

WHAT ARE THE ENDURING ISSUES FOR CONSUMERS  
OF COMMUNICATIONS SERVICES?  
ARE CONSUMERS' PRIORITIES AND CONCERNS CHANGING?

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**Effective Consumers**

- access
- effective use
- affordability

**Fair Communications**

- fair terms and conditions of service
- adequate consumer information
- easy, effective, and fair redress

**Consumers' Say in Data**

- privacy
- ownership and control over consumer data

**Informed and Empowered Citizens**

- information and media diversity
- media literacy and consumer participation in media making

In the past two decades since the 1997 *Telecommunications Act*, the communications and media landscape has transformed dramatically for consumers. The range of services available has greatly expanded, and prices of many longstanding and even newer services has dropped over time. The communication services consumers used has fundamentally changed—notably with sophisticated telecommunications services, the emergence of mobile and Internet services,.

It is also the case that maturity of the industry—especially some segments of the industry—has improved in terms of taking into account consumer needs, and their responsiveness to consumer concerns. Generally also there is an acceptance in Australia by industry, and considerable goodwill, that consumer issues need to be addressed, in order for markets to function efficiently, fairly, and in a sustainable way. In effect, there is something of a shared understanding in Australia—a 'social contract',<sup>1</sup> if you will—when it comes to communications services. The nature and composition of

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1 See, for instance, Jorge Reina Schemet, 'Broadband, Internet, and Universal Service: Challenges to the Social Contract of the Twenty-First Century', in Amit M. Schejter (ed.) ... *And Communications for All: A Policy Agenda for a New Administration* (Lanham, MD: Lexington, 2009), 3-28.

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this will be debated, suffice to say it is an important achievement of the turbulent and exciting times in communications since introduction of competition.

Broadly speaking, these improvements in consumer performance by industry revolve around two elements. First, even with a relatively small marketplace dominated across many parts of communications by a handful of large players, the greater range of choices available has led to a more empowered consumer, who can more readily move products and services if they are dissatisfied with one product or service. This emergence of the 'agile', empowered consumer is even more evident—and enabled—by the nature of the online environment, where information can be easily sought from other consumers (via online review sites, blogs, and so on), and consumer power can be aggregated and combined in new ways to influence provider behaviour (e.g. new modes of customer complaint and protest, such as the adaptation of Twitter hashtags, or formation of Facebook protest groups). Often related to this is the second element: emergence of market norms and, if necessary, clear policy and regulation, that consolidates the environment where consumer choice can easily operate, and competition can function.

We see this in the area of customer transfer, where policies need to be in place to enable this (e.g. number portability) and also to ensure efficient and fair treatment by all players in market (e.g. industry regulation creating codes of conduct on 'churn'). In other areas, sections of industry have played important leadership roles in bringing about innovations in complaint handling, consumer information, and billing, to mention but a few.

The challenge faced by leaders in the industry has been obvious: some competitors take a different view of consumer benefit, and often have not been prepared to adopt consumer-friendly practices—or agree to industry codes—unless required to do so by regulation. This challenge bears on the scenario of the 'agile', empowered consumer. Yes, the presence and power projected by online consumers is a new trend that has had real influence on the behaviour of communication business, large and small. We certainly hear about it from highly publicized cases—but it will operate most effectively in an environment where clear consumer protections are already well-established.

Looking forward, there is ample evidence of enduring issues that will remain key concerns for the next decade—if not two decades. A short list would include these main issues, grouped around four key concepts. While these issues may be complex in practice (especially in the forms they take in relation to new services), they remain central. In various ways, they have been conceptualized and expressed by researchers, policymakers, industry, and consumer groups alike.<sup>2</sup> They are at the heart of conceptions of consumers, well-functioning markets, and safeguards.

