

## Lorna Woods: Reviewing the Communications Review

*As part of the ongoing discussion surrounding the Communications Review, **Lorna Woods**, Professor and Associate Dean of Research at **City Law School**, City University London, explains which areas of communications regulation are being given the most attention, and which areas should be given more.*



The current government has long promised us a review of the Communications Act 2003, but with Leveson rumbling on in the background, progress seems slow. The review process was launched by Jeremy Hunt in 2011 who issued an 'open letter' and DCMS created a [review webpage](#). In 2012 a series of seminars were held (aimed at industry, not consumers/audiences). The topics identified were:

- **Consumers:** this includes content regulation, and online transactional and audience behaviour.
- **Competition in content:** this envisages the market as the solution to diversity issues.
- **Spectrum:** this concerns greater roll-out/connectivity and assumes the desirability of spectrum trading. For example, Ofcom has recently issued a [consultation](#) on one aspect of spectrum: whether there should be charges for national digital terrestrial TV (DTT), local TV and digital audio broadcasting (DAB), in line with Ofcom's duty to secure optimal use of radio spectrum.
- **TV Content:** this questions the current requirements of the existing regulatory framework for broadcasting and looks for other options such as the introduction of tax incentives to support the creation of digital content. It also considers the policy objectives for UK and European regulatory requirements for Electronic Programme Guide (EPG) prominence, conditions for carriage consent and product placement. The Culture, Media and Sport Committee is examining these issues as part of its [inquiry into support for the creative industries](#), with a focus on the development of high quality British content.
- **Radio:** this questions whether the radio licensing regime is sufficiently flexible for future changes, and whether there are existing barriers to the on-going success of the radio sector.

Two points should be emphasised. The first is a recognition of a changing media environment that focuses on new (or not so new) services beyond traditional mass media. The second is a deregulatory impulse. These are no doubt important topics, but does the Communications Review cover everything that is actually under review, or needs reviewing?

While the review did identify carriage issues – and certainly the issue of the fees charged to PSB by satellite companies has [risen up the agenda](#) – it did not raise the issue of net neutrality directly, although this has already been the topic of considerable discussion. (See, e.g., [Ofcom's approach](#) as well as [the voluntary code](#). Ofcom's workplan suggests there may be more to come.)

The review did not directly address challenges in broadcast regulation, implicitly affirming the consensus established in the 2003 Act. Several broadcasting licences are currently being renewed, while the [BBC Charter](#) is not due for renewal until 2016. It may be that the Government was wary of opening the door to calls for [Leveson](#) to be implemented, or that the government is complacent if certain PSB obligations are weakened following licence renegotiation. Moreover, it is often unclear which platforms for content are subject to which types of regulations, such as the [Authority for Television On Demand \(ATVOD\)](#) rules. Having a fractured and piecemeal system does not reflect a converged environment and may be confusing for consumers.

The final issue is media ownership as it relates to competition law. The debacle over the News International/Sky acquisition and the concerns over political influence beg the question: is the current system appropriate? The government has put forward proposals to reform the [competition](#)

regime, but these changes are not driven by media concerns. There is no specific consideration of the public interest aspects of media ownership. Indeed, one proposal is to move the regulators away from using sector specific powers towards considering matters under general competition law, thus undermining future regard for a media specific public interest. This is particularly noteworthy given the criticism of the UK [by the High Level Group on Media Pluralism](#). Moreover, these changes are not being introduced through the review of communications, but as part of the [Enterprise and Regulatory Reform Bill](#). The issue of media ownership may therefore not get the scrutiny it deserves.

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