

**Regolamentare la professione?**  
**Fotografia del Regno Unito, dell'Italia e del Sud Africa**  
*con Nigel O'Connor.*

*Una analisi comparata delle regolazioni delle pratiche professionali nei tre paesi*

1.

**Background**

In December 2002, thanks to a generous grant supplied by the Edelman Group of Companies to whom the Global Alliance is extremely grateful, a survey was conducted among national associations in membership of the Global Alliance on the Regulation of the Public Relations Profession Worldwide.

The survey was designed to gather and collate information regarding the hard (i.e. mandatory/legislature imposed) and soft (i.e. voluntary/association or regulatory agency imposed) regulations affecting the general and specific disciplinary practices of public relations across the globe.

If we estimate that some 3 million people across the globe exercise public relations as their main professional activity, probably around one twelfth of these belong to some sort of professional body. This would mean that less than 10% of today's practitioners are aware of the need to co-operate and exchange knowledge and ideas with fellow practitioners in order to advance the profession as a whole.

The ability to make a collective difference and enhance a coherent and positive public identity for the profession can only occur when the various market rules and constraints affecting practice across the globe, both the commonalities and the differences, are fully understood. Understanding would enable greater consensus to be reached about the educational accreditation and certification framework, and ethics and practice standards, required to advance the profession – the core objective of the Global Alliance.

Eleven Global Alliance member national associations and the IABC (International Association of Business Communicators) responded to the survey and in June 2003 an interim paper summarising results was reported to the Global Alliance Annual General Meeting held in Rome, Italy.

With few exceptions the majority of responses to the survey highlight that national public relations associations do not currently take particular account of the regulatory environments affecting specific PR practices and seem to be principally concerned with issues affecting the profession as a whole.

This could indicate that national associations may not effectively advise their members on and proactively operate to shape the regulatory environments or the increasing number of regulations which appear to effect the specific practices which, more than others, impact on the public interest and the public policy process, as well as on consumer, financial and marketing public relations.

In concerned response, the Global Alliance argued that a further and more detailed profile study of the hard/soft regulatory environments of three nations (the UK, Italy and South Africa) could assist in providing a template that would enable the regulatory environments of all Alliance member associations to be catalogued on a similar and rolling basis.

Overtime this would enable the Global Alliance and its member associations to monitor and identify and anticipate coming regulations, defining common advocacy platforms and ensuring, where necessary, regional, continental as well as global harmonisation. The Global Alliance ethics Protocol would also require regular monitoring and modification to ensure that it reflects best practice in respect of regulations affecting member countries. The Alliance may then wish to consider the proper role of enforcement in respect of its Protocol for member countries.

2.

## **Introduction**

The global 24/7 news-media environment requires an increasing number of public relations practitioners to operate internationally as a matter of routine. The immediacy of technology enables communication outputs to be instantly disseminated and accessed across countries and continents beyond their primary source of origin.

Communications transmitted are automatically reproduced and adapted by international collaborators, subsidiaries, news services and news consumers. It's a complex and relentless process over which individuals, organisations and information systems struggle to maintain some semblance of control.

In order to dialogue effectively across such demanding international boundaries, practitioners must be adept at using effectively different channels in order to build relationships with different audiences which have differing cultural sensitivities, including language, and information needs.

Knowledge of the regulatory environment and related variables, and not just publics and relationship and communicative channels, is also absolutely critical.

Irrespective of field, the difference between a good practitioner and a true professional is also the extent to which variables that risk and mitigate against the chance of successful attainment of objectives are significantly and systematically reduced.

The probability of success is greatly enhanced through a combination of foresight, information, theoretical as well as practical knowledge and experience, characteristics that reflect professionalism. The same applies in the Public Relations profession.

Culbertson et al (1993) highlighted the importance of social, political and economic contexts to public relations practice, emphasising that consideration of the political context 'focuses on gaining support from officials – on power relationships having to do with clients and the public at large'.

Based on the Excellence Project (J. E. Grunig, 1992b), Vercic, Grunig and Grunig (1996) identified five environmental variables that can be used to design public relations strategies specific to a given country, namely:

1. Political ideology
2. Economic system
3. Degree of activism
4. Culture
5. Media system

Sriramesh and Vercic (2003) note that, despite the significance of these variables, few studies have empirically linked environmental variables with public relations. Their Global Public Relations Handbook provides 17 country-specific chapters that attempt to present a coherent framework for understanding the environmental variables - public relations dynamic.

However, the authors themselves note the limitations of the work: much of the country information is anecdotal.

So although invaluable in advancing the body of knowledge, it provides neither easily digestible nor systematic summaries of the regulatory environments affecting the practice of public relations in the countries examined.

This profile study of three Global Alliance member countries attempts to begin that process. Obvious shortcomings are explicitly flagged and more will be apparent to readers: the public relations profession is indeed highly varied in its practices and so are the societal sectors in which it operates; therefore it is practically impossible to cover all its facts.

However, it is hoped that this study offers an approach that will stimulate attentive readers in supplying corrections, re-interpretations and addenda as well as provide an incentive to other member (and non member) associations to study and circulate around the world, through channels also supplied by the GA, their own regulatory environment.

All this could lead the GA to capture an enduring model of PR regulation to be mapped, modified and adapted, according to the highly volatile and ever changing environments in which pr professionals are called to operate.

Finally, professional associations - who in every country are engaged in a continuing effort to differentiate ethical and professional standards of their members from those of non members who, nine times out of ten, are publicly portrayed as indulging in unethical or unsuitable behaviours, thus contributing to the deterioration of the public identity of public relations - will hopefully be stimulated by this exercise to continuously monitor their own regulatory environment, anticipating change and offering this service to their members and, where felt necessary and useful, will wish to proactively advocate regulation of specific pr practices which, more than others have a direct impact on the public interest, in the hope that such proactive policy contribute to the improvement of both professional standards and the profession's identity.

3.

### **The Regulatory Environment of Public Relations in the UK**

#### **Political System**

The United Kingdom has an open and democratic system of Government led by collective Cabinet and a Prime Minister, with the monarch as (figure-) Head of State.

The UK Parliament ([www.parliament.uk](http://www.parliament.uk)) is based at Westminster and has an upper (the Lords) and lower house (the Commons). A devolved Parliament is based in Scotland, and Northern Ireland and Wales have devolved legislative assemblies.

Legislation is initiated when political parties go to the country at election time with manifestos that become the central plank of stated policy upon a political party coming to power and a Government being formed.

The Queen's Speech sets out the Government's legislative priorities and is the focus of a wider ceremony known as the state opening of parliament that marks the start of the parliamentary year. Legislation reaches the statute book through a systematic Parliamentary process of consultation, debate and scrutiny and in accordance with the normal sequence of Bills through Parliament that enables amendments to be made.

Stages of a Bill through Parliament include: a Formal First Reading when a Minister introduces a Bill; a Second Reading which debates the general principles of the Bill on the floor of the House of Commons, without amendments possible; Committee stage is a line-by-line discussion by a standing committee in a committee room and is the main time for amendments; the Report and Third Reading stage is a debate 'reporting back' the committee proceedings to the whole House with amendments possible.

The same procedures operate in the House of Lords, with amendments possible at some stages. If the Lords amend a Bill it will be reconsidered by the Commons, which may accept or reject the proposed amendment before it returns to the Lords. Under the Parliament Act the Lords can only send a Bill back twice to the Commons. If after that the Commons do not accept the Lords' amendment it goes into law anyway. After the third reading in both Houses a Bill receives Royal Assent by a Royal Commission in the Lords – this is required for the Bill to become an Act of Parliament and law of the land.

The UK is a member of the European Union and so is affected by European Directives that are incorporated into domestic legislation.

## **Judiciary**

In the UK there is no single written set of codified legislative rules. Whether an action is recognised as being in conformity with the law is determined by a consideration of various authorities, for examples reports of decided cases ('precedents'), acts of Parliament, regulations of the European Community, articles of the European Convention, or the byelaws of a local authority. There are two main divisions of law: criminal i.e. offences against community or sovereign, and civil, i.e. maintaining and redressing private claims.

Judges are appointed to administer the law and custom of the realm (i.e. common law - common to the whole kingdom) and the Lord Chancellor, who is the Government appointed head of the judiciary, is a member of the Cabinet, Speaker of the House of Lords, and the senior judge in the House of Lords sitting as the Supreme Court of Appeal.

The Lord Chancellor is the only person who rises above the separation of powers that prevails in the UK, having positions in the executive, legislative and judicial branches of government. The Attorney General and Solicitor General also advise the Government.

As part of the continuing drive to modernise the constitution and public services, in June 2003 the Prime Minister announced the creation of a new Department for Constitutional Affairs that will incorporate most of the responsibilities of the former Lord Chancellor's Department.

## **Pluralism**

The UK has a history of activist social movements that campaign and lobbying to effect change within the public policy agenda. The principle that organisations and individuals can participate in the development of policy and legislation clearly reflects a determination to maximise democratic involvement and to ensure that Parliament is responsive to the concerns of all interest groups. Government and Parliament are held to account through elections, formalised committee systems of scrutiny and by a commitment to public consultation in matters of regulation. Rapid technological advancement, particularly the proliferation of the Internet as an information empowerment tool, has enabled greater access to Government and the articulation of Government policy and administration.

