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## What is the citizen's interest in communication regulation? Ofcom's agenda for 'Citizens, communications and convergence' Conference paper

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**What is the citizen's interest in communication regulation?  
Ofcom's agenda for 'Citizens, communications and convergence'**

**Sonia Livingstone<sup>1</sup>**

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**Introduction**

Writing 20 years ago, ten years even before the Department of Culture, Media and Sport was established, when television policy was overseen by the Home Office, and when the UK had few schools of journalism or departments of communication, Colin Seymour-Ure (1987) surveyed the 'now you see it, now you don't' character of British media policy with dismay. His article lists a litany of regulatory inconsistencies across the media landscape, itself ill-defined – he included press, television, radio, cable, satellite, film, music and books – but not telecommunications. Although he doesn't quite spell it out, the implication is that a coherent media policy is desirable.

Writing ten years on, and with the internet already a reality, Collins and Murrone (1996) again surveyed the multiplying regulators and regulatory incoherence and ineffectiveness in relation to media policy. Their explicit call for a converged regulator combined several purposes – to promote innovation and competition in a converging market, to increase choice for business and domestic consumers, to ensure public representation and accountability in regulatory decisions, and to ensure fairness in redress, rights and vulnerabilities.

Another decade has passed, and as part of a fast-changing regulatory regime (Livingstone and Lunt, 2007), we've now had a converged regulator – the Office of Communications, Ofcom – for five years. Some things didn't turn out quite as expected – in the end, only five regulators were swept up into Ofcom, leaving out advertising, film, video games, press, music, print and, most curiously for a converged regulator, the internet. But whether things are turning out as hoped – in terms of coherence, choice, accountability and fairness – people are beginning to doubt.

This paper focuses on one key issue, signalled by a rather long-running row over the notion of the citizen interest in media and communications regulation - a row in which 'empowerment' has become tied not to positive regulation but to deregulation, and in which policymakers can assert, in all seriousness, that claiming that 'citizen is a meaningless term'.

Twenty years ago, this country was populated, discursively speaking, by citizens in a democracy, readers of the press, an audience for television and radio, customers for

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telecommunications, and consumers on the High Street. Ten years ago, this sensible state of affairs began to change – led, arguably, by New Labour’s discursive makeover of public life (Clarke, et al, 2007), and exacerbated by the lack of a distinct collective noun for those who use the print, television and, among other media, the internet (Livingstone, 2008).

### **Framing the Communication Act 2003**

A significant debate was held during the framing of the 2003 Act (see Livingstone, Lunt and Miller, 2007a and b). This is rapidly summarised below.

In December 2000, the Communications White Paper proposed a converged regulator for the benefit of consumers (focused on choice and value for money) and citizens (focused on standards, fairness and privacy).

In May 2002, the Draft Communications Bill proposed that Ofcom should further the interests of customers (of broadcasting and telecommunications services). No citizens or consumers

In July 2002, Lord Puttnam’s Joint Select Committee concluded a wide-ranging public consultation and – rejecting the customer of the draft bill - recommended that Ofcom should have two principal duties – to further the interests of citizens and of consumers.

A DTI/DCMS note on terminology issued at that time explained that the consumer interest referred to an economic focus on networks and services, for the benefit of individuals; by contrast, the citizen interest referred to a cultural focus on content, for the benefit of the community. In Ofcom, these would be represented by the Consumer Panel and Content Board respectively, and the hitherto separate interests of telecoms and broadcasting would be thereby converged in one regulator.

But in the Communications Bill of November 2002, Clause 3 (General duties of Ofcom) specified that Ofcom was “to further the interests of consumers in relevant markets, where appropriate by promoting competition” – no mention of the citizen.

A lively debate in the House of Lords followed, in June 2003, with Lord Puttnam leading the case for the citizen interest, against the Government’s argument that, first, the citizen interest was already covered by the consumer interest, that the citizen is not a term that can appear in any UK law for it refers only to immigration status, that this is all an unnecessary semantic distraction, and that we must trust Ofcom to do the right thing.

