

**THE SIGNIFICANCE AND FUNCTION OF REGULATION  
IN A CONVERGING MEDIA LANDSCAPE  
CHALLENGES IN AUDIOVISUAL REGULATION IN FINLAND**

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## THE SIGNIFICANCE AND FUNCTION OF REGULATION IN A CONVERGING MEDIA LANDSCAPE – Challenges in audiovisual regulation in Finland

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Tutkimuksen tehtävänä on selvittää, kuinka audiovisuaalinen sääntely ja erityisesti sen ikärajajärjestelmä pystyvät vastaamaan 2000-luvun mediamaailman muutokseen, jossa audiovisuaalisten sisältöjen levittäminen verkossa ja digitaalisessa muodossa on teknologian kehittymisen myötä nopeutunut ja kansallisten rajojen merkitys hälventynyt. Tarkoituksena on tarkastella audiovisuaalisten ohjelmien ikärajajärjestelmän merkitystä sekä sääntelyn sopeutumista konvergoituneeseen audiovisuaaliseen ympäristöön, jossa samoja sisältöjä voidaan tarjota eri alustoilla. Tutkimuksen näkökulma on kulttuuripoliittinen.

Tutkimuksen aineiston muodostaa audiovisuaaliseen alan sääntelyyn liittyvä lainsäädäntö, sitä selittävät hallituksen esitykset sekä muut hallituksen kulttuuripoliittiset linjaukset. Tutkimuksen analyysimenetelmänä on diskurssianalyttinen lähestyminen; tekstianalyysin keinoin pyritään tarkastelemaan, miten sääntelyä perustellaan hallituksen ja lainsäätäjän asiakirjoissa ja strategioissa. Haitallisuus on keskeinen käsite audiovisuaalisen sääntelyn legitimoinnissa.

Tutkimuksen teoreettisen viitekehyksen muodostavat foucaultilainen hallinnallisuuden teoria, Nussbaumin toimintavalmius-teoria sekä käsitykset siitä, miten kulttuuri kytkeytyy identiteetin muodostumiseen.

Tutkimuksen keskeisiä löydöksiä ovat kolme johtopäätelmää. Sääntely on muuntunut valtiovetoisesta kohti yhteissääntelyä, ja osin myös kohti itsesääntelyä, eli valta on hajaantunut. Toiseksi, kansallisia ikärajoja puoltaa kansallisidentiteettiin liittyvä kansallisten arvojen vaaliminen. Kolmanneksi, lasten turvallisen kehityksen ja hyvinvoinnin kannalta sääntelyä puoltavat hallinnan ja toimintavalmius -teorioiden näkemys valtiosta väestön hyvän elämän edellytysten luojana.

**Avainsanat:** sääntely, ikärajaluokittelu, haitallinen sisältö, lastensuojelu, hallinnallisuus, toimintavalmius -teoria.

## ABSTRACT

### **THE SIGNIFICANCE AND FUNCTION OF REGULATION IN A CONVERGING MEDIA LANDSCAPE – Challenges in audiovisual regulation in Finland**

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The aim of the study is to examine how audiovisual regulation, and in particular its age classification system, can respond to the changes in the media environment in the 21st century when distributing audiovisual content online and in digital form has become an everyday practice and national borders have become less important. The aim is to look at the importance of an age rating system for audiovisual programs and the adaptation of regulation to a converged audiovisual environment where the same content can be provided on different platforms. The research perspective is that of cultural policy.

The source material for the study consists of legislative documents related to the regulation of the audiovisual sector, explained by the government proposals and other governmental, cultural policy (strategy) documents. The method of analysis is a discourse analytical approach; the analysis seeks to examine how regulation is justified in government and legislative documents and strategies. Harmfulness is a key concept in legitimizing audiovisual regulation.

The theoretical framework of the research consists of Foucault's theory of governance, Nussbaum's capability approach, and theories on the role of culture in the formation of identity.

The study has in three main conclusions. Regulation has shifted from state-led to co-regulation, and partly also towards self-regulation – that is towards the dispersal of power. Secondly, national age classifications help to maintain national values, building blocks of a national identity. Thirdly, in terms of the safe development and well-being of children, regulation can be interpreted as the duty of governments for the good of its people from the point of view of governance and capability approach theories.

**Key concepts:** regulation, classification, harmful content, protection of minors, governance, capability approach

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# 1. INTRODUCTION

## 1.1. Audiovisual regulation: rating to indicate harmfulness

This study concentrates on recent developments in the regulation of audiovisual programmes without forgetting their historical context, which has traditionally centred around age classification or censorship. It maps out the types of regulation applicable to audiovisual programmes, while focusing on the changes in audiovisual regulation in the 20<sup>th</sup> and 21<sup>st</sup> centuries. To do this, the study investigates both government documents and legislation along with salient theories on regulation and child protection to outline the function of audiovisual regulation today.

Films have been censored and regulated by the state since the 1940s in Finland. The primary reasons for censoring were often political. Films were cut according to the demands of foreign policy and Ministry of Foreign Affairs, oftentimes, in the era of the Cold War, the underlying reason was the unwillingness to risk arousing negative reactions in the eastern neighbour. The last case was a film called *Jäätävä polte*, by director Renny Harlin, in 1984; since then cuts have not been administered (Paloheimo 2003, 21). This marked a shift from censorship towards classification by using age ratings only.

Regulation is legitimized by emphasizing the welfare of children, the only legal ground for setting limits to a person's freedom of speech is that of protection. Legally, it is expressed as protection of minors from harmful content that is "likely to detrimentally affect children's development" (Act 710/2011, chp 3, section 15). A similar system of age limits and ratings is in place in most western countries to protect minors from what is perceived as 'harmful content' in some countries or 'unsuitable' in others. Although national regulatory bodies strive to rely their age rating criteria on academic research, we can see national differences in the interpretation of what seems to be constituting 'harm' in different countries. For instance, in the Swedish legal system sexual content other than pornography is not a cause for rating, which seems to suggest that sexual content is not seen as harmful for minors in the Swedish society. Whereas in Finland, sexual content has long been one of the legal considerations for an age rating. From there we can draw the conclusion that the perception of harm and harmfulness is somewhat culturally dependent

– a difference that can be detected even in such culturally and geographically close societies as Finland and Sweden.

Most countries still rely on the more traditional national rating institutions or boards when it comes to rating films. A movement towards co-regulation<sup>1</sup> has become more common in the 2010s with Finland revising its Act on Audiovisual Programmes (Act 775/2000), Norway following suit a few years later in 2015 (Medietilsynet). It was in the Netherlands that the European trend towards co-regulation started in early 2001 when the country abolished their national classification board and replaced it with NICAM<sup>2</sup>, which is responsible for a scheme of classification criteria for programs other than digital games, called ‘Kijkwijzer’<sup>3</sup>. The Dutch institute also encompasses the PEGI<sup>4</sup> system responsible for game ratings, NICAM works in close co-operation with PEGI, and according to their website the Dutch Kijkwijzer has been instrumental in devising the game classification system. NICAM was the first to create a detailed roster for the criteria of age rating, which became the duty of the distributors and their chosen, criteria-educated ‘coders’<sup>5</sup>. The supervision of the Kijkwijzer system was left to the Dutch authorities, i.e. NICAM (NICAM1, NICAM2).

Even the new systems vary according to national discretion. Norwegians decided to continue subjecting cinema releases to the prior review and classification of the national authority, Norwegian Media Authority, while Finns decided to leave it all in the hands of the industry, following the Dutch example with cinema films and other audiovisual programs being rated by classifiers working for the industry and PEGI classifications being ratified at face value. In all of the three national cases, once the classification has been issued by the classifiers or coders working in the industry, it is the task of the national authority to oversee, give guidance and to take corrective measures if necessary (Medietilsynet; Act 710/2011; NICAM3).

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<sup>1</sup> A form of regulation incorporating the industry to participate under government control.

<sup>2</sup> Nederlands Instituut voor de Classificatie van Audiovisuele Media (Netherlands Institute for the Classification of Audiovisual Media)

<sup>3</sup> The Dutch ‘Kijkwijzer’ has the double meaning of a ‘TV guide’ or the request to ‘watch wisely’.

<sup>4</sup> Short for Pan-European Game Information.

<sup>5</sup> NICAM calls the classifiers working for the Kijkwijzer system ‘coders’.

Depending on each national practice, a system of checks and balances has been devised into the classification systems. It may be a re-classification by the respective media authority, which can be initiated by a complaint from an audience or other source. This tends to be followed by the possibility for the parties involved<sup>6</sup> to lodge a complaint against the decision taken by the authorities. The complaints are handled by a board or a committee of appeals that has been nominated for this task, consisting of legal, psychological and audiovisual expertise, and reconvenes on the basis of need. In Finland, after the complaint has been handled by the Audiovisual Programme Board<sup>7</sup>, a dissatisfied stakeholder can further lodge a complaint at the Supreme Administrative Court<sup>8</sup>, who has the final say in the matter and whose deliberations remain in force without the possibility of further appeals. There is thus a three-tier<sup>9</sup> system of complaints and appeals in place, as is the case for any administrative ruling.

## 1.2. Research question

The current Finnish system has been modelled after that of the Dutch, who have sold their model to be used under their license to Turkey, Iceland, Slovenia and Belgium (NICAM). Rather than adopting the Dutch system as such, Finns wanted to devise their own. The underlying reasons perhaps having to do with wanting to accommodate national idiosyncrasies within the rating criteria. The desire to retain a national rating system as opposed to a common European one - such as PEGI - is a question that is at the heart of this dissertation. What are these reasons? Why is it important for nations to keep their own national classifications for films and TV programs while PEGI (for digital games) is widely adopted by many European countries? Does national audiovisual rating still serve its protective purpose today? This paper focuses on the possible reasons for retaining national classification systems, while reflecting on their plausible future scenarios.

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<sup>6</sup> Generally the distributor.

<sup>7</sup> In Finnish, kuvaohjelmatalokunta, appointed by the Ministry of Education and Culture.

<sup>8</sup> In Finnish: KHO, Korkein hallinto-oikeus.

<sup>9</sup> Classifier → KAVI as national audiovisual authority → Audiovisual Programme Board → Supreme Administrative Court



### **1.3. The scope of the study**

The development from censorship to protecting minors is the backdrop for justifying ratings. This reflects a shift from concerns about the morality of adult society towards the well-being of children and liberal views on adult viewing. This study is mainly concerned with audiovisual ratings of fictional programmes from the point of view of child protection, as mapped out by the UN Convention for Children's Rights (UN). It focuses on the regulation of audiovisual media as defined by the current audiovisual legislation, the Act on Audiovisual Programmes (Act 710/2011) and its predecessors. It places the regulation of cinema films, television broadcasts, video-on-demand as well as digital games within the scope of this master's dissertation, as they all fall within the scope of the Act, which also legislates about the state's involvement in media education. This study will attempt to define key concepts within audiovisual regulation as well as take a brief look at the history of classification, without forgetting the challenges today's converging media landscape poses for audiovisual regulation. This will be done by looking at legal texts, government bills and reports to trace back the justification for classificatory regulation.

The study at hand will not focus on questions of how to shield minors from viewing pornography, as this is a matter of technical control, or "contact", rather than "content" (Livingstone, 2011, 509). Hard-core pornographic contents are classified for only adult viewing in Finland, the problem in itself is not whether children should see such material or not, but how to keep it out of their sight. The dilemma then is primarily technological, how to identify the age of a potential viewer effectively so as to block minors' access to clearly adult contents. To an extent, it involves informing parents of the dangers of children's unhindered use of media and raising awareness of technological measures.

For the purposes of this study, the year 2012 marked a turning point in recent audiovisual legislation in Finland with a shift towards co-regulative policy in audiovisual regulation. For TV broadcasts, it meant a move from a self-regulated situation towards co-regulation when contents broadcasted in linear television came to be regulated in the same manner as other audiovisual programmes. In the current regulatory system, also non-linear broadcasting, the so-called video-on-demand or internet TV originating in Finland is subject to regulation according to the Act on Audiovisual Programmes. This is to say that

services such as Ruutu and Yle Areena, which originate in Finland, need to have their contents classified according to the legal requirements before they are published for viewing. On the other hand, video-on-demand services originating from outside the national borders are not bound by the Act on Audiovisual Programmes for the services are provided abroad where national, Finnish, laws are not applicable. In essence, the provider needs to hold an address within Finland for the law to apply to their provisions (Act 710/2011, Section 2). ‘Today’, for the purposes of this study then, started in 2012 and the more recent developments in policy have taken place post-2012.

## **1.4. Approach and method**

### **1.4.1. Approach**

The approach used in this study is theoretical and hermeneutic. The theoretical nature of this study refers to the use of existing, mainly written, texts, both government documents outlining cultural policy and theoretical writings concerned with issues of regulation, harmfulness, governance and the idea of ‘good life’ and what constitutes the elements for it. The theories applied investigate the legitimacy of regulation. What is the interest of nation-states to uphold such a system? Considering the rate of technological advancement propelling the convergence and easy flow of media contents across national borders and various platforms offering audiovisual contents, one might think a system of government regulation by age classifications superfluous, slow and outdated. The theories employed in this study work to illustrate the various issues at play in the contemporary field of audiovisual regulation.

Hermeneutic approach takes various kinds of texts, be they visual or written, as its starting point when attempting to understand a phenomenon, the subject of the research – in this case the need for audiovisual regulation to protect minors. Hermeneutic approach aims at understanding a phenomenon more fully by analysing and interpreting it, by looking at the larger context and its ramifications for the object of study, rather than offering absolute truths. Its method is one of discussion of salient theories in connection with the chosen texts. Unlike empiricism, it does not aim at a verification of a process or information by repeating the process whereby the information was attained (Gadamer 2004, 17).

According to Gadamer, a precise retracing of a phenomenon can have the appearance of a scientific study while it may not actually bring about any novel insights (Ibid., 20).

For hermeneutic approach, the understanding of the subject of study is achieved by examining both the subject and its context. Gadamer compares this process to that of how understanding a foreign language works. Words make up sentences, and the sentences are the object of understanding. Yet, the sentence level is not enough to appreciate the whole story: the whole text comprised of sentences provides the reader with clues to its textual context. This is how hermeneutic circle works, from the whole to its detail and from the detail back to the whole on the road to understanding (Gadamer 2004, 29). Hermeneutic circle is a movement that negotiates meaning, a method of approaching possible truths.

Hermeneutic approach lends itself to the study of art, which is subject to interpretation and a work of art is the sum total of its parts, the details that make up the whole picture.

However, Gadamer points out that applying law to practice is also an act of interpretation. He claims that the applications of law can be seen to create “new reality”, and the act of application, according to Gadamer, is always more than the mere understanding of its meaning (Ibid., 140). Gadamer compares the interpretation of law to that of performing arts, such as music. Reading sheet music, the act of playing it, is always an interpretation of scripture, an application of written music into a reality where it can be heard (Ibid., 140-141). For Gadamer, application is the central component of understanding something; application presupposes understanding (Ibid., 143).

For the purposes of this study, the texts that are examined are mostly written documents: central pieces of legislation and also the Audiovisual Media Services Directive along with the UN Convention on the Rights of a Child are both founding documents for the legislation on audiovisual regulation. Also government bills, reports and strategy documents that focus on audiovisual regulation and the welfare of minors are of interest as documents of cultural policy.

#### **1.4.2. Method**

This study investigates firstly the concept of regulation and secondly the types of regulation that are applied to audiovisual programmes, namely command and control, co-regulation and self-regulation. Regulation is an important tool of cultural policy, and the

movement towards deregulation, which has marked neoliberal tendencies in politics and government, can be interpreted as a diminished importance of cultural policies.

Cultural policies aim at satisfying the cultural needs of their target group, generally a group of citizens in a country if considering national cultural policies (Häyrynen 2015, 10). In Häyrynen's definition, cultural policy is in effect a strategy, a way to quench the thirst for culture and the arts. Cultural policy is about what cultural artefacts, productions or events are chosen to be funded and promoted for the public to consume them. Cultural policy tends to follow a higher objective in its choices of what to bring to the fore and what kind of art becomes subject to public funding. Opinion forming and identity building are some of its objectives or side effects.

To look at how cultural policy works in national identity building, how it foregrounds national idiosyncrasies in the case of audiovisual regulation, this master's dissertation examines those textual documents that outline Finnish cultural policies in the field of audiovisual regulation. Critical discourse analysis examines the ways how language, in this case the formulations in cultural policy documents, shapes the actions of citizens and therefore their realities when these instances of language, texts, are taken as a given and not questioned (Suoninen). This study investigates legislation as well as documents on cultural policy pertaining to audiovisual regulation to find out how the role of audiovisual regulation has been and still is legitimized in and for Finnish society.

The starting point in the source materials is the current Act on Audiovisual Programmes (Act 710/2011), which lays down the law – it tells Finnish subjects what elements are undesirable or harmful for minors. Another key document is the government bill (HE190/2010 vp) because it explains in more detail the reasoning behind the legal choices.

To understand the historical context and the reasons why Finnish classification system has evolved into what it is today, previous legislation and the underlying government bill are examined in connection with the history of Finnish film classification. In other words, to understand the current system it is necessary to trace back its antecedents by taking a look at their respective documents. To investigate how current cultural policy as well as cultural policy for the near future are outlined, the central document is Strategy for Cultural Policy (STRATEGY2025) by the current government.

In addition to the above-mentioned national policy and legal documents, the underlying EU legislation in the form of Audiovisual Media Services Directive (AVMSD) and, to a lesser degree, the United Nations Convention on the Rights of Children (UN Convention) are referred to as source material. In matters audiovisual regulation, both these two documents form the backbone for national legislations within the EU, and hence for their cultural policies; EU directives set the minimum requirement level for national legislations.

According to Fairclough & Fairclough (2012, 79) critical social analysis can be normative and explanatory, and it critiques particular areas of social life: “Normative critique evaluates social realities against the standard of values taken as necessary to a ‘good society’ [while e]xplanatory critique seeks to explain why social realities are as they are”. This study attempts to do both; it looks at audiovisual regulation from the point of view of providing tools for enabling well-being and ‘good life’, the tasks of a ‘good society’ as Nussbaum (2006, 2011, 2018) has argued on several occasions. To borrow Fairclough & Fairclough’s words, this study seeks to understand “what makes a given social order work” (Ibid), i.e. what other functions audiovisual regulation may have beyond enabling good life.

## **1.5. The structure of the study**

The effects of audiovisual contents on the young, and government’s regulatory approach to counter them, is a key issue in this study. While chapters 2 and 3 discuss different types of regulation and the history of classification of audiovisual programmes in Finland, chapter 4 takes a closer look at the precise elements that are considered as the sources for potential adverse effects on young minds. A central concept is the idea of harmfulness that is foregrounded in Finnish cultural policy as the only legal justification for limiting the freedom of speech for minors since the abolition of censorship in the early 2000s. Harmfulness as defined by the Act on Audiovisual Programmes (Act 710/2011), its specific application to constitute classificatory criteria (KAVI Criteria) and a government bill are used as source material for investigation, and discussed in reference to various

writers on harmful elements. The Act on Audiovisual Programmes sets the framework for the scope of this study.

