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CHECK AGAINST DELIVERY

ENABLE, ENGAGE, EVOLVE: A NEW RECIPE FOR REGULATION
Speech by Lord Grade, Ofcom Chairman, King's College Strand Group
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Introduction

Good evening and thank you all for coming.

I'd like to start by taking you back to the early nineties. Back then, it should be said, I was somewhat sceptical of regulators. The country had gained rather a lot of them: free market economics were in vogue and watchdogs were needed to keep privatised sectors in check. But in my experience, working in the creative world, these were people with whom one often engaged in wearisome, hand-to-hand combat.

How well I remember one meeting at the Independent Broadcasting Authority where they demanded that ITV cancel our most popular programme, the soap opera "Crossroads". Their explanation was that it was, and I quote the chair, Lady Bridget Plowden: "The Authority finds it distressingly popular." I kid you not!

The need for regulation in modern times was brought home to me when I was Chief Executive of Channel 4.   I took a call from Sir Peter Hall, the great director of theatre, opera and film. He was pitching a TV adaptation of *Sacred Hunger*, the novel by Barry Unsworth which describes the cruelty and horror of transatlantic slave ships in the 18th century. The book is truly exceptional, but the subject had been well explored over the years in documentaries and dramas. So, I asked Sir Peter how this story would speak to the audience and concerns of the day.   "Michael," he replied, "you have to understand. In a free market, without regulation, you ultimately end up trading human beings as a commodity."

I have never forgotten his words. Without good regulation, markets risk running wild. And good regulation means being fit for the times.

I can promise you, the Ofcom that I joined as Chair, thirty years later, is galaxies away from those dark days of regulation that seemed to insist, like nanny, 'whatever you're doing, stop it."

Ofcom, I would say, is a very modern regulator. But what does that really *mean* today?

That is a question every regulator should be ready to answer. With the country demanding growth, and public finances under constant pressure, each public body must prove its value. Ofcom must be able to articulate the difference we make and the merits of our approach.

What should a regulator do?

I believe a modern regulator must do three things. It must enable. It must engage. And it must evolve.

Let me explain these in turn.

A regulator that enables

To begin with, we need regulators that play an active role, directing their means to the broader good and showing leadership wherever they can. There is still something in the traditional role of enforcing a set of rules. But to enforce is no longer enough: it is necessary also to *enable*.

That is why regulators should enable economic growth and competition.

At Ofcom, we're doing that through our telecoms work.

- We've created an investment climate that is supporting the fastest roll-out of full-fibre broadband in Europe.

-We're doing it by allocating airwaves to ground-breaking services, from climate monitoring to giving your smartphone a signal from space.

-And we're doing it in broadcasting. Later this week, we will publish our review of public service media – that essential pillar of our hugely successful creative economy, whose talent-creation, export potential and soft power are the envy of the world. More on that in a moment.

We also support growth by <u>deregulating</u> wherever we can. Over time, we've lifted outdated rules around phone boxes and faxes. We've allowed better Wi-Fi routers to come to market quickly, without needing new licences. And we've given more room to commercial radio to broadcast programmes that appeal to their audiences today, rather than being held to legacy commitments from an analogue age.

<u>Enablement</u> works in other ways, too. It might mean working with companies to establish what works and then creating the guidance that captures the best of what industry is doing. That's increasingly necessary; because if the rules and laws that give regulators their powers are too prescriptive, they risk becoming quickly outdated.

Take our mission to make websites and apps safer under the Online Safety Act. The Act sets broad duties on tech firms and establishes a framework for tackling specific harms. Ofcom then develops the codes and guidance that allow companies to comply. But these are not compulsory, because parliament recognised that the online world is rapidly evolving. So, companies can comply in different ways, but our codes provide a clear path to avoid penalties.

Of course, if firms fall short, enforce we will. But in all our work, enable we must.

A regulator that engages

Second, a modern regulator needs to engage and face outwards. They must be present, accountable, transparent and fully conversant with Parliament, the public, civil society and business – not just in the UK, but these days overseas too.

Ofcom has always consulted on its decisions, but today our audience is bigger than even before. We are completely transparent in our decision making, explaining our decisions in detail. We make our data available for companies and academics to harness and explore.

