

2019 Research Report

**The Final Research Report: The  
Reference, Processing Procedures,  
and Information Disclosure of The  
Fairness Doctrine for News**

**Project Commission: The National  
Communications Commission**

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### The Final Research Report: The Reference, Processing Procedures, and Information Disclosure of The Fairness Doctrine for News

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## **Abstract**

### **Research Motivation**

Recently, the way taken by the television media in Taiwan to report the news has been widely criticized for presenting the partial contents and thus damage the image of media acting as the role of the gatekeeper. Nevertheless, it is an obligation for the media to reflect the unbiased accuracy and give opportunities for every member in society to express their thoughts.

### **Research Issue and Scope**

This research collects the information on the laws, rules, self-regulations, and cases regarding impartiality and the fairness doctrine from the UK, the EU, South Korea, the US, Japan, and Taiwan. In addition, persons from television channels, academics, and NGOs were invited to share their opinions and influenced aspects by holding panel discussions.

### **UK**

The British broadcasting system is based on the rationales of public service. British broadcasters, either commercial or noncommercial, are supposed to be responsible for society. The Communication Act of 2003 has required broadcasters to meet certain standards, which are further elaborated in the *Broadcasting Codes*. In this framework, news in television and radio services should be presented with due impartiality; as to matters of political or industrial controversy, matters relating to current public policy and programmes at the time of elections and referendums, due impartiality must be preserved in news and other programmes. Within the legal framework, the regulator,

Ofcom, ensures that broadcasters have met the standards. Major British broadcasters have followed the principles of impartiality and rules above as their editorial guidelines.

There are some cases violating the principles and rule of impartiality in recent years. Most of them were foreign channels; though owned by the foreign organizations, they provided services in the UK and obtained licenses from Ofcom. In the case of RT, the Ofcom investigated whether a wide range of significant views and perspectives were given in due weight and prominence, particularly in controversies.

## **EU**

The EU's member states' regulations and legislation on the traditional television industry and the Internet-based TV are governed mainly by the Audiovisual Media Services Directive (AVMSD, formed in 2007 and codified in 2010). Regarding the doctrine of fairness, two major dimensions in the AVMSD include: (1) Right of reply; and (2) the "due impartiality" principle. First, the right of reply is claimed in Chapter IX of the AVMSD, by which member states "shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions," and the broadcasting providers should transmit the reply "within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers." (Article 28) Second, the "due impartiality" principle was adopted by the European Parliament. In order to maintain the public media' role as the public sphere rather than the propaganda of the government, the European Parliament (2018) suggested that "public authorities have the duty to protect the independence and the impartiality of the public media in particular as actors serving democratic societies, as opposed to satisfying the interests of governments in power." This research also selects three cases about the "due impartiality" of news coverage, and finds that the ECtHR reassures that these

governments' judicial judgements or legislations were not a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

## **South Korea**

From the regulations about the broadcasting systems such as “Broadcasting Law” or “The Regulations of Broadcasting Deliberation” in South Korea, it can be seen that maintaining “fairness” and “balance” is the public responsibility of media. Under the Broadcasting Law, there is an independent agency called the Korea Communications Standards Commission (KCSC), which regulates the broadcasting media based on the Regulations of Broadcasting Deliberation. Additionally, this regulation emphasizes that when dealing with social issues of fierce conflicts, or conflict situation of interests, the broadcast should maintain impartiality, fairness, and balance to reflect the opinions of related parties.

“The Special Regulations of Election Broadcasting Deliberation” is also used to regulate the political and election reports. Especially in the special regulations, from the production of program content and the invitations of performers to the use of hardware equipment such as audio, screen composition, and lighting and so on, all need to maintain an equivalent presence in reports.

At last, in the self-discipline of media organizations, two public TV stations, KBS and MBC, both state in the Broadcasting Outline that they will maintain fairness and impartiality; however, there is no more detailed criterion to show how they achieve that in the broadcasting.

## **US**

The most important factor affecting Fairness Doctrine in the United States is the development of satellite TV. Currently, most US TV markets are filled with hundreds

of television networks and stations. Another key factor is the development of the news network technology. Consequently, Fairness Doctrine which mainly legislated due to the limited number of radio and television had to change as it had become more and more incompatible with the external environment.

