to contribute to the regulator's assessment- and regulatory choice-efforts. It examines whether and how success and failure of selected self- and co-regulatory schemes can be explained by their respective institutional design, by characteristics of the industries involved and by the established regulatory environment. In other words, the *performance* of selected self- and co-regulatory schemes is examined comparatively and it is investigated as to whether and how performance differences can be explained by differences in the organisational design of the alternative regulatory institutions (*institutional/organisational success factors*) and by differences regarding their particular industrial and regulatory environments (*enabling contextual factors*).

Check list for regulatory choice and assumption-driven approach

Investigations are based on an analytical framework comprising three sets of evaluation criteria and related empirical indicators. Performance criteria (adoption, awareness, attitude, and action) add up to a "4A concept", which allows for the systematic assessment of alternative regulatory institutions' outcome and impact. For further investigation it is assumed that schemes' performance is influenced by institutional/organisational success factors and by enabling contextual factors. Institutional/organisational success factors (e.g. resources, stakeholder involvement and sanction power) may be modified within the respective organisations in order to increase the regulatory value added or to enhance the legitimacy of an organisation. Contextual factors (e.g. conflicts between public and private interests, intensity of competition and involvement of governmental actors) provide a more or less "enabling context" for self- or co-regulatory institutions. In contrast to institutional/organisational success factors, the modification of contextual factors is not possible at the

organisational level but – if at all – by reforms to the regulatory environment of alternative regulatory institutions.

In sum, the evaluation criteria form a check list for regulatory choice, which in general allows both ex-post evaluations of existing schemes in order to improve regulatory systems and ex-ante evaluations in order to design regulatory schemes for upcoming regulatory issues.

In this project, the analytical framework was applied for comparative ex-post evaluations of *media content-rating schemes* in the film/broadcasting industry and *Internet codes of conduct* in North America, Australasia and the European Union. The empirical analyses employed are based on an *approach* that involves two important selections.

First, analyses prioritise different *performance criteria* for the two regulatory fields studied. For media content-rating schemes, the analyses focus on awareness and attitude, while adoption and action are applied as measures for Internet codes of conduct. Second, analyses are driven by *basic assumptions* regarding theoretically plausible interrelations between the selected performance criteria on the one hand and selected institutional/organisational success factors and contextual factors on the other. Basic assumptions include considerations regarding the relevance of the resources of organisations, of non-industry-member involvement and the involvement of governmental actors in the case of media content-rating schemes. For the evaluation of Internet codes, the assumptions focus on the relevance of competition, of international involvement and of the power to impose sanctions for malpractice.

Key findings on media content-rating schemes

There is a substantial public interest concerning media content. Effective media content-rating schemes with reliable and consistent information can provide added value for consumers. Conversely, the failure to adopt a rating system, or a systematic failure in providing accurate, reliable and consistent information, involves transparency losses. The success of media content-rating schemes in the film/broadcasting industries depends on broad public and industry awareness of the scheme and of the meanings of the content classifications in use. It further demands public confidence in the rating institutions, the rating schemes and the ratings as such.

Contextual factors suggest industry involvement and public oversight

Regarding the provision of media content-rating schemes, analysis of contextual factors suggests a regulatory arrangement with significant industry involvement in the rating practice, combined with some degree of public oversight. Freedom-of-speech concerns, high costs of rating audiovisual content and little demand for uniform binding minimum standards support the suitability of alternative modes of regulation. Sharp conflicts between public and private interests, strong incentives for free-riders and the potentially strong economic impacts of a rating indicate that content rating is not suitable for pure, unlimited industry self-regulation.

Significant performance differences

Evaluation of the prioritised performance criteria, awareness and attitude, shows significant differences among the four rating schemes studied. The Dutch rating scheme (NICAM/Kijkwijzer) is widely known, adopted and respected. The Malaysian rating scheme (CMCF) is supported by the industry and government, but public awareness seems to be lacking. The United States' television rating system (TV Parental Guidelines) is known to the public, but public awareness seems to have declined. Moreover, there is evidence that ratings are applied inconsistently and incorrectly and that they are poorly understood by the public. The United States' rating system for motion pictures (MPAA/CARA) is well known, used broadly by the film industry and considered useful by parents. The lack of transparency in how the ratings are determined and the way they are used in film marketing have, however, generated critics.

Adequate resources, non-industry and governmental involvement contribute to the explanation of performance differences

The performance differences among the four rating schemes led to examination of *whether and how the differences may be explained by institutional/organisational and contextual factors*. Results of empirical analysis partly support the assumption that adequate resources allow for broad public information campaigns, which lead to a high level of public awareness of the institutions. The consistency of the ratings depends on institutions assuring an ongoing dialogue with and between coders, raters and classifiers. Problems arise in systems that operate merely in a decentralised way without institutionalised compliance support. Systems that have delegated significant decision-making power to non-industry members in general perform their roles better than the institutions dominated by industry members. And involvement of governmental actors in alternative regulatory institutions clearly promotes public policy makers' awareness of the alternative regulatory institutions, which is important because the political responsibility to protect minors demands an awareness of rating/classification issues among policy makers, as well as awareness of how various rating schemes relate to each other across the communications industries.

State authorities may adequately support and oversee alternative regulatory institutions in the area of rating schemes. Options for state involvement include soft forms of governmental involvement (symbolic support, inspiration, integration of personnel), financial subsidies, periodic reviews and direct control in a co-regulatory framework. Involvement in and support for alternative regulatory institutions differs considerably between the cases studied. It is very extensive in Malaysia, extensive in the Netherlands, and rather light in the US self-regulation schemes. The success of the Dutch NICAM system under a co-regulatory framework is often referred to as a best-practice example in the literature. But results of comparative analysis show that periodic review can also contribute to further enhancements of an already working self-regulatory scheme.

Key findings on Internet codes

The regulation of Internet services is also a subject of intense international debate. Many of the issues discussed concern questions regarding adequate levels of consumer protection. Due to their gate-keeping position, Internet service providers (ISPs) are regarded as one of the key actors with respect to the achievement of regulatory goals. Since the mid-1990s, hotlines for reporting illegal Internet content have been installed in several countries. Moreover, national Internet service-providers associations (ISPAs) have developed Internet codes of conduct which include (combinations of) provisions regarding illegal activity, limiting access to material harmful to minors, hate speech, bulk e-mail, data protection and privacy.

Significant differences in adoption and action

Evaluation of the prioritised performance, criteria adoption and action, shows significant differences among the four Internet organisations and codes studied. The Irish *ISPAI* Code of Practice and Ethics seems to be well supported and adopted by both industry and government, serving as a valuable complement of the hotline, which is what the public associates with *ISPAI*. The Canadian *CAIP* Code of Conduct was the first such Internet code, and has since been used by many outside Canada as a model. But the enthusiasm for the code among Canadian stakeholders, as measured in adoption and compliance, seems to have decreased over the years. There is hardly any up-to-date information available on Hong Kong and the *HKISPA*'s Code of Practice, but in early reviews its adoption and effectiveness were regarded as being successful. The Internet service providers in New Zealand have clearly and repeatedly failed in terms of code adoption. The debate about *InternetNZ*'s new Code of Practice is still ongoing.

Intensity of competition, sanction powers and international involvement contribute to the explanation of performance differences

The evaluation of institutional success and the contextual factors that might explain performance differences focused on the intensity of competition in the ISP markets of the countries studied, on the international involvement of national Internet organisations and their powers to impose sanctions for malpractice related to the codes of conduct. Findings are partly in line with the theoretical assumption that a high number of players and greater competition in a market is linked to lower adoption of alternative regulatory institutions. However, the New Zealand example shows that comparatively positive market conditions for self-regulation have not yet led to the adoption of a code. Further results of analyses tend to indicate that the extent of adoption of alternative regulatory modes at a national level is related to the involvement of a national Internet organisation in an acknowledged international Internet organisation. And Ireland serves as an example for the assumption that strong powers to impose sanctions for violations of principles of a code of conduct promote industry compliance with rules and obligations under a code.

Further conclusions were derived on the question of how state authorities may adequately support alternative regulatory institutions in the area of consumer protection

on the Internet. In general, self-regulation efforts on the Internet occur in an atmosphere where there is a greater barrier to regulation and a strong demand for transnational regulatory solutions. Inhope (the International Association of Internet Hotlines), in particular, serves as an example of alternative regulatory reaction to transnational challenges by means of internationalisation. Inhope can draw on financial support under the EU Safer Internet Action Plan, which suggests the potential of “soft” intervention resources that (inter)governmental actors can utilise to support self-regulation.

The empirical evaluations presented must be understood as basic attempt to search for and to explain interrelations between performance, contextual and institutional/organisational success factors. Hence the analyses are more comprehensive and go beyond the best-practice assessments that are often applied in the field of self- and co-regulation. However – at the given stage – they are based on reasonable selections of individual performance criteria and influencing factors. Consequently, not all performance differences can be explained by the way the regulatory check list is applied. The analyses point to some additional factors that have to be taken into account, e.g. the maturity of an alternative regulatory institution, its cultural background, enforcement practices apart from sanction powers and the sophistication of the actors involved. It goes without saying that the quality of empirical assessment improves with the number of factors researched. The check list elaborated for regulatory choice addresses most of these further factors and it proves to be suitable for extensive and systematic empirical follow-up investigations.

Introduction

Regulatory agencies are increasingly required to assess the potential and limits of alternative modes of regulation (self-regulation and co-regulation) so as to inform the way regulatory systems function. To facilitate this effort, knowledge of the key institutional factors affecting the performance of alternative regulatory institutions is desirable. A resulting framework may enable regulators to determine which alternative modes of regulation are relevant in addressing new challenges (*ex-ante evaluation*), and in improving already established schemes (*ex-post evaluation*).

This report is intended to contribute to the regulator's assessment- and regulatory choice-efforts. The study's *primary goal* is to examine *whether and how success and failure of selected self- and co-regulatory schemes can be explained by their respective institutional designs, by characteristics of the industries involved and by the particular regulatory environments*.

Translated into analytical terminology, we examine comparatively the *performance* of selected self- and co-regulatory schemes and then investigate whether and how varying performance can be explained by *institutional success factors* at the *organisational* level and by *enabling factors* at the *contextual* level (i.e. the industrial and regulatory environments).

To this end, the study investigates objectives, institutional settings, industry characteristics and the performance of eight selected self- and co-regulation schemes outside of the UK: in North America, Australasia and the European Union. Taking into account Ofcom's specification regarding the scope of selected self- and co-regulatory schemes studied, the comparative research incorporates two different *fields of application*:

- *Internet codes of conduct* – adopted by the industry in order to increase consumer protection on the Internet;
- *Media content-rating schemes* in the film/broadcasting industry – established in order to increase transparency and to facilitate consumer choice through information provision.

Given the tight time schedule, the appropriate *methodology* for this study is desk research. The analytical framework for the assessment of schemes – the performance, institutional and contextual factors – has been derived from a review of existing studies and academic literature on the evaluation of alternative modes of regulation. Empirical investigations into the institutional characteristics of selected cases have been carried out by examining available online sources regarding the eight schemes studied. Institutional details have been found in the institutions' mission statements, their rules of internal procedure and annual reports. Information on the legal, policy and industry contexts has been compiled by analysis of legal frameworks, policy statements and sectoral industry reports. Interviews with representatives of the organisations studied have been conducted in order to verify available information and to acquire additional

information on performance and institutional details. Empirical investigation of the success and impact of selected schemes is based on reviews of existing assessments of the eight cases.

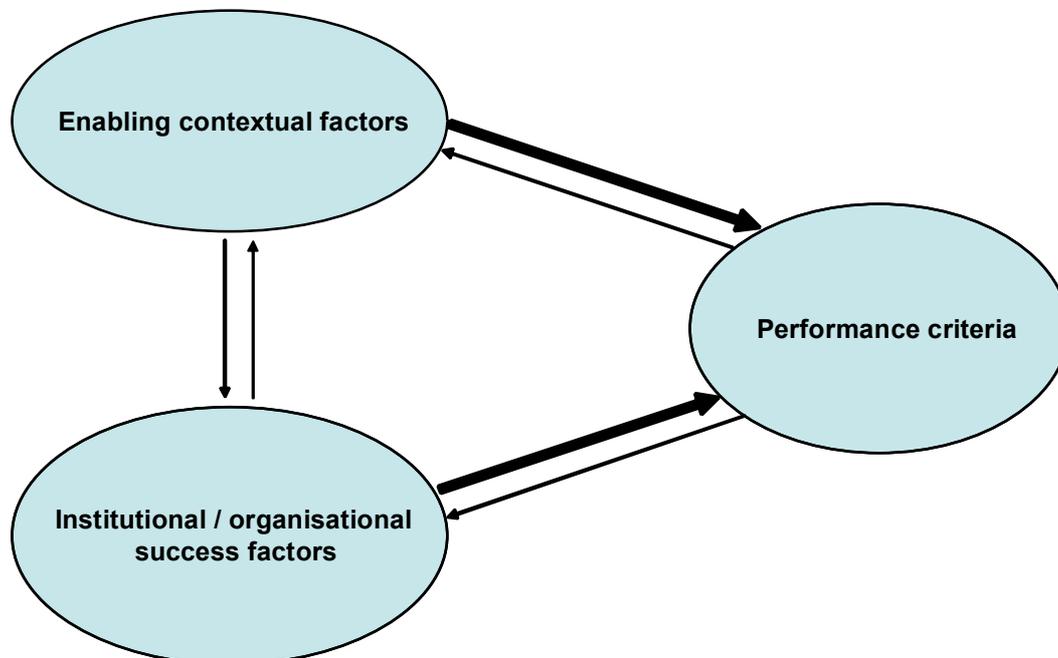
Section A of the report provides the analytical framework for the evaluation of alternative regulatory institutions. It presents a check list for regulatory choice which includes performance criteria (A-1), enabling contextual factors (A-2) and institutional/organisational success factors (A-3). For each of these criteria/factors, respective empirical indicators are presented that permit an empirical assessment of individual criteria/factors. Subsequent empirical analyses in *section B* comprise evaluations of content-rating schemes in the film/broadcasting industry and Internet codes of conduct. Analyses are based on an approach (B-1) that selects prioritised performance criteria in the two application fields studied, and which is driven by basic assumptions regarding theoretically plausible interrelations between these selected performance criteria on the one hand and selected institutional/organisational success factors and contextual factors on the other. The approach is applied for comparative evaluation of media content-rating schemes (B-2) and Internet codes of conduct (B-3) in North America, Australasia and the European Union. The main findings and conclusions are summarised in a final section (B-4). Additional empirical details about the institutions studied are provided in the endnotes and in the annex.

A Analytical Framework: A Check List for Regulatory Choice

The *analytical framework for the systematic assessment of alternative regulatory institutions*, developed further below, allows both *ex-post evaluations* of existing schemes in order to improve regulatory systems and *ex-ante evaluations* in order to design regulatory schemes for upcoming regulatory issues.

In order to develop a coherent check list for regulatory choice, three *interrelated analytical categories* are distinguished (see Figure 1): (1) *Performance criteria*, (2) *enabling contextual factors* and (3) *institutional/organisational success factors*.

Figure 1: Analytical Categories for the Evaluation of Self- and Co-Regulation



Performance criteria facilitate the systematic assessment of alternative regulatory institutions' outcome and impact. This set includes criteria for the measurement of success according to the respective objectives (e.g. public awareness of rating schemes for media content), the key metrics for the assessment of compliance with the schemes (e.g. number of proceedings regarding violations against Internet codes of conduct) as well as factors for the assessment of the main impacts on consumers/citizens, industry and the regulator (e.g. reputation of self-regulatory organisations).

The performance of schemes is primarily influenced by institutional/organisational success factors and by enabling contextual factors (marked by the bold arrows in Figure 1). *Institutional success factors* can be designed or modified at the *organisational* level of self- and co-regulation. They include, for example, the transparency of the scheme,

stakeholder involvement and representation, incentives for participation, adequate sanction power and defined fallback scenarios in case of failure.

Characteristics of industries, markets and regulations that might influence the appropriateness and performance of self- and co-regulation are summarised as ***enabling contextual factors***. The potentials and limits of alternative modes of regulation heavily depend, for example, on risks and consequences of regulatory failure, the required intensity of regulatory intervention, conflicts between public and private interests, differences in market power of the companies involved, the industry's reputation-sensitivity to regulation and the support of statutory bodies. These factors are related to the market and policy context of alternative regulatory institutions. In combination, they can provide a more or less "enabling context" for self- or co-regulatory institutions. They affect the possibilities for the establishment of such institutions, and the way in which already established institutions perform in practice. In contrast to institutional/organisational success factors, the modification of contextual factors is not possible at the organisational level but – if at all – by reforms to the regulatory environment of alternative regulatory institutions.

However, there are also various other ***interrelations*** between these three analytical categories (marked by thin arrows in Figure 1). Growing public awareness of a regulatory issue and the responsible regulatory institutions (performance criterion *awareness*), for example, might lead to growing reputational sensitivity (enabling contextual factor). Increasing reputational sensitivity (enabling contextual factor) may then result in an increase in the number of complaints (performance criterion/indicator) and in adjustments of complaints procedures and the resources therefore needed (institutional success factor).

A second example: deficits in industry participation in a newly established alternative regulatory institution (performance criterion *adoption*) may have negative effects on the institution's funding (institutional success factor *adequate resources*) if the scheme depends upon membership fees. Hence, state authorities may support the alternative regulatory institution with subsidies (contextual factor *governmental involvement*) over a limited period of time.

In the following sections of the report, the three sets of criteria/factors of the analytical framework (performance, institutional/organisational design, and context) are grouped and summarised. Suitable ***indicators*** are needed for the empirical evaluation of these criteria/factors and have been derived for each factor in this study. The existence of an *own budget* and of a *unit for marketing*, for example, are empirical *indicators* that should be checked in order to evaluate whether alternative regulatory institutions possess *adequate resources* (institutional/organisational success factor) to assure that objectives of alternative regulatory institutions are not compromised. Other examples of empirical indicators would be a *defined division of responsibilities* between government and alternative regulatory institutions in order to assess the *adequate involvement of governmental actors* (enabling contextual factor). Altogether, the criteria/factors and their respective empirical indicators result in an exhaustive check-list for the ex-ante or ex-post assessment of alternative regulatory institutions.

When using the check list for empirical evaluations, it must be borne in mind that it will not always be possible to apply all the criteria. Not all factors and indicators have the same relevance with regard to different regulatory issues. The interplay of factors and the intensity of each particular indicator have to be taken into account. The suitability of an alternative mode of regulation depends on the mix of factors and indicators in each individual case. This has to be considered when the check list on contextual factors (section 2) is used for an ex-ante evaluation of the suitability of alternative regulatory modes for the solution of a new regulatory challenge. But ex-post evaluations of existing alternative regulatory institutions also demand the selection of sound performance indicators (section 1) that reflect the public policy objectives in the respective regulatory field. The institutional success factors (section 3) mentioned below may promote the achievement of public policy objectives, and can be used to design new regulatory institutions and to assess existing ones. However, successful institutional design of an organisation does not necessarily demand the fulfilment of all success factors and related indicators. A successful institutional design depends on the appropriate mix of measures, which has to be determined on a case-by-case basis. There are no one-size-fits-all solutions and the factors and criteria do not represent a technocratic formula that can be applied mechanically. Any regulatory system is ultimately the result of a political (and public) process that aims to reconcile various interests and goals into an appropriate response.

1 Performance Criteria

As mentioned, performance criteria are necessary for the systematic assessment of alternative approaches to a regulatory task. But measurement of criteria for “success,” “outcome” or “impact” is a complicated though basic task. Articulating regulatory objectives is essential for shaping key metrics; once articulated, however, their very articulation has a feedback impact on the institutional setting and environment.¹

One might argue that “performance” is simply the level of compliance by the industry involved with the objectives established in the standards for self- or co-regulation. We argue, however, that this notion alone does not capture the complexity of “performance”. Instead, we suggest what we call a “**4A**” *concept*. The performance of self-regulatory schemes is determined by *awareness* by the institutional players; the processes of *adoption* of the regulatory scheme (including institution(s), rule(s) and process(es)); the public (and legislative) *attitude*, including acceptance and appreciation of the regulatory institutions and their rules/processes; and, of course, the *actions* undertaken by those that regulate, are regulated or affected by the regulations in question.

Performance then becomes a more nuanced concept, involving both *direct impact* on those who are part of the industry and the *perceptions* of ways in which the various schemes are working. One has to examine not only the level of compliance, but the mode and standard of adoption of the self regulatory scheme, which in itself implies the participation or awareness of the major players.

Another way to put all of this is that performance is a *set of interrelationships* between awareness, adoption, attitude and actions:

- Compliance, and thus performance, is determined by the relationship(s) that exist between regulators and their regulated communities at all stages of the regulatory process.
- The relationship between regulators and their constituencies (including the general public and the government) is contingent upon:
 - the *level of public and industry awareness* of the regulatory schemes and processes
 - the *level of adoption* of the regulatory schemes and *acceptance* of the authority of the regulatory institution
 - the *reputation or public attitude*, including the perceived legitimacy, of the regulatory institution
 - the *behaviour* of the *actors* (primarily from industry) responsible for *complying* with the regulatory goals, and those *affected* by the rules/processes (primarily the public and the government sector)

The increased adoption of alternative modes of regulation is often premised upon the belief that self-regulatory institutions are more effective and more cost-efficient than the strictly governmental command-and-control approach in making targeted groups act responsibly. This greater *efficiency and effectiveness* is explained by highlighting the *unique relationships* among the “regulators” and those “regulated” or responsible for complying. In particular, stronger partnerships with regulated communities, better communication and reputation and better incentives to comply (voluntarily) with regulations are all arguments used in favour of self-regulation.

Further, it is often assumed that self-regulatory agencies, given their origins in the private sector, are more likely to embrace the *ethos of “service”*, which is believed to be less important/central to government regulators. If this enhanced ethos were indeed the case, *customer satisfaction* with their regulatory services would then determine their performance plans; compliance assistance would be a legitimate and important line of business; agencies would encourage their partners (and the public) to get involved in rule-making early in the process, through a constant feedback loop; and communities and citizens would get real-time information so they could take steps to protect themselves.

At the same time, given their limited *enforcement mechanisms*, self-regulatory agencies are highly dependent upon their relationships with those responsible for compliance, and with government. How they perform depends on how they communicate, on their legitimacy and accepted authority, and on how they establish (or provide incentives for) compliance.

In sum, to measure the impact and/or performance of self-regulatory bodies in achieving their respective social goal(s) (e.g. encouraging responsible behaviour among industry

actors, protecting consumers, achieving technical interoperability), one must consider the following *four criteria* of “effect”-iveness, and make them “*measurable*” by means of selected *indicators*:

a) Awareness:

Knowledge and understanding of schemes

Indicators include:

- *Public awareness* of the *existence, goals and substance* of the alternative regulatory institution, its *guiding norms* (e.g. codes of conduct) and *processes* (e.g. complaints procedure) and *how it relates* to the public
- *Industry awareness* of the alternative regulatory institution and of industry’s rights and obligations under the alternative regulatory system
- *Awareness across the communications sectors* and among *public policy makers* of how the alternative regulatory institution relates to other schemes

b) Adoption:

Concurrence with schemes and acceptance of authority

Indicators include:

- Industry (and government) *support for creation* of *code/institution/rating scheme*
- *Adoption and use* of code/rating scheme among industry players/content providers
- *Acceptance of authority* among industry/content providers
- *Public concurrence* with or acquiescence to goals and methods

c) Attitude:

Perception, especially in terms of trust, credibility and legitimacy

Indicators include:

- *Public trust* in alternative regulatory regimes and institutions (and how these can address the public’s concerns/interests)
- *Legitimacy* and public image (*credibility*)
- *Implications of media coverage*

d) Action:

Includes specific code or self and co-regulatory output, including compliance with schemes in an objective sense; complaints received and disputes handled; presence or absence of threats by government to intervene; and general satisfaction with the level of enforcement.

Indicators include:

- Industry (*non*)*compliance* with rules, rating schemes and obligations of a code
- *Complaints filed and disputes* registered or other modes of industry notice to members
- *Adjudications* and sanctions
- *Governmental (non-)engagement* (e.g. proposed regulations/court decisions) and other modes of potential intervention

Further, each performance criterion must be translated and prioritised according to the different types of alternative regime considered (see section B-1).

2 *Enabling Contextual Factors*

A second set of evaluation criteria consists of factors related to the particular characteristics of the industries involved and to their particular regulatory environment. For example, the potential and limits of alternative modes of regulation are highly dependent on the risks and potential of negative consequences in case of regulatory failure, the required intensity of regulatory intervention, conflicts between public and private interests, differences in market power of the companies involved and on the reputational sensitivity of the industry. These factors are related to the market and policy context of alternative regulatory institutions. In combination, they can provide a more or less enabling context for self- or co-regulatory institutions. They affect the possibilities and probabilities of their *establishment* (e.g. incentives and capabilities of companies to cooperate), as well as the *performance* of already established institutions (e.g. their effectiveness in the reduction or avoidance of market failure).

The enabling contextual factors and their respective empirical indicators provide guidance for the systematic assessment of alternative regulatory forms. They can be applied to discuss the *appropriateness/suitability* of alternative modes of regulation for the solution of a regulatory problem from a public policy perspective. These factors can support the regulatory choice process when *new* regulatory problems are encountered (ex-ante evaluation), but also prove useful when examining *existing* regulatory arrangements (ex-post evaluation).

The following ***nine factors***² (a-i) are derived from theoretical and empirical analyses of advantages and disadvantages, and success factors for alternative regulatory modes.³

For each factor, a set of *indicators* is provided to facilitate an empirical assessment of the respective contextual factor. Furthermore, generally/theoretically *assumed interrelations* are briefly outlined.⁴

a) Intervention capacity of governmental actors

- higher, if there are *legal remits* for authorities and regulatory responsibilities in the respective regulatory field
- higher, if there is *leeway for legal action* (considering possible differences at various levels of the multi-level governance regime: international, supranational, national, regional, local)
- higher, if state authorities can resort to *appropriate resources* and instruments available for *enforcement and imposition of sanctions*
- lower, if there is strong *demand for international coordination*

There is a high capacity for intervention if governmental actors can resort to proper means to adopt and enforce statutory regulation. The intervention capacity of governmental actors may affect the industry's willingness to adopt self-regulatory solutions in order to pre-empt statutory regulation. The greater the government's capacity for intervention, the higher is the feasibility of adopting alternative modes of regulation.

b) Impact in case of regulatory failure (and the need for uniform and binding minimum standards)

- higher, if the *costs* in the event of regulatory failure are considerable
- higher, if there are substantial *public concerns*, i.e. if a product supplied is essential to the welfare of individuals (e.g. major public health and safety concerns; threat to children and minors; detrimental affects on communications infrastructures)
- higher, if *universal application/participation is required* in order to assure the necessary level of goal achievement⁵

The impact in the case of regulatory failure and the need for uniform and binding minimum standards determine the necessary level of governmental intervention. The higher the potential negative impact might be, the stronger is the need for minimum binding standards. Strong demand for minimum binding standards decreases the suitability of alternative regulatory solutions.

c) Intensity of required regulatory intervention

- higher, if regulatory intervention *restricts fundamental rights* (e.g. freedom of communication)
- higher, if regulatory intervention *restricts market access*
- higher, if regulatory intervention *changes prices/revenues*
- lower, if regulatory intervention changes certain aspects of the *quality of products*
- lower, if regulatory intervention does not change prices and/or quality, but provides *additional information about quality and/or prices* (e.g. aims at enhancing transparency)

The intensity of the regulatory intervention required is highly dependent on the characteristics of the regulatory problem and the available means for intervention. In general, it can be assumed that – from a democratic point of view – the demand for direct government involvement increases with the intensity of required regulatory intervention. One of the central questions in the course of the establishment of regulatory arrangements is whether there is scope for applying soft intervention mechanisms without compromising the public regulatory objectives. The lower the intensity of regulatory intervention, the better the suitability of alternative regulatory solutions may be.

d) Conflicts of public and private interests in a regulatory question

- higher, if companies, consumers and the wider community do not share a *common interest in avoiding market failure*
- higher, if the *interest of companies in avoiding market failure diverges significantly*

The degree of conflict between public and private interests for any given regulatory matter affects the feasibility and the suitability of alternative regulatory solutions. If companies share a common interest in avoiding market failure, their willingness to group together and to adopt alternative regulatory solutions will be high, and an alternative regulatory solution is feasible. But even if companies share a common interest and agree on an alternative regulatory mechanism, it is not certain that there will be no conflicts between their private interests and the public interest. The lower the divergence between public and private interests, the more suitable is an alternative regulatory solution.

e) Intensity of competition

- higher, if there is a *high number of market participants*
- higher, if there is a low degree of *market concentration* (no significant market power)
- higher, if *market entry barriers* are low (regulatory barriers, sunk cost etc.)