Lobby and pressure groups exist to promote consumer, professional and union rights. Similarly, in the private sector, many corporate activist groups exist to promote and protect ethical, shareholder, pension and community rights.

The total amount given to charities by individuals in the UK in 2002 was £7.3 billion, up from £6.9 billion in 2001. The proportion of people giving to charity remains relatively stable at 67.3% down slightly from 68.5% in 2001. The average monthly donation in 2002 was £12.93, a 4% increase (in real terms) since 2001. Source: NCVO-CAF Charitable Giving Inside Research 2002.

UK Volunteering: 22 million adults are involved in formal volunteering each year; 90 million hours of formal voluntary work takes place each week. Source: Institute for Volunteering Research.

## **The media: essentials**

The UK has a proud tradition of fostering and protecting an open and 'free press'. Summing up in the 1988 Spy-catcher case, the head of the Court of Appeal said: '...a free press...is an essential element of maintaining parliamentary democracy and the British way of life as we know it. But it is important to remember why the press occupies this crucial position. It is not because of any special wisdom, interest, or status enjoyed by proprietors, editors or journalists. It is because the media are the eyes and ears of the general public. They act on behalf of the general public. Their right to know and their right to publish is neither more nor less than that of the general public. Indeed it is that of the general public for whom they are trustees.'

Factual and descriptive reporting, concerned with interpretation and comment as well as reporting, is a particular feature of the British press. Consequently the media can exercise much power and influence over a wide range of public and private concern issues.

Since the 1980's more strident calls were made for regulation of the print media to have powers to fine or issue injunctions forbidding publication but both Conservative and Labour Governments have preferred to encourage and enforce ethical standards of the print media through the Press Complaints Commission (PCC) ([www.pcc.org.uk](http://www.pcc.org.uk)).

The PCC adjudicates upon the Editorial Code of Practice and considers complaints about the contents and conduct of newspapers and magazine. It has powers to ask for a suitable correction and apology to be printed or broadcast.

The incorporation of the European Convention on Human Rights in 2000 had an immediate impact on UK media law as journalists were forced to take account of the important guaranteed rights: Article 6 ECHR the right to a fair trial; Article 8 ECHR right to respect for privacy and family life; and, Article 10 ECHR the freedom of expression (i.e. a right to hold opinions and to receive and impart information and ideas).

The proportionality required to balance the right of freedom of speech is complex and not without limits: if freedom of expression is to be impeded it must be on cogent grounds recognised by law, including on grounds 10 (2) the protection of the rights of others, and in turn Article 8 the right to privacy.

The 1998 Data Protection Act also has major implications for PR and the media. The Act aims to ensure that those handling data comply with data protection principles, including on the fair and lawful process of data, limited purpose processing of data, the accuracy of data, data storage and security. Under the terms of the Act journalists may find it difficult to obtain information from authorities prevented from releasing information and, as people processing information themselves, they may have problems complying with the privacy rights of those about whom they hold information. For further information: ([www.dataprotection.gov.uk](http://www.dataprotection.gov.uk)) and ([www.dpr.gov.uk](http://www.dpr.gov.uk)) and ([www.ipr.org.uk](http://www.ipr.org.uk))

The Human Rights Act and the Data Protection Act attempt to encourage observance of the Editorial Code and broadcast codes (see below) by ensuring that the full benefit of defences provided in the acts are available only to journalists whose conduct has conformed to the codes.

Broadcast codes operated by the Broadcasting Standards Commission, the Independent Television Commission and the Radio Authority consider and adjudicate upon complaints from the public about the conduct of the media. The ITC and Radio Authority can fine and revoke licences, while the BSC can only direct publication of a summary of the complaint and its findings. None has power to fine or to censor publications in advance – that is, issue injunctions.

In July 2003 OFCOM ([www.ofcom.org.uk](http://www.ofcom.org.uk)) received Royal Assent to become the single regulator of the UK's converging communications sector. The new Office of Communications will merge the functions of five existing regulatory bodies the Independent Television Commission (ITC), the Broadcasting Standards Commission (BSC), the Office of Telecommunications (OfTel), the Radio Authority (RAU) and the Radiocommunications Agency (RA).

As the publicly funded broadcaster, the BBC ([www.bbc.co.uk](http://www.bbc.co.uk)) operates its own customer complaint code/charter.

General law and specific regulations affecting UK Public Relations

The UK public relations industry has a turnover in excess of £1.5 billion and employs and estimated 40,000 people.

Membership of the professional body, the Institute of Public Relations, is voluntary. The IPR operates a Code of Conduct and disciplinary powers to which all members agree to adhere. The Professional Practices Committee of the Institute has occasion to handle complaints brought against members of the Institute who are thought to be in breach of the Code. For further information: ([www.ipr.org.uk](http://www.ipr.org.uk))

Membership of the consultant company trade association, the Public Relations Consultants Association, is voluntary. The PRCA operates a Consultancy Management Standard. For further information: ([www.prca.org.uk](http://www.prca.org.uk))

Communications professionals working in Public Relations and Marketing PR in the UK will need to be aware of a wide-range of general law and regulations.

Knowledge of UK contract law is essential for dealings with suppliers and distributors, service providers and clients. A contract is made when two or more parties each promise to the other that they will do something or refrain from doing something. The most common forms of contract in PR are within client contracts that stipulate the terms and conditions communication objectives will be met in return for payment. The terms of a contract between parties typically includes: commencement date, exclusivity, term, consideration, option to renew, right of refusal, rights and right holders objectives, evaluation criteria, dispute resolution mechanism, intellectual property rights, termination, breach and insurance.

In the UK the primary law concerned with copyright is the Copyright, Designs and Patents Act 1988. It has recently itself been amended as part of the EU harmonisation process following which, in particular, the duration of copyright was extended for certain types of works. Copyright law does not apply across the board. Only certain types of creative works are covered. Sections 3-8 of the Copyright Act define those works that will attract copyright protection:

Literary Works:	Works which are written, spoken or sung (not being dramatic or musical) e.g. books, reports, tables, computer programs and newspaper articles.
Dramatic Works:	Theatre and stage plays and works of dance and mime.
Musical Works:	Music of all styles (exclusive of any associated words or actions).
Artistic Works:	Paintings, drawings, photographs, graphic designs, sculptures, architecture.
Sound Recordings:	Reproducible recordings of sound or literary, dramatic or musical works e.g. records, tapes and CDs.
Films:	A recording on any medium from which a moving image may be produced e.g. films, videos, and newsreels, recorded television programmes.
Broadcasts:	Transmissions by wireless telegraphy of visual images, sounds or other information e.g. radio and terrestrial television.
Cable Programmes:	The contents of cable programme services.
Typographical Arrangements:	The typographical arrangement of books, magazines and newspapers or other published editions of literary dramatic and musical works. For further information and a license to copy see: <a href="http://www.nla.co.uk">www.nla.co.uk</a> and <a href="http://www.cla.co.uk">www.cla.co.uk</a>
Publication Right:	Where a person publishes for the first time a previously unpublished work in which copyright has expired.

In addition to copyright law, communicators engaged in the marketing of goods and services must also be aware of the implications of making statements to potential buyers or clients, ensuring a legal duty under the 1967 Misrepresentation Act to take care that statements are true and a breach of this duty may result in a claim in tort (which means a harm done to another party).

Other regulations may apply such as the Trade Marks Act 1994, the Comparative Advertising Regulations 2000 and the EU Injunctions for the Prosecution of Consumers' Interests Directive 2001. Those manufacturing, marketing and selling a product to consumers must also ensure that the product is safe (either by checking or meeting correct labelling regulations). Where a claimant has suffered from a defective product supplied after 1 March 1998, it may bring an action under the Consumer Protection Act 1987.

Practitioners engaged in marketing PR must be aware of the British Code of Advertising, Sales Promotion and Direct Marketing (CAP Code), the rule book for non-broadcast advertisements, sales promotions and direct marketing communications (marketing communications). The Code is primarily concerned with the content of marketing communications and not with terms of business or products themselves. Some rules, however, go beyond content, for example those that cover the administration of sales promotions, the suitability of promotional items, the delivery of products ordered through an advertisement and the use of personal information in direct marketing. Editorial content is specifically excluded from the Code, though it might be a factor in determining the context in which marketing communications are judged. Source: ([www.asa.org.uk](http://www.asa.org.uk))

The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and enforces the CAP Code. CAP's members include organisations that represent the advertising, sales promotion, direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those businesses agree to comply with the Code so that marketing communications are legal, decent, honest and truthful and consumer confidence is maintained. Some CAP member organisations, for example the Direct Marketing Association and the Proprietary Association of Great Britain, also require their members to observe their own codes of practice. Those codes may cover some practices that are not covered in the CAP Code.

The CAP Code supplements the law, fills gaps where the law does not reach and often provides an easier way of resolving disputes than by civil litigation or criminal prosecution. In many cases, self-regulation ensures that legislation is not necessary. Although advertisers, promoters and direct marketers (marketers), agencies and media may still wish to consult lawyers, compliance with the CAP Code should go a long way to ensuring compliance with the law in areas covered by both the CAP Code and the law.