By 1984, the doctrine had been doubted continually by Federal Supreme Court. The court was willing to support FCC's opinion at first, but court began to change its opinions and considered that FCC could choose to enforce Fairness Doctrine or not eventually. As a response to the legal opinion of the Supreme Court, FCC began to re-examine the doctrine. Finally, it concluded that as a policy matter the fairness doctrine no longer served the public interest.

Although the fairness doctrine was abolished, the debate over its constitutionality has continued for years, but no significant results have been achieved so far. Meanwhile, Editorial Guidelines or Code of Ethics are existing in PBS, NAB, and SPJ, as the emphasis of them are on the opportunity to respond or reply and the time is given to those who are criticized.

Thus, current Fairness Doctrine in the United States is limited to providing opportunities to express, and ensures that the views of respondents are properly communicated, instead of emphasizing on the fairness of the reported contents.

## **Japan**

In Japan, regulations on broadcasting have been characterized by relatively "lax" methods that more depend on media self-regulations. The broadcasting regulation system is not under a strict government control. Even the law administrative measures are not clear. It implies that the regulations on broadcasting content mainly depend on media self-regulation mechanisms and less administrative measures were taken against program content.

Another important feature of Japanese broadcasting regulation is that there is no independent agency to regulate the broadcasters. The Broadcasting Ethics & Program Improvement Organization (BPO) is a non-profit, non-governmental organization to enforce broadcasting regulations.

BPO was established by the Japan Broadcasting Corporation (NHK, *Nippon Hoso Kyokai*) and the Japan Commercial Broadcasters Association (JBA). The Japan Commercial Broadcasters Association (JBA) was formed by the commercial broadcasters.

The Japan Broadcasting Act, Article 4, states that a broadcaster must be politically fair. However, no broadcaster has ever been punished due to the violation of the principle of political fairness. There are only three administrative guidance cases from Ministry of Internal Affairs and Communications about “politically fair” issues. Most Japanese scholars consider the principle of political fairness as an ethical statement more than a penalty law. To enforce the principle of political fairness depends on media self-regulation, but not on government control.

From 2003 to 2019, BPO has announced four committee deliberation decisions about the violation of the principle of political fairness. Those four deliberations are all about the election news and programs. BPO concluded those news or programs violated the principle of political fairness and journalism ethics. Although BPO is a non-profit, non-governmental organization without any law enforcement authority, but the BPO announcement can deeply influence the credibility of a broadcaster. Hence, most of the broadcasters follow the principle of political fairness.

## **Research Findings**

Though the regulations may vary in different countries, serious social issues and elections are the two dimensions emphasized more in most countries that enact and



implement the fairness doctrine, and this is correspondent with the conclusion of the panel discussion.

### **Implications**

- A. Not all the news shall be applied to the fairness principle. However, at least serious social issues and elections should be.
- B. We shall avoid the “chilling effects” or “spillover effects” when enforcing the fairness principle.
- C. The fairness principle and the right of reply can complement each other; however, the Self-regulations of the media are still in the first place. The governments are liable to outreach how people claim fairness principle, and the right to respond and correct.

Keywords: the principle of fairness, the right of reply.

## **Chapter 1 Introduction**

### **1. Research Motivation**

Truth, accuracy, impartiality, and balance are some of the most important features regarding the news. The National Communication Commission (NCC, hereafter) received bunches of petitions as the reports which put much emphasis on some specific candidates and resulted in a lack of balance concerned citizens a lot in 2018.

Although, the legislative Yuan passed the amendment of Section 2, Article 27 of the Satellite Broadcasting Act in 2016: “The produced and broadcasted news and comments shall pay attention to fact verification and principles of fairness”, people do not know if it has impact on the media or not.

### **2. Research Issues and Scope**

The goal of this research (“Research”) is to formulate the principle of fairness for the news' production and broadcasting. First, Research collects laws, rules, and regulations regarding government and self-regulations from the UK, the EU, South Korea, the US, and Japan. Second, there are 4-panel discussions, consisting of persons from television channels, academics, and NGOs, held for Research. Finally, Research drafts the principle of fairness for the news' production and broadcasting as a reference to NCC.

## **Chapter 2 Preface**

### **1. The purpose of Research**

- A. Understanding the effect of the implementation of the fairness principle in other countries.
- B. In practice (including self and other regulations), to what degree would the fairness principle be accepted, and its feasibility as well as the obstacle to it.
- C. Concretizing the Section 2, Article 27 of the Satellite Broadcasting Act, and proposing the procedure to implement the fairness principle.

