

## **Citizens, Communications and Convergence**

The Campaign for Press and Broadcasting Freedom is an independent organisation which campaigns for greater diversity and accountability in the media. We have intervened on a range of important policy issues in media and communications since our foundation in 1979. We have a longstanding interest in the issue of broadcasting as a public service, and have campaigned vigorously against the re-regulation of broadcasting in the corporate interest and against the citizen interest, a process usually referred to misleadingly as ‘deregulation’.

1.1. As one of the civil society groups which lobbied tirelessly, and against a great deal of powerful opposition, for the inclusion of the word ‘citizens’ in the Communications Act 2003, we are naturally pleased that Ofcom has published this discussion paper. However, we are also disappointed, but not altogether surprised (for reasons which will become clear below), that it has taken so long for Ofcom to publish a paper ‘specifically discussing how we seek to promote the interests of citizens’ (1.3).

2.1. As the discussion paper makes clear, the government had considerable difficulty with including the word citizens in the Act: ‘The Government was advised that this would not be possible to articulate in law because “citizen” had a specific meaning in immigration statutes which meant that it could not be used in a broader sense in the Communications Bill’ (2.9). Frankly, we never believed this for a single moment during the passage of the Act, and still less do we believe it now.

2.2. As no less an authority than David Marquand puts it in *Capitalism, States and Citizens* (1997): ‘The notion of citizenship has, at best, an insecure place, in the British political tradition. The British are subjects of a monarch, not citizens of a state’. As a consequence, ‘the terminology of citizenship has rarely figured in political discourse’ in Britain. It is, incidentally, quite pointless to argue that the British Nationality Act 1981 technically redefined the British as citizens. In order to be worthy of the title of citizen people have to be *treated* as citizens, not simply labelled

as such. In the light of even these preliminary considerations, then, it is thus not surprising that Ofcom faces some difficulty in defining what is meant by the terms ‘citizen’ and ‘citizenship’.

2.3. As John Clarke *et al* note in *Creating Citizen Consumers* (2007): ‘The citizen is an egalitarian figure, lodged in a republican imaginary of liberty, equality and solidarity’. This immediately suggests exactly why the political classes in England have had such difficulty with the term, since it is so redolent of values of which they, ever since the French Revolution and the ensuing Napoleonic era, have been at best fearful and at worst highly sceptical.

2.4. As a consequence, when the words ‘citizen’ or ‘citizenship’ have been employed in political discourse at the Westminster level, they have had quite different meanings from those which adhere to them elsewhere in western Europe and in the US. For example, traditional, one-nation Conservatives have proclaimed the ideal of ‘active and responsible citizenship’, building on the old English tradition of ‘voluntary service’, with local voluntarism being conceived as a replacement for what they see as the morally debilitating ‘nanny state’. A good example of this extremely limited conception of citizenship was provided by the then Home Office minister John Patten when he wrote in 1989 that: ‘The active citizen is someone making more than a solely economic contribution to his or her community; nothing more, nothing less’.

2.5. However, neo-liberals (of both Conservative and New Labour persuasion) adhere to yet another concept of the citizen and of citizenship. An absolutely key part of the neo-liberal project has been to narrow the scope of the civic sphere, to privatise not only public institutions but public purposes as well. In this process, people’s roles as ‘citizens’ have been very deliberately re-conceptualised in consumerist terms. For example, John Major’s so-called ‘Citizen’s Charter’ sought to ‘give the citizen a better deal through extending consumer choice and competition’. Thus essentially political questions about what public services people should be entitled to, and the appropriate levels of public service provision, were replaced by the imposition of an entirely inappropriate market model on the public services, which involved the setting of performance targets and large-scale privatisation – all in the name of an entirely spurious notion of ‘consumer choice’.

2.6. Under New Labour this process has continued unabated, indeed with even greater vigour, only now the issue of citizenship has also become embroiled in debates about ‘communitarianism’. To put it bluntly, as the result of nearly 30 years of neo-liberalism in the economic sphere is a society falling apart at the seams, governments have looked to new ways of attempting to discipline people and to legitimise the heavy hand of the state in this respect. (The fact that this is the selfsame state which neo-liberalism wishes to see drastically shrunk is simply one of the more obvious contradictions of this particular project). Communitarianism stresses above all people’s duties and responsibilities (in return for the exercise of which they are granted rights), and in this vision of things, being a ‘good citizen’ amounts to little more than fulfilling one’s social obligations and behaving ‘properly’. Not altogether surprisingly, this distinctively moralistic and one-way conception of citizenship has all too often resulted in the perception that what citizenship is really all about is being bullied and hectorred into leading what the authorities consider to be better lives, but which actually amounts to little more than knowing one’s place.