Recent experience shows that these enduring issues are often neglected with the introduction of new services. Sometimes this occurs for real reason, other than the short-term establishment of new services and players, and profit-taking. There is real risk to allowing new services to flout well-established consumer principles: not only do specific individual consumers and groups suffer losses, but proper-functioning and confidence in the market suffers. We can point to various cases, where regulatory responses to obvious consumer issues were inadequate. Quite a number of these were in the mobiles area including fair terms and conditions in contracts, and premium rate services. In contrast, there are cases where regulation was established on firm foundations and proved capable of providing evolutionary (but not tardy) responses to emerging consumer consumers—a notable case being the establishment of the Telecommunications Industry Ombudsman (TIO) scheme, then its expansion to cover Internet consumers.

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2 Especially useful are: Australian Communications Action Network (ACCAN)'s *Future Consumer: Emerging Consumer Issues in Telecommunications and Convergent Communications and Media* (Sydney: ACCAN, 2009; [http://www.accan.org.au/files/Reports/ACCAN\\_Future\\_Consumer.pdf](http://www.accan.org.au/files/Reports/ACCAN_Future_Consumer.pdf)); and Australian Communications and Media Authority (ACMA), *Enduring Concepts: Communications and Media in Australia* (Sydney: ACMA, 2011: [http://www.acma.gov.au/webwr/\\_assets/main/lib310665/Enduring\\_Concepts.pdf](http://www.acma.gov.au/webwr/_assets/main/lib310665/Enduring_Concepts.pdf)).

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### Enduring Issues for Altered Consumers

The challenge for understanding consumer futures, and in turn, potential regulatory responses, is grasping the forms these enduring issues take—then crafting adequate responses. Access is an obvious case, given it represents the threshold for consumers. If the infrastructure exists, and service is available (through a competitive market or otherwise), then in principle consumers have a choice. In Australia, universal service has required successive laws and regulation to drive such access to the standard telecommunications service to all. The deeper dimensions of access were also registered in the landmark decision to incorporate disability accessibility into universal service.<sup>3</sup> The problem we now face is that the nature of consumer communication has changed.

With online, social, mobile, locative and other media, access requires broadband capacity and mobility, in varying measures. The National Broadband Network (NBN) responds to nearly 15 years' demand from consumers for fast, high-capacity Internet. How it is implemented is complex, and the detail matters to consumers, especially those who are living on the 'edges of the grid' in rural and remote Australia, especially in indigenous communities.

Many Australian consumers have turned to mobile platforms for Internet service, especially with the arrival of relative fast 3G and 4G platforms—and in response to the uneven diffusion of WiFi (widely used though it is, in homes, institutions, and public places). Yet when it comes to evolving mobile communication services, we have a quandry—most concerning when it comes to affordability.

Although many people would think otherwise, affordability is an enduring issue. While the Australian population has increased its average wealth and income, the share of this economic benefit varies greatly across the community, as marked by significant levels of poverty and uneven distribution of income. Then there are the other dimensions of inequality—whereby, for instance, some consumers gain better access to, literacy, and expertise in communication services, by dint of better resourced schools, neighbourhoods, workplaces, or occupations (indicated often by notions of 'social' and 'cultural' capital).

Successive Australian governments have been reluctant to tackle communication affordability head-on—so the 'low-income' measures that do exist remain piecemeal, and reliant on one industry player, as well as expertise and resource of the not-for-profit sector.<sup>4</sup> These leave a significant number of consumers as relative 'information-have-less.' As importantly, it means that the new priorities and concerns of consumers remain unexplored and unaddressed.

For instance, we have known for a long time that many Australians in precarious situations rely upon mobile and Internet communications, and exhibit impressive creativity and resourcefulness in their D.I.Y. solutions. There are many more communication services available now, especially evident in the glittering array of mobile technologies and services. The breakthrough service for consumers was 'pre-pay' mobiles, and the ensuing developments in mobiles over the successive 15 or so years, have seen a very rich palette of mobile technologies eventuate. So, we now have the classic dilemma of our digital age, where 'plenty' rather than 'scarcity' apparently reigns. Many consumers do rely on, and favour, mobile devices and applications. Yet their ability to afford these can be moot.