### **2. The issues of Research**

- A. What are the contents of the “fairness principle” ? It’s a question including the definition, samples, and practice around the different countries.
- B. What are the differences, controversies, and collaborations between the fairness principle and the right to respond and correct regulated by the Satellite Broadcasting Act?
- C. How does the government interfere in or review whether the news accords with the fairness principle? From a comparative law’s point of view, should the fairness principle be implemented strongly or softly?

- D. How do journalists accord with the fairness principle and what should they pay attention to in practice?
- E. How do we strike a balance between the freedom of the press and the fairness principle if we have understood the fairness principle?
- F. Is it possible that the fairness principle treats the news differently according to its content such as elections and big social issues?
- G. Would self-regulation respond effectively to the fairness principle?
- H. How do we practice the fairness principle?

## Chapter 3 UK

The British broadcasting system is based on the rationale of public service. Accordingly, the broadcasters, either commercial or noncommercial, are supposed to be responsible for society. The Communication Act of 2003 has required broadcasters to meet certain standards, which are further elaborated in the *Broadcasting Codes*. The main regulator, Office of Communication (Ofcom, hereafter), will ensure the broadcasters follow the principles of impartiality and meet the standards.

Ofcom has set up the principles of impartiality in the Communication Act. According to Article 319 of the Act, news included in television and radio services should be presented with due impartiality. Further, news and other programmes that are concerning the matters of political and industrial controversy and matters relating to current public policy should all be expressed with due impartiality.

The principles of impartiality stated above are elaborated in the *Broadcasting Codes*. Firstly, concerning news in television and radio services, news must be reported with due accuracy and presented with due impartiality(5.1). Significant mistakes in news should normally be acknowledged and corrected (5.2).

Secondly, relating to matters of political or industrial controversy and matters relating to current public policy, due impartiality must be preserved in news or other programmes, and this may be achieved within a programme or over a series of programmes taken as a whole (5.5). In these matters, due impartiality must be preserved by the person providing a service in each programme or in clearly linked and timely programmes (5.11); also an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes; views and facts must not be misrepresented(5.12). Broadcasters should

not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service taken as a whole (5.13).

Concerning programmes at the time of elections and referendums, the rules relating to matters of major political or industrial controversy and major matters relating to current public policy apply to the coverage of elections and referendums (6.1). Further, due weight must be given to the coverage of parties and independent candidates during the election period; broadcasters must take evidence of past electoral support and/or current support into account, also considering giving appropriate coverage to parties and independent candidates with significant views and perspectives (6.2). Due weight must be given to designated organizations in coverage during the referendum period. Broadcasters must also consider giving appropriate coverage to other permitted participants with significant views and perspectives (6.3).

Major British broadcasters have followed the principles of impartiality and rules above as their editorial guidelines. For example, in its Editorial Guidelines, the BBC has declared to be committed to achieving due impartiality in all its output; to the BBC, due impartiality is more than a simple matter of 'balance' between opposing viewpoints, but must be inclusive, considering the broad perspective and ensuring that the existence of a range of views is appropriately reflected; in applying due impartiality to news, the BBC has declared to give due weight to events, opinion and the main strands of argument. The BBC also declared that, while dealing with 'controversial subjects', the BBC must ensure a wide range of significant views and perspectives are given due weight and prominence, particularly when the controversy is active, and that opinion should be clearly distinguished from fact. Other broadcasters(e.g., ITV, C4, Skynews) set up their codes of practice based on the principles of impartiality.

There are some cases violating the principles and rules of impartiality in recent years. Most of them were foreign channels; though owned by the foreign organizations, they provided services in the UK and obtained licenses from Ofcom.

