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Media Power and Plurality

From Hyperlocal to High-Level Policy

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Preface

This book draws on 18 months of research activity during 2013–14 under the auspices of a Research Fellowship project funded by the Arts and Humanities Research Council (AHRC), and based at the University of Westminster in London. The project, called *Media Power and Plurality*, was situated within the UK context but sought to draw on debates, experience, and policy thinking in other jurisdictions as policymakers, practitioners, and academics around the world struggle to protect diversity of voice in a hostile economic environment. To that end, we brought together leading specialists in a variety of fora, as well as conducting policy analysis and new empirical research. This book is one of the resulting products of that research and consultation process, and brings together international scholars from law, politics, and communications to examine UK, European, and international plurality policy issues from both ‘bottom-up’ and ‘top-down’ perspectives.

A number of thanks are due. First, we are grateful to the AHRC for its funding and support within a research programme which was specifically designed to allow for new and creative thinking. It is an admirable programme, and we hope this volume reflects its spirit. We are also very grateful to our contributors for their hard work and their prompt responses to our requests for drafts and changes over the Christmas period, often sent from far-flung places with little Internet access. It was a very tight publishing deadline by academic standards – partly because the issues are current and date easily – and we have been hugely impressed by everyone’s goodwill in response to our holiday emails. Thanks also to those many other scholars, policymakers, regulators, lawyers, industry executives and journalists who participated in our research seminars and helped to stimulate debate and contribute to a complex policy dialogue. Summaries of these seminars and links to all of the project outputs, as well as links to other relevant articles, reports, debates, and policy documents, can be found on our dedicated project website <http://www.mediaplurality.com/>.

We are also grateful to our Westminster colleagues for their support both in the initial application to the AHRC and then in implementing the various research commitments. In particular, we would like to thank Fionnuala Rose for her invaluable help in putting together the research proposal, Helen Cohen for her administrative support and efficiency,

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And, of course, no expressions of gratitude would be complete without acknowledgement of the patience and support of our respective spouses and families who accepted the hours spent poring over drafts and redrafts instead of wrapping Christmas presents. A heartfelt thank you from us both and we'll try to make sure it doesn't happen again, at least until next Christmas.

Steven Barnett, London
Judith Townend, Brighton
8 January 2015

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Introduction

Steven Barnett and Judith Townend

Twenty years after the ‘big leap forward’ in democracy, media pluralism is in trouble in too many countries in the wider Europe. Governmental or oligarchic monopolies are getting thicker by the year, and not only in post-Soviet nations but also inside the EU walls. The burgeoning internet-based media alone cannot provide for a functioning diversity of public opinion, and yet they are already under attack.

(Haraszti, 2012)

So wrote Miklos Haraszti, Hungarian writer and academic, in advance of a one-day event on media pluralism staged in the debating chamber of the European Parliament on 27 June 2012. Although not an official parliamentary occasion, the event featured a keynote speech by Neelie Kroes, then vice-president of the European Commission with responsibility for Europe’s media and digital agenda, and was attended by speakers and delegates from throughout the European Union and accession nations. It took place amidst rising concerns – mirrored in countries well beyond Europe – that even as social, mobile and online media technologies were proliferating and apparently presenting new opportunities for promoting diversity and enhancing democracy, a number of counterbalancing factors were conspiring to create uncertainty and anxiety. For a number of reasons, the pressure for political intervention – and for new, imaginative and creative policy ideas to protect and enhance plurality – had intensified.

This initiative was given added impetus by a grass-roots pan-European campaign launched in 2012 by a small group of activists, who combined to launch a European Initiative for Media Pluralism (EIMP). This was

designed to take advantage of a new EU scheme, the European Citizens Initiative, which arose out of the 2007 Treaty of Lisbon to promote greater transnational participation in EU decision making. It requires a minimum of one million citizens in at least seven EU member states to sign a legislative proposal which can then be presented directly to the European Commission, which must then provide a formal response explaining what action it proposes (or the reasons behind inaction). While they cannot mandate legislation, such initiatives can serve to demonstrate strength of feeling across member states.

The EIMP drew on popular dissatisfaction in Hungary, Italy and the UK and what they called the ‘fatal example’ set for other countries by allowing undue media concentration and overt government intervention in regulatory agencies. It also pointed to threats from digital and online worlds and the problems posed by ‘big data corporations’ such as Google and Facebook in their access to and use of private information. In response both to these corporate and political threats, and to the threat posed by continuing closure of media outlets throughout Europe, the EIMP called on Europe’s legislative bodies to take a stand on media pluralism and freedom of expression. It called for signatories to the following declaration:

We demand amendments to the Audiovisual Media Services Directive (or the endorsement of a new Directive) aiming at introducing harmonised rules with regard to the protection of media pluralism as [a] necessary step towards the correct functioning of the internal market. Such legislation, in accordance with the EU Charter of Fundamental Rights, will also meet the public interest objective of maintaining a pluralist democratic debate through free exchange of ideas and information in the European Union. (EIMP, 2014)

By the beginning of 2015, the EIMP had collected just over 200,000 signatories which, while not demonstrating huge public antipathy, demonstrated a significant level of popular concern: ‘democracy and the media’ is not a strong rallying cry in the face of real economic hardship, and these are complex issues. In addition, of course, those very mass media that might normally be called upon to mobilise public interest initiatives are the most likely to feel their own self-interest threatened and therefore to ignore them altogether. While it is therefore very unlikely that media pluralism will be propelled to the top of Europe’s legislative list through sheer popular acclaim, there is sufficient evidence of mounting anxiety about threats to plurality and diversity across Europe and within nation states.

Underlying this mounting anxiety is a fundamental belief – expressed by scholars, writers and policymakers over the years – that media plurality is a vital pillar of a healthy dynamic democracy (see e.g. Bagdikian, 2004; Baker, 2007). If authoritarian states choose to restrict the range of media available or their outputs; if national media are dominated by a tiny number of powerful corporate cartels; if local media become unsustainable through lack of revenues or broken business models; if investment in original newsgathering diminishes to paltry levels, then democracy suffers. Citizens – at both national and local levels – are left uninformed and disengaged, decisionmakers are not interrogated, and political and corporate leaders are unchecked, allowing corruption, wrongdoing and incompetence to thrive.

So what are the factors that have prompted such widespread concern, which has not been ameliorated by the advent of new ‘democratising’ technologies, and if anything appears to be growing? There are at least four, interlinked underlying causes, all of which are likely to become more rather than less pressing over the next decade.

First is the long-standing concern – and traditional basis for intervention in media markets – about undue accumulation of what Baker calls ‘communicative power’ in too few hands. The ability of powerful media proprietors like Rupert Murdoch and Silvio Berlusconi to dictate news agendas, influence public opinion, and engage in political power-broking (or, indeed, achieve elected political power) has animated debates in the UK, Australia and Italy, as well as alerting regulators and policymakers in other countries to the potential damage of allowing untrammelled power in the hands of individual media moguls. In the UK, the phone-hacking scandal and subsequent enquiries and trials into its causes revealed a deeply unsettling level of political collusion between British political leaders and Rupert Murdoch’s News Corporation. Despite his apparent ‘humbling’ (Murdoch’s own words), there is little sign of that power diminishing. In the US, the proposed acquisition of Time Warner by cable and internet giant Comcast for \$45 billion in 2014 raised major issues of political access and lobbying as well as questions about the limits of antitrust laws and what is democratically acceptable. It prompted former labor secretary Robert Reich, now professor of Public Policy at Berkley, to write: ‘When any large corporation wields this degree of political influence it drowns out the voices of the rest of us ... The danger is greater when such power is wielded by media giants because they can potentially control the marketplace of ideas on which a democracy is based’ (Reich, 2014). And while some have argued that the democratising force of new technologies will eventually render the age of the media mogul irrelevant, such

conventional wisdoms do not survive proper scrutiny of the empirical facts (McChesney, 2013). For the foreseeable future, those who command large media organisations will continue to exercise disproportionate 'communicative power'.

Second, the new generation of social and digital media raises separate questions about the gate-keeping powers of global companies like Google, Amazon, Facebook and Apple (described in some Brussels circles as the 'GAFA' problem). While clearly engaged in the news process (disseminating, fuelling), these are not (yet) significantly investing in news production (though the purchase of the *Washington Post* by Amazon's Jeff Bezos may signal a move into this area). Additionally, they are beginning to raise different kinds of questions about concentrated power around access. Whether and how these corporations raise an equivalent threat to democratic vitality has yet to be properly understood or determined, as has the complex question of how to circumscribe such power through regulatory intervention. But debates around net neutrality, search algorithms and security of online data all have democratic implications which are qualitatively different from – but no less important than – debates around the power of traditional news publishers.

Third, there is the economic background, combining worldwide recession and pressure on revenues with an irreversible structural shift of advertising revenues from the press and (to a lesser extent) broadcasting to online, where it is much more difficult to monetise (Currah, 2009; Fenton, 2009). This is exacerbated by audiences both fragmenting and moving increasingly to non-linear consumption which is less easily commodified by advertisers. The resulting pressure on private sector revenues inevitably makes media businesses less sustainable and therefore more likely to seek refuge in consolidation or acquisition. Thus, economic imperatives clash directly with the democratic imperatives of diversity of voice and plurality of media enterprises.

Finally, particularly in emerging democracies and smaller nations, there is anxiety about the role of the state and nervousness about encouraging any government intervention in the media. While more mature democracies, certainly in Western Europe, are philosophically and politically accustomed to benign interventions of, for example public service broadcasting or press subsidies, nations which have only recently emerged from authoritarian rule are instinctively wary of any state involvement. Moreover, even in the more mature democracies, the growing objections of private media enterprises to public subsidies and the shift towards more neoliberal economic policies have created

greater hostility to public interventions which have traditionally been willingly embraced (Leys, 2001; Freedman, 2008).

For all these reasons, long-standing media plurality issues have become more urgent and more relevant, and are increasing pressure on policymakers and regulators to act (or, in some cases, to resist any action at all). This book attempts to examine those challenges to policymakers and media practitioners, and to present analyses which are grounded both in theory and in contemporary developments across different nation states. It consciously takes both a 'top-down' and 'bottom-up' approach: it looks at challenges and policy responses imposed by regulatory regimes designed, for example, to curb undue concentration or protect the independence of publicly funded institutions (and, of course, the frequent political resiling from any such intervention); but it also examines policies, subsidies or other initiatives targeted at new (often digital) media enterprises or organisations not immediately supported by the market but offering manifest democratic or cultural gain. The economic and political logic of such initiatives was well expressed by Noam: 'Where markets do not provide the desirable results, non-economic social objectives must be accomplished through social policy and the allocation of public funds. For media, this means, in particular, public support mechanisms for noncommercial content and distribution' (2009, p. 18). How these have developed and whether lessons are transferable comprise an important part of this collection.

The book falls naturally into four parts. The first is an overview of the policy landscape, with a particular emphasis on the UK. Gibbons asks what is meant by 'sufficient plurality' and suggests that a *practical* pluralism policy should focus on determining whether *all* media users are exposed to *all* significant standpoints of opinion. He argues that, instead of blunt measures of traditional structural regulation (such as quantitative caps), more sophisticated ideas should be and are now being developed which combine structural elements with a wider range of behaviour variables in media markets. These offer more flexibility than traditional concerns with corporate ownership structures and competition law: 'If a threshold of sufficiency is to reflect the media's contribution to democratic functioning, there really is no substitute for a detailed behavioural review'.

In the following chapter, Woods addresses the definitional question around 'media' posed by new technologies, and calls for more coherence in regulatory regimes which have so far failed to embrace transmission or access issues. Tracing the origins and current state of the legislative framework around plurality in the UK – and citing a number

of case studies where the framework is clearly not operating in the public interest – she argues that the current UK regime is both overly complex and incoherent. In particular, she suggests that the current competition-based framework is not capable of dealing with the public interest issues arising from vertical integration (so-called ‘quadruple play’), and that ‘in the light of these weaknesses of a competition-based approach from a diversity perspective, a stronger mechanism for identifying when cases should be referred for special consideration is needed’.

In the final chapter of Part 1, Barnett considers the plurality implications of a publicly funded broadcaster, with particular reference to the BBC and the growing private sector clamour for its funding and remit to be further constrained. In the process, he analyses the UK government’s policy response on media plurality following the phone-hacking scandal and exposure of decades of high-level collusion with Murdoch’s News Corporation. He describes the Coalition Government’s proposals as ‘possibly one of the dullest, shallowest and most unimaginative documents ever to emerge from a government department on a matter of vital public interest’, and examines how the subsequent debate was deliberately repositioned by the self-interested British press as a debate about the ‘dominance’ of the BBC. This, he suggests, is likely to become a more common theme in all countries with a publicly funded broadcaster, and while such arguments are empirically quite easy to rebut, a normative framework which guarantees an institution’s independence, transparency and accountability will help to protect it from such self-serving attacks by competitors.