The CAP Code also includes a number of requirements and special rules covering: advertising and direct marketing to children, and parental permission to buy; and the prohibition on advertising and promotion of tobacco products through the 2003 Tobacco Advertising and Promotion Act which does not, however, cover advertisements for rolling papers or filters and does permit certain tobacco advertising at point of sale.

By creating and following self-imposed rules, the marketing community produces marketing communications that are welcomed and trusted. By practising self-regulation, it ensures the integrity of advertising, promotions and direct marketing.

The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including those on misleading and comparative advertising (Directives 84/450 and 97/55 EC), and self-regulation is accepted by the Department of Trade and Industry and the Office of Fair Trading as a first line of control in protecting consumers.

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the Code, ensuring that the self-regulatory system works in the public interest. The ASA's activities include investigating and adjudicating on complaints and conducting research. All advertisements and promotions in non-broadcast media are covered by the CAP Code and are regulated by the ASA. These include:

- Press - national, regional, magazines and free newspapers
- Outdoor - posters, transport, aerial announcements
- Direct marketing - direct mail, leaflets, brochures, catalogues, circulars, inserts and facsimiles. As well as the content of this material, the ASA also regulates the use of mailing lists for targeting consumers
- Cinema commercials
- Sales promotions - on-pack promotions, front page promotions, reader offers, competitions and prize draws
- Internet - advertisements in paid for space, but not generic product information on home pages. The remit includes:
  - Banner, pop-up and other advertisements
  - commercial e-mails
  - sales promotions anywhere online
- Other electronic media, including advertisements on computer games, videos, viewdata services and CD-Roms
- SMS text messages

The vast majority of advertisers, promoters and direct marketers comply with the CAP Code. Those that do not may be subject to sanctions. Adverse publicity may result from the rulings published by the ASA weekly on its website. The media, contractors and service providers may withhold their services or deny access to space. Trading privileges (including direct mail discounts) and recognition may be revoked, withdrawn or temporarily withheld. Pre-vetting may be imposed and, in some cases, non-complying parties can be referred to the Office of Fair Trading for action, where appropriate, under the Control of Misleading Advertisements Regulations. The system is structured so that it does not operate in an unfair or anti-competitive manner or restrict free speech unjustifiably. ASA decisions are subject to independent review, including in exceptional cases by the Administrative Division of the High Court.

Communicators engaged in UK public affairs and lobbying require knowledge of the workings of UK government, particularly at Westminster, as outlined in the Political System section above. The emergence of 'permanent campaigning' tactics by political parties in the UK has led to the use of government as an instrument to build and sustain popular support and, for the political party in office, advance the prospect of re-election.

The 'permanent campaign' dynamic is perpetuated by the role of political consulting, polling, fund raising, the contribution of interest groups in shaping political debate and the rising influence of 'think tanks' in exploring and pre-testing public policy agendas. The net effect is such that the line between campaigning and governing has all but disappeared, with campaigning increasingly dominant. The 24/7 news-media environment has in part contributed to a diminution in the quality and depth of analysis of reporting, thereby failing to bring the full complexities and sensitivities of

certain policy issues to the public attention. Cyclically this exacerbates the ‘permanent campaigning’ and ‘sound-bite’ tendencies of policy makers in Government and Opposition.

Despite the tendency towards politicisation, professional communicators within Government ought to operate within clearly defined roles, under systems of rules and reporting that are proportionate, transparent and clear in their accountability. Civil servants handling marketing, advertising and publicity in Government Communications are subject to additional regulation through the Civil Service Code, the Guidance on the work of the Government Information Service (GICS) and the Cabinet Office Guidance for departments on sponsorship which all form part of the Official Guidance available at: ([www.gics.gov.uk](http://www.gics.gov.uk))

It is important that public affairs/lobbying practitioners are aware of GICS regulations and those affecting the elected MP’s, Lords, Ministers and Ministerial Special Advisers with whom, they may come into contact. Specific information concerning the Codes of Conduct and Registers of Interests binding members of the House of Commons and the House of Lords are available from: ([www.publications.parliament.uk](http://www.publications.parliament.uk)) Lobbyists in Scotland must be aware of similar rules that apply there and are accessible at: ([www.scottish.parliament.uk](http://www.scottish.parliament.uk))

The City of London is a leading international finance capital. The London Stock Exchange ([www.londonstockexchange.com](http://www.londonstockexchange.com)) operates several trading indices including the FTSE index of 100 leading shares. The Financial Services Authority (FSA) ([www.fsa.gov.uk](http://www.fsa.gov.uk)) is the sole regulator of UK investment business FSA’s objectives are to maintain confidence in the UK financial system; promote public understanding of the financial system; secure the right degree of protection for consumers; and, help to reduce financial crime.

The FSA is also the official UK Listing Authority (UKLA) whose principal regulatory objectives are to: provide an appropriate level of protection for investors in listed securities; facilitate access to listed markets for a broad range of enterprises; and, seek to maintain the integrity and competitiveness of UK markets for listed securities.

Financial communications advisers must be fully aware of and comply with rules governing the dealing of shares and the disclosure of information within the financial sector.

Continuing obligations exist to ensure that all market users have simultaneous access to the same information. This makes the market fair and maintains its reputation. It is the continuing obligations that form the basis of a company’s financial calendar and give the company the obligation (and opportunity) to communicate regularly with shareholders. The fundamental obligation is to disclose all information that is likely to have an impact on the share price through the selective disclosure of price sensitive information including results and trading statements, share issues, mergers and acquisitions over a certain size, directors’ share dealings, board appointments and removals and other major corporate developments.

Market abuse, which risks criminal and civil action, is constituted by:

- The misuse of information - for example, knowing about a forthcoming takeover and buying shares in the target company prior to general disclosure
- The giving of false or misleading impressions – for example, posting on a bulletin board an inaccurate story that an important deal has been secured by a major company in order to give a false or misleading impression

- Market distortion – for example, ramping the price of shares to a distorted level

The primary laws and publications affecting financial communications with which Financial PR/Investor relations professional must be aware and fully compliant are:

- The Financial Services and Markets Act 2000
- The Criminal Justice Act 1993
- The FSA's UKLA Sourcebook
  - The Listing Rules (formerly the Yellow Book, now the Purple Book) including the Model Code and the Combined Code
  - The UKLA Guidance Manual, including the Price-Sensitive Information (PSI) Guide
- The Financial Service Authority's Code of Market Conduct
  - Covering the Market Abuse Regime – part of the FSA Handbook of rules and guidance
- The City Code on Takeovers and Mergers (the Blue Book)

There are no educational or professional legal entry requirements to the financial communications area of public relations practice. However, legal requirements exist related to company compliance with the regulatory regime: the principal disclosure obligation for companies is to ensure that the information emanating from it, its advisors or agents is given to the market as a whole and is timely, sufficient and relevant.

A joint text with major implications for Internal Communications on an Information & Consultation Directive was agreed between the Council and the European Parliament on 17 December 2001 and subsequently adopted by both institutions in February 2002. The UK will now have three years to implement the Information and Consultation Directive, i.e. until 23 March 2005. The agreement allows the UK to restrict application of the directive in the first instance to businesses with 150 or more employees. After two years (i.e. 2007) it will also apply to businesses with 100 or more employees, and after a further one year (i.e. 2008) to ones with 50 or more employees. The directive gives employees new rights to be informed about the business's economic situation, informed and consulted about employment prospects, and informed and consulted about decisions likely to lead to substantial changes in work organisation or contractual relations, including redundancies and transfers. The DTI will consult widely about implementation in the UK: ([www.dti.gov.uk](http://www.dti.gov.uk))

Corporate Social Responsibility (CSR) is a growing area of UK public relations practice. There are no specific regulations affecting communications within this practice area of PR, except that which applies to all companies as stated under Financial PR/Investor Relations practice area (see below). Certain regulations may apply in certain industrial sectors, in respect of the environment, emissions and pollution. Further information is available at: ([www.defra.gov.uk/environment](http://www.defra.gov.uk/environment))

Communications efforts to increase transparency and accountability in governance and reporting are integral to CSR. In July 2003 the UK Government indicated its intention to fast-track aspects of company law within the next session of parliament. This will include proposals to make it mandatory for large companies to provide a narrative Operating and Financial Review report on intangibles. The OFR will cover: returns to and from shareholders; employment policies; policies on environmental, social and community issues; performance in the financial year in relation to those policies; other matters affecting reputation. Companies likely to be affected by the OFR will be public companies with a turnover of at least £50 million (or balance sheet of £25 million) and at least 500 staff; private companies with a turnover of at least £500 million (£250 million balance sheet) and at least 5,000

employees. Together these represent 1,000 companies accounting for one quarter of UK corporate activity. Responsibility for the OFR rests with directors. Non-executive directors will have a higher profile. Company auditors will verify information provided by directors, including the process employed. Compliance and sanctions: administrative enforcement will be used for failure of content. Criminal sanctions will be retained only for procedural offences (e.g. the duty to prepare, to distribute or file). For further information: ([www.dti.gov.uk](http://www.dti.gov.uk)) and ([www.ipr.org.uk](http://www.ipr.org.uk))

4.