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3 In the wake of the 1995 Human Rights and Equal Opportunity Commission decision in *Scott v Telstra*. See Michael Bourk, 'Scott v Telstra: A Watershed in Australian Telecommunication Policy,' *Media International Australia* 96 (2000): 69-81. For an argument concerning Internet and disability accessibility, see Peter Blanck, *eQuality: The Struggle for Web Accessibility by Persons with Cognitive Disabilities* (Cambridge, UK: Cambridge University Press, 2014).

4 Gerard Goggin, 'New Ideas for Digital Affordability: Is a Paradigm Shift Possible?' *Australian Journal of Telecommunications and the Digital Economy* 2.2 (2014), article 42, <http://doi.org/10.7790/ajtde.v2n2.42>

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### New Priorities and Concerns

Alongside enduring issues, there are new priorities and concerns. The introduction of telecommunications competition and digital technologies was accompanied by great debate over privacy, and its relevance as a consumer concern. Such argument has only deepened, with the entrenchment of Internet, mobiles, and social media platforms in everyday life.<sup>5</sup> The apparent paradox is that privacy remains a touchstone issue for many, yet consumers are willing to—or feel they have no alternative—share personal information and media content. Further, many corporations seek to push the boundaries of seeking, retaining, and using information, only to experience an equal and opposite response from consumers when they feel their privacy has been violated.<sup>6</sup> For sometime, various commentators and corporations have contended that consumers—especially young consumers—have a different attitude towards privacy. Yet research has suggested that care needs to be taken, in particular that attention needs to be paid to the contexts and meanings of privacy in different circumstances, socio-demographics, and cultural contexts.<sup>7</sup>

Alongside privacy, consumers have new concerns about the collection and use of information related to them, arising from the pervasive gathering and harvesting of data. Such data gathering is increasingly viewed as unwanted surveillance, and it occurs not just from those offering the core communication and media services—but, especially, from applications and software that run on the platforms, and by new kinds of firms, intermediaries, and actors (including governments) that seek to profit from consumer data.<sup>8</sup> The most controversial recent case is the alleged mass surveillance practices undertaken by National Security Agency (NSA) and partner national security agencies, revealed by Edward Snowden. Private corporations have become highly attuned to the potential consumer discomfort and outcry over such surveillance practices, not just when mandated by government. Accordingly, some technology companies figured prominently in public debates over the Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015. Much of the opposition here centred on the cost of government required data retention to the Australian communications industry.

For consumers, the prior question in relation to data collection and use is what say they have in such pervasive practices, what the implications (especially harms) may be, and what options and remedies are available to them. The question arises of whether there are civil rights—and indeed human rights—other than privacy that are potentially infringed when data is used inappropriately. In the Australian context, such rights might include those related to freedom of information (requesting details of data—generated by your communication activity—that a provider holds has proven to be a non-trivial question),<sup>9</sup> as well as anti-discrimination (when data is used to target particular consumers, or consumer segments). There is unprecedented complexity to the data environments that consumers inhabit, made more difficult to understand and manage because of the lack of clear information and

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5 Tim Dwyer, *Convergent Media and Privacy* (Basingstoke: Palgrave, 2015).

6 A point made early on by danah boyd in her classic paper, 'Facebook's Privacy Trainwreck: Exposure, Invasion, and Social Convergence,' *Convergence* 14.1 (2008): 13-20.

7 Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* (Palo Alto, CA: Stanford University Press, 2010).

8 Marc Rotenberg, Julia Horwitz, and Jeramie Scott (eds.), *Privacy in the Modern Age: The Search for Solutions* (New York: New Press, 2015).

