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THE MISSION OF MEDIA IN
AN AGE OF MONOPOLY

Justin Schlosberg



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ABOUT THE AUTHORS

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SUMMARY

How do you regulate concentrations of media power in a post-digital age? This is a question that has confounded media policy debates across Europe over recent years and it is one which, in spite of a number of inquiries and consultations following the unfolding phone hacking scandal in the UK, remains deeply unresolved. This essay is an attempt to move the debate forward by outlining how more virtuous media markets (those markets that serve to inform, defend and represent citizens) could be created in the UK and across Europe. The discussions and proposals of this essay are based on three widely accepted premises:

1. that the crux of plurality concerns rest on the potential for a small number of media voices to dominate public conversation;
2. that the BBC – by far the dominant source of news across broadcasting and online platforms – should be part of a new plurality framework; and
3. that online news intermediaries – especially in search and social networking – play an integral and expanding role in directing information flows and should therefore also be included.

The challenge facing policymakers in the creation and preservation of virtuous media markets has been underlined by the impact of new technologies on the public sphere and the emergence of new forms of gatekeeping and monopoly power wielded by digital intermediaries. At the same time, 'old media' bottlenecks have not gone away in Europe and much of the world. Consolidation has been the prevailing trend in online news consumption throughout Europe favouring a relatively small number of mostly 'legacy' media brands.

Added to all this, the power vacuum left by evaporating profits and retreating corporate investors has put many newsrooms back in the hands of wealthy individuals, from local oligarchs in Eastern Europe hoping to capitalise on opportunities for political influence,¹ to dot com billionaires in the US seeking to redefine the business of news.²

Whilst the growth of participatory news platforms and an emergent 'fifth estate'³ has offered a challenge to dominant and incumbent news voices, it has far from levelled the playing field. Mainstream press and broadcasters still, in the main, have a much wider reach across fragmented audiences, and a far deeper reach into the corridors of power. Indeed, the broad thrust of empirical research suggests that news agendas on social media and blogging platforms are still predominantly shaped by legacy media, notwithstanding a small number of new entrants over recent years.

In response to these deeply unresolved problems, plurality and transparency have become contemporary buzzwords in media policy discourse across Europe. They seem to capture the ideal of what a healthy, virtuous

1 Open Society Foundations (2014). *Digital Journalism: Making news, breaking news*. Retrieved from <https://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-overviews-20140828.pdf>

2 Freedman, D. (2014). *The Contradictions of Media Power*. London: Bloomsbury.

3 This term is commonly ascribed to a form of journalism that is focused on critical scrutiny of the mainstream news agenda

and democratically legitimate media system looks like, as well as the limits of what governments and regulators can do before encroaching on media freedom and independence. If the number of media ‘voices’ is plentiful, and those who exercise voice are open to public oversight and scrutiny, the risks of political capture posed by media concentration (of politicians by proprietors or vice versa) are dissolved.

But of course, the reality is infinitely more complex. For one thing, increasing or preserving the number of media players in any given market is no guarantee for ensuring diversity of expression. Whilst some studies have indeed demonstrated an inverse correlation – suggesting that lower media concentration corresponds to greater diversity – others have found the opposite, suggesting that the more competitive a media market is, the more prone it is to producing homogenised content across the board.⁴ As the author of one such study concluded, “in the age of information plenty, what most consumers get is more of the same.”⁵

As for transparency, complex financial structures remain a key mechanism by which the ultimate beneficiaries of media groups can remain in the shadows, even when apparently robust media transparency laws are introduced. Though this is not generally a problem in the UK and northern Europe, it explains why much of Ukraine’s TV, for instance, continues to be bank-rolled by non-disclosed offshore sources in Cyprus, in spite of a new law on media ownership transparency that came into effect in 2013. A report by Freedom House notes that whilst the new law prohibits the financing of broadcast companies from offshore zones, it is “easy to evade by creating a chain of three or more shell companies with a Ukrainian broadcasting company on one side and an offshore company on the other. Indeed, offshore companies have not been removed from corporate structures of Ukrainian TV channels as a result of the law’s enactment.”⁶ Alongside this, in Romania there is a marked problem with scrutiny and ownership transparency, with several government figures being implicated in corruption proceedings. This includes the charging of the former chief executive of US listed and regulated company CME, which was also owned by a US citizen at the time (more is detailed on this case later).

Nevertheless, plurality and transparency provide useful starting points for thinking through solutions and, ultimately, developing new legislation that replaces legacy frameworks. There is broad consensus that these frameworks across Europe are out-dated and not fit for purpose. In the UK, the adequacy of the existing ‘public interest test’ regime for monitoring media mergers was first called into question by Ofcom in 2010 when it recommended to the Government regular periodic reviews of media plurality. Since then, this recommendation has been endorsed by Lord Leveson following the 2012 inquiry he led into the ethics and practices of the press; by the Lords Select Committee for Communications in their 2014 report on media plurality; and by the government itself in its own communications review in the same year. And in 2015 Ofcom raised doubt on the necessity of the last remaining media ownership law prohibiting significant cross-ownership of ITV and national newspapers.

4 For instance, whilst Glasser (1984) suggests that competition in radio can mask a lack of diversity, research by Di Cola (2006) attributes homogenised radio programming to ownership consolidation.

5 Boczkowski, P. J. (2010). *News at Work: Imitation in an age of information abundance*. Chicago: University of Chicago Press, p. 10.

6 Freedom House (2013). *One Step Forward, One Step Back: An assessment of freedom of expression in Ukraine during its OSCE membership*. Retrieved from https://www.freedomhouse.org/sites/default/files/FREEDOM%20HOUSE%20One%20Step%20Forward,%20One%20Step%20Back%20-%20Assessment%20of%20FOE%20in%20Ukraine%20ENG_0.pdf

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All of this has underlined the need for a new legislative and regulatory framework, which Ofcom has intimated in its repeated deference to Parliament in determining how plurality judgements should be made, how the balance between regulatory 'bright lines' (that can act as clear triggers for intervention) and flexibility should be struck in a new plurality regime, and what sorts of remedies could be applied. But more than five years since Ofcom first called into question the adequacy of the public interest test, and after more than five related public inquiries, we are still no closer to determining answers to these questions.

Whilst recognising that plurality and transparency are concepts that can be applied to the full range of established and emergent media policy arenas – from net neutrality to privacy and surveillance – the focus here is restricted to three areas of concern. They are particular to the UK context but have strong resonance for broader policy debates at the EU level and in many parts of the world.

The first addresses redistributive measures to promote plurality 'on the ground'. The effects of media concentration in the UK are most acutely felt in the local news sector where, according to a recent report, just four companies now control more than 70% of the total market for local and regional news.⁷ At the same time, spending on long form and in-depth news coverage – especially current affairs programming – has faced the thin edge of resource cuts in news organisations across local and national media and both public service and commercial broadcasting. There is clearly a public interest in sustaining these forms of journalism. The most logical and achievable means of support is via **a nominal levy on the revenues of large scale news intermediaries** in online search and social networking, including Google and Facebook.

