

Guarding Human Rights in Broadcasting: Japan's Five-year Experiment

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It is rare anywhere in the world to find an organization that was set up specifically to deal with complaints from television and radio audiences. Yet Japanese broadcasters did precisely that, and it has already been five years since they founded the Broadcast and Human Rights/Other Related Rights Organization (BRO).

Reader and audience criticism of human rights violations by the media became increasingly audible in Japan during the 1990s. Media scums (overbearing concentrated coverage of individuals), low-brow articles and programs with a potential for exerting unhealthy influences on youth, and violations of privacy all have contributed to a steady erosion of popular trust in the media. The Japan Broadcasting Corporation (NHK), the country's only public broadcaster, and 190 commercial broadcasters got together and organized BRO in May 1997 in an attempt to do something about the situation.¹

Audience trust in broadcasting has not recovered, however, partly because the broadcasting industry's attempts to clean itself up have not worked. Continuing and frequent media scums are a case in point. Freedom of speech and expression is guaranteed in the Constitution, but some audiences and lawmakers are beginning to believe that this very freedom may have to be constrained by law, to the extent that the Constitution will allow. In response to the vocal public criticism of broadcasting, the government submitted to the Diet two "media constraint" bills.²

¹ The public broadcaster NHK is operated with reception fees from audiences whereas commercial broadcasters are supported from the revenues of advertising fees. The number of commercial broadcasters belonging to the BRO as of April 2002 was 203. Commercial broadcasters that are not members of the BRO are limited to those without news reporting functions, such as those specializing in music.

² The "media constraint" bills under Diet deliberation as of September 2002 were: the Personal Information Protection Bill and the Human Rights Protection Bill. No agreement on either of the bills was reached between ruling and opposition parties, however, and it was decided that deliberations would continue even after the Diet session was over. Ruling and opposition parties are also considering a bill for dealing with aspects of the social environment detrimental to youth. Some fear this bill may overly restrict broadcasting under the pretext of removing content potentially harmful to young people.

One of the bills, the Human Rights Protection Bill, contains a proposal to treat victims of human rights infringements by the media in the same manner as victims of discrimination and abuse. If passed, the bill provides for the establishment of a committee with legal authority to redress such media violations, and any broadcast listener or viewer with a claim to argue could appeal either through the broadcasting industry's own organization, the BRO, or seek redress through the legally authorized committee. Because of these developments, the broadcasting industry is feeling new pressure to protect its freedom, and new and bigger expectations are suddenly being focused on the BRO.

If true freedom of broadcasting is to be preserved, no form of restraint imposed by law is desirable. Redress for violations of human rights should be left to the BRO. The BRO, therefore, needs to upgrade its functions to meet the needs of people in the audience, and the broadcasting industry has to start policing itself better to restore audience confidence.

Now, five years since the founding of the BRO, this article looks back on its history thus far, discusses the structure of the organization and how it came into being, and offers an overview of the results of hearings on specific complaints. It also goes into the complex mission of the BRO to defend the freedom of broadcasting.

“A Rare Organization”

The BRO was founded with the purpose of acting on human rights violations committed in the preparation or execution of broadcasts, including newsgathering activities by broadcasters. It is an unincorporated, independent organization designed to consider the listener/viewer standpoint in dealing with complaints in an expeditious and effective manner. Operating expenses are provided by NHK and commercial broadcasters.

The BRO operates within the structures and according to the rules and guidelines described below:

- 1) While not invested with the authority of law, the BRO is an organization established at the initiative of the broadcasting industry.
- 2) The members of the Broadcast and Human Rights/Other Related Rights Committee (BRC) who consider and advise on redress of infringements of human rights are selected by an independent Advisory Council.
- 3) Members of the BRC include no one from the broadcasting community. The BRC, which hears complaints from viewers, is a neutral third-party organization.
- 4) The conclusions of BRC hearings are not decisions binding upon broad-

casters. However, since all of Japan's broadcasters with news-reporting functions are party to the agreement regarding the purposes of the BRC, they are obliged to observe its advice as long as they are BRO members.

- 5) The BRC hears cases in which the claimant and the broadcaster fail to agree with regard to a program that has been broadcast.
- 6) Complaints received by the BRO prior to broadcast are limited to rights violations that occurred in the process of newsgathering.
- 7) As a rule, complaints are filed either by individuals whose rights have been infringed upon in broadcasting, or persons with a direct interest in and acting on behalf of such individuals.

The BRO is a rare example of its kind anywhere in the world: while having no legal power or jurisdiction, the determinations it makes after deliberation are essentially binding on the parties involved. Broadcasters have the option of withdrawing from membership. But precisely because the BRO is a voluntary group, the cooperation of broadcasters is all the more important to its credibility and effective functioning. Given the nature and purposes of this venture, the five years since the BRO's establishment should be regarded as the experimental phase.

The Need to Reestablish Trust

In December 1996, the Multichannel Advisory Council, a private advisory body to the broadcast administration bureau chief of the Ministry of Posts and Telecommunications (now the Ministry of Public Management, Home Affairs, Posts and Telecommunications), issued a report. In it, the Council proposed to broadcasters that a system be set up to allow an extra-industry body to consider and make decisions on cases when the claimant and broadcasters could not reach agreement themselves with regard to major complaints, especially rights infringements, bearing on broadcasting law or program standards. The aims of this body would be to help maintain audience trust in broadcasting, facilitate the healthy development of the industry, and help those who suffered from broadcasting lapses.

To give a third party the job of judging the content of broadcasting might seem to impinge too closely on freedom of speech and expression, and some members of the council opposed the idea. The council went ahead anyway, feeling constrained to create some such system to deal with what looked like a spreading epidemic of human rights violations that were drawing fire from an increasingly indignant public.