9 As illustrated in the ruling of the Information Commissioner in the case of journalist Ben Grubb, who requested Telstra provide him with access to his mobile phone's metadata. See Ben Grubb, 'Me and My Metadata: How I Beat Telstra after My 22-Month Legal Battle,' *Sydney Morning Herald*, 4 May 2015, <http://www.smh.com.au/digital-life/digital-life-news/me-and-my-metadata-how-i-beat-telstra-after-my-22month-legal-battle-20150504-1mz91c.html>.

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options available.<sup>10</sup> So this is a 'wicked problem', and it is surely a high priority 'harm' that regulators need to tackle, urgently, and with a new approach.

### Effective Consumers: Challenging the New Constraints

Such developments in communication services and usage represent an evolution of consumer practices and preferences, which scholar Jonathan Donner has argued—in relation to emergence of the more mobile Internet in the global south—that we need to capture with an 'after-access lens'. According to Donner, we need to understand the 'digital repertoires' of consumers, and the gradations of use they entail. A central issue here that Donner unpacks has to do with the 'new constraints' consumers face that come from the combination of restrictive policies of Internet and mobile providers, the 'built-in' constraints of design assumptions in software and hardware, and the 'taken-for-granted' assumptions about how consumers should use devices.<sup>11</sup> In lieu of identifying and challenging new constraints, the default outcome is that while many communication devices and services do surely offer great capabilities, consumers often cannot afford to realize the promise—or are frustrated by particular business, design, or policy settings in gaining effective and productive use.

If we take up Donner's ideas in our Australian context, it is striking to see two things. Firstly, the communications marketplace, while surely evolving still, falls short of supporting consumers in gaining access and 'effective use' of services. This is a potential loss to economy and society. Secondly, policy and regulation is not up to the task in correcting this situation. While the ACMA, in particular, has made significant advances in developing a research and evidence base for understanding consumers' 'digital repertoires,' it neither has the breadth of mandate nor is it supported by, and part of, a wider framework to chart and address the key issues. That is, our policy and regulatory frameworks, and institutions, are not fit for purpose in gauging and tackling the new constraints consumers face.

Interestingly, Internet users have pioneered much of the debates concerning such constraints, with online discussion of Internet caps, filtering, and so on. But these kind of constraints go much wider. This is evident in the emergence of new kinds of television via online and mobile platforms: services such as peer-to-peer sharing, YouTube, Fetch, Netflix, Stan, mobile television, catch-up and time-shifting and cross-platform services now offered by free-to-air and subscription channel providers. From a long gestation,<sup>12</sup> the vision of plenty has crystallized in these 'connected TV' services in 2015, in particular, but what do the digital repertoires of Australian consumers actually look like? And what kind of effective access and use do consumers actually enjoy? What kinds of services and capability do we, as a society, now think are pivotal? And what kind of regulatory response do we think might be necessary, if a consequential gap exists. (Given that anti-siphoning—twenty or so years on—does not capture the new varieties of Australian television consumption in any adequate sense).

Another key area of new constraints is the role of algorithm, code, and design in shaping digital media services and environments for consumers. Much of the environments consumers encounter with communication services involves computational and engineering design, including: ranking of search results; the preferences embedded in algorithms used in design of social media platforms, such as Twitter and Facebook (where consumers value particular kind of features, which are then often

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10 Finn Brunton and Helen Nissenbaum, *Obfuscation: A User's Guide for Privacy and Protest* (Cambridge, MA: MIT Press, 2015).

11 Jonathan Donner, *After Access: Inclusion, Development, and a More Mobile Internet* (Cambridge, MA: MIT Press, 2015).

12 Andrew Kenyon (ed.), *TV Futures: Digital Television Policy in Australia* (Melbourne: Melbourne University Press, 2007); James Meese, Rowan Wilken, Bjorn Nansen, and Michael Arnold, 'Entering the Graveyard Shift: Disassembling the Australian TiVo', *Television & New Media* 16.2 (2015): 165-179.