Part 2 consists of two chapters which focus specifically on the UK local media, where (in common with many other countries) the more limited resources and advertising revenue of smaller geographical areas and populations have created a serious media lacuna. First, Moore analyses the growing democratic deficit and reduction in ‘local-ness’ of content. He draws a particular comparison between a number of funding initiatives in the US to combat a similar deficit, and subsidies in the UK which, he argues, ‘tend to be 20th-century legacy policies that have remained mostly unchanged for the last decade. As such they are now chiefly aimed at managing decline, not at promoting innovation or growth’. He proposes a number of positive policy interventions that would exploit new media technologies as well as existing funding interventions: establishing a contestable fund for news, financed through a digital levy; allowing news organisations to establish themselves as charities; linking the placement of statutory notices to a commitment

to local reporting; requiring the BBC to allow reuse of its news content; creating news hubs; and accelerating the release of open data.

Following Moore, Townend presents findings and analysis of the emerging hyperlocal sector in the UK that could play a larger role in sustainable local news provision, if enabled through positive policy interventions. She suggests that a wholly market-oriented approach to pluralism, reliant on market-related vocabulary and metaphors, is inappropriate, particularly at the local and regional level. Instead, she argues for public intervention – although not in the form of direct subsidy – which will assist the growth of new local initiatives and encourage cultural change at institutions that control access to local information. She elaborates on two specific interventions, both of which are potentially generalisable to other countries: the opportunities for charitable assistance, and institutional collaborations with new players. The emphasis, she argues, should be ‘on positive, rather than inhibitory, policy measures that can be developed to enhance diversity of media content, and to ensure that media users can access accurate civic information, and are exposed to a range of opinions and perspectives’.

Part 3 explores the realpolitik of media policymaking through critical case studies in the US, Australia and the European Union. In the US, Napoli critically analyses the political and economic dynamics of the research commissioning process in the Federal Communications Commission’s quadrennial media ownership review. He identifies a range of problematic tendencies stemming from the FCC’s ‘pre-determined policy positions’ and an inconsistency throughout the reviews that he believes ‘represents a lost opportunity to build a substantial, robust body of knowledge that could contribute to well-informed decision making’. In outlining a normative framework for how the research policy-making process might proceed, he despairs of ‘a system that has never functioned according to any idealised notion of rigorous objectively conducted research informing and influencing policy’. Real change will only occur if there is sufficient political will to reconfigure the institutional apparatus, but this is unlikely given the number of key stakeholders well served by the status quo.

In a similar vein, Brevini charts the initial optimism which greeted two major media policy enquiries in Australia, only to see any potential public interest crushed by the hostility of powerful media corporations which are capable of creating and reiterating a ‘dominant narrative’ to undermine proposals for change. As in Europe, while new campaigning initiatives to enhance media pluralism in principle opened new ‘policy windows’ for change, genuine reform of ownership rules

to foster greater pluralism are very hard to implement in reality. In Australia, a neoliberal discourse was ‘the context – and challenge – for the Australian enquiries: an established and oligopolistic commercial media system combined with the hegemonic credo of market neoliberalism, where media “democratisation” becomes synonymous with deregulation’. If the power to decide policy goals is progressively and solely delegated to – or defined by – established incumbents, she argues, then media policy turns into ‘Big Media Policy’.

Finally, at the level of EU supranational intervention, Harcourt argues that – despite campaigning initiatives such as the EIMP and the Brussels debate outlined above – ‘there is no legal basis for such an initiative at the EU level’. The EU approach is competition-based, and indeed looks benignly on expansion of national groups ‘as large European media companies fit well with European champion policies’. Although politicians in the European Parliament might express their concern about national concentration levels – and the High Level Groups established by Neelie Kroes and examined in this chapter is one response – the EU’s focus is on protecting against state interference, particularly in those states (mainly in Central and Eastern Europe) struggling with declining democratic standards. In other countries, the concentration issue is being addressed through ‘soft’ initiatives such as funding or recommendations, as well as greater emphasis on transparency and monitoring risk.

The final part focuses on comparative international case studies. In the first of these four chapters, Peter Humphreys sets out transferable media policy lessons from Europe – in particular, France and Germany – in relation to press and broadcasting subsidies and regulation. He suggests that convergence presents a problem in the coexistence of very different subsidy and regulatory arrangements, which will need to be rationalised but not used as an excuse for abandoning or reducing them. Public support and structural regulation will still be required, and indeed ‘subsidies will be needed more than ever in the digital online age as a means to maintain a healthy supply of public service content and journalism’. To overcome the convergence and funding issue, he proposes fusing an idea previously mooted by the UK regulator Ofcom – that of a public service publisher – with a French-style industry levy to generate and safeguard revenues.

In the following chapter, Kuhn looks specifically at France and the transformation of its media system over the past 20 years. Some of the state’s policy instruments are designed to secure ‘external pluralism’, defined in terms of the plurality of supply, while the enforcement of ‘internal pluralism’ (defined in terms of equity and diversity of voice)

has been restricted to the broadcasting sector. Kuhn argues that in terms of mainstream political views there is a reasonable degree of plurality under both 'external' and 'internal' pluralism, although minority views tend to be marginalised, especially in broadcast coverage. Despite experiencing the same global shift as other countries towards greater marketisation, he argues that 'the state has not simply abandoned its policy-making and regulatory functions. Indeed, from a cross-national comparative perspective the French state continues to be particularly interventionist in seeking to protect and support national media companies through sympathetic regulation, financial assistance and beneficial tax regimes'.

In the penultimate chapter, Trappel confronts the traditional political and economic objections to press subsidies and assesses the practical and theoretical implications of their implementation in Austria and Switzerland. He describes what he calls the 'robot subsidies' system of Austria which, once programmed by law, 'operates on its own without further intervention or instruction'. He then examines the 'compensation subsidies' system in Switzerland which does not allow 'any discretion for decisions taken by politicians or the government or the broadcasting authority'. These press subsidy systems demonstrably employ mechanisms which minimise or practically exclude undue influence from the state and government on editorial independence. Given that such protection is manifestly achievable, he argues, media subsidies should not be excluded *ex ante* from media policy toolkits.

Finally, Klimkiewicz examines the changing media environment in the emerging democracies of Central and East European countries, focusing in particular on the Czech Republic, Hungary, Poland and Slovakia. While they moved relatively quickly to remove restrictive censorship laws, she says, these nations relied on the market and deregulation to produce a diverse press system. Thus, 'new or amended national press laws since the 1990s have ... not addressed structural media pluralism, particularly issues of ownership concentration or mergers, most commonly relying on general competition rules'. Nevertheless, she shows that the region has produced a variety of responses to media pluralism policies which are guided by different premises, expectations and perhaps also policy questions. She suggests that most structural pluralism measures are reactive and relatively permissive, especially in respect of media ownership policies and consolidation, reflecting the emphasis on a market-led approach.

Overall, we believe this volume will contribute some important empirical as well as theoretical arguments to active debates across

Europe and other countries grappling with complex problems of marrying convergent media, transforming business models, emerging technologies, fragmenting consumer behaviour, and the communicative needs of truly democratic states. Though rapidly shifting in their manifestations, we have tried to show that many of the arguments and dilemmas being faced by policymakers are not new, and that potential policy solutions lie in decisions taken – or at least debated – elsewhere.

Implicit in these chapters – and explicit in some – are clear indicators of where power in effecting or resisting change is actually situated. In that sense, it is perhaps a rather more nuanced analysis than some critical scholars have traditionally advanced. On the one hand, it is certainly true that market-centred arguments and rhetoric still tend to prevail, whether out of genuine belief in the free market as a universal panacea, or as convenient political cover for inaction in the face of vigorous lobbying by powerful corporations. As Gibbons has previously argued, in reference to media policymaking, ‘states may be tempted to emphasise trade and industrial policy, intended to improve transnational competitiveness, at the expense of media and cultural policy, aimed at protecting pluralism and diversity’ (2007, p. 240). Frequently, however, these arguments are deployed as a means of deflecting intense pressure from global corporations who view any regulatory or policy intervention as an unacceptable infringement of their own corporate freedom. We have argued elsewhere, following the phone-hacking scandal and an urgent need to address serious plurality concerns in the UK, that ‘our politicians appear to be no nearer to correcting the serious imbalance of power relations’ (Barnett and Townend, 2014, p. 168). Some of the chapters in this book demonstrate that such a power imbalance is plainly visible not only in the UK but in other countries where dominant transnational corporations successfully browbeat governments into culpable inertia.

On the other hand, there is also evidence within this book that governments are sometimes both willing and able to flex their muscles and make policy interventions in the public interest. Whether through regulatory levers or subsidies for small media enterprises, or continuing support for public service broadcasting (as in France, Germany, Switzerland and Austria), states are still prepared to challenge the marketplace rhetoric and exercise political power in pursuit of democratic aims. Of course, these tend to be countries where notions of ‘state intervention’ have not been tainted by years of one-party autocracy: for nations emerging from long periods of authoritarian and centralised state control, an emphasis on market-centred thinking may be regarded

as a liberating rebalancing of power as well as sensible economically. But equally implicit in some chapters is the more reassuring conclusion that, far from surrendering power entirely to the dictates of the market, there is still plenty of scope for benign state intervention and still the political will – in some cases – to implement policies which enhance rather than restrict democratic ideals.

In those countries where traditionally that political will has been lacking – the UK, US and Australia in particular – civil society campaigning groups might be able to effect some change. In the UK, the Media Reform Coalition, launched in 2011 and with its roots in the academy, has begun a new campaigning initiative, in partnership with the Campaign for Press and Broadcasting Freedom (CPBF), to coincide with the 2015 general election. Elsewhere, there has been valuable work on moving towards transparency, and the Centre for Media Pluralism and Media Freedom in Italy has begun work on implementing a pilot of the Media Pluralism Monitor (MPM) in nine European countries.

We offer this book as a complement to these and other relevant ongoing academic projects, and particularly as a contribution to political debate in those countries where – despite recognising the dangers to democracy of concentrated media power – governments have found it extraordinarily difficult to legislate accordingly. We hope it will provide a stimulus for further policy-oriented and practice-based discussion – and perhaps even action – around media plurality across international media environments.

References

- Bagdikian, B. H., 2004, *The New Media Monopoly*, Boston: Beacon Press.
- Baker, C. E., 2007, *Media Concentration and Democracy: Why Ownership Matters*, New York: Cambridge University Press.
- Barnett, S. and Townend, J., 2014, “‘And What Good Came of it at Last?’ Press-Politician Relations Post-Leveson’, *The Political Quarterly*, Vol. 85, No. 2, pp. 159–170.
- Currah, A., 2009, *What’s Happening to our News?*, Reuters Institute for the Study of Journalism, Oxford.
- European Initiative for Media Pluralism (EIMP), 2014, <http://www.mediainitiative.eu/2014-year-freedom-expression-media-pluralism/> (accessed 7 January 2015).
- Fenton, N. (ed), 2009, *New Media, Old News: Journalism and Democracy in the Digital Age*, London: Sage.
- Freedman, D., 2008, *The Politics of Media Policy*, Cambridge: Polity Press.
- Gibbons, T., 2007, ‘The Impact of Regulatory Competition on Measures to Promote Pluralism and Cultural Diversity in the Audiovisual Sector’, in *The*

- Cambridge yearbook of European legal studies*, Oxford: Hart Publishing, Vol 9, pp. 239–259.
- Haraszti, M., 2012, 'Introduction to Pan-European Forum on Media Pluralism and New Media', <http://www.mediapluralism.eu/> (accessed 7 January 2015).
- Leys, C., 2001, *Market-Driven Politics*, London: Verso Books.
- McChesney, R., 2013, *Digital Disconnect: How Capitalism is Turning the Internet Against Democracy*, New York: The New Press.
- Noam, E., 2009, *Media Ownership and Concentration in America*, Oxford: Oxford University Press.
- Reich, R., 2014, 'We're Living in a New Gilded Age of Wealth and Power', http://www.salon.com/2014/04/19/robert_reich_were_living_in_a_new_gilded_age_of_wealth_and_power_partner/ (accessed 7 January 2015).

Part I

1

What Is ‘Sufficient’ Plurality?

Thomas Gibbons

Introduction

Recent discussion of media pluralism, whether in the UK, Europe, Australia, or the US, demonstrates how sophisticated the policy and regulatory choices have become. Instead of the blunt measures which characterised early structural regulation of media ownership, contemporary proposals aim to measure more accurately the influence that different kinds of media have on democratic opinion forming, and offer schemes which combine structural elements with more complex analyses of firms’ behaviour in media markets.

For all that, there continues to be little debate about the most difficult part of pluralism policy, which is to identify how much plurality is adequate or sufficient for democratic purposes. Judgements about the issue are acknowledged to involve discretion and subjective assessments, and the policy question typically transforms into one of deciding where the final decision should lie, whether with politicians or with regulators. It is now being recognised that further guidance is needed for effective and legitimate regulation of media pluralism, and a number of key elements have emerged as sufficiency factors which should be taken into account. Thus, in the UK, the communications regulator Ofcom has highlighted, and the House of Lords Select Committee on Communications (the ‘Communications Committee’) has endorsed, the significance of: the range of independent media voices, the reach and consumption of those sources, the absence of one them having too high a share of consumption, consumers’ use of multi-sourcing from a range of independent providers, and conditions of relatively free entry into media markets. But there continues to be reluctance to articulate criteria for determining the threshold requirements for sufficiency in each case.