One of the most critical cases is Ofcom's sanctions against *Russia Today* (RT, hereafter) for violating the principles of impartiality. The licence holder for the RT news channel is an autonomous non-profit organization TV Novosti, which is based in Russia and said to be sponsored by Russia government. Ofcom had investigated into the performance of RT and found out that RT failed to preserve due impartiality in seven news and current affairs programmes from 17 March to 26 April 2018. According to Ofcom, these breaches represented serious and repeated failures of compliance with the rules; the programmes were mostly in relation to major matters of political controversy and current public policy – the UK Government's response to the events in Salisbury, and the Syrian conflict. Ofcom was concerned by the frequency of RT's rule-breaking over a relatively short period of time. After Ofcom's investigation, RT was given opportunities to represent written and oral performances; RT argued that their presentation was based on freedom of speech, as RT reported the Russian perspectives that were absent in global news media; in addition, the definition of undue impartiality described by Ofcom was unclear. However, the Ofcom replied that the Ofcom aimed to protect the UK citizens' freedom to impartial information and that the Ofcom's investigation was clear and transparent.

To sum up, with the long history of public service broadcasting, the British regulator has established the principles of impartiality and rules for broadcasters to follow. In this framework, news in television and radio services should be presented with due impartiality; as to matters of political or industrial controversy, matters relating to current public policy and programmes at the time of elections and referendums, due impartiality must be preserved in news and other programmes. Within

the legal framework, the regulator, Ofcom, ensures that broadcasters have met the standards. In the case of RT, the Ofcom investigated whether a wide range of significant views and perspectives are given in due weight and prominence, particularly in controversies.



## Chapter 4 EU

As a “supernational union”, the European Union (EU) consists of 27 member states in 2020. The EU was created by the Maastricht Treaty, which entered into force in 1993, and the organizational origins could be traced back to the 1951 Treaty of Paris and the 1957 Treaty of Rome. The Council of the European Union which represents the member states, and the European Parliament which represents the European citizens, are legislative branches and adopt the legislation proposed from the European Commission which is the EU’s executive branch. Meanwhile, the European Court of Human Rights (ECtHR) is an international court established in 1959. ECtHR rules on applications--by an individual, a group of individuals, or one or several member states—alleging violations of the civil and political rights based on the European Convention on Human Rights and its protocols.

The EU’s member states’ regulations and legislation on the traditional television industry and the Internet-based TV are governed mainly by the Audiovisual Media Services Directive (AVMSD, formed in 2007 and codified in 2010) which could be traced back to the 1989 Television without Frontiers Directive (TVwF 89/552/EEC). In 2018, the European Parliament revised AVMSD, including limiting the hate speech in the converging media, increasing the local manufacturing of audiovisual products. Regarding the doctrine of fairness, two major dimensions in the AVMSD include: (1) Right of reply; and (2) the “due impartiality” principle.

First, the right of reply is claimed in Chapter IX of the AVMSD, by which member states “shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions,” and the broadcasting providers should transmit the reply “within a reasonable time subsequent

to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.” (Article 28) For the news reports about the political elections, the Council of Europe (2007) recommended member states, “Given the short duration of an election campaign, any candidate or political party which is entitled to a right of reply or equivalent remedies under national law or systems should be able to exercise this right or equivalent remedies during the campaign period without undue delay.” (I, #7).

Second, the “due impartiality” principle was adopted by the European Parliament. In order to maintain the public media’ role as the public sphere rather than the propaganda of the government, the European Parliament (2018) suggested that “public authorities have the duty to protect the independence and the impartiality of the public media in particular as actors serving democratic societies, as opposed to satisfying the interests of governments in power.” (J) For the news reports about the elections, the Council of Europe (2019) emphasized the importance of media “to ensure balanced and impartial coverage of elections and fair participation in the election process of all candidate and political parties” (2), as well as “to cover election campaigns fairly and impartially, making sure that opposition parties benefit from balanced media coverage in current affairs and information programmes.” (8.3)

Reviewing the judicial examples of the ECtHR, this research selects three cases about the “due impartiality” of news coverage: (1) *Gaunt v United Kingdom* (2016) 63 EHRR SE 15; (2) *the Communist Party of Russia and others v. Russia* (Application no. 29400/05) 19 June 2012; and (3) *Partija "Jaunie Demokrāti" and Partija "Mūsu Zeme" v. Latvia* – 10547/07 and 34049/07. In the three cases, the ECtHR reassures that these governments’ judicial judgements or legislations were not a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The self-regulation of the media at the EU level is implemented mainly by two

professional organizations. The European Broadcasting Union (EBU), consisting of 71 public media in European countries, aims at preserving the independence of media and cultural diversity. The European Federation of Journalists (EFJ), a member organization of the Ethical Journalism Network, proposes to improve excellent journalism by training and education. EFJ set up the journalistic codes, which stress the importance of fairness and impartiality of news reports.