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changed without consultation); and recommendation technologies.<sup>13</sup> There are obvious consumer issues in this new 'governance by algorithm', but it is not something that regulators keep a watching brief on. Well-informed consumers will keep tabs on whether Twitter is really about to ditch its @ reply or hashtags, as a key part of its architecture, but it is very much perceived to be a matter in the corporate gift.<sup>14</sup>

If we expand our notion of consumers to take seriously the citizen dimension of adequate information, media diversity, media literacy, and a stake in producing media, there are further constraints that have as yet received little critical, policy, and regulatory attention, or public debate. Here the theme concerning content and services delivered by networks articulated by ACCAN's 2009 report remains relevant, with its key questions: 'Are [communications services and networks] accessible and easily usable? Do they meet the diverse needs of users and support users as creators? Do they deal fairly and consistently with content regulation and content use?'<sup>15</sup> An obvious issue here is that, apart from the Internet, many of the other emerging technologies—including mobiles, locative media, and digital television—are rarely scrutinized from the perspective of consumers-as-citizens-and-content-creators. That is, the question is not often asked: how easy is it for consumers to make media—or at least, better contribute to media and communication—through this digital device, application, or platform?

## Consumers at the Threshold

In this essay, I have briefly outlined enduring issues, new priorities and concerns, and the emerging problematic of the new constraints hampering effective consumers. In conclusion, let us consider what the barriers and challenges that need to shift for such consumer issues to be advanced. In doing so, it is useful to note which issues have been better addressed by industry over time. Also which others are emerging as significant new issues that will be as important as billing or customer transfer have been in the past.

In an environment, where regulatory resources will continue to be scarce, it is also necessary to consider where the priority should be. In broad terms, firstly, governments need to ensure consumers have the basic, threshold components: access, effective use, and affordability when it comes communications. Backed by governments, secondly, regulators need to ensure consumers can access and use services in a fair, well-functioning market. As I have suggested, the foundations of good policy and regulation, into the future, remain the baseline protections on the key consumer issues. As experience with the telecommunications environments indicates, such protections should apply to new services—without needing a protracted period of waiting. Against this robust, clear environment, balancing consumer protection with competition, we can focus on the significant new issues. Especially those which have the most potential to cause harm—and which call for innovative, new ways for regulators to organize themselves to tackle them.<sup>16</sup> I have suggested data gathering is one of the greatest potential harms here; to which the counterbalance is that there are rich methods, approaches, and good research emerging which regulators can harness, if they are prepared to act differently.

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13 See, for instance: Taina Bucher, "Want to be on the top? Algorithmic power and the threat of invisibility on Facebook," *New Media & Society* 14(7): 1164-1180; and Tarleton Gillespie, 'The relevance of algorithms,' in Tarleton Gillespie, Pablo Boczkowski, and Kirstin Foot (eds.), *Media Technologies: Essays on Communication, Materiality, and Society* (Cambridge, MA: MIT Press, 2014), 167-194.

14 Katrin Weller, Axel Bruns, Jean Burgess, Merja Mahrt, and Cornelius Puschmann (eds.), *Twitter and Society* (New York: Peter Lang, 2013).

15 ACCAN, *Future Consumer*, 3

16 Malcolm K. Sparrow, *The Character of Harms: Operational Challenges in Control* (Cambridge: Cambridge University Press, 2008).

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A recurrent challenge for consumers lies in their individual and collective capacities to understand their options, and find the communication services best suited for them. The factors that contribute to this confusion are various, but quite a number are obvious and can be tackled without delay. For instance, there is no reason why policymakers and regulators should not set out frameworks and enforcement to ensure services are only offered via easy-to-understand contracts, and terms and conditions, in formats all consumers can understand. Similarly unconscionable conduct requires resources to investigate and tackle. Misleading advertising is sometimes a difficult issue, but regulators have been prepared to take it on—and this remains vital, especially given new kinds of online and mobile advertising forms and practices. Provision of consumer information cuts across all these areas, but requires further effort. The frontline are the providers themselves, who need to provide clear, accurate information on products and services for consumers—and this will require regulatory backing (in law as well as codes of practice).