A typical case was the Matsumoto sarin gas incident. In June 1994 a poisonous gas spread through a residential district in the city of Matsumoto,

Nagano prefecture. Seven people died and some sixty were sent to the hospital. In the absence of an identified perpetrator, the local police investigated the house of the man who first notified the authorities. The media immediately reported that this man was the prime suspect, giving his real name. Later it was found that the gas had been released by a religious cult and that the man who first alerted the police was in fact a victim, having had nothing to do with the poisonous attack. Broadcasters and newspapers subsequently issued apologies to him on the air and in news articles.

In September 1995, an elementary school girl was reported to have been raped and held by three American servicemen in Okinawa prefecture. Since the victim was a child, the media should have been especially careful in their coverage, but teams of reporters and photographers from television stations and magazines converged on her house, noisily jostling for something that would make a good story. They carried on with no sensitivity toward the victim or concern for the privacy of the girl and her family. Public censure of the media was intense.

An opinion poll conducted by NHK in March 1996 revealed that a high 84 percent of respondents felt that media reporting infringed on human rights. Feeling bound to honor constitutional guarantees of freedom of speech and expression, the Multichannel Advisory Council did not, in its report, try to force broadcasters to set up an organization to deal with viewers' complaints; it only expressed "the hope" for such an organization. At first, therefore, broadcasters did not respond to that suggestion. As a group they took the position that there was no need to set up a third-party organization to deal with rights infringements.

Within the Diet, however, opinion was growing in favor of legislating an agency to work with the media if broadcasters did not set up a third-party body. Wanting to avoid government intervention, the president of NHK and the president of the National Association of Commercial Broadcasters in Japan (NAB) decided in March 1997 to organize on their own a complaint-handling body, which became the Broadcast and Human Rights/Other Related Rights Organization.

Other such agencies do exist outside Japan, most notably Britain's Broadcasting Standard Commission (BSC), but that body was established under the 1996 broadcast law, while BRO was set up independently. Also, the scope of complaints handled by the BSC, which started operating in 1997, is wider than that dealt with by the BRO; it covers a diverse range of issues, from improper or unfair treatment in broadcast programs, to violation of privacy, sex and violence, discrimination, and indecency.

BRC, a Third-party Organization

According to its bylaws, the BRO was founded “to ensure that broadcasters actively fulfill their social responsibility and also maintain freedom of speech and expression. Moreover, in order to protect the basic human rights of viewers and listeners, the BRO shall deal with complaints made about broadcast programs promptly and effectively, considering them from the standpoint of audiences, thereby helping to ensure accuracy in and enhance the ethical standards of broadcasting.”

The complaints subject to BRO deliberation are “serious complaints bearing on broadcasting law and regulations or program standards, especially complaints about infringement of human and other rights.” It is stipulated that these complaints qualify for BRO deliberation only when they are not being adjudicated in court and when there is no possibility of settlement between claimant and broadcaster(s).

The BRO began operations with a difficult-to-navigate mission. It set out, on the one hand, to redress damage to vulnerable listener/viewers through deliberations of their claims of human or other rights infringements by broadcast programs, and at the same time, to protect freedom in broadcasting.

The interests of the broadcast audience and the broadcasters sometimes clash, but the BRO judgments must be fair and objective. Therefore when it comes to deliberation of complaints from viewers and listeners, the judgments are left in the hands of the BRC, a third-party organization.

The BRO regulations for the BRC specify that the eight members of the BRC are to be selected by the Advisory Council, which in turn is made up of five persons of “learning and experience” and excludes anyone from the broadcasting industry itself. As of April 2002, the five Advisory Council members were a former supreme court judge, a former university professor, the president of a culture-related foundation, an author, and the president of a prefectural university. The BRO Board of Directors selects the Advisory Council members. To ensure the independence of the BRC, the Advisory Council only selects BRC members; it does not supervise BRC operations.

Responding to Claims

The eight members of the BRC are also outstanding individuals. They include a university professor, a lawyer, a language and culture critic, a former supreme court judge, a social critic, a freelance journalist, and two others (as of April 2002). Needless to say, none is engaged in broadcasting. Seven criteria guide BRC responses to complaints:

- 1) As a rule, complaints that involve possible violations of the rights to individual dignity, reputation, and privacy are accepted for deliberation;

- 2) Complaints about programs prior to their airing or complaints about items that have not been broadcast are, as a rule, not subject to deliberation; but violations of rights committed in the process of producing a broadcast program may, at the discretion of the BRC, be subject to deliberation;
- 3) Complaints subject to deliberation will be limited to cases in which claimants and broadcasters have failed to reconcile their positions about a program already broadcast. As a rule, these complaints must be presented to broadcasters within three months of the relevant broadcast date and brought to the BRO within one year;
- 4) Complaints that are in some stage of court adjudication do not qualify for deliberation. Also, if either claimants or broadcasters file a lawsuit, deliberations cease at that point;
- 5) Those eligible to present complaints are, as a rule, limited *for the time being* to individuals whose rights have been infringed or violated by a broadcast program or persons with direct interest in and acting on behalf of those individuals.
- 6) Complaints against individuals in charge of the production of a broadcast program in question are not subject to deliberation;
- 7) Complaints against commercial advertising are, as a rule, not subject to deliberation.

The "rights" that the BRC considers when it deliberates infringement or violation are the individual rights to personal dignity, reputation, privacy and the like, and it accepts claims only from individuals or those acting for and with direct interest in, those individuals. It does not deal with complaints from corporations, local government agencies, political parties, or other organizations. The phrase "for the time being" in (5) indicates that with further improvement of the BRC system, complaints from organizations too weak to file a lawsuit will become eligible for deliberation.

