Media Regulation: Crash Course Government and Politics #45

Crash Course: U.S. Government and Politics
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Hello. I'm Craig, and this is Crash Course Government and Politics. Today I'm gonna talk a little bit about the media. Specifically, the way the media interacts with the government itself, and more specifically, the way the government regulates the media. Some of you might be saying, "Craig, get real, the government doesn't regulate the media. We live in a free-market capitalist society and the only real regulation on what gets published or broadcast is determined by consumers, Craig." Right Clone: Right on. Left Clone: Except there are things you can't say on television or print in a newspaper either because they're harmful or untrue, and there are a number of government agencies that exist to place limits on the media and to make sure that we have access to information. Left Clone: Right on! Craig: Don't you mean left on? [laughs] But wait, so you guys both agree then? Clones: No. Craig: Oh, I guess I misunderstood. [Theme Music] Let's start our discussion of government regulation of the media with a little review. The oldest form of media in the US is print, so you might think that it has been the most regulated, but you'll remember from our episode on the freedom of the press that this isn't really the case because of the pesky first amendment. The freedom of the press was written into the Bill of Rights because the framers wisely recognized that without a free press, Americans would be less able to have the information they needed to make good political decisions, which they do all the time. They also make bad political decisions, too. They just make a lot of decisions. So there are very few government regulations on what can and can't appear in the newspaper. Near v. Minnesota basically said that there could be no censorship in the form of prior restraint. In New York Times v. US, the Pentagon Papers case made it difficult for the government to use national security as an excuse to prevent publication of sensitive, or in that case, embarrassing material. There are still libel laws that allow individuals to sue newspapers and magazines when they print something that they don't like. But as far as public figures are concerned, the Supreme Court's decision in New York Times v. Sullivan makes it pretty hard to censor the press by suing for libel. So I can say anything I want about public figures. Public figures are dumb. In order to win this type of lawsuit, the plaintiff must show that the article, or advertisement, was both untrue and published with actual malice or reckless disregard for the truth, which is a very, very high bar. What this means in practice is that the first amendment pretty much protects print media from government regulation. Although as we saw in the last episode, the number of Americans getting their information from print is shrinking. So maybe the markets are doing the regulation after all. Although I don't think people are buying fewer newspapers as a way of regulating their content. They probably just don't want the papers cluttering up their house and they don't wanna get that ink on their hands, you know, the black ink the rubs off. The government is taking a larger role in TV and radio, possibly because it reaches the largest numbers. Broadcast media is the most tightly regulated among the information sources. The first and probably least transparent way that the government regulates broadcast media is through control of the airwaves, which is done through licensing. Broadcast spectrum is a limited resource and is technically owned by the public, so if you want to broadcast, you need to purchase a license from the federal government. This gives you the right to operate your television or radio station under certain well-defined conditions. These licenses must be renewed every five years and they almost always are. The licenses are granted and most of the government regulation of broadcasters is managed by the Federal Communications Commission, the FCC. It was founded in 1934 to oversee a chaotic radio industry and it soon expanded to include television. As part of its mission, the FCC required that in order for a station to be granted a license, it had to show that it was operating in the public interest. In terms of politics, this meant that the FCC has come up with some rules regarding what gets broadcast. Every channel has to have a CSI. The first rule, dating back to 1949, is called the Fairness Doctrine. This requires broadcasters to give equal time to each side of a public issue. So if a station airs a program criticizing a war, say the one in Vietnam or the one in Iraq, it has to air another program of equal length that supports the war. What this meant in practice was that stations shied away from controversial programming, even though the Fairness Doctrine was never rigidly enforced. The lack of enforcement and generally non-controversial nature of commercial broadcasting didn't stop Ronald Reagan's administration from pushing for the repeal of the Fairness Doctrine in 1983. Congress voted to reinstate it in 1987 when Democrats took control, but Reagan said "uh-uh," and he vetoed the legislation. As a result, the Fairness Doctrine is pretty much dead. Other rules related to the Fairness Doctrine are the Equal Time Rule, which requires that broadcasters not discriminate in selling time to political candidates, and the Right of Rebuttal, which ensures a political candidate will have the opportunity to respond to a personal attack if it gets aired. These rules do not apply to eagles, however. Yeah, you stay down. There's another important FCC rule that deals with media ownership, but I'm gonna talk about that later because the FCC didn't tell me I can't. The FCC also regulates what can be broadcast, but these rules doesn't relate to politics as much as obscenity, indecency, or profanity showing up on radio or television. Sometimes these FCC rulings and fines become Supreme Court cases as people raise concerns about whether they deny our precious, precious free speech. One of the most famous cases in this area, FCC v. Pacifica Broadcasting, dealt with comedian George Carlin's Seven Words routine, which I will not be repeating because Crash Course is a family-friendly educational channel. This