This chapter provides an analysis that moves beyond the current intuitive approach to suggest that appropriate thresholds should be decided by reference to the underlying purpose of media plurality, which is to enhance democratic functioning. It discusses whether criteria can be devised which are workable, and considers whether they should be manifested in relatively rigid statutory limits or be left to some discretion, either of politicians or the regulator. A major consequence of thinking about sufficient plurality in this way is that, instead of treating diversity of media sources and platforms as proxies for citizens' experience of diverse content, direct judgements of the plurality effects of media content will be required, and that has implications for practical regulation and for media freedom.

The development of discussion about media pluralism

Although media pluralism has often been regarded as a supplement to protecting the right of freedom of expression, it has long been associated with the promotion of democratic values. As the Council of Europe has put it, it involves:

Political pluralism, which is about the need, in the interests of democracy, for a wide range of political opinions and viewpoints to be represented in the media. Democracy would be threatened if any single voice within the media, with the power to propagate a single political viewpoint, were to become too dominant. Cultural pluralism, which is about the need for a variety of cultures, as reflects the diversity within society, to find expression in the media. (Council of Europe, 1999, para. 4)

In media policy, the idea of pluralism is often used interchangeably with notions such as 'diversity', 'plurality of information' and 'multiplicity of voices'. The general concept both describes and makes normative claims about various commercial models and forms of content that can or should be found in the media. Noting the complexity of definition, a recent review describes media pluralism as being related to:

(1) diversity, variety and plurality of media supply; (2) the public sphere, the general public or the audience; it is (3) provided by free, independent and autonomous media sources, and (4) results in both access and a choice of opinions and representations which reflect the citizens of the State in question. (Centre for Media Pluralism and Freedom, 2012, p. 22)

Media pluralism has been reinvigorated as a policy issue over the past few years. While measures to promote it have long been an important part of the media policy maker's toolkit (Gibbons and Humphreys, 2012), recent initiatives in the European Union (EU) and in the UK have not only given it a fillip but also encouraged the development of more refined ways of thinking about it. In the EU, in debate about the scope of the Audiovisual Media Services Directive 2007, it was accepted that, while competence for media pluralism regulation should reside with member states, a residual role remained for the Union.

The European Commission duly announced a 'three step plan' for monitoring media pluralism. It entailed the publication of a Commission Working Paper on media pluralism (Commission of the European Communities, 2007) and the commissioning of an independent research study. Although it has not yet emerged, the outcome was envisaged to be the publication of a formal Communication on indicators of media pluralism. The research study produced the Media Pluralism Monitor, a tool for identifying various risks by reference to type (legal, socio-demographic, economic) and domain (including ownership and control, media genres, and political, cultural, and geographic aspects of pluralism) (Valcke et al., 2010). Although the Monitor seems rather complex to apply in practice, it was piloted in a sample of countries in 2014, including in the UK (Picard and Dzakula, 2014). But its real significance may be greater. Its presence in regulatory discussion has lent credibility to considering the suitability, for media pluralism policy, of a much wider range of variables, many with democratic foundations, compared to traditional concerns with corporate ownership structures and competition law.

More recently, there has been a positive shift in attitude in the European Commission, not only towards media pluralism but also towards media freedom more generally (Komorek, 2012; 2014). This was demonstrated by the appointment of a High Level Group on Media Freedom and Pluralism in 2011, together with the establishment of the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute in Florence. The High Level Group's report, (Commission of the European Communities, 2013) reasserted the importance of media pluralism policy, recommending that the EU should have a bigger role in supporting media freedom and pluralism in the EU and beyond. It offered detailed suggestions which included the need for media pluralism to be openly considered in regulation for relevant competition purposes, for threats to pluralism to be monitored more actively, for greater transparency to be required about the provenance of information in traditional and

especially new media, and for the strengthening of protections for journalism.

At the same time, the CMPF reported on the EU's competency to regulate media pluralism (Centre for Media Pluralism and Freedom, 2013). Emphasising the democratic values underpinning the EU, it also suggested that there was more scope for considering non-economic and cultural factors in implementing the Treaties, especially in relation to competition regulation. In the absence of a clear basis for intervention on internal market grounds, it recommended that the Treaties should be re-evaluated with a view to revising them to introduce specific principles on media freedom and pluralism. It may be doubted whether these ideas have much political traction in the EU, since the Council of Ministers has indicated that it favours only non-legislative measures in this field. But the interesting feature of the recent discussion has been the way that the democratic basis for media pluralism has been articulated so much more explicitly. This paves the way for a more focused analysis of a wider range of policy components that need to be incorporated into regulation.

This wider approach is also reflected in recent discussion of media pluralism in the UK, stimulated by renewed anxiety about the influence of News Corporation in key media sectors. The anxiety was prompted by two media merger cases, which had exposed inadequacies in the regulatory framework established by the Communications Act 2003; and by the Leveson Inquiry (Lord Justice Leveson, 2012), which had revealed serious failings in the company's corporate and journalistic culture. In the BSkyB case (Court of Appeal, 2010), the News Corporation-controlled pay-TV company had acquired a 17.9 per cent interest in ITV, the main terrestrial commercial television company. That just avoided the 20 per cent ceiling imposed by one of the few remaining structural ownership rules (the '20/20 rule', whereby a newspaper company with more than 20 per cent of national circulation is prohibited from having a 20 per cent interest or more in a Channel 3 licence). However, the then Competition Commission found against BSkyB on competition grounds, which the Court of Appeal upheld. But the case revealed some ambiguity in the drafting of the separate plurality provisions in the relevant legislation (s.58 of the Enterprise Act, 2002), a matter ultimately resolved by the Court's holding that they were not confined to matters of external plurality, which is concerned with the number of persons with control of media enterprises, but could properly include consideration of internal plurality. This means that it is not merely a matter of counting heads but that, in determining whether there would

be sufficient plurality following a merger, a qualitative assessment is required of the actual degree of control that one of the companies has over the policy and output of the other. Here, in making such an assessment, the Competition Commission had considered that BskyB would not have been able to control ITV's editorial policy. (It may be noted, however, that this is narrow usage; in wider policy discussion, 'internal pluralism' typically refers to more than control arrangements but to the substantive diversity of content offered within any particular media organisation).

The second case, in 2010, involved News Corporation's proposal to increase its holding in BskyB to take full control. Under the legislation, the Secretary of State for Culture, Media & Sport (the Culture Secretary) intervened on public interest grounds, asking Ofcom to advise about, in the words of the statute, 'the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience'. Making a 'qualitative' assessment, Ofcom concluded that the acquisition would be expected to operate against the public interest, 'because there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK wide cross-media audiences' (Ofcom, 2010, para. 1.57). However, the Culture Secretary did not refer the matter to the Competition Commission as might have been anticipated, instead seeking to resolve it informally through undertakings, in a setting politically charged by the vigorous lobbying of interested parties. This underlined the importance of having clearly defined standards for pluralism, if only to defend decision makers against inappropriate pressure and influence. As it happened, News Corporation withdrew its proposal following the revelations about phone hacking at the *News of the World*, which was part of the News Corporation group.

Of particular interest for present purposes, however, is the element of Ofcom's advice that went beyond the particular facts of the case. It noted that:

The future market developments explored in this report suggest that the current statutory framework may no longer be equipped to achieve Parliament's policy objective of ensuring sufficient plurality of media ownership. These market developments include the risk of market exit by current news providers, or a steady, organic growth in audience shares and increase in the ability to influence by any one provider. (Ofcom, 2010, para. 1.59)

Yet the statutory mechanism could only be triggered by a specific corporate transaction. Ofcom therefore suggested that the government might consider conducting a wider review of the whole framework. This reflected the constitutional proprieties, which require that it is for Parliamentarians to make policy and for Ofcom only to implement it. However, Ofcom is obviously best placed to see how well the current rules work, so there has followed a ritual in which the Culture Secretary has duly made formal requests for advice, and Ofcom has been enabled to make suggestions for reform (Ofcom, 2012a; 2012b). In addition, the Leveson Inquiry had been asked to include issues of media plurality in its report on the culture, ethics, and practices of the press (Lord Justice Leveson, 2012). In the light of all this material, in 2013, the government consulted on measuring media plurality (Department of Culture, Media and Sport, 2013). In the meantime, the Communications Committee had conducted its own investigation into media plurality (House of Lords, 2014a). The government responded to both, in summer 2014 (Department of Culture, Media and Sport, 2014), setting out the scope of a measurement framework for plurality, and has now asked Ofcom to develop it (Ofcom, 2014).

Objects of media pluralism policy

Although Ofcom has been proceeding one step at a time, with the 2014 consultation applying only to the identification of indicators for measuring media plurality, since the first BSKyB case it has been developing a normative framework for analysing pluralism. The first component of that framework was a statement of the underlying policy. Taking into account both academic and earlier policy discussion:

... we have concluded that plurality contributes to a *well-functioning democratic society* – through the means of: i) *Informed citizens* – able to access and consume a wide range of viewpoints across a variety of platforms and media owners. ii) *Preventing too much influence over the political process* – exercised by any one media owner. (Ofcom, 2012a, para. 3.5 – original emphasis)

That was accepted by the Communications Committee as reflecting the broad political and industrial consensus (House of Lords, 2014a, paras 1–3). For regulatory purposes, however, the scope of the policy was narrowed by Ofcom to apply only to the media market:

Based on the public policy goals highlighted above, and consistent with precedent, we have defined plurality with reference to desired outcomes of a plural market:

- Ensuring there is a diversity of viewpoints available and consumed across and within media enterprises.
- Preventing any one media owner or voice having too much influence over public opinion and the political agenda. (Ofcom, 2012a, para. 3.8)

The outcome has been the specification of an ideal state of pluralism against which current practice can be assessed. Initially, it offered a description of the 'features that would characterize an ideal plural outcome' (Ofcom, 2012a, para. 3.22). It later described those features as being associated with 'a well-functioning plural media market' (Ofcom, 2012b, para. 7.8), and then confined them further to news provision only. That led to the following proposal:

Qualitative guidance could be designed around whether the news media market in the UK displays the following characteristics:

- There is a diverse range of independent news media voices across all platforms, providing citizens with access to a breadth of views on matters of industrial controversy and public policy, ensuring a vibrant democratic debate.
- Among consumers, the reach and consumption of many news sources is relatively high, across all demographic groups and across all parts of the English regions and the devolved nations.
- No one source of news commands too high a share of consumption, thereby ensuring that consumers are not exposed to too narrow a range of viewpoints.
- People multi-source from a number of independent news sources to help inform their opinions, ensuring that the process of opinion-forming draws on a diversity of viewpoints.
- The market conditions are such that there is comparatively free entry into the news media market, as evidenced by the emergence and establishment over time of new news providers.
- News media organisations are well-funded and commercial returns are high enough to ensure their long-term economic sustainability (Ofcom, 2012b, para. 7.24).

This iteration has differences of emphasis from earlier versions. In particular, it is less aspirational and more directed at practical regulation. It is also more concerned with the structure of the media market, omitting references to the quality of journalism. Yet the development of this framework is firmly rooted in democratic policy, and that is very significant. It means that, when the framework is being put into practice, there exist statements of principle that can be used to resolve hard choices about appropriate levels of plurality.

Sufficient plurality

Ofcom's advice and the Communications Committee's report pose a range of policy options for a media pluralism regime about: the scope of media activity to be considered, the appropriate scheme to be adopted (whether using fixed limits, discretion, or some hybrid of the two), the appropriate decision maker, and suitable remedies. But they both agree that, ultimately, the key question is whether there is sufficient plurality and that, therefore, there is a need to articulate some threshold of sufficiency. This, however, is the trickiest part of pluralism policy. As Ofcom noted, 'Given the importance of contextual factors, and the associated exercise of judgement, there is unlikely ever to be a crisp and unambiguous definition of sufficiency' (Ofcom, 2012b, para. 5.). Ofcom is keenly aware that judgements about where to draw the line are matters for politicians. It noted that decisions about the sufficiency of plurality will involve subjective assessments and discretion, and it suggested that it would therefore be appropriate for Parliament to provide guidance about the issue. Yet, while the Communications Committee did recommend that there should be statutory guidance about sufficiency, it did not offer any substantive suggestions itself, instead leaving it to government (House of Lords, 2014a, paras 164–166).

However, government and politicians will obtain little help from current discussion of sufficiency. There are many examples of attempts to provide guidance but they generally involve elaboration and refinement of the broad criteria for making a judgement, albeit without indicating a standard for decision. A good instance is the Leveson Report which, endorsing Ofcom's framework, spoke of 'concerns' being raised about plurality (Leveson, 2012, pp.1461–1469). That terminology was adopted by the Communications Committee, which considered that it might be useful to rank plurality concerns as moderate, high, or severe (House of Lords, 2014a, para. 213). The approach reflects a trend in the recent literature to couch the discussion in terms of risk, most notably, the Media Pluralism Monitor. But

that does not resolve the problem – the Monitor typically defines its risk factors in terms of sufficiency.