The second area of focus is the future of the BBC in response to the Government's recent White Paper for Charter Renewal. Since the BBC accounts for a dominant share of news consumption across platforms, its independence, accountability and structure are fundamental to delivering on wider plurality goals. This paper argues that **whilst BBC production must remain not-for-profit and entirely in public hands, decentralisation of both management structure and delivery is essential to ensure more robust independence, genuine accountability, and internal plurality**. Decentralisation in this sense should not be confused with, or used as a basis for rationalisation or cuts.

The third area concerns dominant news market players not subject to public service regulation – namely large scale newspaper and online news providers - but which nevertheless wield demonstrable influence over the wider media agenda and whose owners often enjoy privileged access to senior government ministers and officials. Given the acute risks of policy capture posed by such influence and access, there is a need to **subject meetings between senior media executives and government ministers to greater public oversight** and for **clear bright lines** in determining when to intervene in media markets with a view to remedying concentrations and bottlenecks that may have a detrimental effect on media plurality. Finally, there is a need for **a new European task force** to investigate potential ways in which news algorithms, operated by major online search and social networking services, could be subjected to regulation aimed at protecting and advancing plurality in the online news sphere.

⁷ Ramsay, G. & Moore, M. (2016). *Monopolising Local News*. Centre for the Study of Media, Communication and Power, Kings College London. Retrieved from <http://www.kcl.ac.uk/sspp/policy-institute/CMCP/local-news.pdf>



THE PLIGHT OF LOCAL AND LONG-FORM MEDIA, AND HOW TO SAVE IT

It's important to acknowledge the limitations of any form of plurality regulation. However targeted and justified, no remedy can guarantee to prevent or redress concentrated gatekeeping and agenda-setting power. What's more, it is essential that any reforms do not open the door to overreach and encroachment on the editorial independence of media organisations. In this regard, dangerous precedents have been set in a number of countries over recent years including Hungary and Poland, where authorities have used the pretext of media plurality to impose laws that facilitate significant state interference with the media. A new media law that came into effect in Poland earlier this year, for instance, consolidates the executive's power of appointments in public broadcasters and has attracted significant condemnation from press freedom and civil liberty groups.⁸

Although top-down plurality remedies may be needed in particular circumstances, there is arguably more potential and less difficulty for policy to deliver on plurality goals by following a more bottom-up approach, and supporting those forms of journalism that are clearly in the public interest but are nevertheless struggling to survive under market conditions. Long-form journalism, which is investigative and content heavy in nature, in particular allows the media to hold politicians to account and provide insightful information, and it should be better supported.

In many parts of the world, the existential crisis faced by both newspapers and public service broadcasters has helped to ferment an emergent 'third sector' of not-for-profit news providers outside of both state and market frames that specialise in long-form or local news provision. Some have managed to capitalise on the cost-efficiencies offered by digital platforms of newsgathering and publishing, as well as 'networked' forms of collaborative journalism. The Center for Public Integrity in the US, the Bureau of Investigative Journalism in the UK, Netzwerke Recherche in Germany, and Chiaralettere in Italy are all examples of independent not-for-profit news organisations for whom broadening and challenging mainstream news agendas is a core part of their mission. Examples are even more common in local and hyperlocal journalism where a number of charity and trust-supported local news outlets are surviving – and some thriving – in an otherwise crisis-ridden sector. Some (such as the West Highlands Free Press and Camden New Journal) have maintained print circulations and many (such as the Bristol Cable) subsist on a hybrid mix of funding from advertising, donations and subscriptions.

Notwithstanding such success stories, the overall picture and future prospects for long-form and local journalism looks grim. Newspapers remain the primary vehicles for investigative reporting but many are facing radical restructuring of their cost base in order to manage the digital transition, and long-form reporting is inevitably facing the thin end of the wedge. In the last three months alone the *Guardian* has announced 250 job losses – many of them editorial – in an effort to stem its £60 million loss last year, whilst the *Independent* announced the closure of its print title altogether. Television has fared little better with a sustained long term

⁸ See Reporters without Borders (2016, 5 January). *RSF calls for firm EU stance if Poland does not abandon new media law*. Retrieved from <https://rsf.org/en/news/rsf-calls-firm-eu-stance-if-poland-does-not-abandon-new-media-law>

decline in current affairs spending well documented.⁹ Since 2010, there has also been a consistent year on year decline in news and current affairs investment by all public service broadcasters.¹⁰

At the local level, the crisis is even more pronounced. As researchers at the Reuters Institute for the Study of Journalism stated last year: “Seeing little potential for growth, investors have lost interest in the sector, as demonstrated by the collapsing market value of publicly traded local newspaper companies.”¹¹ Added to this, local newspaper industries are facing acute levels of market concentration. According to a recent report by Kings College, University of London, just four companies account for over 70 percent of the local newspaper market across the UK whilst their analysis of provision in local authority districts suggested that “monopoly coverage or dominance of a single provider is often not reduced by the availability of online content.”¹²

Whilst recent years have seen the emergence of new online entrants such as BuzzFeed and Huffington Post, it remains to be seen whether they will be able to make a meaningful contribution to long-form and investigative news. The recent announcement of cuts at BuzzFeed suggests that its foray into this area of journalism is proving less than sustainable.¹³ At the same time, smaller players and new entrants face an uphill struggle in trying to gain a piece of the referral traffic pie. Google’s news algorithm certainly appears to favour large scale and incumbent news brands based on metrics that reward volume of coverage and existing traffic above all.¹⁴

Some countries have attempted to address digital disruption to news publishing businesses by enforcing so-called ‘ancillary’ copyrights. In 2013, the German Government passed legislation requiring digital intermediaries to obtain a license from publishers in order to feature cached content from their articles in search listings or news feeds. But a law intended to make Google pay for the use of such ‘snippets’, quickly became a law that forced publishers to agree *not* to be paid.

In the aftermath of the law’s passing, Google was faced with an impromptu lawsuit brought by VG Media – a collecting society representing some of Germany’s largest news publishers – for what it claimed was the continued unlicensed use of its members’ content, in violation of the new law. But Google’s response was to simply exclude sites represented by VG Media from its listings with a catastrophic effect on publishers. Axel Springer announced soon after that it was issuing Google a royalty-free license to start including the

9 Hughes, J. (2013). An Uncertain Future: The threat to current affairs. *The International Broadcasting Trust*. Retrieved from <http://ibt.org.uk/documents/reports/An-Uncertain-Future-the-threat-to-current-affairs.pdf>

10 Ofcom (2015a). *Public Service Broadcasting: Annual report 2015 annex*. Retrieved from http://stakeholders.ofcom.org.uk/binaries/broadcast/reviews-investigations/psb-review/psb2015/PSB_Annual_Report_2015_Background_and__methodology.pdf

11 Reuters Institute, “Local Journalism: The Decline of Newspapers and the Rise of Digital Media”, 2015

12 Ramsay, G. & Moore, M. (2016). *Monopolising Local News*. Centre for the Study of Media, Communication and Power, Kings College London. Retrieved from <http://www.kcl.ac.uk/sspp/policy-institute/CMCP/local-news.pdf>

13 Lacy, S. (2016, 13 April). If BuzzFeed is screwed, everyone else is REALLY screwed. *Pando.com*. Retrieved from <https://pando.com/2016/04/13/if-buzzfeed-screwed-everyone-else-really-screwed/>

14 Filloux, F. (2013, 25 February). Google News: The secret sauce. *The Guardian*. Retrieved from <http://www.theguardian.com/technology/2013/feb/25/1>

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snippets again, after traffic to its websites plummeted.¹⁵ A number of other publishers promptly followed suit, as it became clear that those who refused to play by Google's rules faced the prospect of banishment to a cyber-wilderness.