3.1. So much for the government’s difficulties with the concepts of citizens and citizenship. But what of Ofcom’s position on this matter. We welcome Ofcom’s brief narrative of its use of the words citizen-consumer and ‘citizen’ (2.11-2.15), but although we have no wish to re-fight old battles here, we have to say that we are somewhat sceptical about Ed Richards’ remark at his lecture to the Westminster Media Forum on 16 October 2007 that: ‘We have always had the balancing act of meeting these twin objectives [furthering the interests of citizens and consumers] at our heart and in our minds. Let me say personally that I have never had any difficulty with this notion, indeed I have always been a strong supporter of this relatively straightforward concept’. It is not that we doubt his sincerity, but that we feel, for reasons which will become apparent below, that Ofcom operates with a far too narrow conception of what constitutes the citizen interest, and that this is the inevitable consequence of Ofcom’s primarily economic approach to the communications sector.

3.2. One example of this kind of thinking was of course Ofcom’s early insistence on using the appellation ‘citizen-consumer’, which nowhere appears in the Communications Act and which does indeed assert the primacy of the economic and

subsume the citizen into the consumer. However, just because ‘citizen-consumer’ is no longer used by Ofcom this does not necessarily mean that it has ceased to think in the terms which that compound noun implies. We could cite any number of examples which suggest to us that this has been and still is the predominant view within. For example, speaking to the Oxford IPPR Media Conference on 13 January 2004 Stephen Carter let slip the surely remarkably revealing remark that ‘we are fundamentally free-market and light-touch, tempered by a bit of social justice’. And speaking to the Voice of the Listener and Viewer conference in April 2004 he stated that: ‘Externally and in our regulation, the promotion of civic values must infuse all our actions; economics should be the basic tool which underpins all our actions. Neither can be hermetically sealed from the other’. But as Sonia Livingstone and Peter Lunt have pointed out in a paper in *Media, Culture and Society*, this is ‘a formulation in which civic values may inspire goals, but economic realities will dictate outcomes’. At the same conference he also stated that: ‘Throughout the three years of debates that led up to the Communications Act, there were two clear counter-currents: those who hoped or feared that Ofcom would approach its tasks wholly through an economic prism and would sweep away anything subjective that could not be encompassed by a market analysis; and those who hoped or feared that Ofcom would give primacy to the cultural and political themes and would intervene subjectively and distortingly into market choices – twelve of the great and good sitting in an ivory tower deciding what the rest of the population should get’. However, this formulation inevitably suggests that although those viewing the communications sector through an economic prism may be looking at it from too narrow or limited a perspective, it is at least an ‘objective’ one, a suggestion which we would most emphatically challenge.

3.3. In response to the above, Ofcom might argue that Stephen Carter is no longer with Ofcom, and that his remarks reflect past thinking within the institution. However, our suspicion that this fundamentally economic perspective remains dominant at Ofcom is amply confirmed by the assertion in the discussion document that: ‘We tend to think of a market as a vibrant, enticing place where consumers interact, but there is not an equivalent metaphor for the way that citizens interact in civil society’ (2.31). This is really quite breathtaking, for two reasons, the second of which will be discussed at 4:4.

3.4. We (that is, the CPBF) would be extremely interested to know who exactly is this ‘we’? It most certainly is not the CPBF and its members, nor, we would suggest, the numerous civil society groups with whom we interact. Furthermore, with the world financial system facing meltdown and global recession looming as the direct and inevitable result of what George Soros, Joseph Stiglitz, Will Hutton and many others have quite rightly identified as the prolonged and rigid application of the dogmas of economic fundamentalism, we doubt that it is the view of most of the citizens whose interests Ofcom is supposed to be furthering. It may be, of course, that Ofcom is referring not to the market in an abstract sense but to actual markets in real towns and villages. But, even if that is the case, anyone who has any experience of such markets will know that, unless they are extremely well regulated, these are places in which consumers are frequently ripped off, sellers engage in price fixing and other uncompetitive practices, and where new entrants are not exactly welcomed as competitors by already-established sellers – just like the much vaunted ‘free market’, in fact.