Along with the specific purpose of avoiding causing harm on the psychological development and welfare of children, the fifth chapter explores the idea of age classification in particular and regulation in general from the theoretical viewpoint of governance or governmentality, which the French sociologist-philosopher Michel Foucault wrote about in the 1980s. This study also looks at capabilities approach by contemporary American philosopher Martha C. Nussbaum, suggesting that Finnish Strategy for Cultural Policy 2025 (STRATEGY2025) parallels Nussbaum's theory of capabilities. The fifth chapter also approaches regulation from the point of view of identity and national identities in particular – an aspect of nation building fostered by cultural policies. The theories of identity and regulation by Stuart Hall of Birmingham School of Cultural Studies are applied at this juncture.

The final sections of the study focus on the current challenges and debates within Finnish classificatory practice brought up by media or reports, and the perceived needs for renewing the practices.

## **2. DEFINITIONS - the concepts of regulation, censorship and harm**

Regulation as part of the governance of culture includes various aspects of cultural policy, as Stuart Hall has pointed out. Regulation encompasses such areas as “broadcasting [...]; censorship of the arts; the relationship of minority cultures to ‘mainstream’, national cultural traditions; control of the international flow of cultural goods and images; the regulation of morality and representations of sexuality” to mention a few within the domain of media (Hall 1997, 227). Economy, politics, state and the market forces all come into play under the concept of regulation. States impose legislative power to control media, but economic interests also play a part in controlling citizens’ access to cultural contents by the choice of which goods, films or audiovisual programmes to import.

When it comes to audiovisual contents, the concept of regulation can be understood on two levels: indirect and direct regulation. On one hand, there is the macro level including the use of market forces that indirectly affects, regulates, the consumption of audiovisual media as described above. Also taxation in the form of value added tax affects the consumer price of a product and thus becomes a factor in the decision to partake in a cultural event – whether to buy the ticket or not. VAT in Finland, in general, is at 24%, but many cultural events enjoy a lower tax rate of 10%, including cinema admission fees. On the other hand, there is the direct legislative regulation of audiovisual programmes. It is the latter, a more specific and detail-oriented regulation using age classifications that this dissertation focuses on.

Jalonen (1985, 274-277) distinguishes between regulative measures that aim to promote and to hinder the import of cultural products. According to him, at its most specified form, this meant command-and-control regulation of films, subjecting them to pre-release viewing by the classification authorities. Jalonen wrote in the mid-1980s when command and control regulation, with the possibility of censoring, rejecting and cuts, was still part and parcel of film regulation. In a market economy, the decisions concerning cultural imports are taken by profit-driven import companies, and according to Jalonen, censorship was the primary way for a society to influence what kind of cultural contents the members of the society could be subjected to.

Part of the command and control, state-led, regulation of films in Finland until the late 1980s was the so called Pigouvian tax, which stipulated a taxation rate on a cinema film depending on its content. If the contents were deemed artistically substandard or indecent, the tax could be as high as 30% of the ticket price instead of the normal 10%. If the contents were judged educationally or artistically valuable or especially suited for children, no tax was levied (Act 366/1964, Sections 1-3). Imposing Pigouvian tax on films meant that it was more expensive to go and see Hollywood entertainment than a film of supposedly considerable artistic value. As so often with imposing taxes on consumer goods, also with the Pigouvian tax, the goal of the society was to regulate the behavior and consumption of its members, to steer the citizens away from undesirable contents. The same principle still applies to the value added tax levied on goods the legislators have judged harmful, such as tobacco: the more expensive it is, the less people can afford to consume it.

## **2.1. Defining regulation**

Lunt and Livingstone (2012, 4)<sup>10</sup> define regulation as “the relations between power and the ordering of social behavior at all levels of society from the nation-state up to the transnational organization and down to the [...] individual.” In the case of audiovisual classifications, the regulator exercises public power on the citizens whose freedom of speech might be restricted by the regulator’s decision. Freedom of speech includes the freedom to receive messages and it is a fundamental right carried in the constitution. As such it relates to basic individual rights.

Cultural rights, as expressed by Fribourg Declaration (FD) are not explicitly targeted or called into question by age rating. Yet, age rating criteria tend to incorporate culture-specific values affecting the assessment of harmfulness, as will be discussed later in this study. As a tool, classification criteria deal with masses, applying general tendencies in psychological development to the rating criteria, and as such it is insensitive to individuals, or for instance minority cultures. It is therefore possible that implicitly an age rating system might impose on an individual’s cultural rights, albeit in the first instance the

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<sup>10</sup> The page number refers to the paging of the e-book chapter.



purpose is one of limiting the freedom to receive messages that might be traumatic to a minor.

According to Hall (1997, 227-228) culture, including the consumption of cultural products such as audiovisual programmes, is central to “issues around social regulation, morality and the governance of social conduct in late-modern societies” that we inhabit. Following Hall’s argument, if culture and cultural products are central in the “governance of social conduct”, it must then be equally important to regulate the products of culture themselves: if we accept that culture affects people’s conduct, their behavior and their view of the world even, is it not the governance, or regulation, of the cultures themselves that should be given a key role? As Hall (1997, 227-228) contends: “The more important [...] culture becomes, the more significant are the forces which shape, regulate and govern it.” The question then arises whether these significant forces should be bestowed on state administrators or market forces.

When it comes to regulating audiovisual contents, there are generally three possibilities: command and control, co-regulation and self-regulation. Command and control is a top-down, state-led form of regulation where politicians make the laws and authorities “at an arm’s length” from the law makers enforce the law by classifying programmes according to criteria and parameters laid down in the legislation. The principle of ‘at an arm’s length’ is meant to safeguard the independent judgement of the regulatory body, while being accountable to their respective governments but being able to exercise their independent judgement over the classificatory criteria (Lunt & Livingstone, 22-23). The role of distributors and the industry is to deliver “accessible and diverse media content from a range of suppliers” and to abide by the laws and subject their audiovisual imports and enterprises under the scrutiny of the administrators (Lunt & Livingstone 2012, 2).

As Lunt and Livingstone (2012, 24) point out, an effective system of command and control regulation tends to be costly. Another problem with it is its inflexibility to account for the developments in the market and technology, rendering audiovisual legislation into a complex bundle of mutually co-dependent rules. Prosser (2008, 100) contends that “law is a blunt tool” for intervening in such complex systems as the media. Therefore, command and control regulation that merely assumes the adherence to its rules as a given is not supple enough to accommodate the complexity of cultural needs, claims Prosser. The

economic challenge of classifying all audiovisual programmes by state administrators in an equitable manner in a world where transnational movement of media contents has become rapid and unhindered has led to nations incorporating co-regulation or self-regulation, or as a fourth possibility, an amalgamation of two or three types of regulation into their regulatory regime.

When it comes to audiovisual programmes, co-regulation combines the control of state authorities with the non-state, often industry-generated, classifications. Self-regulation would seem, on the surface, to make state intervention redundant, but as Prosser (2008) argues, a pure form of self-regulation is rare if not non-existent. Nation-states generally want to have some control over the regulation of cultural goods within their jurisdiction for the sake of protecting the public interest. The public interest viewpoint no longer describes the relationship between PEGI, Pan European Game Information<sup>11</sup>, and Finnish legislation on classification. Finland has chosen to accept, to ratify game classifications as such, without the possibility to intervene at the stage when a classification is being brought to the knowledge of the regulatory agency (KAVIgames). This decision leaves the national regulators with no room to maneuver, should they detect a classification that in some significant way rides against the cultural norms and values, in other words perceivable harm, inscribed in the national legislation. Any complaints from the authorities would have to be handled internally within the PEGI boards of experts. Therefore, the insertion of PEGI's self-regulated classifications within the Finnish classification system can be seen as a form of co-regulation, or a combination of self-regulated PEGI with otherwise co-regulated Finnish classifications.

Co-regulation refers to a practice where the industry, in the case of Finland the TV companies and the film distributors, handle the minute-to-minute viewing and application of the classification criteria to any given audiovisual programme. In co-regulation, the overseeing control rests in the hands of state authorities who can react to the classifications after the fact and alter them if the classification is judged erroneous in respect to the criteria given by the authorities. In this model of regulation, much of the costs of classification are "absorbed" by the classifying industry. They stand for the costs of the

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<sup>11</sup> An organization of the computer game industry that also handles classification of computer games.

time consuming and labour intensive process of classification (Lunt & Livingstone 2012, 25).

In the first instance, one might suspect co- and self-regulation of being industry biased, and crumbling the trust in classifications. To avoid this, governments generally reserve the possibility of issuing sanctions and corrective measures on perceived breaches on the commonly agreed code of conduct or the application of classificatory criteria (Lunt & Livingstone 2012, 24-25).

The Finnish classification system has a three-tier model of corrective measures. In the first instance, the regulatory agency can re-classify a work on the basis of its own judgement, audience feedback or on the grounds of a stakeholder's appeal. A member of the audience can give feedback, but they are not considered a stakeholder. This means that feedback does not necessarily result in a re-classification if the authorities view the classification is justified, but any appeal by a stakeholder must result in a re-classification. However, a re-classification by the regulatory agency can yield the same result as the original classification, and it would then prevail.

The second level of corrective measures gives stakeholders, usually a distributor of a film, a chance to lodge an appeal against a classification taken by the regulatory agency. In Finland, the regulatory agency is National Audiovisual Institute and the body to inspect the appeal is the Board of Audiovisual Programmes, who in its turn will again issue a classification of the programme according to its interpretation of the relevant legislation. It should be noted that the Board concentrates on the application and interpretation of the law, the current Act on Audiovisual Programmes, whereas the classifiers and the regulatory authorities are bound by the application of the classificatory criteria which already is an interpretation of the law and devised by the regulatory authorities. Because of their slightly differing strategies in the process of classification, the 'verdicts' of the Board of Audiovisual Programmes are treated as corrective guidelines by the regulatory authority, should they differ from the classification by the latter.

According to the administrative legislation, the third level is the final level of judgement, and with audiovisual classifications it too is the Supreme Administrative Court, whose rulings cannot be appealed against and changed. It is rare for an audiovisual programme to

go through the entire complaint process all the way to the Supreme Administrative Court, but it is not unheard of. The last case was that of a documentary film called *Reindeer Spotting* in 2010 when the appeal was dismissed by the court.<sup>12</sup>

## **2.2. The difference between censorship and classification: protection of minors**

"Classification"<sup>13</sup> is the term widely used of the process of age rating these days, and in the European context it tends to denote cut-free ratings as a norm. Classification with its age-related ratings infringes on the freedom of speech of minors, on their freedom to receive messages, and audiovisual programmes are the only form of media, so far, where minors' access to media contents is being restricted by law. The justification for it is protection, rather than censorship. In many countries, including Finland, people over 18 years old are no longer the consideration or worry of classification officials. Legally, the classification process, age rating, can only consider the best interest of minors. Finnish classification law, along with their north European counterparts, aim at the protection and welfare of children. The very first chapter of current Finnish legislation (Act 710/211) states that the purpose of the law is to protect children.

The basic principle is that the only justifiable reason for an age rating is to protect a certain age group from a conceivable harm that seeing contents too brutal or otherwise traumatizing could cause them. For example, let's consider children of five years of age. Their developmental stage does not yet allow the children to distinguish between fact and fiction – everything that they see on the screen does not only feel real, but is real to them. A child losing their sleep over a scary film, or a scene, is not consoled by being told 'it wasn't real, it was just a story, it was just a film'. To the child the film is part of the world they live in. The distancing method of 'it is just a film' that older children, and adults, use when seeing something disturbing does not work for the very young. It is here age rating intervenes: if ratings are respected, children should be protected from seeing age

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<sup>12</sup> This information can be found on the classification database at [www.luokittelu.kavi.fi](http://www.luokittelu.kavi.fi).

<sup>13</sup> 'Classification' as a term is used to refer to age ratings produced both by command and control and co-regulation. It is used synonymously with 'ratings' or 'age ratings' in the context of audiovisual regulation. In Finnish, the relevant terms would be '(ennakko)tarkastus' as referring to command-and-control ratings, or these days in the co-regulation the term would be 'luokittelu'.

insensitive materials. Following this principle, the “allowed for all audiences” rating can have but very minor and very few scary situations that are quite quickly resolved within the same scene (KAVI Criteria nr 12, page 5).

At the other end of the rating spectrum, the 18 rating is assigned to shield minors from, for example, graphic depictions of gore and splatter violence. Such films are rare in cinema, but they exist, such as the 2013 release *Only God Forgives*. Hard core pornography is another example of contents that our society has decided children should be protected from being exposed to. Hard core pornography is not subjected to rating, but automatically given the 18 label as discussed in sub-chapter 1.3.

Sometimes the process of assigning age ratings to films is still referred to as censorship and the authorities involved in rating as censors, yet the term "censorship" tends to carry a negative connotation, evoking ideas of adults being patronized. It is strongly linked to the notions of banning or rejecting a work of film or, alternatively, authorities demanding cuts. In today's western societies, this sounds rather extreme - applying bandage before injury. Although it may still be legally possible, the classification offices operating in Europe rarely resort to censoring in the form of cuts. For instance, the British Board of Film Classification, BBFC, mentions the rare occasion of cuts in connection to wishes for a lower rating by the distributor (BBFC0). In more conservative cultures cuts are still part of the classificatory tool box: Singapore's Media Development Authority mentions the terms "clean" (classification of the original without cuts) and "PWC" (passed with cuts) on its website of classification database (SMDA).

The United Nations Convention on the Rights of Children has been ratified in Finland and it forms the basis of the Act on the Classification of Audiovisual Programmes. Article 17 of the UN Convention states that member states should ensure children's access to various, but age appropriate materials, the Convention emphasizes the well-being of children as the justification for media protection.<sup>14</sup> Since Finland has ratified the UN Convention on the Rights of Children, its laws on media need to respect children's right to a safe media environment. Article 17 of the Convention stipulates that children have the right to access

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<sup>14</sup> " Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being" (Article 17)

information especially of the kind that is “aimed at the promotion of [...] moral well-being and physical and mental health” (UN, 5).

The Classification Act is then seen as a decree of child protection. The purpose of keeping children from harm is always to be weighed against children’s freedom of speech. If a film or other audiovisual material can be considered to cause harm, to be “detrimental” (Act 710/2011) to children’s development, it is reason enough to protect children from it by setting the material an age rating. For instance, if a film or a game is considered to be detrimental on account of its violent content, it can be assigned the age rating 7, 12, 16 or 18 depending on the level of the depictions of violence, following the Finnish law and PEGI practice. For example, some James Bond films have been rated 12 and others 16 in Finland, this reflects the degree of graphic violence in the film, the degree of detail in the depiction of violence. As commercial productions, Bond films aim to reach a wide audience, it would be unthinkable for these movies to have such detailed depictions of gore and graphic violence that it would require an 18 rating. Also, such cinematography would not be in keeping with the genre of omnipotent agent films spiced with a touch of self-conscious humour. The 16 rated Bond films are then to be understood to potentially have such contents that could traumatize a child younger than 16. Traumatizing here does not necessarily mean scarred for life, but yet a frightening enough an experience to cause nightmares, for example (KAVI).

### **2.3. UN Convention on the Rights of the Child and the well-being of children**

The UN Convention on the Rights of the Child (UN) has been ratified in Finland, and it is a foundational document for the Act on Audiovisual Programmes (Act 710/2011), considering the latter’s *raison d’être* of protection and safe-guarding by age ratings. Being able not only to receive messages, but also to create them is important in today’s world to young people as stipulated in the UN Convention on the Rights of the Child (UN, Article 13, section 1; Article 17, paragraph 1). The use of media has become an intrinsic part of contemporary life – so much so that we can say our ability to use it affects our well-being. For the young, a “shined-up” presence on social media can be different from their real-life presence and these “online personas” can cultivate feelings of alienation (Gardner & Davis , 63).

Media enables us to establish and remain in contact with others, be it person-to-person messages or following social and mass media. In terms of Maslow's (1970, 43-46) hierarchy of needs, the ability to communicate and be heard can be understood to relate to the psychological needs of safety and belonging. On a higher level, it also relates to our creative needs.

Minors have these same needs, and Article 17 sees it the duty of nation-states to see to that these needs are met safely and minors are protected from "injurious material" (UN, Article 17, section e, page 5). Moral well-being, as referenced in the UN Convention, is not to be understood as wagging-one's-finger moralizing, but striving for the kind of well-being that allows the children to grow into responsible world citizens whose moral compass, a sense of ethics and worldview are based on their access to a culturally wide array of age sensitive media contents.

## **2.4. Development of the notion of harmfulness**

The Video Act of 1987 (697/1987)<sup>15</sup> mentions indecency, anxiety, brutality or other damage to mental well-being<sup>16</sup> as reasons for rejecting a programme. The Act on Classification of Audiovisual Programmes from the year 2000 (775/2000)<sup>17</sup> in practice abolishes censorship and total rejections, bringing child protection to the forefront:

An audiovisual programme shall be considered harmful to children's development when it is likely to have a detrimental effect on children's development owing to its violent or sexual content or by causing terror or in a comparable manner.

A decade later, the legal definition of harm in the Act on the Classification of Audiovisual Programmes (711/2011 Section 5)<sup>18</sup> reads as follows

[content that] by virtue of its violent or sexual content or its properties causing anxiety or any other comparable features, is likely to detrimentally affect children's development.

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<sup>15</sup> no translation available

<sup>16</sup> Section 8, paragraph 2 in the original: "epäsiveellinen tai raaistava taikka on omiaan kauhua herättämällä tai muulla tavoin vaikuttamaan mielenterveyttä vahingoittavasti"

<sup>17</sup> <https://www.finlex.fi/en/laki/kaannokset/2000/en20000775.pdf>

<sup>18</sup> <https://www.finlex.fi/en/laki/kaannokset/2011/en20110710.pdf> (unofficial translation)

The translations of the legislation are unofficial insofar as English is not an official language in Finland, but they have been commanded by the authorities and can be seen as reliable translations, true to the original legal scripture. It can be seen in the wording of the Act of 2000 that the grounds for causing rejections have there been transformed into a matter of child protection from the more general damage to mental well-being, which can be understood to apply to all ages.

‘Indecency’ has been termed ‘sexual content’ in the later editions of the law; ‘likely to cause anxiety’ has been later understood as ‘causing terror or anxiety’; and ‘violence’ has been one of the principal elements to affect censoring and the rating to different age categories. Before the year 2000, the Acts referred to violent content as "brutalizing" (HE 2/2000 vp, 16). According to an online dictionary<sup>19</sup> on Finnish the word “raaistaa”, means to make (more) brutal or violent. The example it gives<sup>20</sup> is one to do with films, placing the collocative and denotative usage of the verb within the realm of violent films. Consequently, it would seem the same elements of violence and sexual content are still under scrutiny and subject to regulative measures as they were at the beginning of the history of Finnish censorship.

The criterion of anxiety is not a new one, either. It was already a concern with the early American crime films and thrillers that were heavily censored during the 1930s for their brutalizing elements (Sedergren 2006, 20). This meant that violent imagery was linked with the feelings of terror and anxiety it could be understood to generate in the viewer.

