

Communicating Democracy

A response to Ofcom's discussion paper *Citizens, Communications and Convergence*.

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Introduction

We welcome the opportunity to comment on Ofcom's discussion paper *Citizens, Communications and Convergence* issued on 11 July 2008. In our view there are both strengths and weaknesses in Ofcom's performance with regard to its duty to 'further the interests of citizens in relation to communication matters'. This primary duty was assigned to Ofcom by the 2003 Communications Act:

Weaknesses

1. It has taken Ofcom nearly five years to issue its first statement on the issue of citizens' interests. In this regard the new regulatory body was perhaps taking its cue from a government that had at first refused to accept the citizenship duty into the draft legislation.
2. A further apparent lack of interest in the issue may be found in Ofcom's consistent practice of conflating the terms 'citizen' and 'consumer' and in its early use of the term 'citizen-consumer'. This latter term seemed to imply that there were no distinctive communications issues to be tackled by Britain's citizens and their political representatives.
3. In establishing its institutional culture, and in welcoming visitors within its doors, Ofcom appears to have accorded the privilege of face-to face communication predominantly to the representatives of producer interests. User, citizen and civil society groups have enjoyed only a minimal presence at Ofcom events. Thus the disciplined focus on supporting the growth of communications businesses has not been matched by a parallel interest in listening directly to the opinions of the users of communications services. Much research has been undertaken into the habits of the viewing, listening, phoning, texting and web-surfing public but these users have existed as statistics for Ofcom executives and not as persons to be invited into productive dialogue.
4. For over two hundred years the concept of political equality has provided much of the ballast and substance for the term 'citizen'. The American Revolution of 1776 established the principle that governments derive their legitimacy from the consent of the governed; while in more modern times we have come to believe that this consent must be informed. Political accountability – the essence of democracy – can only work if citizens are well informed and if they trust their sources of information.

In the early years of British broadcasting the universal availability of broadcast signals – available to all homes and all citizens - was regarded as one of the hallmarks of the public service system provided by the BBC. This availability was achieved at considerable cost as a transmitter network was built to reach (almost) the last valley and the last island. The network, and its capacity to relay high quality and credible content, became one of the defining characteristics of the new communications infrastructure for democracy. Moreover the principle of universal access to high quality information, and high quality dramatic representation, predated by some twenty years the principle of providing a universal system of healthcare, free at the point of use.

By the late twentieth century the initial impulse to develop broadcasting as part of the cultural infrastructure of democracy had given way to the recognition that broadcasting could also be a profitable business, with prices established for different categories of consumers. Thus, for example, in its Communications White Paper of 2000 the government urged its proposed new regulatory body to make Britain home to ‘the most dynamic and competitive communications market in the world’. Some of this ambition has been achieved with an exponential growth in commercial broadcasting and, in particular, with the growth of subscription television. Subscription broadcasting established the principle of exclusivity in broadcast markets and is incompatible with the principle of universal access.

In the light of these developments the *Citizens* document of 2008 gives no evidence that Ofcom is willing to reflect upon - or even to recognise - the different objectives of broadcasting considered as a business and broadcasting considered as part of the communications infrastructure for democracy. There is a striking absence of reflection upon the principles of universal availability and universal provision. Instead the issue of access is presented as one of the desirable consequences of reasonable cost and technical competence, with no reference being made to the larger issues at stake in terms of communicative and political rights and informed citizenship. The *Citizens* document does not recognise the connection between the provision of high quality and universally available information and the ability of citizens to call their political representatives to account.

5. There is a striking absence in this, as in many of Ofcom’s documents, of any reference to the cultural significance and value that derives from the content and quality of individual programmes. It is as though a forest were being surveyed from the air with no capacity to spot either that some individual trees are dying from within or that some changes in temperature have resulted in the appearance of magnificent new species.. It is not possible to consider citizenship interests in broadcasting without reflecting upon the content and quality of specific programmes and genres. Moreover it would be incorrect, in our view, to assume that citizenship needs are met only by factual programming. Since the work of great dramatists, entertainers and satirists also contributes to the sharpness and quality of public understanding and debate.

Strengths

1. The strength of Ofcom's performance in respect of citizenship issues is largely to be found in some aspects of its two major reviews of public service broadcasting - in 2004-5 and 2008-9; this second review is still in progress at the time of writing.
2. Ofcom's publication of a wide variety of statistics and research findings - principally in its annual *UK Communications Market Review* - provides some invaluable material and evidence to underpin a variety of analyses of British communications. As should be expected, not all of these analyses concur with Ofcom's identification of key trends, opportunities or threats.
3. The Communications Act requires Ofcom to undertake regular reviews with the objective of maintaining and strengthening public service broadcasting (PSB). However the legislation also indicates that in any evaluation of the range and quality of services these may be 'taken together'. What this means in practice is that when commercial public service broadcasters wish to discontinue unprofitable programme genres the licence-fee funded BBC can, as it were, 'take up the slack' and satisfy the review by providing programmes in the otherwise missing categories. Thus, in the case of ITV's past practice of discontinuing most of its peak-time documentary and current affairs, together with its more recent announcement that it is no longer commercially viable for it to provide children's programmes, non-news regional programmes or extensive, locally-based news services, the required quality indicator can still be met if other broadcasters (probably the BBC) provide them.
4. However, the strength of the PSB reviews quickly becomes a weakness (in respect of catering to audience interests and, arguably, in meeting a larger public interest) for two reasons. Firstly the 'taken together' rule permits a diminution in the range and quality of the PSB services provided. Secondly, the understandable and theoretically desirable objective of providing a quality alternative to BBC provision in the threatened genres has led Ofcom to propose that part of the BBC licence fee should be allocated to its competitors in order that they might provide alternatives. There are many dangers in this proposal including a possible longer term dysfunction as the more extensive disaggregation of previously BBC-specific resources results in both inadequate competition and a lowering in the quality of the BBC's own programmes and services. If public money were to be spread so thinly that the quality of programmes suffered, this development would not meet Ofcom's own objectives and would not be in the public interest.

5. Recommendations for Change

1. Establish a new Content Panel to replace the existing Content Board. Such a body would enjoy the same degree of independence currently allowed to Ofcom's Consumer Panel.

2. Ensure that the new Content Panel has an independent competence to take evidence, consult with producers and users and publish its findings.
3. Include within Ofcom's annual programme of work a series of seminars and events designed to promote the vigorous exchange of ideas between the regulator and relevant civil society organisations.
4. Conduct an internal review within Ofcom to determine the appropriateness of the current balance between decisions taken in the public interest and those taken in response to producer lobbying. Publish the findings of this review. One consequence of the review would be to ensure that sufficient quantities of spectrum are allocated on the basis of a rigorous public interest test. The test would recognise the importance of quality, diversity and impartiality in public communication and the role that such communication plays in sustaining a democratic political system and process.
5. Conduct public hearings designed to examine the ways in which British broadcasting makes a distinctive contribution to PSB in Europe and in relationship to the statement on PSB offered in the European Union's Amsterdam Treaty that:

The system of public service broadcasting in member states is directly related to the democratic, social and cultural needs of each society, and to the need to preserve media pluralism.

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