The level of adoption of alternative regulatory modes depends on the number of market participants and on the intensity of competition in a market. Intensive competition may decrease the incentives to accept additional regulatory authorities alongside statutory authorities. At the same time, it has to be considered that alternative regulatory institutions might entail or encourage anti-competitive behaviour. In particular, great differences in market power and high market entry barriers might encourage this potential disadvantage of alternative regulation. In reaction, governmental regulatory oversight might be introduced.

f) Reputational sensitivity of the industry

- higher, if strong *public awareness and public concern* is generated/exists regarding regulatory issues (e.g. protection of minors, privacy, environmental pollution)
- higher, if companies have already *invested heavily* in the development of their reputation
- higher, if *non-compliance* leads to a loss of reputation and to a drop in sales figures
- higher in *B2C-markets* with direct consumer contact
- lower in *B2B-markets* with indirect consumer contact

The *reputational sensitivity* of the industry is considered as a central factor for the feasibility of the adoption of an alternative regulatory solution. The more the companies' success depends upon their own reputation and on the reputation of their industry segment in general, the greater are the incentives to adopt alternative regulatory solutions in order to avoid losses of reputation.⁶

g) Availability of organisations that could take over regulatory tasks

- *industry expertise* regarding self-/co-regulation (e.g. another self-/co-regulatory scheme is already in place)
- an already *acknowledged industry association* with a high reputation, adequate resources and the ability to reconcile diverging company interests
- an already *acknowledged industry association* with widespread *support of industry* (near universal participation)
- adequate *international cooperation* among recognised organisations to meet transnational regulatory challenges (mutual exchange of opinions, transnational

coordination, agreements on common objectives, minimum standards and enforcement mechanisms)

- *number of alternative regulatory institutions* in the sector and a *level of regulatory competition*
- number of *single- and multiple-issue organisations*

The feasibility of adopting alternative modes of regulation for a new regulatory challenge depends on the existing industry environment. The practicability of adoption is in general higher if there is already a recognised organisation that can take over additional regulatory tasks or if an industry segment already has experience with alternative modes of regulation. The ability to cope with transnational regulatory challenges depends on the existence of adequate international cooperation. Further, the feasibility of adoption also increases with the number of alternative regulatory institutions dealing with the same issues in the respective sector (e.g. e-commerce seals), because companies may choose between various organisations (forum shopping). This may lead to regulatory competition and decreasing standards (“race to the bottom”). Moreover, regulatory competition and the existence of many single-issue organisations may cause transparency and awareness problems.

h) The extent to which public policy objectives are supported by the existing industry culture

- high, if there is a pre-existing *sensitivity to public interests* on the part of the industry (awareness of public objectives; pre-existence of a “responsible industry culture”)
- high, if there is a *tradition of cooperation* with state authorities and stakeholders
- high, if there is a *cohesive industry* with like-minded participants, motivated to achieve common goals
- high, if there is little scope for the benefits of self- or co-regulation being shared by non-participants (free-riding)
- high, if there is *effective pressure* from within the industry to solve the regulatory problem

The practicability of the adoption of alternative modes of regulation for a new regulatory challenge depends on the extent to which public policy objectives are supported by the existing industry culture. A pre-existing *sensitivity to public interests* and a *tradition of cooperation* with state authorities, for example, will support the adoption of alternative regulatory solutions.

i) Involvement of governmental actors⁷

- *encouragement* of self-regulation by government/state authorities (carrot, inspiration)
- *political appreciation* of the scheme, its outcomes, etc. by governmental agencies (symbolic support)
- *financial support* (subsidy)
- involvement of government *personnel* (information)
- *collaboration* between governmental agencies and alternative regulatory institutions (cooperation)
- *co-regulation* within a legal framework (direct control)
- *periodic review* of the scheme by state authorities
- definition of *fall-back-scenarios* in the case of failure (government intervention; stick)
- in any case or form of state involvement, *clear division of responsibility* between the self-/co-regulatory institution and the state authorities involved

Successful alternative regulation depends on an adequate level of support and involvement of governmental actors/state authorities. In most cases, alternative regulatory institutions are not set up completely without governmental influence or government pressure, and in many cases there are ongoing connections to governmental agencies during their operation. State authorities can draw on a range of instruments to support alternative regulatory institutions, to make active use of them and to control them. The options range from soft forms of governmental involvement (symbolic support, inspiration, integration of personnel) to financial subsidies, to direct control in a co-regulatory framework. Not all the above listed indicators are likely to be fulfilled in a single regulatory arrangement. A successful institutional design depends on an appropriate mix of measures.

3 Institutional/Organisational Success Factors and Respective Indicators for Empirical Evaluations

The following *eight success factors* and their respective *indicators* for empirical evaluations are related to the institutional/organisational design of alternative regulatory institutions. The factors are derived from the analysis of potential failures of alternative modes of regulation (i.e. disadvantages compared to governmental regulation) on the one hand, and their potential benefits (i.e. advantages compared to governmental regulation) on the other.⁸ Institutional/organisational success factors comprise the measures and provisions that can be made at the organisational level of an alternative regulatory institution in order to promote the potential advantages/benefits and to reduce potential disadvantages/failures. In contrast to contextual factors, these may be modified *within* the respective organisations, for example in order to:

⇒ *increase the regulatory value added (a-e), or to*

⇒ *enhance the legitimacy of an organisation (f, g).*

a) Rule making: *Clearly defined remit, intelligible objectives and (measurable) standards that go beyond governmental regulatory requirements*

- a general *statement of principles* in the scheme (e.g. a mission statement comprising commitments to public policy objectives, not merely individual/private interests)
- clear definition (operational, measurable) of *objectives*
- definition of *intended outcomes* and measurable standards regarding these outcomes (performance indicators, operational/measurable as far as possible)
- *clarification* regarding how these objectives contribute to the achievement of regulatory added value, a value that goes beyond already existing governmental provisions⁹

b) Enforcement: *Adequate enforcement mechanisms (ex-ante and ex-post-enforcement)*

- an organisational structure comprising a *responsible enforcement unit* (e.g. body/board that deals with complaints)
- a defined *enforcement procedure* (e.g. a complaints procedure)
- adequate *enforcement remit*, measures/instruments and resources (e.g. for continuous monitoring of compliance)
- *visible, well-known contact point* to report on potential infringements (or, in the case of a dispute-resolution schemes, ease of access for consumers)
- an appropriate *appeals mechanism* (independent of previous decision-making board/body)

c) Adjudication: *Adequate sanction power in case of malpractice (effective, credible, commercially significant sanctions)*

- *powers to enforce revocation*, relief, change of malpractice (requirement for specific changes in output)
- *reputational* sanctions (e.g. publication of violations, withdrawal of a quality seal, etc.)
- *financial* sanctions (e.g. fines)
- *organisational* sanctions (e.g. exclusion from an industry association)
- *existential* sanctions (e.g. withdrawal of a license)

d) Review: *Periodic internal and external review (control, evaluation, monitoring, auditing)*

- definition of *performance indicators* (related to the objectives of the scheme, to the measurable standards)
- internal, adequately resourced *evaluation/auditing body* and defined *evaluation/auditing procedures* (“organisational self-assessments”)
- *published reports* on results of *internal* evaluation (e.g. compliance letter)
- *periodic reviews by state authorities* (based on key performance indicators)
- openness for review/auditing/control by other *interested parties* (public actors, consumer-protection organisations, scientists/experts, etc.)¹⁰

e) Resources: *Adequate resources to assure that objectives are not compromised*

- adequate *budget* (an adequate “own” overall budget and dedicated budgets for special purposes, e.g. a marketing budget if the scheme is heavily dependent on interaction with and awareness of consumers/public)
- sufficient *staff*
- effective *internal division of labour* (e.g. specific units, such as an advisory body, a governing board, bodies for compliance support, complaints handling and appeals; units for finance, marketing and review)
- adequate “communications strategies and technical support,” related to:
 - consumers/citizens (e.g. public education programme, image campaign, hotline)
 - industry (industry training, compliance support, compliance guidelines, manuals)
 - government (regulatory information, round tables, etc.)
- adequate *means* to achieve *participation* by those who are affected by the regulation (incentives, threat/stick)

f) Participation and representation: *Balanced representation, involvement of stakeholders, independence from interference by interested parties*

- provisions for *organisational independence* from the individual interested parties (legal, contractual, infrastructural independence)
- provisions for *financial independence* from the individual interested parties (e.g. balanced sources of funding)
- *openness/accessibility* for all interested stakeholders (industry, government, consumers, scientists/experts, etc.)
- proactive measures to involve *all relevant stakeholders* in the design of the scheme in order to achieve broad participation (e.g. broad public consultation)
- provisions to integrate non-industry members in the *operation* of the scheme (balanced representation in the decision-making bodies of the schemes, e.g. the advisory body, the governing body, complaints body, etc.)

g) Transparency: *Transparent institutional design and transparent regulatory processes (decision making)*

- the right to *access all relevant information* on regulatory processes for all interested parties (e.g. government, stakeholders, public/media, scientists/experts)
- *public information* (e.g. website) about key institutional features (e.g. decision-making boards/units, accountabilities/main responsibilities, complaints procedure, funding arrangements, performance indicators)
- (public) *consultation* in the course of the *establishment* of the institution
- (public) consultation on significant *changes* to procedures, governance, appeal mechanisms, funding arrangements, etc.¹¹
- public information (e.g. website) on progress in *ongoing regulatory processes* (agenda, protocols, draft resolutions, decisions)
- the obligation to provide reasonable *justification* (arguments) for all relevant decisions in order to assure that decisions can be criticised based on arguing/reasoning (discursive structure)
- *periodic (e.g. annual) reports* on progress/performance and significant changes of institutional designs (e.g. reports accessible to government, stakeholders, public/media, scientists/experts)

h) International involvement: *Appropriate measures to contribute to international efforts for the solution of transnational regulatory problems*¹²

- direct participation/involvement (e.g. membership) in a transnational (e.g. continental) alternative regulatory organisation
- formal agreements for cooperation with national alternative regulatory organisations in other countries

Table 1: Check List for Regulatory Choice – Overview of Evaluation Criteria

Performance Criteria
a) Awareness: Knowledge and understanding of schemes
b) Adoption: Concurrence with schemes and acceptance of authority
c) Attitude: Perception, especially in terms of trust, credibility and legitimacy
d) Action: Compliance with schemes, complaints received, disputes handled, governmental engagement
Contextual Factors
a) Intervention capacity of governmental actors
b) Impact in case of regulatory failure (and need for uniform and binding minimum standards)
c) Intensity of required regulatory intervention
d) Conflicts of public and private interests in a regulatory question
e) Intensity of competition
f) Reputational sensitivity of the industry
g) Availability of organisations that could take over regulatory tasks
h) Extent to which public policy objectives are supported by the existing industry culture
i) Involvement of governmental actors
Institutional/organisational success factors
a) Rule making: Clearly defined remit, intelligible objectives and (measurable) standards that go beyond governmental regulatory requirements
b) Enforcement: Adequate enforcement mechanisms (ex-ante and ex-post-enforcement)
c) Adjudication: Adequate sanction power in case of malpractice (effective, credible, commercially significant sanctions)
d) Review: Periodic internal and external review (control, evaluation, monitoring, auditing)
e) Resources: Adequate resources to assure that objectives are not compromised
f) Participation and representation: Balanced representation, involvement of stakeholders, independence from interference by interested parties
g) Transparency: Transparent institutional design and transparent regulatory processes (decision making)
h) International involvement: Appropriate measures to contribute to international efforts for the solution of transnational regulatory problems

B Comparative Analysis of Selected Cases

1 Overview and Approach

The analytical tools, developed and presented in section A allow for a systematic comparative evaluation of self- and co-regulation schemes. For this study, a selection of non-UK schemes with a focus on consumer-protection issues has been made (see Table 2). The *eight cases* chosen offer a *mixture* of

- application fields (Internet codes of conduct; content-rating schemes)
- geographical regions (European Union, North America, Australasia)
- self- and co-regulation (intensity of governmental involvement)
- particularly successful/best-practice and unsuccessful schemes (according to the literature)

Table 2: Selected Cases

	Successful schemes outside of the UK			Unsuccessful schemes
	European Union	North America	Australasia	
Internet Codes of Conduct Consumer Protection on the Internet	Internet Service Providers Association of Ireland (ISPAI , Ireland)*	Canadian Advanced Technology Alliance – Canadian Association of Internet Service Providers (CATA-CAIP , Canada)	Hong Kong Internet Service Providers Association (HKISPA , Hong Kong)	Internet Society of New Zealand (InternetNZ , New Zealand)
Content-Rating Systems Choice & Information Provision in the Film/Broadcasting Industry	Netherlands Institute for the Classification of Audiovisual Media (NICAM , Netherlands)*	Motion Picture Association of America/Classification and Rating Administration (MPAA/CARA , USA)	Communications and Multimedia Content Forum of Malaysia (CMCF , Malaysia)	TV Parental Guidelines (USA)

Note: Cases marked with an * in the table are described as good or best practice in the literature

Approach

The starting point is the study's primary goal to examine whether and how success and failure of selected self- and co-regulatory schemes can be explained by their respective institutional design, by characteristics of the industries involved and by the established regulatory environment. Evaluation is supposed to show if differences regarding the performance of the institutions studied can be explained by differences of contextual factors and institutional success factors.

The evaluation of successful or unsuccessful performance calls for *different approaches* in the *two fields of application*, because the primary objectives (intended outcomes, impacts) vary considerably. Hence, from application field to application field, there are differences in the mixture of performance criteria selected for empirical analyses.

For *media content-rating schemes*, we prioritise the performance indicators *awareness* of and *attitude* towards the rating schemes. The rationale for the selection of awareness and attitude as key criteria is given because success of a content-rating scheme depends on *broad public awareness* and *understanding* of the scheme and of the meanings of the content classifications in use. It further demands public confidence in the rating institutions, the rating schemes and the ratings as such. A successful rating institution also depends on *industry (content providers) awareness* of rating schemes. Industry needs to know the schemes, how to use the rating systems and how to comply with rating rules. Moreover, the growing number of rating schemes (motion pictures, television, Internet, games) demands *awareness* of schemes *across the communications sectors* and for awareness on how the *ratings* relate *with other schemes*. Finally, the *political responsibilities* regarding protection of minors demand an *awareness* of rating/classification issues among the public policy makers.

For the *Internet codes of conduct*, we focus mainly upon *adoption* and *action* variables, as these are considered as priority criteria for their performance. Success of an Internet code of conduct heavily depends on the *level of adoption by the industry*. A code without any signatories hardly provides any added regulatory value. Action – i.e. in terms of compliance with a code of conduct – is referred to as a second crucial performance criterion. Added regulatory value is achieved if the signatories of a code effectively comply with the objectives and standards they have agreed on.

Evaluation should show if differences regarding performance in the respective fields of priority can be explained by contextual factors and institutional success factors. Theoretically it would be possible to assess all the above-listed success and contextual factors (section A-2 and A-3) and to investigate the significant differences. However, given considerable differences regarding the explanatory potential of the various factors and indicators developed, further selections of factors are useful and necessary.¹³

The selection of success and contextual factors for empirical investigations is based on an approach driven by *basic assumptions* regarding theoretically plausible interrelations between performance indicators (outcome/impact) on the one hand and institutional/organisational success factors and contextual factors on the other. Each assumption combines at least one performance criterion with one institutional/organisational success factor or with one contextual factor. Among many possible assumptions only those which are *considered particularly relevant for the selected/prioritised performance criteria* in the two fields of application have been selected for empirical investigation (Content-rating schemes: Awareness & Attitude; Internet Codes: Adoption & Action).¹⁴

Selected Basic Assumptions on Awareness of and Attitude Towards Media Content-Rating Schemes in the Film/Broadcasting Industry:

⇒ **A 1:** *The range of resources* that alternative regulatory institutions can draw on *essentially promotes their ability to increase public awareness* of the institutions.

Rationale: The ability of alternative regulatory institutions to gain public awareness (visibility, knowledge, and understanding) for their content rating-schemes depends – *inter alia* – on adequate resources in terms of funding, staff, and communications strategies (marketing activities, technical support). The awareness among the general public is particularly relevant because the success of media content-rating schemes strongly depends on broad knowledge and understanding of the scheme.

⇒ **A 2:** *Strong involvement* of *non-industry* members in alternative regulatory institutions promotes the *attitude towards the institution* in terms of trust, credibility and legitimacy.

Rationale: The attitude towards alternative regulatory institutions in terms of trust, credibility and legitimacy depends – *inter alia* – on adequate involvement of non-industry members in media content-rating schemes. Adequate involvement of non-industry members can counter self-serving tendencies by the industry (i.e. provide a watchdog function) thus contributing to public trust in a rating scheme and its overall legitimacy. Involvement of non-industry members (e.g. consumer representatives, independent experts) may be achieved, for example, by appropriate representation of non-industry members in the decision-making bodies of the alternative regulatory institution.

⇒ **A 3:** *Involvement of governmental actors* in alternative regulatory institutions promotes the *awareness* of the institution among *policy makers* and it contributes to the *attitude* towards the regulatory institution in terms of trust, credibility and legitimacy.

Rationale: Awareness and credibility of alternative regulatory institutions depend – *inter alia* – on adequate involvement of governmental actors in alternative regulatory institutions. State oversight of rating institutions may counter the industry's self-serving tendencies. Political responsibilities regarding protection of minors call for an awareness of rating/classification issues among the public policy makers and for awareness of how various rating schemes across the communications industries relate to each other.

Table 3 shows the prioritised fields for empirical evaluation of the selected media content-rating schemes. It summarises and operationalises the “4A concept” and the related contextual and institutional/organisational success factors.

Table 3: Selected Evaluation Criteria for Media Content-Rating Schemes

Performance criteria	Awareness (and knowledge)	Attitude: trust, credibility and legitimacy
Selected indicators for empirical analysis	<p>public awareness of the existence, goals and meaning of rating schemes and their processes (and how the public can use them)</p> <p>industry (content providers) awareness of rating schemes, and how to use or comply with them</p> <p>awareness across the communications sectors, and among public policy makers, and how the ratings relate with other schemes</p>	<p>public trust in rating schemes/methodologies and how they are implemented (and how these can address the public's concerns/interests)</p> <p>legitimacy of rating bodies (credibility)</p> <p>media coverage</p>
Institutional/organisational success factors	Adequate resources in terms of funding, staff, and communications strategies	Balanced representation, involvement of stakeholders, independence from interference by interested parties
Selected indicators for empirical analysis	<p>adequate overall/total funding/budget</p> <p>adequate funding dedicated for special purposes (e.g. marketing; educational training)</p> <p>sufficient staff/personnel</p> <p>effective internal division of labour</p> <p>adequate "communications strategies and technical support" related to citizens, industry, government</p> <p>means/instruments to achieve industry participation (incentives, pressure)</p>	<p>adequate involvement of non-industry members in the decision-making units of the schemes:</p> <p>... advisory/supervisory unit</p> <p>... governing unit</p> <p>... complaints unit</p> <p>... appeals unit</p>
Contextual factor	Adequate involvement of governmental actors	
Selected indicators for empirical analysis	<p>encouragement of self-regulation by government (carrot; inspiration)</p> <p>demand for self-regulation by government (stick; threat)</p> <p>financial government support (subsidy)</p> <p>involvement of government personnel (information)</p> <p>government involvement via contracts (contractual)</p> <p>collaboration between government and the alternative regulatory institution (ARI) in regulatory practice (cooperation)</p> <p>defined division of responsibilities between government and ARI</p> <p>(periodic) review of the scheme by state authorities</p> <p>political appreciation of the scheme and its outcomes (symbolic support)</p> <p>co-regulation within a legal framework</p>	

Selected Basic Assumptions on Adoption of Internet Codes of Conduct and Action/Compliance with the Codes of Conduct:

- ⇒ **A 4:** A *high intensity of competition* in the ISP market in a country decreases the incentives for ISPs to *adopt* and accept alternative regulatory institutions on a large scale.

Rationale: The level of acceptance of alternative regulatory organisations and the level of adoption of alternative regulatory modes in a country depend – *inter alia* – on the intensity of competition in the ISP market in the respective country. Strong competition in an ISP market decreases the incentives of ISPs to accept additional regulatory authorities alongside statutory authorities. Moreover, intense competition reduces the incentive to comply with voluntary codes of conduct, which put additional restraints on the options for market behaviour in a competitive market. In effect, intense competition hampers the adoption of alternative regulation on a *large scale*, i.e. adoption by *many* market participants. At the same time, intense competition can promote the adoption of alternative regulatory institutions on a *limited scale*, i.e. adoption by *some* market participants who aspire to the reputation benefits accruing from self-regulatory measures.

- ⇒ **A 5:** Strong *international involvement* of a national Internet organisation with an international Internet organisation and intensive modes of cooperation within this international Internet organisation contribute to a high level of *adoption* of alternative regulatory modes at national level.

Rationale: The level of consumer protection on the Internet in a country depends – *inter alia* – on adequate international cooperation between national Internet organisations. The international involvement of a recognised national Internet institution (e.g. via membership or formal agreements) is a prerequisite for transnational cooperation in order to meet transnational regulatory challenges. A high level of adoption of standards at international level combined with intensive modes of cooperation within the respective international Internet institution (i.e. cooperation going beyond mutual exchange of opinions) increases pressure on national Internet organisations to adopt and comply with standards on which agreement has been found at international level.

- ⇒ **A 6:** *Extensive powers* of alternative regulatory organisations to *impose sanctions* on violations of principles of a code of conduct promote *industry compliance* with rules and obligations under a code.

Rationale: The level of compliance with a code of conduct depends – *inter alia* – on the powers to impose sanctions where there are violations. Hence, adequate power of sanction in the case of malpractice (violations/non-observance of principles/objectives) is considered to be a key success factor for alternative modes of regulation. The level of sanction powers available to an alternative regulatory institution affects the credibility of the whole alternative regulatory system, the room for manoeuvre and action of the alternative regulatory organisation and the incentives of industry members to comply with rules and obligations. Strong incentives for compliance are present if violations of principles result in significant disadvantages for the respective violator.

Table 4 shows the prioritised fields for empirical evaluation of the selected Internet codes of conduct. It summarises and operationalises the “4A concept”, and the related contextual and institutional/organisational success factors.

Table 4: Selected Evaluation Criteria for Internet Codes of Conduct

Performance criteria	Adoption: concurrence with schemes and acceptance of authority	Action: compliance, complaints and disputes
Selected indicators for empirical analysis	industry support for creation of code/institution adoption of code among industry players acceptance of authority among industry players public concurrence with goals and methods	industry (non)compliance with rules and obligations of code complaints and disputes on how code is implemented (if at all) sanctions and adjudications governmental (non-)engagement (e.g. proposed regulations/court decisions)
Contextual factors	Intensity of competition Availability of international organisations that could take over regulatory tasks	
Selected indicators for empirical analysis	number of market participants intensity of competition in the ISP market in a country recognised international Internet organisations adequate modes of international cooperation to meet transnational regulatory challenges ... mutual exchange of opinions ... agreement on common objectives ... transnational cooperation in practice ... minimum standards and enforcement mechanisms	
Institutional/organisational success factors	International involvement: Adequate measures to contribute to international efforts for the solution of transnational regulatory problems	Adjudication: Adequate powers to impose sanctions in case of malpractice
Selected indicators for empirical analysis	membership of international Internet organisations formal agreements with other national internet organisations	powers to enforce revocation, relief, change of malpractice (requirement for specific changes in output) reputational sanctions (e.g. publication of violations; withdrawal of a quality seal, etc.) financial sanctions (e.g. fines) organisational sanctions (e.g. exclusion from an industry association) existential sanctions (e.g. withdrawal of a license)

Using the above outline approach for empirical investigations it has to be borne in mind, that it is based on a range of selections according to prioritised fields for analysis. Many additional contextual and institutional/organisational success factors do in fact influence the performance of an alternative regulatory institution, but these additional factors are omitted in the subsequent empirical analyses. While the quality of empirical assessment

improves with the number of factors researched, a reduction of factors was unavoidable given the limited resources of this research project. The following analysis of the selected criteria must be understood as a *basic attempt* to search for and to explain interrelations between performance, contextual and institutional/organisational success factors. The analytical framework developed, especially the elaborated lists of performance criteria, success factors, contextual factors and the related indicators for empirical measurement (see sections A) can be guidance for systematic follow-up research.

2 *Media Content-Rating Schemes in the Film/Broadcasting Industry*

The great impact of audiovisual media on social, democratic and cultural developments is one of the main reasons for regulatory intervention in film and broadcasting markets. One starting point here is market failure resulting from *information asymmetry* between producers and consumers of media content. Because of the characteristics of media products (experience goods), consumers find it almost impossible to assess the quality of media content before consumption. This results in difficulties for rational choices regarding the selection of media content. There are a number of reasons why consumers want to be adequately informed about the content of a media product in advance. One of the major driving forces is the question of whether content is suitable for consumption by minors.

In order to support users in their selection process and to increase transparency, a wide range of rating and filter systems are being developed for analogue and digital media content. The debate on content rating and filtering predominantly concerns Internet content, where complex regulatory arrangements with major industrial participation are emerging. But rating and filtering is also a regulatory technique in the film and broadcasting industries, which have been subject to major changes in the course of convergence. Regulatory agencies are increasingly required to assess the various options for effective media content rating, which includes an evaluation of the potential and limits of alternative modes of regulation (self- and co-regulation). In particular, knowledge of the key institutional factors affecting the performance of alternative regulatory institutions may enable regulators to determine whether alternative modes are relevant in addressing the regulatory challenges that occur with an increasing amount of media content.

Most of the evaluation criteria are closely related to the industry and policy context in the respective country and they consequently have to be assessed case by case. However, some criteria refer to more general characteristics of industries, products and regulatory demands.

The more *general contextual factors for self- and co-regulation in the area of content-rating* schemes are discussed in section 2.1.1 in order to provide an overview of the general conditions for alternative regulation in the area of content-rating schemes. This

is followed by a *comparison of basic characteristics* of the four cases studied (2.1.2). Analysis shows basic differences among the four institutions selected for empirical investigation, which have to be borne in mind when it comes to the assessment of regulatory performance. The subsequent part of the analysis provides a *comparative evaluation of the performance* of the institutions studied (2.2) applying selected performance criteria (awareness and attitude) from the 4A concept. This is followed by a detailed comparative analysis of institutional success- and contextual factors (2.3), which were derived from the selected basic assumptions on interrelations between performance indicators on the one hand and institutional/organisational success factors and contextual factors on the other. The analyses show commonalities and differences of institutional designs of the four rating schemes that serve as the basis for the discussion of interrelations between performance and institutional designs of the schemes.

2.1 Context and Characteristics of Selected Cases

The potentials and limits for alternative modes of regulation are highly dependent on characteristics of the industries involved and on the established regulatory environment. Contextual factors that have to be considered when it comes to choices between regulatory modes are, for instance, the risk and consequences of regulatory failure, the required intensity of regulatory intervention, conflicts between public and private interests, differences in market power of the companies involved, reputation-sensitivity of the industry to regulation, and the support of statutory bodies (see A-2). These factors are related to the market and policy context of alternative regulatory institutions. In combination they can provide a more or less “enabling context” for self- or co-regulatory institutions. They affect the possibilities for their establishment and the way in which established institutions perform in practice. The criteria can be used to discuss the appropriateness of alternative modes of regulation from a public policy perspective. The evaluation shows the feasibility of the emergence of alternative regulatory solutions and their general suitability for the solution of a regulatory problem.

Some of these criteria are strongly related to the industry and policy context in the respective country and they consequently have to be assessed case by case.¹⁵ Other criteria refer to *more general characteristics of industries, products and regulatory demands*. Some of these more general contextual factors for self- and co-regulation in the area of content-rating schemes are discussed in the following section (2.1.1) in order to provide an overview of the general conditions for alternative regulation in the area of content-rating schemes. This is followed by a *comparison of basic characteristics* of the four cases studied (2.1.2). Analysis shows basic differences among the four institutions, which have to be borne in mind when it comes to the assessment of regulatory performance.

2.1.1 Evaluation of Selected Contextual Factors

Intervention Capacity of the State

The intervention capacity of governmental actors may affect the industry's willingness to adopt self-regulatory solutions in order to pre-empt statutory regulation. The greater the government's capacity for intervention the higher is the feasibility of adopting alternative modes of regulation. However, the state's intervention capacity in the area of media content-rating schemes in the film and broadcasting industry is *ambiguous*.

On the one hand, *intervention capacity is high* as there are regulatory responsibilities for state authorities regarding content regulation aimed at the protection of minors. There are usually clearly defined legal remits for communication authorities regarding protection of minors, which provides leeway for state legal action, inter alia with regard to content rating. Moreover, in the case of motion pictures and television programmes, there is little demand for international coordination of rating systems even if international solutions would reduce transaction costs. National solutions are basically possible, and regionally biased rating schemes seem necessary as there are cultural differences that call for a certain level of differentiation.

On the other hand, *intervention capacity is low*, because every state intervention in media affairs is generally sensitive with regard to freedom-of-speech concerns (censorship) even if the heights of the barriers to government intervention vary between different types of media (motion pictures, television, Internet) and between countries.¹⁶ But at least in western democracies, the industry's self-regulatory solutions are generally preferred. Moreover, intervention capacity is low because the estimated expenditures for enforcement are high. The coding, rating and classifying of an increasing amount of audiovisual content¹⁷ involves very high costs of a "do-it-yourself solution" on the part of the state.¹⁸ This is a further powerful argument for delegation of regulatory powers to the industry.

In sum, the sensitiveness with regard to freedom-of-speech concerns and the high costs of rating argue for a regulatory arrangement with significant industry involvement in the rating practice. The state's intervention capacity may, however, be used to implement modes of state oversight in order to avoid the failure of an industry rating scheme.

Impact in the Case of Regulatory Failure and Need for Uniform and Binding Minimum Standards

The impact in the case of regulatory failure and the need for uniform and binding minimum standards determine the necessary level of governmental intervention. The higher the potential negative impact, the greater is the need for minimum binding standards. High demand for minimum binding standards diminishes the suitability of alternative regulatory solutions. Assessment of the impact in the case of regulatory failure of a content-rating scheme and assessment of the need for uniform and binding minimum standards for content ratings leads to a differentiated result of evaluation:

Regulatory failures may result from the absence of a rating scheme or from a systematic failure of an established rating scheme in providing accurate, reliable and consistent information for consumers. The main impacts of regulatory failure due to information asymmetries are a lack of transparency and subsequent difficulties for consumers in making rational choices when it comes to the selection of media content.

It is impossible to assess the overall costs of such a market failure, but it is possible to outline some of its potential impacts. As some media products involve a significant threat to the development of minors, parents in particular want to be adequately informed in advance. Given this *substantial public-interest concern*, non-adoption of a rating system or systematic failure in providing accurate, reliable and consistent information involves transparency losses for consumers. This could lead to decreasing trust in the media system as a whole, to adverse selection,¹⁹ to refusal of consumption and subsequent economic losses for the industry. An effective rating scheme, in contrast, provides significant added value for parents.

The *need for uniform and binding minimum standards* is generally considered to be low. There is a desire for a high level of consistency in the rating practice,²⁰ which calls for a certain level of *uniformity in the application* of a rating scheme. But universal application by all the market participants and binding minimum standards are not required in order to assure a satisfactory level of goal achievement. The impact of a problem caused in a single case of non-compliance is low, because the effects of *one* not rated product or *one* wrongly rated product are comparatively innocuous. Failures in individual cases may hardly damage an otherwise effective rating scheme and do not involve welfare losses to a community on a dangerous scale.