The stipulation limiting complaints under (3) reflects the priority the BRC places on negotiations between claimants and broadcasters, and it emphasizes the importance of ensuring freedom in broadcasting. At the same time, the BRC holds that even if a broadcast program itself does not involve rights infringements, complaints about rights violated during the production of the program in question may be subject to deliberation. This stipulation takes into account the damage caused by media scrums (and other excessive newsgathering activities).

By refusing to handle problems pending in court, the BRC stresses its function as an organization for settling disputes by mediation. But it does not prohibit claimants who are dissatisfied with the outcome of BRC deliberation from bringing their case to court afterward.

If problems arise that might constitute serious violations of rights, the BRC can, at its discretion, deliberate issues even if no complaints are filed. This procedure is intended to seek redress for victims (children, for example) who are prevented by circumstances from presenting complaints themselves. This provision allows the BRC to make clear its role not simply as a passive receptor of complaints initiated externally, but also as a responsible organization established and upheld by broadcasters.

“Recommendations” and “Views”

In its deliberations the BRC respects the editorial rights of broadcasters. When it deliberates complaints, the BRC listens to what the broadcasters concerned have to say. It also can request videotapes of the program(s) in question and related materials. Submission of such materials, however, is not compulsory, and broadcasters can decide whether or not to hand over such materials. Over these five years since the BRC began handling complaints, no broadcaster has refused to present material when requested.

The BRC, as provided in its bylaws, may call on the broadcaster in question to air the results of its deliberations, and broadcasters have the option to refuse. Whether or not to broadcast the results is ultimately left to the editorial judgment of the broadcaster. In five years, however, no broadcaster has refused this call. This is because, at the time of the BRO's founding, NHK and the NAB agreed that broadcasters would respect BRC judgments and would take the results of its deliberations very seriously.

When the BRC recognizes fault on the part of the broadcaster in question, it issues its conclusions after deliberations in the form of “recommendations” (*kankoku*) or “views” (*kenkai*). The distinctions are defined as follows.

Recommendations are issued when a complaint testifies to an obvious infringement of rights, placing an obligation on the broadcaster in question. In such cases, the BRC might call upon the broadcaster to take appropriate measures of redress. Views are issued when the BRC identifies problems involving broadcasting ethics but not so serious as to be called violations of human rights. The broadcaster in question is called upon to give more serious consideration to human rights.

Over the past five years the BRC has deliberated seventeen cases (eight complaints). The reason the number of cases is larger than that of complaints is because two or more broadcasters were sometimes named in one complaint. Of the seventeen cases, recommendations were issued twice, and views were issued twelve times. In three cases, the BRC concluded that “there was no problem.”

Recommendations: Two Cases

The content of the BRC's recommendations is sometimes revealing. Let us examine two of them here.

On October 6, 2000, the BRC issued to Iyo Television, a local television station based in the city of Matsuyama, Ehime prefecture, a recommendation stating that the broadcaster had committed an infringement of human rights.

This case involved the reporting on an incident of fraud in which a man swindled money from a loan company by taking out a loan under a false name to purchase a car. In September 1999 an automobile salesman was arrested on suspicion of fraud. In reporting the incident, Iyo Television broadcast images of a local auto dealership with which the arrested salesman had done business, using a subtitle that read "auto dealership allegedly related to the crime." In the footage mosaics were superimposed over private information, but the owner of the auto dealership complained that "images of my company were used for this report, even though I had nothing to do with the fraud case. Maybe the details were blocked by mosaics, but it was possible to tell it was my business, and some people were led to think I was implicated in the fraud. The broadcast infringed on my rights as a citizen." He had submitted his protest to Iyo Television but had not received an acceptable response, so in June 2000, he filed a complaint with the BRC.

The results of eight BRC meetings deliberating the case are as follows:

- (1) The content of the broadcast was not misinformation. However, it did give viewers the impression that the owner of the auto dealership was involved in the fraud. Using images of the company with which the suspect did business in a broadcast gave viewers the impression that it was the scene of the crime.
- (2) Although mosaics were used, they did not provide enough camouflage, and people were able to recognize the places and persons shown. The wording of the subtitle, "Auto dealership allegedly related to the crime," was also inappropriate.

The BRC therefore issued a recommendation recognizing "infringement of human rights by the broadcaster" and calling on the broadcaster to redress the grievances of the claimant.

Iyo Television, upon receiving the recommendation, broadcast the following statement:

The BRC recommendation notes that the images in question had been processed to block sensitive information, and that the news report did not specifically name the enterprise shown and did not treat the enterprise as if

it were implicated in the crime. Nevertheless, the recommendation states that the selection of images, handling of mosaics, and the wording of the subtitle were inappropriate, giving the impression that the claimant had collaborated with the suspect in the case, thereby infringing on the human rights of the claimant. The recommendation also requests us to broadcast the outcome of BRC deliberations in order to redress any infringement of the man's rights. However the recommendation includes the minority opinion [of the BRC] that while broadcasting ethics may have been breached in this case, it may not be possible to establish any human rights violation because the names of individuals and business establishments were not shown and the claimant was not expressly mentioned.

We at Iyo Television believe the broadcast was based on adequate reporting and that it gave sufficient consideration to the rights of the parties related to the case. We deeply regret that not all BRC members agree with this view. While taking serious note of the recommendation, Iyo Television will continue to follow fair broadcasting practices.

This text shows that, while Iyo Television did broadcast a statement reflecting the content of BRC's conclusions, it did not include any clear expression of apology or acknowledgment of having infringed on the human rights of an individual.