Alternative formulations are no more helpful, for example, the Communication Committee's recommendation that 'no content provider has an unreasonably high level of consumption' (House of Lords, 2014a, para. 56) or its description of a high plurality concern as one of 'material and unacceptable lessening of plurality'. Of course, it is possible to avoid the problem altogether by stipulating presumptive categories. This is what the BBC suggested to the Communications Committee: 'sufficiency is best approached by considering: whether current plurality is sufficient, and whether amply so, or marginally [and] ranges against the chosen metrics, within which plurality would be presumed to be sufficient, or marginal, or insufficient' (House of Lords, 2014b, 70, para.7). Indeed, setting caps or thresholds for media ownership metrics, such as audience share or corporate control, combines both precautionary and presumptive approaches without the need to analyse sufficient plurality in detail.

One reason why there is reluctance to articulate sufficiency more closely is that the analysis inevitably opens a can of worms. Sufficiency has to be assessed in terms of what is needed for a particular purpose or objective. In the context of media pluralism policy, the objective is the proper functioning of the media in a democracy, and that raises large questions about the meaning of democracy and about the appropriate role of the media. For the purposes of this chapter, drawing some key points from the literature, contemporary democracy entails, at least, that citizens have the resources to take part equally in the political decision-making process (Held, 1996; Dryzek and Dunleavy, 2009). The trend in recent democratic theory is to emphasise the deliberative or discursive aspects of such participation, and that links well with discussion of the appropriate role of the media (Keane, 1991; Baker, 2007; Butsch, 2007; Curran, 2011).

A key feature of that role is to provide, albeit not exclusively, an information resource for citizens so that, as democracy entails, they can weigh choices between alternative options. Another key aspect of its role is to provide a platform, again not exclusively, for standpoints to be expressed. More aspirationally, media can explain and mediate standpoints, and facilitate engagement between them. Thinking about the conditions for plurality, then, in terms of diversity of content and dissipation of influence over the political process, what seems to be required is that: the viewpoints available in the media should represent the range of different interests and communities in civic society; citizens' perspectives should be dominant, so that they should be aware

of the diversity of viewpoints and have access to them; and ideas promoted by any single media organisation should be open to challenge by an equivalent other.

Considering such details of the process of democratic communication is fully consistent with the aims of pluralism policy stated by Ofcom (as set out earlier) and agreed by the Communications Committee to represent a consensus of opinion. But the stronger emphasis on democracy, reflecting the wider trend outlined at the beginning of this chapter, suggests that policymakers may have been asking the wrong question up to now. Following the formula in the Communications Act 2003, Ofcom, the Communications Committee and the government have posed the question in the form 'What is sufficient plurality?' This naturally shapes the anticipated answer, because it suggests that what is required is a description of a state of affairs. That, in turn, rests attention on relatively static metrics, whether quantitative or qualitative. Suppose the question were posed in terms of the acknowledged purpose of the exercise, which is to enhance democracy. The structural question might then be, drawing on the acknowledged underlying policy, 'How adequately does the media market (or markets) contribute to a well-functioning democracy?' This apparently slight, but actually significant, change in emphasis has the effect of enabling a more dynamic analysis, looking at active processes to support democratic participation.

Any response to such a question will, of course, involve the exercise of judgement. But that does not mean that it will necessarily be subjective, or even arbitrary. To make it workable in practice, it only needs to be refined and narrowed to yield a more specific question. Focusing it more closely, then, what are the minimum conditions that might be expected to characterise media activity which claims to be contributing to a well-functioning democracy? The idea here is to distinguish between the ideal and the sufficient; it is implicit that pluralism policy will and should encourage activity which rises above the minimum. But it must be recognised that the more specific question will require some consideration of media content, because the aim is to judge the adequacy of the citizen's information resources. One serious limitation of the current review in the UK is that policymakers have conceded that, for practical purposes, it should be confined to news and current affairs (House of Lords, 2014a, para. 27). But, even accepting that, assessing the mere availability of information is no longer satisfactory, as Ofcom has itself acknowledged (Ofcom, 2012a, para. 5.10). Rather, as highlighted in recent writing about exposure diversity (Helberger, 2012), it is important to look at the citizen's actual exposure to content.

Even then, it will be necessary to specify the desired range of content experienced by the media user as citizen.

If this reasoning is accepted, it leads to the following 'sufficiency' question: 'Are media users exposed to all significant standpoints of opinion?' That, in turn, may be further refined. An indicative range of significant standpoints will have to be defined and identified empirically; that is not as daunting as it may appear, because it is implicit in the application of current rules about impartiality in broadcasting. The scale of media users may also be open to interpretation: ideally, it should mean all, but it might be relaxed to cover a very high percentage (such as not less than 90 per cent). Either way, the detailed question echoes the dynamic nature of the broader one that enquires about the media's contribution to democracy. It is about the structure of media markets as a whole and does not presuppose that any particular ways of exposing users to significant standpoints are better; nor that any particular media should have more responsibility for doing so than others; nor does it presuppose any particular remedies if contributions to pluralism fall short. However, it does contemplate the need for mechanisms in the media market which can combine to direct users' attention to the existence of different standpoints. Those mechanisms might include, in the market as a whole and not necessarily in any particular media outlet: an open editorial policy, signposting of alternative viewpoints, public service media commitments, and transparency of ownership, control and vested interests. The idea of exposure to all significant standpoints entails that, in the media market as a whole, all these elements balance and complement each other so that no citizen can avoid being aware of comparisons and contrasts to opinion in his or her preferred media outlet.

Applying such a test for the adequacy of the media's contribution to democratic functioning would add rigour to Ofcom's image of the ideal plural outcome, mentioned above. This descriptive approach to regulation has worked reasonably well in the past as a substitute for outlining professional values; for example, when the IBA was awarding programme contracts to ITV prior to 1990, or when Channel 3 companies are required to set out programme promises in respect of public service content. But, in relation to plurality, an explicit sufficiency test is needed to harden up the subjective elements of the ideal scenario: a 'diverse range' of independent voices, 'relatively high' reach and consumption for news, no news source commanding 'too high' a share of consumption, multi-sourcing from 'a number' of sources, 'comparatively' free entry to the news market, and 'high enough' commercial returns for sustainability.

Metrics and the test for sufficient pluralism

The details of the existing circumstances of plurality will be ascertained by reference to some specific metrics. The relative advantages of various proxies for pluralism and associated metrics are now well known. They were recently reviewed in the academic literature (Craufurd Smith and Tambini, 2012) and again surveyed by the Communications Committee. In addition to emphasising media ownership, at the request of the government (Department of Culture, Media and Sport, 2014, p. 19), Ofcom's current review will refine the definition of its preferred three categories of metrics in relation to (the unfortunately narrow) class of news provision (Ofcom, 2014). 'Availability' indicates the number of news providers, but is rightly considered by Ofcom to be in itself an inadequate proxy for plurality. 'Consumption' covers diversity of usage: the reach of different platforms' offerings, relative share of consumption between users, and the extent of multi-sourcing across platforms. 'Impact' represents the personal importance of media offerings to users. Importantly, Ofcom has also recognised the value of a number of 'contextual factors', such as internal plurality, editorial policy and impartiality requirements. However, those factors will need to be given much greater emphasis in assessing the sufficiency of the media's contribution to democratic functioning. That exercise is not one of ascertaining whether viewpoints in the media represent viewpoints in society; it requires a shift in perspective to discover whether citizens are practically aware of the range of other points of view.

Thinking about the purposes of media pluralism policy lends weight to the Communication Committee's working principle that 'the assessment of plurality should drive the decision about which remedy or intervention is appropriate, not the other way around' (House of Lords, 2014a, para. 69). It also clarifies why the use of hard rules or quantitative 'caps' on media companies' ownership structures and their market share are not a proper basis for regulation. Both Ofcom's advice and the Communications Committee's report rejected them as being crude, arbitrary, and inflexible (Ofcom, 2012b, paras 7.13–19; House of Lords, 2014a, paras. 102–122). Historically, they have been attractive because of their intuitive link with competition law analysis – the idea that a maximum of 30 per cent market share, implying around five or six players, represents a suitably contestable media environment – and that they enable risk avoidance and simple decision making. Often, in the UK and elsewhere in Europe, that figure has happened to represent the status quo and it tends to work against responding to organic changes

in market conditions. But caps are also a blunt instrument because they are not capable of indicating the way that media are used, an essential prerequisite for assessing the democratic contribution of media activity. It follows that cap-like thresholds are no better if they act, in 'hybrid' schemes, as 'triggers' for further behavioural review of media markets and activity.

Practicalities

If a threshold of sufficiency is to reflect the media's contribution to democratic functioning, there really is no substitute for a detailed behavioural review. A practical and politically more neutral way of initiating the process is Ofcom's suggestion, supported by the Communications Committee, that there should be regular, periodic reviews of plurality, supplemented by specific reviews triggered by media transactions (or, it may be added, other significant events, such as a change of editorial policy) that are significant for plurality. Certainly, such a review will involve complex and time-consuming analysis of multifarious variables. It will also lack the built-in margin of risk that caps can provide. Its discretionary nature (albeit highly structured) makes the regulator's conclusions vulnerable to legal challenge for lack of clarity and predictability, with large media companies having the resources to 'game' the process. But that is why it is necessary to fine-tune the original broad question, of what is sufficient pluralism, to one that gets to the core of the matter and admits of a relatively clear answer one way or the other. Nevertheless, a potential problem with the sufficiency test that is proposed here is that it will involve much closer attention to substantive media content than features in the current plurality regime. However, Ofcom does have experience of making similar, evaluative determinations in relation to, for example, the BSkyB cases mentioned above, local plurality in radio markets, regional representation, and public service commitments; and the test being advocated here is much tighter than in those cases.

Ofcom did suggest some 'practicality conditions' in its second statement of advice in 2012. They require that for a plurality framework to operate well 'It must acknowledge the possible trade-off between plurality on the one hand, and economic sustainability on the other. An idealised view of levels of plurality might not be achievable in practice if that level of provision is not commercially viable' (Ofcom, 2012b, para. 7.11). In addition, there should be consultation with those who are subject to the regime, and there should be recognition of the

dynamic nature of the news media market in anticipation of a move from print media to online media. The concern about sustainability is certainly a serious one. But it should not be used as a pretext for compromising the description of an ideal plural scenario, nor the specification of the minimum requirements for the media market to be able to claim that it is contributing to democratic functioning. Knowing the ideal and the minimum will show the nature of any trade-off, and its political implications.

Finally, some free speech implications may be noted. The test for sufficiency being advocated here – Are media users exposed to all significant standpoints of opinion? – is systemic or structural. Although it requires at least some attention to media content, it is not targeting specific media outlets in themselves but assessing the overall plurality situation by reference to their contributions. That is consistent with the free speech jurisprudence of the European Court of Human Rights (ECHR, 2009). There may be a free speech problem if a remedy for insufficient plurality were to require changes to a media outlet's editorial policy. But the response to editorial deficiencies in one outlet is here anticipated to be remediable by positive measures elsewhere. They might include public service media obligations or wholly new initiatives to create alternative content, whether or not publicly subsidised.

Conclusion

The interesting feature of recent media pluralism policy discussion in the UK is its more explicit reference to wider considerations of democratic functioning, ideas which are well established in the literature and which also have a firm base in wider European policymaking. Whether those ideas can be given greater prominence in the regulatory regime is a moot point. Hitherto, the crucial decisions, about permitted patterns of ownership and about sufficient levels of pluralism, have been based on instinct and historical intuition. Articulating criteria for making such decisions, by reference to democratic functioning, will be a controversial undertaking. Ofcom is right to expect politicians and Parliament to guide it in drawing the line. The problem is that a more sophisticated pluralism regime might challenge so many vested media interests that it may prove easier for politicians to settle for more rough and ready solutions. This chapter has sought to show that, by drawing out the implications of the underlying consensus about the aims of pluralism policy, it is possible to formulate a fairly specific question for regulatory implementation. That question is, at least, a starting point

for the debate that will have to take place, and it poses the challenge: Why would politicians *not* want all citizens to be exposed to all significant standpoints of opinion?

