

Comms Review Series: Telecoms Seek Fair Access to Content & Insist Copyright is for Courts

Regulatory convergence was a key theme in the responses from UK network operators to Jeremy's Hunt's open letter that kicked off the **Communications Review**. The operators that responded believe that the current asymmetric regulatory approach to mobile, cable and pay TV markets has been detrimental to both new entrants and consumers. For instance, mobile operator **Three** drew attention to the fact that Ofcom regulates mobile VOD content as 'Premium Rate' content but the same content over fixed services (such as Virgin Media or BT Vision) is not considered 'Premium Rate'. They call for a new regulatory framework that ensures that identical content is treated the same manner regardless of whether it is distributed through a fixed or mobile network.

Commercial access to valuable content in this converged delivery climate was a recurring element found in the submissions from the big network operators **BT**, **Three**, **Vodafone** and **Talk Talk**. These major players are seeking regulatory intervention to ensure that they have access to a wide range of premium content such as sports and films in order to bundle this content with their service delivery. While not explicitly mentioning Sky, it's likely to be the cable operator's premium shows in their sights. Talk Talk used the recent Sky Sports cross platform requirements as a step in the right direction, but network operators are now seeking ex ante measures to ensure that premium TV content is available on a fair wholesale basis. BT made the interesting argument that if access to infrastructure is assessed on the grounds of market power, then so should access to premium content.

Within this converged delivery model, the network operators are looking for a regulatory framework that will enable them to strike commercial deals with content providers for a guaranteed level of service along an otherwise managed channel. Talk Talk believe that customers will 'want to prioritise' certain content and new innovative services over other traffic, and Vodafone similarly believe that they should be free to offer different grades of service to retail customers and 'other internet players'. A **recent report** from Plum Consulting insisted that, if allowed, the commercial terms of such deals should be available to all content and service providers. This was reaffirmed by Vodafone, who do not want to see content providers offering deals only to competitor networks. Clearly network operators continue to see commercial content delivery as a significant element of their business model over the coming years, and are seeking a regulatory framework that allows them to maximise revenues.

In regards to policing copyright infringement, network operators call for an evidence-based approach to regulation. In alignment with the **Hargreaves Report**, they too believe that regulation in this area has been subject to industry capture and do not wish to see internet regulation privatised through ex ante requirements on ISPs. Ex ante legislation that requires ISPs to police copyright infringement would require significant investment and resources for ISPs, and has the potential to be detrimental for their customers. Talk Talk insisted that copyright is a job only for the courts, and considering BT also tried last year to overturn the Digital Economy Act, it is unsurprising to find them on the same page.

Some respondents used the consultation as an opportunity to criticise the effectiveness and procedures of Ofcom. Three drew attention to reports from both the National Audit Office and the House of Commons' Public Accounts Committee, who reported a lack of transparency in the way that Ofcom measures its performance. This, says Three, makes it difficult to assess whether Ofcom is providing value for money. Talk Talk also took shots at the regulator, saying they have fallen flat with handling market power situations within the network and content markets.

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