## **Chapter 5 South Korea**

During the democratization process in South Korea, people in South Korea still used to watch the two major public television stations, KBS and MBC. Therefore, when discussing the regulations and cases about the "Doctrine of Impartiality" or the "Fairness Doctrine" in South Korean's television industry, those discussions are mostly related to the spirit of publicity to the public TV in South Korea.

From the regulations about the radio and television such as "Broadcasting Law" or "The Regulations of Broadcasting Deliberation" in South Korea, it can be seen that maintaining "fairness" and "balance" is the public responsibility of South Korean radio and television media. For example, the Broadcasting Law emphasizes that during the broadcasting, policies must be given equal opportunities for performance; while the broadcasting content is about the political interests, the balance of broadcast arrangements should also be maintained. Under the Broadcasting Law, there is an independent agency called the Korea Communications Standards Commission (KCSC), and it regulates the broadcasting media in South Korea based on the Regulations of Broadcasting Deliberation. Additionally, this regulation emphasizes that when dealing with social issues of fierce conflicts, or conflict situation of interests, the broadcast should maintain impartiality, fairness, and balance to reflect the opinions of related parties.

Furthermore, not only the "Civil Servants Election Act", but also "The Special Regulations of Election Broadcasting Deliberation" are used to regulate the political and election reports which are easier to have disputes over fairness and balance. Especially in the special regulations, from the production of program content and the invitations of performers to the use of hardware equipment such as audio, sound,

shooting, screen composition, and lighting and so on, all need to maintain an equivalent presence in reports during the election period.

Also, there are two competent authorities of the radio and television media in South Korea and take different responsibilities separately. The Korea Communications Standards Commission (KCSC) focuses on regulation and establishes standing committee or task-force committee according to the regulation content, e.g., the Election Broadcasting Deliberation Committee is a task-force committee established during the election period. The implementation of subsequent rulings, or other administrative matters related to the broadcasting and television industry's policy planning, will be handled by the Korea Communications Commission (KCC).

Among the ruling cases announced by the Korea Communications Standards Commission (KCSC), a total of 11 cases related to fairness were considered, in which 7 were related to public broadcasting. The main point of dispute is the news reported by TV stations (especially MBC in the case of labor disputes) as it disclosed one-sidedly without taking into account the opinions of the labor force, which obviously violated the principle of fairness and impartiality. As a result, KCSC advised or provided administrative guidance to the TV station. The remaining four cases were related to political issues, and those TV stations in these cases also failed to report the issue in a fair and impartial way. Since presenting unilateral or biased personal opinions, they were ruled by KCSC as illegal. Although fines, demand for amending or suspending the programs, or punishment of related personnel are some of the other available sanctions in the relevant laws and regulations, KCSC is still limited to giving advice or providing administrative guidance to the TV stations.

At last, in the self-discipline of media organizations, two public TV stations, KBS and MBC, both state in the Broadcasting Outline that they will maintain fairness and

impartiality; however, there is no more detailed criterion to show how they achieve that in the broadcasting.

## **Chapter 6 US**

The most important factor affecting Fairness Doctrine in the United States is the development of satellite TV. Currently, most US TV markets are filled with hundreds of television networks and stations. According to Nielsen Holdings N.V., the average number of channels that TV households can receive increased from 33 in 1990 to more than 100 currently.

In the 1970s, three nationwide wireless networks, ABC, NBC, and CBS, had occupied over 90% of the TV market in the United States. These television networks shared the evening primetime market by about 70% in 1985 and dropped to around 30-40% nowadays, and this is suggesting that the loss of traditional national television audience is relatively serious. Currently, about 70% of households in the US have cable television, 23% of the households own digital pay-TV, and 22.4% of households have direct broadcast satellite TV. Based on this state, we can recognize that the market has reached external diversity.

Another key affecting factor is the development of the news network technology. The traditional national or local networks no longer have exclusive rights to report news. Besides, owing to the emergence of various NGOs, the United States, to some extent forced by their pressure, has more focus on meeting the needs of independent reporters, and this also leads to the recession of the influence of the traditional television networks.

Consequently, the doctrine which was legislated mainly due to the limited number of radio and television had to change as it had become more and more incompatible with the external environment. The Fairness Doctrine was therefore abolished in 1987, which also means the external diversity of the TV market has been wildly recognized.