The second recommendation was issued March 26, 2002 to Asahi National Broadcasting (TV Asahi), the key broadcaster in one of the country's national networks.

In May 2000, a car rolled over a precipice in Kumamoto prefecture and the vice-chairman of a hospital, the head nurse, and two others were killed. Together, their life insurance premiums were worth a total of ¥6.4 billion (approximately \$53.3 million). Such a huge amount started gossip in some of the weekly magazines, which published articles insinuating that the accident was engineered by someone who wanted the insurance money.

TV Asahi reported on the accident in August 2000 in a 40-minute broadcast called "Kumamoto: The Mystery of the Automobile Accident." The program began with the sentence: "Four people died in an auto accident in Kumamoto prefecture's Amakusa, and the real surprise is that some ¥6.4 billion in life insurance had been taken out on the four." The program went on to describe how "the 1.8 meter-wide car passed through a narrow gap in the guardrail about 2.5 meters wide, leaving no traces of brake marks or even damage to the guardrails," and then took up the TV station's investigation of the cause, the activities of the four people on the day before the accident, conditions at the hospital where they had worked, and the amount of life insur-

ance taken out on them. Commentary at the end of the program played up the “exorbitant” amounts of insurance involved and stated that the alleged cause of the accident was hard to accept. It concluded by saying that “many questions remain” about the accident.

The director of the hospital lodged a protest with TV Asahi, claiming, “The program reported a strong possibility that the accident was actually a murder motivated by insurance money, damaging the honor and dignity of the hospital director.” He demanded that TV Asahi acknowledge its error and apologize on air.

TV Asahi countered, “The program was meant to examine the careless response of the police and did not intend to present the accident as the result of a pursuit of insurance money.” The broadcaster and the claimant were unable to resolve their differences.

In the course of the discussion, TV Asahi suggested that they await the results of investigation by the public prosecutor’s office, and if no criminal behavior was found to be involved, take up the incident on the air.

In July 2001, the public prosecutor’s office released the results of their investigation. “The accident was the result of driver error and had nothing to do with life insurance,” it concluded.

A TV Asahi program reported the public prosecutor’s findings, but the company never made an apology and never acknowledged or amended any errors. Exasperated by the TV Asahi response to his protest, the hospital director requested redress through the BRC in August 2001.

The conclusions the BRC reached after its examination of this case are as follows:

- (1) The August 2000 TV Asahi program had two prongs, one focusing on the unusual circumstances of the accident, and the other on the amount of life insurance taken out on the four, which was out of the ordinary. The program presented the information in such a way as to arouse suspicion among ordinary viewers.
- (2) Using an analysis of the site made by private investigators, TV Asahi calculated the speed of the car and other data and made those the ground for suggesting that the accident had been staged. On that evidence alone, however, it is difficult to say definitely that the accident was intentionally caused. Insofar as the program did not identify causes or motives that might explain why the driver would purposefully cause the accident, any evidence suggesting that the accident was staged is not sufficient.
- (3) Nevertheless, the program commentator remarked, “If the police believe that this was a simple accident, we can only say that they were greatly

misled,” and later added, “After the controversy in the media, [the police] began to think something was not right and began to take the investigation more seriously.” In such ways, the program seemed intent on fanning innuendo and suspicion surrounding the incident.

- (4) The amount of the insurance is large, but considering that the policies were taken out by a corporation (the hospital) and considering the annual revenue of the hospital, it does not seem so exceptional. The financial state of the hospital, moreover, was not so impoverished as to provoke the desperate measure of attempting to collect on the insurance policies of four people.

The BRC stated that greater care should have been taken in broadcasting the program to ensure that the accident would not be linked to an insurance scam. The BRC made two further points:

- (1) For some time the accident had been reported in weekly magazines in connection with insurance fraud. TV Asahi, therefore, would have been aware that its broadcast could exaggerate the insurance scam angle of the incident, true or not, and should have handled the information with greater care.
- (2) If TV Asahi had complied with the demands of the hospital’s director at the point when the public prosecutor’s office completed their investigation, the matter might have been settled amicably. The follow-up TV Asahi broadcast, however, did not show even a partial apology or willingness to correct any errors.

The BRC judged that, “Despite the lack of sufficient evidence, the presentation of the program, with its focus on the unnatural features of the accident and the possibility of insurance fraud, shows inadequate consideration of the position of the hospital’s director.” It determined that, “If the investigating agency ultimately refuted the possibility of fraud, the broadcaster, in reporting the results of the investigation, should either have presented evidence to overturn the investigation, or, if it could not obtain such evidence, taken steps to make prompt redress for damages to the honor or the claimant.” The BRC conclusion was that even though the broadcast had damaged the honor of the hospital director and had undermined his reputation, TV Asahi did little to make amends or clear his reputation.

The BRC recommended to TV Asahi that it “broadcast the gist of the Committee’s decision and take the necessary steps to restore the honor and reputation of the claimant, and then, in reporting from now on, make sure that all background investigations and broadcasting be carried out with caution and care in order to prevent any infringement of human rights.”

In answer to the BRC recommendation, TV Asahi publicized the following comment:

[TV Asahi] takes the [BRC] decisions seriously, and we will make sure the gist of their content is thoroughly known [within the company]. We will make every effort to maintain the trust of viewers through broadcasting that demonstrates our commitment to broadcasting ethics. We apologize to all those related to the said case.

On four programs aired the day the recommendation was issued and the following day, TV Asahi conveyed the BRC decision, candidly admitted its error, and apologized. These broadcasts by such a major station carried special significance. They demonstrated that the BRO is functioning as it should.

