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The regulator, the public and the media:

Imagining a role for the public in communication regulation

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For *Intermedia*

Changing regimes of regulation

Economic developments, technological advances, globalisation - all these and more are reshaping contemporary approaches to the management of risk in an ever-shrinking world. One response is the shift from state regulation to various forms of self- and co-regulation. In the UK's media and communication sector, the formation of the new converged Office of Communications (Ofcom) in 2003, itself based on parallel transformations in the domain of financial services regulation (with the establishment in 2000 of the Financial Services Authority), exemplifies the changing nature of regulation that are now underway internationally.

These new regulatory bodies, to a greater degree than ever before, expect the general public to take increased responsibility for managing their relations with the industry and for protecting themselves against risks. Tessa Jowell, then Minister of State for Culture, Media and Sport, framed the emerging relation between regulators, industry and public neatly when she said, soon after Ofcom was established, "if people can take greater personal responsibility for what they watch and listen to, that will in itself lessen the need for regulatory intervention" (*The Daily Mail*, 21/1/04, p. 23). However, the formation of Ofcom was not entirely a deregulatory move since it was also given the responsibility of opening up possibilities for public participation, enhancing the role of civil society and ensuring that the public's interests lie at the heart of regulatory practice.

Our recently-completed research project on the 'Public Understanding of Regimes of Risk Regulation', funded by the Economic and Social Research Council, aimed to understand how complex risk-related challenges faced by the public are being addressed, focusing on how the regulator (for this project, both Ofcom and FSA) seeks to represent the interests of the public, undertake consumer education, engage with stakeholders and influence wider policy formation.

Thus the project asked, on the one hand, how the public is represented within the new culture of regulation and, on the other hand, how the public understands its changing role within communications and financial service regulatory regimes, this potentially influencing personal responses to communications and financial risks. This short article first notes the methods we employed before presenting an overview of the main findings and implications.

Interviewing stakeholders and the public

To understand the changing role of regulation in the personal risks people face, two research questions were formulated as follows:

- (i) How is the public represented (consulted, researched, engaged, reported to) by the regulatory regime and associated multi-stakeholder deliberations?
- (ii) How do diverse segments of the public understand and engage with their role in relation to the regulation of risk, and what is the role of the media in shaping public understanding?

For each domain, a multi-method case study approach was taken, triangulating different data sources. First, we conducted 34 key actor interviews with senior personnel in FSA and Ofcom responsible for public-facing services, including both Consumer Panel Chairs and, additionally, selected industry stakeholders and civil society representatives. Our questions focused on regulatory continuities and changes compared to legacy regulators, the meaning of self-regulation, issues arising from statutory obligations, policy and operational agendas, responses to government expectation, public accountability and consultation, consumer representation and the role of market research in evidence-based, principled regulation.

Then we conducted sixteen focus group interviews with 116 members of the public. The groups included a balance of men and women and were stratified by socio-economic status and life stage ('young adults', 'new families', 'mid-lifers' and 'recently retired'). For these, our questions focused on how people understand 'rules and regulations', good and bad regulation; consumer protection, individual rights and responsibilities, vulnerable groups, and awareness of the FSA and Ofcom.

Last, we analysed media coverage of changing regulatory regimes. For this, we used the online newspaper database, Lexis Nexis, to sample all articles which mentioned FSA (246 articles) or Ofcom (181 articles) in February, May, August or November 2007 from seventeen UK national newspapers. Additionally, we conducted a purposive sampling of public policy documents relevant to both FSA and Ofcom, this informing the construction of interview schedules, media analysis and interpretive data analysis.

Key findings

For reasons of space, these are summarised below rather briefly. More detailed analyses can be found in the project references listed at the end of this article.

Representing and engaging with, the public in the work of the regulator

The changing regulatory regime is generating significant tensions and unresolved issues in both financial services and communications sectors. These focus, among other critical questions, on the degree of responsibility

for risk regulation that can be expected of individuals, how to address the needs of particular vulnerable groups, and what kind of safety net provision is required for the majority.

Regulators in both sectors have developed substantial programmes of consumer-facing activities, including consumer policy toolkits, the work of the Consumer Panel, financial or media literacy policies, complaints procedures, public education and awareness initiatives, open consultation processes etc. There is a strong sense, however, that take-up is disappointingly low, that the reach is uneven and unequal, and that responses to consultations can be skewed by niche interest groups.

In financial services, key issues persist regarding the public's competence to understand and protect themselves against technically difficult financial risk decisions. In communications, a key unresolved issue concerns the nature and importance of the citizen (as opposed to the consumer) interest in media and communications regulation.