References

- Baker, C. E. (2007) *Media Concentration and Democracy: Why Ownership Matters*. Cambridge: Cambridge University Press.
- Butsch, R. (Ed.) (2007) *Media and Public Spheres*. Basingstoke: Palgrave Macmillan.
- Centre for Media Pluralism and Freedom (2013) *European Union Competencies in Respect of Media Pluralism and Media Freedom*. Florence, Italy: European University Institute.
- Commission of the European Communities (2007) *Media Pluralism in the Member States of the European Union*. SEC (2007) 32. Brussels, Belgium: European Commission.
- Commission of the European Communities (2013) *A Free and Pluralistic Media to Sustain European Democracy*. Report of the High Level Group on Media Freedom and Pluralism. Brussels, Belgium: European Commission.
- Council of Europe. (1999) Recommendation No. R (99) 1 of the Committee of Ministers to Member States on Measures to Promote Media Pluralism. Explanatory memorandum. Strasbourg, France: Council of Europe.
- Court of Appeal (2010) *British Sky Broadcasting Group Plc & Virgin Media Inc v Competition Commission & Secretary of State for Business, Enterprise and Regulatory Reform* [2010] EWCA Civ 2
- Craufurd Smith, R. and Tambini, D. (2012) 'Measuring media plurality in the United Kingdom: Policy choices and regulatory challenges', *Journal of Media Law*, 4, 35–64.
- Curran, J. (2011) *Media and Democracy*. London: Routledge.
- Department of Culture, Media and Sport (2013) *Media Ownership and Plurality*. Consultation, July 2013. London: Stationary Office.
- Department of Culture, Media and Sport (2014) *Media Ownership & Plurality. Consultation Report*. Government Response to the House of Lords Select Committee on Communications Report into Media Plurality. London: Stationary Office.
- Dryzek, J. and Dunleavy, P. (2009) *Theories of the Democratic State*. Basingstoke: Palgrave.
- ECHR (2009) *Manole v Moldova* [2009] ECHR 1292, Strasbourg: European Court of Human Rights.
- Gibbons, T. and Humphreys, P. (2012) *Audiovisual Regulation Under Pressure: Comparative Cases from North America and Europe*. Abington, UK: Routledge.
- Held, D. (1996) *Models of Democracy* (2nd ed.). Cambridge: Polity Press.
- Helberger, N. (2012) 'Exposure diversity as a policy goal,' *Journal of Media Law*, 4, 65–92.
- House of Lords (2014a) Select Committee on Communications, *Media plurality*, 1st Report of Session 2013–14, HL Paper 120, London: Stationary Office Ltd.
- House of Lords (2014b) Select Committee on Communications, *Inquiry into Media Plurality. Written and Corrected Oral Evidence*, London: Stationary Office.

- Lord Justice Leveson (2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report*, HC 780, London: Stationary Office Ltd.
- Keane, J. (1991) *The Media and Democracy*. Cambridge: Polity Press.
- Komorek, E. (2012) *Media Pluralism and European Law*. Kluwer.
- Komorek, E. (2014) 'The problem which refuses to go away. Recent developments in the EU approach to media pluralism', *Communications Law*, 19, 39–46.
- Ofcom (2010) *Report on Public Interest Test on the Proposed Acquisition of British Sky Broadcasting Group plc by News Corporation*. London, UK: Ofcom.
- Ofcom (2012a) *Measuring Media Plurality. Ofcom's Advice to the Secretary of State for Culture, Olympics, Media and Sport*. June 2012. London, UK: Ofcom.
- Ofcom (2012b, October) *Measuring media plurality: Supplementary advice to the secretary of state for culture, media and sport and the Leveson inquiry*. October 2012. London, UK: Ofcom.
- Ofcom (2014) *Media Plurality Measurement Framework – Call for Inputs*. London, UK: Ofcom.
- Picard, R. G. and Dzakula, J. (2014) *Media Pluralism Monitor Pilot Test: United Kingdom*: <http://reutersinstitute.politics.ox.ac.uk/publication/media-pluralism-monitor-pilot-test-united-kingdom>
- Valcke, P., Picard, R., Sükösd, M., Klimkiewicz, B., Petkovic, B., Zotto, C., and Kerremans, R. (2010) 'The European media pluralism monitor: Bridging law, economics and media studies as a first step towards risk-based regulation in media markets', *Journal of Media Law*, 2, 85–113.

2

Diversity, Distribution, and Definitions of ‘Media’

Lorna Woods

Introduction

Typically discussion around media pluralism has focused on the variety of content available to consume, using the tools of internal and external diversity: external diversity has been linked specifically to media ownership, and internal diversity to regulation. In reality, the boundaries are not so clear-cut. The focus of this chapter is on structural controls, whether seen as regulatory or competition-based: either by providing for specific limitations on media ownership, or by including pluralism or public interest considerations in the general merger regime. Although competition regimes themselves have changed – reflecting a greater emphasis on economic analysis alone – over the years there has been a preference towards general regimes and market-led approaches. Thus, Harastzi (2011, p. 9) argued that, ‘[i]n the digital and Internet era, with the number of accessible channels and audiovisual platforms multiplying by the year, urgency for detailed regulation – the bulk of which is aimed at avoiding political domination – will fade.’

These regimes, specifically those tailored to the media environment, have been seen as problematic for a range of reasons but this chapter argues that one key issue has been overlooked: the definition of ‘media’ in this context. It is axiomatic that digital technologies – particularly the Internet – have changed the media environment, but this truism does not in itself address the question of which actors are significant for the creation, dissemination, and consumption of content in this new environment. Traditionally, media specific regimes have typically focused on the broadcaster or the newspaper, identifying a particular locus of regulation in the distribution chain: those who effectively control the choice of content. Quite apart from the new services which are

affecting our understanding of the market, we should then ask if the traditional choice for point of regulation is sufficient, or whether there are new bottlenecks and gatekeepers. Underpinning this issue is the question of what we mean by ‘media’ when we seek to ensure plurality, and whether the new key issue is not about *existence* of content but about *access* to that content. While the approach to national media regulation has been influenced, perhaps to a significant degree, by EU competition law and policy (Burnley and Bania, 2014, p. 216), this chapter focuses on the UK regime.

Historical development

Typically, the various stages in the distribution chain have been differently regulated. In terms of pluralism or diversity, the main focus has been the middle of the chain: broadcasters and newspapers. These are the identities that audiences recognise, they have responsibility for the editorial control of content at a meta level, and they have traditionally been regarded as gatekeepers to the mass audience. Content creation itself is rarely the subject of similar concern, though access to the market for creators may give rise to regulatory intervention (e.g. independent production quotas). Historically, distribution was bundled in with the newspaper organisations and the broadcasters, but during the 1990s transmission capacity was spun off, and the development of new platforms suggested that content provision should be dealt with separately from transmission. While the regulatory regimes may reflect this view, market developments show a move towards consolidation and vertical reintegration, as illustrated by the acquisition of Energis by Cable and Wireless, and Easynet by Sky.

In the UK, most of the ownership provisions contained in the Broadcasting Acts of 1990 and 1996 were rationalised or abolished by the 2003 Communications Act (CA03). Nonetheless, certain ownership rules remain. Examples include prohibitions and limitations on the holding of licences by certain groups, such as advertising agencies, and rules relating to the provision of news to Channel 3 licensees (to ensure that there remains a different voice from that of the BBC). Schedule 14 of CA03 specifies that no person may acquire a Channel 3 licence if he or she runs one or more national newspapers with an aggregate market share of 20 per cent or more; and a Channel 3 licensee may not acquire an interest of 20 per cent or more in a body corporate running one or more national newspapers with an aggregate market share of 20 per cent or more. Comparable restrictions on cross-media ownership exist at the local radio level, also to ensure a plurality of voices.

Ofcom is under a duty to ensure 'the maintenance of a sufficient plurality of providers of different television and radio services' (s. 3(2)(d) CA03), and as a result has kept media ownership under review. Section 316 also includes sectoral competition powers, whereby Ofcom may include licence conditions in each broadcasting licence in terms that Ofcom considers appropriate 'for ensuring fair and effective competition in the provision of licensed services or of connected services'; s. 318 requires Ofcom to review the situation. Similar conditions are found in the multiplex licences. There are currently no specific rules relating to other platform operators, though telecommunications service operators must comply with the terms of the General Conditions and Specific Conditions set out by the CA03. These are not aimed at ownership issues, but rather at behaviour in the market. It is open to interpretation whether these conditions could be understood as restricting further acquisition of media interests.

The CA03 also amended the Enterprise Act 2002 (EA02), which itself had revised the general approach to competition analysis in the UK. UK press mergers were assessed on a broad public interest test under first the Monopolies and Restrictive Practices Act 1948 and then the Fair Trading Act (FTA) 1973. Broadcasting at this stage was not included presumably because, with the sector-specific regulation, it was thought unnecessary. While the regime was apparently long-lived, it was subject to three main criticisms: that there were insufficient reasons given for non-notification of mergers; the 'public interest' test was very broad covering a range of non-economic issues (including regional and industrial policy as well as plurality and cultural concerns), leading to a risk of lack of consistency in applications; and the extent of political discretion was thought undesirable. It was not until the EA02 that an end was put to the 'exercise of political preferences' (Wilks, 1999, p. 228), but it was only a year later that the media merger amendments were introduced by the CA03. The resulting regime remains substantively the same, although the Enterprise and Regulatory Reform Act 2013 introduced the Competition and Markets Authority (CMA), which took over from the Office of Fair Trading (OFT) and Competition Commission (CC) as of 1 April 2014.

The current regime

The CMA is under a duty to *review* mergers falling under the Act (a Phase 1 investigation) and *refers* for in-depth investigation any deal resulting or likely to result in a substantial lessening of competition (SLC) (a Phase 2 investigation). The SLC test is narrower than the 'public

interest' test in the previous regime (Whish, 2003) and is based on an economic analysis. Such a substantial lessening of competition was found when the CMA's predecessor the CC blocked *Project Kangaroo*, a joint venture between the UK public service broadcasters where the parties proposed to merge their video-on-demand services onto one platform (while maintaining separate on-line catch-up services). The consumer wanting to access this one-stop shop lost out in the short term, as the CC concluded that the platform would be too powerful in a nascent market. Notably, the broadcasters involved were each other's closest competitors. The resulting loss of rivalry between the parties would have enabled them to offer less attractive terms to consumers, and perhaps incentivise them to foreclose access to content to future VOD providers.

The CMA is obliged to inform the Secretary of State of any merger it is investigating at Phase 1 which it believes raises a material public interest consideration (such as the media rules). Where such considerations exist, the Secretary of State may intervene through the issuing of a public interest intervention notice (PIIN) and then decide whether to make a reference to Phase 2, to accept 'undertakings in lieu of reference' (UILs), or to impose remedies following a Phase 2 investigation. Ofcom does not advise the Secretary of State on whether to intervene in a merger on media public interest grounds, and is involved only once the PIIN is issued. Ofcom may also advise the Secretary of State at Phase 2, after the Secretary of State has received the CMA's report. In both cases, the advice may be disregarded. If a PIIN is not issued, the CMA may deal with the merger on the basis of a standard competition analysis; that is, on economic grounds which exclude any special public interest. A recent example is the acquisition by Trinity Mirror of the *Guardian's* regional newspapers (ME/4434/10), when no reference to the CC was made. DTI Guidance (DTI, 2004, p. 37) suggested that a PIIN should be issued only where there were no specific limitations on ownership applying under the CA03, suggesting the regimes operate in the alternative not cumulatively.

Section 58 of EA 02 details the public interest considerations in respect of the media, as follows:

- the need for accurate presentation of news and free expression of opinion in newspapers;
- the need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the UK or a part of the UK;

- the need, in relation to every different audience in the UK or in a particular area or locality of the UK, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;
- the need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests;
- the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 CA03.

These provisions introduce a two-stream system. The first relates to newspapers and essentially preserves the old regime. The second deals with broadcasting, and mergers between newspapers and broadcasting undertakings. It imposes slightly different tests and requirements than that used in relation to the press. On the face of the Act, broadcasting issues are not limited to news and current affairs provision, and as regards news, it seems that for broadcasting impartiality concerns are as important as plurality (though the interpretation of this aspect of the EA02 is problematic). There are no special public interest provisions in relation to regulated public utilities generally (such as telecommunications), although a merger may give rise to regulatory consequences, especially where the resulting undertaking acquires significant market power potentially triggering the telecommunications regulatory regime in the CA03.

Comment

The current ownership regime is multi-layered and complex, comprising not only specific restrictions on media ownership, but Ofcom competition powers under the licensing regime, the media mergers regime and the general merger regime in the EA02. The licensing system must be understood also as part of the general regulatory framework for content providers. It includes PSB obligations and impartiality rules which may be expected to deal with some aspects of plurality, as an internal matter. The telecommunications regime, although principally driven by competition concepts, still allows for regulatory or quasi-regulatory action, such as the imposition of must-carry obligations on some operators.

The CA03 regime, however, tilts the balance away from the use of regulatory powers, suggesting that the use of competition rules would

be preferable (s. 317 Communications Act; DTI, 2006, pp. 3, 17). Whether diversity concerns are adequately reflected in a competition-based analysis is one of the underlying questions in this area. The public interest exceptions introduced into the EA02 by the CA03 are narrower than the previous FTA provisions, and there was some concern that the role of the CC (and now the CMA) in the process would mean that competition analysis would predominate. In the Sky/ITV case (outlined by Gibbons in the previous chapter), it was determined that there were no plurality concerns but that competition issues remained. It has been suggested that the CC linked its reasoning in relation to plurality to its reasoning in terms of competition (Arnott, 2010, p. 250).