In Germany, decisions made by the Complaints Settlement Committee of its Press Council (Deutscher Presserat) were basically ignored by the newspapers concerned. In the 1980s, the Committee temporarily ceased activity. In Britain as well, the Press Council ceased to function when its decisions were ignored by newspapers. It was replaced in the early 1990s by a new commission to handle complaints. If TV Asahi had ignored the BRC decision, it is possible that Japan's independently established body for redress of complaints about broadcasting, having no legal force or government standing, would also have ceased to function.

Criteria of BRC Judgments

Over the first five years of its history, the BRC has produced two recommendations on cases it determined to be infringement of human rights, and twelve views identifying "problems involving broadcasting ethics, but not so serious as to be called violations of human rights." The points emphasized by the BRC in these cases may be summarized as follows:

- (1) When misinformation has been broadcast, it should be promptly corrected as a matter of course. A "correction broadcast" should be made at the earliest possible date and with maximum possible accuracy. Even if the broadcaster quoted the misinformation from other media or news agencies, it should take responsibility for correction and publicize the correction on its own broadcasting time.
- (2) In reporting information given out by the investigation agency, broadcasters should try their best to broadcast what the suspect has to say also. In dealing with announcements issuing from the investigation authorities, it may be necessary initially to report the information exactly as received. As investigations progress, however, broadcasters should make maximum efforts to interview members of the suspect's family, lawyers, and others

in order to transmit the suspect's side of the story as well as the prosecutor's side.

In an ongoing case when the outcome expected by the authorities has been broadcast, and then the investigation fails to lead to that outcome, resulting essentially in "misinformation," a follow-up broadcast should be made to establish clearly that the original expectation was in error.

- (3) Broadcasters should be punctilious about conducting thorough background investigation before they air anything even with overtones of scandal. Particularly in cases when the authorities have cleared someone of suspicion for criminal or scandalous actions, broadcasters should take all necessary steps to recover the honor of the parties involved and restore reputations that might have been damaged by broadcasting coverage, unless they have sufficient evidence to overturn the conclusions of the authorities or believe that such evidence can be obtained. Broadcasts made to restore an individual reputation should present unambiguous correction of information and offer an unveiled apology for the broadcast of misinformation.
- (4) Resorting to blurring, mosaics, and other processing impairs the veracity of images and should be avoided except when concealing the identity of a source. When these techniques are used, the broadcaster must be extremely careful to ensure that they are effective and the person's identity cannot be ascertained in any way.
- (5) Broadcasters should always stay alert to the contagious effect of reporting by several media organizations. When a scandal is reported by one media organization, there is a tendency for many others to follow suit and issue similar reports. In such cases a broadcaster should resist being swept along with the general trend of coverage and maintain care and caution in researching and airing its own reports. This is important because media synergy can lead to hyperbole and distortion, misleading viewers all the more easily and running the risk of reporting that infringes on human rights.
- (6) When a case is still in the preliminary stage of investigation but a suspect has been identified, it is advisable not to use definitive expressions about the suspect in subtitles. Repeated display of the photograph of the suspect should also be avoided.³
- (7) If remarks by persons appearing on a program—most notably the moder-

³ In Japan it is standard practice to mention the real names of persons identified as suspected of crimes in newspaper and broadcast reporting. Photographs of suspects are also routinely shown. From the standpoint of human rights protection, there are citizens' movements against mentioning the real name of a suspect.

ator and a reporter, and including guest commentators—make explicit reference to the suspect as the culprit in the case, the program as a whole may be held responsible.

- (8) As they gather information, reporters should keep in mind that their sources may not be accustomed to being interviewed. In interviews, the reporter should explain clearly and in detail the purpose of the investigation interview. If segments of the discussion that the person interviewed believes will be included have to be cut in editing, the changes should be reported and explained to that person.
- (9) In reporting on disputes among private individuals, broadcasters must be very careful to protect human rights and privacy and consider whether or not the information should be placed in the public realm and its usefulness to the audience at large. Broadcasters then must see to it that the information is not conveyed in a prejudiced manner that favors one of the parties involved.

Every broadcasting company in Japan has house rules on reporting that include points like these. If editors, reporters, and cameramen all abided by these rules, no problems concerning human rights or broadcasting ethics would ever arise. In reality, as the statements and opinions of the BRC demonstrate, those who do the nuts-and-bolts work of news gathering and reporting do not always follow the basic rules and ethics of journalism.

Many veterans in the business of getting and reporting news, on the other hand, argue that broadcasting is above all dominated by the market—the need to stay ahead of the competition in order to attract and hold as large an audience as possible. They respect the maxim, “Be first and be fastest.” Some would argue that it is unreasonable, even self-defeating, to try to impose on this work the constraints of “broadcasting ethics.” The only brake that can be effective on the dynamics of the market, they insist, is market principles themselves.

Such arguments sharply highlight one aspect of the problems encountered in facing the intense competition among Japanese media organizations. Those arguments derive from the first-hand experience of working professionals. Now confronting strong criticism from both government agencies and viewers/listeners, the paramount task of broadcasters today is to hold fast to freedom of broadcasting, and that means they must work even harder to avoid the pitfalls of market dynamics playing out in the competition for ratings.

Media Scrum and Self-restraint

In principle, the BRC deals mainly with complaints regarding the content of programs already broadcast. However, rights infringements sometimes occur in the course of newsgathering, and this is another big problem involving broadcasting ethics.

In December 1999, in connection with the case of a female university student murdered in a Tokyo suburb, the BRC called on the television broadcasters in Tokyo to exercise moderation in covering the news. This was the first time the Committee had ever taken that step.