Each programme, be it a film, a TV programme or a computer game, is individually classified, by undergoing a viewing, or with games, playing. Each work of film or a game has its own possible issues that may raise a flag during the classification process and these concerns cannot all be listed in the legal scripture, hence the phrase "any other comparable features" in the Act of 2011 (Section 3, paragraph 15). This leeway for unforeseeable issues affecting classification has been included in the Acts of 1987 and 2000 with similar wording, but it was not formulated into a criterion of its own until the current application of the law. "Any other comparable features" has been interpreted to include for instance drug use by the classification authority since the latest Act took force at the beginning of

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<sup>19</sup> [www.suomisanakirja.fi](http://www.suomisanakirja.fi)

<sup>20</sup> The example of usage given is “the brutalizing effect of violent films”.



2012, and today it is not only violence, sex and horror that affect age rating but also the portrayals of illicit substance use.

The harmful effect does not need to be imminent or even certain, for the elements of violence, anxiety, sexual content or drug use to cause an age rating according to the current classification law. Because the legal scripture uses the wording of "if the programme [...] is likely to detrimentally affect children's development" (Act 701/2011, Section 3, paragraph 15). A likelihood of harm is enough to trigger a rating. A certainty of a specific programme being traumatizing to any young viewer would be difficult to ascertain, therefore 'a reasonable doubt', to borrow an oft-used term from legal drama, suffices.

At the same time, the likelihood of perceivable harm is important in distinguishing this type of ratings from rating for suitability. The harm factor differentiates Finnish audiovisual ratings from those issued in the US or the UK; in the Anglo-American contexts, the defining factor for ratings is suitability, whereas the notion of harm is the only criterion in Finland and in other Nordic countries. In countries where suitability is a factor in rating, the system of parental guidance, or PG rated programmes, is a common feature. Often foul language, swearing, is an element in rating in these countries, whereas in Finland and other harm based classifications systems, it is not considered a source of developmental hazard, merely unsuitable behaviour. This difference becomes apparent in the harm based classifications being legally binding, while the parental guidance ratings tend to be just that, not excluding children from seeing them, they act as a guidance to parents who might consider it improper for their young children to view certain types of contents.

## **2.5. Context matters**

Yet, the law does not only outline the types of contents that are deemed harmful, but it also stipulates the context and the manner, in which the harmful content is being portrayed, must also be considered during the rating process. The contextualization of harmful elements has been a consistent consideration that was already mentioned in the Video Act in the 1980s. Narrative context allows for violence to be reviewed differently depending on the genre of a film, for instance. An animated cartoon with Mickey Mouse shooting his

gun in the air or a slapstick style punch should then yield a different rating than shootings and fist fights in an action film.

According to research (Salokoski & Mustonen 2007, 89-92), the degree of realness, or vraisemblance, of the depiction as opposed to its degree of fictivity has a bearing on its impact on viewers. The more authentic the depiction seems, the stronger the effect on a young mind. Also the amount of a particular type of media content is likely to affect a child subjected to either great or lesser amounts of certain kinds of media content. Yet another factor in evaluating the impact of how events are contextualized in audiovisual depictions is the attitude within the story to its events, in what light the events are shown in the film. For instance, if the hero/heroine, or the central figure, of a film is subjected to violence, it is likely to reduce the viewer's acceptance of such treatment, due to the viewer's identification with the fictional character.

The next chapter will look at the historical developments in audiovisual, especially film, classification.

### **3. TURNING POINTS IN THE HISTORY OF FILM CLASSIFICATION IN FINLAND**

#### **3.1. The early 20th century: governmental censorship**

In the early 20th century, between 1911 and 1919, film censorship was not a matter of pre-release viewing, but it was left in the hands of the police who had the right to interrupt a screening if the contents of the film being shown had untoward, undue or inappropriate contents<sup>21</sup> (Sedergren 2006, 9). In 1911, the cinema owners financed a film projector for the use of the police forces for the sole purpose of reviewing films. At the time, films were categorized as either accepted for viewing, accepted for viewing by children or rejected for public viewing, i.e. censored completely from the public. It was in the interest of the distributors to play along with this early form of co-regulation to avoid post-release censorship. If a film had been accepted for national distribution by the police, no government office could overthrow this verdict. (Ibid., 16-17)

The first constitution of the independent Finland, dated in 1919, stipulated that films too were covered by the clause concerning freedom of speech. As Paloheimo notes, this would seem to conflict with any form of censorship. Yet, censorship was a regular occurrence and to enable it, exemptions needed to be decreed. (Paloheimo 2003, 14) From 1919 onwards, censorship was no longer in the hands of the police forces, but it was enforced by a board<sup>22</sup> consisting of part-time censors.

The reasons affecting censoring or cutting films reflected the history and culture of the time - the ways of a given period in time. According to Nenonen (1999, 17), censorship was aimed at the maintenance of political power and status quo in the society. In addition to portrayals of untoward behaviour, films were censored on the basis of foreign policy. The wars during the 1910s to the 1930s affected censorship, political incitement was on the list of unacceptable content, e.g. Bolshevist propaganda was rejected. The Ministry of Education instructed the censors to also be strict about films depicting crime or sexual

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<sup>21</sup> In Finnish "tapojen vastainen sisältö"

<sup>22</sup> 1919-1921 Valtion filmitarkastuslautakunta (National Board of Film Censors); after 1921 (National Film Censors) Valtion filmitarkastamo. Despite the name, the Board was not strictly speaking a government office but a Ministry appointed group of censors working under the roof the Finnish Film Chamber.

content. As depictions of crime were not acceptable, many American crime or gangster films were banned in the 1930s (Sedergren 2006, 18-31).

A set of guidelines for censorship was issued in 1935 by the Film Committee founded in 1924. According to Sedergren, the detailed guidelines of 1935 were the principal achievement of the Film Committee. The grounds for rejecting the distribution of a film could vary from religious<sup>23</sup>, moral and legal reasons to upholding order and public policy. The censors were on the lookout for contents that were violent, sexual, politically tainted or otherwise likely to "excite" a young mind and lead into decadence. As an example of causing undesirable arousal, Sedergren mentions a slap on the buttocks and spitting to have been perceived as sexual and likely to cause moral depravation (Sedergren 2006, 17). To ensure contents to be in good taste meant to rake out scenes depicting upsetting events or accidents in a realistic tone, describes Sedergren. As he points out, many a masterpiece or a classic work of cinematography was rejected from public viewing on the grounds of violence or being otherwise unacceptable (Ibid., 21-22).

The start of the Winter War in the late 1930s resulted in matters of foreign policy to be added onto the 'unsuitable list'; films that were likely to have a deteriorating effect on international relations were to be banned. During the Winter and Continuation Wars, film censorship did not stop the distribution of American and German propaganda films. Wartime censoring was motivated by making politics, contends Sedergren, it had its eye on the goals of warring as well as keeping up the morale of the general public (Ibid., 42).

### **3.2. From 1946 onwards**

The birth of the Finnish Film Classification Bureau dates back to the year 1946 when classification, although censorship might be a more befitting description from today's perspective, of films became a matter of governmental command and control regulation. Prior to 1946, it had been dealt by an institution of the film industry<sup>24</sup> where government appointed censors reviewed the films before their release. The arrangement had been one

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<sup>23</sup> blasphemy

<sup>24</sup> Filmikamari (the Finnish Chamber of Films) that is still in existence and represents cinema owners as well as film distributors.

of coexistence of governmental actors and representatives: censors operated under the orders from the state but were housed under the roof of a representative of film industry (Sedergren 2006, 15).

The 1950s were the golden era for cinema films in Hollywood, but also in Finland. Crime films and westerns became popular and the Classification Bureau paid particular attention to them for their contents of violence and ill manners. The quality of the cinematic narration was no guarantee against rejecting a film, according to Sedergren many “quality films” acclaimed by international critics were banned (Ibid., 262-263).

The great wars were over and television hadn't invaded Finnish living rooms yet while in America the era of television had already started. However, as soon as television broadcasts started in Finland, so did the tug of war about their regulation. Initially in the late 1950s, films and news programmes showed on TV fell under the scrutiny of the Film Classification Bureau (Ibid., 217). In the early 1960s pressure to exempt television programmes from pre-broadcast scrutiny mounted up, the director of the then Classification Bureau argued for issuing ratings on television programmes based on the written synopses provided by the national broadcasting company. According to the director, there wasn't simply enough manpower in the Classification Bureau to handle all cinema films and TV programmes in the same manner, by pre-viewing them (Ibid., 220). The dispute about whether television contents should be regulated differently from cinema films, especially when contents were similar, continued until 1966 when the regulation of the two went their separate ways (Ibid., 251).

Film classification in the 1970s concentrated on violence and sexual content, both domestically and internationally (Ibid., 346, 359). Indecency and untoward behavior were oft-used reasons for rejecting films (Ibid., 360-361). The ombudsman at the time took a stand on who has the right to lodge a complaint and in his interpretation the members of the audience were not considered stakeholders (Ibid., 364). This has been somewhat altered: today members of the audience can request a reviewing of a given programme at the authorities, but they still don't have stakeholder status when it comes to appealing to courts (Act 710/2011, paragraph 4, section 20). It is reserved for economic stakeholders, in that sense the 1970s ruling of the ombudsman still prevails.

While defining the status of stakeholders, the ombudsman also reflected on the nature of ‘indecent’<sup>25</sup>. He concluded that legislation is not clear in its definition of the concept, nor could it be so as ‘indecent’ is offensive to the generally accepted idea of decency in the society. Therefore, a film could be considered ‘indecent’ when it was in conflict with the generally accepted notions of decency in a given society. This, in turn, concluded the ombudsman, varies in different times as societies change their attitudes to sexuality and moral (Ibid., 364-365). This reasoning leaves room for cultural change, it acknowledges that societies are not static but in a state of flux when it comes to attitudes towards culturally dependent issues such as media contents.

However, what remained unchanged in the censoring policy from the 1946 to the 1980s were matters of foreign policy (Ibid., 398).

### **3.2.1. Late 1980s: the last film censored and the Video Act**

Matters of foreign policy remained on the agenda for censoring late into the 1980s. The geopolitical situation of a small nation sharing a 1,300-kilometre long border with an erratically behaving autocratic neighbour, who had a different set of values and interests, was a reality to consider. Renny Harlin's fiction film *Jäätävä polte*<sup>26</sup> was rejected from public distribution on the grounds of its violent and anti-Soviet content in 1986 (Paloheimo 2003, 21). The film had fictional depictions of KGB cruelty and was deemed too upsetting by the Soviets. In Finland, rocking the boat of goodwill between the two nations was not regarded as advantageous. In the spirit of Cold War finlandization, Finland acquiesced to Soviet views. Later the same year, the film was nevertheless released after considerable cuts, as long as 3.5 minutes (HS1, 2016). Cultural policy became thus an instrument of foreign policy, in an effort to hold on to democratic, western and Finnish values such as freedom of expression and having the right to one's own cultural products, even if they express views that are not supported by all.

Cultural policy is not a separate entity from other areas of policy making; it is not immune to societal interests and having to make choices between them (Häyrynen 2015, 10). The treatment of Renny Harlin's film is an example of cultural policy serving a higher master –

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<sup>25</sup> In Finnish: “epäsiveellinen”.

<sup>26</sup> Released under the title *Born American* in the US.

maintaining the status quo with the Soviet Union. The 1980s were still the era of the Cold War, albeit towards the end of it. However, the fall of the Iron Curtain was still a few years away, and finlandization marked the way Soviet-Finnish foreign policy was conducted. During the era of finlandization, it was considered unwise to rattle the delicate particularity of Finnish sovereignty. Yet, after the wars and towards the 1980s, Finland was gradually integrating into the West; the country joined the United Nations and several foreign treaties, also cultural, were signed. Cultural imports from the US and the UK increased during this period, which meant the decrease in imports from other countries. As Jalonen points out, every choice in cultural imports was also a negative choice, a rejection, of another country's cultural products; the number of imported cultural productions could not be limitless. Already towards the end of the 1970s, Anglo-Saxon cultural import was gaining more and more ground and became the norm (Jalonen 1985, 234-235). Regardless of the integration to the West, integration to the Soviet Union, finlandization, was a factor that influenced the treatment of cultural contents even from other countries, contends Jalonen (1985, 235).

Another milestone in the history of classification was the coming of VHS tapes, videos, in the 1980s. To begin with, they were not required to be classified, but what with becoming common household items, the law caught on. The law makers expressed a worry over the spreading of violent depictions via "video technique" into the homes and lives of the impressionable young. As VHS devices were becoming increasingly common in the latter part of the 1980s and the early 1990s, the general understanding was that children and young people would be susceptible to ever growing amounts of violent audiovisual contents. According to the Government bill of 1986, the understanding at the time was that continuous viewing of fictional violence was destined to lead to the development of violent behaviours in children and adolescents. Video recorders were expected to be used mostly for recording broadcast TV programmes, but also video stores and video rental shops were predicted to become more common. Hence the need to subject video films to classification. Indecent content and brutality, alongside with violent content, were mentioned as grounds for rejecting a film or a video, whereas the reason for an age rating was only violence. Rejections were justified on the grounds of national security and maintaining order in society as well as protecting potential viewers, also adult viewers. Censorship in the form of rejections was seen as protection, shielding the citizens from depravity, but it was also a tool to safeguard the interests of the general public and good relations to foreign nations

according to the Government bill of 1986 (HE 95/86: 3-4, 9, 12). *Jäätävä polte* in the year 1986 was the last case of cuts being ordered before its acceptance for public distribution, but rejections, on the other hand, remained in the censors' toolbox until the next millennium.

The Video Act (Act 697/1987) was implemented in 1987 and contrary to the original intentions, it turned out stricter than its cinematic counterpart. Only video films classified for 16 or under could be released for public distribution. Adult rated video films were not allowed to be distributed. This situation led to a conscious liberalization of the strictest ratings: what could have been an 18 rated film was now rated 16 to enable both forms of releases, 35mm and VHS (Sedergren 2006, 430). For instance, the Japanese classic *Ai no corrida*<sup>27</sup>, released in 1976, was rejected five times on the grounds of its sexual and violent content before it was accepted for distribution with an 18 rating in 1997.<sup>28</sup> Soon after its adult rating, the Appeal Board reviewed it and by lowering the rating to 16 enabled its release on VHS as well (Ibid., 506).<sup>29</sup> The most recent development in the *Ai no corrida* case is its yet another re-rating; now the current rating is 18. The latest rating was made possible by the 2012 change in legislation that allows for old and outdated ratings to be reviewed and updated by the classification authorities<sup>30</sup>. The possibility of re-rating aimed at having old films and their ratings updated with current rating criteria that, in turn, supposedly reflect the values and norms of today's society. (Act 710/2011 Chapter 4, Section 21 Paragraph 2) In this light, the raised rating is slightly surprising; it would seem to indicate a tightening of the norms and perceived possibility of harm to minors.

### 3.2.2. Television broadcasts: historical and classificatory context

The initial attitude to television before the 1950s was to see it as a rival to cinemas. Yet, in the 1970s Raymond Williams characterized television as “inefficient medium of visual broadcasting [whose visual inefficiency] by comparison with the cinema is especially striking” (Williams 1975, 28). According to Williams, cited by Kortti, technology

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<sup>27</sup> English title: In the Realm of the Senses; suom. Aistien valtakunta

<sup>28</sup> The information is based on the Finnish classification database found at [www.ikarajat.fi](http://www.ikarajat.fi)

<sup>29</sup> <https://luokittelu.kavi.fi/public.html#haku/aistien%20valtakunta//542bb53525b88ee7ebb7bdcc>

According to KAVI database the year of the rating and rerating was 1997.

<sup>30</sup> A so-called sundown clause made re-rating possible to any classifier with credentials only for the first two years after the implementation of the new legislation in 2012, after which it became possible only for the relevant authorities.



preceded content (Williams 1975, 25; Kortti 2007, 53-54). Williams calls the kinds of early television contents that were not produced for television use *per se* “parasitical” (Williams 1975, 25). He points out that television was especially suited for the transmission of “something that was in any case happening or had happened”, broadcasting theatre plays or sports was quite inexpensive (Williams 1975, 30). It was, and still is, the production of television drama that is costly; at the time of Williams’s writing, reality television, which also has the reputation of being economical to produce, had not been conceived of.

It wasn’t until after the Second World War when American television became an integral part of American consumerism in the 1950s that television started on the road to becoming a household media to be used in different parts of the world (Kortti 2007, 54; Thompson & Bordwell 1994, 375). Williams contends that television broadcasts and home TV sets would have become commonplace earlier had it not been for the World War II (Williams 1975, 29). For Williams, broadcast technology, both radio and television, came to combine “varying needs [and their] specialized means”. In addition to the press catering for the need of current political information and the photograph for the maintenance of distant personal and family connections, broadcasting became another new medium to access information. The first half of the 20<sup>th</sup> century with the two World Wars had also played a part in the development of communication technology that later enabled first (sound) cinema and then television broadcasts (Williams 1975, 22-23).

In Finland, and elsewhere in Europe, television became a household item a decade later than in the United States, in the 1960s. In 1964, half a million television licenses had been issued in Finland, which roughly translates to half a million households having a television set. By the 1960s, 80% of British households had a TV set; in the United States television became an everyday occurrence by the end of the 1950s with 86% of the households having acquired a set of their own (Kortti 2007, 60-61, 69).

Until 2012, the regulation of TV programmes was supervised by the Finnish Communication Authority and, in practice, since 1966 (Sedergren 2006, 251) programmes were self-regulated by the TV companies themselves within their mutually agreed age recommendation categories and the use of watershed times. The Act on Television and

Radio Operations mentions programmes detrimental to children's development, naming it the duty of the broadcaster to ensure the broadcasting of harmful contents at such times "when children do not usually watch TV" (Act 744/1998, Section 19)<sup>31</sup>. The earlier version of the law (Act on Cable Transmissions) from the year 1987, addressed the issue of harm under the heading of "rejected programmes" as follows: "[A] programme may not contain brutal violence, nor can it be damaging to mental health or sexually explicit."<sup>32</sup> (Act 307/1987, Section 13) It was at the discretion of the distributor-broadcaster to determine which programmes could not be shown at all for their indecent or violent contents, a situation which cannot but have led to censoring programmes.

The later Act of 1998 required the use of watershed times in programme planning to avoid showing harmful material for minors. The watershed times are still in use alongside with age ratings. They are not decreed about explicitly in the legislation, but the details are agreed upon in the so-called Code of Conduct, together with the industry and the respective authority. According to the current watershed times, a 16 rated programme cannot be shown before 9 pm, and an 18 rated programme can only be shown after 11 pm (Cupore&KAVI 2014, 14). Five o'clock used to be a watershed for the 12 rated programmes, but after discussions about the problems of programming between television companies and the regulatory authority National Audiovisual Institute, it was agreed to lift the five o'clock watershed as long as the television broadcasting companies agreed to continue to observe the aspect of protecting children from harm (KAVI/MEKU 2017, 3).

Only from 2012 onwards also the contents of television broadcasts fell within the scope of the Act on the Classification of Audiovisual Programmes. This change had the effect of making the regulation of television contents stricter than before, and it was decreed to establish a uniform system for all audiovisual programmes regardless of the form of distribution. This meant that a film or another audiovisual programme released in cinemas, broadcast television or on domestic, non-linear online services needed to be classified only once when it was first provided for audiences. After the first classification and distribution, the programme could be rereleased and distributed with the same rating on other platforms (HE 190/2010 vp, 16).