Part of the problem with both the CA03 regime and the EA provisions is that they focus primarily on content retailers – broadcasters and newspapers – and as such use outmoded concepts to determine the scope of the regime. While some cross-media ownership issues are addressed in the CA03 relating specifically to press and (traditional) broadcasting, other areas are excluded. Firstly, content provision is not considered across the board. While traditional broadcasters are covered by both the CA03 rules and the EA02 merger regime, the position regarding other channel providers is not clear. Television content service licences are not subject to numerical control under the CA03, and as Internet delivery of audiovisual content services develops, this discrepancy becomes more obvious. The ‘over the top’ (OTT) market is growing. Ofcom’s 2012 Communications Report indicated that 37 per cent of individuals claimed to watch catch-up TV distributed over the Internet. These services employ a variety of business models: some are free-to-view (Google TV, films on YouTube); others are subscription services (LOVEFiLM, Netflix, Sky’s NOW TV); and some operate on a pay-per-view basis (Blinkbox, Dixon’s ‘KnowHow Movies’, HMV, iTunes). None appears to be included in the CA03 ownership regime, even if acquired or owned by a broadcaster or national newspaper proprietor.

The CA03 accumulation rules may have another weakness: that they focus on one point in the distribution chain, effectively the bundling of content into channels (or newspapers), and thus cover neither distribution nor access. Ownership rules do recognise the role of telecommunications operators, in that national public telecommunications operators with annual turnover in excess of £2 billion are prohibited from holding a broadcasting licence, but other platforms and smaller telecommunications operators are not covered. Thus, the CA03 regime excludes from its purview deals such as the acquisition of NGW by Macquarie UK Broadcast Ventures Limited, and BSkyB Broadband

Services Limited's acquisition of Easynet, a company offering wholesale and retail broadband Internet access services via DSL. This failure to consider infrastructure is part of an ongoing structural weakness in the system. It was noted at the time of the 1996 Broadcasting Act that, while the government continued to accept that the media was to some degree special, it underplayed the significance of transmission and access. As Landau notes in the context of the government's policy paper prior to the 1996 Act, 'instead of viewing this as one communication system requiring coherent ownership regulation, the proposals separated the components and regulated them discretely' (Landau, 1998, p. 64). While the CA03 transferred the responsibility for regulation across the telecommunications and media sector to one regulator, Ofcom, the regime itself has not been integrated and the CA03 is essentially in two parts: one focusing on (tele)communications regulation (driven by the EU Communications Package); and one relating to broadcasting. It lacks coherence.

The EA02 media mergers regime was designed to catch the cases not covered by the CA03 limitations. Indeed, it seemed that the regime was intended principally to apply where ownership restrictions had been removed, as well as to press mergers. Here, too, there are weaknesses which derive from traditional categorisations. The EA02 focuses on 'newspaper enterprises' and on 'media enterprises', each term defined in somewhat unhelpful terms. So, 'newspaper enterprise' means 'an enterprise consisting in or involving the supply of newspapers' (s. 58A(3)) and 'an enterprise is a media enterprise if it consists in or involves broadcasting' (s. 58A(1)). Both definitions beg the question of what 'newspapers' or 'broadcasting' are in the first place. Does a 'newspaper' include online-only publications (such as *Huffington Post*) and, if so, how like a traditional paper in layout and feel should any such publication be before we consider it a newspaper, especially if hard copy 'newspapers' include magazines and other periodicals? Likewise, does the EA02 replicate the CA03 regime and limit its field of application to traditional broadcasting, thus excluding on-demand programme services (ODPS)? Some have suggested that, in terms of the public interest regime, the Internet (whether in terms of content or access) is not covered (Graham, 2013, p. 402). This is a significant omission, noted by a number of reports and commentators, and requires a remedy – though precisely how to include online in any regime is a hugely complex issue.

Further, the EA02 regime does not take transmission or access to services into account, save to the extent that they already form part of a media or newspaper enterprise. Thus, mergers and acquisitions may

only be assessed by reference to whether there is a 'significant lessening of competition', rather than public interest considerations as a whole. The difficulties of the SLC test can be illustrated by the Easynet case (OFT, 2006), which was assessed under the general merger rules in the EA02. Easynet was essentially an access provider but Sky's acquisition gave rise to foreclosure concerns, given Sky's power in the premium content market. Nonetheless, the OFT did not refer the merger to the CC. While it noted that these concerns existed, it concluded that they did not arise because of the merger but because of Sky's pre-existing strength. This was therefore a matter for market structure analysis rather than merger analysis.

Equally, this sort of issue might give rise to general public interest concerns were it to fall under the public interest mergers regime. But here again, the regime requires that there be a 'merger situation'. Project Canvas was not referred because the parties remained independent and no element of their businesses was transferred; hence, no merger situation. Further, to trigger the merger rules, certain minimum turnover or supply thresholds must be met. While this makes sense from a competition perspective, there may be a public interest in new business and start-ups not being bought by large industry players. BSkyB's acquisition of a wireless Internet connectivity company, Cloud Networks, did not meet this threshold and was not therefore considered at all (ME/4862/11).

The fall-back position is assessment under the normal merger rules. This means that: the jurisdictional test of turnover must be satisfied; there is a merger; and that results in an SLC. Determination of this last point requires an assessment of what the relevant market is, and then consideration of the power of the players on that market. This is a contested area, especially given the double-sided nature of the market (for both advertisers and consumers) and the rapidly evolving nature of the industry. Whereas historically different forms of media were seen as operating in distinct markets, converging media technologies make these historic assumptions more problematic. A key disruptive factor is of course the Internet, which has changed the platforms across which people communicate and has arguably changed the scope of the competitive environment. In the acquisition of the FIVE stable of channels by Portland (the broadcasting interests of which relate to adult entertainment), the Internet was used as a justification for reducing the assessment of the merged entity's share of the news market. In general terms, this acquisition received little attention, perhaps because overall market shares were small. In the acquisition of the *Independent*

by Lebedev (ME/4450/10), the deal included the *Independent's* Internet activities. How they might have been included in any calculation of share or 'dominance' was not addressed because the market shares were too small to trigger jurisdictional tests. The impact of the Internet has been noted more generally. In the market investigation into films on pay-TV in August 2012, the CC concluded that Sky was not dominant, due in part to the launch of new subscription video on-demand services from LOVEFiLM and Netflix, delivered over the open Internet.

The Internet has had a huge impact on local media revenue, which relied heavily on classified advertising such as cars, jobs, and property, much of which is now being diverted to online. In the Kent Messenger decision (ME/5121/11), although the argument was put forward that local papers were in competition for advertising with sites such as eBay and Rightmove, the OFT determined that the examples given were insufficient in number and detail to allow a conclusion that online media should be included in the market definition. While Ofcom noted that the merger could lead to longer-term sustainability of the titles and thus bring important consumer benefits, the OFT placed more emphasis on the impact on advertisers and therefore referred the merger to the CC. As a result, the deal was abandoned, and a number of titles closed.

Ofcom (2006) had earlier noted problems with the CA03's local accumulation rules, suggesting that they might not always work in the interests of plurality in practice – what Ofcom labelled the 'EMap' issue (para 1.6) where, following the conditions of a merger, Emap was obliged to divest a service from three local digital multiplexes. No alternative service providers could be found to take up the capacity, which was therefore left unused. It may be that in future under the general merger rules, an 'exiting title' defence to a merger will become more common and more acceptable, whatever the consequences for competition theory. While many believe that ownership rules around local media should generally be reduced to help sustain it, there is a very good argument that public interest considerations should allow such mergers to go through and may be a justification for more frequent referral to the specialist media merger regime.

Access issues

Triggers for the special plurality regimes do not attach to vertical issues (with the exception of large Telecoms operators). With an increasingly integrated market there are concerns that infrastructure might be used to limit access to competitors' content (cf. the net neutrality debate

and Deutsche Telekom's plans to introduce a data cap on its DSL service, but excluding its own content services from the cap); conversely, sale and distribution of content affects competition in downstream markets. Arguably, access to premium content is, from the perspective of competing service providers, just as much a bottleneck as transmission issues (Fells, 2013, p. 367). The way content and infrastructure issues intertwine can be seen in the acquisition of Virgin Media TV by Sky, where the deal was linked to carriage arrangements so that Virgin can offer the Sky basic TV package on its cable service. The deal was approved without referral. Of course, the exclusion of vertical issues from the CA03 and EA02 public interest regimes does not mean that the CMA would not consider vertical issues, especially foreclosure issues. It merely means that such issues will automatically be considered – if at all – within the context of a competition analysis. Plurality issues may then be considered only through the guise of 'consumer harm'.

This, however, is rarely assessed directly from the viewers' perspective, but rather that of competing providers or – as can be seen in local radio and newspaper cases – from the perspective of advertisers. One consequence, apparently, is that a competition issue is more likely to be found if a media organisation seeks to address more of the same audience (i.e. competing in the same market) than if it seeks to extend its range of influence to new audiences by moving into different types of content (as in the acquisition of FIVE). Whether the former position is more problematic than the latter is debatable. As Arnott (2010) notes, the consideration of the needs of distinct audiences is a complex one, as different audiences may be differently affected by a merger (p. 267). Part of the problem seems to be that there are different ways of assessing the 'market': by genre (e.g. news), by platform (distinction between pay-TV and FTA), as well as by audience targeted. Each of these may raise different plurality issues, a fact which currently does not seem to be recognised within the competition analysis.

As noted, the media ownership rules in the CA03 do not place any specific limits on the ownership of television platforms and these matters fall to competition law. Thus, the acquisition of NGW by Macquarie UK Broadcast Ventures Limited did give rise to an investigation by the CC (CC, 2008) as the merger triggered the economic thresholds in the EA02. The possible impact on content available to viewers was not directly discussed, though significant behavioural commitments were required and the merger took place against certain regulatory obligations. In general terms, the impact was assessed from the perspective of industry participants, which seems to be a common approach with

regard to competition assessments. Audience needs, specifically qualitative considerations, are harder to quantify and seem therefore only to appear indirectly if at all. Similarly, in the Orange T-Mobile case (COMP M.5650), the consequences of the combined entity achieving early-mover advantage in terms of networks and new services (in which download speeds might be significant) were not analysed in terms of consumer access to content and choice of services. Download speeds have, however, the power to influence consumer (content) choice in the context of the Internet generally (as do data caps), and thus may affect certain service providers more than others. Ofcom has also noted the possible impact of 3G services (Ofcom, 2006).

In the context of vertical arrangements, or those where the parties are vertically integrated, there seems to be greater awareness of the impact of transmission on content, and vice versa, though the outcome in these cases is not necessarily reassuring. The CC market investigation into pay-TV and premium content, and the 1996 review of Sky's position in wholesale markets, all indicate the close link between transmission and service content in a sector that has a high degree of vertical integration, especially as a result of rising costs and as the impact of 'triple play' (and now 'quadruple play') takes effect. While triple play considerations were argued in the BSkyB/Easynet and ntl/Telewest mergers, at that point the strategy was at too nascent a stage to be factored in. The ntl/Telewest merger was not referred as the OFT determined that there was no SLC; it was also not subject to the public interest regime and so plurality was again not directly considered. In passing, we might wonder whether these mergers raised public interest considerations and should have been referred.

There are two possible reasons why no reference was made. The first is that a narrow interpretation was given to media enterprise, despite the parties' involvement in pay-TV services, reaffirming the points made above. The second is that the OFT has not been particularly sensitive to when such issues arise, suggesting that some media mergers are perhaps being dealt with inappropriately, as is perhaps also indicated by some of the local media cases. In ntl/Telewest, the threat that Flextech, a content provider vertically integrated with Telewest, would be foreclosed was considered. The OFT dismissed this argument as 'the competitive impact of foreclosing one channel provider with only 5 channels is hard to characterise as substantial'. Some potential loss of diversity therefore seems acceptable to the OFT.

The final issue that is not directly discussed is the impact of those service providers which allow us to find and access content: search

engines, both horizontal (e.g. Google and Yahoo) and vertical (e.g. price comparison websites). Especially in a context of overwhelming availability of content, the means to navigate and to choose becomes of increased significance for content consumption. This issue is not new: the listing in an electronic programme guide (EPG) can affect viewers' choices, and may therefore constitute a barrier to entry or reaffirm existing preferences. The issue of EPG listings has been dealt with by regulation, rather than being a major factor in ownership questions. Ofcom was required to draw up a code, the terms of which recognise that corporate structures may have a role to play in the organisation of listings. So, where there is a link between a channel provider and EPG provider, the EPG provider must refrain from giving undue prominence to that content and ensure that access to all television services in the EPG is 'easily available' (OFCOM, 2004).

The role of the search engine is beginning to be recognised. The High Level Report on Media Pluralism argued that '[d]igital intermediaries such as search engines, news aggregators, social networks and app stores should be included in the monitoring of the sector' (p. 23). Of course, neither the CA03 nor the EA02 specifically mention these sorts of intermediaries, an obvious gap in the level of protection. Whether the right solution is automatic inclusion of such intermediaries in a special regime is doubtful, but it seems clear that their impact on the media environment needs to be considered, as well as the question of whether all such intermediaries should be treated in the same way. One obvious distinction is that between those who produce their own content (or have structural links to such content providers) and those who do not.