## **The Regulatory Environment of Public Relations in Italy**

### **Political System**

Following the establishment of parliamentary democracy since 1946 and under the 1948 constitution, Italian legislative power is vested in a bicameral (two chamber) parliament consisting of a 630-member chamber of deputies, which is popularly elected, and a senate, made up of 315 members elected by region, plus 11 life members. Approximately a quarter of deputy and senator seats in both houses are assigned on a proportional basis. The council of ministers, led by the premier, is the country's executive; it must have the confidence of parliament. The head of state is the president, chosen in a joint session by parliament. The government is presided over by the premier, whose status is "primus inter pares". Dissolution of parliament before the end of a term of legislature (5 years) is a prerogative of the Head of State (elected for 7 years). This prerogative may be exercised if it is ascertained that the executive is incapable of obtaining a majority providing a vote of confidence.

Laws are enacted by the President of the Republic and within one month of passage through Parliament. The government, on receiving a delegation of powers by the two Chambers, may issue non-constitutional decrees. In extraordinary circumstances, the necessities of the situation and considerations of urgency may lead the government, under its own responsibility, to issue laws by decree that are immediately enforceable. The Chamber of Deputies and Senate must then turn such laws by decree into laws within a period of 60 days, on pain of annulment.

The country is divided into 20 regions, which are subdivided into a total of 94 provinces and some 8,000 city halls. The country's 20 regions, provinces and city halls also have parliaments and governments. In 2001 an amendment to the Constitution was approved by parliament that increased regional powers: the federal government is responsible for foreign relations and national defence, public order and justice, election law, and environmental issues, with the regions in charge of all other matters.

Prior to the dissolution of the communist party in 1992, Italian democracy was necessarily based on various coalitions around the Christian Democratic Party (DC). Since then electoral reform, abandoning the proportional system, introduced the option of semi-majority alternate government coalitions.

Italy is a member of the European Union and currently (2003) holds the Presidency of the EU Council.

### **Judiciary**

Jurisdiction is one of the three fundamental functions of the democratic state along with the legislative and the executive functions. Its purpose is to give concrete application to the regulations of the legal system. The Italian legal system divides its jurisdictional functions into: the ordinary, practised by ordinary magistrates, instituted and regulated according to the norms of the legal system, in the field of civil and criminal law; administrative, practised by the Regional Administrative Courts (TAR) and by the State Board in disputes against the Public Administration; accounting, performed by the Court of Auditors in matters of public accounting; military, carried out by the Military Court, the Military Court of Appeals and the Military Court of Surveillance, and limited to military crimes committed by members of the armed forces; and tax-related, performed by the Provincial Tax Commission and the Regional Tax Commission in tax matters.

The Constitutional Court guarantees that the norms correspond to the principles established by the Constitution. Magistrates may turn to the Constitutional Court if, during proceedings, they have doubts about the constitutional legitimacy of a law and of acts enacted by the State and the Regions. According to Article 135 of the Constitution, the Constitutional Court is made up of fifteen judges, five of whom are nominated by the President of the Republic, five by Parliament in joint session, and five by the supreme council of magistrates. In accordance with the dictates of the constitution, the constitutional court passes judgement on controversies regarding the constitutional legitimacy of laws or of decisions with legal force made by the state or regional councils, on controversies between branches of government regarding the assignment of state and regional council powers, and on accusations directed at the head of state.

### **Pluralism**

According to the last census, carried out in October 2001 by ISTAT (the Central Statistical Office) there are 56,995,744 Italians residing in Italy. This figure has remained quite stable since the previous census 10 years earlier (56,778,031). 26.2% of the population live in north-west Italy; 18.8% in the north-east; 19% in central Italy; 24.5% in the south and the remaining 11.5% on the islands.

The number of foreigners living in Italy has almost tripled since 1991: there are now 1.5 million resident foreigners as opposed to 350 thousand in 1991. Important linguistic minorities are present and recognised in Italy, in particular German-speakers in Trentino Alto Adige, Albanian-speakers in Sicily and Calabria, Slovenian-speakers in Friuli Venezia Giulia, some Serbo-Croat corners in Molise and groups of Catalan-speakers in Sardinia; there are some French Provençal-speaking minorities living in Valle d'Aosta.

Culture and education: Italy has the world's largest cultural heritage and lowest number of university graduates in Europe, see: ([www.ueitalia2003.it/EN/Italia/paeseItalia](http://www.ueitalia2003.it/EN/Italia/paeseItalia))

There are more than 400,000 non-profit organisations recorded by ISTAT (Central Statistical Office), many of which collaborate with the local authorities and are part of the social services network. With 4 million volunteer workers, these associations mainly provide social and health assistance and 20% of them receive public funding.

In recent years Italy has managed to bridge the information technology gap with its European partners. According to reliable sources there are 25.5 personal computers for every 100 inhabitants and 62 for every 100 employed persons. In percentage terms, expenditure on information technology accounts for 2.5% of the GNP. And the Internet is reaching 35.4% of families and 80% of companies. According to recent data, 40 million people own a mobile phone.

## The media: essentials

Written press: A colourful, open and free press is a critical aspect of Italian civic life: the FIEG (Federazione Italiana Editori Giornali) reports a slowly increasing rate in national newspaper circulation that is now about 6million daily copies sold, one million more than it was in 1946.

Although there are in excess of 150 newspapers published daily, most are owned or controlled by a small number of publishing groups. For example, Editoriale L'Espresso ([www.gruppoespresso.it](http://www.gruppoespresso.it)) owns La Repubblica (the second daily by circulation), 15 provincial newspapers, 3 radio channels and the internet provider Kataweb; RCS, controlled by the Hdp financial trust, owns the major Italian daily, Il Corriere della Sera and the major sport daily, La Gazzetta dello Sport and is also a major book publisher ([www.rcs.it](http://www.rcs.it)); The Mondadori Group, part of Mediaset (also owner of the three major commercial TV channels), owns daily Il Giornale, weekly Panorama, a host of other publications and is also the largest book publisher ([www.mondadori.com](http://www.mondadori.com)); The Fiat Group owns *La Stampa*; The Monti-Riffeser family (Poligrafici Editoriale) publishes Il Resto del Carlino - Quotidiano Nazionale, La Nazione and Il Giorno; The Caltagirone Group owns Rome's daily *Il Messaggero* and Naples' *Il Mattino*.

The consolidation of traditional publishing houses by capital from non publishing origin, for example Berlusconi (real estate, commercial television, finance, insurance, distribution) and Agnelli (the automobile mogul), is often criticised for its tendency to concentrate and monopolise power and public influence. In 2003 the Italian Parliament is still discussing the approval of a controversial media law which critics claim will disable the existing albeit feeble anti-trust law and further extend current Prime Minister Silvio Berlusconi's grip over television, the press and advertising by allowing further cross-ownership and expansion in an already dominated market.

Audiovisual media: The 1997 Broadcasting Act (Maccanico Law) reformed the domestic audiovisual and telecommunications system by enabling the opening-up of terrestrial networks (now 13) and small to medium-size independent private local television stations (around 800). The major broadcasting groups are:

- RAI, a public-owned company, is governed by a board appointed by the Speakers of the Chamber of Deputies and of the Senate. Its income is derived from both the household licence fee (50% of revenues in 1998) and advertising;
- Berlusconi owns Mediaset which, together with RAI, controls almost completely the domestic television market, and helps explain why the term 'duopoly' is currently used;
- The La7 network born out of an attempt to establish a real "third pole of Television" in Italy. The new name reflects its 7th position after the other six national networks of RAI and Mediaset. The channel is now owned by Telecom Italia.

Pay TV is presently offered by only one organisation SkyChannel owned by Rupert Murdoch. There are also a myriad of small, local or regional TV stations. The new media law, which is presently being discussed by Parliament, also includes a digital terrestrial TV capacity by 2006.

Radio: the sector has a similar structure to that of television with the public-owned RAI running three nationwide channels and 14 commercial networks sharing the other 50 per cent of the national audience in an average day.

Media Regulation: The Guarantor for Publishing and Broadcasting, introduced in 1981 (for Publishing) and in 1990 (for Broadcasting), and the Parliamentary Board for RAI, introduced by the 1975 Reform Bill were the two main control bodies. The former was a monocratic Authority, holding some control powers but with little capacity to effectively regulate the system. The latter is a 'political' authority, made up of MPs from all parties. This body has until today only control tasks over the activity of the public broadcasting company, RAI.

The 1997 Maccanico Law abolished the Guarantor for Publishing and Broadcasting and introduced the Authority for Communications, a collegial body with a President (appointed by the government), a Council of seven members (elected by parliament) and two committees (one for networks and infrastructures, another for services and products). This new authority extends its control over the press, electronic media and the telecommunications sector.

Media organisations: The largest journalists' union confederation is FNSI ([www.fnsi.it](http://www.fnsi.it)). In 1993, together with the Order of Journalists, it compiled the 'Journalists' Code of Ethics'. Established in 1963, the Order of Journalists ([www.odg.it](http://www.odg.it)) organises and supervises the news profession. It is a public corporation recognised and regulated by the State. It has a regional structure and National Council based in Rome. Other important organisations are the Italian Publishers' Association ([www.fieg.it](http://www.fieg.it)), the Federation of Television Broadcasters ([www.frt.it](http://www.frt.it)) and the Italian Newspaper Publishers Association (ASIG).