But the farcical episode didn't end there. In 2015, VG Media submitted a formal complaint to the German competition authority, this time arguing that by refusing to use snippets by publishers who did not agree to a royalty-free license, Google was abusing its dominant market position. It did not take long for the regulator to dismiss the complaint out of hand on the simple logic that you can't *force* someone to use your copyrighted content in order to get paid for it.¹⁶

Other European countries have pursued divergent paths in dealing with this issue. In France, for instance, publishers agreed to lay their claims to rest after Google promised a fund for supporting digital innovation in journalism. In Spain on the other hand, legislators passed a much tougher version of Germany's ancillary copyright law in 2014, making it illegal for publishers to 'opt in' and extending copyright restrictions to cover *any* amount of copyrighted text or hyperlinks. Google's response in that case was to simply shut down its Spanish news service altogether.

But even if ancillary copyright laws were to prove workable, they would be unlikely to deliver on plurality goals. This is because the principal concern with sustainability rests neither with particular providers nor particular types of content, but rather with particular forms of journalism. A viable democracy depends as much on the circulation of diverse viewpoints as it does on particular news services that promote civic accountability and subject all levels of public authority – as well as both state and corporate centres of power – to meaningful journalistic scrutiny.

(see *Case Study: Google* - page 7)

A much more effective way of cross-subsidising professional news is to target those forms of public interest journalism – namely local and long-form – that are most endangered in the new media ecosystem. In prioritising particular *forms* of journalism, any form of cross-subsidy should be open to a range of outlets to bid for – large and small, commercial and non-profit, local and national – and across all platforms of delivery. Supporting a diverse ecology of 'vehicles' for these endangered forms of journalism is essential in meeting wider plurality goals. The particular benefit of this approach is that it incentivises *both* legacy news publishers and established brands as well as smaller and newer entrants to invest in local and long-form news, with potential positive knock-on effects for journalism jobs, especially at the local level.

15 Axel Springer (2014, 5 November). Axel Springer concludes its data documentation: Major losses resulting from downgraded search notices on Google. Retrieved from http://www.axel-springer.de/en/presse/Axel-Springer-concludes-its-data-documentation-Major-losses-resulting-from-downgraded-search-notices-on-Google_22070687.html

16 Bundeskartellamt (2015, 9 September). *Bundeskartellamt takes decision in ancillary copyright dispute*. Retrieved from http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/09_09_2015_VG_Media_Google.html

CASE STUDY: GOOGLE

Online intermediaries have faced criticism for being overly cautious in their responses to legal threats and complaints. In 2002, for instance, Google blocked links to a website critical of Scientology after being served with a complaint under the US Digital Millennium Copyright Act (DCMA). The incident appeared to underline concerns that copyright regulations posed a threat to free speech and that, in the words of one civil liberties lawyer, “people will attempt to silence critics under the guise of copyright infringement”.¹⁷

In Europe, intermediaries have been placed in a similar position under the ‘right to be forgotten’, an addendum to data protection laws that came into force in 2014. Since then, a number of news organisations – as well as Wikipedia – have had articles effectively blacklisted by Google as result of requests under the newly defined legal right. Although many of them have been restored following appeals by publishers, the right has effectively placed Google in a quasi-judicial role with little transparency and no oversight of its decisions.

On top of this, Google now has significant lobbying and media market power. Google has been one of the most vociferous advocates of net neutrality regulation since it first emerged as a public policy issue in 2006. Yet Google itself actively discriminates between content arguably in ways that extend far beyond the capacity of ISPs. Indeed, Google may already have breached many of the new net neutrality rules it helped to bring about, at least in spirit if not the letter. Since 2010, the company has been the target of on-going antitrust investigations by the European Union that began over allegations that its search algorithm actively discriminates against rival online shopping services.

On the other side of the coin, Google pays network operators in order to ensure that its services are afforded preferential treatment – an example of how its unrivalled resources can secure its privileged position. In 2014, for instance, it paid Apple \$1 billion to retain its status as the default search function on Apple’s mobile operating system. It also regularly enters into negotiated deals with ISPs in order to secure a dedicated path into their networks. Throughout many of its activities, Google now exhibits a growing degree of market influence over media and the news.

There is now an equally strong case for such funds to be raised by a small levy on the revenues of digital intermediaries that wield monopoly market power in the search and social networking markets. These companies have a critical bearing on news and information flows and derive significant underlying value from news content. Although Google, for instance, does not profit directly from news content, it forms an integral part of its user experience and volume base, and thus contributes substantially to the company’s bottom

17 See <http://www.cnet.com/uk/news/google-pulls-anti-scientology-links/>

line. In the UK alone, Google generated over £7 billion of revenues in 2015 with a search market share of over 90%. Facebook registered £105 million of UK revenues in 2014 and commands more than 80% of the social networking market.

Much of these revenues stem from advertisers that once supported news publishers. Notwithstanding debates over ancillary copyrights, this further underlines the moral and economic case for a levy. And given the demonstrable capacity for intermediaries to avoid corporation tax by redirecting profits away from the jurisdictions in which they are generated, a small levy on advertising revenues would be a practical and logical basis for the cross-subsidy. It would ensure that such corporations not only make a more meaningful contribution to the public purse (proportionate to the scale of their revenue) but also that funds raised target those forms of public interest journalism most under threat in the new information paradigm.

If a levy was imposed on those companies with more than a 25 percent share of these UK markets, it would currently impact only on Google and Facebook. Based on their last reported annual UK revenues, a one percent levy would generate in excess of £70 million.¹⁸ This level of funding would go some way to nurturing and sustaining a third sector of news. As an indication of potential measurable impact, the Bureau of Investigative Journalism was established in 2010 with a start-up grant of £2million from the Potter Foundation. Within two years of its launch, the agency had secured over thirty-four front-page stories and produced a number of award-winning investigations and current affairs documentaries.

Such funds could be redirected via an independent Media Plurality Board appointed by an independent panel along similar lines to the appointments system in place for the Press Recognition Panel. It could be housed under the auspices of Ofcom or separate boards could be appointed for the nations and operate as adjuncts to the national arts councils for England, Scotland and Wales. An advantage of the latter approach is that the principle of 'arms-length' funding (which prevents government or state interference) is inscribed in the arts councils' structure and governance. The board or boards should operate with a defined remit to collect the levy and allocate funds in support of long-form and local journalism across all platforms and in all sectors.

18 Over time, as the market matures, you would expect more players to fall within this bracket as the market becomes more diverse.