Beginning a few months before the young woman was killed, a series of stalking incidents had been reported, such as notices posted in the neighborhood of her home slandering her, and silent phone calls made to her house. Even before a suspect was arrested, the media had seized on those events and had been giving the case enormous coverage, including the intense and relentless newsgathering activities directed at her relatives, friends, and others.

Following the arrest of a suspect, when media reporters and cameramen thronged to the homes of the murdered student's family, relatives, and friends, her family called the BRO to protest. In their complaint, her mother and family said that they were mercilessly harassed: "Thronged of media people crowd in front of our house. They are constantly there trying to get pictures of members of the family, and we cannot even go out. Daily life for us has become impossible. The photograph of our murdered daughter appears again and again on TV, and even though we plead with these people to stop taking pictures of us, they will not listen. They broadcast pictures of whatever parts of the house they can get at with their cameras. They obdurately keep pressuring us to talk to them, totally unconcerned that we have an elementary school child and a high school student who needs peace and quiet to study for university entrance exams. They are creating great disturbance for our neighbors as well. If things continue like this, we will not be able to live here anymore. We are the victims of this murder case; why is it that we have to be bullied like this? What they are doing is the same thing as pushing us to suicide."

In response to the family's protest, the BRC sent the broadcasters an emergency request and made the request public: "This kind of behavior has been pointed out again and again when the media cover an incident, and in this case, too, we regret to say that the media have not given sufficient consideration to the murder victim, and they are now causing secondary injury to her family. While we grant that newsgathering is necessary to bring out the true facts of an incident, the BRC emphatically requests broadcasters to take the family's voice seriously and exercise moderation in covering the case in order to avoid violating the privacy of the victim and her family."

Newspapers reported the BRC request under such headlines as, “Already victims once—why are they bullied now? BRC calls on TV stations to use moderation,” or “Fear of privacy violations by broadcasters—BRC urges self-restraint by news gatherers.”

Some broadcasters were upset. They claimed that the behavior of reporters at the house depended on which station they worked for—not everyone used bullying tactics; but the BRC sent the same request to all broadcasters, regardless. After the request went out, however, the clamor for news material apparently let up, and there were no more protests from the family.

Public outrage regarding media scrums nonetheless remained strong. The Japan Newspaper Publishers and Editors Association, to which NHK belongs, and the National Association of Commercial Broadcasters in Japan each decided on a number of countermeasures and in December 2001 announced some specific behavioral guidelines for journalists and reporters. They can be summarized as follows:

- 1) When covering an event and the subject(s) or related persons are reluctant to respond, media people should refrain from gathering around them and trying to pressure them to talk. Take special care about methods when gathering news involving an elementary school student or a pre-schooler.
- 2) When covering a wake, a funeral, the transportation of a corpse, and so forth, [media people] should give sufficient consideration to the feelings of the bereaved family and other people concerned, and, furthermore, they should be careful to dress appropriately and behave with the required decorum.
- 3) When gathering information at locations where a quiet and calm atmosphere should be preserved, such as residential districts, schools, and hospitals, take all necessary precautions to avoid obstructing traffic in the vicinity and disturbing the peace. For example, media trucks should be parked in an orderly, acceptable manner.
- 4) When an incident of media scrum occurs, media people should hold discussions at a press club⁴ or elsewhere and determine appropriate measures, such as reducing the size of media crews, placing limits on newsgathering time, and limiting interviews to certain media representatives.

⁴ Press clubs (*kisha kurabu*) are groups organized mainly by reporters from the media organizations that belong to the Japan Newspaper Publishers and Editors Association (NSK). They usually use space given to them in the building of the government agency, etc. they cover. The press clubs host press conferences, etc. but they have been criticized for being too exclusive, by, for example, refusing to allow reporters from non-NSK member organizations to participate. Actions are being taken to improve that situation.

These points are no more than common sense; even a child could see that. The very fact that such elementary modes of acceptable behavior have had to be spelled out in order to avoid unruly disturbances just shows how deep and intractable the media malaise has become.

The BRC as Middleman

Over the past five years the BRO has received a total of 5,031 complaints, opinions, and requests. In 1997 the number was 633; it rose to 1,004 in 1998, then to 1,134 in 1999, and since then it has almost leveled off. Yet over the same five years only seventeen cases were accepted for deliberation by the BRC. The BRC uses less time to deliberate each case than a court would, but it still takes between three and eight months to reach their conclusions.

It was not long before grumbling about the BRC itself began: "They deal with such a small number of cases," or, "It's just impossible to get the BRC to accept a complaint for deliberation." In 2001 the BRC decided to give more weight to its role as intermediary in order to encourage the parties involved to settle problems between themselves, and it began conveying specific complaints to the broadcasters in question. This decision was based on experience; the BRC had seen many cases that could be resolved without direct BRC involvement, as long as the claimant was satisfied that the offending broadcaster had made proper redress for violating their rights or having caused a blot on their honor.

In April 2001, the BRC lay down bylaws concerning the acceptance and deliberation of complaints. They stipulate that the BRC will request the broadcaster concerned to settle the complaint when (1) the claimant has no intention of asking for BRC deliberation but simply wants the broadcaster to cope with the problem; (2) a protest or a request is made at the stage of news-gathering; and (3) a serious complaint is filed concerning a radio/TV program. These provisions prompted the BRC to become an active mediator in settling problems between claimant and broadcasters.

In 2001 the BRC accepted 32 serious complaints or protests brought against radio/TV programs for human rights infringements. The BRC deliberated only two of those cases, announcing the outcome later, while as many as 16 cases were settled through the Committee's good offices.

The following are two examples of settlements made in 2001.