General law and specific regulations affecting Italian Public Relations

The annual estimated investment in Italian public relations activities is in excess of 10 billion euro and the industry employs an estimated 70,000 people (40,000 of whom operate in the public sector).

Membership of the professional body, FERPI ([www.ferpi.it](http://www.ferpi.it)), is voluntary and stands at around 1,200 members. FERPI operates a Code of Conduct, last modified in 1986. Recently FERPI also approved the Global Alliance ethics protocol.

Membership of Comunicazione Pubblica ([www.compub.it](http://www.compub.it)) the Italian Association of Public Sector Communicators is around 1,500. In 2003 it also adopted a code of ethics.

Assorel ([www.assorel.it](http://www.assorel.it)) is the association of full service consultancies and is a member of ICCO. Its members are approximately 40, and in 2003 approved its own ethics code while having since its 1983 inception accepted the code of Lisbon.

The public relations profession in Italy is not, per se, regulated. Access and practice are free where not violating the law.

Since 1978 many proposals of law have been presented and discussed (but never approved) to nationally regulate the practice of lobbying.

In 2001, the Region of Tuscany approved a law regulating all interest group activities in that region ([www.ferpi.it/oldsite/www/testi/week/20020220/toscana.pdf](http://www.ferpi.it/oldsite/www/testi/week/20020220/toscana.pdf)). A similar proposal is also in discussion in the Region of Calabria.

The public use of opinion polls and market research is regulated and operators who intend to publicise the results of their research are required by law to post information on client, methodology, questions, timing and results on the web site of the central government ([www.agcom.it/sondaggi/sondaggi.htm](http://www.agcom.it/sondaggi/sondaggi.htm)).

Financial and investor relations PR are regulated by Borsa Italiana (the body governing the stock exchange) and by Consob - the state authority regulating private companies ([www.consob.it/eng\\_index.htm](http://www.consob.it/eng_index.htm)). Since privatisation in 1998, the Borsa Italiana S.p.A ([www.borsaitalia.it](http://www.borsaitalia.it)) is responsible for the organisation and management of the Italian stock exchange ensuring the development of the managed markets, maximising their liquidity, transparency and competitiveness and at the same time pursuing high levels of efficiency and profitability by:

- Defining and organising the functioning of the markets
- Defining the rules and procedures for admission and listing on the market for issuing companies and brokers
- Managing and overseeing the market
- Supervising listed companies' disclosure

Borsa Italiana organises and manages the Italian stock market with the participation of nearly 140 domestic and international brokers who operate in Italy or from abroad through *remote membership*, using a completely electronic trading system for the real-time execution of trades. In addition, it performs organisational, commercial and promotional activities aimed at developing high value-added services for the financial community ([www.borsaitalia.it/opsmedia/pdf/11083.pdf](http://www.borsaitalia.it/opsmedia/pdf/11083.pdf)).

Health communications and promotions are regulated on the basis of a recent agreement between the Ministry of Health and the association of pharmaceutical companies.

([www.farindustria.it/farindustria/html/publisher\\_doc.asp?title=Comunicati&menu2expand=eIThree&table=publisherdoc&tablefields=publisherdocfield&tableattachment=attachment&tableattachmentservizioid=29&servizioid=30&newsid=101](http://www.farindustria.it/farindustria/html/publisher_doc.asp?title=Comunicati&menu2expand=eIThree&table=publisherdoc&tablefields=publisherdocfield&tableattachment=attachment&tableattachmentservizioid=29&servizioid=30&newsid=101)).

[www.farindustria.it/farindustria/html/publisher\\_doc.asp?title=Comunicati&menu2expand=eIThree&table=publisherdoc&tablefields=publisherdocfield&tableattachment=attachment&tableattachmentservizioid=29&servizioid=30&newsid=98](http://www.farindustria.it/farindustria/html/publisher_doc.asp?title=Comunicati&menu2expand=eIThree&table=publisherdoc&tablefields=publisherdocfield&tableattachment=attachment&tableattachmentservizioid=29&servizioid=30&newsid=98)).

Internal communications, in the period 1974/1981 were regulated by a contractual agreement between trade unions and the national manufacturers association, by which management would inform trade unions on current and future affairs and trade unions would inform employees. Since 1982, however, management no longer accepts this agreement. Specific regulations issued by the Ministry of Labour and Welfare also relate to work safety and environmental communication needs in certain productions. Also Italy is about to enact a European directive related to internal communication requirements for companies.

Since 2000 public sector communications have been regulated by a specific law (bill 150) that defines public sector communication as a strategic asset for the administration and policy-making transparency and for citizens information needs. The law defines three major professional roles required by each national/local branch of the administration: spokesperson (to the political leadership), media relations (to the administration activities), relations with publics (face to face as well as mediated). This bill and its subsequent regulatory proceedings

(<http://www.ferpi.it/down/regolamento.pdf>) also include customer satisfaction analysis, internal communications, the need for continued professional training, and as well as the need for coordination of messages as all part of the profession.

The Authority for Privacy is presently preparing a discussion with FERPI about a specific list of guidelines to protect individuals from possible abuses stemming from public relations activities – ([www.garanteprivacy.it/garante/navig/jsp/index.jsp?folderpath=Normativa%2FItaliana%2FCodici+deontologici](http://www.garanteprivacy.it/garante/navig/jsp/index.jsp?folderpath=Normativa%2FItaliana%2FCodici+deontologici)).

The Italian Government and Parliament are presently discussing a new law recognizing and regulating so called new professions, including public relations since FERPI is one of the professional associations recognized by CNEL - the national council of economy and labour ([www.cnel.it](http://www.cnel.it)) as a body recognised by the Constitution and financed by the State. This proposed bill would formally recognise and certify the existence of FERPI on the basis of its long-standing and revised ethics code and its continued commitment to compulsory professional training for all its members - ([http://212.177.132.169/portale/documenti.nsf/7CD68D881F27F626C1256CB6003F23C1/\\$File/Ddl%20professioni%20non%20regolamentate.pdf](http://212.177.132.169/portale/documenti.nsf/7CD68D881F27F626C1256CB6003F23C1/$File/Ddl%20professioni%20non%20regolamentate.pdf)).

The Italian Welfare Ministry has announced an intention to legislate for the regulation and encouragement by incentive of social responsibility activities among private sector organisations – ([www.welfare.gov.it/EaChannel/MenuTematiche/csrs/DocumentiUfficiali/the+Ministry+of+Welfare%27s+CSR-SC+project.htm](http://www.welfare.gov.it/EaChannel/MenuTematiche/csrs/DocumentiUfficiali/the+Ministry+of+Welfare%27s+CSR-SC+project.htm)).

The Anti-trust Authority (Autorità Garante della Concorrenza e del Mercato [www.agcm.it](http://www.agcm.it)) is responsible for trade and competition regulation, including abuse of dominant position, merger and acquisition prohibition and, under Legislative Decree no.74 as amended by Legislative Decree no. 67 of 25 February 2000, misleading and comparative advertising which includes: advertisements for products harmful to health and consumer safety and those affecting children and adolescents. This Authority has often intervened to dissuade or actually impede the issue of press releases containing perceivably false or incomplete information directly to consumer or via the media. It has also recently reissued a 2001 message to Parliament indicating that the 2000 public communication law (150) runs contrary to the fair competition act where it states (art.9) that only journalists from the Ordine dei Giornalisti (the State recognised and regulated journalist guild) can be responsible for a public sector media relations department.

5.

## **The Regulatory Environment of Public Relations in South Africa**

### **Political System**

Safeguarded by one of the world's most progressive constitutions, an independent judiciary, free press and a robust multi-party political system, South Africa has been a constitutional democracy since 1994 and the 1996 Constitution Act (Act 108 of 1996) of the Republic of South Africa is the result of a long and inclusive negotiation, carried out with an acute awareness of the injustices of the country's non-democratic past-characterised colonial conquest, racial domination, social injustice, political oppression, economic exploitation, gender discrimination and judicial repression. It is widely regarded as one of the most progressive constitutions in the world.

The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. ([www.gov.za/structure/constitution.htm](http://www.gov.za/structure/constitution.htm)).

South Africa has a three-tier system of government and an independent judiciary. The national, provincial and local levels of government all have legislative and executive authority in their own spheres, and are defined in the Constitution as distinctive, interdependent and interrelated. Operating at both national and provincial levels are advisory bodies drawn from South Africa's traditional leaders. Although the supreme authority is the National Assembly, there are also nine provincial legislatures, and in some instances they have exclusive legislative authority in that particular province.

Legislative authority is vested in Parliament ([www.parliament.gov.za](http://www.parliament.gov.za)) seated in Cape Town and consisting of two houses, the National Assembly and the National Council of Provinces.

The National Assembly consists of between 350 and not more than 400 members each elected for a five-year term on the basis of a common voters' roll. It is elected to represent the people and to ensure government by the people under the constitution. It does this by electing the President, providing a national forum for public consideration of issues, passing legislation and scrutinising as well as overseeing executive action. The number of seats awarded to each political party is in proportion to the outcome of the national election, held every five years.

The National Council of Provinces aligns provincial interests to national legislation and consists of 54 permanent members and 36 special delegates, and elects its own chairperson. Each of the nine provinces sends 10 representatives to the NCOP. There is a formula to ensure that each province's delegation includes representation by minority parties. In addition, local (municipal) government representatives may participate in the NCOP but not vote – 10 part-time members represent different categories of municipalities.