In sum, there is no need for uniform and binding minimum standards, which is one argument in favour of alternative modes of regulation. But there are potentially negative impacts of non-adoption of a rating system or its systematic failure in providing accurate and reliable information and there is a desired high level of consistency in the rating practice. *Substantial public-interest concerns* and the threat of transparency losses call for measures in order to avoid failures. Such measures may be adopted by the industry itself or by the state authorities responsible.

Intensity of Required Regulatory Intervention

The required intensity of regulatory intervention is highly dependent on the characteristics of the regulatory problem and the available means for intervention. In general it can be assumed that the lower the intensity of regulatory intervention, the better the suitability of alternative regulatory solutions.

At first glance the intensity of regulatory intervention via content rating schemes seems rather low. Regulatory intervention via rating does not change the media product as such. Rating mainly aims at enhancing transparency by providing additional information about content, e.g. its suitability of consumption by minors.

However, on the other hand, there may be a strong economic impact resulting from rating. A certain rating may change the mode of delivery of a service/product.

Transmission of “highly rated” products is often limited to certain air times (watershed regulations) and this may have a considerable effect on prices/revenues.²¹ Certain ratings may restrict market access for providers²² and it has even been argued that rating constrains fundamental rights (e.g. freedom of communication).

In sum, potentially strong economic impacts call for institutional dispositions to object to a given rating and to guarantee fair practice. Such dispositions may be constituted in the institutional design of the alternative regulatory institution (e.g. independent appeals units) and/or by possibilities to take legal action.

Conflicts between Public and Private Interests in a Regulatory Question

The degree of conflict between public and private interests in a regulatory question affects the feasibility and the suitability of alternative regulatory solutions. The lower the divergence between public and private interests the more suitable is an alternative regulatory solution.

Conflicts between public and private interests in the case of rating schemes are high, because companies, consumers and the wider community do not share a common interest in reducing information asymmetries. TV stations and film and DVD distributors have an immediate interest in the outcomes of the ratings. The better a rating, the larger is the potential audience. Each restriction due to a certain rating may reduce audience share and thus revenue.²³ Hence producers have an incentive to “consistently underlabel their products”.²⁴ The audience on the other hand expects accurate and reliable ratings and a high level of protection.

Due to the evident conflict of public and private interests, content rating is not suitable for pure, unlimited industry self-regulation. Some kind of public oversight is indispensable.

Reputational Sensitivity of the Industry

The *reputational sensitivity* of the industry is considered to be a central factor for the feasibility of the adoption of an alternative regulatory solution. The more the companies’ success depends upon their own reputation and on the reputation of the whole industry segment, the greater are the incentives to adopt alternative regulatory solutions in order to avoid losses of reputation. The question of reputational sensitivity of the media-content industry does not have an across-the-board answer.

On the one hand there is a high level of public awareness and concern regarding the regulatory issue as it affects the protection of minors.²⁵ Moreover, the audiovisual sector is a b-2-c market with direct consumer contact, where reputation losses may result in changing consumer’s choices. Content suppliers, especially in the quality segment and the producers of special programmes for children, have incentives to pay close attention to and invest heavily into their reputations. Reputation strategies may involve an emphasis on accurate and reliable ratings for their programmes.

However, other content producers and suppliers (e.g. in the down-market segment) do not consider reputation a central value. There are incentives to free-ride on the benefits of an established and effective rating-scheme. Moreover, not complying with a rule or a rating in individual cases will not lead to a significant loss of reputation and to a drop in sales figures. However, a systematic aberration which is obvious to the audience might lead to reputation losses resulting in a drop on sales figures.

Differentiated levels of reputational sensitivity and the free-rider problematic involved are further aspects that have to be borne in mind when it comes to the establishment of alternative modes of regulation for media content rating. The development of instruments to counter free-riding and to achieve sufficient participation in the scheme might be considered.

Summary and Interim Conclusions on Selected Contextual Factors for Content-Rating Schemes

- ⇒ Evaluation of selected contextual factors for content-rating schemes shows that there is a substantial public-interest concern regarding media content. Effective rating schemes with accurate, reliable and consistent information about media content can provide added value for consumers, especially for parents and their content choices regarding consumption by minors. Non-adoption of a rating system or systematic failure in providing accurate, reliable and consistent information involves transparency losses for consumers and subsequent difficulties for rational choices when it comes to the selection of media content.
- ⇒ Regarding the provision of rating schemes, at least in western democracies, self-regulatory initiatives of the industry are the generally preferred solution. State intervention in media affairs is generally sensitive with regard to freedom-of-speech concerns (censorship). Moreover, expenditure on coding, rating and classifying of an increasing amount of audiovisual content would involve very high costs for a “state rating solution”, which is a second strong argument in favour of industry solutions. The low need for uniform and binding minimum standards due to the low impact of a problem caused in an individual case of non-compliance is a third one.
- ⇒ However, consumers – especially parents – are demanding a high level of accuracy, reliability and consistency of media content rating and an adequate level of protection for minors. The potentially strong economic impact resulting from a rating for an individual company and the high degree of conflict between public and private interests may undermine the public desire for reliable content rating. Moreover, not all producers and suppliers of media content share a common level of interest in reducing the market failures and there are strong incentives to free-ride on benefits of an effective established system. These are central arguments for some degree of public control of a rating scheme.
- ⇒ The capacity for public control via state intervention is ambiguous. On the one hand, there are concerns regarding restrictions on freedom of speech. On the other, there are regulatory responsibilities for state authorities regarding content regulation aimed at the protection of minors. In sum these arguments favour a

regulatory arrangement with significant industry involvement in the rating practice combined with some degree of state oversight (e.g. co-regulation, periodic review etc.)

2.1.2 Comparison of Selected Basic Characteristics

Four non-UK schemes were selected for comparative analyses of media content-rating schemes. The four institutions studied vary considerably in their basic characteristics (see Table 5). These differences have to be borne in mind when comparing the institutions on performance criteria, enabling contextual factors and success factors.

Table 5: Selected Basic Characteristics of Content-Rating Schemes

Background: Basic characteristics					
Evaluation Indicators	Cases	NICAM [NL]	CMCF [MAL]	TVPG [USA]	MPAA/CARA [USA]
Maturity and experience I: Year of foundation of the organisation		NICAM 1999	CMCF 2001	TVPG 1997	MPAA 1922
Maturity and experience II: Year of foundation of the rating-scheme		Kijkwijzer 2001	Content Code 2004	TVPG 1997	CARA 1968
Institutional embeddedness: Single- or multiple-issue organisation		single-issue organisation	single-issue initiative within a multiple-issue organisation	single-issue organisation	single-issue initiative within a multiple-issue organisation
Modes of rating: Self-coding; self-rating; 3rd party rating		self-coding	self-rating	self-rating	3 rd party rating
Scope: Services/content covered by the rating-scheme		motion pictures; video/DVD; TV programmes; music videos; (mobile services)	TV programmes; (audiotext hosting services) *	TV programmes	motion pictures; video/DVD
Intensity of state involvement Classification: self- or co-regulation**		co-regulation	co-regulation	self-regulation	self-regulation

* Audiotext Hosting Service enables a caller to receive a pre-recorded message or interact with a programme to receive information.

** In order to be classified as co-regulation, it requires an explicit unilateral legal basis for the alternative regulatory arrangement (cf. Latzer et al. 2002).

The four schemes studied were not founded in the same period of time. The maturity of a system may have an effect on public awareness of the system and on the availability of data regarding the performance of the schemes. The MPAA rating scheme for motion pictures, founded in 1968, is a mature system with experience of almost four decades of operation. Compared to the MPAA's rating scheme, the NICAMs Kijkwijzer (2001) and the CMCF Content Code, which introduced the voluntary TV programme classification system (2004), are comparatively new rating schemes. TV Parental Guidelines have been in existence for 10 years.

The four rating schemes differ considerably in their *institutional embeddedness*. The formal affiliation(s) of a rating organisation may affect its independence and the resources available to perform its duties in general and to take measures to increase awareness in particular. CARA is an independent single-issue initiative within the MPAA, which is one of the worldwide leading industry trade associations coping with various industry tasks (multiple-issue organisation). NICAM is a single-issue organisation which focuses on rating issues only. NICAM was set up by the Dutch audiovisual industry in consultation with stakeholders and in close cooperation with the government.²⁶ The TV Parental Guidelines are also a single-issue organisation set up and run by the US television industry, however, with significant state influence in the course of their establishment. The voluntary television-programme classification scheme in Malaysia is a single-issue initiative, embedded in the broader framework of a general content code, which was set up and is enforced by the multiple-issue organisation CMCF. CMCF deals with various tasks in the area of communications content.

Rating systems vary considerably in their key modes of operation. The central decision-making unit in rating schemes are individuals who code and/or classify an audiovisual product. It makes a difference if the coding and classification mode is self-coding and/or self-rating or third-party rating. The mode of classifying, for example, affects the possibilities of including stakeholders (consumer representatives) in decision-making processes. *Third-party rating* by a classification board is still applied in the motion-pictures sector with a manageable amount of movies.²⁷ Circumstances are different for television rating. Due to the large amount of audiovisual material,²⁸ content rating is mostly decentralised. Methods of *self-coding* and *self-rating* are applied and the main responsibility for decision making rests with the coders and classifiers who are usually employees of the suppliers (industry). But *different approaches to coding and rating* can be found:

In the Netherlands, the coding selections²⁹ are made by the individuals but they do not themselves allocate an age category to the productions. The NICAM system determines the final classification on the basis of the answers given (technology-supported decision making). In contrast, in the USA rating based on the TV Parental Guidelines is carried out directly by employees of the television networks. But as the Malaysian example shows, even a large number of television programmes can be controlled (censorship and rating) by statutory authorities. Almost all television programmes have to be approved by the national Film Censorship Board in advance (censorship and third-party rating). Television material is not submitted to the Board, but the Board has employees who work directly in the TV stations (for free-to-air TV).³⁰ In contrast, rating in accordance with the provisions of the content code of the Content Forum is voluntary and carried out – if at all – by employees of the television stations (self-rating).

Moreover, the rating schemes studied vary in their scope regarding the *services and types of content* covered by the scheme. The Dutch Kijkwijzer scheme is applied to various types of content such as movies, videos, DVDs and television programmes, including music videos. Since April 2005, Kijkwijzer has also been applied to some of the services provided on mobile telephones.³¹ In the USA there is no common rating system for audiovisual content. MPAA/CARA ratings apply to motion pictures distributed theatrically, by video and DVD, and they apply to unedited movies on

premium cable channels. The TV Parental Guidelines are given to all television programming except news, sports, and unedited movies on premium cable channels. In Malaysia, guidelines for rating and classification are applied to broadcasting content and (in a reduced form) to audiotext hosting services. Government broadcasters are not subject to the content code.

Finally, the *intensity of state involvement* in and state support for an alternative regulatory institution is considered a crucial contextual factor for the adoption and the performance of an alternative regulatory institution. While NICAM and CMCF operate within a co-regulatory framework (legal basis) with significant state involvement, the formal influence of statutory authorities on the US rating schemes (TV Parental Guidelines, MPAA/CARA) is comparatively low.³²

2.2 Comparative Analysis of Performance Criteria

In this section we summarise our findings of the application of the performance criteria to evaluate the rating systems that were the subject of our analyses. We refer to Annex I for a more detailed analysis (along with concrete facts and figures).

Kijkwijzer/NICAM seems to score best in terms of performance criteria. They have very high public awareness, very high industry involvement, a coherent process of adoption and a transparent and integrated process of adoption and enforcement. The legitimacy and integrity of the self-regulatory effort is unchallenged, while there is also close involvement and support by parliament, which monitors whether suitable performance criteria have been met. In this instance, it is our conclusion that a relatively high number of complaints is in fact a sign of system health rather than one of system failure.

The *Content Forum of Malaysia* seems stronger with regard to industry awareness than public awareness. Greater public awareness might lead to greater respect for self-regulation by both the public and policy makers. The continued proposals for direct regulation by legislators may be a consequence of low levels of public awareness. The lack of complaints could also be an indication of a lack of public awareness, a function of barriers to making complaints or of a fundamental weakness in the adoption of the mechanism.

Public awareness of the *TV Parental Guidelines* (and the V-chip) seems to have declined in the period since implementation and is poorly understood. The implementation has occurred in two parts, each of which has its awareness/adoption/action problems. The “ratings” aspect of the system is fairly comprehensively implemented. Enforcement of this aspect would mean more even application of rating labels across programmes and categories. But for the system to work fully there would have to be more television sets with the chip installed and greater public awareness of the chip’s existence and utility. With the two parts implemented, “action” would be on the part of the parent (or controller of the household set). Here, “success” as measured by the performance criteria would imply much fuller

understanding and use of the self-regulatory system by parents. It is important to note that the V-chip model does not include a strong self-regulatory entity. Rather, enforcement is in the hands of programme makers and distributors, with enforcement left to the Federal Trade Commission or Congressional oversight. Further, and perhaps more importantly, the parental guidelines are generally poorly understood by the public. One of the biggest concerns with the performance of the parental guidelines involves the belief (and evidence) that the ratings are used inconsistently and incorrectly, a belief that undermines public trust in the rating scheme.

Evaluating the *MPAA* system provides particular challenges. Unlike the other systems evaluated, the MPAA conducts its own centralised evaluations in terms of applying labels or ratings. “Industry involvement” here means the submission of the film, rather than its self-evaluation. As a result, “action” or “attitude” takes on a different colour, namely whether there is respect for the mode and practice in attaching ratings. Because of the structure of the industry and the relationship between the industry and the MPAA, and the availability of an appeal system, this process seems quite smooth. Taken as a whole, the MPAA system probably has the greatest contact and recognition by consumers. This could be a function of several factors: the iconic stature of the motion picture industry, the political sophistication of the stewards of the system; the marketing of the system to cinema owners and consumers as a preventive tool against state censorship efforts; a recognition that the industry can shift the discourse from applying standards to explaining and being transparent about content. None of this success, however, has prevented some criticism of the particular ratings (e.g. setting the wrong age category for a film or not giving it a rating at all).

2.3 Comparative Analysis of Selected Institutional Success Factors and Contextual Factors

The performance of alternative regulatory institutions is influenced by institutional/organisational success factors and by enabling contextual factors.³³ Some contextual factors (reputational sensitivity, for example, requires intensity of regulatory intervention) are related to general characteristics of products and services which allows for general assessment without reference to the market and policy environment in a country (see section 2.1.1). However, other contextual factors (e.g. the modes of state involvement) and all institutional/organisational success factors have to be assessed case by case.

Section 2.3 provides an overview of findings of a comparative analysis of selected contextual and institutional/organisational success factors. Selections were made according to the *basic assumptions* regarding theoretically plausible interrelations between performance indicators (outcome/impact) on the one hand and institutional/organisational success factors and contextual factors on the other (see section 1). It is assumed that awareness of content-rating schemes and attitude towards media content-rating schemes in the film/broadcasting industry depends, inter alia, on

adequate resources (section 2.3.1), on the *involvement of non-industry members* (section 2.3.2) and on *adequate involvement of governmental actors* (section 2.3.3).

2.3.1 Adequate Resources

Adequate *funding* and sufficient *staff* are frequently referred to as important success factors in the literature.³⁴ Whether or not an institution can draw on adequate resources may further be assessed by investigating whether there is an *effective internal division of labour* (special units for special purposes such as marketing/public relations; internal review etc.) and whether an institution has access to *adequate means to assure broad participation* (incentives; pressure).

Moreover, an important but widely neglected success criterion is the ability of the institutions to have a well-founded dialogue with their constituencies, including the public, industry and government. The respective measures are summarised as *communications strategies* and these include, for example, supporting resources for the industry to adopt and comply with the alternative regulatory schemes (technical support, hotlines, industry training, manuals etc.), public education programmes and awareness campaigns or regulatory round tables with the industry and with state authorities to discuss performance and to review regulatory strategies.

Assessing the performance of media content-rating schemes, we prioritised the performance-indicator *awareness* of rating schemes. The general public's awareness is particularly relevant because the success of media content-rating schemes is heavily dependent on broad knowledge and understanding of the scheme. The ability of alternative regulatory institutions to gain public awareness (visibility, knowledge, and understanding) for their rating schemes depends – inter alia – on adequate resources (*Assumption No. 1*). Differences regarding selected resources of the four institutions studied are summarised in Table 6.

Table 6: Selected Resources of Media Content-Rating Schemes

Success Factor:					
Adequate resources to assure that objectives are not compromised					
Evaluation Indicator*	Cases	NICAM [NL]	CMCF [MAL]	TVPG [USA]	MPAA/CARA [USA]
Sufficient overall funding (budget)		yes	no	yes	yes
Adequate communications strategies related to:					
... consumers/citizens**		yes	(no)	yes	(yes)
... industry		yes	yes	no	no
... government		yes	yes	no	no

* Besides the evaluation indicators mentioned in the table (funding; communications strategies), there are further evaluation indicators related to resources (e.g. staff/personnel; internal division of labour etc.). However, no explanatory differences among the institutions were found with regard to these additional factors.

** All institutions use "communications strategies related to public/citizens". But only NICAM and TVPG use traditional mass media (television) for broad public information campaigns. MPAA/CARA uses Internet information services, CMCF activities focus on road shows.

There are differences among the four institutions regarding *funding/budget*. NICAM, the TV Parental Guidelines and the MPAA Classification and Rating Administration (CARA) consider their funding satisfactory; only the Malaysian CMCF complains about its limited financial resources.³⁵

This may result from *differences in the funding sources* of the four institutions. NICAM and CMCF can rely on fixed annual budgets provided by industry membership fees and state subsidies. While the share of industry funding of NICAM has increased over the years,³⁶ the CMCF efforts to increase its membership and to find additional sources of funding have not been very successful to date.³⁷ The MPAA/CARA budget is based on fees from producers and distributors of motion pictures submitted for rating (sale of service).³⁸ The TV Parental Guidelines cannot rely on a fixed annual budget in advance as funding is based on “a case-by-case assessment”. Industry participants cover the expenses for all activities considered necessary and which have been agreed in the Monitoring Board.³⁹ TV Parental Guidelines and the MPAA Rating Board in particular do not complain of any financial problems. One reason might be that both rating systems are underwritten by the extensive and powerful associations of the US film/broadcasting industry.⁴⁰ Also, NICAM is based on broad industry participation in terms of membership, but is financially supported by the government and is calling for the continuation of the co-financed system.⁴¹

It is assumed that differences among the institutions in terms of funding/budget affect their ability to develop and implement communications strategies related to consumers/citizens, which then results in differences regarding the public awareness of the schemes. This assumption is only partly supported by empirical findings:

CMCF mentions that it particularly lacks financial resources for broad public-awareness campaigns in the mass media.⁴² This is one central reason why the CMCF and the Malaysian Content Code have so far not been well recognised in the wider public. Both NICAM and the TV Parental Guidelines consider their funding satisfactory and both have made substantial investments to promote their rating schemes in the mass media. This included broad public-awareness campaigns with public-service announcements, television advertising spots, etc. But the Dutch Kijkwijzer rating scheme is well known and understood in the Netherlands while awareness and understanding of the US television ratings based on the TV Parental Guidelines is comparatively low.⁴³

Finally, the *maturity of a system* has to be borne in mind as a further factor when it comes to the assessment of the level of public awareness and its causes. While NICAM, CMCF and the TV Parental Guidelines are comparatively new institutions, which have to undertake active measures to gain and to increase public awareness, the situation is different for the MPAA rating system for motion pictures. This was established in 1968, so it can look back on a long tradition and it has had sufficient time to gradually increase public awareness. Performance in terms of awareness does not depend as heavily on broad public campaigning as it does for the newly established rating-schemes.

Further differences are found with regard to *communications strategies related to the industry*. CMCF and NICAM have developed and implemented strategies to ensure an ongoing, regular and well-founded dialogue with industry. CMCF has a Content Advisory Centre (CAC) which provides an institutional interface between the industry and CMCF, and which gives day to day compliance support.⁴⁴ NICAM provides wide-ranging support for the coders, comprising initial training, annual quality tests, written manuals for coding, a fulltime help desk and regular inter-coder reliability tests. These “institutionalised communication strategies” related to the industry mark a difference to the US rating systems, where communication with the industry is limited to meetings of the Monitoring Board (TV Parental Guidelines) initial training for film classifiers (MPAA/CARA) and the written guidelines for content classification (TV Parental Guidelines, MPAA Rules for Classification and Rating). While members of the MPAA/CARA Rating Board can exchange views and knowledge in their day-to-day working practice, the rating of the US television programmes is completely decentralised, without any exchange of views between the content classifiers of the many TV stations and without continuous institutionalised support of the TV Parental Guidelines Monitoring Board. This may be one reason why it is considered that the ratings are used inconsistently, undermining public trust in the rating scheme.

Summary, Interrelations between Performance and Success Factors, and Interim Conclusions

- ⇒ Comparison of resources shows that the operation of media content-rating schemes is based on various *sources of funding*. Modes applied comprise fixed membership fees (NICAM, CMCF), sale of services (MPAA/CARA), and state subsidies (NICAM, CMCF). The TV Parental Guidelines cannot resort to a fixed annual budget, but there is agreement within the industry to bear the expenses for all activities considered necessary by the Monitoring Board.
- ⇒ Results of analyses partly support the assumption that the level of public *awareness* of an institution depends on the available *resources* (Assumption No. 1). However, analysis also clearly shows that additional factors have to be taken into consideration when it comes to the assessment of the reasons for strong or rather weak public awareness: CMCF lacks financial resources, which results in deficits regarding broad public awareness campaigns via traditional mass media and this results in a lack of public awareness of CMCF. Based on adequate funding, NICAM and TV Parental Guidelines have made substantial investments to publicly promoting their rating schemes, but results in terms of the level of public awareness of the schemes differ strongly. Hence, public awareness does not exclusively depend on adequate resources for effective public communication strategies. Factors other than funding and communications strategies may influence the performance differences between NICAM and the TV Parental Guidelines. The maturity of a system seems to be a further influential factor, as seen in the case of the MPAA/CARA, which draws on a very long tradition.
- ⇒ Differences between the rating schemes were found regarding *communications strategies related to the industry*, and these may explain why ratings are applied

more or less consistently in different countries. NICAM has developed and implemented strategies to assure an ongoing, regular and well-founded dialogue with coders. In contrast, rating of the US television programmes based on the TV Parental Guidelines is completely decentralised, without institutionalised support of the Monitoring Board. The level of institutionalisation of communications strategies related to the industry marks a difference that has to be borne in mind when considering how ratings can be applied (more) consistently.

2.3.2 Involvement of Non-Industry Members

Adequate involvement of non-industry members (e.g. independent experts, consumer representatives) in alternative regulatory institutions is considered a crucial success factor for alternative modes of regulation. It is argued that non-industry members may control the practice of alternative regulatory institutions (providing a watchdog function) and thus counter self-serving tendencies. This could contribute to increased public trust in a rating scheme and its overall legitimacy (Assumption No. 2). The involvement of non-industry members is analysed on the basis of the decision-making units (boards, panels, commissions etc.) of the four cases studied (see Table 7).

Table 7: Involvement of Non-Industry Members in Media Content-Rating Schemes

Success Factor: Representation & Participation					
Indicator: Involvement of non-industry members (e.g. consumer representatives)					
<i>Evaluation Indicator</i>	<i>Cases</i>	NICAM [NL]	CMCF [MAL]	TVPG [USA]	MPAA/CARA [USA]
Consumer representatives in supervisory body/board		YES		No	NO
Proportion of non-industry members		(82.4%)	-	(0%)	(0.0%)
... governmental actors		no	-	no	no
... industry members		yes (3)	-	yes (3) ^{chair}	yes (2)
... consumer representatives		yes (3)	-	no	no
... other public-interest groups		yes (3)	-	no	no
... independent experts (e.g. scientists)		yes (2)	-	no	no
... lay members		yes (3)	-	no	no
... others		yes (3)	-	no	no
Consumer representatives in the governing bodies		NO	YES	YES	(NO)*
Proportion of non-industry members		(10.0%)	(15.8%)	(21.7)	(100.0%)
... governmental actors		no	no	no	no
... industry members		yes (9)	yes (16) ^{chair}	yes (18)	no
... consumer representatives		no	yes (1)	yes (5)	no
... other public-interest groups		no	yes (1)	no	no
... independent experts (e.g. scientists)		yes (1) ^{chair}	yes (1)	no	no
... lay members		no	no	no	yes (10-13)
Consumer representatives in classification units		NO***	NO	NO	(NO)
Proportion of non-industry members		(0.0%)	(0.0%)	(0.0%)	(100.0%)
... governmental actors		no	No	no	No
... industry members		yes	yes	yes	No
... consumer representatives		no	no	no	No
... other public-interest groups		no	no	no	no
... independent experts (e.g. scientists)		no	no	no	no
... lay members		no	no	no	yes (10-13)
Consumer representatives in unit for complaints handling		NO	YES		-**
Proportion of non-industry members		(100.0%)	(28.6%)	-	
... governmental actors		no	no	-	-
... industry members		no	yes (5)	-	-
... consumer representatives		no	yes (1)	-	-
... other public-interest groups		no	no	-	-
... independent experts (e.g. scientists)		yes (7)	yes (1) ^{chair}	-	-
... lay members		no	no	-	-
Consumer representatives in appeals unit		NO			NO
Proportion of non-industry members		(100.0%)	-	-	(23.4%)
... governmental actors		no	-	-	no
... industry members		no	-	-	yes (13)
... consumer representatives		no	-	-	no
... other public-interest groups		no	-	-	no
... independent experts (e.g. scientists)		yes (3)	-	-	yes (4)
... lay members		no	-	-	no

- means that there is no respective unit within the organisation;

* In the case of the MPAA rating system the “governing body” is identical with the “classification unit”. Main “governance responsibilities” rest with the Rating Board in general and with its chairman in particular.

** In the case of the MPAA rating system there is no unit and no procedure for complaints from the public. There is a possibility for the industry to submit movies to CARA for “re-rating”.

*** In the case of NICAM there are additionally a “Coder Commission” (composed of industry members) and a “Scientific Commission” (composed of independent experts/scientists).

Ofcom's (2004, 11) consideration that it would be appropriate for independent representatives to make up half to three-quarters of a co-regulatory organisations governing body is only partly fulfilled in the cases studied.⁴⁵ Only MPAA/CARA (100% lay members/parents in the Classification Board) and NICAM (100% independent experts in the units for complaints handling and appeals; 82.4% in the Advisory Committee) decided to provide significant influence to non-industry members. In all other units of the institutions studied the proportion of non-industry members is less than a third.

The key decisions in a content-rating scheme are made by the individuals who code and classify an audiovisual product. With the trend from "third-party rating" towards "self-coding and self-rating", the influence of the industry is increasing and influence of other parties (e.g. consumer representatives, public interest groups, governmental actors) is decreasing.

Third-party rating by classification boards such as the MPAA's Classification and Rating Administration (CARA) theoretically allows for involvement of non-industry members (e.g. consumer representatives) in the rating board. CARA is composed of non-industry members (parents, lay members). It does not include representatives from organised consumer groups. The chairperson of the board attempts to select a group of film classifiers who represent the diversity of American parents.⁴⁶

For television content rating mostly *self-coding* and *self-rating* methods are applied and the main responsibility for decision making lies with the coders and classifiers, who usually are employees of the suppliers (industry). Involvement of non-industry members at this stage of the process is costly. Hence coding and/or classification decisions under the CMCF rating system, the TV Parental Guidelines and the NICAM/Kijkwijzer system are made without any direct influence by non-industry members.⁴⁷

If non-industry members cannot be involved in key decision making regarding self-coding and self-rating, the question emerges of whether and how alternative regulatory institutions can and do involve consumer representatives, representatives of civic groups, and/or independent experts in their organisational design. Empirical examples reveal different methods according the institutional structures of organisations studied:

NICAM involves representatives of parents' organisations and other social organisations in its Advisory Committee, but its governing board is composed of industry representatives under an independent chairperson.⁴⁸ The CMCF (CMCF Council) and the TV Parental Guidelines (Monitoring Board) integrate members of "civic groups" and "advocacy groups" in their governing bodies.⁴⁹ CMCF additionally involves representatives from "civic groups" in the unit for complaints handling, which moreover is led by an independent chair (Complaints Bureau). With the exception of the CMCF example, members of civic groups are not involved in the units dealing with complaints and appeals. Decision making at these stages of the policy cycle lies with members of the industry (e.g. MPAA) and/or with independent experts (e.g. NICAM).

State authorities play a significant role in assuring involvement of non-industry members:

In the Netherlands, involvement of consumer representatives is explicitly required in the legal basis for the co-regulatory framework.⁵⁰ In Malaysia the legal framework requires openness of the alternative regulatory institution for interested parties.⁵¹ In the United States, the initial Industry Proposal for the organisational structure of the Monitoring Board of the TV Parental Guidelines did not include provisions for involvement of any stakeholders outside the industry.⁵² Following a public consultation by the FCC, the industry submitted a Revised Industry Proposal, under which an additional five representatives of the advocacy community were to be added to the monitoring board in order to provide input from representatives of parents and family and child advocacy groups.⁵³

The involvement of non-industry members in general and consumer representatives in particular is a highly controversial topic in theory and practice. From a theoretical point of view, Ofcom (2004, 10f.) points out that there is a clear tension between the desirability of achieving independence and the objective of introducing industry expertise.⁵⁴ In practice, in the USA as in the Netherlands, it is mainly parents' organisations that complain about their roles in broadcasting rating schemes.

In the Netherlands one parents' organisation claims that it is not involved in the NICAMs Board (governing body).⁵⁵ Parents' organisations have called for the establishment of a media expertise centre in order to monitor and control NICAM ratings and other activities. In the USA, parents' organisations and independent rating organisations have pressed industry to "encourage programmers and distributors to permit independent rating services to have prior access to content, so that such services could provide information as to the type of violence depicted" (Kinney 2004, 7). They further want their own ratings to be adequately displayed in television for consumer information. With regard to this, the independent rating organisations are confident that future technical television standards⁵⁶ will accommodate multiple ratings. The providers of independent rating systems argue that *multiple rating* will "provide healthy competition in the market to give parents and other caregivers' objective information on the degree and type of violence in a particular programme" (Kinney 2004, 8). This kind of *regulatory competition* could, however, lead to an increasing lack of transparency and to confusion among consumers.