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<sup>31</sup> Translated by the writer from the original Act, the translated Act is a compilation of the 1998 Act on Television and Radio Operations and of later Acts.

<sup>32</sup> Translation by the writer.

Before 2012, a TV series could be shown on national television with its self-regulatory age recommendation and released on DVD with a binding rating. The same material having two different ratings under two different systems was considered confusing for the consumer and this was one incentive behind the renewed legislation – to unify the ratings regardless of the manner of distribution (HE 190/2010 vp, 14-15).

### **3.2.3. The 2000s: The end of adult censorship**

Until 2001, cinema films could be censored from adult audiences. The renewal of the Constitution in 2000 included a clause stipulating about the legal causes for infringements on a subject's freedom of speech. This, in turn, enabled the decreeing of the Act on Film Classification in the normal order instead of an exemption to the Constitution. According to the clause, freedom of speech can be infringed upon only when it comes to audiovisual programmes and only on the basis of protecting the minors (Paloheimo 2003, 14). This meant the dawn of a new era for Finnish film classification, it was a move away from censorship towards protecting children from harm. The protection of minors from harmful material was done by rating films into different age categories according to the gravity of harmful contents. Adults were free to watch what they desired, as long as their desires were within legal boundaries; if a film was deemed to contain illegal contents, to be in violation of the Criminal Code, it could still be banned. In practice, there was no more banning on the grounds of decency, morality, violence or politics - as long as these 'atrocities' were fictional. Depictions of actual violence, which could be interpreted as inciting to violence, can still be interpreted to be in violation of the Criminal Code.

The legal scripture does not make a distinction between fact and fiction in its interpretation on harmful content, the verbal specifications do not mention a division of content into fact and fiction (Act 710/2011, paragraph 1, section 3, subsection 1). Yet it has become a practice in classification to steer clear of censorship in the form of banning or cuts requested by the authorities since adult censoring ceased in 2001 (Paloheimo 2003, 14). The more violent the content, the stricter the rating is the main principle of approach. The stricter the rating, the fewer the members of the audience who should have access to see the production.

For instance, hard core pornography is issued the age limit of 18, only to be distributed for adult audiences, be it fictional or not. The narratives in hard core pornography, by definition, tend to be weak or non-existent, and the films tend to focus on the act itself. One might see very little fictionality in it. In the case of hard core pornography, to talk of ‘ratings’ is misleading since they are not classified in the sense that fictional films are required to be classified. The process of classification entails a minute-by-minute viewing of the entire work, be it a cinema film or an episode of a TV series. Only on the basis of having seen all of the work, the classifier is entitled and able to produce a classificatory rating according to the criteria generated by the national authority.<sup>33</sup> Hard core pornography, on the other hand, falls under the category of “a programme [...] unambiguously produced for people aged 18 or more”, and as such it is “provided a label indicating [the] age limit of 18” (Act 710/2011, Chp. 3, Section 16, paragraphs 2-3). Hard core pornographic films are not classified or rated, in the proper sense of the word, they are merely given a label denoting the age limit that is plainly the only possible one even without viewing the work.

Distribution of depictions of “brutal violence” is a punishable offence according to the Criminal Code. It does not differentiate between fictional or factual depictions, which leaves room for interpretation. But as stated above, if the violence is portrayed in a fictional context, the fictionality of the programme yields a rating, and if “brutal violence” is deemed to depict a real incident, it becomes a matter of criminal law. Yet, there are exemptions mentioned in the statute: either on the grounds of its artistic or informative value can the distribution of such material, containing depictions of real brutal violence, be justified (CC 39/1889, chp 17, section 17, paragraphs 1&2). This stipulation allows for news reports and documentaries that might, for instance, deal with animal cruelty or contain footage from war zones. It should be emphasized that the exemptions leave room for ambiguity and debate concerning ethics: is it, for instance, acceptable to kill an animal in a process labelled art production?<sup>34</sup> Is there a limit to the amount of graphic, detailed

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<sup>33</sup> See KAVI Criteria in the list of sources.

<sup>34</sup> This is in reference to a controversial video work of Teemu Mäki, titled *Sex and Death*, in 1988, which was banned by the Finnish Board of Film Classification for its violent content showing an actual killing of a cat. The context of the work - not depicting a fictional, but a real event - has most likely had a bearing on the decision. As mentioned in the next paragraph, the last fictional film to have been censored was Renny Harlin’s *Jäätävä polte* four years earlier.

depictions of real, actual violence showed in journalistic context? These questions do not solicit clear-cut answers, and the legal scripture, as is its nature, leaves room for interpretation.

### **3.3. The 2000s: From command and control/self-regulation to co-regulation**

The Classification Act of 2000 abolished adult censorship; the Act no longer allowed films to be rejected and it permitted the distribution of 18 rated films on VHS and on DVD. In the preceding 1987 legislation, the grounds for rejecting a film had been authentic depictions of animal cruelty and violence, as well as pornography including sexual acts with minors or bestiality (HE2/2000 vp, 16-17). In the 1987 legislation, the legal limitations were not seen as an infringement on the freedom of speech, which is an every individual's constitutional right, as the intention was to stop harmful violent entertainment<sup>35</sup> from reaching audiences (HE 95/86: 12).

In the 2000 decrees, we see a shift in how harmfulness is addressed, this becomes clear in the wording of sections 7 and 8 of the Classification Act (775/2000). Section 7 speaks of “programmes detrimental to the development of children” (Act 775/2000, section 7, paragraph 1) and section 8 gives but two options for the classification authorities: either programmes are to be accepted for general viewing for all ages or they are to be assigned an age limit. Contrary to the preceding legislation of the Video Act of 1987, the authorities no longer had the possibility of refusing a film or its classification and the consequent distribution of a film on the basis of its violent, brutal or indecent contents (697/1987, section 8, paragraph 2). Instead, section 8 of the Classification Act of 2000 lists the possible age limits that could be applied to keep certain age groups from seeing harmful contents.

Interestingly, the possibility of cuts is still mentioned in the 2000 decree (section 8, paragraph 2) as it had been mentioned in the previous Act of 1987. Yet, this possibility had not been used since 1984, age categories had rendered cuts redundant. In the 21<sup>st</sup> century, it is no longer the practice of contemporary classification policy to ‘shield’ adult viewers from unsuitable material, only the minors from harmful content.

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<sup>35</sup> Translated from the original “vahingollinen väkivaltaviihde”.

While abolishing adult censorship in the Act of 2000, Finland still kept on with command and control regulation until the beginning of 2012 when the current legislation came into force. In practice, until the end of 2011 any audiovisual recording be it a cinema or a DVD release, had to be classified by the Finnish Film Classification Bureau before they could be released for distribution for the general public. Classifying a film meant viewing it and assigning it with an age rating, which had to be in accordance with the law: it could only be based on the perceivable harm it could inflict on minors. The ratings were also to consider only the aspects of harmfulness outlined in the legislation: violent or sexual content and horror (Act 775/2000, section 7).

During the first decade of the 2000s the two formats of distribution that were exempted from classification were computer games and video on-demand, but they too were required to be registered with the authority. As mentioned earlier, computer games were registered with PEGI age recommendations that were adjusted to the local age categorisations in their labelling. Apart from these two, various contents - such as educational, religious and sport programmes - were, and still are, exempted on the grounds of the nature of production or contents that renders classification either futile or impossible. Before 2012, TV programmes did not fall within the scope of the Act on the Classification of Audiovisual Programmes, but were overseen by the Finnish Communication Authority.

### **3.3.2. Shifts in policy: co-regulation and media education**

Co-regulation and media education first became part of regulation practice in Finland in 2012 with the legislation changes that abolished command-and-control regulation. The purpose was to update the law to have it correspond with the changing “media environment” (HE 190/2010 vp, 4). The government bill referred to policies of the European Union emphasizing the development of new measures to increase children’s safety in “new media environments” and media education was introduced as such a measure (Ibid). The purpose of co-regulation was to have a unified classification system for all audiovisual programmes (Ibid., 16), while strengthening the safety of children’s media use with media literacy skills where classificatory measures don’t reach (Ibid., 18).

#### **Co-regulation**

With the dawn of 2012, regulation saw a shift towards co-regulation whose aim was to encompass all forms and formats of distribution of audiovisual programmes under the same labelling system and the same criteria. This unification to streamline regulation meant a new, stricter-than-earlier system for TV companies for their broadcasted contents and their online on-demand services<sup>36</sup>, but PEGI ratings were still acceptable for computer games as they had been before, and for cinema releases classification was required as before. DVD releases were naturally also included within the range of the 2012 Act on Classification of Audiovisual Programmes, but their market share has steadily dwindled while ubiquitous streaming platforms have become increasingly popular.

Being medium neutral was one of the goals outlined in the Government's bill (HE 190/2010 vp) for the current legislation. This meant that a much larger quantity of contents from different media, including television broadcasts, video on-demand, or online TV, along with the cinema releases, would need to be classified. The responsibility of the actual classification with its time-consuming viewing and decision taking (of the rating) became the duty of the distributors, or their employees on whom the duty was bestowed. This shift of classificatory responsibility to non-state operators was necessitated by the sheer quantity of the contents that fell under the jurisdiction of the new legislation. True to the neo-liberalist times, the increase in classifications did not result in increasing the authorities' resources, the work load was shifted onto the industry-hired classifiers. The national authorities are responsible for both the training and control of these new classifiers, they can operate only if licensed by the national regulatory body, the National Audiovisual Institution.

### **Media education**

Another shift in policy was to introduce media education<sup>37</sup> as a duty of the national authority to coordinate its operation in the field from 2012 onwards. As laid out in the Government bill (HE 190/2010 vp, 18), the challenges posed by Internet distribution and convergence of media are countered by investing in media education. The bill acknowledges the impossibility of regulating and classifying everything, Finnish laws do

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<sup>36</sup> Online streaming services, referred to in the legislation as video on-demand, such as YLE Areena and Ruutu.

<sup>37</sup> The terms media education, media literacy and media pedagogy are used interchangeably in the literature. Media literacy tends to be used in Britain, media pedagogy in Sweden and media education has become the established term in Finland.

not apply outside the boundaries of Finland, yet the Internet enables streaming of audiovisual material from sources beyond the reach of national regulation measures. This is the reason why Netflix, for example, does not display Finnish classification labels on their programmes. Finnish laws do not apply to them because of the country of origin: Netflix headquarters is located outside Finland.

Silverstone's (2007) answer to the problem of not being able to classify or regulate everything is the actors taking ownership of their responsibility over their use of media. He advocates "media literacy as a dynamic of the mediapolis<sup>38</sup> in which all who participate in it, as producers or consumers, or indeed as both must take responsibility for what they do and say within media space" (Silverstone 2007, 181). For Silverstone, media literacy pertains to both individuals and society, to their acquired competences. However, being a competent user or producer is not enough, for the ubiquitous nature of media in our world, media literacy is also a matter of morality and ethics (2007, 182). This is to say that according to Silverstone, it is not enough for individuals, and societies, to have the appropriate digital and critical skills to use and produce media contents, but to be able to distinguish between right and wrong while doing so is crucial.

In interpreting Silverstone, we can draw the conclusion that where societies, or governments, fail to protect their members or citizens, it becomes the duty of the citizens to protect themselves from the 'wrong' kinds of media contents. The Government bill (HE 190/2010 vp) seems to reflect this view in its formulations about the task of classification and media education; it presents media education as a tool to continue from where classificatory measures stop short. The goal of renewing the legislation in 2012 was to solidify the national coordination of actors in the media space as well as promote skills considered necessary for children to navigate the media environment safely (HE 190/2010 vp, 18).

Safer Internet Day campaign, which is funded by the EU in its member states, is an example of media education approach, of teaching media literacy skills to the young. The national regulator in Finland, National Audiovisual Institute, has coordinated a yearly media literacy week with information and tools for teachers and other media educators to

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<sup>38</sup> A term used by Silverstone to denote a public sphere where both the audiences and producers of media share a responsibility over the process.



use in their work with children and teenagers (ME). It is arranged in co-operation with different operators in the field of media ranging from the more conventional newspaper and broadcast media to online media, including social media. Much of the work centers around promoting awareness of how to safely operate on social media sites with respect to one's own privacy and that of the others.

Since the writing of the Government bill in 2010, changes in media space and technology have been rapid. This is reflected in the publication of media education policy in 2019 (OKM) and in the report on the needs for renewal of the Act on Classification of Audiovisual Programmes published in 2020 (Rantala 2020). The policy document, Media literacy in Finland (OKM), refines the goals and positioning of media education in the Finnish society. It outlines media literacy as the goal of media education; it also adopts a wider view of the media included in the literacy work, stating, after Buckingham (2019), that all types of media platforms and technologies need to be included, from the traditional radio, television, print media and cinema to platforms of social media, and on to the uses of artificial intelligence (OKM 2019, 11). The renewed media education policy has also widened its range of subjects: the 2012 legislation was only concerned with the media education of the minors, whereas the 2019 policy outlines the inclusion of people of all ages as its target group (Ibid). With the contemporary society becoming increasingly online-operated, the need to include special needs groups and the elderly is apparent in the spirit of a civic society.

As the goal of media education and media literate citizens, the policy document states the promotion of “good, meaningful life” that is seen as an “important element of civic competence”, echoing Nussbaum's terminology in her capability approach, which will be discussed in chapter five (OKM 2019, 13). Active citizenship is promoted in the Programme of Government under the name of “social sustainability”, and “trust among individuals” is named a key element for it (GovPro 2019: 9-10). The policy document on media education connects the agency of young people in society and “preventing the dissemination of misinformation” with the goal of social sustainability, and consequently links social sustainability with media literacy (OKM 2019, 9).

### **3.3.3. Recent history in regulation of computer games**

Computer games are first mentioned in the Video Act of 1987. They were exempted from classification according to Section 6, Paragraph 8, and this stance is repeated in the rewrite in 2000: "The provisions of Section 3 [of having to have all programmes distributed to minors classified] do not apply to interactive programmes" (776/2000, chapter 4, paragraph 1). Yet, chapter 3, section 12, paragraph 7 of the Act states the requirement for labelling "the recommended age category for an unclassified interactive audiovisual programme". The "recommended age category" refers to PEGI ratings that were accepted nationally as recommendations since 2003 (HE 190/2010: 5) whereas the classifications issued by the national authority (Finnish Board of Film Classification) were legally binding. Only the 18 rating in computer games was binding. This meant that it was not illegal to sell, for instance, a 15-rated game to a 12-year-old buyer, but to sell a DVD labelled with a 15 rating to the same buyer, the salesperson would have been in defiance of the law. From a consumer's point of view this would have seemed confusing.

Since the renewal of the Act in 2012, computer games became equal in treatment with cinema films and television programmes. PEGI ratings are accepted and implemented as such in Finland, and in the current legislation their ratings are binding although the criteria for issuing them are not uniform with the current Finnish rating criteria. PEGI rating criteria has largely remained the same as they were before 2012 when game ratings by PEGI were treated as recommendations. It is their legal standing that has changed. This is noticeable as game ratings can also be issued on the basis of bad language, which generally indicates rating for suitability, not harmfulness. According to Finnish criteria, and the foundations for the legislation clarified in the Government bill, bad language as such is not a reason for an age rating, only if it can be seen to constitute verbal abuse or violence (HE 190/2010 vp, 36).

## 4. HARMFUL CONTENT: WHAT ARE MINORS PROTECTED FROM?

According to Häyrynen (2015, 10), cultural policies or strategies include supporting the dissemination of “good” culture, but also preventing the effects of “bad” culture.

Distributing “brutalizing entertainment” or unacceptable cultural treatment or behaviour, such as smuggling ancient artefacts or racist crimes, can be instances of “bad culture” (Ibid). With “brutalizing entertainment”, Häyrynen is referring to the practice of classification of films. Although classification does not prevent the distribution of violent fiction films, it aims at diminishing its adverse effects on the young.

Depictions of violence and frightening elements that are likely to cause anxiety in young spectators are recurring reasons for rating audiovisual programmes. They have been so from the start of censorship or classification, only these elements were named differently as discussed above, perhaps due to the linguistic conventions of the time.

Sexual content is the third legitimate reason for an age rating in the current Finnish classification system, and as discussed earlier, it too has a long-standing history of being a subject of censors’ interest under the name of indecency or immorality. The latest amendment to the list of harmful content is the use illicit of drugs or intoxicating substances, which was added on the classification criteria in 2012 when the current legislation came into force.

The current rating scale used in Finland has five categories of age: allowed for all ages, for over 7-year-olds, 12-year-olds, 16-year-olds and the adult rating of 18. Three of the ratings – 7, 12 and 16 – include what is termed age flexibility. Age flexibility means that a child three years younger than the actual rating is allowed to see a film or a programme with an accompanying adult. The lawmaker’s thinking behind this is that this adult, often a parent or a guardian of a young child, is someone who knows the child intimately and can therefore assess the child’s resilience to the harmful elements indicated in the rating (HE 190/2010 vp, 29-30). This flexibility acts as a concession to the otherwise restrictive and binding rating that infringes on the minor’s freedom of speech. That said, there is no such concession when it comes to the adult 18 rating. Subsequently, using the age flexibility

rests on the responsibility of the adult, while the intention of the official rating is to communicate a likelihood to be harmful or scary for a child younger than the rating.

The list of ‘only’ four elements may seem simple enough, but what makes the classification process less like an automated robot work and more a case-by-case deliberation is the need to consider the context of the audiovisual programme. How does it portray these elements in its narration? How graphic is the violence? How pervasive and prolonged are the elements of terror? Does the narration allow the viewers any moments of respite from the detrimental elements? Is the narration true to its genre, making the events perhaps more predictable for the viewer? At what age can we expect a young viewer to find the conventions of genre and cinematic story telling reassuring? At what age might a child find overt but not fully open sexual scenes troublesome, as opposed to them merely embarrassing the accompanying adult? These are but a few considerations the classifier needs to ponder on, with the help of the given criteria. But as every film is its own unique work of filming, the criteria cannot be exhaustive in its detail, while, on the other hand, it has to be applicable to a range of different types of audiovisual programmes. This is to say that the tools, the guidelines, have been provided, but the application, how to use these tools, rests on the individual classifier and their competence.

#### **4.1. Research on harmful effects**

Research on audiovisual media *vis-à-vis* children tends to focus on the harmful effects of different types of media content, especially violent and sexual content or otherwise disturbing or damaging content. Clear effects are difficult to establish other than tentatively, and experimental research is such that to conduct laboratory research on them would be unethical. This leaves room for debate on the results of cause-and-effect research. Yet, Cantor points out that experiments are better suited to study cause and effect than longitudinal studies, and a way to go around the problem of ethics is through “retrospective reports” (Cantor 2008, 165). This means using adults’ memories of the frightening programmes they saw at a young age.

Debate about the effect theories heated up in Finland at the turn of the century towards the early 2000s. The effect debate has its tradition and roots in the cultural policies of the 1920s United States and the Hayes Code that was meant to oversee the ethical, moral and

pedagogical contents of films (Sihvonen, 1988, 135). As Oravala (2007, 105, by reference to Bert Fridlund 1989; also Sihvonen 2004, 31-32) points out, the worry, or in some instances the moral outrage, towards a new technology is nothing new: in the 19<sup>th</sup> century it was the romantic novel that was claimed to corrupt young people's morals, in the 1950s the comic books such as Donald Duck and the cinema films. During the second half of the 20<sup>th</sup> century, broadcast television became the main culprit to have an adverse influence on the young. A little later, films released on VHS and DVD and, in the 21<sup>st</sup> century computer games and the Internet, became a concern for their ill effects.