Elected by the National Assembly from among its members, the President, who may not serve more than two five-year terms, is the executive Head of State who leads the Cabinet - consists of the President, the Deputy President and 25 Ministers. The members of Cabinet are accountable individually and collectively to Parliament.

The President appoints the Deputy President from among the members of the National Assembly. The Deputy President must assist the President in the execution of the functions of government.

Cabinet consists of the President, a Deputy President and Ministers. The President appoints the Deputy President and Ministers, assigns their powers and functions and may dismiss them.

The President may select any number of Ministers from among the members of the National Assembly and may select not more than two Ministers from outside the Assembly. The President must appoint a member of the Cabinet to be the leader of the government business in the National Assembly.

National House of traditional Leaders was established on 18 April 1997 in terms of the legislation passed by Parliament. Each Provincial House of Traditional Leaders nominate three members to represent it in the National House which advises the National Government on the role of the traditional leaders and on customary law. It may also conduct its own investigations and advise the country's President on request.

Legislation ([www.gov.za/gazette/bills](http://www.gov.za/gazette/bills)) can only be introduced in the National Assembly by Cabinet members, Deputy Ministers and members of a National Assembly committee. In the NCOP only a member or committee may introduce legislation and it must fall within certain constitutionally defined areas. Bills passed in the National Assembly must be referred to the NCOP for consideration. The NCOP may pass, propose amendments to or reject a Bill. The National Assembly must reconsider a Bill in cases of amendments or rejections, and pass it again with or without amendments. Ultimately, the National Assembly may override the NCOP by a two-thirds majority.

Bills amending the Constitution require a two-thirds majority in the National Assembly as well as a supporting vote of six of the nine provinces represented in the NCOP. However, preceding that is the requirement that a Bill amending Section 1 of the Constitution, which sets out the state's founding values, requires a 75% majority in the National Assembly.

State institutions created to strengthen constitutional democracy are the Public Protector ([www.polity.org.za](http://www.polity.org.za)); the Human Rights Commission ([www.sahrc.org.za](http://www.sahrc.org.za)); the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality ([www.cge.org.za](http://www.cge.org.za)); the Auditor-General and the Electoral Commission ([www.agsa.co.za](http://www.agsa.co.za)); Pan South African Language Board ([www.pansalb.org.za](http://www.pansalb.org.za)); National Youth Commission ([www.nyc.gov.za](http://www.nyc.gov.za)) and the Department of Justice and Constitutional Department ([www.ncfhr.sa-info.com](http://www.ncfhr.sa-info.com); [www.doj.gov.za](http://www.doj.gov.za))

These institutions are independent, and subject only to the Constitution and the law; they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

In 2000, Cabinet established a public/private partnership – The International Marketing Council – to attract foreign investment, promote exports and boost tourism, integrate public and private sector campaigns that market South Africa internationally, and to build support within South Africa for the national brand as a country 'Alive with Possibility'. See [www.safrica.info](http://www.safrica.info) and [www.imc.org.za](http://www.imc.org.za). The IMC reports regularly to an International Investment Council and to the President of South Africa and integrates multi-sector marketing and public relations programmes on behalf of the South African government, together with the Government Communication and Information Service [www.gcis.gov.za](http://www.gcis.gov.za).

## **Judiciary**

South Africa has an independent judiciary, subject only to the Constitution and the law, comprising the Constitutional Court, Supreme Court of Appeal, High Courts, Magistrates Courts, (and) including any High Court that may be established by an Act of Parliament to hear appeals from High Courts and other court established or recognised in terms of an Act of Parliament, including any court the of a status similar to either the High Courts or the Magistrate Courts.

The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own processes, and to develop the common law taking into account the interests of justice.

Judges in the various courts are appointed by the President in consultation with the Judicial Service Commission, the leaders of parties represented in National Assembly, and, where relevant, the President of the Constitutional Court ([www.concourt.gov.za](http://www.concourt.gov.za)).

Magistrate Courts and all other courts may decide any matter determined by an Act of Parliament but a court a status lower than the High Court may not enquire into or rule on the constitutionality of any legislation or any conduct of the President.

The Judicial Service Commission includes the Chief Justice, the President of the Constitutional Court and the Minister of Justice. The Commission may determine its own procedure, but decisions of the Commission must be supported by a majority of its members. It is a widely representative body – among its other members are two practising advocates, two practising attorneys, six members of the National Assembly (including three from opposition parties), and four members of the National Council of Provinces.

Before judicial officers begin to perform their functions, they must take an oath or affirm that they will uphold and protect the Constitution.

### Pluralism

If the history of South Africa, the ‘Rainbow Nation’, is in large part one of racial divisiveness, today it can also be seen as the story of - eventually - a journey towards the creation, from tremendous diversity, of a single nation of unity and common purpose capable of realisation. The 1996 Constitution negotiation process demonstrates the inclusive detail in considering minute sectional interests now exemplified by South African democracy.

The Human Rights Commission ([www.sahrc.org.za](http://www.sahrc.org.za)) must promote respect for human rights and a culture of human rights; promote the protection, development and attainment of rights; monitor and assess the observance of human rights in South Africa, so as to entrench constitutional democracy.

A vibrant multi-party political system, with 13 parties, is represented in Parliament. An 18 member Commission has been established for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities ([www.gov.za](http://www.gov.za)). Eleven (11) official languages are named and protected under the Constitution and The Pan South African Language Board (Act 59 of 1995) which provides for the recognition, implementation and furtherance of multilingualism in South Africa by promoting and ensuring respect for all languages commonly used by communities including languages used for religious purposes in South Africa.

Recognising the historically diminished use and status of the indigenous languages, the Constitution makes it clear that the Government must take practical and positive measures to elevate the status and advance the use of these languages. The Constitution states that all official languages must enjoy parity of esteem and must be treated equitably.

South Africa is a nation of 44.8 million people of diverse origins, cultures, languages and beliefs. The 2001 census provided five racial categories (including unspecified/other) by which people classified themselves, namely: African/Black - 79%; White - 9.6%; Coloured - 8.9%; Indian/Asian - 2.5%.

By far the major part of the population is classified as African or black, but it is not culturally or linguistically homogenous. Nine of the 11 official languages are African, reflecting a variety of tribal groups, which nevertheless have a great deal in common in terms of background, culture and descent.

In terms of religious affiliation, almost 80% of the population in South Africa professes Christian faith. They belong to a variety of churches, including many that combine Christian and traditional African beliefs. Other significant religions are Islam, Hinduism and Judaism. A sizeable minority of South Africa's population does not belong to any of the major religious affiliation. Freedom of worship is guaranteed by the Constitution and official policy is one of non-interference in religious practices.

The population as a whole is young, with the highest numbers being recorded in the 10-14-year bracket. Of the total population, about 11,3% are between 10 and 14 years old. A variety of lobby and activist groups operate in South Africa – ranging from environmentalists, anti-crime and anti-rape groups to AIDS activists and religious affiliated groups. Labour activism also manifests itself in the workplace. South Africa lost an estimated 1.4 million human days to strikes and stay-away days in 2000. In 1995, the National Economic Development and Labour Council was established among Government, organised business, organised labour and community groupings on a national level to discuss and try and reach consensus on issues of social and economic policy.

Through this social dialogue, NEDLAC assists in more inclusive economic decision-making and promotes the goals of economic growth and social equity ([www.nedlac.org.za](http://www.nedlac.org.za)).

### **The media: essentials**

The media in South Africa is in the process of transforming into an entity that will be a reflection of the entire population. Through policy, legislation and regulation, the broadcasting sector has been defined into three tiers, namely public, community and community broadcasting.

Developments in the print sector, on the other hand, have not been influenced by legislation.

### **Media Freedom**

The annual media surveys that measure press freedom by assessing the effects of laws, government decisions and economic and political influence on the content of news reports.

In terms of the Bill of Rights, as contained in South Africa's Constitution of 1996, everyone has the right to freedom of expression which includes: freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; academic freedom and freedom of scientific research (<http://www.fxj.org.za>).

Several laws, policies and organisations act to protect and promote press freedom in South Africa. Print media's Nat Nakasa Prize for the Advancement of Press Freedom is awarded annually in co-operation with the Nieman Society of Southern Africa and the South African National Editors Forum (Sanef). Press Freedom Day is celebrated on October 19<sup>th</sup>. The [www.safrika.info](http://www.safrika.info) web portal has links to South African media sites.

During the apartheid era, newspapers had to apply for registration if they published more than 11 times a year. An arbitrary amount was also required before registration was approved. The government also enforced regulations controlling what newspapers could or could not publish, especially relating to articles and comment on activities against the apartheid system. Newspapers were, for instance, not allowed to quote banned organisations and their spokesmen, or report on conditions inside prisons or the activities of the security forces.

At the height of the anti-apartheid struggle in the 1980s, when two states of emergency were declared, censorship regulations were tightened. Newspapers were barred from reporting on any demonstrations or activity against the apartheid government or any of its laws. The threat of closure forced newspaper editors to apply a self-censorship policy, while other papers printed blank pages or whole paragraphs blacked out as a sign of protest.

