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Paper No. 36
KEEPING PACE WITH MEDIA CONVERGENCE: ARE REGULATIONS STILL RELEVANT?

Andrea Millwood Hargrave, Research Director, Broadcasting Standards Commission, UK

Rupert Murdoch argued some time ago that ‘technology (has) carried us beyond politicians and the regulators’. It is this assertion I want to discuss for it seems to me that the issues it raises underpins so much of the debate about convergence, and regulation.

However I take heart, for it is a debate that has more time than some suspect, I would argue – certainly from a British standpoint. Among some commentators there is a sense that the opportunities offered by the converging technologies mean we are on the threshold of major change. But history has shown that, in the UK at least, we are relatively slow to adopt new media opportunities, unless they represent real change and choice as video did. It is likely therefore, that – for quite some time to come – new technologies will complement rather than replace the established forms of broadcasting. Latest predictions argue that the switch off of analogue in the UK would not be feasible for about fifteen years. Other countries might move more quickly, that is true, particularly if they have less developed broadcasting environments. Then the digital/converged technology offer may make more sense and the market penetration of those products might be more rapid.
This is not to deny that we are all in a period of intense technological change. In the UK, digital broadcasting is already a fact with 70,000 subscribers hooked up. The many possibilities offered by a true convergence of telecomms., publishing, computing and broadcasting are close, but it is difficult to predict how quickly that change will come and what its impact will be. So, yes, I think it is still relevant to have a discussion about regulation. We have time now to ask what we require from this brave new world and how we can harness it for the greater and general good while eliminating or at least mitigating its undesirable consequences.

There is now a potentially global culture; a world which has exciting possibilities but also potential dangers. It will challenge, by the radical nature of the technologies, existing value systems and national cultures. It is incumbent upon the citizen to be more than a passive, accepting consumer – he or she must understand these opportunities, both good and bad.

The environment in which the discussion is being had is also germane. We are moving into a world which will rely ever more heavily on huge capital investment by some, while the brains of others will be enough to put them in extraordinary positions of power, and certainly influence. Again, for good or bad. New technology has created industries which contain ever fewer competitors. The paradox is that as audiences fragment, so ownership is concentrated into fewer hands with global alliances linking fields together. Can we be sure that this concentration of ownership is beneficial to the citizen and the consumer? Do private monopolies feel the same need as public monopolies to fulfil certain basic democratic principles? Competition
policy, I argue, is not enough. The public interest aspect of broadcasting and communications makes them a special case.

Will the next big source of conflict be between the information rich and the information poor? Can we let that happen? Have not so many of us sought to create an equality of access to information? When asking if regulation is relevant, we need to look again at some basic questions. We need to confront both the good and the bad, and – I will argue – seek to ensure that the future belongs to us all. Single gateways to the various means of distribution of information and entertainment create the danger of reliance on one supplier – does that still matter? Diversity and richness of access have been so important in the past. Some would argue that there is more diversity and more potential access now, or there will be, than ever before. But more does not mean better or offer greater variety. Research commissioned by my own organisation has shown that, in the case of children's programming, the overall amount of time devoted to such material has increased eight fold over a five year period\(^1\). But the choice of content available has narrowed, so that over one-third of all programming on terrestrial television now on offer is of one genre – animation – while pre-school provision and drama have suffered. On the thematic children's channels available through satellite, over half the product on offer is cartoon material.

So, is Mr Murdoch right? Many have argued that there can be no regulation where so much is on offer. The digital age does pose substantial difficulties to politicians and regulators. But also to consumers and citizens, all aspects of the audience. The detractors argue that, if there had been regulation of the print, then we would never

have the diversity of magazines, newspapers, books that we now enjoy in most countries. In the UK, the written word is subject only to the most basic of laws to do with defamation or obscenity and the press industry watchdog is a self-regulating animal.

But how should we define regulation? In the past in the UK there were certain minimum legal requirements but concepts such as humour and decency towards others governed much of how we behaved. But this has changed and today regulation has come to substitute ethics - we have codes and guidelines and regulatory frameworks to help us live our lives. In my field, broadcasting, there are two direct regulators, and a host of codes and licences.

The organisation I represent, the Broadcasting Standards Commission, has no economic or technical regulatory powers. It is a statutory advisory body, required by its remit to produce a Code of Practice which must be reflected in the codes and guidelines of all regulators and broadcasters within the UK – radio and television. Both satellite and terrestrial.

Why? Why is the Broadcasting Standards Commission there alongside all the other bodies and rules? Part of the answer lies in the historical difference between the press and broadcasting. There has always been a concern that broadcasting, a powerful medium, would have a disproportionate moral influence on society and affect behaviour. We worry about its potentially corrupting influence on our young. But we also applaud the window on other cultures and societies that it offers. We recognise that it presents us with a diversity of views and opinions, that it is easily accessible,
that it stands for cultural identity and – we hope – represents fairness and impartiality. Importantly broadcasting is a benefit to the whole of society, not just to the individual.

So, it is not just about regulating ‘against’ – much of our regulation has been based on the premise that broadcasting represents an immense social and public good. Regulation has sought to maintain certain standards through the provision of quotas, for example, particularly for programming that would not naturally capture large audiences and, hopefully, ensure they are available at times when people want them.

But regulation of broadcasting in the UK was not born simply of concern for the public good. There was spectrum shortage. However, this too was played to a general societal advantage and gave rise to a fundamental principle that has held true in most countries – instead of opting for the highest bidder for this scarce resource, it was decided that the public and social good should be emphasised. In the UK the BBC and then commercial television were born – based on the trio of information, entertainment and education.