According to Oravala (2007, 106), the 1980s effect debate in Finland was dominated by psychological research on aggression that was judged to be too straight-forward in its argument on causation by researchers approaching the issue from a humanities-film studies angle. The critics objected to positioning the viewer in a passive role who could not but become a passive object to the effects of violence in films (cf. Sihvonen 1998).

Sihvonen (2004, 95) argues that media is not an educator or a pedagogue. A story narrated in a book is not inherently 'better', pedagogically or developmentally speaking, than an audiovisual narrative (Ibid., 32). On the contrary, he argues that one's understanding of narrational nuances may well be developed by audiovisual narratives that contain a multitude of aspects to observe – spoken language, image and sound woven together to form a language of its own (Ibid).

In their overview of recent research on media effects, Salokoski and Mustonen (2007, 12) remind the reader of the effects of media being not only varied in the way they affect young people's outlook on the world, but the effects can be direct or indirect with a multitude of variables coming into play. These variables may have a simultaneous effect on the situation of a child, which makes it difficult to pinpoint any one cause to an action. They mention that, for instance, age and social competences play a part in how a child might interpret audiovisual contents.

## 4.2. Harmful elements and damage to minors

### 4.2.1. Violent content in games

The ratings, and the consequent prohibitions of provision, i.e. sale, are based in the perceived harmfulness of the programmes, which, in turn, is supported by scientific research. The harm, or detrimental effect, does not need to be imminent but only "likely" (Act 710/2011, Chapter 3, Section 15, Paragraph 1). Nor can it be reasonably expected that any research on the effects of media violence or anxiety could be conclusive, rather it is a matter of 'getting the big picture', of considering "the total picture of combined studies" and drawing out probabilities (Gentile & Andersen 2006, 4).

Andersen and Gentile have conducted research on the effects of violence in computer games. In experimental studies, causality can only be inferred, not deduced, for ethical reasons, as they point out. This means that after playing a violent game, participants in the study can't actually be allowed to engage in violent behaviour, "it is usually impossible to use strong 'real-world' measures of aggressive behaviour", Andersen and Gentile describe the ethical dilemma. Yet, according to them, the data derived from three psychological methods of study - experimental, longitudinal and correlational - yield a compelling argument for the effects of gaming when it comes to violence. Engaging in violent computer games and its effects on the player's well-being and behaviour lie at the heart of their research interest. They contend that all three types of research point to similar results: "playing violent video games can indeed cause increases in aggressive thoughts, feelings, and behaviours." They say nothing, or very little, about anxiety, drug use or sexual content in the games and their effects on players, but they do mention the positive effects of gaming that have been documented by using the same research methods. They consider computer games to be "powerful teaching tools" and they are interested in studying whether games not only teach players the good but also the bad. The bad in this case means the aforementioned "aggressive thoughts, feelings and behaviours" (Ibid., 5).

In Gentile and Andersen's study, the negative effects of playing violent computer games affect the individual by increasing their "hostile thoughts"<sup>39</sup> and these thoughts in turn

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<sup>39</sup> Gentile and Andersen call this "aggressive cognition".

increase the odds of behaving aggressively" (Ibid., 7). Another finding, on a social level, is that aggressive behaviour together with "decreased prosocial behaviours", i.e. anti-social behaviour, predicts peer rejection. Gentile and Anderson's finding is that in terms of the effects of game violence it doesn't matter whether the gamers have aggressive tendencies or not to start with, but "regardless of the initial cause, playing violent video games still makes children more aggressive" (Ibid., 8).

Ethical issues in game research restrict the kinds of violent contents that young media users can be subjected to. Gentile and Anderson's comment on the heightened vulnerability of the young to game violence is that research does not seem to support the supposition of children above 7 years of age being "more vulnerable to the effects of playing violent [...] games than adults" (Ibid., 9). They do not, however, elaborate on the degrees of realism or brutality of the violent depictions that young gamers have been subjected to in their studies. If, as could be supposed for ethical reasons, the children were subjected to age appropriate materials, it would be logical that their reactions to (children's) violent games would not exceed the gravity of the reactions of the adults.

Gentile and Andersen also discuss media violence as a risk factor in connection with school shootings. Such events tend to reinvigorate the discussion of the effects of media violence, but according to Gentile and Andersen, school shootings are not good examples of the effects. They point out the risk factors for aggressive behaviour are manifold: "poverty, a history of having been abused, psychological disorders, gang membership<sup>40</sup>, drug use, media violence and inflated self-esteem." Having acknowledged the situation, they emphasize that of these risk factors named above, media violence is one that is "easily controlled" as opposed to the others (Ibid., 10). They see parents as the gate keepers in this control, and that is where classification with its rating labels can be of help to parents.

Krzywinska (2012, 143-144) takes a critical view on the discourse on the effects of game, or audiovisual, violence, calling it "reductive". She proposes that "the fear that games pose a significant threat to our [...] children and teenagers as well as [...] to our moral health and values" is part of what she calls "sensationalist rhetoric". In her view, sensationalizing game or film violence is in fact a technique of exploitation that lumps sex and violence

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<sup>40</sup> Gentile and Andersen write from a North American perspective.

together and “thrives on lack of knowledge”. The rhetoric of sensationalism seeks to make violence the culprit in audiovisual fiction. Krzywinska points out how sensationalists overlook that violent and sexual depictions in games are “highly contextualized”, as they tend to be in films and TV fiction, too. This is to say that they are usually narratively motivated, and not displayed for sheer pleasure of seeing violence or sexual content. Therefore, to consider harmful elements within their narrative context is an important element in classification.

#### **4.2.2. Pornography and sexual content**

Audiovisual material, films, TV programmes, unless exempted from classification in the Act on Audiovisual Programmes, and computer games are required to undergo classification if the work is intended for public viewing and distribution for minors. Except when a programme is "unambiguously produced for people aged 18 or more [it] is not classified" (Act 711/2011, Chp 3, Section 16). This means hard core pornography, they are expected to "only be provided if a label indicating an age limit of 18 is clearly displayed on or in connection with the programme" (Ibid). It was pornography that was not allowed on the market as a result of the Video Act of 1987. Films rated 18 could only be distributed in the cinemas until the abolition of censorship with the Act in the year 2000. When 18 rated films could be distributed on VHS, pornography flooded the market in large quantities. In 2009, the Finnish Bureau of Film Classification rated approximately 1,800 titles, compared with the number of pornographic titles released on DVD being as high as 18 600 and the number of PEGI classified computer games registered for distribution in Finland was at 1,300 titles (HE 190/2010 vp, 6).

According to Salokoski and Mustonen (2007, 55-59) young people are extremely interested in sexual matters and often the lack of information from school or home leads to young people searching for answers in the media. Media, especially the online world, does not only function as a source of information, but media and its depictions of sexuality play a part in young people’s identity formation. Films and games offer role models, representations of female and male bodies, as well as representations of various sexual orientations. Whether the media contents and stories are fictional or factual is not important in making an impression on young minds.



Krzywinska (2012, 144) points out that games contain a relatively little sex in comparison with for instance films. Yet, she asserts that to only consider explicit sexual imagery is simplistic, sexual content in games includes a more complex notion of human sexuality – of which much centers on visual portrayals of desire, as Krzywinska argues in her article. She calls the portrayals of sexuality “libidinal economies of games” (Ibid., 147). The libidinal economies deal with such issues as how the female body is portrayed, what kind of female bodies are being depicted in (erotic) games and how their physical body parts, such as breasts, are pictures in the course of the game. The same applies for the male body, an archetypal male hero in an erotic game is muscular and physically adept at moving about. Seeing unrealistic and idealized depictions of the human body is likely to have some effect on the teenagers’ budding sexuality and self-image; possibly generating unduly romanticized ideas of bodily beings and what one should strive for in one’s own body.

The current Finnish classification criteria pays attention to the explicitness of on-screen sexual encounters and to how much they dominate the narrative. This is most likely a result of having to write up clear enough parameters for different age ratings and it leads to assessments on how much is shown and how often (KAVI Criteria). On the other hand, the Government bill (HE 190/2010 vp, 36) names depictions of sexist attitudes among “other harmful elements” as contributing factors to children’s sexual identity, sense of self-worth or self-respect and body image, allowing sexist attitudes to become part of the classificatory deliberation process where applicable. However, the government text goes on to add that there is no unambiguous classificatory categories for these matters that would be independent on the person interpreting them – in its part, this explains why they are not incorporated in the classificatory criteria. The Government bill contends that the most blatant cases would be classified under the categories of violence or anxiety.

#### **4.2.3. Anxiety and fear**

It has been argued (Cantor 2008, 164; Salokoski&Mustonen 2007, 47) that watching disturbing or unsettling media coverage or even fiction feeds into people’s perception of the real world, making people believe the world is a darker place than there is actually reason to think. This, in turn, feeds the feelings of fear: if one sees the world as a

threatening, hostile place, it would be understandable for individuals to have feelings of anxiety and fear – however misplaced – of others, strange things and undesirable events in their world.

Ahmed (2014, 65) defines fear as an “anticipation of hurt or injury”, fear is an unpleasant bodily sensation: “One sweats, one’s heart races, one’s whole body becomes a space of unpleasant intensity [and the feeling of fear may] involve taking flight, and other times may involve paralysis.” Ahmed also distinguishes between fear and anxiety. In fear, the object of fear is “not quite present”, whereas with anxiety, following Heidegger, the object of it is “nowhere at all”.

Ahmed (Ibid., 66) describes anxiety as a state where “one’s thoughts often move quickly between different objects [... intensifying] the sense of anxiety”. Fear is a more tangible feeling than anxiety, it is linked to objects or others that approach the subject, whereas anxiety, according to Ahmed, “becomes an approach to objects”.

In Ahmed’s reasoning, fear makes people, the child or the subject turn away from the object of fear and towards a place or object of safety and love (Ibid., 68). Fear, in Ahmed’s argument, makes people turn inwards and away from the other because otherness is seen as a threat and a reason to flee. Ahmed writes about fear on a societal level, evoking a thought process of what it can mean in and for societies to be constituted of fearful people. For her, fear “involves shrinking the body” (Ibid., 69), it makes some people “take up less space”. This leads to people’s limited mobility, an example of which would be most women’s limited freedom of night-time movement in urban spaces for the sake of feeling anxious for their safety if walking the streets alone.

To extend Ahmed’s argument, media-induced anxieties, where the world manifests itself as an ambiguously dangerous place, may play a part in media consumers becoming fearful of the world to the point where their world starts to shrink inwards and media consumers’ world view becomes unduly alarmist. This, in turn, could lead to hostility and turning to defend what is seen as a safe place, in Ahmed’s argument. While Ahmed writes about a post 9/11 world struggling with an increasing fear of national and international crisis of terrorism, the same logic of fear and anxiety shrinking the individual’s free movement and

making them turn towards the familiar and away from the unknown can be argued to work on a smaller scale in media-induced anxieties.

Being able to distinguish between fact and fiction predicts what a young child or a teenager tend to find frightening when it comes to audiovisual contents. Cantor (2008, 167-168) reports that children tend to reach this level of cognitive development around the age of 8. According to Cantor, age is a decisive factor in what children find frightening in films. Children who understand the difference between fact and fiction tend to find realistic depictions of events more frightening whereas children under the age of 8 or 9 tend to find fantasy elements, such as grotesque appearance, disturbing. With cognitive maturity comes the understanding of more abstract threats, and fictional events depicting “the potential annihilation of the earth” become more upsetting for older children. The different age categorizations are aimed at corresponding with the issue of age-related sensitivity to audiovisual media content. Media-induced fears in children often lead to sleep problems, “enduring anxieties” and nightmares, according to Cantor’s review of related research (2008, 164).

#### **4.2.4. Drugs**

The attitudes towards drug use in Finland in a 2018 survey reveal a tendency for increasing leniency. Since 1998, more and more Finns think drug use is a minor problem (Karjalainen et al 2020, 27). According to the report, young people have had the least judgmental attitudes towards drug use. The increasing tolerance towards drug use is reflected in the views opposing penalization of it: in 2018, 20% of participants in the survey held that penalization was not necessary (Ibid., 29).

The increasing tolerance for drug use may well correlate with the citizens’ initiative to decriminalize the use of cannabis, proposed in Finland in 2014. When such an initiative was taken to the Parliament, it sparked wider debates and discussion in the society, making it known there were people who disagreed with the status quo of the majority. Hakkarainen and Karjalainen (2017, 19) point out that the increased tolerance towards drug use marks an acceptance of the use of cannabis, but views towards other drug use have remained critical and attitudes towards the risks associated with smoking and drinking alcohol, both legal for over 18-year-olds, have tightened. Why is it that cannabis has become more

acceptable, while the use of two legal substances – alcohol and tobacco – is more disdainful?

For some reason, not dwelled on in the article by Hakkarainen and Karjalainen, the use of cannabis has increased remarkably since 1992 (2017, 19). The use in this context includes trying the substance and not being a regular user. Hakkarainen and Karjalainen describe it as a “trendy” drug, and people, especially younger people, seem to think there is no risk involved in trying it (Ibid). Another reason for the accepting attitudes and the increase in the domestic use of cannabis could be the changes in drug policies overseas, the legalization of its use in parts of the United States, Canada and Uruguay (Ibid., 20). Legalizing its use makes it socially acceptable and when it happens in North America, a trickle-down effect in a global world is next to unavoidable. Most use of cannabis is recreational in Finland, with a small percentage of medicinal use. Interviewees might indicate medicinal use, although it was not officially so (Ibid., 22, 29).. This means an illegal use of the drug obtained for one’s own medicinal purposes, and it might be an indication of the acceptance of cannabis as a medical substance dragging behind the need.

According to the study (Hakkarainen&Karjalainen, 2017, 25-26), a young age was a strong indicator for the likelihood of using cannabis together with being a male. Other indicators were living in an urban surrounding, unemployment and marital status. Financial situation, however, was not an indicator for increased likelihood to use cannabis. While the study concludes that cannabis users are a heterogenous group when it comes their social backgrounds or ways of substance use, it does contend there is a prototypical user who is a young urbanite male occasionally smoking home-grown cannabis offered by his friends. The use of alcohol often coincides with the use of cannabis; using both substances leads to an added risk of social marginalization, according to the study. (Ibid., 30).

Despite the increase in favourable attitudes towards cannabis, Finns on the whole do not support legalizing and decriminalizing its use, but its users do (Ibid., 27). When it comes to depenalization its use, 40% of the population are in favour. This could speak of people seeing treatment as a more useful way to handle the perceived problem than incarceration or fines.

The Government bill (HE 190/2010 vp) gives no clear explanation as to why drug use was decided to become a criterion in its own right. It only states it as a given in connection with labelling symbols, listing the four necessary labels for “violence, anxiety, sexual content and substances (drugs and alcohol)” (HE 190/2010 vp, 17). It can only be deduced that perhaps recent developments in the society and the youth culture at the time of policy making gave rise to seeing the need for a more pronounced concern for portrayals of substance use in audiovisual works. This means that the lawmakers would have assumed a cause and effect dynamic in the media portrayals and increasing drug, cannabis, use in young population. Another possible reason for introducing drug use as a harmful element of its own standing could have been that it is used as such in PEGI game ratings, as well, making the two systems more alike on the surface. In general, as has been seen in the historical account of classification, the elements that attract censoring or classifying interest tie in with the times, reflecting the general mood and tendencies in the society – classification laws have been and are influenced by their surrounding cultures.

As mentioned above, films and games offer role models, but with drug use the possible harmful effect may be linked to the way drug use is portrayed in a manner that normalizes the use, making it seem unproblematic. According to the classification authorities, portrayals glorifying drug use, or making it seem everyday, can be considered harmful in that actual drug use can become addictive (KAVI Grounds, 10).

However, the Act on Audiovisual Programmes itself does not mention drug use as a harmful element. It names the other three elements of violence, anxiety and sexual content, and adds that there might be other “comparable features” that need to be considered as well (Act 710/2011, Section 15). The Government bill lists self-destructiveness, drug use and gambling as such comparable contents that could warrant an age rating. The bill further instructs of the need to apply this ‘comparable features’ statute “constrictively”: an element of drug use or violence, for instance, is not in itself enough to lead to a rating and limiting children’s freedom of speech, but the elements in question need to be “objectively perceived as likely to have an adverse effect in children’s development” in order to result in a restrictive age rating (HE 190/2010 vp, 36).

The next chapter will look at the function of regulation for individuals and societies at large.

## 5. REGULATING INTO GOOD LIFE?

The first part of this chapter discusses Foucauldian idea of governance and its relation to regulation. The French term governance, or governmentality, means forming a connection between various social phenomena and state-led governing (Pyykkönen 2015, 202), making aspects of social life subject to state intervention. Regulation of audiovisual media is one such intervention; the insertion of media education under the governmental umbrella being the latest intervention concerning the audiovisual world. It is an example of the state employing regulation to govern its population in order to provide them with the makings of a good life and shepherd them towards it.

The second part of this chapter discusses the capabilities approach, a theory by an American contemporary moral philosopher Martha C. Nussbaum. It too emphasizes the role of governments in creating beneficial circumstances for their subjects to thrive and flourish – to lead a good life. Audiovisual regulation, ratings, can be seen as a governmental service that enables its citizens, parents, better to care for their children – instead of checking every programme themselves, the parents can rely on the pre-checks by respective institutions (Paloheimo 2003, 25).

Both theories of governmentality and capability approach are concerned with the well-being of people. By means of regulation, in this case classification of audiovisual programmes as well as media education, the Finnish state attempts to protect their young people from harm. Foucauldian biopower is connected to the rise of governmentality and the transfer from the rule of a tyrant-sovereign to the idea of governance and to protecting the lives of the individuals who constitute the population of a state (Pyykkönen 2015, 202). Biopower manifests itself in technologies or strategies that further the health, security and happiness of populations (Ibid., 203). Age ratings are a strategy used by states to give necessary information to their populations for protecting themselves. The idea being that this protection enables young people to have more emotionally secure lives.

Lastly, the third section of this chapter discusses the role of identity, especially the creation or maintenance of national identity and its relation to audiovisual regulation. While governmentality and capability approach are concerned with populations and the

individuals making up that population, the concept of national identity relates to the creation of a nation – a shared identity and a set of values for people that form a nation.

## 5.1. Governance/governmentality

To Foucault governing is the *gouvernement* of things rather than of people or regions. He points this out by a comparison of Russia with the Netherlands in the 18th century (Foucault 2010, 105). The 18th century Russia had long borders and spread over a large area, yet it didn't have much to show for in terms of providing a livelihood for its scarce people. It had no industry to speak of, whereas the small country of the Netherlands was densely populated and wealthy due to its active commerce and shipping. This example proves to Foucault that government has to do with things. To Foucault, family sets a good example for state government because it has to do with issues that aim at well-being, and it is the well-being of the people, not the sovereign, that is the goal of modern governing.