Engagement also means being accountable. Our independence from Government is sacrosanct, especially as we're required to adjudicate on politically-sensitive matters. But we are accountable to the Parliaments and Assemblies, where interest in our work has never been greater. This summer alone we've given evidence to seven select committees across the UK nations. We see that as a vital responsibility. We also welcome scrutiny from the courts, which regularly examine our decisions through appeal.

And Ofcom's sectors, like so many, are global in nature. So must our engagement be. For a long time, we've led the debate among European counterparts about how best to regulate a market like telecoms. We co-ordinate how airwaves are used at international conventions. We deal with US tech and content giants. Now we are a founding member of a global network of online safety regulators, aiming to achieve harmony and consistency in rules applying to services the world over.

A regulator that evolves

Third, and perhaps most importantly of all, modern regulators simply must evolve. So great is the pace of change, so diverse are people's modern needs, so complex are the markets where they engage – that expert bodies need to be super fit, agile and adaptive, just to keep pace.

That is why Ofcom is investing in data, digital and AI tools that allow us to remain efficient and effective in the coming years. We're trialling more than a dozen techniques for improving our productivity and efficiency – from analysing large data sets in our consultations, to optimising our management of the UK's airwaves. Our policy team devotes much time to horizon scanning for future trends – and that horizon is pretty close!

We are learning, too. By conducting and commissioning research – on everything from consumer behaviour to emerging tech – we aim to lead the debate and inform our own decisions.

Efficiency is paramount. Our funding comes from the companies we regulate, many of whom operate in challenging environments. So, we must treat every penny with respect. Over the past decade, except where we've been asked to take on new duties, our budgets and our fees have largely remained flat. The real-terms cost to industry of our regulation has fallen significantly. And because of the fees and penalties we collect, Ofcom is a net contributor to the public purse.

Those are just some examples of how we seek to enable, engage and evolve. That last imperative will be familiar, I'm sure, to everyone here. At times it might feel like we're facing into a hurricane of technological and societal change. Anyone who attempts to stand still risks being blown backwards.

And nowhere is the pace of change greater than the online world.

A safer life online

Here, thirty years after Peter Hall's warning, we see again the consequences of a market left to develop without regulation. In the rush to create a cybersphere of networks and tools that promised to transform our lives, from search to social media, the founders of this new world placed a premium on revenue growth. But they failed to give enough attention to safety.

Society was slow to catch up. And the result is a virtual place where children are routinely approached by strangers. Where they are exposed to content encouraging them to self-harm and end their own lives. Where they find themselves a click away from pornography, often more violent or extreme than anything previous generations might have encountered.

No-one, least of all the tech sector, should be surprised that a situation like this has brought about a societal, political, regulatory and global response. But it has. And now, change is happening.

Just next week, a range of measures from Ofcom designed to protect children online will come into force. We have set out more than 40 practical steps that tech firms should take.

At the moment, children's main path to harm is the content served to them on social feeds. So, companies will need to change their algorithms so they don't promote damaging material. They must have the right teams and resources in place to take swift action when dangerous content is posted. And they must use strong, effective age checks to ensure that minors don't encounter material unsuitable for them. That includes pornography sites. If firms don't comply by next Friday, we'll be ready to take enforcement action.

Earlier this year, duties came into force protecting *all* online users from illegal harm. Tech services now need to carry out proper risk assessments. They should be taking steps to remove criminal content quickly and reducing the risk of it appearing in the first place. I'm afraid we have already identified some firms who have not got their house in order. So, we have already launched around a dozen investigations, and these could result in fines. In very serious cases, we may apply to the court to stop a service being available in the UK, as the Act allows.

At which point, some might ask, has this all become rather Orwellian? Whatever happened to free speech?

When the Online Safety Bill passed through Parliament, there was a fulsome debate about how far regulation should go. In the end, plans to protect adults from content that was 'legal but harmful' were removed. So today, as the online safety regulator, Ofcom is specifically doing two things. We are tackling criminal material, such as terrorist content or child sexual abuse. And we are getting the tech companies to protect children both from the illegal, *and* from content that poses serious risks of harm to their physical or emotional health.

Now if anyone believes that either of those aims is misguided, I really cannot agree. Neither one, to my mind, is in conflict with free expression. Because as the historian Fara Dabhoiwala put it, freedom of speech is "speech *without wrongful interference*. It is not speech without rules". Nor, I would add, is it speech without regard for the laws of the land.