3.5. Ofcom is, however, peculiarly addicted to delivering remarks which, superficially, appear to be authoritative but which turn out to be mere bromides, and highly questionable ones at that. For example: ‘Competitive markets often provide an important contribution to delivering diversity and plurality’ (2.13). Yes, but equally often they do not, and especially not in broadcasting, which is particularly prone to various forms of ‘market failure’, as Gavin Davis, David Lipsey, Patrick Barwise and many others have conclusively demonstrated. It is thus difficult to disagree with Georgina Born in her book *Uncertain Vision* (2004) when she argues that: ‘While Ofcom doctrine espouses evidence-based regulation based on tight definitions and quantitative data, basic issues appear simply as articles of faith. The statement “[In] a fully digital world ... consumers will have access to much greater choice” begs the crucial and opaque question of just how “choice” in broadcasting is defined or even measured’, and indeed with Don Redding, formerly of Public Voice, when in a paper in *Screen* he complains of Ofcom that many of its statements are simply ‘beliefs and assertions – that is, ideology’.

4.1. The discussion document points out ‘the need for Ofcom to consider separately the interests of citizens and consumers stems from section 3(1) of the Communications Act 2003. This requires Ofcom to: (a) further the interests of citizens in relation to communications matters; and (b) further the interests of consumers in relevant markets, where appropriate by promoting competition’ (2.2). The document adds that: ‘It is notable that the section sets out a mechanism for furthering consumers’ interests – promoting competition – although it is recognised that this will not always be appropriate. The Act does not specify a particular mechanism for furthering citizens’ interests’ (2.3).

4.2. In order to help to define what is meant by the citizens’ interests, and to suggest ways in which these might best be met, the document refers briefly at 2.15 to a speech by Ed Richards to the Westminster Media Forum in 2003. The direct quotation, however, comes from a speech by Ed Richards to that body in 2004, in which he discussed the citizen case for market intervention in broadcasting and in which he very usefully laid out ‘four core purposes of PSB that reflect the potential of broadcasting (not just television) to benefit society more generally, beyond our interests as private consumers’. These are:

- ‘To inform ourselves and others and to increase our understanding of the world through news, information and analysis of current events and ideas
- To reflect and strengthen our cultural identity through high quality UK, national and regional programming
- To stimulate our interest in and knowledge of the world, including the arts, science, history through content that is accessible, encourages personal development and promotes participation in society
- To support a tolerant and inclusive society through the availability of programmes which reflect the lives of different people and communities within the UK, encourage a better understanding of different cultures and perspectives and, on occasion, bring the nation together for shared experiences’.

4.3. Similarly, the discussion document states that in relation to media and communications services, all citizens have equal rights of access to ‘the services and

content that are needed to participate in society' (2.21) and that 'in furthering the interests of citizens, we focus on what is good for society as a whole, but there will be direct benefits for some individuals. For example, public service broadcasting benefits those citizens who watch it, while all citizens benefit indirectly from living in a better informed society. Other policy interventions may be aimed narrowly at particular social groups, such as older people or people living in remote parts of the UK, but have wider benefits like enhanced participation in society or greater fairness (2.30).

4.4. These seem to us usefully broad, inclusive and productive ways of thinking about the citizen interest in broadcasting, which is why we are so surprised that Ofcom believes that 'there is not an equivalent metaphor [to the market] for the way that citizens interact in civil society' (see 3.3 above). The metaphor is in fact the 'public sphere', first developed by Jürgen Habermas in his seminal book *The Structural Transformation of the Public Sphere* (1962), and which, implicitly or explicitly, has fed into *all* the key debates about the negative consequences for citizens of the 'deregulation' of public service broadcasting in the UK since the 1980s, as well as many other debates about citizenship in modern societies. And, drawing on a rather more US-based tradition of thinking about citizens' rights to be informed, one might also point to the well-established and well-known metaphor of the 'marketplace of ideas'.