THE BBC: A RADICAL RE-THINK

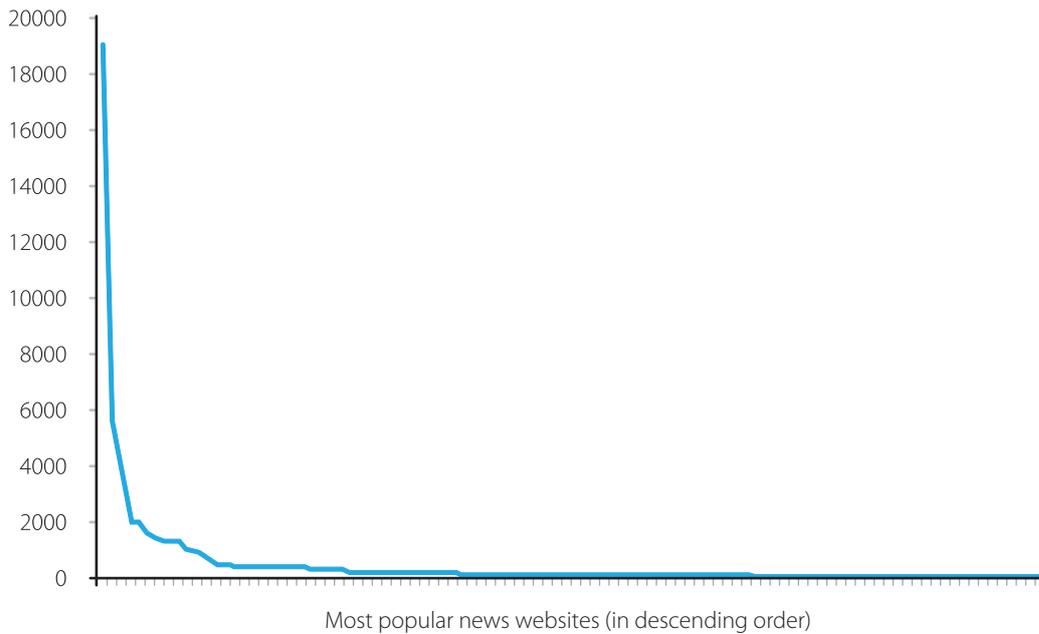
Contrary to widespread expectations and fears, the Government's recent White Paper on BBC Charter Renewal promises little more than moderate change to the BBC's governance and output remit. Despite describing the disappearance of the BBC as a "tempting prospect" just one month prior, Culture Secretary John Whittingdale has come out in support of preserving the BBC's method and level of funding for at least the next five years and, perhaps more importantly, keeping the BBC entirely in public hands.

That will come as welcome relief to those who feared a giant sell-off or switch to subscription funding, and an end to the BBC's unique public service mandate as we know it. Though the door remains open to these pathways in the future, public ownership and license fee funding seem secure at least for the remainder of the current parliament. A much more worrying development, however, concerns proposed changes to the BBC's governance and a system of appointments that threatens encroachment on the BBC's editorial autonomy.

This has critical implications for media plurality. To understand why, it's worth reflecting on the extent of concentration within the online publishing market, and the extent of the BBC's dominance within that distribution curve. SimilarWeb, a digital market research company reported in February 2016 that "the top 10 publishers make up a huge chunk of the U.K. media market and own more than half of the entire industry"¹⁹. The statement was based on data collected over the course of 2015, specifically the number of page visits to 300 selected digital publishers. They found that 65 percent of this traffic was concentrated in the websites of the top 10 publishers. The top five alone attracted more than half of all traffic across the sample. Indeed, if we plot the data from SimilarWeb onto a distribution curve, it yields a highly defined picture of acute market concentration, as shown in Figure 1 on next page.

¹⁹ Schwarz, J. (2016, 8 February). Top UK media publishers and publications – ranked for 2015. *Similarweb*. Retrieved from <https://www.similarweb.com/blog/index-top-u-k-media-publishers-and-publications-of-2015>

Figure 1. Total number of page visits (millions) to top 100 news websites in the UK, 2015



Source: Similarweb, Index: Top UK media publishers and publications 2015. Retrieved from Similarweb.com

The graph reveals a high level of concentration in news consumption in the UK, a mature digital news market that is generally considered relatively pluralistic compared to much of Europe.²⁰

But the head of the curve is itself dominated by a single news provider: the BBC. Indeed, the BBC's online news services attracted more than three times the total traffic of its nearest rival, and more than 30 percent of traffic across the whole sample. From this perspective, the existence of commercial competitors within the head looks like a much needed check on the near monopoly status enjoyed by the BBC. Rather than worrying about the agenda influence of mainstream media in general, some argue that we should be concerned exclusively with the overarching reach and influence of the BBC.²¹

But how far does the BBC's own news agenda reflect or align with that of its commercial competitors? When scholars at Cardiff University set out to investigate this question during the 2015 UK General Election,²² they found that the BBC's overall issue-agenda appeared to have been consistently led by national newspapers.

20 See, for instance, *Media Pluralism Monitor 2014 Pilot Implementation – Results*. Centre for Media Pluralism and Media Freedom. Retrieved from <http://monitor.cmpf.eui.eu/results-2014/>

21 Elstein, D. (2015, 20 May). Reflections on the election: lessons to be learned. *Open Democracy UK*. Retrieved from <https://www.opendemocracy.net/ourkingdom/david-elstein/reflections-on-election-lessons-to-be-learned>

22 Cushion, S. & Sambrook, R. (2015, 15 May). How TV news let the Tories fight the election on their own terms. *The Guardian*. Retrieved from <http://www.theguardian.com/media/2015/may/15/tv-news-let-the-tories-fight-the-election-coalition-economy-taxation>

The extent of this alignment was corroborated by other research conducted at Loughborough University²³ and by the Media Standards Trust.²⁴ These findings showed a strong correlation between the range and rank order of issues covered by both television and the press.

The important point this raises for plurality concerns is twofold. First, if the commercial press exercises a strong influence over the BBC's political news coverage, it makes little sense to consider it a meaningful counterweight to the BBC's dominance of news consumption. The evidence from the 2015 election suggests that if anything, the BBC *amplified* an agenda that was set largely by the commercial press. Second, and by the same token, we ought to be equally sceptical of suggestions that the BBC provides a substantive check on the more partisan editorial agenda of the commercial press.

At a time when many public service broadcasters around the world are facing varying degrees of existential crises, public debate is all too often reduced to a choice between preservation or market-based reforms; with the latter usually amounting to cutbacks or closures. What's left off the agenda is the possibility of radical democratic reform aimed at reconstituting the independence and accountability of public service media. And this is an issue that is intimately tied to questions of media ownership and plurality. The idea that a substantive section of any pluralistic media system needs to be in public hands is one that retains a great deal of force,²⁵ in spite of the digital transition and corresponding end of channel scarcity (which underlined the original rationale for public service media). But the way in which public service broadcasters are structured, regulated and governed can have profound implications for independence in relation to both the state and market.

There are some who argue that the BBC's strength lies in its scale and unitary structure which is assumed to provide a robust defence against both government and market pressures. But there is more reason to think that the exact opposite is the case. A centralised and concentrated BBC is intrinsically more vulnerable to editorial pressures precisely because they can filter down the chain of governors, directors, managers and editors. If a government did seek to censor or control the BBC's agenda, it would be far more difficult if it had to contend with a network of relatively autonomous entities with their own editorial and governance boards more directly accountable to license fee payers.