Yet it has never been more important. Freedom of expression remains the lifeblood of our democracy, and the beating heart of Ofcom's regulation. To illustrate the point, look at our work in TV and radio, where last year we assessed almost *ten thousand* pieces of content. Each time – as required by law – we took full account of freedom of expression. We reflected the editorial discretion of broadcasters. And we observed viewers' and listeners' rights to receive a range of information and ideas. In the final analysis, only 33 cases breached our rules.

Did we also take account of the right not to be offended? Actually, no, because no such right exists! Offence, I'm afraid, is the risk that comes with the freedom to say what we think.

So, the days of overbearing broadcast regulation are far behind us. Young theatregoers today might be shocked to learn that, in my lifetime, the Lord Chamberlain's censorship pencil still hung, dagger-like, over every script BEFORE it could be produced in the West End. We have come a long way indeed.

For all these reasons, I believe that contemporary regulators can be powerful forces for good in the markets of tomorrow. To achieve that, we must continue to enable, engage and evolve.

Public service media

Now I would like to finish briefly where I began: with broadcasting, the wonderful industry that I joined half a century ago.

Later this week, Ofcom will report on the future of public service media. These are the broadcasters who form the cornerstone of our creative industries. They represent one of the great British success stories of the last 50 years.

This is a story of boundless imagination, talent and flair. It is populated by chippies, grips, writers, designers, make-up, special effects, directors and actors, who are in demand all over the world. Thanks to their work, British viewers and listeners enjoy a rich and varied diet of British-made programmes.

British broadcasting has always been a happy mix of culture and commerce. But in recent years, the latter has witnessed enormous change. This commercial field is now a battleground for global giants, who have the financial and technological firepower to overpower smaller, domestic players.

Rival entertainment is everywhere: from the TikTok on your phone, to the streamers in your living room. YouTube has declared itself the new television. How can the likes of the BBC, ITV or Channel 4 compete? I learned to my surprise recently that 80% of homes have smart TVs.

Well, regulation can help. We're already making changes under the Media Act to level-up the battlefield. These will mean streamers are subject to Ofcom's standards in the same way as traditional channels, and those channels will remain easy to find.

But there are some things that regulation, no matter how modern, cannot do.

It can't make people watch what they don't want to watch.

The extraordinary choice we enjoy today is here to stay. If anything, it will only increase. Machine learning and large language models will allow media to become even more personalised, responsive and interactive. New social platforms and content models will emerge. Video and audio will be available across an even wider range of personal and household devices. Many of the world's biggest companies will compete even harder for their slice of our time.

So, public service broadcasters will have to fight even harder to stay relevant and valued.

How do they do it? By doing what no-one else can.

They can do it by harnessing their unrivalled heritage, to create collective moments of essential, national viewing.

They can do it by using their national, regional and local networks to reach people from all backgrounds, in every part of the UK.

They can do it by informing our society, through world-class news and documentaries that report and reflect on our lives. As they do so, the standards to which they're held by Ofcom will continue to engender a level of trust among viewers that online and overseas platforms have never achieved.

In the end, broadcasters can only do it making things that people want to watch, *no matter* what is available elsewhere.

What if they fail? What if public service media should end up reaching almost nobody, losing its purpose or withering into the airwaves? Then, I fear, we would lose not only its economic benefits, but also its unique power to improve society. We would be left with – yes – another unregulated, commodified market. This time, the casualties would be trusted British news, drama, discussion and debate – a unique RANGE of programmes made by British producers with no target other than to please the domestic audience.

I don't believe that Domesday scenario will happen; but none of us can afford to be complacent. And to emphasise why it matters, I can do no better than finish with the words of Edward R Murrow, the incomparable American broadcast journalist who covered World War Two from London and then starred weekly on CBS.

Murrow said of television:

> *"This instrument can teach, it can illuminate; yes, and even it can inspire. But it can do so only to the extent that humans are determined to use it to those ends. Otherwise, it's nothing but wires and lights in a box.*
>
> *"There is a great and perhaps decisive battle to be fought against ignorance, intolerance and indifference. This weapon of television could be useful."*

Thank you very much.

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