5.1. Unfortunately, whether because Ofcom is unfamiliar with these ideas, or because it is simply unwilling to deploy them in its policy-making, it tends generally to work with a much narrower conception of the citizen interest than that outlined by Ed Richards above. In the Ofcom view of things, furthering the interests of citizens seems largely to boil down to ensuring that everyone has access to a wide range of communication services, making sure that people know how to use the new digital technology, protecting listeners and viewers from content which it deems undesirable, and ensuring that minorities of one kind or another are not totally ignored. Thus, for example: 'Ofcom serves citizen interests in many ways, by promoting widespread access to communications services, ensuring plurality in the supply of radio and TV services, promoting media literacy and ensuring that disadvantaged groups of consumers are protected against market failures' (1.3) and: 'Ofcom's role in furthering the interests of citizens involves ensuring that people have access to the

services, content and skills needed to participate in society, and that they are protected appropriately (2.27).

5.2. The narrowness of Ofcom's concept of the citizen interest in communications was sharply illustrated by Philip Graf's recent speech to the Voice of the Listener and Viewer, 2 October 2008, which stressed access to services and what we would regard as consumer (not citizen) protection issues to the virtual exclusion of anything else. Thus laying out 'a practical agenda that addresses equality, inclusion and plurality', he revealed this as amounting to: 'Promoting the widespread availability of key services whether broadcast or broadband; enhancing access to services and content by all groups in society, with particular focus on the disadvantaged; ensuring that the wireless spectrum is used for the benefit of all citizens'. On the protection issue he stated that: 'With industry, we have designed content filtering and classification systems to help parents and carers protect children online. We are actively participating in and supporting the UK Council on Child Internet Safety, set up following the Byron Review', and also added that Ofcom had 'modernised the standards codes. Citizens today benefit from broadcasters' freedom of expression; but still need protecting from harm, offence, unfairness or invasion of privacy. Dealing with these issues is one of the bedrock functions of the Content Board'. Protection from a different kind of harm was also the subject of his comment that: 'We have punished those who betrayed the viewers' trust in broadcasting through the phone-in scandals. We have also put in place systemic remedies to prevent any re-emergence of the culture that led to those scandals in the first place'. Finally, the disadvantaged were the subject of a comment about Ofcom substantially increasing broadcasters' quotas for subtitling, signing and audio-description, along with a range of other access services for disabled people such as text-relay.

5.3. Narrowing the ever-widening information gap in our society – of which the 'digital divide' is but an aspect, albeit an extremely significant one – is of course extremely important. However, in our view Ofcom is too narrowly concerned with ensuring simply that people have access to a wide range of communication services and not sufficiently concerned with the contents and ownership of those services. We also contend that, just as Ofcom habitually conceptualises public service broadcasting



as a relatively narrow range of programming, so it also tends to characterise citizenship issues as concerning, primarily, vulnerable minorities and not the public as a whole.

6.1. We can illustrate these points more precisely by reference to the *Ofcom Annual Report 2007-08*.

6.2. On the subject of access to services, the Report by the Chief Executive Ed Richards argues that: 'Citizens and consumers are already reaping the benefits of competition. Over half of all households have broadband from one of more than 500 different providers. There are 22 million UK households with digital television, whether it is terrestrial through their aerials, satellite or cable. Today, there are more mobile phones than there are people in the UK, with services offered by five network operators and many more retail-only providers. And one in five adults now owns a digital radio set, offering listeners a choice of up to 60 stations'. Significantly, in his Report 'consumer' or 'consumers' are mentioned thirteen times, 'citizen' or 'citizens' six. As so often when reading Ofcom documents, one ends up feeling that the word 'consumer' has been used throughout, with the word 'citizen' added in later here and there as an afterthought.

6.3. On the subject of protection, Richards points out that: 'During the year we moved to restore trust by introducing a series of new regulations to make broadcasters directly responsible for consumer protection, particularly in relation to the use of premium rate telephone services. We took enforcement action against a number of broadcasters for breaching that trust and imposed the biggest fines in broadcasting history'.