Civil society bodies tend to be frustrated with the scale and imperviousness of the regulators' activities, but they also struggle to justify how they represent the interests of the general public, and they also have difficulties in capacity that challenge their ability to respond critically to the mass of public consultations. Thus, although the shift towards a public facing regulatory regime is widely supported, in practice this is less inclusive or transparent than hoped by many, and increasingly 'managed' by the regulator in organisational terms.

Public understandings of changing regimes of risk regulation

Public understandings of risk and regulation are complex. People express strong principles regarding risk and regulation, grounded in personal experience and often differing from one person or group to the next. They tend to confuse different forms of regulation (state vs. self-regulation, UK or European, laws and codes, etc), and they are silent on some key issues - the relation between regulators and the market, regulators' work in ensuring consumer-facing practices within firms, possibilities for consumer representation.

People understand that regulation balances self-regulation by firms and individual personal responsibility, welcoming the choice this brings but also critical that the individual burden of responsibility of risk is too great for some. People judge there is too much regulation in some areas while not enough in others, that regulation is insufficiently accountable or grounded in common sense, this despite regulators' claim to have become more open and 'public-facing'.

People are comfortable positioned as consumers but are critical of how consumer needs are met; they have little interest in participating as citizens in public consultation and engagement processes, presuming their views will not be heard. Indeed, a shared public agenda of dilemmas and concerns about risk and regulation foregrounds problems of trust, participation, self-efficacy

and institutional legitimacy; people judge that real societal problems are neglected while faceless bureaucrats develop elaborate rules to constrain people's freedoms.

There are some paradoxes in how the public understands regulation and risk. People endorse a strong ethos of personal responsibility but also want protections and backups in place. They want more choice but recognise that they may struggle to understand complex information regarding the decisions they face. They worry about the vulnerable yet attack regulation for being intrusive. They see themselves as outside the regulatory process yet pass up opportunities to become engaged, especially in forms of collective action but in relation to complaints.

The role of the media and public debate in shaping public understanding

The above analyses point to a continuing task for the regulators in managing public expectations. People prefer traditional regulation based on supervision, enforcement and consumer protection, they worry about taking on the burden of risk management themselves as a cost of increased consumer choice, and their perceptions are coloured by a wider agenda of lack of trust in institutions and disaffection with routes to participation.

Perceptions are shaped significantly by media representations, with stories and images from the news frequently cited in both stakeholder and public interviews. Main topics of media reporting are financial or other regulatory crises, problems of consumer behaviour, the behaviour of the market, and the activities of the regulators.

The public are not mentioned in most articles and, when they are included, the framing is that of harm, risk, vulnerability and (problems of) literacy. Further, public information is often disseminated in a context of discussions of social control, 'the nanny state' and the burdens of regulation.

Reporting about regulation is concentrated in the broadsheets rather than the tabloids, potentially producing inequalities in information about regulation. The FSA is reported more in *The Times* and Ofcom in *The Guardian*. Ofcom is seen as representing the public interest more than the FSA. Regulation is often presented in terms of the public vs. industry interests, with little attention to government. Most stories concern the activities of regulators or reports on the market; there is little discussion of regulatory policy.

Conclusions

New regimes of regulation combine the interests of citizens and consumers, engage the public, civil society and industry in the regulatory process, and act in the public interest to maintain market confidence. The definition of the public interest, the framing of the possibilities for civil society's engagement with regulation, the balance of priorities given to consumer and citizen concerns, and the relation between industry self-regulation and public responsibility (enhanced via education or literacy initiatives) are all issues that present considerable and ongoing challenges to regulators. Furthermore, the

regulator faces real challenges arising from the changing technology, global reach and complexity of the media and communications sector.

In its early days Ofcom appeared confident that a focus on consumer interests would provide the means of meeting these challenges and that the removal of structural constraints in the market place would provide the public with the opportunity to express its views and concerns through consumption choices. But recently, a more nuanced approach is emerging in which citizenship issues in regulation are coming to the fore (Livingstone, 2008), as Ofcom tackles a number of issues that require a balance between consumer and citizen interests (such as the future of public service broadcasting, digital switchover, expectations of universal broadband services, the relation of advertising to childhood obesity, and so forth), this requiring a broad base of public engagement and discussion.

In charting some of the difficulties that ensue when publics (and the mass media) are drawn into regulatory debates once held primarily with industry and the government, we do not mean to pour cold water on the importance of imagining, and indeed delivering, a role for the public in communication regulation. Rather, our research has merely begun to scope the nature of the challenges ahead.

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