Summary, Interrelations between Performance and Success Factors and Interim Conclusions

- ⇒ The *success factor of adequate involvement of non-industry members* (e.g. consumer representatives) is *partly fulfilled* in the cases studied. MPAA/CARA and NICAM have delegated significant decision-making power to non-industry members at selected stages of the decision-making process. In all other units (bodies, subdivisions, boards) studied, the ratio of non-industry members is less than a third.

- ⇒ Whether the *strong involvement* of *non-industry* members in alternative regulatory institutions results in *good attitude* (trust, credibility and legitimacy) towards the institution (Assumption No. 2) is *not completely ascertainable* from the available data. Analysis shows that the attitude towards the institutions with significant non-industry influence at selected stages of the decision-making process is high in the case of NICAM and medium in the case of MPAA/CARA. The attitude towards the TV Parental Guidelines – which are dominated by industry members – is low, but the attitude towards the CMCF is so far unknown.
- ⇒ Considering the overall performance of the rating schemes, data shows that the two institutions with significant non-industry influence at selected stages of the decision-making process (MPAA/CARA and NICAM) also seem to perform their roles better than the institutions dominated by industry members in all decision-making units. However, here it has to be borne in mind that involvement of non-industry members is by far not the only success factor in the overall performance of an alternative regulatory institution.
- ⇒ Involvement of non-industry members can be supported by governmental actors/state authorities. The legal demand for adequate stakeholder involvement in general (Malaysia) and for consumer representatives in particular (Netherlands) is a typical technique used in co-regulatory schemes, where alternative regulatory institutions may not gain accreditation without appropriate stakeholder involvement.
- ⇒ Investigations show that there is no standard pattern for involvement of non-industry members in alternative regulatory institutions. The modes of involvement differ depending on the institutional structure of the organisations (involvement in supervisory bodies, governing bodies, complaints boards, appeals units). Adequate involvement of non-industry members does not depend on significant involvement of non-industry members in each individual unit but on an appropriate *mix* of industry and non-industry members of the various decision-making units.
- ⇒ Moreover, policy makers have to consider the potential drawbacks of direct involvement of consumer representatives in alternative regulatory institutions with regard to a *watchdog function* in relation to an alternative regulatory institution (capture). Under certain circumstances, non-industry groups may fulfil such a critical function (even better) from *outside* the alternative regulatory institution (e.g. criticism of industry rating schemes; periodic review; provision of alternative/independent rating schemes etc).
- ⇒ An alternative to assuring non-industry participation in alternative regulatory institutions could be to enhance the position of critical non-industry groups outside the alternative regulatory institution (e.g. support with resources for periodical review; monitoring).

2.3.3 Involvement of Governmental Actors

In most cases, alternative regulatory institutions are not set up completely without governmental influence or government pressure and in many cases there are connections to governmental agencies during ongoing operation. Hence in most cases the term *self-regulation* can be considered as a misnomer.⁵⁷ State authorities draw on many instruments to support alternative regulatory institutions, to make active use of them and to control them. The options range from soft forms of governmental involvement (symbolic support, inspiration, integration of personnel), to financial subsidies, right through to direct control in a co-regulatory framework.

Adequate involvement of governmental actors is considered to be an important success factor. State oversight of rating institutions may counter the industry's self-serving tendencies. Political responsibilities regarding protection of minors call for an awareness of rating/classification issues among the public policy makers and for awareness of how various rating schemes across the communications industries relate to each other. For the following analyses it is therefore assumed that *adequate involvement of governmental actors* in alternative regulatory institutions promotes the *awareness* of the institution among *policy makers* and the *attitude* towards the regulatory institution in terms of trust, credibility and legitimacy (Assumption No. 3). Table 8 shows the modes of state involvement in the four cases studied.

Table 8: Involvement of Governmental Actors in Media Content-Rating Schemes

Contextual Factor: Adequate involvement of governmental actors					
Evaluation Indicator	Cases	NICAM [NL]	CMCF [MAL]	TVPG [USA]	MPAA/CARA [USA]
Encouragement of self-regulation by government (carrot; inspiration)		yes	yes	yes	n.a.
Demand for self-regulation by government (stick; threat)		n.a.	yes	yes	(yes)
Financial government support (subsidy)		yes	yes	no	no
Involvement of government personnel (information)		no	no	no	no
Government involvement via contracts (contractual)		yes	no	no	no
Collaboration between government and alternative regulatory institution (ARI) in regulatory practice (cooperation)		no	yes	no	no
Defined division of responsibilities between government and ARI		yes	yes	no	no
(Periodic) Review of the scheme by state authorities		yes	(yes)***	(no)*	yes
Political appreciation of the scheme and its outcomes (symbolic support)		yes	n.a.	yes 1997 no 2007	yes/no
Co-regulation within a legal framework (direct control), with		yes	yes	(yes/no)**	no
... defined areas of operation for ARIs		yes	yes	yes	no
... mode of accreditation of ARIs		yes	yes	no	no
... mode of ratification of regulatory processes/outcomes		no	yes	(yes/no)**	no
... provisions regarding structure/organisation of ARI		yes	yes	no	no
... provision to assure near universal participation		yes	yes	no	no
... provisions regarding transparency (e.g. annual report)		no	no	no	no
... definition of fall-back-scenarios in the case of failure		yes	yes	(yes/no)**	no

* There is no periodic review of the TV Parental Guidelines by state authorities, but the Federal Communication Commission (FCC) in 2007 presented a report with a critical discussion about the performance of TV Parental Guidelines.

** There is no “co-regulatory framework” for the ongoing regulatory practice of the TV Parental Guidelines, but co-regulatory techniques were applied in course of the establishment of the scheme.

*** There is a legal provision for (periodic) review of industry forums in Malaysia, but the CMCF has not been under review so far.

Frequently, the establishment of alternative regulatory institutions and reforms of their institutional structure are a reaction to the *threat* of governmental intervention (*stick; threat*) or the result of governmental *encouragement* of self-regulation (*inspiration; carrot*):

In the Netherlands, for example, the policy document “Niet voor alle leeftijden” (Not for all ages, 1997) argued for the establishment of an independent body that would act as the national support group for self-regulation within the audiovisual sector. Most members of parliament expressed a preference for self-regulation and a belief that the audio-visual sector could take responsibility for this (encouragement; carrot). This resulted in the establishment of NICAM.

In Malaysia, the Communications and Multimedia Act of 1998 provided the leeway for alternative modes of regulation, stating that “an industry forum may prepare a voluntary industry code dealing with any matter provided for in this Act” (CMA 1998, Section 95). But the CMA 1998 also provides that “the Malaysian Communications and Multimedia Commission (MCMC) may determine a mandatory standard for any matter which may be the subject matter of a voluntary industry code if the Commission is satisfied that the voluntary industry code has failed” (CMA 1998, Section 104).

In the United States, the US Congress used a weak stick-and-carrot strategy for intervention in the course of the establishment of a television rating system. Section 551 (b) (1) (1) of the Telecommunications Act states, that the FCC shall “prescribe . . . guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children.” However, the provision would have come into force only if a self-regulatory arrangement⁵⁸ had not been established within one year. The television industry developed the TV Parental Guidelines within the statutory time schedule.

With regard to the establishment of the MPAA rating scheme for movies, Jack Valenti (MPAA chairman in 1968) stated that it was “the mix of new social currents, the irresistible force of creators determined to make ‘their’ films and the possible intrusion of government into the movie arena”⁵⁹ that demanded his immediate action.⁶⁰

The establishment of alternative regulatory institutions and their ongoing operations may be supported by state authorities in many ways. Potential *instruments* of state authorities include governmental tax resources such as subsidies (*financial support*), personnel resources (*involving personnel*), *contracts* and means of *cooperation* in the regulatory practice.⁶¹

In Malaysia and in the Netherlands, for example, the alternative regulatory institutions are supported financially by the governments. The establishment of NICAM was supported by government subsidies and the share of government subsidies on the overall costs of NICAM has been decreasing since 2003.⁶² Moreover, NICAM and the Broadcasting Authority are working and cooperating on the basis of an official covenant.⁶³ Also, the Malaysian Content Forum cannot support its operations through membership fees alone. The Malaysian Communications and Multimedia Commission (MCMC) has given annual grants to the Content Forum for its operations and management.⁶⁴ Moreover, the Content Forum was assisted in its regulatory practice by the commission. The commission drafted guidelines for the establishment of industry forums and industry codes, and it supported the CMCF in its publicity activities in order to increase the public awareness for the forum and the code.⁶⁵

In the cases studied there is no personnel involvement by the government (e.g. a political actor being a member of an advisory board).

Periodic review is referred to as one of the key success factors for alternative modes of regulation. Besides “self-assessment” by an alternative regulatory institution and review by other stakeholders (e.g. public-interest groups), state authorities may also resort to

(periodic) review as a means of control. Review may force/promote reforms of unsuccessful schemes and it may increase the awareness of policy makers for alternative modes of regulation:

In the Netherlands the supervisory role is delegated to the Media Authority, which regularly investigates and evaluates the functioning of the system of self-regulation.⁶⁶ Early in 2004, NICAM and Kijkwijzer were evaluated by the cabinet and parliament. In Malaysia there is a legal provision for review of industry forums and codes by the MCMC.⁶⁷ However, the Content Forum and the Content Code have not yet been subject to review. In the United States there is no legal provision for periodic review of the TV Parental Guidelines and the MPAA rating system for motion pictures, but state authorities do review the systems. Since 2000 the Federal Trade Commission (FTC) has released six reports reviewing self-regulation and industry practices in the motion-picture, music recording and electronic-game industries.⁶⁸ The Federal Communication Commission (FCC) in 2007 presented a report with a critical discussion about the performance of TV Parental Guidelines.⁶⁹

Looking at the conclusions of governmental review of selected schemes, major differences regarding the performance of the schemes become obvious:

In the Netherlands, in 2004 there was appreciation of the results achieved within a short time. The conclusion was that, although there are certainly areas for improvement, NICAM works well.⁷⁰ In the United States, periodic review of the MPAA rating system showed that since 2000 “the movie industry made progress in limiting marketing of R- and M-rated products to children.”⁷¹ Regarding the TV Parental Guidelines, the FCC in 1997 adopted an order “finding acceptable the video programming rating system”, which “will help provide parents with the information and ability to make informed viewing decisions for their families.”⁷² However, 10 years later, the FCC 2007 states that “although the V-chip and TV rating system appear useful in the abstract, they are not effective at protecting children from violent content for a number of reasons.”⁷³ In the same report the FCC discusses options and limits for alternative measures such as “time channelling”, “a la carte or bundling approaches in the cable and DBS context”, “viewer-initiated blocking” and “mandatory ratings”. The report will be delivered to the US Congress for debate. The modes of procedure and the findings indicate that state involvement could increase in the future. In Malaysia there is a legal provision for review of industry forums by the MCMC, but the CMCF has not so far been subject to review.

The formally most intensive mode of state involvement in alternative regulatory institutions is *co-regulation* within a legal framework. The de facto intensity of government involvement then depends on the actual provisions in the basic legislative act. Among other things, the legal basis enables state authorities to define the public policy objectives for co-regulation, the areas of operation for alternative regulatory institutions, the modes of accreditation of alternative regulatory institutions, the modes of ratification of regulatory processes/outcomes, the provisions regarding structure/organisation, provisions to assure near universal participation, provisions regarding transparency (e.g. annual report) and the definition of fall-back scenarios in the case of failure:

Co-regulation is applied in the Netherlands (Media Act) and in Malaysia (Communications and Multimedia Act). In both cases the mode of official approval is a system of accreditation of alternative regulatory institutions.⁷⁴ In Malaysia, additionally, the outcome of regulatory processes (the Industry Codes of Conduct) requires ratification by the MCMC.⁷⁵

Both co-regulatory systems include provisions regarding the structure of the alternative regulatory institution,⁷⁶ provisions that support (near) universal participation⁷⁷ and defined fall-back scenarios.⁷⁸ However, in both cases the legal basis does not include provisions regarding transparency (e.g. mandatory annual report), but both institutions frequently report to state authorities.⁷⁹

“Techniques of co-regulation” were also applied in the case of the US TV Parental Guidelines, but only in the course of the establishment of the rating scheme.⁸⁰ After the scheme was established in 1997, there were no further requirements regarding control of the scheme by state authorities. This could be one reason for the comparatively poor performance of the TV Parental Guidelines.

Summary, Interrelations between Performance and Contextual Factors and Interim Conclusions

- ⇒ State involvement and support for alternative regulatory institutions varies considerably across the cases studied. Due to the co-regulatory framework with accreditation and ratification procedures and additional relations between CMCM and the CMCF (subsidies, cooperation in practice), state involvement and support is *very extensive in Malaysia*. It is *extensive in the Netherlands* where NICAM operates also within a co-regulatory framework, but under less government involvement (e.g. no cooperation, no ratification of regulatory outcomes). Compared to Malaysia and the Netherlands, state involvement in the US self-regulation schemes is rather light. In the case of the MPAA no formal state involvement exists, but there are periodic reviews. In the case of the TV Parental Guidelines, the recent FCC report and its discussion in the US Congress could lead to new modes of state involvement.
- ⇒ State authorities can draw on a whole raft of instruments to support alternative regulatory institutions, to make active use of them and control them. The options range from soft forms of governmental involvement (symbolic support, inspiration, integration of personnel), to financial subsidies and direct control in a co-regulatory framework. The intensity of state involvement may vary depending on the different combinations of instruments of intervention applied.
- ⇒ State support for alternative regulatory institutions and involvement of state authorities in alternative regulatory institutions reflects and promotes public policy makers’ *awareness* of the alternative regulatory institutions. Analysis supports the assumption that extensive state involvement (in terms of instruments applied) results in policy makers having a high level of awareness of the scheme (Assumption No. 3). Policy makers’ awareness of alternative

regulatory institutions is particularly high in co-regulatory arrangements with significant state involvement. It is lower in self-regulatory arrangements.

- ⇒ Whether or not extensive state involvement in alternative regulatory institutions also results in improved *attitude* (trust, credibility and legitimacy) towards the institution (Assumption No. 3) is not completely ascertainable from the available data. Analysis shows that the attitude towards the institutions with little state involvement is medium (MPAA/CARA) and low (TV Parental Guidelines). Attitude towards the state-supported NICAM is high (NICAM) but attitude towards the CMCF is unknown so far.
- ⇒ Co-regulation is not the only available means to assure and to promote the awareness of policy makers for alternative modes of regulation. A valuable (capable, efficient) alternative to a potentially costly co-regulatory arrangement is transparent (periodic) state review of a scheme, its outcomes and its impacts along with key performance indicators.
- ⇒ Moreover – from a theoretical perspective – (periodic) review may not only increase awareness of policy makers, but it may also stimulate public debate about the scheme, increase public awareness of the scheme and it may enhance the overall credibility of the alternative regulatory institution. Results of (periodic) review may stimulate reforms of the scheme if it proves to be unsuccessful. Results of periodic review may re-stipulate internal reform processes that had been terminated (e.g. following divergence of interests).

3 *Internet Codes of Conduct*

The regulation of Internet services is a subject of intensive international debate. Many of the issues discussed concern questions regarding the options and measures to ensure an adequate level of consumer protection. Key consumer-protection issues that the Internet raises include privacy and security, protection from illegal or inappropriate content and protection from malicious software (Ofcom 2006, 1).

Regulatory action to promote consumer protection can be taken at many different levels of the Internet value chain. Informal social standards for Internet users (netiquette) and formal technical standards (codes) are increasingly being supplemented by institutions for collective self- and co-regulation. Since the mid-1990s, national Internet service providers associations (ISPAs) have been set up to assume self-regulation tasks and develop codes of conduct. Hotlines for illegal Internet content are being installed,⁸¹ which use “notice and take down procedures” (NTDs) to support governmental agencies in combating illegal content. In addition to the initiatives by cross-industry associations, various sectoral initiatives have been started at the Internet content provider (ICP) level.⁸²

Due to their gate-keeping position, Internet service providers (ISPs) are regarded as one of the key actors with respect to the achievement of regulatory goals. Codes of conduct of Internet service-provider associations (ISPAs) are a widespread tool to promote consumer protection by alternative modes of regulation. The codes usually comprise (combinations of) provisions regarding illegal activity, limiting access to material harmful to minors, hate speech, bulk e-mail, data protection and privacy (PCMLP 2004, 50). The various fields of activity involve very different characteristics of regulatory issues. An overall evaluation of general contextual factors for Internet codes of conduct (as applied in the case of the rating-schemes) is therefore not possible. Evaluation calls for case-by-case-assessments, which will be carried out in four steps:

Evaluation starts with a comparison of basic characteristics of the four cases studied (3.1). Analysis shows important differences among the four institutions selected for empirical investigation, which have to be borne in mind when it comes to the assessment of regulatory performance. The subsequent part provides a comparative evaluation of the performance (3.2) applying selected performance criteria (adoption, action) from the 4A concept. This is followed by a detailed comparative analysis of institutional success and contextual factors (3.3), which were derived from the selected basic assumptions on interrelations between performance indicators on the one hand and institutional/organisational success factors and contextual factors on the other. Analyses show commonalities and differences between institutional designs of the four rating schemes, which serve as the basis for the discussion of interrelations between performance and institutional designs of the schemes. The final section (3.4) summarises key findings of the comparative analyses.

3.1 Basic Characteristics of Selected Cases

Four non-UK schemes were selected for comparative analysis of Internet codes. All four Internet organisations studied were established during the Internet boom in the mid 1990s. Regarding other characteristics there are a couple of noteworthy differences (see Table 9). These differences have to be borne in mind, when comparing the institutions by performance criteria, enabling contextual factors and success factors.

Table 9: Selected Characteristics of Internet Organisations and Codes of Conduct

Background: Basic characteristics				
Cases	InternetNZ [NZL]	ISPAI [IRL]	CAIP [CAN]	HKISPA [HK]
Evaluation Indicators				
Maturity & experience: Year of foundation of the Internet organisation	1995	1998	1996	1996
Institutional embeddedness Single- or multiple- issue organisation	Internet organisation with membership of ISPs	detached ISP Association (ISPAI)	ISP Association (CAIP) within a trade association (CATA)	ISP Association (HKISPA) within a trade association (HKITF)
Type of basic code (conduct, practice, ethics, etc.) & mode of adoption (mandatory/voluntary)	Code of Practice (CoP), <i>Draft</i> Code not in force	Code of Practice and Ethics (CoP&E) mandatory adoption by ISPAI members	Code of Conduct (CoC) voluntary adoption by CAIP members	Code of Practice (CoP) voluntary adoption by HKISPA members
Prominent commitment to self-regulation (e.g. mission statement; organisations objectives)	no	yes	no	yes
Year(s) of adoption and reform of the basic code	1997; 1999; 2005; 2007	2002	1996	1997
Additional regulatory activities besides the basic code	DNS Administration Spam Code of Practice (2007), <i>Draft</i>	Hotline (1999)	CAIP Privacy Code (2000) (Fair Practices Initiative)	Anti-Spam Code of Practice (2005) Practice Statement on Regulation of Obscene and Indecent Material (1997; 2003)

The *institutional embeddedness* of an Internet organisation in terms of formal affiliation(s) may affect its independence and the resources available to perform its duties:

While the Irish ISPAI is a detached/independent Internet service providers association without formal affiliation to an industry body, HKISPA and CAIP are subdivisions of larger trade organisations. CAIP merged with the high-tech trade association Canadian Advanced Technology Alliance (CATAAlliance) in 2002.⁸³ HKISPA is an Internet service providers association and formed as a focus group of the Hong Kong Information Technology Federation (HKITF). Hence, both HKISPA and CAIP can draw on the resources of trade organisations.

InternetNZ⁸⁴ is a detached/independent non-profit Internet organisation which is not exclusively made up of Internet service providers. InternetNZ's ordinary membership is open to Internet service providers (ISPs), but also to web designers, academics, public-information groups and Internet users.⁸⁵ Besides InternetNZ there is also another independent Internet service providers association operating in New Zealand (NZISPA, founded 1997). However, in contrast to the other cases studied, activities for an Internet

code of conduct in New Zealand are not driven by the national Internet service providers association (ISPANZ), but by an Internet society (InternetNZ).

There are differences regarding the institutions' general *commitment to self-regulation* in mission statements and in general objectives:

ISPAI makes a strong commitment to self-regulation in its mission statement. The principal aims of the association include self-regulatory objectives such as “to establish a Code of Practice for service providers, to establish accepted standards of service, a uniform code of practice acceptable to members and to foster the industry’s image”.⁸⁶ Also the mission of the HKISPA states “establishing and maintaining of a Code of Practice” as a central aim.⁸⁷

In contrast, InternetNZ and CAIP do not refer explicitly to self-regulation as central objectives of their activities. InternetNZ’s mission is “high performance and unfettered access for all so the Internet continues to operate in an open environment that cannot be captured by any entity or individual for their own ends.” Also the detailed objectives in the InternetNZ’s statutes do not mention self-regulation as a central aim.⁸⁸

CAIP aims at providing “effective industry advocacy respecting public policy and regulatory matters (e.g. access, copyright, privacy and security issues, e-commerce guidelines) affecting Canada's ISP industry; promoting a positive image for the Internet industry and the association through pro-actively educating Canadians about, and building awareness of Internet industry issues; and offering value to members through the timely communication of relevant business information.” Despite the rather vague commitment to “respecting public policy matters” there is no further prominently placed commitment to self-regulation.

Despite variations in their basic commitments to self-regulation, all the organisations have developed basic self-regulatory instruments. *Basic codes* of conduct or codes of practice – which are the focus of our further analysis – were adopted between 1996 (CAIP) and 2002 (ISPAI):

The ISPAI Code of Practice and Ethics is *mandatory* for an ISPAI member, as a member agrees that “in subscribing to ISPAI it shall abide by the Code.”⁸⁹ In contrast, adoption of the HKISPA Code of Practice and the CAIP Code of Conduct is *voluntary*.⁹⁰

New Zealand’s Internet Code of Practice of InternetNZ is *not in force* yet and it has not been decided if adoption should be voluntary or mandatory.⁹¹ There have been efforts to develop an Internet code for New Zealand since 1997, but the attempts to bring it into force failed in 1999 and again in 2005 after some of the larger ISPs refused to back it (see Box 1).

Box 1: Adoption of an Internet Code in New Zealand

- The first “ISP Code of Practice” was designed by ISOCNZ in 1997 and it was signed by 25 Internet service providers.
- In 1999 the ISP Code of Practice was relaunched as an “Internet Code of Practice”, but adoption was stymied by the reluctance of the country’s biggest ISP, Xtra, to become a member.⁹²
- In March 2005 a Code of Practice for ISPs was released in draft form by InternetNZ. According to the time schedule it was intended to “launch the Code and commence signups” in November 2005.
- However, adoption is still “on hold” for two main reasons: a) The Code of Practice has been adopted by some of the larger ISPs but not by others. b) Another communications industry forum, the Telecommunications Carrier’s Forum (TCF) has produced the Customer Complaints Code (CCC) and set up a telecommunications dispute-resolution service (TDRS).
- In 2007, InternetNZ is redrafting the Internet Code of Practice to remove duplication with the CCC and TDRS.
- According to InternetNZ it is considered that the new Internet Code of Practice should focus on “behavioural” issues and take the form of a *best-practice document for ISPs*. It may, for example, have more detail on Internet issues such as acceptable use policies, rather than focus on complaint handling, which is covered by the TCF codes.⁹³

The feasibility of the adoption of alternative modes of regulation for a new regulatory challenge depends on the existing industry environment. The practicability of adoption is in general higher if there is an already recognised organisation that can take over additional regulatory tasks or if an industry segment already has experience with alternative modes of regulation. Analyses show that the basic codes of conduct and codes of practice are not the only regulatory activities of the four institutions studied. ***Manifold regulatory activities*** complementing the basic codes have been adopted, but apart from the basic codes there is no common pattern of regulatory activities across the institutions:

InternetNZ administers the New Zealand domain name system (DNS) through the Office of the Domain Name Commissioner, and InternetNZ is actively involved in a recent initiative for the adoption of an Anti-Spam Code of Practice.⁹⁴

HKISPA adopted an anti-spam code of practice in 2005 and HKISPA made a Practice Statement on Regulation of Obscene and Indecent Material in 1997, amended in 2003.

CAIP’s basic Code of Conduct is complemented by a Privacy Code adopted in 2000 and a Fair Practices Initiative. The initiative is strongly related to consumer-protection issues, but it is more “informatory” than “regulatory” in nature.

In Ireland, the ISPAI not only adopted the Code of Practice and Ethics but it is also the provider of the national hotline for illegal child pornography on the Internet (www.hotline.ie).

All the institutions are self-regulating with regard to their basic codes of conduct. However some of the institution’s other initiatives show some *state involvement*. The Irish hotline for illegal child pornography on the Internet (www.hotline.ie) is partly funded by the EU Safer Internet Action Plan. The anti-spam code of practice in New Zealand was created in keeping with the requirements of the government’s Unsolicited

Electronic Messages Act 2007. Hence forms of *governmental involvement* in self-regulatory organisations exist in complex institutional arrangements with manifold regulatory activities. This makes it very hard to provide precise classifications for a single Internet organisation. Differentiated assessments of the organisation's individual regulatory initiatives are necessary in order to draw conclusions on the intensity and the modes of state involvement.

3.2 Comparative Analysis of Performance Criteria

In this section we summarise our findings of the application of the performance criteria to evaluate Internet organisations and Internet codes of conduct that were the subject of our analyses. We refer to Annex II for a more detailed analysis (along with concrete facts and figures).

In evaluating the findings for codes of conduct as compared to content-rating systems, a variety of distinctions emerge. Content-rating systems are usually designed and employed against a background of traditional spheres of regulation. Self-regulatory arrangements are in many cases formed as part of a deregulatory phase. In terms of codes of conduct (e.g. for Internet service providers), self-regulation efforts occur in an atmosphere where there is an assumption of greater barriers to regulation.

The Canadian Association of Internet Service Providers (CAIP) has the longest experience in developing a code of conduct among the four cases studied. It performs satisfactorily in the area of industry support and stated adoption, including around 30% of Canadian ISPs and 80% of all Internet traffic. Many of the CAIP members provide consumers with safety information, Internet filtering software and online complaint lines while declaring adherence to Canadian laws and cooperation with law-enforcement officials. CAIP performs well in its efforts to raise public awareness by offering online safety tools such as CyberTip.ca, WebAware, and by contributing to the establishment of the Canadian Coalition Against Internet Child Exploitation (CCAICE). CAIP scores high in terms of attitude, being internationally acclaimed as a model of the right way to fight hate and terrorism on the Internet. However, paradoxically, there are significant internal shortcomings, notably at the level of possible punishments of behaviour that breaks the CAIP Code of Conduct. This lack of punitive teeth originates in the fact that adoption of the code by CAIP members is purely voluntary and does not determine membership status. Moreover, the code itself does not contain any reference to sanctions. Thus, breaking the code does not lead to a loss of membership and, moreover, there is no apparent way by which a consumer can verify whether or not a member complies with the code's principles. The relationship between the CAIP and the government is also relatively undefined. While the government has been involved in drafting several guides on voluntary codes, it is unclear at what point and to what extent there is significant governmental involvement in handling major complaints and sanctions.

The *Internet Society of New Zealand (InternetNZ)* scores lowest in terms of performance. There is no lack of membership in the organisation. More than half of all ISPs in New Zealand participate in InternetNZ, but the latest Internet Code of Practice has been under construction since 2005, its drafting process having been characterised by repeated internal misunderstandings among the members of the association. The difficulty of reaching an internal agreement on a final text of the code could lead to the conclusion that the ISP community in New Zealand is simply not ready or “mature” enough to act unanimously and provide a generally applicable standard for Internet safety at the national level.

The *Internet Service Providers Association of Ireland (ISPAI)* scores best in terms of adoption both by the industry and government, as well as in terms of cooperation between the two. More than 40% of Irish ISPs participate in ISPAI and their traffic represents approximately 90% of all Internet traffic generated within Ireland. In this case, the requirement for all ISPAI members to adhere to the ISPAI Code of Practice and Ethics reveals its benefits in terms of public awareness and confidence. Awareness on the ISPAI itself is high but less due to its practice code and more due to the popularity of the hotline service provided and widely promoted by the association. There is low activity at the level of action and sanctions: no valid complaints have been directly made against any ISPAI members.

The *Internet Service Providers Association of Hong Kong (HKISPA)* has the benefit of experience, its basic Code of Practice having been in effect since 1997 and widely adopted among Hong Kong ISPs, which represent around 30% of the Hong Kong ISPs and over 95 % of the Internet traffic in Hong Kong, revealing a good performance in terms of industry support. While early reviews (1998) of the code concluded that it was successful, there has been a noticeable absence of more recent official data and survey reports to gauge public awareness, attitude and use of the code. Thus, with no recent data to reach conclusions either way, the assessment HKISPA’s effectiveness at the level of action and sanctions is based on rather outdated information.

3.3 Comparative Analysis of Selected Institutional Success Factors and Contextual Factors

3.3.1 Market Structure and Competition

Little attention is being paid in the literature to the effects of market structures and competition on the adoption of alternative regulatory institutions. However, it seems plausible that the ability of the industry to group together in order to adopt alternative regulatory modes is more difficult in a highly fragmented industry branch with many market participants. Hence the level of acceptance of alternative regulatory organisations and the level of adoption of alternative regulatory modes in a country may depend – inter alia – on the number of players and on the intensity of competition in an ISP market in the respective country. Intensive competition in an ISP market may decrease the incentives of ISPs to accept additional regulatory authorities alongside

statutory authorities. Moreover, intensive competition may reduce the incentive to comply with voluntary codes of conduct, which put additional restraints on the options for market behaviour in a competitive market. In effect, intensive competition could hamper the adoption of alternative regulation on a large scale i.e. adoption by *many* market participants. Nevertheless, intense competition can promote the adoption of alternative regulatory institutions on a limited scale, i.e. adoption by *some* market participants who aspire to the reputation benefits accruing from self-regulatory measures.