6.4. Richards also notes that: 'In our investigations into broadcasting standards, we issued sanctions against television and radio companies who had breached our Broadcasting Code, which is designed to protect consumers'. Elsewhere, the *Annual Report* reveals that the chief culprit in this respect was the treatment of Shilpa Shetty in *Celebrity Big Brother*: 'We launched a full investigation while the programme was still on air, and found that Channel 4 had made serious editorial misjudgements, compounded by a major failure in its compliance process. The channel was found to be in breach of the Broadcasting Code, and Ofcom imposed a statutory sanction on

Channel 4 (and S4C), requiring it to broadcast a statement of its findings on three separate occasions' However, the issues raised by this programme were citizen and not consumer ones, and we cannot help but find it significant that Richards refers to the Code only as being 'designed to protect consumers', thus ignoring its crucially important citizen aspects.

6.5. We are also concerned that the section of the *Annual Report* headed 'Improving compliance and empowering citizens and consumers' is entirely about telecommunications. The subjects covered are: clamping down on mobile mis-selling; enabling faster 'number porting' (switching mobile phone operators whilst keeping the same phone number); introducing new rules against 'slamming' (having your phone account moved to another provider without your knowledge or consent); and investigating other forms of fixed-line mis-selling. How any of this can be in the citizen, as opposed to the consumer, interest, is entirely unclear to us.

6.6. In our view, the only parts of the *Annual Report* which relate to Ofcom's furtherance of citizens' interests in communications matters are those brief sections which relate to its investigation into complaints about *Undercover Mosque*, its PSB review, its options for C4's long-term future, and its report *The Future of Radio*. These take up a mere two pages.

7.1. Let us now turn to the matter of spectrum sell-off, which Ofcom, in announcing the findings of its review of the matter, called 'one of the most important decisions we have ever made'. We would agree. We also think it one of the very worst, and a complete betrayal of the citizen interest in communications. But there again, Ofcom's *Annual Report* lets slip the all too revealing remark that: 'This approach means that companies and organisations will have the freedom and incentive to offer services using the spectrum that are highly valued by customers'. Precisely: customers.

7.2. We thus find incomprehensible the statement in the discussion document that: 'Another example [of Ofcom's attention to the citizen perspective] is provided by the debate about how the spectrum freed-up by the switchover to digital TV should be released to the market, and whether any of it should be reserved for particular uses. Our starting point is that markets will normally ensure that spectrum is used in the most optimal way, but we have carried out research to find out what, as citizens, our

preferences would be for the use of the spectrum and whether they differ from the likely outcomes that would be produced by market forces’.

7.3. First of all, the remark that: ‘Our starting point is that markets will normally ensure that spectrum is used in the most optimal way’ (a) immediately begs the question: optimal to whom? and (b) is yet another example of Ofcom’s tendency, noted at 3.5 above, to present what are basically articles of faith as matters of fact. Secondly, those civil society groups which we would regard as representing the citizen interest in this matter and which managed to respond to an extremely complex and technical consultation most emphatically did *not* want this particular outcome, as a survey of their responses will rapidly reveal. The CPBF certainly made it abundantly clear to Ofcom that spectrum should be seen as a public asset and not a commodity, and that it should thus be used primarily for public purposes.

7.4. Indeed, the consultation process itself revealed in a particularly acute way a problem which we have raised before, namely that although Ofcom’s consultations appear to be democratic (and thus in the citizen interest), in that theoretically they are open to anyone, they are in fact heavily weighted against civil society groups, who quite simply lack the resources to respond adequately to any but a handful of them. Corporate interests, on the other hand, employ armies of staff precisely to respond to such consultations, which for them are quite simply another aspect of their extensive lobbying activities (which in themselves raise serious citizenship issues about the workings of the democratic process at both the UK and EU levels). Furthermore, the digital dividend involved particularly complex technical issues, and these inevitably were much easier for corporate rather than civil society interests to deal with.

7.5. In our view, taking a market-led approach to awarding the digital dividend, which in effect means flogging it off to the highest bidder, is nothing short of a total disaster from the point of view of the citizen interest. Again, Ofcom in reporting the result of its digital dividend review simply resorted to highly questionable assertions posing as authoritative judgements. For example: ‘We recognise that many services can provide broader social value, but we do not think that support via implicit subsidies in the form of spectrum is necessary to realise this. Explicit support through direct funding is more transparent and can achieve a better outcome’. Again, two blindingly obvious

question immediately arise: ‘better’ in what way, and ‘better’ for whom? Further articles of faith follow in the remark that a spectrum auction ‘reflects our view that an auction is the fairest and most transparent way to award rights to use spectrum and that it is superior to a beauty contest. We think that market mechanisms are the most effective tool available to encourage efficient use of spectrum and should be used unless there is a compelling case to the contrary’. But on what, exactly, is this ‘view’ based? And by what precise standards is ‘efficient use’ being judged here?