By the same token, a decentralised, networked BBC would be far more immune to market pressures that many believe have fostered homogenisation of its news output and a growing dependency on a commercial-press-led agenda. Of course, cost-efficiencies would necessitate shared resources and a central newsgathering backbone. But this could function more as a wire agency rather than command and control news desk. With editorial autonomy thus enshrined into its structure, and accountability to audiences enhanced by membership-driven governance, the BBC would be inherently better placed to deliver on internal plurality goals.

23 See General Election 2015 – Media analysis from Loughborough University Communication Research Centre. Available at <http://blog.lboro.ac.uk/general-election/> (last accessed 28 March, 2016).

24 Moore, M. & Ramsay, G. (2015, October). UK Election 2015: Setting the agenda. Media Standards Trust, Centre for the Study of Media, Communication and Power, Kings College London. Retrieved from <https://www.kcl.ac.uk/sspp/policy-institute/publications/MST-Election-2015-FINAL.pdf>

25 See Aalberg, T. & Curran, J. (2012). *How Media Inform Democracy: A comparative approach*. London: Routledge; and Cushion, S. (2012). *The Democratic Value of News: Why public service media matter*. Basingstoke: Palgrave Macmillan.

If such an alternative sounds unthinkably radical, that only reflects how restricted the terms of public debate over the BBC's future have become. Indeed, a decentralised structure along these lines has established precedent in Holland which was ranked the second most free media system in the world by Reporters without Borders in 2016.²⁶ Although it has faced recent cutbacks and consolidation, the Nederlandse Publieke Omroep (NPO) has proved relatively resilient to the pressures of digitisation and continues to demonstrate public value in the strength of its member-based affiliates.

Specifically, the bulk of channels and airtime assigned to NPO is shared among 10 broadcasting associations. Eight of these function as audience cooperatives, with memberships bases that reflect the diversity of interests and groups in Dutch society. The remaining two are 'task-based' broadcasters specialising predominantly in news, current affairs and other factual programming. The NPO is charged with administering this network but does not have overall editorial responsibility for output.

The potential configuration of a networked structure for the BBC could take many forms and the concept of decentralisation should not be seen as a back door route to privatisation or top slicing. If anything, however, the government's white paper for Charter Renewal moves us in the opposite direction – towards greater centralisation – especially in its proposed 'unitary board' of which the majority and most senior members will be appointed by government. For the first time in its history, such an approach threatens to give a government appointee editorial responsibility for all of the BBC's output.

26 See <https://rsf.org/en/ranking>



REGULATING FOR TRANSPARENCY AND PLURALITY

In this final part of the essay we examine the broader regulatory picture as regards transparency and plurality in media markets. We begin by examining the need and potential for greater transparency in relations between senior political and media figures. This addresses the first aspect of Ofcom's twin-sided definition of the media plurality 'problem', i.e. the risk that certain interests wield disproportionate influence over policymaking and the policy agenda, using their ownership of media as political leverage. We then go on to address the second aspect which concerns the need for a plurality of news sources in order to maximise potential for diverse voices and viewpoints to surface in the news.

AN UNHEALTHY INTIMACY

During the Leveson hearings in 2011 and 2012, we learned about a club at the top echelons of political and press power in Britain that operated both as an exclusive social clique as well as a professional alliance:

The relationships within which lobbying can take place are not the everyday relationships of journalism and politics. They are the relationships of policy makers (actual or potential) and those who stand to benefit directly from those policies.²⁷

In reflecting on the nature of relations between media and political elites, Leveson further remarked that the former are "highly skilled, at the level of some proprietors, editors and senior executives, at subtle and intuitive lobbying in the context of personal relationships and friendships".

Of course, there is nothing legally or perhaps even ethically wrong with politicians having meetings or developing close friendships with media executives. The problematic question concerns the degree to which this kind of interaction – which takes place beyond public scrutiny or participation – yields a trickle down influence both over media and policy agendas and/or facilitates reciprocal influence between them. One of the most striking features of testimony given to the Leveson Inquiry by former Prime Ministers (including close friends of Rupert Murdoch) was the frank admission that their views were affected by, in the words of Tony Blair, "how we are treated by them."²⁸

27 Leveson, B. (2012). *An Inquiry into the Culture, Practices and Ethics of the Press: Executive summary*. Retrieved from <http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0779/0779.pdf>, p. 28

28 Blair, T. (2012). *The Leveson Inquiry: Witness statement by the RT Hon Tony Blair*. Retrieved from <http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Tony-Blair1.pdf>

CASE STUDY: UK

In the UK, serious concerns were raised about the relationship between politicians and media at the time of the proposed buy-out of then BSkyB in 2010 Rupert Murdoch's News Corp. Although Leveson's report found no 'smoking gun' of impropriety in policy deliberations, his hearings uncovered frequent back channel communications between government officials and News Corp lobbyists throughout the bid process, to the extent that counsel for the inquiry Robert Jay QC accused the then culture secretary Jeremy Hunt of acting as a 'cheerleader' for News Corp's bid.

Leveson concluded that Hunt had failed to clarify the role of and effectively supervise his Special Political Advisor, Adam Smith, though also asserted that Hunt was "entitled" to his own "strong views" on the bid's merits. His final report argued that politicians should be prepared to publish the details of their meetings with the press, in order to avoid suspicion and in recognition of the difficulty of separating the 'personal' from the 'political' in the relationship between politicians and senior media executives.

But this is not to single out Britain: 'cosy' relations between senior politicians and media representatives is common across Europe. Over the last few years, Eastern Europe has, in particular, come under increasing scrutiny. Roy Greenslade, in the Guardian, has examined the issue of press freedom in the post-Communist countries of Eastern Europe, arguing that "in several instances, steps forward towards the foundation of press freedom have been matched by steps backward".²⁹ He singled out Romania as being particularly worrying.

CASE STUDY: ROMANIA

An example of the importance of plurality, diversity and transparency in media ownership can be found in Romania. The independent international watchdog Freedom House found in its 2015 audit of press freedom in Romania that the Presidential election of November 2014 had seen "biased coverage based on the political agendas of media owners and sponsors".³⁰

29 <http://www.theguardian.com/media/greenslade/2015/aug/24/romania-media-haunted-by-communism-and-dominated-by-capitalism>

30 <https://freedomhouse.org/report/freedom-press/2015/romania>

CASE STUDY: ROMANIA (CONTINUED)

Freedom House also found that “the private media sector is dominated by Romanian businessmen with political ties or holdings in other industries, and these interests typically determine an outlet’s editorial line”. They give the example of Dan Voiculescu, a politician and businessman, whose news outlets throughout 2014 launched attacks on the country’s chief anticorruption prosecutor – who was pursuing charges against Voiculescu. They find that the ownership structures of many outlets are very non-transparent, with “actual ownership often obscured through intermediaries”.

Another example was highlighted in a report by the Centre for Media Transparency. One particular owner the report focusses on is Ronald Lauder, son of the cosmetics tycoon Estée Lauder. He founded the Central Media Enterprise (CME), which has or had media outlets in Slovenia, Romania, Slovakia and Ukraine. In Romania, Lauder worked with Adrian Sârbu eventually appointing him as the CEO of the CME Group. CME is a company listed in the USA and subject to its regulation. However, Sârbu is shortly to stand trial charged with tax evasion, money laundering and embezzlement dating from the time when Lauder owned the company (Lauder has since withdrawn from the board).