- A television station planned to rebroadcast a documentary on the current situation of disorderly classrooms at an elementary school. The father of one of the children appearing in the program lodged a protest, demanding the BRC to cancel the planned rebroadcast. His protest stated, "The broadcaster made it known that it was going to rebroadcast images of violence-prone

children. In the first broadcast of the program mosaics were used over these children's faces, but they could easily be identified. I told the station not to air it again, but they aren't listening." The BRC requested the broadcaster in question to do something. As a result, in consideration of human rights, the broadcaster decided to release the program only after the children's faces had been sufficiently blurred to prevent identification, and the father finally gave his consent.

- A radio program emcee made a remark to the effect that insulin-dependent diabetes was infectious. A protest against this remark was filed by, among others, a society of parents who had diabetic children, stating that the remark would "encourage prejudice against diabetes." The BRC requested the broadcaster in question to deal with the problem. The broadcaster responded by having the emcee make the correction and apologize in the same program, and it further decided to present two separate programs to educate people about diabetes, rectifying misunderstandings and prejudices about the disease. It took time, but the problem was settled to everyone's satisfaction.

A look at these and other examples of solutions engineered by the mediation of the BRC makes the point very clear: it is possible to reach an agreement with someone who files a protest or complaint as long as the broadcaster is willing to engage in honest discussion and take action to rectify its own missteps. The cases described above illustrate the high likelihood of settlement *if* the broadcaster is willing to be straightforward with the claimant or protestor, abandoning any preconceived ideas that protests simply interfere with their broadcasting and editorial rights.

Besides deliberating complaints, if the BRC steps up its efforts to communicate complaints to broadcasters and encourages the parties to discuss problems between themselves, the BRC itself will become increasingly accessible. One result will be a wider and stronger channel of communication between broadcaster and audience, and at the same time it will promote greater self-regulation by broadcasters themselves.

In 2002 two bills that, if passed, would constrain freedom of the media were debated in the Diet, as mentioned earlier. If broadcasters wish to prevent such legislation and preserve the autonomy they now have, they must achieve a high level of self-regulation. Now, more than ever, that level of self-regulation requires firm and systematic channels of communication with audiences. Only with the support of audiences can they guard freedom of broadcasting. By steadily strengthening and upgrading its role as mediator, the BRC can play an important part in augmenting the audience-broadcaster communication channel.

Challenges Ahead

During the first five years, the experimental phase, the BRO achieved substantial results. It now has entered its second phase, the period that will determine what functions it can perform. A number of challenges lie ahead for the BRO. By meeting them successfully, the organization will establish itself among the people as a stronghold protecting freedom of broadcasting in Japan.

First of all, for the BRO to function effectively as a self-regulating—not legally-regulated—organ of the broadcasting industry, it must have the respect of broadcasters. They must take its decisions seriously and be willing and able to take the necessary actions promptly. Over the first five years, the response of broadcasters to BRC conclusions was somewhat superficial: while stating that they took the outcome “seriously,” some of them simply aired the BRC decision almost verbatim, without adding any sincere expression of apology, and showed reluctance to make public the findings of their own internal investigations into the cause of complaints.

Even now complaints and protests continue to be filed. Somehow, the working professionals in the broadcasting industry still seem completely oblivious to the threat to freedom of broadcasting unless they—the reporters, cameramen, editors, etc.—observe broadcasting ethics.

Broadcasters to whom the BRC issues a recommendation or view should feel bound to analyze and evaluate its content, and if they judge it unacceptable they should have the courage to bring forth a counterargument. To present a counterargument does not necessarily mean lack of respect for BRC decisions. Open debates between broadcasters and the BRC are certain to result in greater accountability to viewers/listeners regarding broadcasting and human rights.

When broadcasters know that they have made a mistake, instead of airing the BRC decisions perfunctorily, as if those decisions were directed at someone else, they should clarify on the air what went wrong and what measures they are taking to avoid repeating the mistake. Their explanation should be convincing to the claimant and also be understandable to the general audience. Such a response should become the norm. Broadcasters generally have not shown that kind of courage over the past five years, but it will be much more important from now on.

What matters here is to keep on producing lively and innovative programs and at the same time avoid human rights violations. The people who do the nuts and bolts jobs that go into a program need to be conscious of broadcasting ethics but they must not be so afraid of generating a BRC view or recommendation that they become professionally timid. Excessive worry about

mistakes will work against invigorating, creative broadcasting. The challenge is how to strike a balance between keeping the working pros from being too hesitant, on the one hand, while ensuring that they are thoroughly conscious of the need to protect human rights, on the other. In an ideal world there would be no mistakes, but in reality mistakes are made, and when they are, those responsible need to take prompt and sufficient action that satisfies those who suffer from the mistake.

The second major challenge is to motivate as many people in the audience as possible to participate in the BRO system. Audience participation requires that viewers and listeners understand and support the BRO. Being an independent body, the BRO depends on strong audience support in order to function more effectively. It is not legally authorized, but with sufficient backing, it can redress human rights infringements. First and foremost, people need to learn about the BRO.

Right from the start, the various radio and television stations have been airing spot broadcasts notifying listeners/viewers of the BRO. In 1998 the BRO produced its own notification spot, which was aired a total of 28,000 times on television and 35,000 times on radio that year. The following year it was aired 31,000 times on television and 45,000 times on radio; and in 2000, those figures were 32,000 and 49,000 times, respectively. The figures for 2001 were 38,000 times for television and 66,000 times for radio. In sheer quantity, obviously the message was going out more frequently, but it was rarely broadcast in the most popular time slots. That aspect needs to be improved in the future.