To review the evolution of the Fairness Doctrine and the FCC regulatory policy from the United States history, we can conclude that it was closely related to the development of telecommunications technology. The FCC and the Federal Supreme Court both considered the fairness doctrine about regulatory principles of broadcasting was based on the radio spectrum scarcity theory: the wavelength of the electromagnetic spectrum is a finite medium, since the signal overlap and interfere with each other. Due to the scarcity of spectrum, the industry continued to promote establishing an agency to assigned frequencies, which later as known as the Federal Communications Commission.

By 1984, the doctrine had been doubted continually by Federal Supreme Court. The court was willing to support the opinion of FCC at first; however, as the increasing criticism of the prevailing theory based on the scarce broadcast channel management theory, Court began to change its opinions and considered that FCC could choose to enforce Fairness Doctrine or not. Thus, the fate of Fairness Doctrine referred to FCC's own decision.

As a response to the legal opinion of the Supreme Court, FCC began to re-examine the doctrine. In August 1985, FCC published a "Fairness Report", in which FCC believed that due to explosive growth in various available media, the fairness doctrine had lost realistic basis for its existence. Secondly, the fairness doctrine inhibited the ability of radio and television mia to comment, and restricted freedom of the press; what's more, rather than achieving the original purpose to encourage the public discussion, it had a "chilling effect" on broadcasters and thus reduced the quality and quantity of public affairs programs. Finally, FCC concluded that "As a policy matter the fairness doctrine no longer serves the public interest".

Although the fairness doctrine was abolished, the debate over its constitutionality has continued for years. Some say nothing can quickly replace a media broadcasting as



a real-time, all-weather sources of information; therefore, a lot of people launched a revival movement of Fairness Doctrine, but no significant results have been achieved so far.

After abolishing the doctrine, the FCC's regulation focuses on who has the right to disagree with the report if the contents of conflict are presented.

When it comes to self-regulation of the media, Editorial Guidelines or Code of Ethics are existing in PBS, NAB, and SPJ, as the emphasis of these are on the opportunity to respond or reply and time is given to those who are criticized. Obviously, current Fairness Doctrine in the United States is limited to providing opportunities to express, and ensures that the views of respondents are properly communicated, instead of emphasizing on the fairness of the reported contents.

### **Introduction of procedure**

Based on the legal theory of the administrative penalty, the team recognizes the fairness doctrine is neither listed in paragraph 2 of Article 27 Satellite Broadcasting Act, nor Article 53 of the same Act. This lack of punishment of the fairness doctrine violation should be considered as an intention of the legislator. Justified by the same reason, the provision of section 2 of Article 43 of the same Act should not be punished.

This procedure meant to expose the violating conduct of satellite radio and television broadcasting as the main effect. By discussion of the appeal and its conclusions, we try to establish predictability to the original definition of fairness. In particular cases depending on circumstances, each of the violations of the fairness doctrine can be considered as a factor when granting the license.

## Chapter 7 Japan

In Japan, regulations on broadcasting have been characterized by relatively “lax” methods that more depend on media self-regulations. The broadcasting regulation system is not under strict government control. Even the law administrative measures are not clear. It implies that the regulations on broadcasting content mainly depend on media self-regulation mechanisms and fewer administrative measures were taken against program content.

Another important feature of Japanese broadcasting regulation is that there is no independent agency to regulate the broadcasters. The Broadcasting Ethics & Program Improvement Organization (BPO) is a non-profit, non-governmental organization to enforce broadcasting regulations.

BPO was established by the Japan Broadcasting Corporation (NHK, *Nippon Hoso Kyokai*) and the Japan Commercial Broadcasters Association (JBA). The Japan Commercial Broadcasters Association (JBA) was formed by the commercial broadcasters.

The Japan Broadcasting Act, Article 4, states that a broadcaster must be politically fair. However, no broadcaster has ever been punished due to the violation of the principle of political fairness. There are only three administrative guidance cases from the Ministry of Internal Affairs and Communications about the “politically fair” issues. Most Japanese scholars consider the principle of political fairness as an ethical statement more than a penalty law. To enforce the principle of political fairness depends on media self-regulation, but not on government control.