The results of the Media Pluralism Monitor 2015, run by the Centre for Media Pluralism and Media Freedom based in the Robert Schuman Centre for Advanced Studies of the European University Institute, meanwhile find that the financial crisis of the last decade had an especially pronounced negative effect on the Romanian press, making journalism a more “precarious” career. This has had the result of “reducing professionalism and editorial independence to barely recognised principles”.³¹

The research suggests that existing domestic laws in Romania are “not effective in disclosing the real owners of media outlets”, and points to limitations in legislation regulating the ownership of both print media and the internet sector as well as a lack of effective sanctions to prevent ownership concentration in radio. Moreover, it finds that:

“No media outlet with a significant audience shows internal pluralism in its editorial content (i.e. excluding op-eds), and external pluralism is driven mostly by the owners, some of whom are covert, highlighting a problem with ownership transparency.”

31 <http://monitor.cmpf.eui.eu/mpm2015/results/romania/>

Across the West, and in general terms, the power of media institutions to draw attention to certain policy issues and solutions and to marginalise or exclude others from public debate is what makes the business of media policymaking acutely vulnerable to capture and corruptive influence. It's important to stress that the flow of influence can operate in both directions: politicians may be 'captured' by the interests of media elites in some contexts whilst in others, media organisations may adopt certain viewpoints, editorial lines or focus on certain issues over others in deference to the will and influence of policymakers. In both cases the integrity and independent performance of the media is undermined. But there remains, to a large degree, a black box between evidence of an 'unhealthy intimacy' and the shape of policy and media agendas that surface via news outlets whose owners enjoy privileged access to the corridors of political power.

Rather than absolving the need for regulation of media ownership and plurality, such uncertainty is precisely why we need it. It is the job of regulation to minimise the *risks* of corruption and capture that are intrinsic to concentrations of political and economic power. How this can be achieved amidst all the complexities of the converged media environment is a deeply complex and difficult question. But a starting point – and one which Leveson himself strongly urged – is to enhance the transparency of media policy making and in particular, meetings between senior government ministers and officials on the one hand, and senior media executives and proprietors on the other. Alongside the British example mentioned in Leveson and the Romanian case study detailed above, media plurality and ownership has become an increasingly important topic in Ireland as well.

CASE STUDY: IRELAND

In Ireland, concerns have been raised about the dominance of the domestic media landscape by the businessman Denis O'Brien. Independent News and Media, of which he is the largest shareholder, publishes both the Irish Independent and Sunday Independent (Ireland's two largest selling newspapers), as well as the Sunday World and Dublin Herald. It also owns 14 regional papers across Ireland as well as 50% of the Irish Daily Star.

Looking beyond the printed press, O'Brien's Communicorp Group owns both of the two foremost Irish commercial radio talk stations, Newstalk and Today FM. This concentration of ownership led to the National Union of Journalists calling in April 2016 for a commission on the future of the Irish media to be established.³²

This dominance has also led to criticism from commentators such as Fintan O'Toole (writing in the Irish Times, a competitor to the press outlets owned by O'Brien), who has claimed that O'Brien's accumulation of "excessive private power" has had "an impact on the public realm of democracy".

32 <http://www.theguardian.com/media/greenslade/2016/apr/08/nuj-calls-for-commission-to-investigate-media-ownership-in-ireland>

CASE STUDY: IRELAND (CONTINUED)

He points to examples such as the findings of the Moriarty Tribunal, published in 2011 and examining the financial affairs of leading Irish politicians and businessmen, as demonstrative of how O'Brien's "private interests intersected in an unhealthy way with the processes of public decision-making".³³

In the UK meanwhile, the Guardian's Roy Greenslade points to O'Brien's ability to obtain an injunction to prevent the reporting of a speech made to the Irish Parliament by Catherine Murphy TD concerning a loan O'Brien had obtained from the state-owned Irish Bank Resolution Corporation (IRBC), despite the speech being protected by Parliamentary privilege, as a further expression of his power.³⁴

In Britain, relatively simple concrete steps could be taken in this direction which do not necessarily require the force of law. At present the Government proactively publishes details of all meetings involving senior government ministers and officials, and external stakeholders. But they are published separately by each government department at different times, on disparate web pages, and with varying titles and file formats. Given the particular concerns attached to meetings with media executives and proprietors, details of these meetings should be published on a central register, made available in spreadsheet format, and updated at regular and defined intervals. Leveson himself also called for the quarterly disclosure of "the simple fact of long term relationships with media proprietors, newspapers editors or senior executives"; "details of all meetings and the fact and general nature of any discussion of media policy issues"; and "a fair and reasonably complete picture... of the frequency or density of other interaction (including correspondence, phone, text and email)".³⁵ He also emphasised the urgency of such measures stating that "the suggestions that I have made in the direction of greater transparency about meetings and contacts should be considered not just as a future project but as an immediate need".³⁶

REDEFINING MEDIA MARKETS

Beyond this, there is a longer term need to develop a robust and future proof framework for measuring and remedying concentration in a converged media landscape, where distinguishing media by platform (broadcasting, print and online) has diminishing use value.

33 <http://www.irishtimes.com/opinion/fintan-o-toole-loud-silence-on-public-interest-in-siteserv-affair-1.2233683>

34 <http://www.theguardian.com/media/greenslade/2015/may/29/irelands-media-silenced-over-mps-speech-about-denis-obrien>

35 Potentially, any further transparency requirements could build upon and expand on the lobbying register created by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.

36 Leveson, B. (2012). *An Inquiry into the Culture, Practices and Ethics of the Press: Volume III*. Retrieved from http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_iii.pdf, pp. 1457-1459

Media convergence in this sense reflects the reality that we are rapidly moving into an age when most if not all news providers operate through both multi-media and on multiple platforms. The main source of confusion stems from categorising online news as a separate and comparable category alongside print and broadcasting. For a start, the internet is clearly not a single medium in the same sense as print, radio or television. If I stream the BBC News Channel live through my laptop, am I consuming television or online news? But especially problematic is the implied suggestion that companies like MSN and BuzzFeed share more similar characteristics with each other than they do with television, radio or print outlets. In fact, BuzzFeed is much closer to a broadcaster like CNN to the extent that it produces and publishes its own news, than it is to an intermediary like MSN that predominantly aggregates and filters news produced by others.

In its proposed framework for measuring plurality, unveiled in November 2015, Ofcom sub-divides online players between 'content originators' (those who produce original news), 'aggregators' (those who host and compile news produced by others) and intermediaries (those who act primarily as a *gateway* to news on other sites), and it further distinguishes between wholesale and retail news providers.³⁷ But its primary default categorisation is still based on a traditional conception of platform. As technologies and platforms continue to evolve, this is likely to create more conceptual difficulties than it solves.