Spectrum scarcity is not so much the issue any more, but other scarcities are apparent, also based on resources. Not just money but a scarcity of ideas and of talent. Who will represent the consumer? And without some regulation, who will protect those who have no purse –power, such as children?

I act as an expert witness on a Council of Europe group. This group includes those western European countries of the European Union and also countries such as Switzerland, emerging countries such as Albania and others in Eastern Europe and
Russia. The group’s remit is to look at the ways in which we can increase access by communities, disadvantaged and otherwise, to the new technological opportunities. Within that we have been forced to consider where we stand on harmful and illegal content. Should we label, can we censor, should there be codes of conduct. If so, should they be mandatory? All these debates rage. There are a few key messages though: most players want some framework within which to work. The group is being encouraged by the ISPs to produce a Recommendation that all member states will sign up to, which would promote a Code of Practice and lay out the advisability of filtering and labelling packages. We are not in the business of pinning our standard to any one group but wish the public to be offered choice that is intelligible.

And access by the public to intelligible information is key - The profusion of new services and the actual impossibility of censorship or other forms of direct control make it all the more important that we should have an informed public. The urgent priority for all of us is to encourage greater awareness of media education. We need to ensure there is vigorous and public debate in which we discuss the values we want the ‘new forms’ of broadcasting to reflect.

In the UK we have long argued that there is an active relationship between the viewer and the screen. Over the years, research has shown that the people who watch television are rather sophisticated consumers, who ‘read’ the image on screen in much the same way as they might recognise the bias of a newspaper. They can distinguish, in the main, between their own realities and the depicted reality\(^2\). The remote control

\(^2\) Defining Violence – The Search for Understanding; David Morrison et al; University of \L{}uton, 1999
offers them a means of control and a means to voice an opinion. We need to augment their innate ability to discriminate.

And indeed, the public seems to welcome regulation. I have already suggested that the ISPs who spoke to the Council of Europe committee looked to it for some guidance. In 1997 the Broadcasting Standards Commission published a detailed look at what people thought of regulation in a world where values were changing. We found that two-thirds of the audience were what were labelled ‘neo-Aristotelian’. That is, they were people who felt that the purpose of the state and of regulation is to develop the good character of its citizens. In other words, to maintain basic ethical standards. 16% of the sample were ‘liberals’ – for them, the purpose of the state and of regulation is to protect and promote freedom for its citizens. The remaining one in five people were somewhere between the two extremes.

Within regulation, should there be a place for the individual – the lone voice? The Broadcasting Standards Commission argues that there should be. We are required by our remit to consider a complaint from a single individual. That may seem absurd when a programme achieves an audience of tens of millions. But, in nearly half the cases where we have upheld such a complaint, the broadcaster has acknowledged that they have made a mistake, based on that single complainant. Why should such a structure not be available to the viewer in the new, technologically converged environment?

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3 Regulating for Changing Values; Broadcasting Standards Commission, 1997
There is also the distinction to be made between illegal and harmful content, again part of the Council of Europe’s committee’s remit. Illegal content is rather simpler in a way. In many countries there are hotlines for the reporting of illegal material and they work closely with police forces. Gratifyingly, and increasingly, there are significant international attempts being made to achieve some basic and common standards among hotline providers; in the area of child pornography for example.

Harmful content is more difficult and is often a matter of taste. But why should I not be allowed to protect my child from material I do not want her to be exposed to? I will take my share of the responsibility and employ various policing tactics such as filtering software and, most effectively, standing over her but what can I do if a site is misrated? Where will I turn to then? Regulation can set the requirements for provision of information to me, the user, but must also afford me some redress should I be misled.

Finally, and possibly most importantly in this debate, we need to make clear the distinction between content and carriage. A film is a high value piece of content with property rights. It is meant for public consumption and therefore has to respect certain social or ethical standards. A fax is none of that, and is meant to be private. Because they might travel down the same telephone line, it does not mean that we should apply the same regulatory rules to each of them. The internet is again, different. It is ‘a tribal notice board’, a library, a shopping precinct, an entertainment centre, a bank, a post box. The future regulatory framework needs to take account of these specific differences between these very different functions and services, which have separate values and serve different functions. Content is not easily standardised so the great
challenge is to produce systems which allow customisation by culture, by nationality, by individual belief.

Regulation of ownership and for access could come from government. Legal requirements which ensure minimum standards of respect for human dignity including issues such as privacy, pornography, and the protection of children should be tightened. Self-regulation by the industry and the accompanying responsibility for standards, of service and content, should be encouraged and placed upon those who provide the services. And then the individual must be shown the way to self-regulate, through education and through access to systems that allow such actions – in the converged world this may be through the use of labelling packages. But the individual must be able also to seek redress for the infringement of privacy or unfairness, for the unreasonable offence against standards, for the reduction of real choice.

These are all matters of public good and public policy. They require an ethical approach to the regulatory framework which is guided not only by commercial considerations, but reflects an aspiration for a world where convergence means a forward and positive development for society. Where the best journalism and information are available, where creative skills are set free, and made available to the widest possible public. There will need to be some basic rules. We suggest such regulation:

Should be fair with consistent rules for all providers

Should be transparent with decisions fully explained

Should be accountable with appropriate means of redress available

Should be informed by technical and industrial expertise
Finally it should be effective so that service providers and others are obliged to take note.

June 1999