From 2003 to 2019, BPO has announced four committee deliberation decisions about the violation of the principle of political fairness. Those four deliberations are all about the election news and programs. BPO concluded those news or programs violated the principle of political fairness and journalism ethics. Although BPO is a non-profit, non-governmental organization without any law enforcement authority, the BPO announcement can deeply influence the credibility of a broadcaster. Hence, most of the broadcasters follow the principle of political fairness.

The operation model of BPO is listed below.

BPO operates the following three Committees:

the Committee for the Investigation of Broadcasting Ethics whose roles are to improve the quality of broadcasting by examining programs and to investigate falsified/fabricated programs.

the Broadcast and Human Rights / Other Related Rights Committee (BRC) whose role is to aid parties whose human rights are infringed upon by broadcasting programs.

the Broadcast Committee for Youth Programming whose role is to improve programs targeting youth by organizing opinion exchanges and designing research.

If one of the Committees determines that an ethical problem exists, the BPO member broadcaster concerned is required to submit, within a prescribed period, a progress report of the corrective measures taken. BPO discloses such reports to the public.

BPO was established by the Japan Broadcasting Corporation (NHK) and the Japan Commercial Broadcasters Association (JBA). To ensure impartiality of the organization, members of each Committee are selected by the Board of Councilors, which consists of individuals other than broadcasting company executives or employees. Of the ten members of the Board of Directors, the Chairperson and three

Directors are selected from third-party individuals. BPO is funded by annual membership fees from NHK, JBA and JBA member broadcasters.

The Board of Councilors selects members of the three BPO Committees: the Committee for the Investigation of Broadcasting Ethics, the Broadcast and Human Rights/Other Related Rights Committee and the Broadcast Committee for Youth Programming. The Board of Councilors is comprised of seven or fewer members who, like the Committee members, are selected by the Board of Directors from individuals other than broadcasting company executives or employees.

The Board of Directors selects the Board of Councilors and gives approval to BPO's annual plan, budget, and financial statements. The Board is composed of a Chairperson and nine Directors. The Chairperson is selected from individuals other than current or former broadcasting company executives or employees. The Chairperson selects three Directors from individuals other than broadcaster executives or employees, and the Japan Broadcasting Corporation (NHK) and the Japan Commercial Broadcasting Associations (JBA) each select three Directors.

The Committee for the Investigation of Broadcasting Ethics, with eight to ten members who are experts in various fields, aims to improve broadcasting ethics and program quality. The committee acts on opinions from viewers/listeners and news coverage. By investigating how the coverage or production is made, it determines whether ethical problems exist based on whether the broadcaster's code of ethics and programming standards are followed. The Committee issues a public "opinion" if it is necessary.

Additionally, it acts on aired programs with allegedly falsified content that may have created grossly misleading impressions on viewers/listeners by performing

investigations to find out whether ethical problems exist. Results of such investigations are publicly announced in the form of “recommendations” or “opinions.” It also has the authority to require broadcasters to submit a report of measures designed to prevent the recurrence of such problems and how these measures are being implemented.

BPO has an agreement with each broadcaster to define the scope of authority invested in the Committee and to ensure the effectiveness of its actions by requiring cooperation and compliance of the broadcasters.

## Chapter 8 Conclusion

### 1. Research Findings

A. Comparative Laws: the UK and Korea have strong fairness principle to apply to and with individual cases. The EU guides its members on how to apply to fairness principle and takes parties' petitions. The US abolishes the fairness principle. Japan only relies on self-regulations to enforce fairness principle rather than governments. Most of them emphasize more on serious social issues and elections. In addition, the right to respond and correct can collaborate with the fairness principle.

### B. The panels:

(A) The government shall restrict itself to protect freedom of the press, even if we support the fairness principle.

(B) The fairness principle is usually too powerful to balance the partial report.

Thus, the fairness principle shall be a "soft law."

(C) The fairness principle can be stronger regarding news about serious social issues and elections.

(D) The right to respond and correct can collaborate with the fairness principle.

(E) Self-regulations still work in some fields.

(F) The fairness principle can be a reference during the license review procedure.

## 2. Implications

A. Not all the news shall be applied to the fairness principle. However, at least serious social issues and elections should be.

B. We shall avoid the “chilling effects” or “spillover effects” when enforcing the fairness principle.

C. The Self-regulations of the media are still in the first place. The governments are liable to outreach how people claim fairness principle, and the right to respond and correct.