A more robust categorisation for the converged news market as a whole would centre on the varied gatekeeping roles played by different market players. In particular, we can conceive of five categories that reflect the spectrum from editorial to more structural forms of control:

1. At the editorial end of the spectrum are news *providers* that exercise control over newsgathering resources and a degree of brand power at the consumption end of the chain. A news provider may publish or broadcast on its own platforms (in print, broadcasting and/or online) *as well as* provide content for third party aggregators or exclusive retailers. It may also itself carry news content supplied by others. But the defining characteristic of news providers is that their core business is based on copyright – the production and ownership of original news content.
2. A secondary form of gatekeeping is then denoted by *aggregators* who source the majority of their content from wholesale providers. Unlike retailers that carry the content of a single wholesale provider, aggregators exercise a degree of editorial control in the selection, arrangement and prioritisation of stories. In other words, their editorial function is implicit in layout and design (as opposed to production). But this can nevertheless have significant implications for the framing and promoting of particular issue agendas.
3. A third form of gatekeeping that is close to aggregators but one step further removed from editorial control may be considered *portals*. These are defined as platforms that predominantly carry *channels* supplied and operated by third parties. The most obvious examples here would be satellite and cable television providers but we can also conceive of portals as online platforms that 'embed' third party content. These gatekeepers exercise only a modicum of editorial influence in the selection of which channels to carry or embed, as well as their arrangement in menus or electronic programme guides.

³⁷ Ofcom (2012, 19 June). *Measuring media plurality*. Retrieved from <http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf>

4. In the fourth group, gatekeepers no longer can be thought to exercise significant editorial control over news output. Aside from manual editorial interventions to override code, their gatekeeping function consists in their power to *point* users towards particular types of content or particular types of content providers. They are essentially news *gateways* such as search and social networking sites, as well as open publishing and content sharing platforms. Their primary news activity resides in guiding news selection through recommendation, filtering and highlighting.

5. The final category of gatekeepers refers to those companies that *facilitate* access to a network including internet service providers, browsers, mobile operators and app platforms. The distinguishing feature of these services is that they play neither a packaging nor a filtering role in news content and thus have no *direct* bearing on news consumption. However, they do have power to varying degrees over traffic management; that is, the power to admit, exclude, prioritise or otherwise determine the accessibility of particular content and services. This inevitably impacts on the relative prominence of different news services and thus, potentially at least, on the range of voices heard.

The boundaries between these distinctions are of course blurred to some extent by the growing institutional overlap between them. Google, for instance, plays significant roles as both a gateway (through its search services and YouTube platform) and facilitator (through its wireless and mobile ISP services, as well as app platform); whilst Microsoft inhabits the roles of aggregator (msn.com), gateway (through its search and social networking services) as well as facilitator (through its internet service provision).

Table 1. News gatekeeping roles played by BBC, Microsoft, Google and 21st Century Fox

Company	Provider	Aggregator	Portal	Gateway	Facilitator
BBC	X				
Microsoft		X		X	X
Google				X	X
21st Century Fox	X		X		

21st Century Fox on the other hand – the holding company for film and broadcasting assets siphoned off from Murdoch's News Corporation in 2013 – is centred on content ownership but also has a controlling stake in Sky, which monopolises the satellite TV platform in the UK. As such, it can be said to exercise news gatekeeping roles as both provider (e.g. Fox News and Sky News) as well as portal (Sky plc).

Nevertheless, the five conceptual gatekeeping categories outlined above offer a useful starting point in the measurement of media concentration and plurality. The challenge for policymakers is to recognise both the interconnectedness of institutional gatekeepers, as well as the relatively distinct roles that they continue to play overall in the new information paradigm.

Returning to Ofcom's measuring framework, we will now address three further methodological problem areas. These concern the *range* of metrics adopted; the way in which 'sources' are quantified; and an absence of clear bright lines.

AN OVERFLOWING BASKET OF MEASURES AND METRICS

The first problem can be simply stated as this: the broader the array of measures and indicators adopted, the greater the element of interpretation afforded to any decision-making body as regards plurality 'sufficiency'. Just as plurality can be thought of in many different ways, so it can be measured in many different ways.

A prime example of this can be found in Ofcom's qualitative 'narrative' which includes consideration of what it calls 'contextual factors'. These refer to existing plurality safeguards including adherence to the broadcasting code, internal plurality measures, and the adoption of certain governance frameworks (for example, editorial boards or trust ownership) that may mitigate the risks of a media institution serving as a megaphone for vested interests.

So far, so good. But things start to become cloudy when Ofcom refers to another set of indicators that will inform its 'qualitative narrative', this time to do with *impact*. Here, the importance attached to certain news sources by audiences, including levels of trust, seems to add a certain weight to their reach and consumption. This creates something of a logical contradiction at the heart of Ofcom's approach.

The contradiction arises because impact indicators are causally *related* to contextual factors. For instance, it is precisely the adoption of impartiality rules or adherence to other public service commitments that can engender relative 'impact' reflected in audience trust. Ofcom's framework may thus consider a news provider to pose less of a concentration risk because of its adoption of such rules or commitments, but *more* of a risk because they increase levels of audience trust (and hence, impact).

THE PROBLEM WITH MULTI-SOURCING

Another area of conceptual murkiness concerns what Ofcom refers to as multi-sourcing – the practice of consuming news from more than one source. This has become a buzzword for industry lobbyists and policymakers alike and on the surface, seems to be an increasingly apparent phenomenon in the online

news sphere. But in reality, the prevailing trend is in the exact opposite direction. To illustrate the confusion that abounds here, consider this statement made by the UK Government (DCMS, 2014), responding to a Parliamentary inquiry into media plurality:

Consumers actively multisource – such that the large majority of individuals consume a range of different news sources.

Although no source for the claim was provided, the report did reference Ofcom’s standard definition of news multi-sourcing. Yet for the very same year, Ofcom reported that the majority of people – 55 percent – get their news from only one or two sources across all platforms, a figure that *rose* to 59 percent in the following year.³⁸ But even these figures may well be overstating the degree of diversity in news consumption, especially when we consider what counts as a ‘source’ in this sense.

We have already mentioned Ofcom’s distinction between content originators, aggregators and intermediaries in the online news sphere. But when it comes to survey questionnaires that interrogate the number of sources used ‘for news nowadays’, this distinction is not applied. For instance, in a news omnibus survey commissioned by Ofcom,³⁹ respondents were asked which online sources they use and presented with a list of options that included content originators alongside aggregators and intermediaries. So in effect, the survey question framed them all as equivalent news sources.

To illustrate how this can distort the plurality picture, let’s consider a hypothetical example. Imagine that respondent A and B are both avid online news consumers and have both been following recent headline stories on tax evasion, terrorism and the environment. They also share a tendency to gravitate towards the editorial style and slant offered by both the *Daily Telegraph* and the *Mail* online. Respondent A is conscious of her preference for these outlets and tends to visit their websites directly. She recalls reading three recent articles on each of the headline stories – two on the *Telegraph* website and one on the *Mail* website. She therefore selects these two outlets from the list appended to the question ‘which of the following do you use for news nowadays?’

Respondent B is relatively less brand-conscious but no less inclined towards the same stories by the same providers. He read a recent story on tax evasion (produced by the *Telegraph*) on Yahoo and another one on terrorism (produced by the *Mail*) on Facebook. He also read a third story on the environment – another from the *Telegraph* – which he recalls finding on Google News but ended up clicking on the link and reading the article in full on the *Telegraph* website. In his survey response, he therefore selects all four of these outlets – Yahoo, Facebook, Google News and the *Telegraph* – as sources he uses for news.