The position of search engines has arisen under general competition law: Google is currently subject to investigation at EU level for abuse of a dominant position. The issue of its acquisitions strategy has also arisen both at European level and within the UK. So far, a competition-based analysis in the merger field has not raised sufficient concerns to trigger a reference to a Phase II investigation. Clearly, an acquisition strategy which led intermediaries towards the acquisition of content providers might well lead to questions about impact on the market and on end-consumers (as might also be the case for transmission companies), but it must be remembered that not all the concerns in this area link into media ownership or even competition law. Some relate to more general strategies which are sold to the consumer as a means of managing information flow. Here we see the problem of the 'filter bubble' (Sunstein, 2009; Pariser, 2011) and the consequences of filtering to

achieve personalisation and relevance of information. Filtering may well be a problem in terms of news and current affairs, given its potential to skew debate on matters of public importance, but is it equally a problem with sport and entertainment? While we might consider whether some regulatory action (such as non-discrimination or transparency requirements) should be imposed on search engines and similar entities, this issue is unlikely to be resolved through structural limitations.

Conclusion

The current regime is complex, perhaps overly complex. It seems that the special regimes in the CA03 and the EA02 – in addition to any questions about appropriate levels of media concentration – are defective in that they draw the definitional boundaries of the media very narrowly. In the current media environment, it seems likely that some cases which may raise plurality concerns, or public interest concerns more generally, are not being considered within this regime. This is because some similar services are not subject to the same rules (note the difference between broadcast and Internet content services of various kinds), and the full implications of vertical integration (especially triple and quadruple play) are not considered from the perspective of plurality. Questions relating to the finding of content have yet to be addressed.

Rapid technological and market change, and the difficulty of making assessments in emerging markets, makes competition assessment difficult enough in its own terms even before the additional problem of the authority not being able to focus directly on plurality issues. Consumers are seen as targets of services which are valued by price, and consumers' interests are often outweighed by more easily measurable considerations such as advertisers' concerns about advertising costs. In sum, if we accept that the media is sufficiently distinctive to raise specific concerns, it seems unlikely that a pure competition regime will address these issues adequately. In the light of these weaknesses of a competition-based approach from a diversity perspective, a stronger mechanism for identifying when cases should be referred for special consideration is needed. A competition authority which analyses issues from a competition perspective seems not best placed to pick up non-competition issues. So, if a regime is required to deal specifically with media-related issues, more thought must be invested in how 'media' is to be defined and what particular concerns might trigger regulatory investigation or intervention. Moreover, the regime needs to take account of the fact that media operators participate in what is – from an

audience perspective – one chain of communication. A more coherent approach is needed.

References

- Arnott, C. (2010), 'Media Mergers and the Meaning of Sufficient Plurality: A Tale of Two Acts', (2010) 2 *The Journal of Media Law* 245–276.
- Burnley, R. and Bania, N. (2014) 'Co-operation between broadcasters in the new media age: Rethinking national competition policy', *European Competition Law Review*, 216.
- Competition Commission (2008), *Macquarie UK Broadcast Ventures Limited/ National Grid Wireless Group: Completed Acquisition*, 11 March 2008.
- DTI (2004) *Enterprise Act 2002: Public Interest Intervention in Media Mergers – Guidance on the Operation of the Public Interest Merger Provisions Relating to Newspaper and Other Media Mergers*, May 2004: <http://webarchive.nationalarchives.gov.uk/20100512144753/http://www.bis.gov.uk/files/file14331.pdf>.
- DTI (2006) *Concurrent Competition Powers in Sectoral Regulation*, May 2006, URN 06/1244.
- Fells, A. (2013) 'Competition issues in broadcasting and internet content – Navigating the unknown and the unknowable' In: *OECD Roundtables: Competition Issues in Television and Broadcasting 2013* (DAF/COMP/GF(2013)13), 28 October 2013.
- Graham, C. (2013) 'Public interest mergers' 9 *European Competition Journal*, 383.
- Harastzi (2011) *Media Pluralism and Human Rights*, 2011, Council of Europe (CommDH(2011)43).
- Landau, J. (1998) 'The regulation of broadcasting following the advent of digital convergence', *Computer and Telecommunications Law Review*, 63.
- Ofcom (2004), Code of Practice on Electronic Programme Guides: <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/epgcode.pdf>.
- Ofcom (2006) *Review of Media Ownership Rules*, 14 November 2006: <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-ownership/rules.pdf>.
- OFT (2006) *Anticipated acquisition by BSkyB Broadband Services Limited of Easynet group plc*, 13 January 2006: http://www.ofcom.gov.uk/shared_ofcom/mergers_ea02/2005/bskyb.pdf.
- Pariser, E. (2011) *The Filter Bubble: What the internet is Hiding from You*. New York: Penguin Press.
- Sunstein, C. (2009) *Republic.com 2.0*. Princeton: Princeton University Press.
- Whish, R. (2003) 'Substantive analysis under the EC Merger Regulation: Should the dominance test be replaced by 'substantial lessening of competition?' In: Hutchings and Andenas (eds) *Competition Law Yearbook 2002*, London: BICCL.
- Wilks, S. (1999) *In the Public Interest: Competition Policy and the Monopolies and Mergers Commission*. Manchester: MUP.

3

Plurality and Public Service Broadcasting: Why and How PSBs Deserve Protection

Steven Barnett

Introduction

One of the more neglected areas in discussions (and literature) on plurality is the potential and actual contribution of public service broadcasting (PSB). While supporters of PSB argue that it represents an essential intervention and wholly positive contribution to a more pluralistic media ecology, critics (mostly from private sector competitors) counter with two interlinked objections: first, that by their very nature public service broadcasters offer only a homogeneous and centrally dictated news agenda; and second, that this public intervention either potentially or actually distorts the media market and thus in fact serves to *suppress* diversity. Moreover, it is argued that in some countries with less developed democratic cultures, public funding is more likely to render such broadcasters more susceptible to state or elite pressure, thereby narrowing the potential for greater pluralism still further.

This chapter examines the debate around the contribution of PSB to plurality, focusing specifically on recent policy debates in the UK and the role and contribution of the BBC. It looks first at the background to current plurality debates rooted in the Leveson Inquiry into the culture, ethics, and practice of the UK press, which reported in late 2012, and how muted and ineffectual government responses have in turn been reinterpreted by some private sector interests to suggest that any remedial structural action should be focused on a 'dominant' BBC rather than an overly concentrated private sector. It then examines how this deliberate reinterpretation of plurality has been unintentionally exacerbated by ill-suited measurement processes originally proposed by the UK regulator Ofcom – suggesting that television rather than print, online or social media still dominates the national political conversation – and

the vital importance of identifying appropriate measures for a proper assessment of PSB contributions to plurality. Finally, drawing on arguments around the BBC's contribution to UK plurality, it examines the rationale for excluding PSBs from plurality considerations, subject to certain normative conditions and empirical evidence around internal plurality, governance, transparency, and ethics. These conditions are transferable to other nation states, and fall within the parameters laid down by the EU.

Plurality and the Leveson Inquiry

Though set up by Prime Minister David Cameron in the light of the phone hacking scandal in July 2011 specifically to investigate the 'Culture, Practice and Ethics of the Press', the Leveson Inquiry's remit ran more widely than simply examining press behaviour and making recommendations on a new regulatory regime. As the terms of reference were being determined, campaigners lobbied to ensure that media plurality was included as an integral element of the new inquiry, on the basis that neither phone hacking nor the police connivance nor the many other journalistic abuses – such as intrusions into personal grief, data mining, or gratuitous distortion of facts – could have happened without the untrammelled power of private media corporations in general and Rupert Murdoch's News Corporation in particular. Thus, a crucial element of the Leveson Inquiry's final Terms of Reference was to make recommendations:

- a. for a new more effective policy and regulatory regime which supports ... the plurality of the media;
- b. for how future concerns about press behaviour, media policy, regulation and cross-media ownership should be dealt with by all the relevant authorities

In order to accommodate this broad remit, the oral evidence-gathering phase of the inquiry itself was split into three distinct parts: the press and the public; the press and the police; the press and the politicians. And while the headlines were made during the Part One hearings – by the A-list celebrities who testified to the personal anguish inflicted on them by phone hacking, and by the newspaper editors who tried to justify their excesses – a less publicised but equally remarkable series of exchanges took place during Part Three, when several senior politicians publicly admitted that they had surrendered too much power to

big media corporations. In particular, the Prime Minister, the deputy PM (Nick Clegg, leader of the Coalition's minority party the Liberal Democrats), and the Opposition leader Ed Miliband made public statements to that effect before, during, and after Leveson. Speaking in the House of Commons just days after the hacking scandal broke, David Cameron specifically addressed the issue of unbridled media power:

[the] challenge is how we address the vexed issue of media power. We need competition policy to be properly enforced. We need a sensible look at the relevance of plurality and cross-media ownership. Above all, we need to ensure that no one voice – not News Corporation, not the BBC – becomes too powerful ... never again should we let a media group get too powerful.¹

It was noticeable that, even in the heat of a scandal clearly focused on News Corporation, Cameron could not resist including the BBC in his reference to media power. Returning to the theme at Prime Minister's Questions on 25 April 2012, however, Cameron felt able to be more specific about the problem without resorting to a sideswipe at the BBC: 'I think on all sides of the House there's a bit of a need for a hand on heart. We all did too much cosyng up to Rupert Murdoch'.

Both the other major party leaders also responded with direct reference to ownership and plurality issues as the phone hacking scandal unfolded. In a speech to the Institute for Government on 14 July 2011, Deputy Prime Minister Nick Clegg explicitly addressed the need to tackle ownership, within the principles of his own party's creed: '... diversity of ownership is an indelible liberal principle because a corporate media monopoly threatens a free press almost as much as a state monopoly does. For liberals, a cacophony of dissenting and conflicting voices is a prerequisite for healthy competition and vibrant debate'.² And in the same debate in which Cameron had expressly warned about letting media groups become too powerful, the Opposition leader Ed Miliband also referred to the UK's inadequate anti-monopoly regime:

The [Communications] Act needs to be updated as such a concentration of power is unhealthy. If one thing comes out of what we have seen in the past two weeks and over many years, it must be that we understand the point about concentrations of power in our society because large concentrations of power are more likely to lead to abuses of power.³

With political leaders freely admitting that they and their predecessor governments had not applied the kind of regulatory constraints to burgeoning media enterprises that were essential for a thriving democracy, it was scarcely surprising that Leveson himself should come to the same conclusion. He concluded his section on the press and politicians by reiterating the Prime Minister's view that 'we all got too close to News International' and then observed that 'no government addressed the issue of press regulation, nor of concentration of ownership', making it clear through the juxtaposition that inaction in both regulation and media ownership was at least partly down to the certain antagonism that policy initiatives would have provoked from Rupert Murdoch.⁴ More generally, he concluded that both governments and opposition parties in the UK over the last 30–35 years had developed too close a relationship with the press and that 'politicians have conducted themselves in a way that I do consider has not served the public interest'.⁵

It was therefore disappointing that, in a 2,000-word report with Terms of Reference which explicitly mentioned cross-media ownership, barely 15 pages were devoted to eight highly generalised and unambitious recommendations on plurality, pitched at the level of what Leveson called 'desirable outcomes and broad policy framework'. While he explored some of the less appetising details of press–politician relationships – the use of 'spin', covert or unpublicised meetings with proprietors, the development of cosy relationship with senior editorial figures, the lack of transparency in political dealings with media corporations – the rather more abstract issue of concentration of media power and the potential threat to democracy was not central to his report or recommendations. On the role of the BBC, there was one interesting observation which was lost amidst other generalities but which, as we shall see, was highly significant:

The Governance provisions of the BBC require a high degree of editorial independence within the Corporation, which, when working effectively, ensure ... a diversity of voices and viewpoints from the different channels and programmes. This, perhaps, provides a model that would help to ensure plurality in relation to other large players in the media market.⁶

Government response and emergence of a BBC 'issue'

Despite the generality of Leveson's proposals, the political momentum behind real change in the plurality regime might have been expected

to energise the Coalition Government into meaningful reform. It soon became clear, however, that any sense of urgency or radicalism had quickly evaporated. After an eight-month delay, the government finally published its consultation paper, *Media Ownership and Plurality* – possibly one of the dullest, shallowest, and most unimaginative documents ever to emerge from a government department on a matter of vital public interest (DCMS, 2013). From beginning to end, it reeked of ministerial caution and government fear of upsetting powerful vested interests less than two years before a general election. It was as if the political earthquake around media power, News Corporation and high-level politicians' admissions of cowardice had never happened.

After a brief overview of the current regulatory framework, the document stated unequivocally that '[t]here are good reasons for wanting to look again at this approach'. It then quoted Leveson's broad recommendations, which might have been expected to serve as the starting point for a more wide-ranging discussion about available policy options. This was followed by five pages of statistics on 'where do we get our news from?', situating any policy thinking firmly within the context of news *consumption* rather than addressing issues of power, concentrated ownership, or broader ideas for advancing diversity and serving the public interest. It concluded by explicitly (and fatally) confining the whole consultation to 'the scope of the measurement framework'.