Before the 1600s when the process of governmentalizing various aspects of social life started, *gouvernement* took place for the benefit of the sovereign, not the subjects, the people (Pyykkönen 2015, 202). Foucault explains in his lectures that the goal of a post-1600s sovereignty<sup>41</sup> is circular. A good subject is law-abiding, and the respect of societal rules and laws generates common good. The common good is about being law-abiding either to the rules of the sovereign or those of God, according to Foucault's explanation of the rational of 17<sup>th</sup> century theologians and lawyers (Foucault 2010, 106). The goal of the sovereign, which is said to be the common good, is, however, characterized by acquiescence to laws (Ibid).

In his essay 'The Subject and Power', Foucault analyses power by scrutinizing the resistance of it, noting that power being resisted "makes individuals subjects" (1982, 781). The word subject can be understood in two ways: through the dichotomy of subject-object of psychoanalytic discourse, where subject denotes an actor, the one in charge, whereas in Foucault's usage subject means a subject of a state, a citizen. In the latter case, both in English and in French, 'subject' has the overtones of being an 'underling' of a higher

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<sup>41</sup> Foucault uses the term 'sovereign' for both the tyrannical pre-17<sup>th</sup> century rule and the later rule of governance.

power, “subject to someone else by control” (Ibid). The act of governance presupposes a position of subjection, one cannot govern if there is no one to govern, if there are no subjects. While according to Walters (2012, 12) governmentality necessarily presumes “the existence of a degree of freedom”, the process of subjection to governmental control may be unwanted for the subject (Pyykkönen 2015, 210-211). What Walters means with the presumption of freedom is the possibility of the subject to choose a different path of action than is suggested by the governing attempts. This kind of situation could arise when a subject feels repulsed by the act or goal of subjection.

Notwithstanding the stated intention for the well-being of the people, they are seen as mass, as an object guided and steered by acts of governing. This governance is described as pastoral power, an act of “shepherding”. The term pastoral, again, has two meanings: it refers both to a rural setting, where for instance shepherds would have their sheep graze, but also to Christian church and its pastors (Foucault 1982, 782). A shepherd oversees his flock of sheep as a member of the clergy would oversee the spiritual well-being of their parishioners. The act of shepherding aims at monitoring and securing the best possible outcome for the ‘shepherdees’, for the population. For Foucault, pastoral power is “salvation oriented”, and the state “a new form of pastoral power”; the salvation by the pastor-state includes the aspects of health and well-being, notes Foucault (Ibid., 783). In the shepherding situation, the state is the shepherd and the citizens the population whose interests are watched over. Foucault is thus saying that for ensuring a good life, the people are not to be left to their own devices, but the state needs to “police” the social action, their lives, to save them from themselves. In Foucault’s language, derived from 18<sup>th</sup> century uses of French, “police” refers to the role of the state, not the state employed officials today’s people understand the police to be (Foucault 2010, 116).

Walters (2012, 24-25) sees pastoral power marking a shift from a rule of “law, violence, myth and cunning” into a form of power encouraging self-reflection by utilizing guidance and “conducting” its subjects instead of the former rule of a self-serving sovereign. Pastoral power, according to Walters, urges the subjects to practice “a certain government of their selves”. He interprets Foucault’s concept of *gouvernement*, governmentality, borrowing the latter’s words, as “conduct of conducts”, which goes on “whenever individuals [...] seek to shape their own conduct or the conduct of others” (Walters, 2012, 11). This conducting can take place within families, schools etc, not just within state



institutions, contends Walters (Ibid). In Walters's understanding, governance stretches from the state-imposed rules and expectations of conduct into a wider code of conduct that we as citizens expect from each other as a part of a more or less tacit agreement. Governance, understood in this way, enables normative rules and behaviours.

Lunt and Livingstone (2012, 18-19) refer to Foucault's ideas of governance suggesting that in a situation where top-down government is challenged by neoliberal arguments promoting deregulation of media, new forms of governance called "the dispersal of power" emerge. The will to deregulate is apparent in the recent shift from command and control regulation to co-regulation, and so is the increasing interest in self-regulation, for instance with social media contents. The recent pressure to regulate social media platforms will be discussed briefly in the next chapter.

The application of Foucault's theory of governance to classification is manifested in how the Finnish state has taken on the role of the shepherd and the police. The shepherding state ushers its subjects to conduct themselves in a self-protecting manner, by informing them of the hazards with age ratings, and on the other hand, by policing the overall functioning of the system. In the current system of co-regulation, the Finnish government has chosen to disperse the majority of the shepherding power and has bestowed it on 'pastors for hire', i.e. the classifiers it trains to do the work at the expense of the industry. It is these non-state employed classifiers that the authorities 'police' by checking their work at the request of the audience, the viewing population.

## **5.2. Capabilities and the quality of life**

Capabilities are possibilities, or opportunities, that society should provide individuals with; capabilities approach is a theory of social justice. Capabilities are the entitlements that individuals can expect to have at the minimum level (Nussbaum 2011). It is a theory whose thinking has been introduced in youth work in Finland since the 2010s (Laitio 2014).

The capabilities approach, or the human development approach, was developed by economist Amartya Sen and philosopher Martha C. Nussbaum as an alternative to gross national product for measuring the success of nations, or their quality of life (Nussbaum

2006, 282). In former president Sarkozy's France, a need for a novel way of measuring the well-being of its citizens was felt to be necessary after people had expressed their distrust in French statistics. It was not necessarily that the statistics were faulty, but they did not *feel* right. Saying that the Finnish gross domestic product is at a high level and the country is doing well financially will probably not ring true to an unemployed person who struggles to make the ends meet.

The Sarkozy Commission opted for another type of analysis of the French well-being that was influenced by the capability approach (Nussbaum 2011, 46). The Sarkozy Commission attempted to more reliably measure what people perceived good life to consist of, not just the average income per capita. Since the publishing of *The Quality of Life* (1993), which they edited together, both Sen and Nussbaum have worked separately on the capabilities approach and the elements that define a dignified life. In her article 'Non-Relative Virtues: An Aristotelian Approach', Nussbaum outlines the "sphere[s] of human experience", a phrase derived from Aristotle's theory of virtues, along with their corresponding virtues into a list of eleven points (Nussbaum 1993, 245-246). It is this list that has been elaborated into the list of capabilities in the 2006 book where the "spheres" have become to be called capabilities.

Nussbaum describes the difference between her capabilities approach to that of Amartya Sen in terms of "nonhuman and human"; for Nussbaum the approach encompasses both animals and humans, whereas Sen is concerned primarily with the human capabilities, saying that all people have entitlements the society is responsible for producing (2011, 18). Although the approach has been dubbed 'human development approach', in her book *Creating Capabilities* (2011), Nussbaum makes it clear that animals have rights, too, they are entitled to proper treatment of their natural capabilities which humans have no justification to trump.

Nussbaum also writes about a "threshold level" of capabilities, a minimum level of societal enabling that must be provided for each individual (2011, 24). This threshold level is not coercive, but rather leaves the individual with a choice, "a substantive freedom" (Ibid). The idea of a threshold also entails the requirement for the society to provide additional help to those who need it to cross the threshold. For Nussbaum, the threshold signifies "equal respect" regardless of one's innate skills and cognitive abilities (Ibid). Differently to

Sen, Nussbaum also clearly lists the capabilities she considers central to human development (2011, 18-19).

In *Creating Capabilities*, Nussbaum makes frequent reference to a particular woman in India and how this woman was able to improve her quality of life despite her situation of low caste, childlessness, being divorced and illiterate. Nussbaum describes the circumstances that enabled the woman to improve her situation in life: for instance, finding a form of adult education enabling the woman to learn to read (2011, 2-9). Another example she mentions is the role of free school meals to girls' education in India. Because it was more economic for poor families to have the girls be fed at school, they sent them there rather than to work (2011, 6). With this fairly modest investment, a poor community was able to have an impact on women's literacy in India. This example illustrates Nussbaum's point about how it is the duty of the government to equip its people with such tools that they can make the most of their lives and flourish.

The capabilities theory is a theory of social justice, much of it seems to relate back to Aristototele's ideas for good life, or comment on John Rawls's theory of justice, both aspects outside the scope of this paper. For Nussbaum, at the core of the theory of justice is the question of human dignity, how individuals can be supported by governments, societies, in the fulfilment of their capabilities so that the individuals can lead a dignified life. In Nussbaum's theory of justice, it is the job of the society to support the development of innate capabilities by education. Nussbaum herself is a university lecturer and the emphasis on education seems to be her answer to attaining dignity within the capabilities framework as illustrated in her examples from India.

Nussbaum lists ten main capabilities or opportunities that are necessary for achieving a quality of life that allows individuals to develop in their pursuit of dignity. She calls this list "the central human capabilities" (2006, 76). Although the theory of capabilities is not a theory on the development and protection of children, it does weigh the elements necessary for a dignified life of any individual and it addresses certain aspects of well-being, creativity and freedom of speech that are useful here. One of the ten capabilities on Nussbaum's list is entitled "Senses, Imagination, and Thought" and it includes the ability to cultivate not just one's basic literacy and math skills, but also the more creative skills of "experiencing and producing works and events of one's own choice, religious, literary,

musical and so forth”. Here Nussbaum specifically mentions freedom of speech in the expression of one’s creative mind or in the reception of such work (Ibid).

An individual’s emotional well-being is also addressed in the list of capabilities. Nussbaum’s emotional capability promotes a safe emotional environment that is not “blighted by fear and anxiety”, and she adds that to support this emotional capability factor, it is necessary to support such “forms of human association” that are “crucial” in the development of a safe emotional environment (Ibid., 77). The “forms of human association” can be understood as societal or governmental instances that safeguard individual’s emotional development, such as regulatory institutions who aim at protecting minors from psychological harm, rather than shielding upset parents from moral indignation.

A third capability of interest here, is that of “affiliation” that promotes the capability for empathy and living “with and toward others”, including different forms of social interaction (Ibid., 77). To protect this capability, we need the help of societies and institutions, says Nussbaum. To be a good person, to be capable of empathy, is necessary not only in one’s physical world, but we should also be able to extend that dignity to our online and digital communications. Here media literacy, or media education as it is called in Finland, still has work to do. It should not only teach us how to be clever and avoid the pitfalls in the digital world, but also how to comport ourselves there and how to create ways for weeding out the affiliative incapacities, or even how to disable them altogether, in the digital realm. For instance, how to steer online discussion forums towards a more civil style of conversation? Is it a matter of media education for all ages or controlling the environment in such a manner that does not enable expressions of rudeness and antipathy?

### **5.2.1. Finnish Cultural Strategy and Capabilities Approach**

The 2025 Strategy for Cultural Policy in Finland (STRATEGY2025, 7/abstract), outlined by the Ministry of Education and Culture, lists three main objectives for the policy: improving the conditions of work for creative workers and artists, raising the numbers of participation – termed “inclusion” in the Strategy - in arts and culture, and supporting a “strong and vital” cultural basis. The last objective can be understood to mean the diversity

and plurality of Finnish cultural life and works of art that are intended to reflect the diversifying ethnicity of the nation, not only mainstream ‘Finnishness’.

The Strategy also outlines the role of the state in its cultural policy. It stresses the rights of citizens, of everyone, to “self-development, the freedom of arts, and [...] one’s own language and culture” (STRATEGY2025, 13). These rights are what in Sen and Nussbaum’s (1993) language would be termed ‘substantive<sup>42</sup> freedoms’. Substantive freedoms enable the flourishing of capabilities into ‘functionings’, another term from the capabilities theory (Nussbaum 2011, 20, 25). Functionings are what we are able to do, they are the performance of our actions, but they are enabled by capabilities, and capabilities, in their turn, are nurtured, made possible by, state and local governments.

It is the role of governments to have such an infrastructure, for want of a better word, that allows or enables individuals to put their capabilities to use. For instance, a child, or an adult for that matter, may have the capability for absolute pitch, but if the local government does not offer any affordable music tuition, this capability will never come to its fruition, it will never have a functioning other than being naturally bothered by out-of-tune playing or singing. On the other hand, a talented individual may well have access to such services that would enable the cultivation of the innate skill to musical creativity. Yet, the individual may choose not to pursue this line of action and this is completely within the individual’s right. In the capabilities approach, the objective is to enable the capabilities and then leave the freedom of choice with the individual – as long as the opportunities are present.

The Strategy for Cultural Policy sees cultural activities as “strengthen[ing] our cultural heritage” and the cultural activity of individuals in their respective communities as a way to “safeguard” democracy (STRATEGY2025, 14). This is to say that the Ministry of Education and Culture sees cultural participation as a platform for civic discussion and participation, and possibly as a place for different types of individuals to come together. When people work together towards a common goal, they get to know each other and establishing some form of connection with, for example, a neighbour who might seem different to yourself, usually helps in understanding them and thus “strengthen[s] democracy” and living together peacefully (Ibid., 14). The Strategy sees cultural

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<sup>42</sup> Nussbaum also uses ‘substantial’ freedoms.

participation as a source of individual well-being, but also as a means to the well-being of Finnish democracy. The Ministry reminds the readers of the Strategy of the “competencies” both on national and EU level in the field of culture and of EU legislation it is mandated to uphold. The mandate of the Ministry of Education and Culture is related to audiovisual culture, not only the regulation of contents for the purposes of child protection, but also to ensure that copyrights are respected (Ibid., 14). The strategy places the state as a watchful eye to keep vigil over the interests of copyright owners and children. By serving the rights of copyright owners, it supports the finances of the artists and creators of works of art and culture, which in turn enables the production of the creative works of these actors that the population can enjoy.

### **5.3. Cultural policy and products as a medium for national identity and power**

As already argued above by referring to Hall (1997, 232), culture, and cultural products such as media, are central to the shaping of identities and people’s conduct. “[E]very social practice [that gives life meaning] has a cultural dimension”, according to Hall (1997, 226). Furthermore, Hall (1997, 232) argues that if culture regulates our social practices, it follows that those wishing to influence what and how things are done in the world “will need to [...] somehow get hold of ‘culture’ to shape and regulate it”. Generally, this “governing by culture” (Ibid., 231), to borrow Hall’s phrase, is a power exerted by governments or, alternatively and increasingly in neoliberal societies, the market forces.

Hall (1997, 233) argues that education, for instance, is a way in which society passes its cultural norms onto the next generation. Media has the capacity to ‘educate’ – either explicitly or implicitly – to instill beliefs and normative attitudes. Hall uses the example of the kinds of representations seen on television and how they might, for instance, influence sexual conduct. What one sees on television, may well be taken as normal and the right way of going about things, such as sexual conduct, which one cannot generally observe outside media representations. Hall goes on to ascertain that the regulation of culture and by culture are closely intertwined. Because “[a]ll our conduct and actions are shaped [...] and regulated normatively by cultural meanings”, such as offered on television or other audiovisual media, Hall argues that it matters greatly who regulates culture, more specifically media in this case. Those in power to decide about contents and to regulate it

have the power to affect cultural conduct, what is deemed acceptable or not acceptable behaviour in societies (Ibid). When “mark[ing] out” different representations of conduct and content, classificatory systems come to define their national idiosyncrasies, they solidify national stereotypes and cultural codes of what is acceptable and what practices are considered normal (Ibid., 234).

Minnaert (2014, 100) defines international cultural policy as a “policy aimed at the role of culture in foreign relations and the presentation of the nation abroad”. Concentrating on the latter, while cultural products such as films by director Aki Kaurismäki have had such international status to have likely influenced the image of Finland and Finnishness in their representations of it, the role of classification in this process is more indirect. Rating imported and domestically produced films according to the same criteria imposes a cultural framework on what is considered acceptable or harmful for impressionable young minds, it superimposes a cultural matrix within which films are to be seen. When foreign narrative films are imported and their contents classified, classification superimposes a national matrix on international contents, on the ICP<sup>43</sup> products of other nations. In doing so, ‘our cultural values’ are imposed on foreign contents, the classification criteria becomes a form of “nation branding” (Ibid., 106) in the manner described above with reference to Hall.

This classificatory use of nation branding is seen, for instance, in the treatment of nudity when rating films. Stereotypically, Nordics tend to be ‘liberal’ about representations of nudity when they involve no overt depictions of sexuality, the French are perceived as relaxed in their ratings of sexuality, not to mention nudity, and the Anglo-American cultures tend to abhor any representation of nudity. A ‘full-frontal’ nudity yields an 18 rating in the English-speaking world in contexts considered non-sexual and giving no impetus for any kind of rating in the Nordic countries.<sup>44</sup> The differences in rating similar contents ‘profile’ nations and give an indication of what kind of conduct is acceptable and unacceptable in their societies.

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<sup>43</sup> ICP, international cultural policy, is understood here as an inevitable and concomitant process to the import of foreign films apart from a deliberate cultural export or import as part of cultural diplomacy.

<sup>44</sup> This observation is based on the common viewing and unofficial trial group rating of the Finnish film *Leijonasydän* (Heart of a Lion, 2013, directed by Dome Karukoski) during an international conference of classification professionals in Helsinki in 2013.

The national profiling or branding is a force to be reckoned with when considering the interests to safeguard national classification systems. Minnaert (2014, 102) points out that “a shared level of identity” creates communities and these identities to be shared are, in their turn, created or maintained by governments. What is considered acceptable or harmful conduct in societies acts as an adhesive uniting communities, the shared aspects of cultural identities include a shared notion of harm to minors.

Hall (1997, 229) warns against a simplistic dichotomy of state equalling regulation and markets equalling freedom, despite the overpowering force of globalization and its pressure towards internationalization that has proven to be a challenge for national policies. He believes that “markets would soon collapse into anarchy” without their regulation (Ibid). For Hall, deregulation is not an option: it is “not a choice between freedom and constraint, but between different modes of regulation” (Ibid., 230), by which he seems to mean a co-regulation by both the market and the state. Hall also notes, as discussed above, that there seems to be an increasing moral interest to regulate certain areas of culture, i.e. what is perceived as sexual content in some countries, while in other areas the trend towards privatization is more pronounced. He seems to agree with Prosser (2008) that a pure form of self-regulation, in other words governmental deregulation, is an impossibility in claiming that “there is no total or ‘pure’ freedom [from regulation]” (Ibid).

The next chapter will highlight some of the challenges in the current Finnish classification system.



## **6. TODAY'S CHALLENGES IN AUDIOVISUAL REGULATION**

The renewal of audiovisual legislation concerning regulation and classification taking place in 2012 was motivated by a rapid and constant changes in media environment (HE 190/2010 vp, 12). The Government bill is referring to the technological developments in the early 2000s that changed the everyday use of audiovisual media. Together with globalization, technological developments enabled a convergence of media contents and their easy travel across national borders, making their regulation by classification either impossible or increasingly difficult. The government's answer for meeting the challenge of convergence was government-coordinated media education in situations where national laws could not reach, and to unify the classification demands for nationally distributed media contents (Ibid., 15).

Since 2012 minor amendments have been made and a larger evaluation of necessary renewals has been written (Rantala 2020). It seems another adaptation of the legislation to match the current audiovisual culture is to be expected. The following subsections of this chapter will look at various aspects of the current legislation on the distribution of audiovisual programmes and its possible shortcomings.