case established that it's okay for the FCC to require that certain language and images not be broadcast during family times, which is before 10 PM. The FCC also hands out fines for f-bombs and wardrobe malfunctions to keep us safe and virtuous. I should point out here that these FCC rules only apply to broadcast media and not most basic cable channels, which is why there's so many naked people in Game of Thrones. I don't know if that's why there is, but that's why they can do it. Congress also tried to regulate broadcasters by passing legislation, as it tried to do with the 1996 Telecommunications Act. This act was best known for its failed attempts to regulate the internet, but it had other more interesting effects, too. As with any congressional legislation, this act was subject to Supreme Court judicial review. The court did strike down part of the law, Title V, which was called the Communications Decency Act and was meant to regulate online pornography, because its definition of obscenity was over-broad, and the court said that it violated the first amendment. Speaking of the internet, unlike print and broadcast media, it's largely self-regulating. This is possibly because Congress has recognized that it changes so quickly that most laws and regulations will be out of date by the time they're finally written. But this hasn't stopped them from trying. After the court struck down the Communications Decency Act, Congress tried again with the Child Online Protection Act in 1998, and they failed. This one didn't make it all the way to the Supreme Court, but lower federal courts enjoined the government from enforcing it in 2007. A more effective way to regulate the internet has been through lawsuits, especially those around intellectual property. As viewers of our IP series know, this is super complicated, but basically people can use the courts to restrict the internet. A good example of this was the Napster case, where courts ruled against the file-sharing company and it was shut down. It takes individuals, and Metallica, and corporations to bring these suits, but they use the government to shape the internet to meet their interests, so it can be seen as government regulation. Speaking of corporations, this is a good place to bring up a couple of very complicated regulatory issues involving the internet, television and newspapers. The first one has to do with media ownership. Let's go to the Thought Bubble. Part of the 1996 Telecommunications Law, Title III to be more exact, dealt with the regulation of cable television. Actually, it was a deregulation of the cable industry, allowing for companies that own newspapers and radio and television stations to also own cable companies. This kind of cross-ownership was

supposed to lower barriers to entry into the cable business, and it was clarified by the 2003 FCC ruling that allows a single company to own and operate the leading newspaper, television and cable companies in a single market. This has led to concerns about monopolization of the media as more and more companies merge. And it's hard to argue that this isn't happening. So the number of companies that provide media content and access has been shrinking precipitously in the past 30 years, which is probably why the FCC and Congress scrutinize media mergers so closely. Critics point out that these kinds of super-mergers can lead to a lack of diversity in media. This can lead to fewer points of view represented in our news coverage and our stories. Net neutrality has also been a big issue, you've probably head about it. The question revolves around whether the FCC should pass rules that allow internet service providers to charge differential rates to companies that use their bandwidth. For example, internet service providers sometimes sell faster or better service to large companies like Netflix at the expense of smaller competitors or individuals who don't pay as much. Thanks, Thought Bubble. The net neutrality issue is a really complex regulatory question, but the debate over it, which takes place in Congress, on television, on the internet, and even through the FCC's website, where anyone's allowed to make public comments on proposed rules, has been fascinating and it points out a number of key issues involving government regulation of the media. First, it shows that a lot of media regulation involves a number of actors. In this case, George Clooney. No, no, no, not those kinds of actors. Private media companies, media organizations themselves and executive agencies like the FCC. It also points out that the overarching regulatory structure is built by Congress but that the real key actors are the regulatory rule makers and enforcers of the executive branch. And George Clooney. He has aged so well. Even more important though, are the questions that lie behind the debate. When we think about regulation, what comes to mind is regulation of content or censorship, but with net neutrality rules as with FCC cross-ownership rules, what we're really looking at is regulation of access and how much media will be available at a given price. Those who argue that the internet should be regulated like a public utility rather than just another set of corporations that take their cues from the market are getting at something. The media is different from other corporate entities because it serves a public function, something that the framers realized when they wrote freedom of the press into the first amendment. Without a robust media, Americans may have less access to information that they need to make smarter political choices. Of course, all the access we have doesn't mean that we necessarily will make smarter choices, but in this case, being able to hear more points of view is better than only hearing a few. That's why we're skeptical of censorship and why many people wanna keep the internet as open as possible. Thanks for watching, I'll see you next time. Crash Course Government and Politics is produced in association with PBS Digital Studios. Support for Crash Course US Government comes from Voqal. Voqal supports nonprofits that use technology and media to advance social equity. Learn more about their mission and initiatives at voqal.org. Crash Course is made with the help of all these monstrous jerks. That's not libel, they're public figures. Go ahead, try and sue me. Thanks for watching.