Going beyond this, consumers benefit from comparative information. It is often hard for regulators, for instance, to provide up-to-the-minute accurate, unbiased information on services to consumers to based their decision on. Nonetheless, regulators can easily highlight critical aspects of the consumer information puzzle—as the Australian Competition and Consumer Commission (ACCC) has done with its 2015 pilot broadband monitoring program. Clearly, given the dynamic and expanding communication market, providing such information is a challenge but there are new modes of gathering and presenting information, in real-time or near real-time, that can be harnessed. This is the thing that independent bodies are well-placed to do, if resourced—and would greatly assist consumers in exercising choices.

In many ways, a tougher issue in tackling consumer confusion is literacy—financial, consumer, and 'digital' (by which I mean knowing what services offer, and how this might meet a consumer's need). We have considerable experience tackling these literacy issues, that lie at the heart of consumer empowerment (not least through the ACCAN Consumer Grants fund, as well as through programs initiated by various industry players). So these efforts need to be built upon, expanded, and updated, to address emerging services—ensuring all consumers can understand, engage with, and choose what suits them best. Here research is crucial to understand the nature of the social dynamics, contexts, and emerging communication use and repertoire in particular demographics, communities, and settings.

An overarching issue for advancing consumer capacity to understand and choose communication services lies in the structure and characteristics of the environment itself.

By its very nature, the consumer sector is broad and diverse—ultimately encompassing everyone (potentially affecting and including those who might be characterized as 'non-users'). The options for communication services continue to grow, especially with technology-enabled platforms that expand into other sectors, such as transportation (ride-sharing, for instance), health, travel, friendship and intimacy, play and games, and so on.

While there is a much wider variety of services offered by a greater number of firms and organizations, there also exists a countervailing new, internationally-based group of communications corporations that exercise substantial market control, over key facilities. The wide usage of Facebook, LinkedIn, Twitter, Google, Instagram, and other popular social media platforms by Australians will continue to pose difficult challenges for consumers and regulators alike.

The classic scenario for consumer regulation remains: what power does an individual consumer or class of consumers exercise concerning communication services they rely upon, in the face of the resources wielded by a company—especially large and powerful corporation?

As noted, there is now a well-established new twist on an old recourse: consumers can create a social media 'storm', by taking their complaint very quickly to an avid online audience. The prospect that a consumer protest might go viral on social media—including to highlight failings of social media

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companies themselves—offers one highly visible kind of redress. However, especially given the crowded public sphere in which attention—as the first step to countervailing power—should not distract from the need for strong consumer protection frameworks to be maintained and updated. This requires that governments and regulators, as well as those in industry who support good consumer protection, keep a shrew eye on the overlapping global media regulation frameworks.

Accordingly, governments and their agencies, including regulators, have a vital role in ensuring consumers are at the forefront of the next phase of communication services in Australia. This is imperative, because so much of the promise of contemporary communications hangs on the fact that, if not else, they have much everything to do with *consumers*.

If we are involved in a communications revolution, it has to do with the radical way in which consumers are addressed, engaged, and supported by the new technologies and services. There is real promise (if often over-sold) for consumers to improve their lives. There is now a burgeoning market and new industrial and trade opportunities, predicated on access, effective use, and management of communication services. Many communications services—especially those relying upon 'consumer-generated content', and consumer data—are constituted through an ongoing exchange of information, communication, and media content among consumers, reworked by the digital platforms.

Consumer value and productivity is harnessed at a number of levels here. So the real risk is that enduring *and* new consumer concerns are not addressed, there is, at the least, a significant missed opportunity; and, most likely, real risk of worsening social marginalization and exclusion.