### **6.1. Audiovisual classifications: binding or parental guidance**

In some countries, Finland included, audiovisual ratings are binding, not recommendations but meant to be taken literally and based in legal scripture. Yet, in Finland, not adhering to the 18 is the only case that has been criminalised; to sell an 18 rated programme to a minor is a punishable offence (HE 190/2010 vp, 26). Prior to the legislative renewal of 2012, the provision or sale of a programme or allowing a minor to enter a cinema screening of a film rated higher than the young person's age were also criminalised acts (Ibid., 27). The difficulty must have been that many minors do not have an official identity card and therefore the personnel who were assigned a gatekeeping role must have had difficulty in ascertaining young people's ages in a reliable manner, to prove any criminal negligence on such basis would have been not only uncertain, but also unfair.

The situation today is somewhat confusing: non-compliance with only 18 rated materials is criminalised, but all of the ratings are still ‘binding’, they are not recommendations. How binding can no-longer-criminal ‘binding’ be? The idea is that in a public viewing or a provision of a programme the gatekeepers – the game sellers and the cinema attendants – have a duty to ensure the laws are observed. The authorities have the possibility of issuing fines and notifications to uphold the compliance with the not criminally-binding ratings (HE 190/2010 vp, 28).

The message to be drawn from this is that all ratings, be they films, TV programmes or game ratings, are to be taken seriously and at face value, but compliance with the 18 rating carries specific weight, legally speaking. In practice, the enforcement of the binding classifications relies on cinema attendants, the application of watershed times<sup>45</sup> on television and digital identification when playing computer games (Ibid).

Other countries, such as Great Britain and the United States, base their ratings on a principle known as parental guidance, with the higher ratings being more restrictive (Paloheimo 2003, 32-33; HE 190/2010 vp, 11). These types of ratings seek validation by providing essential consumer advice rather than protecting from psychological harm. Parental guidance ratings are being used in Anglo-Saxon, English speaking countries, whereas the rest of the world, and northern Europe in particular, use binding ratings that find their justification in the law that is intended for the protection of children (HE 190/2010 vp, 9-10). Another approach is to treat games and other audiovisual material differently: for instance, having binding ratings for films but treating the PEGI ratings as recommendations. This was the Finnish model up until the year 2012.

Policies in Finland are often compared to those in Sweden; Finland tends to be seen as culturally similar to Sweden. In both countries the rating systems are based on legal definitions of harm and detriment to minors, which in their turn are indicated to have a foundation in research. Yet, sexual content is not mentioned in the Swedish legislation as a criterion for rating whereas in Finland it is so. The Swedish legislation on film classification merely states that their age ratings can be set on a film that can be perceived

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<sup>45</sup> 16 rated programmes are not to be shown before 9pm and 18 rated programmes not before 11pm according to the Code of Conduct agreed on by the television companies. (For instance, <http://vintti.yle.fi/yle.fi/tv1/juttuarkisto/tv1-tiedottaa/television-alkuillan-vedenjakajakellonaika-poistuu.html>)

as harmful, or “damaging” to the “well-being” (SWE2010:1882, paragraph 5) of a child of a given age group. The Swedish formulation leaves a fair amount of room for interpretation of what could be “damaging”, and in practice sexual content has not been considered as such. Their most recent legislative update abolished the 18 rating; if a programme does not qualify for the 15 rating in Sweden, it will not be classified. This means that it can only be shown for adult audiences (SMC). On their webpage, the authorities specify that “harm to the well-being includes emotions such as fear, horror, discomfort and/or confusion” (SMC). As a difference to Finnish legislation, Swedes abstain from naming the possible audiovisual elements causing discomfort in their legislation.

The differences in treating sexual content as harmful or not can result in quite different outcomes in rating the same film. Also, the highest possible rating is 15 in Sweden, whereas the highest rating in Finland is eighteen, the legal age of majority. In Sweden, films meant for public viewing by adults only do not require classification (SMC). The 1976 Japanese film *Ai no corrida (L’empire de sens)* was originally banned in Finland and after certain legal twists and turns, it is now rated at 18.<sup>46</sup> In Sweden, the rating dates from the year 1976, and it is 15, the highest it can be. It should be noted, though, that the Swedish rating is based on a cut version of the film, the online rating document lists two cuts of castration scenes.<sup>47</sup> In 1976, the officials did not list the reasons for their ratings, only the cuts.

To take a more recent example, a Hollywood film *The Big Short*, released in 2015, about subprimes and the consequent financial crisis was rated 12 in Finland for sexual and anxiety causing content.<sup>48</sup> Whereas in Sweden, the same film, the same DCP version of it with 2:10:07 in duration, has been rated ‘barntillåten’, i.e. for all audiences.<sup>49</sup> Swedish Media Council (Statens medieråd) has concluded that the film “is not judged to have damaging content for the well-being of any child of any age”.<sup>50</sup> To contrast the ratings

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<sup>46</sup> According to the Finnish database for classifications:

<https://luokittelu.kavi.fi/public.html#haku//a/542bb53525b88ee7ebb7bdcc>

<sup>47</sup> According to the Swedish database for film classifications: <https://www.statensmedierad.se/aldersgranser-for-film/sok-i-filmregistret>

<sup>48</sup> <https://luokittelu.kavi.fi/public.html#haku/big%20short//5639f8fa229c5e0300de9428>

<sup>49</sup> According to the Swedish film classification database quoted in footnote nr 42.

<sup>50</sup> According to the classification ruling registered in the database and in the original language: ”Framställningen bedöms inte vara till skada för välbefinnandet för barn i någon ålder.”

further, the BBFC (British Board of Film Classification) rated the film at 15<sup>51</sup>. The Brits list the use of strong language, i.e. swearing by mentioning various body parts, and “sexualized nudity” as their reasons for the 15 rating (BBFC1).

Although the overall reason of harmful content prevails in both Sweden and Finland, the interpretations of what exactly can constitute such harm can vary considerably. The possible interpretations are limited by legal definitions of detriment and harm in each country. The British film classification authority, BBFC, on the other hand, is not a government office unlike its Nordic counterparts. The British rating authority is required to consider the legality of films and they consider similar elements of harmfulness as their Nordic counterparts in their classification process, paying attention to “content showing illegal drugs, sexual activity, and criminal, violent or horrific behavior” (BBFC2). However, the British ratings aim at parental guidance, therefore the BBFC conducts regular surveys to adjust their guidelines to public concerns (BBFC3 2019, 2). It is also noteworthy that the central concern in classification in Finland is to strike a balance between freedom of speech and harmfulness, whereas the British put more weight on ‘suitability’ in conjunction with their ratings, indicating with their ratings that a given film is ‘suitable’ for viewing for a given age group.

Even though in the Finnish system only violating against the 18 rating has potential criminal repercussions, and the others have less grave consequences, all ratings in their binding nature are meant to limit children’s freedom of speech. It is therefore essential that they are not given lightly, only to ‘be on the safe side’, as recommendations or parental guidance ratings considering suitability might be, but with a clear intention of protecting from perceivable harm. A parent might oppose the idea of seeing a film or a child’s favourite programme because of its untoward content, but such considerations have no bearing on its harmfulness.

Pressure towards deregulation, or cutting back on the current form of age classification, has been recently expressed by the industry. Television companies pursue a “lighter” form of classification (Rantala 2020, 104), which can be read as a desire to revert back to

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<sup>51</sup> The length is mentioned as approximately 130 minutes, which matches the versions rated in Finland and Sweden.

recommendations instead of the time-consuming and work-intensive system of binding age classifications where each programme has to be viewed in its entirety. This is nothing new and has been the inclination of broadcasting companies since the dawn of television broadcasts in Finland (Sedergren 2006, 118, 220). Cinema film distributors have expressed a similar wish for recommendations (Rantala 2020, 108). Recommendation ratings can be assigned on the basis of synopses and the ratings of other countries, they are estimates rather than precise evaluations based on viewing, the latter is the aim of binding classifications. Rantala's report ascertains that such a change would be a deterioration in regard to the goal of child protection (Ibid).

## **6.2. Keeping the consumer informed**

As it is impossible for parents to actively preview programmes or play games before allowing their children to watch or engage in them, parents rely on the labelling that the regulatory authority has issued. In the survey carried out in Finland in 2014, (CuporeKAVI 2014, 17) about 80% of parents reported paying attention to labelling that indicates the rating of a TV programme or a film, but fewer, about 60%, did so in relation to computer games. An overwhelming majority of parents thought it necessary to have some sort of rating system for audiovisual programmes, either of the kind that is in place now or of the kind that preceded the present one.<sup>52</sup> Only 1,1% of the interviewees indicated that no regulation was necessary (Ibid).

Content descriptors are a quick and easy way for parents to get essential information concerning the reasons behind the individual ratings; earlier they would have had to go online to the regulation database to see the short, written explanations for the ratings. Database information is still available for the consumers. It archives all classified programmes in the history of Finnish classification. The maintenance of the database is the duty of the regulatory authority National Audiovisual Institute, and the database services the distributors who want to check if a title has already been classified, the classifiers to register the results of their work on the database and the authorities who register reclassifications and can use the database to monitor ratings.

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<sup>52</sup> The difference between the present and the previous system is one of content descriptors. They were introduced in 2012. Earlier the reasoning behind the rating was explained in short statements devised by the rating authorities that could be found in the rating database, much as in the Swedish system now.

The challenge of a database being used by a large number of people with different levels of commitment to archiving is the accuracy of the data inserted. For it to be useful for consumers and distributors, the information needs to be trustworthy and clearly presented in a manner that leaves no room for interpretation about which rating belongs to which film. If the same title comes up with different rating results when performing a search, it can be misleading and difficult to decipher why it might be so. When consumers want to file a complaint on a rating at the classification authorities, they can place it via the classification database or use a separate link on the authorities' website.

The BBFC has developed an app to inform parents and consumers of their film ratings; yet the same information is available on their classification database on their website. A consumer is not likely to download an app for infrequent use, but to use a website that accommodates both mobile devices and computers should be a more convenient solution. From a consumer's point of view, it is important that the necessary and trustworthy information is easy to find and readily available on as few downloads, taps or clicks as possible.

### **6.3. Films and TV programs vs. games: difference in treatment**

Digital games, while they fall under the same audiovisual legislation as films and television programmes in Finland, are self-regulated by a system known as PEGI (Pan-European Game Information) that is independent but subsidized by the game industry (PEGI1). Most European countries recognize PEGI ratings as part of their national rating systems similarly to Finland, some have chosen to have their own rating also for digital games, e.g. Germany (USK). Others accept PEGI ratings as they are, but leave room for national countermand, for a possibility to reclassify a PEGI rated game within a particular national rating system. The latter was true of Finland until 2015 (KAVIgames). When the authorities started accepting game ratings automatically, in the eyes of the law they became equal to ratings by the authority and can only be reclassified on a complaint to the Complaint Board of Audiovisual Programmes.

PEGI ratings have been issued since 2003, based on the criteria developed by ISFE, Interactive Software Federation of Europe. The aim of PEGI and ISFE is to "help

European parents make informed decisions” (PEGI1) about the computer games they purchase for their children. The game ratings are based on suitability, not harm. This means that the contents monitored and marked with labels are more varied than the national Finnish criteria. In addition to the current four Finnish criteria of violence, anxiety, drug use and sexual content, PEGI system also considers discrimination, gambling and bad language in its ratings. As PEGI ratings are more advisory in their nature, this can result in seemingly higher ratings to those that are binding in nature.

Regardless of the advisory nature of PEGI game ratings, they are approved at their face value and comparable to nationally conducted ratings. As such they are as binding as the ones based on the four nationally used criteria. The creation of a Pan-European system has meant making “cultural compromises” (PEGI2)<sup>53</sup>; acceptance of PEGI ratings as such into the national system means a two-tier system within the same practice. It can be confusing for the parent to evaluate the validity of a rating in terms of harmfulness when the rating is based on criteria not nationally applied and maybe less familiar, such as bad language.

To negotiate the inevitable cultural compromises that follow from the large number of member countries, PEGI has various committees and boards for selected members from the 38 countries where PEGI ratings are being used. For instance, in 2022, PEGI Council has participants from 14 European countries, with representatives from four Nordic countries, to bridge the gap of “social, political and legal developments in the entire [PEGI] region” (PEGI3). PEGI Experts Group concentrates on advising PEGI on technological development and the Complaints Board, consisting of a handful of experts working within the field of protection of minors, deals with consumer complaints concerning PEGI ratings. Their rulings are binding for the game publishers to abide by (Ibid). This means that the communication works in both directions, PEGI needs to be kept informed about the national developments concerning the regulation of games, but also the individual countries hear of the current trends in the collaborating countries and are kept in the know about future developments within the PEGI system (Ibid).

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<sup>53</sup> This view on “cultural compromises” in connection with PEGI ratings is circulated on advisory websites by different officials and most likely originates from the authorities at National Audiovisual Institution, but can no longer be found as such on their website.

How is the two-tier system possible at all? The Finnish classification system has national ratings for films, television broadcast content and video-on-demand originating from within the national borders. Why is it that computer games with their PEGI ratings are accepted at their face value? According to Audiovisual Media Services Directive of 2010, the so-called country of origin principle applies. It means that if any audiovisual content has been classified in the country of its origin, this classification can be applied in other member states (AVMSD1). This is the case with PEGI classification. On the other hand, there is no legal impediment for applying a similar system to other audiovisual contents, such as films and TV series. It would result in the need only to classify contents produced in Finland, instead of all fictional and some of documentary contents imported from abroad.

#### **6.4. Convergence, multiple platforms of distribution**

Viewers can watch their favourite TV series from various sources. The transmission may be a national broadcast, viewers might access it as a video on-demand service, they might watch a streamed transmission online or in the form of an old-fashioned physical recording. If the consumer is accessing the TV series<sup>54</sup>, or the signal from outside the national borders, national legislation does not apply. A Finnish spectator may watch an episode of *Mad Men* as a national broadcast, with its required labelling indicating the results of the nationally executed rating, but the same spectator may just as well be receiving the same episode as a Netflix customer without any indication as to its rating. National laws only apply within national borders; Netflix is a foreign operator, whose *Mad Men* transmissions are originated from outside national borders. Therefore, the company is under no obligation to have the episodes rated according to Finnish regulatory system, nor to use the existing ratings, it is only required to indicate that the signal is received from abroad and therefore the programmes are not rated.

Netflix, HBO and the national services of YLE Areena and Ruutu are video on-demand services. They have come to replace the physical recording devices of the 1980s and 1990s – the VHS and DVD systems – and the subsequent digital recording systems, sometimes

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<sup>54</sup> To be understood widely – i.e. any fictional or non-fictional audiovisual show produced in the form of a serial or a series, and shown on any platform.



called TiVos in the US. Video on-demand, VoD for short, is essentially an immaterial, digitalized service of recordings where the consumer can access the desired contents at will, regardless of time – VoD is a non-linear service as opposed to broadcasting being linear. Some of the VoD services are provided for free and some are commercially operated.

From the point of view of the spectator, the situation does not differ much: they are watching an episode of *Mad Men* on their smartTV sets or computers sitting on their sofas in their living room or on their laptops sitting in the train. Yet, depending on the source of the transmission, the origin of the signal, the requirements for rating and labelling differ. Also a fair amount of the Swedish speaking programming broadcast on YLE Channel 5, originates from Sweden. As a transmission from SVT, Sveriges Television, by the same token, it requires no rating, only a mention that it does not include national ratings.

Foreign originated transmission is not the only case of escaping national rating. An evening newspaper, *Iltalehti*, produced and published a fictional series of twelve episodes on its website a few years ago. This series called *Kämpikset*<sup>55</sup> (IL) was not required to be rated according to the national system as it was published as part of a newspaper's content on its website. Such a content falls under different legislation from video on-demand, broadcasts and cinema, and is subject to editorial responsibility, as any video clip published on a newspaper's online site would be.

The episodes of 'online TV series', for want of a better term, seem to have adopted a shorter duration to their broadcast or VoD counterparts, of which the running time is generally around 40 to 50 minutes. The episodes of *Kämpikset* lasted about five minutes each, and an Instagram drama series *Goals* by YLE followed suit (YLE1). A five-minute snippet of fictional action is perhaps more in tune with watching on mobile devices whilst on transit from work or school to home. YLE is the Finnish national broadcasting company that alongside with traditional broadcasting is providing its contents online as VoD service, YLE Arena, and has tried branching out to social media transmissions.

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<sup>55</sup> Translation: Room mates

The update of the AVMS Directive will require the implementation of regulating video sharing platforms distributing audiovisual content. The Directive stipulates the regulation should be technological self-regulation (AVMS2). Problems of reliability arise, from a consumer's point of view, when audiovisual contents are treated differently depending on the platform of their publication and the country of the origin of their transmission. This view came up on the report on the shortcomings of the current national audiovisual legislation and possible needs for updating it (Rantala 2020, 73).

## **6.5. Updating the Directive to meet its challenges**

The regulation of video on-demand originating from abroad is not the only worry for legislators, digitally transmitted contents cross national borders via different platforms of distribution. Livingstone wrote about the problems of “regulating the Internet” in the early 2000s in connection with UK policies and the then Secretary of State's unwillingness to regulate the Internet (Livingstone 2011, 505). According to her, the initial unwillingness of regulating online contents had its roots in the suspicions for a “slippery slope” effect, there were fears that the regulation exercised for the sake of protecting children might lead into adult censorship (Ibid., 508). Also the difficulty in applying national laws into matters crossing national boundaries was seen as an obstacle in regulating the Internet: “The Internet [...] evades the jurisdiction of any one government” and non-governmental international bodies lacked both consensus and power to enforce rules. However, the risk of children stumbling upon “more extreme content”, e.g. pornography, was recognized to be much higher online than in traditional broadcast media. The Internet was seen to enable online grooming and thus enhancing the risk of offline crime against minors (Ibid. 508-509). In Livingstone's reading of the situation political talk of regulation as “red tape”, as meaningless bureaucracy that would only hamper online creativity and business was yet another reason for the unwillingness to regulate the Internet (Ibid., 509).

Judging by Livingstone's views above, the need to reign in online contents had been on the agenda even before the writing of the Audiovisual Media Services Directive in 2010. Ever since its birth, the AVMSD could be construed as insufficient in this respect whilst it had a working system in other, more traditional, areas of audiovisual regulation. Online contents,

including user-generated contents, have been a bone of contention that have now been addressed in the latest version of the Directive, amended in October 2018 (AVMSD2).

As explicated in the renewed AVMS Directive, while “[t]raditional TV content still accounts for a major share of the average daily viewing time [...], new types of content, such as video clips or user-generated content have gained an increasing importance” and video-sharing platforms, VSPs, have become everyday (AVMSD2, section 1). This can be seen as an effort to tackle the issue of convergence and online contents. To regulate VSPs means the regulation of video clips on such platforms as YouTube, Facebook and Instagram; video-sharing platforms are sites with considerable storing capacity and aim at bringing their contents, which can also be user-generated, within reach of the general public. The Directive points out that it is young people in particular who are accessing video-sharing platforms as well as social media, indicating the possibility for these platforms to contain audiovisual material inciting for hatred and violence (Ibid.). It recognizes the need to regulate social media services, yet not “as such”, but only when video-clips are an “essential” part of the service (Ibid., section 5).