The South African Broadcasting Corporation (SABC) is the country's public broadcaster. It introduced its own national news service on 17 July 1950 with daily news bulletins on the English Service, the Afrikaans and Springbok Radio. Ten years later on June 1960 Radio Zulu, Xhosa and Sesotho were established.

Private radio stations are granted licences by the Independent Broadcasting Authority. The IBA Act, 1993, became a historical piece of legislation, which ushered in a new democratic broadcasting dispensation for South Africa. It was established on 31 March 1994 to promote the development of public, private and community broadcasting services, which are responsive to the needs of the public.

The IBA's tasks include granting and amending broadcasting licenses, making regulations, setting licence conditions, managing broadcasting frequency spectrum and monitoring the broadcasting industry as a whole.

There are 16 daily and 11 weekly newspapers - most in English - and a range of general and specialised news web sites. South Africa's press, with a proud history of criticism of the previous government's apartheid policies, entered the new democracy unburdened by the pre-1994 restrictions.

There are five newspaper groups in South Africa: Independent Newspapers, Johnnic Publishing, Nasionale Media, New Africa Publications and CTP/Caxton. The country's newspapers are based mainly on separate control of the editorial and management departments.

Population demographics and media-usage patterns are having a marked negative impact on the printed press and the financial viability of newspapers is at question. Apart from launching new titles and streamlining existing publications, the decline in newspaper readership can probably be stemmed by developing a stable political environment, a stable education system and an effective communication system.

A range of code and standards form the legal and ethical framework of South African print media, namely:

- Press Ombudsman's Code of Practice – fax +2711-788 4990
- Advertising Standards Authority Code of Conduct: ([www.asasa.org.za](http://www.asasa.org.za))
- Memorandum of Undertaking with Government Communication and Information Service regarding the formation of the Media Development and Diversity Agency.
- In 2002, the MDDA Bill was published creating the MDDA as an independent and impartial body whose objective is to promote the development and diversity in the South African media industry: ([www.gov.za/gazette/acts/2002/a14-02.pdf](http://www.gov.za/gazette/acts/2002/a14-02.pdf))
- King Committees Second Report on Corporate Governance: ([www.iodsa.co.za/corpgov.html](http://www.iodsa.co.za/corpgov.html))

- Employment equity and skills development legislation: Employment Equity Act – ([www.gov.za/gazette/regulation/2001/22209.pdf](http://www.gov.za/gazette/regulation/2001/22209.pdf)) and Basic Conditions of Employment Act 11 of 2002 ([www.gov.za/gazette/acts/2002/a11-02.pdf](http://www.gov.za/gazette/acts/2002/a11-02.pdf))
- South African National Editors' Forum was conceived at a meeting of the Black Editors Forum and the Conference of Editors in 1996.

The importance of radio as a communication medium in South Africa is clearly reflected in the number of radio receivers per 1,000 inhabitants, the highest ratio in Africa (only 96 in Kenya and 89 in Zimbabwe).

Public broadcasting in South Africa falls mainly in the domain of the South African Broadcasting Corporation ([www.sabc.co.za](http://www.sabc.co.za)) serving the various cultural and language groups in the country. The SABC controls 19 radio stations, attracting 20 million listeners daily. Radio News produces 2,000 news programs a week with a combined airtime of close to 300 hours. The SABC's television service consists of three channels broadcasting in the 11 official languages and attracting a daily audience of about 12 million viewers.

The Broadcasting Act of 1999 is aimed at developing a policy to regulate and control broadcasting to develop the freedoms and ethos of the Constitution. Broadcasting regulation is overseen by the Broadcasting Complaints Commission was set up by the National Association of Broadcasters of Southern Africa in 1993 to adjudicate and mediate complaints against a broadcaster who has signed its Code of Conduct. The BCCSA is entirely independent from the NAB and the broadcasters Commissioners are appointed by an independent Panel, Chaired by a retired Judge of the Appellate Division of the Supreme Court ([www.bccsa.co.za](http://www.bccsa.co.za)).

The Independent Communications Authority of South Africa (ICASA) is the regulator of telecommunications and the broadcasting sectors. It was established in July 2000 in terms of the Independent Communications Authority of South Africa Act No.13 of 2000. It took over the functions of two previous regulators, the South African Telecommunications Regulatory Authority (SATRA) and the Independent Broadcasting Authority (IBA). The two bodies were merged into ICASA to facilitate effective and seamless regulation of telecommunications and broadcasting and to accommodate the convergence of technologies ([www.icasa.org.za](http://www.icasa.org.za)).

General law and specific regulations affecting SA Public Relations.

The South African public relations and communication management industry has a turnover in excess of 4 billion Rand and employs and estimated 10,000 people.

Membership of the professional body PRISA, the Institute for Public Relations and Communications Management ([www.prisa.co.za](http://www.prisa.co.za)), is voluntary. PRISA operates a Code of Professional Standards/Conduct and enforces disciplinary powers to which all members agree to adhere.

Membership of the consultant company trade association, the Public Relations Consultants' Chapter of PRISA (PRCC), is voluntary. Note it is not an entirely separate organisation but a fully represented chapter of the Institute.

Communications professionals working in Public Relations and Marketing PR in South Africa will need to be aware of a wide-range of law and regulations, including general company, marketing and copyright law:

- Company law – ([www.gov.za/search97cgi/s97.cgi](http://www.gov.za/search97cgi/s97.cgi))
- Trade Practices Act – ([www.gov.za/gazette/bills/2001/b34-01.pdf](http://www.gov.za/gazette/bills/2001/b34-01.pdf))
- Merchandise Marks Amendment Bill - regulates competition rules including on ambush marketing  
([www.gov.za/gazette/bills/2002/b63-02.pdf](http://www.gov.za/gazette/bills/2002/b63-02.pdf))
- Copyright Act number 98 of 1978 and Copyright Act Amendment Act 9 of 2002  
([www.gov.za/gazette/acts/2002/a9-02.pdf](http://www.gov.za/gazette/acts/2002/a9-02.pdf))
- Ethics ([www.ethicsa.com](http://www.ethicsa.com))

The Promotion of Access to Information Act ([www.gov.za/gazette/bills/2002/b60-02.pdf](http://www.gov.za/gazette/bills/2002/b60-02.pdf)) that came into operation in 2001 gives the right of access to information referred to by the constitution and promotes transparency, accountability, and effective governance of all public and private bodies by, among other things, empowering and educating everyone to do the following:

- Understand their rights in terms of the act and exercise them in relation to private and public bodies
- Understand the functions and operations of public bodies
- Scrutinize and participate in decision-making by public bodies that affect their rights

The Electronic Communications and Transactions Act 2002 encapsulates the Government's e-commerce policy and stipulates ([www.gov.za/gazette/bills/2002/b8-02.pdf](http://www.gov.za/gazette/bills/2002/b8-02.pdf)) a number of objectives including:

- Promoting the development of electronic transactions services which are responsive to the needs of users and consumers
- Developing a safe, secure and effective environment for the consumer, business and the Government to conduct and use electronic transactions
- Promoting legal certainty and confidence in respect of electronic communications and transactions
- Ensuring that electronic transactions in the Republic conform to the highest international standards

The Regulation of Interception of Communications and Provision of Communication-related Information Act 2003 regulates the conduct of law enforcement agencies. In so far as the Act allows the interception of communications, it infringes the constitutional right to privacy. There are checks and balances built into the Act, such as the prohibition on the disclosure of information except for the purpose allowed and the necessity to obtain a court order sanctioning such action. Further, the duty of the government to protect its citizens will override the individual privacy rights.

The Act recognizes the right to privacy as an important constitutional right. The first section of the Act outlaws the interception of communications. The general rule is therefore the prohibition of the interception or recording of conversations, telephone and cell phone calls, SMS, e-mail, letters, and postal packages ([www.gov.za/gazette/bills/2001/b50d-01.pdf](http://www.gov.za/gazette/bills/2001/b50d-01.pdf)).

Regarding the financial communications/investor relations field, the Financial Services Board is an independent institution established by statute to oversee the South African Non-Banking Financial Services Industry in the public interest. Its mission is to promote sound and efficient financial

institutions and services together with mechanisms for investor protection in the markets we supervise ([www.fsb.co.za](http://www.fsb.co.za)).

Company law is supported by the principles underlying the 2002 King II Report on Corporate Governance ([www.iodsa.co.za](http://www.iodsa.co.za)) which includes financial and regulatory guidance on corporate governance and an integrated approach to stakeholder interest combining proper regard financial, social, ethical and environmental practice, reporting and disclosure.

6.

## **Conclusion**

It is a particular area of concern that robust public relations industry population trends by country are unavailable. This does not enable national member associations to track true, rather than projected national, continental and international growth. The Global Alliance should examine how figures are calculated and provide guidance to member associations about how this should be conducted in the future. In the first place the Global Alliance should strongly question the methodologies presently being adopted to define the economics of public relations. Indeed these are normally the same used to analyse the advertising industry notwithstanding the fact that public relations is much more a labour intensive, rather than a capital intensive, activity and that market figures are more than often based on the private sector, whereas in most countries the public and the social sectors contribute to more than half of the overall public relations community.