7.6. To read one particular section of Ofcom’s report of its digital dividend review is immediately to realise just what a desperate betrayal of the citizen interest Ofcom has committed in deciding to auction the spectrum: ‘Many stakeholders have suggested to us that we should ensure the digital dividend is used for particular uses or by particular users. Their proposals have included PSB in HD, local television, mobile television, wireless broadband in rural areas, public safety services, healthcare, education, community development, and providing new services for people with disabilities’. These will now never happen. Experience – not economic theory – very strongly suggests that those media interests which dominate the current media landscape will snap up the spectrum, and that which isn’t used for purely commercial purposes will simply not be used at all, since Ofcom has refused to insert any ‘use it or lose it’ clauses into the terms of the spectrum auction. And all this at a time when the conventional local media – in particular local ITV news services and local papers – are in a more parlous state than ever before. Consider, for example, that in France there are 112 local digital TV channels – that is one channel for every 199,000 viewers. In Spain there are about 1000 such channels: one for every 19,000 viewers. In Latvia there are 24: one for 33,000 viewers, Britain has precisely ten: one for every 2,480,000 people. Utilising the digital dividend in the citizen interest could quite literally have revolutionised local communications, but Ofcom has ensured that this will never, ever happen. In our view, Ofcom is quite extraordinarily fortunate that the mainstream media – all of whom, of course, have a vested interest in backing the spectrum auction option – effectively prevented most people from realising what extraordinary democratic and communications benefits the digital dividend could have brought them.

8.1. For all the various reasons outlined above, then, the CPBF, like many other civil society groups, has very little faith in Ofcom as a body which can ‘further the interests of citizens in relation to communications matters’.

8.2. In particular, reading the discussion paper and Ofcom’s many other documents we are once again struck by the sheer alienness of the language and concepts routinely used by Ofcom. The institution seems largely unwilling or unable to come to grips with the qualitative dimensions of the communications system, and as Sylvia Harvey has pointed out in a paper in *Screen*: ‘Its language and organising concepts are suitable for an analysis of markets and competition, but not of social significance and cultural value’. The result is what she calls a ‘distinctive myopia’. This is most certainly not the way in which those who work in media and cultural studies (who are, after all, unlike economists, experts in the media and culture) discuss the subject. Still less, and more importantly, is it the way in which audiences discuss it. No sane person would scroll through the EPG and remark: ‘Tonight’s choice of viewing represents a clear example of market failure’, nor, having watched a programme which they disliked, complain: ‘That programme had very definite negative externalities’. Sylvia Harvey refers aptly to Ofcom discourse as a kind of ‘lunar landscape’ and argues that ‘the emphasis on measuring at the expense of evaluating suggests a kind of institutional autism characterised by a sharp focus on facts and an inability to see the bigger picture or to sense the shifting tones and textures of a social and cultural environment’. Indeed Ofcom’s emphasis on facts (or what it takes to be facts) irresistibly suggests to us a comparison with Mr Gradgrind’s school in *Hard Times*. So what, we wonder, does Ofcom think girl number twenty should know about the citizen interest in communications?

8.3. As Sylvia Harvey concludes: ‘It is arguably the case that the twin factors of the drive to digital and a fascination with market transformation have had the effect of flicking off a key switch in the Ofcom institutional brain. The off-switch is currently set against four key issues: the communication requirements of citizenship, the cultural quality, value and impact of television programmes, the support measures required for creative, critical and innovative programme-making and the “value for money” represented not just by the BBC but also by the other “free to air”

broadcasters'. The fact that these are, in our view, the four most important issues facing the communications sector at the present moment makes Ofcom's switch-off all the more worrying. We do of course wonder if the global cataclysm finally unleashed by the 'deregulation' of the financial markets will make Ofcom wonder if the 'deregulation' of broadcasting is such a good idea after all, but we are not particularly hopeful. In our experience, when events fail to turn out in the way in which theories suggest that they should, institutions in thrall to those theories blame reality for not behaving as they think it should and redouble their efforts to make it do so.

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