For listeners and viewers to "understand" the BRO, they must know that its essential purpose is to defend freedom of speech and expression and to recognize that it is different from a court or a legally authorized human rights organization. On the basis of that understanding, audiences can expect broadcasters to take responsibility for their mistakes. Taking responsibility, in turn, strengthens the trust that viewers and listeners have in the BRO.

One goes to court for compensation, whereas one turns to the BRO to restore honor and reputation. Once people begin to grasp that basic character of the BRO, its *raison d'être* as a bastion of freedom for broadcasting and as an autonomous citizens' organization will become much clearer.

Each member broadcaster also must do its part to sustain the BRO as an independent civil organization. It is up to them to do a better job of monitoring government and public agencies, working to get rid of social evils, and respecting human rights.

A third challenge is to clarify the relation of the BRC with the courts. The BRC makes it a rule not to handle problems pending in court. But it does not prohibit a claimant from bringing the same case to court after the BRC hear-

ing is over. From time to time, therefore, a BRC case ends up later in court, and the court incorporates part or all of the BRC's conclusion in its judgment. Sometimes the BRC deliberation results have considerable influence in court. The BRC conclusions, however, are just as likely to be contrary to the court judgments as they are to concur.

The relationship between the BRC and the courts is not easy to grasp. First, the criteria for judgment the BRC uses in its deliberations need to be explained to radio and TV audiences. Listeners and viewers also need to understand that the BRC makes determinations not just from the legal perspective but also in terms of broadcasting ethics. If people know those things, they will be able to see the BRO as an autonomous citizens' organization set up to secure freedom of broadcasting through dialogue between broadcasters and audiences. From that point of view, the BRC's judgment should probably be broader in content than a court judgment.

Fourth, let me mention two specific and immediate tasks for the BRC. One is to formulate a set of broadcasting ethical principles to serve as the criteria for decisions when deliberations take place. The criteria should be specific enough that viewers/listeners can easily understand them.⁵ I believe that over the last five years the BRO has garnered enough experience to formulate solid principles of broadcasting ethics.

The other task is to make arrangements enabling the BRO to handle a larger volume of complaints and protests. That will require recruiting legal professionals as examiners in charge of secretarial work. The financial burden will increase, but for the time being it will be shared among broadcasters. In the future it may be possible to ask for small private donations from a large number of people. Contributing in that way would increase the participation of the radio and TV audience in the BRO system.

Finally, there have been suggestions to appoint a person from the broadcasting industry to the BRC. Having industry representation, it is argued, would offer a way to reflect in BRC decisions the point of view of the people "in the field" of newsgathering, and it would also strengthen their support. Another suggestion is to make submission of broadcast materials to the BRC

⁵ In September 1996 NHK and the National Association of Commercial Broadcasters in Japan jointly produced a set of guidelines on broadcasting ethics. Instead of giving specific criteria, the guidelines stated such general principles as: "Concerning an issue over which opinion is divided, fairness should be maintained in broadcasting, and the issue should be elucidated from as many angles as possible," and, "In broadcasting, proper words and images should be employed and efforts should be made to maintain dignified forms of expression. Should an infelicitous expression be used, do not hesitate to correct the error." In a final example, "In news reporting, facts should be reported objectively, accurately, and impartially, and every effort made to obtain the facts."

compulsory and also require broadcasters to cooperate with it. For now, however, neither of these suggestions is practicable. Regarding the former, inasmuch as claimants still sometimes express doubt about the neutrality of the BRC, it is advisable—at least for the time being—not to include any person from broadcasting circles among its members. The BRC sees the most complaints over issues that arise when what is common sense to the broadcasting industry clashes with that of audiences. That the sense of the media is *not* strongly reflected in the outcome of BRC deliberation actually helps to win audiences' trust. As for the latter suggestion, the BRC is a third-party organization established at the initiative of the broadcasting industry for the purpose of self-regulation; it would be unsuitable to make submission of materials and cooperation with BRC compulsory. Broadcasters must make their own judgments about how they will deal with the BRC.

One more major issue concerns limited BRC oversight. Since it does not have strong authority to make direct on-site investigations itself, the BRC cannot always accurately determine human rights infringements. This imposes a serious disadvantage. Inevitably the BRC's decisions tend to have a passive character, often including the phrase, "[BRC] is unable to determine without question that human rights were violated." Naturally this kind of response intensifies the discontent felt by claimants. The BRC is not a court of law, however, but a third-party body whose basic rule is "good-will agreement." Following that principle, the criteria of judgment for the BRC should not be confined to a legal framework but should derive from the question of whether or not a claim of human rights infringement is valid.

Since the end of World War II freedom of speech and expression has been protected in Japan. The Broadcast Law is the only binding law that partially regulates the freedom of the media. It came into being to ensure fairness and neutrality of broadcast content, in view of the limits on radio waves and their enormous influence, but the basic policy of the authorities is to minimize regulation and respect the freedom of broadcasting.

The broadcasting industry in Japan today, however, is confronted with the problem of human rights infringements committed by the industry itself, and is being attacked by both audiences and the authorities. Thus it is all the more crucial that the BRC, an independent human rights organization, be recognized as an autonomous agency of the people. With that recognition, the freedom of broadcasting will be secured by citizens. Neither the broadcasting industry nor the people in the audience should spare any efforts in trying to achieve that goal.

Postscript

In February 2003 NHK and the National Association of Commercial Broadcasters announced that they would combine the BRO and the Program Improvement Council to inaugurate a broadcast ethics and program improvement organization in July 2003. The merger is intended to strengthen the BRC as a third-party body, and measures aimed at enhancing the investigative function of the BRO secretariat staff and having broadcasters observe BRC decisions, among others, will be adopted.

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