But the government lost the vote, and in July 2003, the Communications Act was passed, requiring Ofcom “to further the interests of citizens in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition.”

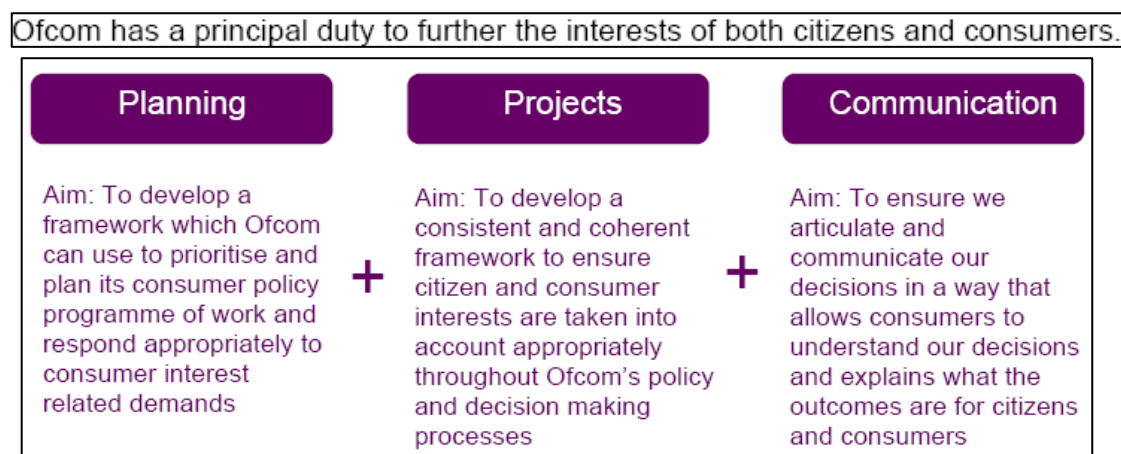
The latter appears rather uncontroversial. Not so the former. Lord Currie, Chair of Ofcom appeared furious, for the wording of the Act seems to confuse the clear vision of Ofcom as an economic regulator.

## The citizen interest in communication matters – now you see it, now you don't

Once established, in late 2003, Ofcom painted on its walls, its website and its reports, its new mission statement –“Ofcom exists to further the interests of citizen-consumers through a regulatory regime which, where appropriate, encourages competition”.

Generally forgetting to refer to citizens thereafter, though occasionally throwing in the neologism, ‘citizen-consumer’ or ‘citizens and consumers’, Ofcom largely acted as if none of this had happened. It established a department of consumer policy, reported progress in meeting consumer concerns, adopted the consumer toolkit developed by the consumer panel, and its homepage offers advice for consumers. It also rebuffed all requests from civil society groups to define and report on its objectives for the citizen interest.

Consider this example, from a current policy statement, of what one might call, the “now you see it, now you don't” citizen interest in communication matters, here headed by the elision of Ofcom’s two primary duties back into one (Ofcom, 2007).



This is not to say they did nothing regarding citizen interests, however. Public service broadcasting has been at the top of their agenda for the past five years. The question of universal service for broadband is rising up the agenda. Community radio has been strengthened by Ofcom’s efforts. They present the digital dividend review, their digital inclusion and media literacy strategies, and various other instances of policy as furthering the citizen interest.

But until this summer, they said little that explicitly scoped in principle how the citizen interest should be defined proactively and reported on in terms of progress or otherwise. Certainly both the Chair, Lord Currie, and the then CEO, Stephen Carter, favoured the hyphenated citizen-consumer, stating that citizen and consumer were two sides of the same coin – all the same people, after all – and insisting that the citizen interest was not thereby subordinated to the consumer interest (Livingstone, et al, 2007b).