For empirical investigation it is therefore assumed that a high number of ISPs and intensive competition in an ISP market in a country decreases the incentives for ISPs to adopt and accept alternative regulatory institutions on a large scale. Of the many potential indicators for the *level of competition* in an ISP market we selected the number of ISPs per million inhabitants and the number of ISPs per million Internet subscribers for evaluation. The level of adoption of alternative regulatory institutions is assessed by the percentage of a country's ISPs participating in the Internet organisation studied. The results of the evaluation of interrelations between market structure, competition and adoption are summarised in Table 10.

Table 10: Intensity of Competition in ISP Markets

Contextual factor: Intensity of Competition					
Evaluation Indicators	Cases	InternetNZ [NZL]	ISPAI [IRL]	CAIP [CAN]	HKISPA [HK]
<i>Basic data market structure</i>					
... number of inhabitants, 2006 (population) ⁹⁵		4,143,279	4,239,848	31,612,897	7,013,832
... number of Internet subscribers, 2006 ⁹⁶		1,197,600	1,035,800	7,997,000	2,743,000
... number of ISPs in the Country ⁹⁷ **		57 (2007)	53 (2007)	> 467* (2005)	176 (2007)
... number of members of the national Internet organisation, 2007 ⁹⁸ ***		31	23	142	56
<i>Contextual factor: competition</i>					
... number of ISPs per 1 m. inhabitants		13.8	15.3	> 14.8*	25.1
... number of ISPs per 1 m. subscribers		47.6	51.2	> 58.4*	64.2
<i>Performance criterion: adoption</i>					
<i>Membership in national Internet organisation</i>					
... Percentage of ISPs participating in national Internet organisation		54.4%*	43.4%	< 30.4%*	31.8%

* The number of ISPs in Canada does not include Internet access provided through cable and wireless services. The total number of ISPs will be over 467, with the effect of more intensive competition and a lower degree of participation with CAIP.

** The number of ISPs in these countries was limited to Internet access providers (ISPs who provide host services only are excluded).

*** The number of members of the national Internet organisation includes all members (access and host providers). Due to lack of information on membership categories, limitation to Internet access providers was not possible.

Taking into account the shortcomings of the available data for this analysis,⁹⁹ the following findings can be provided.

Assessment of *competition* in the four ISP markets studied shows that there are differences which, although not very pronounced or extremely statistically significant, are nevertheless worth noting.

The assessment of competition (ISPs per m. inhabitants) suggests that the intensity of competition is greatest in Hong Kong (25.1) and similar in Ireland (15.3), Canada (> 14.8) and New Zealand (13.8). Another indicator of the intensity of competition (ISPs per m. Internet subscribers) confirms that competition is highest in Hong Kong (64.2). It further shows that it is high in Canada (>58.4) and lower in New Zealand (47.6) and Ireland (51.2). However, due to the exclusion of cable and wireless operators the available Canadian data systematically underestimate the level of competition in Canada. Taking this into account, a more realistic conclusion would be that competition in Canada and Hong Kong is to some degree higher than in New Zealand and Ireland.

According to the basic assumption for this analysis, intense competition in a country's ISP market reduces the incentives for ISPs to adopt and accept alternative regulatory institutions on a large scale. The available data, which have to be interpreted with some caution, would indicate that greater competition is in fact combined with lower *adoption*.

Adoption of alternative regulatory institutions – in terms of membership in an Internet organisation – is lowest in Canada (CAIP: <30%) and low in Hong Kong (HKISPA: 32%) – that is, in the countries with a higher number of ISPs and greater competition. Membership of Internet organisations is higher in Ireland (ISPAI: 43%) and highest in New Zealand (InternetNZ: 54%) where lower competition was found according to the available data.

Summary, Interrelations between Performance and Success Factors, and Interim Conclusions

- ⇒ The intensity of competition in an ISP market was measured by the number of ISPs per m. inhabitants and by the number of ISPs per m. Internet subscribers. Findings suggest that competition in Canada and Hong Kong is to a certain degree more intensive than in New Zealand and Ireland. However, for full reliability the preliminary results need further confirmation, specification and underpinning by assessment of further indicators.¹⁰⁰
- ⇒ The available data are in line with the theoretical assumption that a high number of players and greater competition in a market is combined with lower adoption of alternative modes of regulation. In the two countries with a higher number of ISPs and greater competition (Hong Kong, Canada), membership of Internet organisations is lower than in the two countries with less competition (New Zealand, Ireland).¹⁰¹ However, in New Zealand the comparatively positive market conditions for self-regulation (lower number of providers, less intense

competition, higher membership of Internet organisation) have not yet led to the adoption of a code.

- ⇒ Finally, the findings regarding competition and adoption may further be connected to those of the analysis on sanction power (see section 3.3.3). Results show that in countries with a higher number of ISPs, greater competition and lower membership of Internet organisations (Canada, Hong Kong), the Internet organisations cannot resort to powerful sanction mechanisms. This leads to the conclusion that a high number of market participants and intense competition are factors that are hampering agreement on significant and credible sanctions.

3.3.2 International Involvement and Cooperation

The level of consumer protection on the Internet in a particular country depends, among other things, on adequate international cooperation regarding both coordination and cooperation at intergovernmental regulatory level, and coordination and cooperation between alternative regulatory institutions.¹⁰² In practice there are several examples of “regulatory internationalisation” happening through vertical extensions of governance (Latzer/Saurwein 2007). Nevertheless, it is stated that: “Effective consumer protection on the internet requires more significant levels of international cooperation than currently exist” (Ofcom 2006, 6).

The ability to cope with transnational regulatory challenges – inter alia – involves three institutional factors for analysis: It depends on the *existence* of a recognised international Internet organisation (contextual factor). A national Internet organisation can decide whether or not to *participate* in an existing international organisation (e.g. via membership) and/or to cooperate with other national regulatory organisations (e.g. via agreements) on a bilateral basis (institutional success factor). The ability to cope with transnational challenges further depends on the *modes of cooperation* within the respective international organisations (contextual factors).

For alternative modes of regulation we assume that close international involvement of a national Internet organisation in an international Internet organisation and intensive modes of cooperation within this international Internet organisation contribute to a high level of adoption of alternative regulatory modes at national level (see Assumption No. 5).

The modes of international involvement of the four Internet organisations studied and the modes of cooperation in the respective international Internet organisations are summarised in the Tables 11 and 12.

Table 11: International Involvement of National Internet Organisations

Success factor: International involvement					
<i>Evaluation Indicator</i>	Cases	InternetNZ [NZL]	ISPAI [IRL]	CAIP [CAN]	HKISPA [HK]
Direct involvement (e.g. membership) in a transnational/continental Internet organisation		AIPA	EuroISPA Inhope	no	no
Formal agreements with other transnational/continental Internet organisations		no	no	EuroISPA	EuroISPA
Formal agreements with national Internet organisations in other countries		no	no	no	no

Besides APIA, EuroISPA and Inhope, there are further international Internet organisations operating in the countries and continents studied. However, analysis here focuses on international organisations that maintain formal relations with the four national Internet organisations studied.

The four Internet organisations established since the mid-1990s have been undergoing a process of internationalisation. However, the degree of *internationalisation* varies across continents:

In Ireland, the national hotline for illegal internet content (www.hotline.ie) is run directly by the Internet service providers association ISPAI and the hotline is part of the International Association of Internet Hotlines (Inhope). Moreover, ISPAI is a full member organisation of the European Internet Service Providers Association (EuroISPA).

In North America, the Canadian CAIP is not involved in a comparable transnational/continental Internet association. However, CAIP has signed a formal bilateral agreement (Memorandum of Understanding) with EuroISPA and it supports the national hotline for illegal internet content (www.cybertip.ca), which is part of the Inhope network.

In Australasia, New Zealand's Internet organisation, InternetNZ, is member of the Asia & Pacific Internet Association (APIA). But InternetNZ does not operate a hotline to report illegal Internet content and is not involved into an international hotline network like Inhope. A hotline to report objectionable material on the Internet is run by ECPAT NZ.¹⁰³ ECPAT NZ supported the development of an Internet code by InternetNZ,¹⁰⁴ but there are no further formal relations between the ECPAT NZ hotline and InternetNZ.

HKISPA in Hong Kong has also signed a formal bilateral agreement (Memorandum of Understanding) with EuroISPA. But HKISPA is not member of a continental/transnational Internet association (e.g. the Asia & Pacific Internet Association APIA) and there is no national hotline for illegal Internet content in Hong Kong that forms part of the Inhope network.

With regard to internationalisation, the *modes of cooperation* within the international organisations also differ (Table 12).

Table 12: Modes of Cooperation in International Internet Organisations

Context Factor: Available organisations to take over regulatory tasks				
Indicator: Modes of international cooperation				
	Cases	Inhope	EuroISPA	AIPA
<i>Evaluation Indicator</i>				
Mutual exchange of opinions		yes	yes	yes
Agreement on common objectives/principles		yes	yes	no
Transnational cooperation in practice		yes	yes	no
Minimum standards and enforcement mechanisms		yes	no	no

The national hotlines for illegal Internet content are connected in a strong international network. The *International Association of Internet Hotlines (Inhope)* was established in 1999 under the EU’s Safer Internet Action Plan. Inhope currently has 28 members and represents hotlines from all over the world. Besides 22 European partner hotlines, six hotlines from outside Europe are cooperating within the framework of Inhope (USA, Canada, Australia, South Korea, Chinese Taipei, and Japan). The modes of cooperation within the Inhope network are comparatively intensive. Members undertake to cooperate with other members by exchanging information on illegal content. But cooperation is not limited to mutual exchange of opinions. Cooperation within Inhope is based on the Articles of Association¹⁰⁵ and focuses on common objectives and principles and on intensive cooperation in practice. Membership of Inhope is subject to strict requirements, among other things to guarantee high transnational standards for the hotlines.¹⁰⁶

In Europe, nine national ISPAs, including the Irish ISPAI, are members of the *European Internet Service Providers Association (EuroISPA)* which was established in 1997 as the pan-European association of ISP associations from the EU member states. Similar to the Inhope network, members of EuroISPA agreed on common statutes the EuroISPA Articles of Association and on the common objectives/principles which form part of these articles. In addition to representing the members’ interests, EuroISPA commits itself to promote self-regulation and develop professional standards.¹⁰⁷ Recent major EuroISPA projects in relation to consumer-protection issues include support for the Safer Internet Day,¹⁰⁸ an Anti-Phishing Campaign,¹⁰⁹ and support for Inhope is also manifested in a Memorandum of Understanding (2003) between EuroISPA and Inhope. With regard to Internet codes of conduct, EuroISPA’s activities are limited. It contributes to coordination and dissemination of best-practice and provides a harmonised set of measures common to all national codes of conduct, which can be used as a template for new ISPAs.¹¹⁰ Six of the nine EuroISPA full-member organisations have developed codes of conduct at national level.

Compared to Inhope and EuroISPA, transnational cooperation within the *Asia & Pacific Internet Association (APIA)* is rather weak. Established in 1997, APIA is a platform for mutual exchange of opinions. “APIA is committed to continue to play a key role in educating and training the Internet operators in the Asia Pacific region. This is done by providing and promoting educational opportunities by hosting, endorsing, or co-organizing conferences, seminars, forums, workshops, and other training events.”¹¹¹

AIPA for example hosts the Asia-Pacific Regional Internet Conference on Operational Technologies (Apricot) an annual conference with the mission “to provide a forum for those key Internet builders in the region to learn from their peers and other leaders in the Internet community from around the world.”¹¹² In contrast to EuroISPA, AIPA does not have common statutes setting out common principles/objectives, and self-regulation is not mentioned in a mission statement. Consequently there are no collaborative efforts to agree on minimum standards and enforcement mechanisms. AIPA does not deal with consumer-protection issues but rather with the interests of the industry. Even though Internet security has been a topic on some of the annual meetings, it has not been followed up by taking action on a transnational/continental level.

Summary, Interrelations between Performance and Success Factors, and Interim Conclusions

- ⇒ National Internet organisations are undergoing a process of internationalisation, but the extent of this varies across continents. International cooperation in Europe is intense, with the European Internet Service Providers Association (EuroISPA) on the one hand and, on the other, the 22 European Internet hotlines participating in the International Association of Internet Hotlines (Inhope). Regulatory internationalisation appears to be less intensive in North America, where there is no transnational ISP association, and in Australasia, where transnational cooperation within the Asia & Pacific Internet Association (AIPA) is limited to mutual exchange of opinions.
- ⇒ Results of the analysis support the assumption (see Assumption No. 5) that the extent of adoption of alternative regulatory modes at national level is interrelated with the involvement of a national Internet organisation in an acknowledged international Internet organisation. The Irish ISPAI shows a high level of adoption and it is closely involved in acknowledged international organisations (EuroISPA, Inhope). Adoption and international involvement are lower in the other cases studied (InternetNZ, HKISPA, and CAIP). However, analysis here was limited to formally institutionalised relations with international Internet organisations. Further involvements in other domestic or international consumer-protection initiatives were not investigated, although these might have a (positive) influence on adoption and attitude.
- ⇒ Results of analysis do not permit an assessment of whether “effective consumer protection on the internet requires more significant levels of international cooperation than currently exist” (Ofcom 2006, 6). But it should be recognised, that EuroISPA and Inhope are engines of regulatory internationalisation of alternative regulatory institutions. Both organisations are undertaking significant efforts to broaden their international outreach. EuroISPA has signed bilateral agreements with national ISPA outside Europe (e.g. HKISPA, CAIP). The Inhope network is successively expanding through the involvement of additional partner hotlines inside and outside Europe (e.g. USA, Canada, Australia, South Korea, Chinese Taipei, and Japan).
- ⇒ Inhope in particular serves as an example for alternative regulatory reaction to transnational challenges by means of regulatory internationalisation. It was

launched in 1999 with the financial support under the EU Safer Internet Action Plan. This shows “soft” control resources, which governmental players can utilise to support self-regulation (e.g. framework agreements, financial subsidies).

3.3.3 Sanction Power in Case of Malpractice

Alternative regulatory modes are frequently analysed against the background of the policy cycle. This involves assessment of institutional designs and performance at the various stages of the regulatory process, i.e. *legislation* (norm setting, rule making), *enforcement* (ex-ante and ex-post enforcement) and *adjudication* (determination of sanctions in case of violations). Some alternative regulatory institutions are active *at all* the stages of the policy cycle, other organisations focus their action on *one* or *two* of the stages. In some cases, regulatory responsibilities are divided between private and governmental actors.¹¹³

Adequate power to impose sanctions for malpractice (i.e. violations, non-observance of principles/objectives) is often referred to as a central institutional/organisational success factor in the literature.¹¹⁴ Reaching agreement on enforcement and sanction mechanisms is *a crucial challenge in the course of the establishment* of an alternative regulatory institution.¹¹⁵ The level of sanction powers available to an alternative regulatory institution affects the credibility of the whole alternative regulatory system, the room for manoeuvre and the action of the alternative regulatory organisation and the incentives of industry members to comply with rules and obligations.

For the subsequent analysis it is assumed that strong powers of alternative regulatory organisations to impose sanctions for violations of principles of a code of conduct promotes industry compliance with rules and obligations under a code (*Assumption No. 6*). If violations of principles result in significant disadvantages for the respective violator, there are strong incentives for compliance with a code.

The power to impose sanctions for malpractice is analysed along with the different sanction instruments available to alternative regulatory organisations according to the codes of conduct (Table 13). Instruments comprise (1) provisions to demand revocation, relief, or change of malpractice, (2) reputational sanctions, (3) financial sanctions (4) organisational sanctions and (5) existential sanctions.

Table 13: Sanction Power of Internet Organisations in Case of Malpractice

Success factor: Adequate sanction power in case of malpractice					
Evaluation Indicator	Cases	InternetNZ [NZL]*	ISPAI [IRL]	CAIP [CAN]	HKISPA** [HK]
Powers to impose sanctions for violations of the code		yes*	yes	no	no*** / yes****
Powers to demand revocation, relief, change of malpractice (requirement for specific changes in output)		yes	yes	no	no
Reputational sanctions broad publication of violations; withdrawal of a quality seal, etc.)		yes	yes	no	yes****
Organisational sanctions (e.g. exclusion from an industry association)		yes	yes	no	no
Financial sanctions (e.g. fines)		no	yes	no	no
Existential sanctions (e.g. withdrawal of a licenses)		no	no	no	no

* The Internet code in New Zealand is not in force; the table refers to the suggestions for sanctions according to the draft code. Discussion on the draft code could also lead to the adoption a best practice document for ISPs without provisions regarding enforcement and sanctions.

** The HKISPA's Code of Practice is subdivided into three parts: The basic Code of Practice, an additional Practice Statement on Regulation of Obscene and Indecent Material, and an Anti-Spam – Code of Practice. Possibilities to impose sanctions for malpractice vary between the three codes.

*** There are no formal sanction powers under the HKISPA basic Code of Practice.

**** There are reputational sanction powers under HKISPA Anti-Spam Code of Practice.

The four Internet organisations differ considerably with regard to their *sanction powers*:

CAIP cannot resort to any sanction powers under its basic Code of Conduct. The code only provides “guidelines” for the conduct of Internet service providers. Functioning of the code depends solely on the voluntary adoption and respect by CAIP members. Powers to impose sanctions are left to the legal system and applicable laws.¹¹⁶

A special case is the rather secretive sanction power of HKISPA. First, there is a vague provision in the basic Code of Practice that the “HKISPA may request consultation with the Member in extreme circumstances”. Second, the Practice Statement on Regulation of Obscene and Indecent Material provides that the “HKISPA will take appropriate disciplinary action” against a member who refuses to take action against diverse content or if it is found that a member repeatedly breaches the practice statement. However neither code specifies a formal procedure or formal sanctions.

In contrast to CAIP and HKISPA, the Irish ISP AI can and the InternetNZ is planning to impose sanctions for violations of their code, based on formal procedures and instruments that allow for comparative analysis:

Adjudication processes usually start with various requests that violators of rules should change their behaviour. Formal *demands for revocation, relief, or change of malpractice* do not involve sanctions in the strict sense, but from an institutional perspective they are a measure to determine a violation and they are a first step to open the way to sanctions in the case that demands are not met.

In Ireland, the ISPAI Board may request a written remedy of the breach of the code,¹¹⁷ and also in New Zealand under the proposed code a signatory of the code may have to “remedy the breach of the Code within a reasonable time as agreed by the Board”. In both cases the board may additionally “require a written assurance” relating to the future behaviour in terms required by the boards.¹¹⁸

ISPAI and InternetNZ further make use of *organisational sanctions*. In Ireland, the ISPAI may impose suspension or even expulsion from the organisation.¹¹⁹ In New Zealand suspension for one year and expulsion would be possible under the draft; these measures do not include suspension or expulsion from the organisation (InternetNZ) but suspension or expulsion from the Internet Code of Practice.¹²⁰

Only the ISPAI can resort to *financial sanction powers*, as “the Board may suspend the Subject Member from ISPAI without any reimbursement of membership fees in whole or in part.”¹²¹ Nevertheless, this sanction instrument will not be used if a financial sanction has already been imposed by a regulatory body.

In general, *reputational sanctions* are often used by alternative regulatory institutions and the ISPAI, InternetNZ and HKISPA can also make use of these.

The ISPAI and InternetNZ do not use reputational sanctions as a stand-alone-mechanism but in addition to other instruments. In New Zealand the board may choose to use publication of the penalty, ISPAI may publicise the fact of a suspension or expulsion from the ISPAI.

In Hong Kong the HKISPA provides a branding scheme for members who comply with the Anti-Spam Code of Practice. In case of non-compliance with the code of practice, the HKISPA may “remove the right to advertise compliance under the Anti-Spam Initiative”¹²².

Summary, Interrelations between Performance and Success Factors, and Interim conclusions

- ⇒ The four Internet organisations differ considerably with regard to their sanction mechanism in the case of malpractice. CAIP can resort to any sanction powers, the sanction possibilities of the HKISPA are not clearly defined, and InternetNZ is planning considerable sanctions mechanisms (including organisational sanctions) but the code is not in force so far. In sum, only the ISPAI has a defined adjudication procedure in place and can in fact already impose credible sanctions (including financial sanctions).
- ⇒ Overall, the analysis tends to support the assumption that strong powers to impose sanctions for violations of principles of a code of conduct promote industry compliance with rules and obligations under a code (Assumption No. 6). Comparative analysis shows that the ISPAI can resort to the strongest sanction powers and that action under the ISPAI code is low, which indicates high industry compliance with code. The HKISPA and CAIP do not have sanction powers and there was more “action” found in the performance analysis.

⇒ However, in analysing relations between sanction powers on the one hand and action on the other, the limits of the assessment instruments applied become evident. The number of complaints or actions of course not only results from sanction powers of an Internet organisation under a code of conduct. Further factors have to be taken into account, e.g. the age of the entity, its enforcement practice, and the conformance to prevailing norms of the institutions that are regulated. Little action under a code may also result from a rather weak alternative regulatory enforcement regime, which only theoretically provides credible sanction powers. Paucity of action of an alternative regulatory institution may also result from rather strict governmental monitoring, enforcement and adjudication measures, which restrict the leeway for self-regulatory action. But, as indicated, lack of adjudications and sanctions may be a sign that the system is working well in terms of incentives for voluntary responsible behaviour or a conformity of norms to market activities.

4 Conclusions

The comparative analysis of selected self- and co-regulatory schemes is based on an analytical framework comprising three sets of evaluation criteria (performance criteria, institutional success factors and contextual factors) and respective empirical indicators. This check list for regulatory choice allows both *ex-post evaluations* of existing schemes in order to improve regulatory systems and *ex-ante evaluations* in order to design regulatory schemes for upcoming regulatory challenges. In this report the analytical framework is applied for comparative ex-post evaluations of media content-rating schemes in the film/broadcasting industry and of Internet codes of conduct in North America, Australasia and the European Union. The analysis focuses on selected performance criteria in the two application fields studied. The starting point for the evaluations is basic assumptions regarding theoretically plausible interrelations between selected performance criteria (outcome/impact) on the one hand and corresponding institutional/organisational success factors and contextual factors on the other.

4.1 Key Findings: Rating Schemes in the Film/Broadcasting Industry

For media content-rating schemes, we have prioritised the performance indicators *awareness* of and *attitude* towards the rating schemes. The success of a content-rating scheme depends on broad public and industry awareness of the scheme and of the meanings of the content classifications in use. It further demands public confidence in the rating institutions, the rating schemes and the ratings as such. Empirical analysis shows context conditions for alternative modes of regulation in the area of content rating, performance differences of rating schemes and it shows how performance differences may be explained by differences regarding available resources, the involvement of non-industry members and the support/involvement of governmental actors.

The main findings are summarised as follows:

First, our evaluation of selected contextual factors for content-rating schemes shows that there is substantial public interest concerning media content. Effective rating schemes with reliable and consistent information can provide added value for consumers. Conversely, the failure to adopt a rating system, or a systematic failure in providing accurate, reliable and consistent information, involves transparency losses.

Regarding the provision of rating schemes, at least three arguments support the suitability of alternative modes of regulation:

- In western democracies, self-regulation is generally the preferred solution because state intervention in media affairs can be seen as counter to freedom of speech (censorship).
- Expenditure on coding, rating and classifying an increasing amount of audiovisual content would involve very high costs in a “state rating solution”.
- The limited impact of an individual case of non-compliance does not demand more uniform and binding minimum standards.

These arguments suggest the need for some alternative form of regulation. Yet any such alternative system must be able to respond to consumers’ expectations of a high level of accuracy, reliability and consistency in a ratings system, and for an adequate level of protection of minors. Again, three arguments indicate that content rating is not suitable for pure, unlimited industry self-regulation and that there is a demand for some kind of public oversight:

- The sharp conflicts between public and private interests provide incentives for systematic “under-labelling” of media content, which may undermine the public’s desire for reliability.
- Not all producers and suppliers of media content share a common level of interest in reducing market failures; there are strong incentives for free-riders to ignore an established system.
- The potentially strong economic impacts that may be felt by individual companies as the result of a rating suggest the need for institutional mechanisms that make it possible to object to a given rating and to guarantee fair practice.

On balance, these six arguments favour a regulatory arrangement with significant industry involvement in the rating practice, combined with some degree of public oversight, which could be implemented via governmental intervention (e.g. co-regulation and/or periodic reviews).

Second, our evaluation of performance criteria shows significant differences among the four rating schemes studied:

- NICAM and Kijkwijzer are widely known, adopted and respected, which contributes to their success. Of interest is the high number of complaints – which in fact may be related to the high level of public awareness as well as to the complaints process. That is, the complaints may in fact be an indication of system health rather than one of system failure.
- CMCF is supported by the industry and government, but public awareness seems to be lacking and could be considered as a priority area for improvement. A lack of public awareness suggests that the complaints process is under-utilised. On the other hand, the number of complaints could also reflect other barriers to making complaints (e.g. cultural factors), to higher level of general compliance and other factors.
- The TV Parental Guidelines may be known to the public, but public awareness seems to have declined in the period since its implementation. The “ratings” aspect of the system is fairly comprehensively and evenly implemented in terms of application of ratings labels across programmes and categories. More significant, the Parental Guidelines are poorly understood by the public; the V-Chip is hardly used as a filtering device. One of the biggest concerns with the performance of the Parental Guidelines involves the belief (and evidence) that the ratings are applied inconsistently and incorrectly, undermining public trust in the ratings scheme.
- The MPAA system taken as a whole probably has the greatest recognition by consumers. It is well known, used broadly by the film industry and considered useful by parents. Compliance and complaints handling are considered to operate more or less seamlessly, because of the relationship between the industry and the MPAA as well as the availability of an appeal system. The lack of transparency in how the ratings are determined and the way they are used in film marketing have, however, generated critics.

The performance differences among the four rating schemes leads to the question of whether and how the differences may be explained by contextual factors and institutional/organisational factors. Evaluations of selected factors according to basic assumptions on interrelations between performance and success/contextual factors are summarised as follows:

- Results partly support the assumption that *adequate resources* lead to high *public awareness* of the institutions. Individual examples (CMCF) show how a lack of financial resources results in a lack of broad public awareness campaigns and thus in a lack of public awareness. In other cases (NICAM, TV Parental Guidelines) satisfactory funding and substantial promotion investments have led to higher levels of public awareness.
- Explanatory differences were found for *communications strategies related to the industry*. Rating systems that assure an ongoing dialogue with and between coders, raters and classifiers (NICAM, MPAA/CARA) show a higher level of

consistency in the ratings than systems that operate merely in a decentralised way, without institutionalised compliance support (TV Parental Guidelines).

- The criterion of adequate involvement of non-industry members is only partly fulfilled. MPAA/CARA and NICAM, which have delegated significant decision-making power to non-industry members at selected stages of the decision-making process, perform their roles better than the institutions dominated by industry members.
- Finally, results show that state involvement in alternative regulatory institutions clearly promotes public policy makers' *awareness* of the alternative regulatory institutions. This is important because the political responsibility to protect minors demands an awareness of rating/classification issues among policy makers, as well as awareness of how various rating schemes across the communications industries relate to each other.

However, some performance differences between the four rating schemes cannot be explained solely with the analytical instrument applied. There are additional influencing factors that have to be taken into account and which require further research:

- A comparison of NICAM and the TV Parental Guidelines shows that public awareness is not a linear function of the resources deployed for communication strategies. Additional influencing factors have to be considered (e.g. the maturity of a system).
- Investigations show that there is no standard pattern of involvement by non-industry members in alternative regulatory institutions. The available data does not permit a final conclusion regarding the assumption that *extensive involvement* of *non-industry* members and/or adequate governmental involvement in alternative regulatory institutions result in *good attitude* (trust, credibility and legitimacy) towards the institution.
- The modes of involvement of non-industry members differ depending on the institutional structure of the organisations. In general, *adequate involvement* of non-industry members does not depend on significant involvement of non-industry members in each individual unit but on an appropriate *mix* of industry and non-industry members in various decision-making units (a mix that has to be decided and evaluated case-by-case). Moreover, under certain circumstances, non-industry groups may perform a critical *watchdog function* more effectively from outside the alternative regulatory institution.

Finally, the question emerges of whether and how state authorities may adequately support and oversee alternative regulatory institutions in the area of rating schemes:

- State authorities have various options to support alternative regulatory institutions. These range from soft forms of governmental involvement (symbolic support, inspiration, integration of personnel), to financial subsidies, periodic review and direct control in a co-regulatory framework.
- The intensity of state involvement may vary depending on different combinations of the instruments of intervention applied. In fact, involvement

and support for alternative regulatory institutions differs considerably between the cases studied. For example, state involvement and support is very extensive in Malaysia, extensive in the Netherlands, and rather light in the US self-regulation schemes (MPAA/CARA, TV Parental Guidelines).

Potential causes and consequence of such differences may be summarised as follows:

- Despite a legal commitment to co-regulation in *Malaysia*, which involves possibilities for delegation of regulatory powers to the industry, strong governmental oversight of the co-regulatory system and continued proposals for direct regulation by legislators are evident. This may be a consequence of low levels of public awareness of the newly introduced co-regulatory system.
- In the *US*, the *V-chip model* does not include a strong self-regulatory entity. It is more a question of enforcement by programme makers and distributors, with enforcement left to the Federal Trade Commission or congressional oversight. It is the example with the most apparent external legislative and governmental involvement, but the fact that the industry's compliance took place at the end of a legislative gun may have weakened not strengthened the self-regulatory mechanism.
- In the NICAM system, parliament is closely involved in monitoring whether suitable performance criteria have been met. In terms of the assumptions for content-rating systems, NICAM is probably the best example where the strength of the system tracks the logic of the assumptions.
- The MPAA is an example where extensive industry involvement and a concerted effort to court government have led to effectiveness. Success in terms of awareness of the MPAA system may be a result of several factors related to state involvement – e.g. the political sophistication of the stewards of the system and the marketing of the system to cinema owners and consumers as a preventive tool against state censorship efforts.