The Directive expresses a preference for the use of “self- and co-regulatory instruments” (Ibid., section 13), in practice this could mean age verification or other technological barrier systems. Its intention is not to have the contents classified in the manner of films and TV programmes, but to regulate the contents by their “organization”, with the help of “automatic means and algorithms” used by the providers to group the contents (Ibid., sections 47-48).

A similar approach to new platforms of content is seen with the VSPs as is applied to computer games, with the exception of not requiring content classification: choosing an industry-driven form of regulation where the industry is given the responsibility for the day-to-day regulative measures while the nation-states oversee its implementation.

#### **Regulative dichotomy: control vs. content**

As could be noted from the above references to the renewed AVMS Directive, the term regulation can be used to refer to technological measures enhancing the safety of children *vis-à-vis* potential harm, as well as to the more refined tool of content classification according to levels of children’s psychological development. This dichotomy is one of

control by contact as opposed to control by content classification (Livingstone 2011, 510). The regulatory measures outlined in the renewed AVMS Directive are of the technological variety that can be applied to online contents. In other words, national regulative measures would differ from the traditional classificatory approach (Rantala 2020, 33), the vast mass of online contents would seem to require less sensitive tools able to screen large quantities of contents. Livingstone defines regulation as a basic adherence to existing laws, “the relation between power and the ordering of social behaviour” (2011, 507). The restrictions on freedom of speech, secure online transactions, respect of copyright and safety and good management of personal data are among these basic responsibilities of law-abiding citizens and corporations acting online; they are the same expectations of security people have in the terrestrial world, and do not disappear when people go about their lives and manage their affairs digitally. The right to privacy does not disappear when moving from offline to online world, but hiding under the veil of anonymity enables vengeful acts without consequences.

Livingstone contends that developed Western societies are experiencing a shift from a governmental command-and-control regulation to a more “mixed mode of governance” that includes different stages of regulation: self-, co- and state regulation (Ibid). According to her, the favoured form of regulation in matters online is that of self-regulation where the ‘duty of care’ rests largely with the private sector providing the platforms for expression. Livingstone thinks this is in accordance with the wider “shift in regulatory regimes” from “government to [...] often indirect governance characteristic of neoliberalism” (reference to Freedman, 2008 in Livingstone 2011, 507, 511).

## **6.6. Media education to counter the shortcomings of classification**

In the early 2000s, Silverstone (2007) argued for an ethical approach to media use that emphasized responsible behavior towards other media users and saw the teaching of media morality as the task of media education. Towards the 2020s expectations for what media education can achieve have altered. Buckingham (2019) points out in his lecture that media education became the “quick-fix” answer to media related problems since its evolution, and he argues it is time to be more discerning about what media education can achieve.

According to Buckingham (2019), the progress of media literacy, as he calls media education, has been slow due to confusion over its definition. The issue is two-fold, says Buckingham, literacy includes both media and digital literacy, the ability to be a discerning user and the ability to use digital devices. Yet, he emphasizes that media literacy needs to apply to all media, traditional and digital. This would seem to imply that media education needs to be targeted not only at the young but people of all ages. While for Sihvonen (2004, 95) the function of media is not to be an educator or a pedagogue, and it should not therefore be blamed for failing in such a role, fifteen years later for Buckingham (Ibid.), media education entails both teaching *about* the media to enable critical analysis and teaching *through* media, by using media as a tool.

Buckingham (2019) criticizes the cure-all approach to media education seen in national updates to regulation<sup>56</sup>, including Finland, in the recent years. As media literacy aims at shielding children from undue harm, it has come to be used as a substitute for regulation; Buckingham sees this tendency as an attempt to “counterbalance” de-regulative measures.<sup>57</sup> According to him, governments are “passing [regulatory] responsibility to consumers” (Ibid). The AVMS Directive addresses the responsibility of media regulators and media industry, it does not cross over to education in schools. However, for Buckingham the answer lies in education policy, an area not included in the AVMS Directive. Buckingham sees a more structured approach to media literacy as the answer, instead of what he calls “quick-fix solutions”, short-term government funded media education projects targeted at certain root-level groups (Ibid).

It seems that Buckingham’s ‘more structured approach’ reads as bringing media education into school curricula on a national level. In his words, in the UK there is no connection between media literacy policy and education policy. In Finland, media education does not have the status of a taught discipline, but it is inscribed in cross-curricular themes, or in transversal competence, as it is now called in the latest version of the national curriculum (LOPS 2021, 60). This leaves schools with some leeway in how they choose to fulfill the promise of media education embedded in the national curriculum. Some might see this as

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<sup>56</sup> Media education has become part of the regulators’ tools in the 2010s; e.g. Swedish Media Council and British Board of Film Classification have adopted media literacy as part of their work, along with Finland.

<sup>57</sup> Buckingham is referring to British regulatory body, Ofcom, and the deregulation concerning its field of function in 2003.

an opportunity for variety in implementation, others might interpret it, along the lines set by Buckingham, as lacking in structure.

### **6.6.1. Anxious youth and the will to perform**

Anxiety in the young has been on the rise in our society of late and this tendency has become more pronounced, with the recent pandemic (VN 2020, 35) contributing to a prolonged period of remote learning that favours some, but can be difficult for others to cope with. The Finnish organization for upper secondary schools, Suomen Lukiolaisten Liitto, has reported growing rates in problems of mental well-being with more than half of the young upper secondary students; they report experiencing feelings of inadequacy or stress leading to burn-out (Salmela-Aro & Hietajärvi 2019, 3,7).

The young have a strong presence in social media. Certain platforms, such as TikTok and Snapchat, which operate primarily in visual communication, are typically the stomping ground for today's adolescents. Snapchat is about communicating in pictures, in snapshots, and TikTok is about posting short videos for everyone to see. The latter has become a modern stage for short performances, dancing, for instance for young girls. This caters to a need of self-expression that Nussbaum (2018, 149) also brings up in her assessment of what a good school needs to have. In her view, the insecurities of adolescents and the uneasiness of the high school experience of many Americans stem from the feelings of envy (Ibid., 147). She points out that not everyone is good at sports, which is the traditional outlet for extra-curricular activities in American schools, but others are better at creative expression such as drama, dance or poetry. To support the well-being of adolescents, it is important, in Nussbaum's view, to offer alternative 'stages' for various kinds of outlets of creativity and action. This is important because "high schools foreground achievements [...] such as popularity, sexual magnetism and skill in sports" (Nussbaum 2018, 147); adolescents have the need to feel admired and to excel at what they do, to be respected and admired by their peers, and excelling at sports is not the capability of everyone.

TikTok can be seen to offer such a 'stage' for any young person willing to perform for an online audience, and many are willing to take such a chance with the worldwide audience. This willingness to 'put oneself out there' borders on self-exposure, which has its risks on

one's self-image if the response is not sympathetic or admiring. This willingness to expose oneself to others derives from the need to be admired. For others, who do not have the natural performing skills, or "sexual magnetism" to borrow Nussbaum's words (Ibid.), the need to conform, to belong and to have a social media presence persists. If the feelings of peer envy run high, one might resort to extreme measures – such as online bullying, or violent videos – to assert oneself among one's peers.

Whether the relationship between accumulating anxiety disorders and the ubiquity of social media with today's youth is one of causality or mere co-incidence is of interest. At the very least, it seems that with the growing use of social media, the opportunities for bullying have become more, not less, and more far-reaching in its dissemination. Another 'genre' of performance videos on TikTok are violent performative actions. To publish violent videos of bullying (IS) on TikTok has become a curious phenomenon among the young in Finland. If this is done to gain respect from the peers, or be feared by them, is up to debate, but to make them public tells of the performative value of such an action to the aggressors.

According to Gardner and Davis (2013, 66) "the App Generation" is more "externally oriented" than previous, or "predigital" generations; by App Generation they mean people who only know life since the birth of social media and different apps. This is to say that today's young construct their identities by using various social media platforms, in Gardner and Davis's words the young use the apps to present "a polished, packaged self" that they think others will approve of (Ibid). It is an act of performance to construct an identity (Ibid., 72).

Gardner and Davis seem to agree with sociologist Robert Putnam on the effects of the increased media use on individuals. Putnam wrote about watching TV, but the analogy applies to other media as well. According to him, "the rise of electronic communications and entertainment is one of the most powerful social trends of the twentieth century" (Putnam 2000, 245). For Putnam, the time spent with media is unsocial and time away from communal activities, or civic engagements, which in times before electronic media brought people together. For Putnam as well as for Gardner and Davis, this tendency indicates a trend for individualism: "Individualism goes hand in hand with a focus on the self, and there's evidence that today's youth are more self-focused than youth in decades

past” (Gardner & Davis, 2013, 69). Putnam recounts an evening at a bowling alley where team members watch television on screens mounted above the lanes while waiting for their turn: “Even while bowling together, they are watching alone” instead of mingling with team mates (Putnam 2000, 245).

The rising anxiety in the adolescents ties in with rising individualism, and its link with the use of social media to seek acceptance from one’s peers could be a connection worth exploring. The connection may not be one of causality, but interdependent co-occurrence. This in turn would require media educational measures to counter the increasing anxieties among the young.

### **6.6.2. Demands for regulating social media – adult censorship?**

The storming of the Capitol Hill by Trump supporters on January 6<sup>th</sup>, 2021 was a landmark in the demands and discussions for the need to regulate social media. The measures seen so far are those of self-regulation: Facebook employs monitors to screen pictures and texts posted by users and Twitter started to label Trump’s tweets with “contains false information” labels even before January 6<sup>th</sup>.

Soon after the events at the Capitol Hill broke loose and Trump’s connection to the rioters became evident, both the legality and the safety of his actions as a president were put in question by the press, the appalled onlookers and many in the Congress. At this juncture, Twitter, among other social media platforms,<sup>58</sup> terminated Trump’s account, which had acted as his megaphone to the world and to his supporters – soon discussion in the media about the wisdom of this action ensued. Twitter’s rationale for the decision was incitement to violence (HS2, 2021). Politicians and debaters saw the total ban as problematic in terms of freedom of speech, although voices were heard to contend that the President of the United States is not short of media attention and would not have any problems getting coverage in the traditional media.

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<sup>58</sup> According to eff.org article “Expression and the Digital Services Act” by Dr. Alexandra Kucherawy, various other social media sites including Facebook and Instagram “suspended” Trump’s accounts, effectively blocking his access to them.



Jussi Pullinen wrote in his analysis in *Helsingin Sanomat* (Ibid.) that having access to Facebook or other social media is not a human right, but a service provided by commercial companies. Yet, the question of content control remains. The service provider provides the platform, but unlike with media companies producing and distributing audiovisual content, it is the ‘audience’, the users, who provide the content that the platform provider then self-regulates, most likely according to its commercial interests. The problem in the above situation is in the right to limit freedom of speech: should it lie with the commercial company or with another stakeholder? Should it be a matter of co-regulation? A seller can refuse to sell their product to a potential client, but should the service providers have the right to control the user-generated contents? It would mean decentralizing regulatory power on commercial actors.

Traditionally, with content media, regulation has been the right of governments, and in recent decades it has become a co-effort involving also the providers in the process of regulation, under the watchful eye of government authorities. The difficulty with social media is its ubiquitous nature: it is everywhere at the same time, it knows no national boundaries while the headquarters of these companies reside in a certain country. Should the country of origin principle apply here as it is applied in audiovisual media products? The country of origin principle means that an audiovisual broadcast or streaming originating from abroad does not need to be classified in Finland, national laws only apply within the borders of this particular nation, not outside it. Secondly, should the question of harmfulness to children, or even dangerous to societies at large, apply, and what party should have the responsibility for regulating media contents? Should the regulation of social media aim at protecting minors or should it at first and only instance be about unlawful material, such as incitement to violence or racism?

A third aspect into regulating social media is the nature of its content: it can be both textual, written and audiovisual. In Finland, censorship or classification has not been about the written word. The press has its own self-regulatory body, the Council for Mass Media, that passes judgement on issues brought to its attention by whistleblowers. It scrutinizes complaints concerning both the printed and audiovisual press and issues notifications. The EU has, in the updated Directive discussed above, taken the stance of video-sharing platforms needing content control, which would be the responsibility of service providers by technological means.

The rising demands for regulating social media is a quandary that involves the provider's commercial interests and rights to choose their users or customers. Secondly, it involves freedom of speech, a right that should be equal to all. Thirdly, the infringements on the freedom of speech are an issue as well, as the world has seen with the poignant example of the American president. Fourthly, it is an issue of avoiding undue and unnecessary censorship or regulation that is too heavy-handed or even impossible to implement in practice, but at the same time ensuring a safe and functioning media service to all.

## **7. CONCLUSION**

From the close reading of the source material it has become clear that self-regulation is the favoured mode of regulation for audiovisual contents in the future, the updated AVMS Directive is quite clear on this, especially concerning new modes of transmission. This creates a difference in how the classification system is dealing with the more traditional modes of TV broadcasts and cinema films, which are likely to be ‘manually’ scrutinized and classified.

The willingness to retain the co-regulation of TV, film and video on-demand services is explained by both a long-standing tradition in classification and an interest in upholding national values considered somehow central in Finnish culture. Stuart Hall’s (1997, 227-228) notion of culture being central to social regulation and “governance of social conduct” explains the function of national ratings – they work to maintain national values about what is considered harmful or acceptable in audiovisual contents. This in turn relates to the ideas of national identity – what the shared values for a nation are.

The theories of governance and capability approach argue for a strong governmental role in providing necessary services for people to be able to live a good life. Both theories see it as the duty of governments to ensure the safety of societies by regulation and laws. Safe and working societies are able to provide the possibilities for personal development that are necessary for being able to lead a dignified life. In the light of the theory of governance and capability approach, audiovisual regulation with its age classification and media literacy skills is an element of governmental regulation whose function is to support the individual well-being and growth of children and young people.

### **7.1. The point of a national rating system**

In the course of this study, it has become clear that a two-tier system of regulating audiovisual media contents is in place: a combination of self-regulated games and co-regulation for other platforms. This system is likely to continue in the years and decades to come. A consumer support for a system to protect minors is wide (CuporeKAVI 2014, 22),

although especially the industry has expressed interest in age ratings as recommendations (Rantala 2020, 87; 99-100; 104), meaning a system with less binding classifications.

However, it seems likely that the makers of cultural policy support a stricter, binding classification system for the more traditional audiovisual platforms of broadcast television, cinema and domestically generated video on-demand or online viewing services. It is seen as more reliable when the aspect of harmfulness is concerned than a system of recommendative ratings (Ibid., 108). Yet, for the newer forms of distributing audiovisual contents, computer games and VSPs, the regulation is and will be based on the country of origin principle and it is more recommendational by nature, albeit Finnish legislation has placed game ratings at an equal legal standing with nationally generated television, cinema and video-on-demand ratings. While traditional contents or platforms are kept under national co-regulative control, the trend towards favouring self-regulation in the newer platforms or contents is apparent, the AVMS Directive favours such an approach (AVMSD, paragraph 58). Classification of computer games by the PEGI system is an example of this trend, with VSPs the EU is ushering member states towards a technologically enabled self-regulation.

The new trend is described by Lunt & Livingstone as a “hollowing out”<sup>59</sup> of the national state apparatus” and they see globalization as the root cause for the “transnational processes of governance” (Lunt & Livingstone 2012, 4). It seems Finnish cultural policy does not fully want to give in to the forces of convergence and globalization. The reasons for the continued willingness to retain the ‘old’ system of national ratings for certain platforms offering audiovisual contents can be explained by history, the long tradition in classifying films and partly also television contents. Another explanation is “the strong desire to recognize and sustain social and cultural distinctiveness between and within nation states” (Lunt & Livingstone 2012, 30), the cultivation and maintenance of cultural values and norms that national rating criteria uphold. These cultural norms and values tie in with perceptions of what can be harmful or not and how the line between harm and freedom of speech is negotiated.

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<sup>59</sup> The phrase ‘hollowing out’ stems from Jessop, B. (2000) ‘The state and the contradictions of the knowledge-driven economy’, in J. R. Bryson, P. W. Daniels, N. D. Henry and J. Pollard (eds), *Knowledge, Space, Economy*. London: Routledge.

## 7.2. Dispersal of power

From a consumer's point of view, it is less relevant whether ratings are produced nationally as a result of co-regulation or command and control regulation or if they are the result of self-regulative action by the industry, as long as they are reliable and conform to the same set of criteria and values. With self-regulated classifications, which are generated in the EU country of the origin, conforming to the national ideas on harmfulness is likely to be less than perfect. Other than the desire for nation branding by classification and the long tradition in command and control regulation, there is no legal impediment for subjecting all audiovisual contents to the country of origin rule that would allow for EU produced age ratings to be applied nationally in Finland.

The 'hollowing out' of national regulatory apparatus would lead to a dispersal of power. Co-regulation does that to an extent, and self-regulation would do so to an even larger degree. Although a pure form of self-regulation might seem unlikely, as it would mean a nation-state dissociating itself from the nationally applied ratings, a modified form of self-regulation would mean a situation where classifications are produced by the industry in the country of the origin, within the EU, where the audiovisual work has been produced. The role of the nation-state would be minimal, as would be the sustenance of national values and ideas on harmfulness.

The dispersal of power would mean relinquishing of governmental power onto private sector on the premise that assigning age classifications is not a matter of essential rights. According to the Finnish constitution the delegation of administrative tasks cannot take place if the task involves "significant exercise of public powers" (Con731/1999, chapter 11, paragraph 124). The question then is if limiting freedom of speech is considered a significant exercise of public power.

Freedom of speech is a basic human right. Hall (1997, 277-228) argued that culture is important in the "governance of social conduct", and with the centrality of culture "the forces which [...] regulate and govern it" grow in importance. Yet in Finnish legislation, to limit the freedom of speech for children has not been interpreted as a significant use of public power as co-regulation grants this essential task to non-authorities. Giordani and

Kava (2019, 3) have argued that public administrative tasks can be divided into two categories: central and peripheral, and the exercise of public power is a central administrative task. This positions Finnish classifiers on an ambiguous in-between territory: they are not civil servants but work directly or indirectly for the industry. However, a degree of independence and ‘civil servant-like’ liability is expected of them (Rantala 2020, 81-82). Classification, as it is carried out today in Finland, is not a robotic, automated job, but requires an eye for detail and a capability to analyse and apply given criteria to practice.

### **7.3. Enabling good life**

Age ratings are a service typical of developed countries and societies. In Nussbaum’s terms, it works towards the maintenance of a quality of life that enables a safe (media) environment for children. In the 21<sup>st</sup> century, media education or media literacy has become part of the capabilities that a society aspires to in order to shield its young and vulnerable members. Yet, in the future, a similar service with focus on technological capability rather than critical capabilities needs to be extended to the elderly (AVMSD, paragraph 59). They are another group requiring special attention in helping them with their capabilities to maintain a good quality of life in a world where the use of necessary services requires technological capabilities (YLE2 2022).

In her 2018 book, Nussbaum saw fear and fear-mongering, which unchecked and uncritical use of media can help enhance, as a significant threat to the working of democracy. In Putnam’s words (2015, 211), the digital divide has disappeared in the 21<sup>st</sup> century, but “having equal access to the Internet does not mean everyone gains equal benefit from that access”. Adopting Putnam’s view, inequality of opportunity, fostered by unequal division of knowledge or inability to apply one’s capabilities to their fullest in the digital world, can also form a breeding ground for threats to democracy.

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