But the present CEO, then senior partner Ed Richards, said in 2003, that ‘at the very heart of Ofcom is the duality of the citizen and the consumer’. And in 2004, he gave a

speech which contrasted these terms clearly, developing the earlier DTI/DCMS definition:

<u>Consumer rationale</u>	<u>Citizen rationale</u>
Wants	Needs
Individual level	Social level
Private benefits	Public/social benefits
Language of choice	Language of rights (inclusion)
Short-term focus	Long-term focus
Regulate against detriment	Regulate for public interest
Plan to roll back regulation	Continued regulation to correct market failure

On the other hand, in its Consumer Policy Statement of December 2006, issued shortly after Ed Richards became CEO in October, Ofcom announced:

“In our February consultation document, we proposed a distinction between consumer and citizen interests. This recognised that consumer and citizen interests are closely related and that for many people, the distinction is not very important. Stakeholders’ responses to the consultation confirmed this view. However, for clarity, we propose to maintain a distinction between consumer and citizen policy as follows:

“The purpose of consumer policy is to facilitate the operation of markets, to remove barriers and correct market failures which might otherwise prevent them delivering what consumers want.

“Citizen-related policy is concerned with changing market outcomes in order to meet broader social, cultural or economic objectives.” (p.8)

What these broader objectives might be is left to others to specify, it seems, and one might wish to add political/democratic objectives also.

### **Citizens, Communications and Convergence – a new consultation**

Now Ofcom has called on us all to contribute – and so we should, although word on the street is that Ofcom has little interest in this consultation.

In ‘Citizens, Communications and Convergence’ – a discussion paper issued in July 2008, with a closing date in October, Ofcom acknowledges that this discussion may appear rather tardy – saying, “The fact that we have not published an equivalent statement on citizens has led some stakeholders to suggest that Ofcom lacks commitment in discharging its responsibilities in this area” (p.4).

And they unwittingly reveal their lack of vision in addressing the citizen interest, in saying, “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” (p.8). Those of us excited about the public sphere might differ here, as would those who fear the might of Rupert Murdoch.

Their approach also tends to technological determinism – asking how the mobile phone may benefit citizens and/or consumers; rather than asking about the communication needs, wants and rights of citizens and consumers, to see how mobile communication may be developed to meet them. Nor, more broadly, does Ofcom has, what are the communication needs and rights of citizens, and how could their present communication environment enable them to meet these better?

Still, academics should surely respond positively, having long thought about the communication requirements of democracy, culture and society. The options, as I see it:

1. Stay away. The more Ofcom regulates citizens and consumer interests, the more our souls are governed, as Nikolas Rose would say – advancing the neo-liberal, Foucauldian, vision of State action at a distance that regulates our every thought and desire. In short, media and communications are surely important, but let's not encourage regulators or governments to intervene in the public's engagement with them.
2. Celebrate the consumer turn. Via the language of consumers, or citizen-consumers (hyphenated), a politics of identity and entitlement, that allows hitherto marginalised groups to advance new social agendas – is ushered in.
3. Focus on process. Call for public participation in and accountability at two levels - regulatory decision-making in particular, and the deliberative or participatory processes of democracy in general, thereby ensuring citizens in all their diversity are represented and heard.
4. Focus on outcomes - forget the grand statements and focus on the cases that matter: the future of public service broadcasting, universal access to broadband, media ownership.
5. Point to the growing international rights agenda - Hamelink (2003: 1) puts under the heading of 'communication rights' or 'communication entitlements' all those rights recognised by the UN's Universal Declaration of Human Rights that relate to information and communication, arguing that:

“Communication is a fundamental social process and the foundation of all social organization... Communication rights are based on a vision of the free flow of information and ideas which is interactive, egalitarian and non-discriminatory and driven by human needs, rather than commercial or political interests. These rights represent people's claim to freedom, inclusiveness, diversity and participation in the communication process.”

Arguably, all of these options have value. But it is options 3, 4 and 5 that, variously, we should surely prioritise and develop.

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