In sum, state authorities can draw on a range of instruments to support alternative regulatory institutions, to make active use of them and oversee them. The modes of state involvement may be varied, as may the (combinations of) intervention instruments used. The success of NICAM under a co-regulatory framework is often referred to as a best-practice example in the literature. But results in this comparative analysis show that co-regulation is not the only means available to state actors to promote and oversee industry rating schemes. As noted, periodic review of the MPAA system contributed to further enhancements of an already working system. This shows that periodic state review of a self-regulatory scheme, its outcomes and its impacts based on key performance indicators can provide a valuable alternative to a potentially costly regulatory arrangement.

4.2 Key Findings: Internet Codes of Conduct

The regulation of Internet services is a subject of intense international debate. Many of the issues discussed concern questions regarding adequate levels of consumer protection. Due to their gate-keeping position, Internet service providers (ISPs) are regarded as one of the key actors with respect to the achievement of regulatory goals.

Since the mid-1990s, hotlines for illegal Internet content have been installed in several countries; these use “notice and take down procedures” (NTDs) to support governmental agencies in combating illegal content. Moreover, national Internet service providers associations (ISPAs) have been set up to take over self-regulation tasks and develop codes of conduct which comprise (combinations of) provisions regarding illegal activity, limiting access to material harmful to minors, hate speech, bulk e-mail, data protection and privacy. An overall evaluation of general contextual factors for Internet codes of conduct is not possible, because the various fields of activity involve very different types of regulatory issues. Hence, evaluation calls for case-by-case-assessments of performance, selected success and contextual factors and the respective interrelations.

Our evaluation of prioritised performance criteria (adoption and action) shows significant differences among the four Internet organisations and codes studied:

- The ISPAI Code of Practice and Ethics seems to be well supported and adopted by both industry and government. Adopting the code is a mandated requirement of joining the ISPAI. Overall, the code seems to be a valuable complement to the hotline, which is what the public associates with ISPAI.
- The CAIP Code of Conduct was the first Internet code of conduct, and has since been used by many outside Canada as a model. But the enthusiasm for the code among Canadian stakeholders, as measured in adoption and compliance, seems to have decreased over the years.
- Regarding the HKISPA’s Code of Practice, there is hardly any up-to-date information available. In early reviews, adoption and effectiveness of the code were considered to be successful. No information was found to suggest that its effectiveness may have been weakened in recent times.
- The Internet service providers in New Zealand have clearly and repeatedly failed in terms of code adoption. As a consequence, “action” so far is merely related to adoption issues (e.g. consultation, etc.) but there is no action *in relation to the code* as such (e.g. in terms of compliance actions).
- Further, it seems that the older codes, such as the CAIP and the HKISPA code, have lost much of their initial strength and awareness. Instead they have become valuable complements of more targeted complaints systems, such as hotlines.

Our evaluation of prioritised success and contextual factors (intensity of competition, international involvement, and powers to sanction malpractice) also shows significant differences between the four Internet organisations and codes studied:

- Findings suggest that competition – measured by the number of ISPs per million inhabitants and by the number of ISPs per million Internet subscribers – is to a certain degree more intense in Canada and Hong Kong than it is in New Zealand and Ireland.
- National Internet organisations are undergoing a process of internationalisation, but the extent of this process varies across continents. International cooperation in Europe is high, with the European Internet Service Providers Association (EuroISPA) and the 22 European Internet hotlines participating in the International Association of Internet Hotlines (*Inhope*). EuroISPA and Inhope are engines of the regulatory internationalisation of alternative regulatory institutions. Both organisations are undertaking significant efforts to broaden their international outreach. Regulatory internationalisation appears to be less intensive in North America, where there is no transnational ISP association, and in Australasia, where transnational cooperation within the Asia & Pacific Internet Association (APIA) is limited to mutual exchange of opinions.
- Finally, the four Internet organisations differ considerably with regard to their sanction mechanism in the event of adjudicated violations. CAIP can not resort to any sanction powers; the sanction possibilities of the HKISPA are not clearly defined, and InternetNZ was planning considerable sanction mechanisms (including organisational sanctions) but thus far the code is not in force and compliance provisions could be weakened before it is adopted. In sum, only the ISPAI has a defined adjudication procedure in place and can in fact already impose credible sanctions (including financial sanctions).

The performance differences among the four Internet organisations and the differences regarding contextual and institutional/organisational success factors lead to the question of whether performance differences may be explained by contextual factors and institutional/organisational success factors. The results of an evaluation of selected factors according to basic assumptions are summarised as follows:

- The available data are partly in line with the theoretical assumption that a high number of players and greater competition in a market is linked to lower adoption of alternative regulatory institutions (organisations and norms/codes). In the two countries with a higher number of ISPs and greater competition (Hong Kong, Canada), *membership of Internet organisations* is lower than in the two countries with less competition (New Zealand, Ireland). However, in New Zealand, the comparatively positive conditions for self-regulation (lower number of providers, less intense competition, higher membership of Internet organisation) have not yet led to the *adoption of norms (a code of practice)*.
- Results of analyses tend to indicate that the extent of adoption of alternative regulatory modes at a national level is related to the involvement of a national Internet organisation in an acknowledged international Internet organisation.

The Irish ISPAI shows a high level of adoption and is closely involved in acknowledged international organisations (EuroISPA, Inhope).

- Finally, the analysis tends to support the assumption that strong powers to impose sanctions for violations of principles of a code of conduct promote industry compliance with rules and obligations under a code. Comparative analysis shows that the ISPAI can resort to strongest sanction powers and that action under the ISPAI code is low, which is *one* indicator of high industry compliance with a code. The HKISPA's and CAIP's sanctioning powers are more limited, which may have contributed to more compliance challenges. It is too early to make a judgment on New Zealand, because the code is not yet in force and consequently there is no "action" (in terms of compliance) in relation to the code.

However, not all performance differences among the four Internet organisations can be explained by the analytical instruments applied and the available data. There are additional influencing factors which have to be taken into account for further research:

- Regarding interrelations between market conditions (market structure, competition) and adoption of alternative regulatory institutions (organisations, norms), the New Zealand example shows that comparatively positive conditions for self-regulation (lower number of providers, less intense competition, higher membership of Internet organisation) have not yet led to the *adoption of norms (a code)*. The failure to finalise the code in New Zealand *may be* the result of competing forces and voices within the industry, generating a lowest-common-denominator atmosphere among industry players regarding content control. Further research on additional factors of influence is needed in order to assess whether there is empirical basis for this assumption.
- Regarding interrelations between adoption of alternative regulatory modes at the national level and international involvement of national Internet organisations, analysis was limited to formally institutionalised relations with international Internet organisations. Further involvements in other domestic or international consumer protection initiatives were not investigated, although these might have a (positive) influence on adoption and attitude.
- Analysis of interrelations between sanction powers and action shows the limitations of the assessment instruments applied. The number of complaints or actions results is not solely the result of an Internet organisation's powers of sanction under a code of conduct. Further factors have to be taken into account – e.g. the age of the entity, its enforcement practice and the conformance to prevailing norms of the institutions that are regulated. Lack of action under a code *may* also result from a rather weak alternative regulatory enforcement regime, which only theoretically provides credible sanction powers. Lack of action on the part of an alternative regulatory institution *may* also result from rather strict governmental monitoring, enforcement and adjudication measures that restrict the leeway for self-regulatory action.

Thus, the reasons for *adoption failures* (New Zealand) and *action differences* need further and more in-depth assessment on a case-by-case basis. The lists of performance

criteria, success factors, contextual factors and the related indicators for empirical measurement (sections A-1, A-2 and A-3) can serve as guidance for systematic follow-up research.

Finally, the question emerges of whether state authorities may adequately support alternative regulatory institutions in the area of consumer protection on the Internet. Even in the absence of a systematic comparative assessment of the modes of state involvement across the four institutions studied, some conclusions can be derived.

In general, self-regulation efforts on the Internet occur in an atmosphere where there is an assumption of greater barriers to regulation. Nevertheless, there are strong political concerns regarding consumer protection on the Internet and governmental involvement in alternative regulatory institutions, which differ between the countries studied.

Reviewing CAIP (Canada) and ISPAI (Ireland), we can see a long tradition of government involvement in establishing the schemes for codes of conduct.

- The European provider has a relationship with government that has a more substantial tradition of collaboration and governmentality. There has been a longer and far more systematic relationship with the European Commission, which has kept the attention on self-regulation high through the work with various research institutes.
- In Canada, much of the original work was similar, but there has been a less consistent relationship with the government and other entities that reinforce the self-regulatory impulse.
- It is too early to come to a conclusion about New Zealand, and there is too little evidence, or transparency, to truly evaluate Hong Kong. New Zealand seems to be at an intermediate point between ISPAI and CAIP. It does not have the same length of institutional development as Canada, but there is substantial current involvement by a variety of players, which might substantiate the assumption concerning adoption and action.

Further conclusions can be drawn regarding the possibilities for (inter)governmental authorities concerning adoption of alternative modes of regulation at the international level:

- As mentioned above, the extent of internationalisation of alternative modes of regulation varies across continents. While international cooperation in Europe is intense, and EuroISPA and Inhope are engines of further regulatory transnationalisation, the level of internationalisation appears to be less intensive in North America and Australasia.
- Inhope, in particular, serves as an example of alternative regulatory reaction to transnational challenges by means of internationalisation. Inhope can draw on financial support under the EU Safer Internet Action Plan, which suggests the potential of “soft” intervention resources that governmental players can utilise to support self-regulation (e.g. framework agreements, financial subsidies). Such soft intervention resources appear suitable to achieving regulatory goals

regarding consumer protection on the Internet, taking into consideration the overall atmosphere where there is an assumption of a greater barrier to direct “command-and-control state regulation”.

To sum up, the application of parts of the regulatory check list, combined with an assumption-driven approach, yielded numerous illustrative answers to the research question of whether and how success and failure of selected self- and co-regulatory schemes can be explained by their respective institutional design, by characteristics of the industries involved and by the established regulatory environment. The comparative analysis proved the potential of the approach, pointed out its limitations and highlighted several open questions regarding the institutional design and context of the regulatory schemes studied. Most of these could be tackled in systematic follow up research guided by the already elaborated check list of success and contextual factors.

List of Abbreviations

APIA	Asia & Pacific Internet Association
APRICOT	Asia-Pacific Regional Internet Conference on Operational Technologies
ARI	Alternative Regulatory Institution
ATSC	Advanced Television System Committee (<i>USA</i>)
AUP	Acceptable-Use Policy
BIAC	Business and Industry Advisory Committee to the OECD
CAC	Content Advisory Centre of the Content and Multimedia Forum of Malaysia (<i>CMCF</i>)
CAIP	Canadian Association of Internet Service Providers
CAN	Canada
CARA	Classification and Rating Administration of the MPAA
CATA	Canadian Advanced Technology Alliance
CCAICE	Canadian Coalition Against Internet Child Exploitation
CCC	Customer Complaints Code (<i>New Zealand</i>)
CMA	The Communications and Multimedia Act (<i>Malaysia</i>)
CMCS	Center for Media and Communications Studies (<i>Central European University, Hungary</i>)
CMCF	Communications and Multimedia Content Forum of Malaysia
CoC	Code of Conduct
COIAO	Control of Obscene and Indecent Articles Ordinance (<i>Hong Kong</i>)
CoP	Code of Practice
CoP&E	Code of Practice and Ethics
CRS	Congressional Research Service (<i>USA</i>)
CTEL	Commissioner for Television and Entertainment Licensing (<i>Hong Kong</i>)
DBS	Direct Broadcasting Satellite
DNS	Domain Name System
EC	European Commission
ECLG	European Consumer Law Group
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
ECPAT NZ	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes New Zealand
EuroISPA	European Internet Service Providers Association
FCC	Federal Communications Commission (<i>USA</i>)
FTC	Federal Trade Commission (<i>USA</i>)
G	Content Classification: Guidance
HK	Hong Kong
HKITEF	Hong Kong Information Technology Foundation
HKISPA	Hong Kong Internet Service Providers Association
HON	Health on the Net Foundation
ICoP	Internet Code of Practice
ICRA	Internet Content Rating Association

Inhope	International Association of Internet Hotlines
InternetNZ	Internet Society of New Zealand
INSOCNZ	Internet Society of New Zealand (<i>now InternetNZ</i>)
IP	Internet Protocol
IRL	Ireland
ISP	Internet Service Provider
ISPAI	Internet Service Providers Association Ireland
ISPANZ	Internet Service Providers Association of New Zealand
ITA	Institute of Technology Assessment
ITU	International Telecommunication Union
IWF	Internet Watch Foundation (<i>UK</i>)
KFF	Kaiser Family Foundation
MA	Marketing Association (<i>New Zealand</i>)
MAL	Malaysia
MCA	Ministry of Consumer Affairs (<i>New Zealand</i>)
MCMC	Malaysian Communications and Multimedia Commission
MPAA	Motion Picture Association of America
NAB	National Association of Broadcasters (<i>USA</i>)
NAICS	North American Industry Classification System
NATO	National Association of Theatre Owners (<i>USA</i>)
NC-17	No Children Under 17 Admitted
NCC	National Consumer Council (<i>UK</i>)
NCTA	National Cable Television Association (<i>USA</i>)
NICAM	Netherlands Institute for the Classification of Audiovisual Media
NL	Netherlands
NTDs	notice and take down procedures
NZISPA	New Zealand Internet Service Providers Association
NZL	New Zealand
OAW	Austrian Academy of Sciences
OBS	European Audiovisual Observatory
OCW	Ministerie van Onderwijs, Cultuur an Wetenschap (<i>Netherlands</i>)
OECD	Organisation for Economic Cooperation and Development
Ofcom	Office of Communications (<i>UK</i>)
OFTA	Office of the Telecommunications Authority (<i>Hong Kong</i>)
Oftel	Office of Telecommunications (<i>UK</i>)
PG (PG-13)	Content Classification: Parental Guidance is recommended (for viewers under 13)
PSIP	Program System and Information Protocol
PTC	Parents Television Council (<i>USA</i>)
R	Restricted
RM	Malaysian Ringgit (<i>officially: MYR</i>)
RTM	Radio Televisyen Malaysia
TCF	Telecommunication's Carrier Forum (<i>New Zealand</i>)
TDRS	Telecommunications Dispute-Resolution Service
TELA	Television and Entertainment Licensing Authority
TV-MA	Content Classification: intended for mature audiences
TVPG	TV Parental Guidelines (<i>USA</i>)

V-chip	Viewing Television Responsibility Chip
VSDA	Video Software Dealers Association
VWS	Ministerie van Volksgezondheid, Wlzijn an Sport (<i>Netherlands</i>)

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Annex

Evaluation of Performance Criteria

I. Media Content-Rating Schemes (related to report section 2.2)

- 1) Netherlands Institute for the Classification of Audiovisual Media (NICAM, Netherlands) <http://www.kijkwijzer.nl>
- 2) Communications and Multimedia Content Forum of Malaysia (CMCF, Malaysia) <http://www.cmcf.org.my/>
- 3) TV Parental Guidelines & V-Chip (USA) <http://www.tvguidelines.org/>
- 4) Motion Picture Association of America (MPAA, USA) <http://www.mpa.org/index.asp>

1) Netherlands Institute for the Classification of Audiovisual Media (NICAM/Kijkwijzer)

NICAM	Findings
Public awareness	Consumer surveys ¹²³ conducted since the implementation of the rating system in 2001 have shown that more than 90% of parents are now familiar with Kijkwijzer. Of these, 95% think that Kijkwijzer is a useful system, 86% appreciate the combination of advice regarding age and pictograms regarding content; 77% use the advice of Kijkwijzer in practice and 41% of all parents use the Kijkwijzer pictograms (Intomart 2006; NICAM 2007, 23). There is also a high level of awareness among children. According to NICAM, ¹²⁴ “70% of children in the age category 8 to 11 years know what Kijkwijzer is, rising to 93% in the 12 to 15 years category. . . . More than a quarter of the children stated that they also use the pictograms as a source of information when choosing a TV programme, cinema film or video.”
Industry awareness	More than 2200 companies and organisations are affiliated to Kijkwijzer, either through their sector organisations or directly to NICAM ¹²⁵
Awareness across communications sectors and policy makers	The introduction of Kijkwijzer has led to a considerable tightening up of the 16-year age limit in cinemas and in the sale and rental of DVDs and games. ¹²⁶ At the beginning of 2005, NICAM signed a contract with five major mobile operators (KPN Mobile, Orange, Telfort, T-Mobile and Vodafone) based on which these operators introduced the Kijkwijzer system on 1 April 2005. ¹²⁷ “As soon as a mobile-phone user searches for pornographic images or text, a Kijkwijzer icon pops up with a recommended age restriction. For the moment Kijkwijzer only applies to sexually explicit content, but there are plans to extend the application to other types of sensitive material”(Insafe 2005). In the government’s official view, the Kijkwijzer system is a success and has proved its right to exist; in 2004 it received a positive evaluation in parliament. The government and parliament suggested a number of improvements to the system (Bekkers 2005b).
Adoption	On 18 February 2004, the Dutch parliament decided to continue the Kijkwijzer-experiment of the three previous years. “Suggestions, also from outside the political parties, and governmental proposals have been discussed and most of them in all probability will be implemented.” (Hemels 2005b, 14)
Attitude	A 2006 survey by Intomart, on behalf of NICAM, found that only two per cent of parents

	<p>consider Kijkwijzer unreliable. The majority of parents always or often agree with Kijkwijzer.¹²⁸</p> <p>On July 2003, the Media Authority, responsible for overseeing NICAM, ascertained that generally speaking Kijkwijzer works excellently. The authority arrived at this conclusion following an analysis of the data from the NICAM Quality Monitoring report 2006.</p> <p>In June 2003 the European Commission published a study¹²⁹ on the rating practice used for audiovisual works in the European Union. The EC study recommends the NICAM rating system as a most effective and successful model that could be applied elsewhere with the aim to reach uniformity in treating content in EU through a uniform rating system.</p> <p>“In the Netherlands, the classification process itself can be completed online within 10 minutes, although it requires the applicant companies to have staff trained by NICAM in order for them to become official ‘coders’ and consequently legitimately responsible for the in-house rating procedures. This use of online procedures constitutes a case for ‘best-practice’. In the other countries, the process is more time consuming.” (Olsberg/SPI 2003, 56)</p>
Action	<p>Since the introduction of Kijkwijzer, the number of complaints has risen every month. In 2002, 500 complaints were received by NICAM. In 25 cases the complaint went to the Complaints Committee, who passed a verdict. The office of NICAM dealt with the other 475 complaints, for example gave an explanation of the system in accordance to the complaint. In 2003, 450 complaints were received, 40 of which went to the Complaints Committee. Most complaints are filed by private persons, mainly online on the Kijkwijzer Website. One in ten complaints is not serious. “A third of all complaints are dealt with inside a week and four out of five cases are closed within four weeks.”¹³⁰</p> <p>Recent years, however, have seen a decline. According to the NICAM 2005 Annual Report, they received 293 complaints of which 29 were considered by the Complaints Commission. In 2004 they received 517 complaints of which 50 were sent to the Complaints Commission.¹³¹</p>
Assessment	<p>NICAM, and Kijkwijzer, are widely known, adopted and respected, which explains their success. Of interest are the high amount of complaints – which in fact may be related to the high level of public awareness about the rating system, and its complaints process.</p>

2) Communications and Multimedia Content Forum of Malaysia (CMCF)

CMCF	Findings
Public awareness	<p>There are no survey results available, yet according to an official document from the Malaysian Communication and Multimedia Commission (MCMC): “CMCF has ... undertaken several activities for the purposes of publicity and creating greater awareness of its role and functions. In relation to this, CMCF conducted several media interviews and participated in 18 seminars, exhibitions and conferences nationwide.”¹³²</p> <p>In an article reviewing the Malaysian efforts, Eneng Faridah Iskandar, Director of content regulation at MCMC, stated that: “for a code to be properly implemented there must be a body of complaints to drive it and one of the major issues that the Content Forum faces is lack of awareness of the Content Forum as an avenue for complaints. In this regard, the Content Forum with the Commission has embarked on a series of roadshows and publicity campaigns which are aimed at creating greater awareness of the Content Forum and the Content Code to the general public”¹³³.</p>
Industry awareness	<p>The CMCF membership is open to six member categories summing up all the relevant industries: advertisers, audiotext service providers, broadcasters, content creators/distributors, Internet access service providers and civic groups. At present there are 46 members listed on the CMCF Membership webpage, of which eight were broadcasters:¹³⁴</p> <p>Speaking to the journal BizWeek on March 24, 2007, Tony Lee, the CMCF Chairman, said that “the Industry people in particular are very clear about the self-regulatory environment, and the next step is to make the public at large – parents, consumers, everybody – aware of</p>

	this.” ¹³⁵
Awareness across communications sectors and policy makers	Starting from 2004, the Malaysian Communications and Multimedia Commission (MCMC) has been holding annual dialogues with industry representatives where the CMCF has a major role in publicising the importance and effectiveness of the content code for the provision of services. ¹³⁶
Adoption	In his 2006 report, the chairman highlighted signs of possible intervention by the authorities to ban certain broadcast content: “Recent situations indicate that some authorities are reluctant and unwilling to understand the nature of self-regulation. There are cries that the content on television is polluting the morals and culture of this country that pan-Asian faces, though Malaysian citizens, cannot be featured in commercials, that fast-food is bad...” ¹³⁷ Further, not all broadcasters are using the same programme classifications shown on TV. According to Mr Lee, the chairman: “We want to see the same color and the same typeface across the channels to communicate the message better.” CMCF does not cover RTM1, RTM2 and Astro channels, as these are not governed by MCMC. “In the future it is the MCMC’s vision to have every broadcaster under one set of rules and guidelines and CMCF supports it,” Lee indicated in the same article. ¹³⁸ Finally, according to Mr. En Mohd Mustaffa Fazil Mohd Abdan, Executive Director of CMCF, ¹³⁹ most of the TV stations only follow the mandatory ratings from the Film Censorship Board of Malaysia, and thus hardly use the CMCF classifications.
Attitude	Because the CMCF is relatively young, there were no reliable sources available that could provide evidence regarding the public perception of CMCF. However, some sources have indicated that “some authorities are reluctant and unwilling to understand the nature of self-regulation.” ¹⁴⁰
Action	In 2006, CMCF received and resolved 13 complaints and attended to four requests for content advice ¹⁴¹ . On why there have been so few complaints, speaking to The Star, on 22 April 2006, Mr. Lee said that one reason is that CMCF does not accept verbal complaints (it seems citizens tend to express their grievances verbally instead of using the standard complaint forms) – the complainant needs to write, provide full details and sign – whereas most people are afraid to disclose their identity when filing such complaints. ¹⁴² Speaking to the journal BizWeek on 24 March, 2007, Mr. Lee indicated that he feels that the CMCF complaints bureau – created in order to receive and mediate complaints on alleged breaches of the Content Code – “is being underutilized.”
Assessment	While industry and government are supporting CMCF, public awareness seems to be lacking, and is considered as a priority area for improvement by CMCF. Subsequently, the complaints process is underutilised (which may also be explained by cultural factors).

3) TV Parental Guidelines & V-Chip (USA)

TV Parental Guidelines	Findings
Public awareness	According to a 2004 Kaiser Family Foundation survey, ¹⁴³ (1) only 15% of all parents have used the V-chip; (2) 26% of all parents have not bought a new television set since January 2000 (when the V-chip was first required in all sets); (3) 39% of parents have bought a new television set since January 2000, but do not think it includes a V-chip; and (4) 20% of parents know they have a V-chip, but have not used it. In addition, 50 % of all parents surveyed (1,001 parents were interviewed) stated that they have used the TV ratings. The 2004 KFF study indicated that even after years of being available, only 42% of parents who have a V-chip and are aware of it actually use it. Of the parents who had used the V-chip, 89% found it “somewhat” to “very” useful while overall, 20% of parents had never even heard of the rating system. But about four in ten parents (39%) stated that most programmes are not rated accurately, and many parents did not fully understand what the various rating categories mean. For example, only 24% of parents of young children (two-six years old) could name any of the ratings that would apply to

	<p>programming appropriate for children that age. Only 12 % of parents knew that the rating FV (“fantasy violence”) is related to violent content, while 8 % thought it meant “family viewing.” One in five (20 %) parents said that they had never heard of the TV rating system, an increase from 14 % in 2000 and 2001. A more recent survey indicates that only 8 % of respondents could correctly identify the categories” (FCC 2007, 15f.).</p> <p>According to the most recent study conducted by the Parents Television Council – PTC, “A new Zogby survey indicates that fewer than 15% of consumers are using the V-Chip. One likely reason for this abysmal adoption rate is that parents realize what the networks don’t want to admit – that the V-Chip doesn’t work.”¹⁴⁴</p>
Industry awareness	<p>Given the voluntary nature of the rating, it is hard to assess the awareness across industry, yet according to the FCC: “Most television programs are now assigned a rating according to a system established by the broadcasting industry”¹⁴⁵</p>
Awareness across communications sectors and policy makers	<p>“Under current legislative and regulatory mandates, the V-chip is only required to ‘read’ the TV Parental Guidelines and the MPAA (movie) Ratings. This means that any independent system can only be used to augment parental knowledge, not to program the V-chip. So, while a range of varied, independent rating systems can serve to provide additional information to parents, they cannot be used with the current closed V-chip technology. In order for these ratings to become as useful as possible, the V-chip would have to be able to read them.” (Moloney Figliola 2005, 12)</p>
Adoption	<p>According to an FCC report released in April 2007: “The Parents Television Council (‘PTC’) and the Annenberg Public Policy Center ... have conducted studies indicating that the voluntary TV rating system is inaccurate, inconsistently applied, and cannot fully address parental concerns over children’s TV viewing. An economist studying the question of why networks consistently ‘underlabel’ their programs concluded that they are likely responding to economic incentives. He found that programs with more restrictive ratings command lower advertising revenues. The desire to charge more for commercials and fear of ‘advertiser backlash’ over shows with more restrictive ratings ‘means that networks have incentives to resist the provision of content-based information’.” (FCC 2007, 15f.)</p>
Attitude	<p>The same FCC report, which summarises the results of research on the rating practice, reports that there are very many indications that the performance of the scheme is poor, also in terms of awareness.¹⁴⁶ “In this Report, we find that although the V-chip and TV rating system appear useful in the abstract, they are not effective at protecting children from violent content for a number of reasons. In particular, we find that the TV rating system has certain weaknesses that prevent parents from screening out much programming that they find objectionable.” (FCC 2007, 3)</p>
Action	<p>The Parents Television Council has been conducting studies ever since the ratings were introduced. At least half a dozen studies conducted by the council and others have documented persistent problems with the application of the TV ratings. The latest data (PTC 2007) reveals that content descriptors are not being consistently used by any of the broadcast networks during prime time viewing hours. Two-thirds (67%) of the shows reviewed for this analysis containing potentially offensive content lacked one or more of the appropriate content descriptors. Other PTC 2007 findings include:</p> <ul style="list-style-type: none"> • “54% of shows containing suggestive dialogue lacked the “D” descriptor. • 63% of shows containing sexual content lacked the “S” descriptor. • 42% of shows containing violence lacked the “V” descriptor. • 44% of shows containing foul language lacked the “L” descriptor. • On ABC, 100% of the TV-14 rated programs lacked one or more descriptors. • 92% of NBC’s TV-14 rated programs lacked one or more descriptors. • On CBS, 73% of the TV-14 rated programs containing sexual content lacked the “S” descriptor. • None of the programs included in this analysis received a TV-MA rating, meaning every program was deemed appropriate by the networks to be viewed by a child aged fourteen or younger, including (for example) an episode of C.S.I. Miami in which a woman died of asphyxiation during an oral rape.”¹⁴⁷
Assessment	<p>The parental guidelines may be known by the public, but are certainly poorly understood. Further, the V-Chip, as a filtering device, is hardly used. One of the biggest concerns with</p>

	the performance of the parental guidelines involves the belief (and evidence) that the ratings are used inconsistently and incorrectly, undermining the public trust in the rating scheme.
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4) Motion Picture Association of America (MPAA)

MPAA	Findings
Public awareness	<p>According to an important 2000 report by the Federal Trade Commission (FTC) reviewing the rating practices: "A high percentage of parents are familiar with motion picture ratings (surveys show more than 90% awareness) and a large majority (more than 70%)¹⁴⁸ find the ratings useful . . . Consumer survey evidence suggests that parents want more from the movie rating system. Although it appears that over 90% of parents are familiar with motion picture ratings and about 75% find the ratings useful, some surveys show the system could do a better job of informing parents about the level of violence in movies. For example, a survey of parents conducted by the Commission for this Report in May and June 2000 found high satisfaction with the movie rating system in general but much less satisfaction regarding the information about violence the system provides: 50% of the parents surveyed said the movie rating system does a fair or poor job of informing them of the level of violence in a movie, while 48% stated the rating system does an excellent or good job. Similarly, a Gallup poll conducted in June 1999 reported that 58% of the respondents believed that the movie industry does not provide adults with enough information about violent content to make decisions about what is appropriate for children, while 40% stated that it does."</p> <p>A 2007 follow-up to the 2000 FTC report stated that "Parents continue to report a relatively high satisfaction level with the MPAA system. Nevertheless, the MPAA system has been criticized as lacking independence, being overly subjective and devoid of child development expertise, and not fulfilling the information requirements of parents and consumers."¹⁴⁹</p>
Industry awareness	<p>According to MPAA, the awareness and use of the rating system by cinema owners and video retailers is widespread: "Motion picture theater owners, who co-founded the rating system in 1968, were the first group in the entertainment industry to voluntarily enforce its guidelines. NATO [National Association of Theatre Owners] estimates that the majority of the theater owners in the nation observe the rating system. In the mid 1980s as home video grew in popularity, video retailers joined theater owners in embracing the voluntary guidelines of the rating system. Parents who relied on the rating system found that the information provided by the rating classifications were equally helpful in home video. To facilitate its use, ratings are displayed on both the entire home entertainment package and the videocassettes and DVDs themselves. The Video Software Dealers Association (VSDA), which is the major trade association for video retailers in the United States, has adopted a policy (so called 'Pledge to Parents') which strongly endorses the observance of the voluntary movie rating system by video retailers."¹⁵⁰</p>
Awareness across the communications sectors and policy makers	<p>In relation to the TV Parental Guidelines and V-Chip: "Under current legislative and regulatory mandates, the V-chip is only required to "read" the TV Parental Guidelines and the MPAA (movie) Ratings. This means that any independent system can only be used to augment parental knowledge, not to program the V-chip. So, while a range of varied, independent rating systems can serve to provide additional information to parents, they cannot be used with the current closed V-chip technology. In order for these ratings to become as useful as possible, the V-chip would have to be able to read them."¹⁵¹</p>
Adoption	<p>According to the MPAA, the adoption by industry is high: "No one is forced to submit a film to the Board for rating, but the vast majority of producers/distributors opt to do so. Any producer/distributor who wants no part of any rating system is free to go to the market without any rating, or with any description or symbol they choose, as long as it is not confusingly similar to the G, PG, PG-13, R, and, NC-17. The rating symbols are federally registered certification marks of the MPAA and may not be self-applied."^{152 153}</p> <p>The FTC reports confirmed this: "Although the system is voluntary, all MPAA member companies have agreed not to distribute a film without a rating. As a result, the vast majority of films are rated."¹⁵⁴</p>

	The NATO indicated a high adoption by cinema owners: "While the decision to enforce the rating system is purely voluntary, the National Association of Theatre Owners estimate that the majority of theaters observe the Classification and Rating Administration's guidelines." ¹⁵⁵
Attitude	According to MPAA: "Nationwide scientific polls, conducted each year by the Opinion Research Corporation of Princeton, New Jersey, have consistently given the rating program high marks by parents throughout the land. The latest poll results show that 78% of parents with children under 13 found the ratings to be 'very useful' to 'fairly useful' in helping them make decisions about what movies their children see." ¹⁵⁶ However, parents and filmmakers have recently criticised the secrecy of the decision-making process of the rating system. ¹⁵⁷ In response the MPAA has pledged to become more transparent.
Action	A 2004 FTC report shared their findings regarding enforcement in cinemas: "In connection with two previous reports, the Commission conducted nationwide undercover studies to determine the extent to which unaccompanied children under 17 were able to purchase tickets to R-rated films. In its September 2000 Report, the Commission reported that almost half of the theaters studied sold tickets to the 'mystery shoppers', and the Commission found a similar result in its December 2001 Report. In response to these reports, the MPAA, the NATO, the VSDA, and individual motion picture studios have continued to urge theater owners and video retailers to improve their enforcement of the rating system. The Commission conducted its third undercover survey in July and August 2003. The results indicate an improvement in theaters' performance in restricting children's access to R-rated motion pictures: only 36% of the 'mystery shoppers' were able to buy tickets to R-rated films, as compared to 48% in the 2001 survey. In addition, more theaters checked the ages of the teen shoppers, increasing from 39% in the 2001 survey to 48%." Critics have complained about the abuse of the ratings by the film industry: "The film industry uses it to their advantage as a marketing tool. They are required, in compliance with the MPAA, to place the film's rating prominently on all advertisements for their films. Because of this, naturally they do so in whatever way they see most suited for their advertising. This seems to happen almost unconsciously. If a film's studio believes the rating will be to their benefit, it is placed more prominently in newspaper ads, movie posters, and other assorted publicity. If however they feel the film could be harmed by the rating, it's featured less prominently. Furthermore, although NC-17 is not intended as a stamp for censorship, few 'respectable' movie theaters in the country will show NC-17 films. These and other reactions to the MPAA Rating System not only show a misunderstanding among the very people participating in the system, but also this misunderstanding and redirection of information is filtered down to the public as a whole." ¹⁵⁸
Assessment	On the whole, the MPAA rating system is well known, used broadly by the film industry and considered useful by parents. The lack of transparency in how the ratings are determined, and the way ratings are used in film marketing have however generated a growing group of critics.