The data then reveal that between them, these respondents consume six different news sources. But it fails to capture the fact that not only have they based their answers on consumption of the same news agenda, but

38 Ofcom (2015). *News consumption in the UK: Research report*. Retrieved from http://stakeholders.ofcom.org.uk/binaries/research/tv-research/news/2015/News_consumption_in_the_UK_2015_report.pdf

39 Ibid.

also the same selection of stories produced by the same two providers. By considering the likes of Google, Yahoo and the BBC as equivalent news sources, we are both comparing apples with oranges and potentially double counting sources at the same time.

THE CASE FOR FLEXIBLE CAPS IN MEDIA OWNERSHIP

And this leads us to the final and overarching problem with Ofcom's framework in its explicit rejection of clear bright lines that can act as triggers for intervention and minimise the risk of capture in policy decision-making.

In particular, Ofcom has rejected proposals for fixed caps on media ownership arguing that they are too rigid to account for the complexities and uncertainties in rapidly evolving news markets. But clear bright lines are not necessarily synonymous with hard limits or any 'one size fits all' approach to remedies. What they do necessitate is that the precise triggers for regulatory intervention, along with a range of prescribed remedies, are explicitly set out in law rather than left to the discretionary judgement of regulators or ministers.

Ofcom itself has previously suggested to the government indicative ranges for thresholds that could potentially act as triggers. And there are a wide range of behavioural and structural remedies that have been proposed for different cases and circumstances, many of which have established precedent in anti-trust regulation ranging from editorial boards to enforced divestment. It makes sense that a decision-making body should have at its disposal a range of such remedies to apply in different circumstances and to different types of news institution. In terms of behavioural remedies, an emphasis on forms of governance that support an 'arms-length' between media owners and editorial output – such as editorial boards – would fit with plurality goals without imposing forms of public service or content regulation on the press.

ALGORITHM TRANSPARENCY

Beyond conventional plurality remedies mentioned above, a number of scholars in recent years have called for measures aimed at increasing the transparency and accountability of major news algorithms.⁴⁰ There are broadly two potential ways in which these algorithms can impact on news plurality. First, generic weightings for news 'quality' can favour dominant and large scale news providers over smaller players and new entrants, especially if they rank providers based on volume of output or traffic. Second, personalisation filters can limit individual exposure to alternative perspectives or diverse expressions and inhibit the potential for particular viewpoints to reach a critical mass audience.

Though we don't yet know the prevalence or extent of these trends, the risks are endemic in the growing interventionism that has shaped news algorithm development over recent years. That said, it would be neither practical nor desirable to eliminate personalised content filters in news algorithms altogether.

40 See, for instance, Napoli, P. (2014). Digital intermediaries and the public interest in standard in algorithm governance. *LSE Media Policy Project*. Retrieved from <http://blogs.lse.ac.uk/mediapolicyproject/2014/11/07/digital-intermediaries-and-the-public-interest-standard-in-algorithm-governance/>; and Goodman, E. (2014). Informational justice as the new media pluralism. *LSE Media Policy Project*. Retrieved from <http://blogs.lse.ac.uk/mediapolicyproject/2014/11/19/informational-justice-as-the-new-media-pluralism/>

Given the inherent tension between personalisation filters and both privacy and speech rights, a policy emphasis on algorithm transparency would seem the most appropriate course for policymakers to chart. All the more so because of the hidden qualities of algorithm filters which can make news agendas appear natural and spontaneous rather than the work of complex code. Transparency enforcement also reflects the added value of the internet commons as a space within the wider news ecology where, in principle, the flow of content is not 'directed' either by corporations or authorities.

As a start, major news search engines and news feed services could be mandated to present users with prominent opt outs (or opt ins) for personalised filtering. A more radical step would involve subjecting major news algorithms to periodic audits to ensure that they are consistent with baseline plurality objectives. Given the relative infancy of this issue in media plurality policy debates, a dedicated task force or working group should be convened, at the European level, to investigate potential routes towards implementing algorithm governance as part of a broader plurality framework.



CONCLUSIONS AND RECOMMENDATIONS

This essay began by asking how to regulate concentrations of media power in the post digital age. It addressed this question in three broad policy areas with a focus on the UK context, but with wider resonance for media policy across Europe: Redistributive frameworks for nurturing plurality 'from below'; the future of the BBC; and promoting transparency and plurality in converged media markets. This yielded a number of recommendations, each of which speaks to the values of plurality, independence and transparency as foundational to virtuous media markets:

1. A NEW LEVY IMPOSED ON THE REVENUES OF MAJOR ONLINE SEARCH AND SOCIAL NETWORKING SERVICES

This levy should be used to cross-subsidise local and long-form journalism which is facing acute pressures in the evolving news landscape, but which nonetheless typifies the media's potentially unique contribution to democratic life. An independent media plurality board or trust should be established with the remit of administering the fund and supporting these forms of journalism in a range of different vehicles and providers.

2. A NEW DECENTRALISED STRUCTURE FOR THE BBC TO IMPROVE EDITORIAL INDEPENDENCE

The government's white paper on Charter Renewal preserves the BBC as a wholly public broadcaster funded by the license fee, at least for the duration of the current parliament. But it sets a potentially dangerous precedent in consolidating the government's power of appointments over the new 'unitary board' with responsibility for editorial output. A more decentralised structure with devolved editorial responsibility would shore up the BBC's independence and could be modelled on the structure of the Dutch NPO.

3. ENHANCED TRANSPARENCY FOR MEETINGS AND RELATIONS BETWEEN SENIOR MEDIA AND POLITICAL FIGURES

There is an urgent need for the government to adopt proactive measures in line with recommendations in the Leveson Report as well as recent changes to the ministerial code. Simple practical steps could be taken to ensure that details of meetings and interactions are published in a more timely, accessible and comprehensive manner. The UK Government should lobby for such changes at the EU levels as well, to reflect the globalised nature of a lot of media.

4. NEW LEGISLATION TO SUPPORT MEDIA PLURALITY AND EXTEND THE EXISTING PUBLIC INTEREST TEST.

There is a pressing need to develop a new legislative framework that will provide explicit guidelines as to how and when Ofcom should intervene in media markets in order to remedy concentrations that threaten media plurality. An approach that combines clear bright lines with in-built flexibility in determining remedies on a case-by-case basis will protect against both the risk of policy capture in decision-making, whilst also accommodate the complexities of dynamic and converged media markets.

5. A NEW EUROPE-WIDE TASK FORCE FOR THE REGULATION OF MEDIA TRANSPARENCY AND GOVERNANCE

The filtering effects of news feed and search algorithms can potentially impact on media plurality in a number of different ways. Further research is needed into this emergent and rapidly evolving area of concern which would be best pursued at the European level to encourage harmonisation of approaches. The Governments should also lobby for greater levels of transparency in media ownership across Europe, but particularly in Eastern Europe, as the Romanian and Ukrainian case studies in this essays have highlighted as needing special attention.

The challenge for policymakers is to recognise that media plurality and transparency issues are presented by both old and new market players, and both within and across different platforms. Above all, there is a need to acknowledge that progressive reform is both necessary and *possible*. The need for reform of media ownership and plurality rules has been a much talked about issue for some time now, and in many parts of the world. But as digital news markets reach maturity and the political long grass continues to grow, we need action to develop and implement policies that will promote a genuine redistribution of voice and communicative power.