The internationalisation of financial markets, the domination of global PR communications groups and the integration of communications disciplines, powered by technological innovation, have created an increasingly 'homogenous' public relations practice.

Also, a more unitary global approach to relationship management could lead to efficiency gains that benefit employers and clients, as well as providing best practice standards that enable improved competitor benchmarking.

Standardisation however, as much as it could help drive performance, is certainly not without pitfalls. The tendency of PR service provisions to be the same in Italy as in the UK and South Africa, is to be resisted. The framework of global general principles and local specific applications must be nurtured and stimulated if one wishes to take account of variations in culture, custom and regulation that considerably alter consumer mindsets and market conditions. Undoubtedly the globalisation process, as Anthony Giddens acutely remarks, has created much more world awareness of diversities than it has of common standards.

The report chapters and comparative table (Appendix 1) reveal however that greater harmonisation of the regulatory environments affecting public relations is required if a further public consensus based expansion of PR practice is to occur.

The Global Alliance must first establish whether or not harmonisation is indeed desirable across each practice area.

For example, referring to Appendix 1 a series of questions arise regarding:

- **Profession:** Beyond laws affecting specific practice areas, does public relations need to be recognised as having professional status and therefore become subject to specific practice

- regulation? Is there a need for international public relations job title and client contract standardisation?
- **Parliamentary access/lobbying:** the focus of lobbying attention is generally on the lobbied. Is altering the regulatory burden of scrutiny to lobbyists desirable? Could it limit free and open access to parliaments, elected representatives and the instruments of government? Would a requirement to register on regular lobbyists as in the USA be desirable, possibly in exchange for ad hoc advisory services to registered lobbyists from institutions in order to ensure equal access to weak as well as strong interest groups?
  - **Political & Opinion Polls/Market Research:** Is there a need for best practice guidance as it effects public relations? Would it be desirable to make sure that any public use of the opinions express by representative samples of the population or segments of this be regulated by the need to disclose date of poll, representative sample, methodology, questions and subjects who commissioned the research effort?
  - **Financial/Investor Relations:** Internationalisation of accounting standards already being led by auditors and accountants through International Acc. Standards Board. Harmonisation of market regulation across EU member states underway. Would it not be desirable that disclosure, investor and media relations standards in global markets be coherent and similar?
  - **Corporate Social Responsibility (CSR) and governance within company reporting framework:** International attention on good governance and best practice on CSR disclosure/reporting makes this an area for potential harmonisation of communications practices. Would it not be desirable to harmonise global social responsibility reporting standards and to argue they should be applied not only to private sector but also to social and public sector organisations? And further argue that this should always be applicable on a voluntary and not mandatory based, thus underlining the competitive advantage factor of social responsibility?
  - **Health & Pharmaceutical:** The EU move toward single pharmaceutical market has been dramatic, but variable national requirements exist across EU member states, and indeed wider globe. Would at least proactive regional standards of health and life science communication as well as patient relationship practices by public relations professionals not be a relevant support to the profession's reputation?
  - **Privacy, Data Protection, Freedom of Information and Free Speech:** would it be desirable for professionals collecting information on individuals and organisations to be processed and used for public relations purposes to inform the subjects of this and, if required, obtain approval or correction of this information?
  - **Copyright:** Despite broad EU harmonisation of copyright law, there are huge differences and impacts across member states. The situation is similar across globe. Is there a need for harmonisation and standardisation?

Undoubtedly more questions have been raised by this report, than have been answered.

If it is to develop a policy-making and lobbying capacity that goes beyond the exchange of knowledge and sharing of best practices, the Global Alliance must be cognisant of the regulatory landscapes affecting each of its member associations.

This study by no means enables the Alliance to do that. More detailed single issue/sector based analyses are required before the Alliance is able to adopt policy positions that are credible and carry the weight of member association consensus about desired outcomes.

It is clear however that the global PR profession must consider its own role in the obvious harmonisation of approaches to governance, accounting and reporting practices that are taking place across international markets and apply to itself those very principles of social responsibility and sustainable behaviour it advocates for other social subjects.

The challenge for the Alliance is to now begin engaging practitioners in that debate.

### Appendix 1

<b>Country ► ▼ Practice Area</b>	<b>UK</b>	<b>Italy</b>	<b>South Africa</b>
<b>PR Profession</b>	Unregulated, provided within confines of the law. Membership of IPR is voluntary. CPD and Code are in place. IPR signed up to Global Alliance Protocol. IPR aiming for Chartered Status that could introduce licence to practice.	Unregulated, provided within confines of the law. Membership of FERPI is voluntary. Code in place. FERPI signed up to Global Alliance Protocol. FERPI in discussions with Government and CNEL regarding professional status recognition for PR.	Unregulated, provided within confines of the law. Membership of PRISA is voluntary. CPD and Code are in place. PRISA signed up to Global Alliance Protocol. PRISA a founder member of the Council for PR & Communication Management (a new local umbrella body involving IABC, Fundraisers, Academics, Government communicators, PRCC (consultants), PRISA practitioners and Investor Relations practitioners).
<b>Parliamentary access/lobbying.</b>	Lobbying is open and accessible with focus of regulation attention on disclosure affecting the lobbied/elected reps/political parties (i.e. donations).  Regulation of lobbyists occurs through voluntary disclosure.	Lobbying is open and accessible with focus of regulation attention on disclosure affecting the lobbied/elected reps. - Regulation of lobbyists occurs through voluntary disclosure. - Region of Tuscany and, soon likely Region of Calabria, subject to regulation of interest group activities.	Lobbying is open and accessible with focus of regulation attention on disclosure affecting the lobbied/elected reps.  Regulation of lobbyists occurs through voluntary disclosure.
<b>Political &amp; Opinion Polls and Market Research</b>	Unregulated.	Disclosure regulation required by central government, as in France	Unregulated.

<b>Financial/Investor Relations</b>	Listed company compliance with rules on disclosure, price sensitive information and reporting regulated through the London Stock Exchange and Financial Services Authority.	Listed company compliance with rules on disclosure, price sensitive information and reporting regulated through the Borsa Italiana and Consob.	Listed company compliance with rules on disclosure, price sensitive information and reporting regulated through Johannesburg Securities Exchange, and Financial Services Board South Africa.
<b>Corporate Social Responsibility (CSR) and governance within company reporting framework</b>	In addition to compliance with environmental, health and safety regulations, proposals being introduced on mandatory disclosure of non-financial assets and governance through an Operating & Financial Review.	In addition to compliance with environmental, health and safety regulations, proposals being discussed by Italian Welfare Ministry on move to mandatory disclosure of non-financial assets and governance.	In addition to compliance with environmental, health and safety regulations, proposals being discussed on move to mandatory disclosure of non-financial assets and governance (King Report).
<b>Health &amp; Pharmaceutical</b>	Supply-side restrictions affecting packaging, labelling and drug promotion strategies.	Supply-side restrictions affecting packaging, labelling and drug promotion strategies.	Supply-side restrictions affecting packaging, labelling and drug promotion strategies.
<b>Public Sector Communications (PSC)</b>	Public service communicators subject to regulation through Gov. Info & Comm Service Codes. Government has stated intention to introduce Civil Service Act to define boundaries between political party, Gov. and public information communications. IPR in favour of PSC being subject to National Audit Office scrutiny and reporting to Parliament.	Since 2000 PSC subject to regulation aimed to improve public services and increase professionalism within administration/policy-making. Only journalists registered with the Ordine del Giornalisti can be responsible for a public sector media relations department. FERPI has appealed against this clause to the EU as well as to the National Antitrust Authority.	Public service communicators subject to best practice through Gov. Info & Comm Service handbook & training.
<b>Privacy, Data Protection, Freedom of Information and Free Speech</b>	Though no Privacy law is in place, public interest on privacy is served through the Courts and in the media through adherence to the Press Complaints	The Authority for Privacy is discussing with FERPI guidelines for protection from possible abuses stemming from PR activities.	Right to Privacy enshrined by 1996 Constitution Act. Regulation of Interception of Communications Act 2003 infringes constitutional right to privacy on interception

	<p>Commission's Code of Practice for Editors. Data Protection Act 1998 affects data. It must be: fairly and lawfully processed for limited purposes; adequate, relevant and not excessive; accurate; not retained longer than necessary; secure; not transferred to countries without adequate protection.</p> <p>Freedom of Information Act 2000: provides a right of access to recorded information held by public authorities; creates exemptions from the duty to disclose information; and establishes the arrangements for enforcement and appeal. Since 2000 incorporation of European Convention on Human Rights into UK law the right to free speech has been enshrined though it is not an absolute right.</p>		<p>but balances this with other protections.</p> <p>Data Protection: Promotion of Access to Information Act 2001 gives right of access to information.</p> <p>Free speech is enshrined in a bill of Rights under the Constitution Act 1996.</p>
<b>Copyright</b>	<p>Newspaper copyright protected and the photocopying of newspaper articles subject to licence payment, creating additional charges in-house and passed-on to clients.</p>		<p>Copyright is protected through the Copyright act 98 of 1978 and amendments 9/2002</p> <p>Permission for reproduction to be obtained and sources to be quoted.</p> <p>No payment for copying newspaper articles at present.</p>

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Global Alliance for Public Relations  
and Communication Management novembre 2003

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