II. Internet Codes of Conduct (related to report section 3.2)

- 1) Canadian Association of Internet Service Providers (CAIP) <http://www.cata.ca/Communities/caip/>
- 2) Internet Society of New Zealand (InternetNZ) <http://www.internetnz.net.nz/>
- 3) Internet Service Providers Association of Ireland (ISPAI) <http://www.ispai.ie/>
- 4) Hong Kong Internet Service Providers Association (HKISPA) <http://www.hkispa.org.hk/>

1) Canadian Association of Internet Service Providers (CAIP)

CAIP	Findings
Adoption	<p>In 1996, CAIP became one of the first Internet industry associations in the world to develop a code of conduct. CAIP membership comprises over 110 member companies throughout Canada,¹⁵⁹ including commercial Internet service providers (ISP's) as well as enterprises interested or involved, directly or indirectly, in the industry of Internet service provisioning.¹⁶⁰ Adoption of CAIP's Code of Conduct is voluntary for CAIP members, and there is no readily apparent way by which a consumer can verify, at the level of the Association, whether or not a current member complies with the code's principles. Some CAIP members state on their own Web sites that they adhere to the code. "Moreover, an ISP need not agree to comply with the Code to become a member, or stay a member, of CAIP. This eliminates the possibility of using loss of membership as a way to punish behavior that runs contrary to the Code."¹⁶¹</p> <p>According to Christopher Knight, CAIP has 106 ISP members and 38 affiliates — vendors that sell to ISPs.¹⁶² According to Statistics Canada there have been more than 467 ISPs operating in Canada.¹⁶³ In sum, membership in CAIP is <30% of the Canadian ISP market. According to a joint statement by the Canadian minister of industry and justice: "Many Internet service providers, including cable, telephone and independent companies, have implemented a variety of practices to help their customers have a safe Internet experience. These practices include providing information on Internet safety, operating complaint lines and making available Internet filtering software or information on where customers can obtain such software. Most Internet service providers have 'acceptable use policies' and 'terms of service policies' in place that define acceptable on-line behavior, and many adhere to a code of conduct. The Canadian Association of Internet Providers code of conduct states that members will cooperate with law enforcement officials and adhere to Canada's laws."¹⁶⁴</p>
Awareness	<p>Principle 3 of the CAIP Code of Conduct states that "CAIP members are committed to public education about Internet issues and technology."¹⁶⁵</p> <p>"The main aims of CAIP are to:</p> <ul style="list-style-type: none"> • provide effective industry advocacy respecting public policy and regulatory matters (e.g. access, copyright, privacy and security issues, e-commerce guidelines) affecting Canada's ISP industry; • promote a positive image for the Internet industry and the Association through pro-actively educating Canadians about, and building awareness of Internet industry issues; and • offer value to members through the timely communication of relevant business information."¹⁶⁶ <p>CAIP was also instrumental in establishing CCAICE (the Canadian Coalition Against Internet Child Exploitation) and along with individual members of CAIP has been very</p>

	<p>active in developing a national action plan designed to help protect children from online sexual exploitation and to assist in bringing those who victimise children to justice. In a press release CAIP stated that this is a “significant step in helping to win the battle against online child exploitation. It is also another way in which Internet Service Providers are working collaboratively with public agencies and law enforcement to deal with this problem.”¹⁶⁷</p> <p>Through its webpage, CAIP encourages all Canadians to learn about the great potential the Internet provides. It provides advice and tips on how to make the experience a safe one by making available sources like: Cybertip.ca (provides the public with a mechanism to report illegal content on the Internet, and facilitates the investigation and prosecution of those who use the Internet to victimise children); WebAware (provides the tools parents need to help keep children safe online); ICRA (Internet Content Rating Association – provides an important self-regulatory tool for labeling websites).¹⁶⁸</p>
Attitude	<p>CAIP is often used as a model of self regulation. For instance:</p> <p>“At the media launch of the Centre’s seventh annual report on Internet Hate and Terrorism, Rabbi Copper (Associate Dean of the Simon Wiesenthal Centre’s Snider Social Action Institute, based in Los Angeles) presented a plaque to CAIP Chairman Tom Copeland, thanking CAIP for its support in fighting hate on the Internet and working to encourage the responsible use of the internet . . . ‘CAIP is an example of how a working partnership can move swiftly to deal on an issue – we are grateful for CAIP’s support and leadership . . . When I travel internationally, I use Canada and CAIP as models of the right way to fight hate and terrorism on the Internet,’ said Rabbi Abraham Cooper.”¹⁶⁹</p>
Action	<p>There is no concrete evidence regarding compliance and complaints with CAIP’s Code of Conduct. In considering the question of the potential liabilities faced by ISPs, Margo Langford (CAIP representative to BIAC/OECD Forum: Internet Content Self-Regulation, Paris, 25 March 1998) indicated that “not enough people know about the existence of the CAIP code, and the media continues to project a negative image of the Internet. Furthermore, very few complaints are actually made, and responses are not consistent.”¹⁷⁰</p> <p>In addition, some have complained that “the way in which complaints are handled by the Association is not clearly specified, which negatively impacts upon both the transparency and accountability dimensions of the Code.”¹⁷¹ According to Principle 6 of CAIP Code of Conduct – “CAIP members will make a reasonable effort to investigate legitimate complaints about alleged illegal content or network abuse, and will take appropriate action. – Commentary 6.2 Information about the procedures to receive and respond to complaints or inquiries established by each CAIP member, shall be made available to users.” Prior to taking action, CAIP members will:</p> <ul style="list-style-type: none"> • conduct an internal review to determine the nature and location of the content or abuse, and where warranted; • consult with legal counsel and/or outside authorities, and/or; • notify the content provider or abuser of the complaint, with a request for a response within seven days (Commentary: 7.1 Notice is generally only given when the abuser is a customer of a CAIP member or the illegal content has been published by a customer of the CAIP member).¹⁷² <p>In addition, the CAIP Code of Conduct does not contain provisions on sanctions to be imposed on ISPs in case of non-compliance with the principles regarding illegal content.</p> <p>“The Government of Canada has participated in the development of several voluntary codes, including the Canadian Standards Association’s Model Code for the Protection of Personal Information, and more recently the Principles of Consumer Protection for Electronic Commerce. The Government of Canada has also produced a guide called Voluntary Codes: A Guide to Their Development and Use that may be helpful to those involved in code development or implementation”¹⁷³</p>
Assessment	<p>While the CAIP code was the first Internet code of conduct, and has since been used by many outside of Canada as a “model”, the enthusiasm for the code among Canadian stakeholders, as measured in adoption and compliance, seems to have decreased over the years.</p>

2) Internet Society of New Zealand (InternetNZ)

InternetNZ	Findings
Adoption	<p>According to Statistics NZ, there are 57 ISPs operating in New Zealand currently. Keith Davidson (InternetNZ, Executive Director) says that around 30 ISPs are InternetNZ members.¹⁷⁴</p> <p>According to the InternetNZ, a code of practice is presently being developed and is approximately six months away¹⁷⁵. "This is an effort in industry self-regulation to get best practice standards followed across the industry: in the interests of consumers, of providers and so on."¹⁷⁶</p> <p>Drafting the code proved to be a much tougher job than anticipated. "The society has not even managed to appoint a person to co-ordinate the work towards the code yet, and is unlikely to do so before late April, executive director Peter Macaulay says. A number of crucial decisions still need to be made, such as whether formulation of the code will involve just ISPs or the broader community, and whether ISPs will be actively involved in the drafting of the code from the beginning. The alternative will be to draft the code and present it to ISPs for sign-up or criticism and amendment... Some of the major ISPs are still diffident about the need for a code, though Macaulay sees the largest, Xtra, as having come round from an opposed to a neutral position. 'We certainly have to have all the leading ISPs involved,' he says. Without them, there's be no point in doing it."¹⁷⁷</p> <p>"While InternetNZ is developing a draft code of practice for ISPs the issue of content safety is largely unaddressed. The recent consideration and enactment of the Films, Videos and Publications Classification Amendment Act 2005 prompted consideration of the issue of what obligations ISPs should be subject to in relation to the hosting of 'objectionable' material. It was determined that ISPs should not be liable for distribution offences without the requisite mental elements. It was considered that ISPs could not reasonably monitor all the electronic material on the Internet because of the volume and changing nature of material subscribers can access, limitations placed by privacy legislation, and the unreliability of automated filters."¹⁷⁸</p>
Awareness	<p>From the InternetNZ draft COP:</p> <p>"2. ACCESS TO THE INTERNET CODE OF PRACTICE - Minimum Standard:</p> <p>2.1 All Signatories of the Internet Code of Practice must use best endeavors to inform their customers of their adherence to the Code, and of the existence of the Complaints Procedure in the Code. This shall include the following methods:</p> <ul style="list-style-type: none"> • Provide information about the Code along with its Internet service agreements with customers and users, and strongly recommend that their customers and users within New Zealand comply with the Code; • Include in a prominent location on their web-sites the logo of the Internet Code of Practice, a statement of support by the ISP of the Code of Practice, and a link to the Code of Practice document; • Provide a link to the Internet Code of Practice Home Page, which will provide information to the client about their rights under the Code."¹⁷⁹ <p>"8.1 The Executive Body shall undertake appropriate activities to ensure that consumers and industry are aware of the Code and understand its obligations."</p> <p>Regarding consumer awareness on complaints procedure, "each Signatory shall produce information in plain language which shall explain the following issues: how a customer can gain access to the procedure; how the procedure works; The timeframes within which the procedure will be carried out; and the customer's right to access the Code of Practice Complaints Procedure or the legal system if dissatisfied with the Company's decision or the way it has been reached. Signatories must use reasonable means to bring this information to the attention of their Customers."¹⁸⁰</p>
Attitude	Not applicable (as the code is still in the process of development)

Action	<p>One issue that has been causing the delay in adopting a CoP concerns penalties for non-compliance, says InternetNZ executive director Keith Davidson. “Some ISPs are happy with a bare set of instructions on how to be a good member of the ISP industry. But others want to have enforceable penalties for offences such as failing to back-up a customer’s data or allowing a customer’s domain name to expire. The TCF code is, basically, a dispute-resolution scheme, but if a dispute cannot be resolved via corrections and apologies an ISP subscribing to the code could have a ‘determination’ enforced against it, carrying a fine of up to \$12,000, some or all of which may be paid to the aggrieved customer. Davidson sees the possibility of two codes operating together, with InternetNZ’s code of practice setting out standards for ISPs and the TCP dispute-resolution scheme providing forceful back-up in the case of serious breaches. ‘We want to see progress on [the internet code of practice] in this calendar year,’ Davidson says. But he admits it is doubtful much work can be done on it given that other large issues — including the reforms to telecoms law and copyright law — are now occupying InternetNZ.”¹⁸¹</p> <p>From the 2006-2007 Annual Report of InternetNZ: “INTERNET CODE OF PRACTICE – The decision has been made to adjust the Internet Code of Practice to complement the TCF’s new Customer Complaints Code and Telecommunications Dispute Resolution Service. The Internet Code of Practice will provide for best practice in supply of Internet services while not requiring the same level of overhead in enforcement that was originally envisaged. A working group has been formed to progress this long-standing project.”¹⁸²</p> <p>“The recent consideration and enactment of the Films, Videos and Publications Classification Amendment Act 2005 prompted consideration of the issue of what obligations ISPs should be subject to in relation to the hosting of ‘objectionable’ material. It was determined that ISPs should not be liable for distribution offences without the requisite mental elements. It was considered that ISPs could not reasonably monitor all the electronic material on the Internet because of the volume and changing nature of material subscribers can access, limitations placed by privacy legislation, and the unreliability of automated filters.”¹⁸³</p> <p>“The Internet in New Zealand is self managed, meaning that there is no specific government legislation with regards to Internet matters, which are covered under general government legislation.”¹⁸⁴</p>
Assessment	<p>The failure to finalise the code is the result of competing forces and voices within the industry, generating a lowest-common-denominator atmosphere among industry players regarding content control.</p>

3) Internet Service Providers Association of Ireland (ISPAl)

ISPAl	Findings
Adoption	<p>Membership of ISPAl is voluntary and requires adoption of the ISPAl Code of Practice and Ethics.</p> <p>There are currently around 56 ISPs operating in the Irish ISP Market.¹⁸⁵ According to the ISPAl website, the 22 members of ISPAl, comprising Internet access and hosting providers, have agreed with the Irish government that a self-regulatory approach to the industry has greater opportunities for success and effectiveness. "As part of this, the ISPAl established the www.hotline.ie service which permits members of the public to report suspected child pornography or other illegal content they may encounter on the Internet. The Hotline has been in operation since November 1999. In addition, a common Code of Practice with a common Acceptable-Use-Policy (AUP) were adopted. ISPs agree to adhere to this when they become members of the ISPAl."¹⁸⁶</p> <p>According to the Internet Advisory Board Chairman: "To have a meaningful effect, any code of practice must have the support of all members of the industry it seeks to regulate. Accordingly in view of the importance of the codes for self-regulation, the Advisory Board will be closely monitoring the implications of any unevenness in subscribing to the code."¹⁸⁷</p> <p>"Each member of the association is an Internet Service Provider in the Irish market and nominates one representative to attend the monthly board meetings. Each member also makes a financial contribution to the running of the association and a commitment to develop and enforce the necessary code-of-practice and common AUP."¹⁸⁸</p>
Awareness	There are no survey results available. The ISPAl run seminars on a regular basis for parents and other groups to promote safer use of the Internet, particularly by children, and to promote visibility of the hotline. ¹⁸⁹
Attitude	There are no results available, beyond the annual review of the ISPAl Hotline activities, which are judged to be very successful. ¹⁹⁰
Action	2005 Report on Complaints – by Paul Durrant, General Manager, ISPAl, and EuroISPA Council Member: "To date, there have been no valid complaints made about any of ISPAl members in relation to content, and any minor transgressions of operational details have been quickly fixed when brought to the operator's attention. The Hotline has been widely used and reports from the public have continued to increase year on year. Again, to date, all reports determined by the Hotline to be probably illegal under Irish law have been found to be hosted outside the jurisdiction and had to be passed through Inhope or International Police channels. Hence, in the IAB review discussions that have taken place so far, there is very much a view of 'let's not try to fix something that isn't broken'." ¹⁹¹
Assessment	The ISPAl Code of Conduct seems to be well supported and adopted by both industry and government. Adopting the code is a mandated requirement of joining the ISPAl. Overall the code seems to be a valuable complement of the hotline which is what the public associates with ISPAl.

4) Hong Kong Internet Service Providers Association (HKISPA)

HKISPA	Findings
Adoption	<p>According to a 1997 article: "We have consulted all our members in drawing up the code of practice and the practice statement and have obtained their full support in its implementation. All our members agree that they have an important social responsibility to fulfill, the group said. The HKISPA's 40 members provide services that cover about 95 percent of the Internet market in Hong Kong."¹⁹² – Currently, in 2007, there are 56 HKISPA members as listed on HKISPA website.¹⁹³ In total 176 ISPs hold a license for Internet</p>

	service provision. ¹⁹⁴
Awareness	No substantial evidence
Attitude	No substantial evidence
Action	<p>According to a "Report of the Hong Kong Special Administrative Region under the Convention of the Rights of the Child,"¹⁹⁵ released in October 1997, the Hong Kong Internet Service Providers Association (HKISPA) (with the government's assistance) adopted a self regulatory code of practice that addressed the question of obscene and indecent materials on the Internet in the spirit of the COIAO. A complaint handling mechanism was also established. In January 1999, TELA conducted a review of these arrangements. Its findings indicated that the self-regulatory regime was effectively and satisfactorily dealing with objectionable web sites and public complaints."</p> <p>In 1998, the following information regarding complaints cases was made public:¹⁹⁶ "Since the implementation of the Practice Statement in October 1997, HKISPA has received a total of 20 complaints, 17 of which involved obscene material. No further action could be taken on ten cases because in five cases the material under complaint no longer exist; in another three cases, the complainants had failed to provide sufficient information and in the remaining two cases, the material concerned had originated from overseas and was outside the jurisdiction of Hong Kong. Of the remaining ten complaint cases, the Web sites of three cases have been blocked by the ISPs concerned. For two cases which involved Web pages with hyper link to other pornographic Web pages, the ISPs concerned have disconnected the hyper link in question. The remaining five cases have been referred to the Police for further investigation, one resulted in the arrest of a youngster for publication of obscene articles."</p> <p>Commissioner for Television and Entertainment Licensing (CTEL), Mr Eddy Chan, at the Symposium on Protection of Children Online 2002: "Since the implementation of the Code of Practice in October 1997, the Association has received a total of 141 complaints. Of these, 33 complaint cases required follow-up actions. The web sites of seven cases with obscene content, which were hosted overseas, were blocked or had the hyper-link removed by the Internet Service Providers concerned. The remaining 26 cases were referred to the Police for further investigation and prosecution. Of these, 13 cases resulted in convictions leading to a penalty ranging from one to six months imprisonment, and three cases which involved minors under the age of 18, were dealt with under the Superintendent's Discretion Scheme. The Police was unable to take further follow-up actions on the remaining 10 cases because of insufficient evidence. For those 108 cases on which no further action could be taken, these were mainly sites which had already disappeared upon investigation or their publication was in full compliance with the relevant statutory provisions."¹⁹⁷</p>
Assessment	While there is hardly any up-to-date information available regarding HKISPA's Code of Practice, the early adoption and review of the code's effectiveness was considered to be successful. No information was found that proved its effectiveness may have been weakened in recent times.

Endnotes

A Analytical Framework

¹ Given the limited literature on performance criteria for self- and co-regulation, we were mainly informed by the growing literature on assessing the performance of “regulation”. In particular we consulted: Ayres/Braithwaite (1992); Baldwin/Cave (1999); Braithwaite/Drahos (2000); Cook et al. (2004); Hutter (2001); Lindblom (1977); Loughlin/Scott (1997); Majone (1999); Ogus (2001); O’Neill (2002); Parker (2002); Vogel (1996); Wilson (1980).

² See Latzer et al. (2002, 152f.) who presented a set of factors in form of a “regulatory check list”. This basic check list and the amendments developed for this report are based on analyses of: Gupta/Lad (1983); Ayres/Braithwaite (1992); Rees (1994); Gunningham/Rees (1997); Swire (1997); Office of Regulation Review (1998, D4f.); Gunningham/Sinclair (1999); Tasman Asia Pacific (2000, 9f.); Cabugueira (2000); Newman/Bach (2003); Puppis et al. (2004); Just et al. (2007); Schuppert (2006); Latzer (2007).

³ The check list summarises factors and criteria that proved most helpful for empirical analysis of alternative regulatory institutions. However, the lists are not exhaustive and additional factors may be considered depending on the analytical objectives. The Office of Regulation Review (1998) mentions the *incentives* for individuals and groups to develop and comply with self-regulatory arrangements (industry survival, market advantage) and *cost advantage* as further factors. Tasman Asia Pacific (2000) argues that the effectiveness of self-regulation also depends on the *characteristics of products* (homogeneous / heterogeneous) and on *external costs*.

⁴ For a systematic application of these factors to analyse selected regulatory challenges (interconnection, market transparency for e-commerce, spam) see Latzer et al. (2002, 152ff.); Just et al. (2007).

⁵ It is very high for example in the case of an accident in a nuclear power station, but low if a single television movie is classified inadequate.

⁶ Self-regulation in the direct-marketing industry, for example, has generally been introduced with the aim of protecting the reputation of the branch (Latzer/Saurwein 2007, 56).

⁷ See Latzer/Saurwein (2007) for an overview on degree and forms of governmental involvement in self-regulatory institutions.

⁸ Advantages, disadvantages and institutional/organisational success factors of alternative modes of regulation are discussed by: Cane (1987); Boddewyn (1988); Ayres/Braithwaite (1992); Wiedemann (1994); Michael (1995); Ogus (1995); MCA (1997); Office of Regulation Review (1998); Campbell (1999); King/Lenox (2000); NCC (2000); Task Force on Industry Self-Regulation (2000); NCC (2000); ECLG (2001); Liikanen (2001); Oftel (2001); Latzer et al. (2002); Just/Latzer (2002a); Ofcom (2004).

⁹ Objectives of a scheme may either complement or substantiate/concretise governmental/statutory regulatory provisions.

¹⁰ The level of the “openness” of an alternative regulatory organisation for external review by interested parties is influenced by decisions of the organisation. An organisation may decide to publish performance reports, to establish an information bureau or to actively participate in reviews by third parties. However, the decision if the interested third parties (e.g. stakeholders) are in fact reviewing an alternative regulatory organisation and its performance depends on the decisions of the respective third parties. Hence, the external review factor depends on an organisational success factor (openness for review) on the one hand and a contextual factor (decision for external review) on the other.

¹¹ See Ofcom (2004, 12).

¹² Here it has to be recognised that the ability to cope with transnational regulatory challenges mainly depends on the existence of recognised international organisations and on the modes of cooperation within these international organisations (contextual factors). However, a national organisation can decide whether or not to participate in such an international organisation (e.g. via membership) and/or to cooperate with other national regulatory organisations (e.g. via bilateral agreements). Hence, “international involvement” is referred to as an institutional/organisational success factor because the

decisions for involvement/non-involvement or cooperation/non-cooperation are taken on the level of the national organisation.

B Comparative Analysis of Selected Cases

1 Overview and Approach

¹³ Moreover, a reduction of factors was necessary because of the limited resources allocated to this research project. The list of success and contextual factors (section A-2 and A-3) could guide systematic follow-up research on further factors.

¹⁴ It goes without saying that the quality of empirical assessments increases with the number of factors researched.

2 Media Content-Rating Schemes in the Film/Broadcasting Industry

¹⁵ The following factors have to be assessed case by case: differences in market power of the companies involved and barriers to entering the market; recognised organisations which could take over additional regulatory tasks; industry culture supporting public policy objectives; adequate involvement of governmental actors. For a detailed analysis of state involvement in the four cases studied see section 2.3.3.

¹⁶ In the USA, “First Amendment concerns” provide a high hurdle for governmental intervention in any media content. In other countries, government intervention in media content is generally more accepted and the barriers are significantly lower.

¹⁷ In course of the establishment of the US TV Parental Guidelines, the initiators estimated that 2000 TV programme hours a day have to be reviewed (http://www.fcc.gov/Bureaus/Cable/Public_Notices/1997/fc97034a.pdf).

¹⁸ But as the Malaysian example shows, even a large number of television programmes can be controlled (censorship and rating) by statutory authorities. Almost all television programmes have to be approved in advance by the national Film Censorship Board.

¹⁹ See Akerlof (1970). The concept of adverse selection refers to a market process in which “bad” market results occur because “bad” products or customers are more likely to be selected due to information asymmetries between buyers and sellers.

²⁰ Empirical evidence shows that there are complaints about inconsistent rating practices. See the performance analysis in section 2.2.

²¹ Referring to the MPAA ratings for motion pictures it is stated that unrated and NC-17 movies do not make money. The average NC-17 film takes in less than \$4 million; the average unrated film does less than \$1 million. The difference between an “R” and an “NC-17” can be tens of millions of dollars (http://www.usatoday.com/life/movies/news/2007-04-09-movie-ratings-main_N.htm).

²² “Although the National Association of Theatre Owners says there is no written policy on banning NC-17 films it acknowledges that some exhibitors won’t show the movies.” (http://www.usatoday.com/life/movies/news/2007-04-09-movie-ratings-main_N.htm).

²³ The names of the members of the MPAA Rating Board are not provided to the public or any producer or distributor submitting a motion picture for rating. The reason for maintaining confidentiality is to avoid even the appearance that they may be subject to outside influences.

²⁴ “An economist studying the question of why networks consistently ‘underlabel’ their programmes concluded that they are likely responding to economic incentives. He found that programmes with more restrictive ratings command lower advertising revenues. The desire to charge more for commercials and fear of ‘advertiser backlash’ over shows with more restrictive ratings ‘means that networks have incentives to resist the provision of content-based information’.” (FCC 2007, 17 with references to Hamilton 1998)

²⁵ NICAM points out that in the course of the establishment of NICAM, parents expressed a desire to be informed of the content of media products, particularly in relation to violence, frightening scenes, sex, discrimination, drug abuse and strong language, as these were the areas about which they were most concerned.

²⁶ The Ministry of Education, Culture & Science (OCW), the Ministry of Health, Welfare and Sport (VWS) and the Ministry of Justice were involved in the process of establishment.

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- ²⁷ The MPAA's rating board CARA classifies more than 900 films a year (http://www.usatoday.com/life/movies/news/2007-04-09-movie-ratings-main_N.htm).
- ²⁸ In 1996, in the course of the establishment of the US TV Parental Guidelines, the initiators estimated that there is a "huge amount of programming – some 2,000 hours a day – that must be reviewed" (http://www.fcc.gov/Bureaus/Cable/Public_Notices/1997/fc97034a.pdf, 12).
- ²⁹ Coders answer questions on the content of the production in question through a special internet site, using an extensive questionnaire.
- ³⁰ Satellite television networks have an agreement with the Censorship Board which allows them in-house self-rating in accordance with the mandatory ratings system of the Censorship Board.
- ³¹ An exception is made on television for news and live programmes, as it is not possible to classify these in advance. However, the suppliers of these are obliged to take the broadcast time into account. Viewers must also be warned of shocking images in advance. The Internet is not covered by Kijkwijzer. NICAM is following developments in this area with interest.
- ³² For a detailed analysis on the modes of support and involvement of statutory authorities on the institutions see section 2.3.3.
- ³³ As outlined above (section A-2 and A-3), *institutional success factors* can be designed or modified at the organisational level of an alternative regulatory institution. *Contextual factors* are related to the market and policy context of alternative regulatory institutions. In combination, contextual factors can provide a more or less "enabling context" for alternative modes of regulation. In contrast to institutional/organisational success factors, their modification is not possible at the organisational level but – if at all – by reforms to their regulatory environment.
- ³⁴ Ofcom (2004, 11): "The body will need to be adequately funded and its sources of finance would need to be robust and sustainable. Staff resources would need to be sufficient to cope with the volume and type of work which is likely to arise. The body will, however, need to balance this objective with the need to keep the costs of co- and self-regulation under proper control; regulation should only be applied where its benefits exceed the costs of regulation. The body should publish its annual accounts."
- ³⁵ Cf. Iskandar (2007, 26); confirmed in a telephone interview with En Mohd Mustaffa Fazil Mohd Abdan (Executive Director of CMCF), 16 August 2007.
- ³⁶ According to Wim Bekkers (Director of NICAM) the industry share in NICAMs funding increased from 25% (2000-2003) to 35% (2004) and (50%) 2005 (see Bekkers 2005a). The NICAM system comprises two cost factors: 1) The NICAM institute paid for by government and industry, and 2) the internal cost for TV stations and distributors: all classification and information activities inside the member companies (OBS/CCPMM 2005, 26). Following an investigation carried out by a consultant for NICAM, the total cost of NICAM's system of self-regulation (i.e. cost of staff and training) amounts to €10 million per year, with the rating personnel in the broadcasting sector being the most labour intensive (Olsberg/SPI et al. 2003, 51f).
- ³⁷ The MCMC has to date given annual grants amounting to RM 2,525,000 (€529,219) to the Content Forum for its operations and management; which include rental of premises, renovations, staff costs and activities (cf. Iskandar 2007, 26).
- ³⁸ Those fees are assessed in relation to the negative cost of the motion picture submitted and the submitting party's yearly aggregate gross income from motion picture distribution.
- ³⁹ Telephone interview with Courtney Hagen (TV Parental Guidelines Monitoring Board), 28 August 2007.
- ⁴⁰ CARA is run by the Motion Picture Association of America (MPAA) and the National Association of Theatre Owners (NATO). The TV Parental Guidelines are the result of collaboration between the National Association of Broadcasters (NAB), the National Cable Television Association (NCTA), and the Motion Picture Association of America (MPAA).
- ⁴¹ See OBS/CCPMM (2005, 26). The reason is that the protection of minors is the joint responsibility of the industry *and* the government.
- ⁴² Telephone interview En Mohd Mustaffa Fazil Mohd Abdan (Executive Director of CMCF), 16 August 2007.
- ⁴³ See section 2.2.
- ⁴⁴ The CMCF Content Advisory Centre (CAC) shall provide a resource whereby clarification can be obtained regarding the interpretation of the Content Code prior to production and/or dissemination. (<http://www.cmcf.org.my/about.asp>).

⁴⁵ The National Consumer Council (NCC) recommends that up to 75 per cent of a co-regulatory organisation's governing body should be made up of independent representatives (NCC 2000, 51).

⁴⁶ See Article I of the Classification and Rating Rules (MPAA/NATO 2007, 2). "There are no special qualifications for Board membership, except that the members must have a shared parenthood experience, must be possessed of an intelligent maturity, and most of all, have the capacity to put themselves in the role of most American parents so they can view a film and apply a rating that most parents would find suitable and helpful in aiding their decisions about their children and what movies they see."
(http://www.mpa.org/Ratings_HowRated.asp).

⁴⁷ But the Malaysian example shows that even a large number of television programmes must not necessarily be rated by industry actors themselves. Almost all television programmes have to be approved by the national Film Censorship Board in advance. Employees of the Board work directly in the various free TV stations.

⁴⁸ NICAM is supported in the performance of its duties by an Advisory Committee, whose members are experts in the areas of media, youth, education and welfare, representatives of parents' organisations and other social organisations, as well as of the companies participating in NICAM. NICAM's board consists of representatives of both public and commercial broadcasters, film distributors and cinema operators, distributors, videotheques and retailers (<http://www.kijkwijzer.nl/pagina.php?id=3>).

⁴⁹ USA: The Monitoring Board of the TV Parental Guidelines has a chairman, six members each from the broadcast television industry, the cable industry, and the programme production community. The chairman also *selects five non-industry members from the advocacy community*, for a total of 24 members.

Malaysia: The management of the CMCF rests with a chairman and 18 council members elected from the six "ordinary" member categories of advertising, broadcasting, content creators/distributors, audiotext service providers, internet access service providers, and *civic groups*. One of the members of the council is the Representative of the Federation of Malaysian Consumers Association.

⁵⁰ Netherlands: Sec. 53 (3), Media Act: "An organisation shall qualify for accreditation only if (. . .) provision has been made for adequate involvement of stakeholders, including in any event consumer representatives."

⁵¹ Malaysia: Section 94, CMA 1998: "The Commission may designate an industry body to be an industry forum (. . .) if the Commission is satisfied that (. . .) the membership of the body is open to all relevant parties."

⁵² It was planned that: "The Oversight Monitoring Board will have 19 members, six each from the broadcast television industry, the cable industry, and the programme production community, in addition to a chairman" (NAB/NCTA/MPAA 1996, 4).

See http://www.fcc.gov/Bureaus/Cable/Public_Notices/1997/fc97034a.pdf.

⁵³ NAB/NCTA/MPAA (1997), see <http://www.fcc.gov/vchip/revprop.html>.

⁵⁴ Ofcom (2004, 10f.): "The former would suggest reliance on expertise drawn from outside the industry being regulated; the latter would clearly work in the opposite direction. Consequently a system involving a mixture of lay and industry members will often be appropriate, if possible allied to a genuinely independent review and appeals mechanism."

⁵⁵ Hemels (2005, 38) notes that the chairman of the parents' organisation Ouders & Coö believes that rating in the Netherlands is left to a handful of employees of broadcasting corporations, film distributors and scientists. Katinka Moonen (NICAM) mentioned that there are representatives of Dutch parents' organisations in the NICAM Advisory Committee. Another Dutch parents' organisation was invited to the Advisory Committee but refused to join. This parents' organisation is demanding greater influence in the governing bodies of NICAM (Telephone interview, 17. August 2007).

⁵⁶ The FCC has adopted the Programme System and Information Protocol10 (PSIP) standard into the Advanced Television System Committee (ATSC) standard for digital television, and the PSIP standard can accommodate multiple ratings (Kinney 2004, 3).

⁵⁷ Price/Verhulst (2000, 58).

⁵⁸ See Section 551 (e) (1), US Telecommunications Act.

⁵⁹ See http://www.mpa.org/Ratings_HowItAllBegan.asp.

⁶⁰ For an overview see FTC (2000b): First Amendment Issues In Public Debate Over Governmental Regulation of Entertainment Media Products With Violent Content
(<http://www.ftc.gov/reports/violence/Appen%20C.pdf>).

⁶¹ Latzer et al. (2002) suggest the category “self-regulation in the wide sense” in order to grasp these rather light methods of state involvement in alternative regulatory institutions empirically. Self-regulation in a wide sense can be distinguished from self-regulation in a narrow sense (without any state involvement) on the one hand, and from co-regulation on an explicit unilateral legal basis (e.g. an Act) on the other.

⁶² NICAM’s funding: 2000/2003 industry 25%, government 75%; 2004 industry 35%, government 65%; 2005 industry 50%, government 50% (see Bekkers 2005a).

⁶³ E-mail information by Wim Bekkers (NICAM Director), 10 September 2007.

⁶⁴ Iskandar (2007, 26).

⁶⁵ The Content Forum and the Commission have embarked on a series of roadshows and publicity campaigns aimed at creating greater awareness of the Content Forum and the Content Code. Additionally, CMCF and MCMC cooperated in course of CMCF’s establishment. The MCMC for example drafted a “Guideline for Development and Registration of Voluntary Industry Code” (technical support) (cf. Iskandar 2007, 26)

⁶⁶ NICAM itself also performs regular quality assessments of compliance with the rules. In addition, it regularly tests consumer perception and use of Kijkwijzer (<http://www.kijkwijzer.nl/pagina.php?id=34>).

⁶⁷ Section 55, CMA 1998 (Determination by the Commission): “(1) The Commission may, from time to time, determine any matter specified in this Act as being subject to the Commission's determination.”

⁶⁸ FTC (2007): Marketing Violent Entertainment to Children (<http://www.ftc.gov/reports/violence/070412MarketingViolentEChildren.pdf>).

⁶⁹ FCC (2007): In the Matter of Violent Television Programming And Its Impact On Children (http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-50A1.pdf).

⁷⁰ See <http://www.kijkwijzer.nl/pagina.php?id=3>.

⁷¹ See FTC (2007, i).

⁷² See http://www.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

⁷³ FCC (2007, 3)

⁷⁴ Malaysia: Sec. 94, CMA 1998 (Industry forum): “The Commission may designate an industry body to be an industry forum for the purposes of this Act by notifying that body in writing”. Sec. 212, CMA 1998: “The Commission may designate an industry body to be a content forum for the purposes of this Part.” CMCF was designated by the MCMC on 29 March 2001.

Netherlands: Sec. 53 (1), Media Act: “Our Minister may accredit an organisation that provides regulations concerning the classification and broadcasting of programmes. The government has officially recognised NICAM in 2001 on the basis of Sec. 53 (1) in the Media Act.”

⁷⁵ Sec. 95, CMA 1998 (Code by the industry forum): “(1) An industry forum may prepare a voluntary industry code dealing with any matter provided for in this Act— (a) on its own initiative; or (b) upon request by the Commission. (2) The voluntary industry code shall not be effective until it is registered by the Commission.”

⁷⁶ Netherlands: Sec. 53 (3), Media Act: “An organisation shall qualify for accreditation only if: (a) independent supervision by the organisation of compliance with the regulations referred to in subsection 1 is guaranteed; (b) provision has been made for adequate involvement of stakeholders, including in any event consumer representatives, establishments which have obtained broadcasting time, experts in the field of audiovisual media and producers of audiovisual media; (c) the financial position of the organisation ensures proper implementation of the activities.”

Malaysia: Sec. 94, CMA 1998 (Industry forum): “The Commission may designate an industry body to be an industry forum (. . .) if the Commission is satisfied that (a) the membership of the body is open to all relevant parties; (b) the body is capable of performing as required under the relevant provisions of this Act; and (c) the body has a written constitution.”

⁷⁷ Netherlands: Sec 52d (2), Media Act: “The television programme service of establishments which have obtained broadcasting time may only include programmes that may impair the physical, mental or moral development of persons under the age of sixteen if the establishments are members of an organisation accredited by Our Minister, as referred to in section 53, subsection 1, and are subject to the rules and supervision of that accredited organisation in relation to the broadcasting of the above-mentioned programmes. Establishments which have obtained broadcasting time and are members shall demonstrate this by submitting a written declaration from the accredited organisation to the Media Authority.”

Malaysia: Sec. 99, CMA 1998 (Directions to comply with a registered voluntary industry code): “The Commission may direct a person or a class of persons, in accordance with section 51, to comply with a registered voluntary industry code.” Sec. 100, CMA 1998 (Civil penalty for non-compliance): “(1) Notwithstanding section 53, a person who fails to comply with a direction of the Commission that the person complies with any provision of a voluntary industry code shall be liable to pay to the Commission a fine not exceeding two hundred thousand ringgit.”

⁷⁸ Malaysia: Sec 94, CMA 1998 (Industry forum) “(3) The Commission may decide that an existing industry body that was previously designated under subsection (1) to be an industry forum is no longer an industry forum for the purposes of this Act, if the Commission is satisfied that the body no longer meets the requirements set out in subsection (1).”

Netherlands: Sec 53 (5), Media Act: “Our Minister shall withdraw an accreditation if the organisation no longer complies with the requirements laid down by or pursuant to subsection 1 or 3. Our Minister may also withdraw an accreditation if the organisation fails to satisfy the conditions referred to in subsection 2 or the further and other requirements referred to in subsection 4.”

⁷⁹ Especially in Malaysia, communication between CMCF and MCMC and governmental control over the media industry are strongly developed. HBI/EMR (2007, 155) report that MCMC is permanently “educating” broadcasters in the way of doing self-regulation, and that the state authorities play a significant role for the establishment of co-regulatory system.

⁸⁰ According to Sec 551 (e) (1) of the US Telecommunications Act the FCC was required to determine if distributors of video programming have established voluntary rules for rating video programming or not, if these rules are acceptable to the Commission and if distributors of video programming have agreed voluntarily to broadcast signals that contain ratings of such programming or not. On 12 March 1998 the Commission “adopted an order finding acceptable the video programming rating system currently in voluntary use and established technical requirements for consumer electronic equipment to enable blocking of video programming”

(http://www.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html).

3 *Internet Codes of Conduct*

⁸¹ For example, the Internet Watch Foundation (IWF) in the UK.

⁸² For example, the mid-1990s saw the foundation of the Health on the Net Foundation (HON) and the adoption of a code of conduct for the sensitive medical and health-care information sector on the Internet (HONcode). See Latzer/Saurwein (2007, 44f.).

⁸³ According to CAIP the merger was undertaken “to ‘amplify’ CAIP's advocacy messages through a public affairs lobby that is generally acknowledged to be the best in its sector. CAIP members benefit from CATA's platform of services and resources” (<http://www.cata.ca/Communities/caip/>).

⁸⁴ The Internet Society of New Zealand (ISOCNZ) was formed 1995; in 2001 ISOCNZ rebranded to become InternetNZ.

⁸⁵ “Ordinary” membership of HKISPA, CAIP and ISPA involves voting rights and is limited to ISPs. However, all three institutions are also open to associated or affiliated members, e.g. “businesses that supply the IP industry with goods and services” (CAIP), “organisations who may not view themselves as full service Access and/or Hosting providers but have a vested interest in being part of self-regulation of the Internet” (ISPAI), or “any Internet related company which has a business registration in Hong Kong” (HKISPA).

⁸⁶ See <http://www.ispai.ie/mission.htm>.

⁸⁷ See <http://www.hkispa.org.hk/mission.htm>.

⁸⁸ See <http://www.internetnz.net.nz/about/rules/constitution.html>.

⁸⁹ See ISPAI – Code of Practice and Ethics, Section 3.2.

⁹⁰ CAIP: “This code is voluntary for CAIP members”. HKISPA: “HKISPA shall not act in the role of an enforcement agent, although the HKISPA may request consultation with the Member in extreme circumstances.”

⁹¹ However, the statutes of ISPANZ make reference to an Internet code: “The Board or Members in General Meeting may by resolution at any time terminate the Membership of a Member (. . .) if the Member (. . .) refuses or neglects to comply with (. . .) the current code of ethics of ISPANZ or any applicable rules made by the board” (ISPANZ n.d: Constitution, Sec. 7.1.3).

⁹² Press release of 09/09/2004: http://www.netlaw.co.il/En/it_itemid_726_desc_ftext.htm.

⁹³ E-mail information, Campbell Gardiner (InternetNZ), 6 September 2007.

⁹⁴ See <http://www.internetnz.net.nz/issues/current-issues/anti-spam>: The Code which is currently under review was developed by InternetNZ, the Telecommunication Carriers' Forum (TCF) and the Marketing Association (MA). The Code was created in keeping with the requirements of the Unsolicited Electronic Messages Act 2007 of the New Zealand government.

⁹⁵ Source: <http://de.wikipedia.org/wiki/>.

⁹⁶ Source: ITU 2007: Internet indicators: subscribers, users and broadband subscribers (http://www.itu.int/ITU-D/ict/eye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/InformationTechnologyPublic&RP_intYear=2006&RP_intLanguageID=1).

⁹⁷ Source, New Zealand: Statistics NZ: The Internet Service Provider Survey, March 2007 (<http://www.stats.govt.nz/products-and-services/hot-off-the-press/internet-service-provider-survey/internet-service-provider-survey-mar07-hotp.htm?page=para004Master>).

Source, Canada: Statistics Canada (2006): Annual Survey of Internet Service Providers and Related Services (<http://www.statcan.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=4303&lang=en&db=IMDB&dbg=f&adm=8&dis=2>).

The Survey of Internet Service Providers covers companies classified to 518111 (Internet Service Providers), in the North American Industry Classification System (NAICS). It excludes companies coded to wireless telecommunications carriers (NAICS 5172) and cable and other programme distribution industry (NAICS 5175). Additionally, some companies in the telecommunications industry that, despite offering Internet access services do not have distinct establishments related to their ISP activity, are not covered by this survey.

Source, Hong Kong: Office of the Telecommunications Authority (OFTA): List of Internet Service Providers as at 3 August 2007 (<http://www.ofta.gov.hk/en/tele-lic/operator-licensees/isp.pdf>).

Source, Ireland: E-mail request to ISPAI. Mr Paul Durrant (ISPAI General Manager) estimates a total number of 65 Internet service providers operating in Ireland, although the number of some small, local operators is not exactly known. However 12 of the ISPs operate hosting services only. These have been excluded from the data set in order to have comparable data with other countries; Canada, New Zealand and Hong Kong limit their data to Internet access providers.

⁹⁸ See for ISPAI: <http://www.ispai.ie/members.htm>; HKISPA: <http://www.hkispa.org.hk/memberlist.htm>; Internet NZ: e-mail information of Keith Davidson (InternetNZ, Executive Director), 6 September 2007 with reference to ISPANZ (<http://www.ispanz.org.nz/members>) which has 31 members most of whom are also members of InternetNZ; CAIP: <http://www.isp-planet.com/profiles/caip.html> and <http://www.cata.ca/Communities/caip/membership.html>.

⁹⁹ The following limitations regarding the data set used must be stressed: On the one hand, the number of ISPs in the countries was limited to Internet access providers, ISPs who provide host services only have been excluded. On the other hand, the number of members of the national Internet organisation includes all members providing Internet services (access and host providers). Limitation to Internet access providers has not so far been possible. For an accurate number regarding the participation of ISPs in the national Internet organisation it would be necessary in both analytical categories to focus on Internet access providers only.

¹⁰⁰ Potential indicators for further research on competition in the countries are the number of ISPs per household, service prices and the degree of absolute and relative concentration in the respective markets. Assessment of additional indicators was not possible due to the limited resources allocated to this project.

¹⁰¹ However, here again, for a better reliability of results, further research would be possible, which has not been feasible within the timeframe of this project.

¹⁰² “The Internet has fostered unprecedented levels of exchange of information, services and trade across countries. This has been made possible by the international nature of the internet both in terms of its infrastructure, and in terms of content and reach. However, the internet’s international nature also means that regulatory action at certain levels of the value chain can only be taken at international level” (Ofcom 2006, 6).

¹⁰³ See: <http://www.ecpat.org.nz/>. ECPAT NZ is part of the global ECPAT network of organisations and individuals working together for the elimination of child prostitution, child pornography and the trafficking of children for sexual purposes.

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- ¹⁰⁴ See <http://www.internetnz.net.nz/proceedings/council/archive/cmeet990521minutes.html/view?searchterm=ECPAT>.
- ¹⁰⁵ See <http://www.inhope.org/doc/articles.pdf>.
- ¹⁰⁶ Members must provide a mechanism for receiving complaints from the public about alleged illegal content and/or use of the Internet, have effective transparent procedures for dealing with complaints, have the support of government, industry, law enforcement and Internet users in the country of operation, cooperate with other members in exchanging information about illegal content and use and share their expertise, and make a commitment to maintain confidentiality (<http://www.inhope.org/de/about/members.html>).
- ¹⁰⁷ See EuroISPA, Articles of Association – Status 2005: http://www.euroispa.org/docs/euroispa-aoa_en-sept2005.pdf.
- ¹⁰⁸ See <http://www.saferinternet.org/ww/en/pub/insafe/index.htm>.
- ¹⁰⁹ See <http://www.euroispa.org/antiphishing/>.
- ¹¹⁰ See http://www.euroispa.org/docs/041010_libe_presentation.pdf.
- ¹¹¹ See <http://www.apia.org/about.html>.
- ¹¹² See <http://www.apricot.net/about.html>.
- ¹¹³ Gunningham/Rees (1997, 365) define self-regulation in accordance with the distribution of responsibilities between private and governmental players in the regulatory process: in the case of voluntary self-regulation, rule-making and enforcement are performed privately by individual companies or by the entire industry without any governmental influence. In the case of mandated full self-regulation, rule-making and enforcement are privatised; violations, however, are punished by government sanctions. In the case of mandated partial self-regulation, only one component (rule-making or enforcement) is privatised and the imposition of sanctions is carried out by the government.
- ¹¹⁴ See for example Ofcom (2004, 11): “A co-regulatory body needs to have sanctions that provide a clear incentive to comply, and which can be imposed promptly and successfully. (...) For co-regulatory bodies (...) graduated sanctions also need to be available, e.g. fines or requirement for specific changes in output. Clearly, however, the sanctions need to be proportionate to the infringement which occurs. The precise types of sanctions which need to be available depend on whether there is some other form of constraint which operates, e.g. need to protect a firm’s public image.”
- ¹¹⁵ “Of course when you begin to talk about enforcement, obligations and control, in what has been to date an unregulated environment (in practical terms) then some persons are going to object” (ISPAI 2002: Code of Practice and Ethics, 5).
- ¹¹⁶ See CAIP Code of Conduct, Article 2. (<http://www.cata.ca/Communities/caip/codeofconduct/Code/Conduct.html>).
- ¹¹⁷ See ISPAI Code of Practice and Ethics, sections 12.1.1 and 12.1.2 (<http://www.ispai.ie/docs/cope.pdf>).
- ¹¹⁸ See InternetNZ Draft Code of Practice, section 4.1 (http://www.internetnz.net.nz/pdfs/issues/current/icop/2005-03-23_icop_draft.pdf).
- ¹¹⁹ See ISPAI Code of Practice and Ethics, sections 12.1.3 and 12.1.4 (<http://www.ispai.ie/docs/cope.pdf>).
- ¹²⁰ See InternetNZ Draft Code of Practice, Article 10 (http://www.internetnz.net.nz/pdfs/issues/current/icop/2005-03-23_icop_draft.pdf).
- ¹²¹ See ISPAI Code of Practice and Ethics, section 12.1 (<http://www.ispai.ie/docs/cope.pdf>).
- ¹²² See HKISPA Anti-Spam – Code of Practice, Article 12 (<http://www.hkispa.org.hk/antispam/cop.html>).

Appendix

- ¹²³ See Intomart (2002; 2003).
- ¹²⁴ Quoted in Holznagel/Jungfleisch (2005, 297).
- ¹²⁵ See <http://www.kijkwijzer.nl/changelanguage.php?l=/pagina.php?id=3>.
- ¹²⁶ See <http://www.kijkwijzer.nl/pagina.php?id=34>.
- ¹²⁷ Insafe (2005).
- ¹²⁸ See <http://www.kijkwijzer.nl/pagina.php?id=8&nb=156>.
- ¹²⁹ Olsberg/SPI et al. (2003).
- ¹³⁰ van der Stoel et al. (2005).
- ¹³¹ NICAM (2006, 8).

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- ¹³² MCMC (2006, 112).
- ¹³³ Iskandar (2007).
- ¹³⁴ See http://www.cmcf.org.my/HTML/cmcf_about_members.asp (last up-dated in 2006).
- ¹³⁵ BizWeek (24 March 2007), “One for the Code, Tony Lee Makes a Parting Shot”. Press clipping on CMCF website ‘news and events’ at http://www.cmcf.org.my/HTML/cmcf_events_clip01-07.asp.
- ¹³⁶ See http://www.mcmc.gov.my/what_we_do/licensing/pdf/CEOs%20Dialogue%20310105-Report.pdf.
- ¹³⁷ CMCF Chairman’s Report, 2007, CMCF website: http://www.cmcf.org.my/HTML/cmcf_events5a.asp.
- ¹³⁸ “CMCF Gears Up for Action”, The Star (22 April 2006) http://www.cmcf.org.my/HTML/cmcf_events_clip21.asp.
- ¹³⁹ Interview with Mr. En Mohd Mustaffa Fazil Mohd Abdan (Executive Director of CMCF), August 16, 2007.
- ¹⁴⁰ Iskandar (2007).
- ¹⁴¹ MCMC (2006, 112).
- ¹⁴² The Star (22 April 2006), “CMCF Gears Up for Action”. Press clipping on CMCF website ‘news and events’ at http://www.cmcf.org.my/HTML/cmcf_events_clip21.asp.
- ¹⁴³ Kaiser Family Foundation (2004).
- ¹⁴⁴ PTC website, <http://www.parentstv.org/ptc/publications/reports/RatingsStudy/exsummary.asp>.
- ¹⁴⁵ FCC, website information (The V-Chip): <http://www.fcc.gov/cgb/consumerfacts/vchip.html>.
- ¹⁴⁶ FCC (2007, 15f.).
- ¹⁴⁷ PTC website, <http://www.parentstv.org/ptc/publications/reports/RatingsStudy/exsummary.asp>.
- ¹⁴⁸ FTC (2000a, 5).
- ¹⁴⁹ FTC (2007).
- ¹⁵⁰ MPAA website http://www.mpa.org/Ratings_Purpose.asp.
- ¹⁵¹ Moloney Figliola (2005, 12).
- ¹⁵² MPAA website, http://www.mpa.org/Ratings_HowRated.asp.
- ¹⁵³ On the other hand MPAA/NATO (2007, 3) “[a]ll motion pictures produced or theatrically distributed by a member of the MPAA and intended for exhibition in the United States must be submitted to CARA for rating.”
- ¹⁵⁴ FTC (2000, 5).
- ¹⁵⁵ See <http://www.filmratings.com/>.
- ¹⁵⁶ See http://www.mpa.org/Ratings_HowRated.asp.
- ¹⁵⁷ http://www.usatoday.com/life/movies/news/2007-04-09-movie-ratings-main_N.htm.
- ¹⁵⁸ <http://www.bbc.co.uk/dna/h2g2/A155071>.
- ¹⁵⁹ “Its members provide approximately 80% of the Internet connections to Canadian homes, schools and businesses. CAIP services its members by being involved in all of the regulatory developments and policy issues facing Canadian ISPs today.” (‘Omegon Joins Canadian Association of Service Providers and Enters Affinity Program, Offering Special Deals to Members’, in Business Wire, May 29, 2001, http://findarticles.com/p/articles/mi_m0EIN/is_2001_May_29/ai_75094795).
- ¹⁶⁰ CATA website, http://www.cata.ca/Media_and_Events/Press_Releases/cata_pr05270501.html.
- ¹⁶¹ Pierlot (2000).
- ¹⁶² See <http://www.isp-planet.com/profiles/caip.html>.
- ¹⁶³ Statistics Canada (2006): Annual Survey of Internet Service Providers and Related Services <http://www.statcan.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=4303&lang=en&db=IMDB&dbg=f&adm=8&dis=2>.
- ¹⁶⁴ Press Release, 15 February 2001: Minister of Industry and Minister of Justice Announce Canadian Strategy to Promote Cyber-Safety, <http://www.ic.gc.ca/cmb/welcome.nsf/261ce500dfcd7259852564820068dc6d/85256779007b82f4852569f400542682!OpenDocument>.
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- ¹⁶⁶ CAIP website, <http://www.cata.ca/Communities/caip/>.
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- ¹⁶⁹ CATA website, http://www.cata.ca/Media_and_Events/Press_Releases/cata_pr04070501.html.
- ¹⁷⁰ BIAC/OECD (1998).

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- ¹⁷¹ Pierlot (2000).
- ¹⁷² CAIP Code of Conduct, <http://www.cata.ca/Communities/caip/codeofconduct/CodeConduct.html>
- ¹⁷³ Pierlot (2000).
- ¹⁷⁴ Statistics NZ (2007): The Internet Service Provider Survey, March 2007 (<http://www.stats.govt.nz/products-and-services/hot-off-the-press/internet-service-provider-survey/internet-service-provider-survey-mar07-hotp.htm?page=para004Master>); Internet NZ membership according to an e-mail information of Keith Davidson (InternetNZ, Executive Director), 6 September 2007.
- ¹⁷⁵ InternetNZ website (FAQs), http://www.internetnz.net.nz/about/aboutnet/faq_general.
- ¹⁷⁶ InternetNZ released the first public draft of the Internet Code of Practice on 23 March 2005. (InternetNZ website, <http://www.internetnz.net.nz/issues/current-issues/ICOP>).
- ¹⁷⁷ Stephen Bell, Wellington (Saturday, 27 March, 2004): 'InternetNZ's code of practice (COP) for ISPs is proving a much tougher job than anticipated', <http://www.computerworld.co.nz/news.nsf/UNID/29B52994F1924C71CC256E620076CAD7>.
- ¹⁷⁸ Ministry of Economic Development (2006).
- ¹⁷⁹ InternetNZ (2005), Draft Internet Code of Practice.
- ¹⁸⁰ InternetNZ (2005), Draft Internet Code of Practice.
- ¹⁸¹ Stephen Bell, Auckland (Thursday, 15 March, 2007): 'Conflict delays 'forceful' ISP conduct code: One issue concerns penalties — some ISPs want to have enforceable penalties for offences while others are happy with a bare set of instructions', Computerworld, <http://computerworld.co.nz/news.nsf/news/A981BF8F7E23C2E7CC25729900111C6F>.
- ¹⁸² InternetNZ (2007, 13).
- ¹⁸³ Ministry of Economic Development (2006).
- ¹⁸⁴ InternetNZ website, http://www.internetnz.net.nz/about/aboutnet/copy_of_governance.
- ¹⁸⁵ Paul Durrant (ISPAI General Manager) estimates a total number of 65 Internet service providers operating in Ireland, although the number of some small, local operators is not exactly known. However 12 of the ISPs operate hosting services only. These have been excluded from the data set in order to have comparable data with other countries; Canada, New Zealand and Hong Kong limit their data to Internet access providers.
- ¹⁸⁶ ISPAI website, <http://www.ispai.ie/about.htm>.
- ¹⁸⁷ ISPAI Code of Practice and Ethics, 'Internet Advisory Board Chairman report', p.3.
- ¹⁸⁸ ISPAI website, <http://www.ispai.ie/about.htm>.
- ¹⁸⁹ <http://www.euroispa.org/26.htm>.
- ¹⁹⁰ <http://www.hotline.ie/thirdreport/>.
- ¹⁹¹ Durrant (2005, 5).
- ¹⁹² "Hong Kong issues Net code", Reuters (27 October 1997), <http://legalminds.lp.findlaw.com/list/cyber-rights/msg00546.html>.
- ¹⁹³ See <http://www.hkispaa.org.hk/memberlist.htm>.
- ¹⁹⁴ Office of the Telecommunications Authority (OFTA): List of Internet Service Providers as at 3 August 2007 (<http://www.ofta.gov.hk/en/tele-lic/operator-licensees/isp.pdf>).
- ¹⁹⁵ See <http://www.unhchr.ch/html/menu2/6/crc/doc/report/srf-PRCHongKong-1.pdf>.
- ¹⁹⁶ Information Technology and Broadcasting Bureau / Legco Panel on information Technology and Broadcasting (1998).
- ¹⁹⁷ Chan (2002).