Its nine consultation 'questions' were then grouped under five general headings:

- the types of media that a new measurement framework should include
- the genres it should cover
- the types of organisation and services to which it should apply
- whether it should include the BBC
- the audiences with which it should be concerned.

This simplistic approach therefore not only prioritised the measurement process, but severely circumscribed the fundamental issue of how media plurality should operate within a healthy democracy, what new public policy initiatives might serve to promote the public interest, and any discussion of the policy issues that might arise from that. It also excluded any consideration of the efficacy of the public interest plurality test arising out of the 2003 Communications Act (which had been tested and found badly wanting by News Corporation's attempted takeover of BSkyB), the involvement of government ministers in the

decision-making process, and the need for streamlining a complex regulatory process.

It was, however, the aftermath of its publication that was even more instructive than the superficial nature of the consultation itself. Within the 27-page document and its nine consultation questions, there was precisely one question and one-and-a-half pages devoted to the issue of whether – and how – the BBC might be incorporated into a new plurality framework. In any democracy with a publicly funded or subsidised broadcaster, this is of course a legitimate and important question within a holistic debate about developing a plurality framework which protects and promotes the public interest. But, while the role of a publicly funded broadcaster in the total media mix was acknowledged, it was a very small element of the consultation and paled into insignificance during the Leveson hearings when set against the distorting editorial influence of a few privately owned global media corporations pursuing their own explicit agendas.

Nevertheless, when it came to press reaction to the consultation's launch, it was perfectly clear that judicious government briefing combined with certain newspapers' corporate self-interest produced a wholly distorted coverage which focused almost entirely on the single question addressing the role of the BBC.⁷ Thus, according to the *Sun*, 'the BBC's dominant share of news coverage in Britain is to come under Government spotlight' because 'its own figures show it provides nearly three-quarters of all TV news broadcast in Britain'. This was incorrect, though unclear whether driven by sloppy agenda-driven reporting or deliberate but unattributable ministerial briefing. In fact, Ofcom figures (not 'government' figures) show that the BBC *provides* only a quarter of the UK's broadcast news output although it does account for three-quarters of broadcast news *consumption* – a subtle distinction in the exercise of consumer choice which the *Sun* carefully elided.

This precisely targeted reporting was not restricted to the *Sun*. The *Daily Mail* greeted the government paper with the headline: 'BBC could be curbed under government plans to rein in dominance of media giants' and, with almost undisguised glee, continued: 'the BBC ... could be forced to rein in its dominant news website'. Given the rapidly increasing popularity of the *Daily Mail's* online site, there was little disguising where the its financial interest lay (which happened to coincide nicely with its long-standing ideological antipathy to the BBC as a hot-bed of unreconstructed left-wing conspirators). Even the *Observer* joined in this carefully orchestrated propaganda coup when Peter Preston (no great BBC supporter, despite having been an eminent *Guardian* editor

for many years and despite the *Observer's* left-leaning credentials) wrote that the consultation paper 'raises the prospect, at last, of counting the BBC as part of the news landscape'. In fact, as analysed in more detail below, the BBC has always been counted in terms of news consumption, but is virtually irrelevant to discussions of political king making, partisan agenda-setting, and raw political power. It is, in other words, not relevant to what Tony Blair called in his evidence to the Leveson Inquiry 'the use of newspapers as instruments of political power'.

PSBs and the measurement of 'power'

It is this concept of power – and specifically political power – which lies at the heart of discussions about plurality and media ownership: for democracy to function properly, the exercise of power over public opinion, lawmakers, opinion-formers, and elite decision-makers should not become concentrated within an oligopoly of individuals or organisations. At what point or threshold a media enterprise might be deemed to have an unhealthy share – and what measurement criteria to employ in justifying some kind of regulatory intervention – is perhaps the most challenging problem faced by policymakers. Traditionally, the policy and regulatory response has concentrated on measurement proxies for power over *public opinion* formation, a narrow focus on editorial issues which ignores the damage which can be inflicted by concentrations of media power in other ways: over policymakers and the legislative agenda of Parliament; over policy-thinkers and opinion-formers in dictating new ideas and driving change: over the judiciary; or over relevant regulators, exerting both legal and editorial pressure to demand favourable decisions.

This essentially abstract problem of how to define media power for the purposes of establishing measurement criteria was implicitly addressed by the UK communications regulator Ofcom in an important document in June 2012 which responded to a request from the Culture Secretary for advice on an effective metrics system. It defined plurality with reference to what it called 'desired outcomes of a plural market' and suggested two overarching principles:

- Ensuring there is a **diversity of viewpoints** available and consumed across and within media enterprises.
- Preventing any one media owner or voice having **too much influence** over public opinion and the political agenda (Ofcom, 2012, p. 8, emphasis in original).

These principles, described by Ofcom as ‘the two proxies we have for a plural market’, were adopted by the Government in its 2013 consultation and have been widely accepted in the UK as a fair operational interpretation of the democratic underpinnings of media plurality (despite their overly narrow focus on news dissemination and opinion formation). They have therefore become the benchmark for developing a metrics system through which interventions can be justified. Ofcom then proposed, on the basis of its own definition, that relevant measures for quantifying a news media market’s plurality fell into three categories: *availability*, *consumption*, and *impact*. Availability is clearly of limited use, particularly in a world teeming with online and social media outlets, since it fails to take into account reach or influence. Ofcom therefore concluded, rightly, that ‘availability metrics are relevant in any plurality assessment, but offer limited insight and on their own are not sufficient’.

Far more emphasis was therefore placed on consumption. In an era when media sectors were discrete, convergence did not exist and there was little or no cross-ownership, it was relatively easy to impose sectoral limits by audience consumption: traditionally (though not necessarily logically) share of TV viewing, share of newspaper circulation, and share of radio listening. With convergent technologies and cross-ownership now an established fact, any quantitative approach to consumption must find a measurement ‘currency’ which crosses sectoral boundaries. For this reason, Ofcom returned to a scheme which it first employed when carrying out its public interest analysis of News Corp’s proposed takeover of BSkyB in 2010,⁸ which it called ‘Share of References’.

A full explanation of that scheme is contained in Ofcom’s subsequent report on news consumption, published in 2013 (Ofcom, 2013a, p. 20). Essentially, Share of References is calculated by asking respondents in a large representative survey which sources of news they use ‘nowadays’, and how frequently. Each mention is counted separately and the figures are aggregated, culminating in a share for each news provider expressed as a proportion of all references for all news sources. In Ofcom’s words: ‘This produces a cross-media metric with consistent methodology and a consistent definition of news across all platforms’. It is a superficially attractive approach because it appears to offer a solution to the perennial conundrum of cross-media measurement, but it suffers from one fatal flaw which undermines its efficacy: by focusing entirely on news consumption (as reported by consumers), it exaggerates the role of television and – because the BBC has long been the most popular TV

news source – it therefore distorts the true picture of how media power is distributed in the UK.

The bare figures tell this superficial story of television's, and therefore the BBC's, 'dominance'. When asked about their news sources nowadays in Ofcom's news consumption study referenced above, 78 per cent answered television, 40 per cent newspapers, 35 per cent radio and 32 per cent the Internet (Ofcom, 2013a, p. 5). So, twice as many respondents said TV as newspapers, a wholly predictable consequence of television's ubiquity and accessibility (and the average 28 hours a week of television watched in the UK on various platforms). In Ofcom's cross-media 'share of references' calculation, this translated to a 47 per cent share of news consumption for television compared to a mere 13 per cent for newspapers. And because the BBC – partly through its legacy and reputation, and partly through its continuing investment in journalism – remains easily the most popular TV news source, it commands a 62 per cent share of television news viewing. On Ofcom's calculations, therefore, looking at overall news sources, the BBC commands a 44 per cent of Share of References. Its closest rivals were ITN (11 per cent) and Sky (7 per cent), while the largest share for newspapers was News Corporation with just 4 per cent (Ofcom, 2013b, p. 23). Those are the kinds of consumption figures that can easily be exploited by the big media conglomerates to deflect attention from their own size and ensure that the plurality spotlight remains firmly on the BBC. An excellent example of how such an argument plays out in Britain was recently offered by the right-of-centre commentator Fraser Nelson in the *Daily Telegraph*:

Like a medieval army that believes it has to keep conquering or face defeat, the state-funded BBC has started to occupy new terrain and is now a hegemon in providing the printed word. More people get their news from the 18-year-old BBC website than from any newspaper, unfair competition which is crushing not just local newspapers but national ones, too. (Nelson, 2013)

The crucial plurality question, however, is whether this 'Share of References' metric really equates to *power*. There are three important reasons for supposing that, while being superficially attractive, it substantially overstates the power of broadcast media in general, and the public service broadcaster in particular; and conversely, understates the power of the written word, both in hard copy and online.

First, this approach takes no account of the power to persuade, or the opinion-forming impact of print and online media. Ofcom was

careful to acknowledge the significance of 'impact' in its 2012 report but, unsurprisingly given the long and difficult sociological history of 'effects' studies, concluded that it was very difficult and that 'our attempts to measure impact through quantitative research have revealed complexity in how people's opinions are formed'. Having acknowledged its importance, however, it felt compelled to propose measurement 'proxies' for impact and suggested three: perceived *importance*, perceived *impartiality* and perceived *quality* of news source.

Unfortunately, all of these (at least in the UK) tend to favour not only the television medium but specifically the BBC – a reflection of the regulated environment which has helped to construct a strong attachment to broadcasting, and a highly developed national and international sense of trust invested in the BBC. Again, however, it is difficult to argue that this automatically equates to *power*. Impassioned, one-sided argument is an integral and powerful element of a free press and a vibrant online environment. Britain's national newspapers, in particular, have a long tradition of being highly partisan, and its popular press in particular often elides news and comment (an issue raised more than once by politicians during their evidence to the Leveson Inquiry). While we cannot know empirically to what extent such editorialising drives popular opinion, intuitively a one-sided, opinionated approach is likely to have more impact, and be more persuasive, than a carefully balanced and detached approach. And yet the power to exercise that passion and thus to influence hearts and minds is missing from a purely consumption-based and perception-based calculation based on responses to consumer surveys.

Second, a consumption approach takes no account of the power to set news agendas. While recent, reliable empirical research on where and how news stories originate is lacking, it is at least arguable that in Britain the national press plays a hugely important role in setting broadcast news agendas, perhaps unlike any other European country. Anecdotal support for this view emerged recently following a lecture delivered by the BBC's high-profile and highly regarded Economics Editor Robert Peston at the University of Westminster in June 2014. Asked about how the BBC decided on its news agenda, he expressed his frustration at the way in which BBC News was, in his view, 'completely obsessed by the agenda set by newspapers'. This was born, he said, of a safety-first attitude in which 'if we think the *Mail* and *Telegraph* will lead with this, we should. It's part of the culture The safest thing is to go with what the newspapers are going with, even at a time when the influence and power of newspapers is radically declining' (Brown

and Deans, 2014).⁹ That this view extended beyond the BBC was confirmed the following week by John Ryley, Head of Sky News, who was asked his reaction to Peston's comments. He replied: 'I have always been shocked from the very first time I started in [TV] news at the reliance on newspapers' (Sweney, 2014). In addition, most mainstream broadcasters feature newspaper reviews within their news programmes, and BBC News routinely tweets the front-page stories of the following day's national newspapers every evening as well as summarising the main stories in the papers on a dedicated blog (http://www.bbc.co.uk/news/blogs/the_papers/).

Third, this approach takes no account of the power to influence the parliamentarians, think-tankers, civil servants, regulators, and others responsible for developing and implementing public policy. In his 2013 book *Democracy Under Attack*, former *Guardian* journalist Malcolm Dean published a meticulously researched account of case studies which demonstrate how press influence operated in a number of social policy areas including law and order, drugs, and asylum seekers (Dean, 2013). In his book analysing the root causes of the phone-hacking scandal, Nick Davies (the journalist most responsible for its exposure) suggested that some Labour Government policies – including the buying-in of private medical businesses by the National Health Service and the publication of names and addresses of convicted sex offenders – resulted directly from discussions with key figures at Murdoch's *Sun* newspaper (Davies, 2014, pp. 214–215). In addition, evidence to Module Three of the Leveson Inquiry offered abundant evidence of how unduly powerful media corporations can influence policy and regulatory decisions by exerting pressure on politicians. More compelling evidence of such corporate muscle-flexing was provided by the retiring Chief Executive of Ofcom, Ed Richards, when he alleged at his leaving party in December 2014 that one media mogul had shouted at him in his office: 'We know who you are, we know who your friends are and we know where you live'.¹⁰ That kind of power – and a blatant attempt at intimidation – cannot be measured through a 'Share of Reference' metric.

It is inherent in Ofcom's approach that television's penetration and popularity equates to power. But any serious attempt to quantify cross-media power must be able to account for the campaigning, passion, and agenda-setting characteristics of the press, particularly in a country like the UK where – almost uniquely – the power of the national newspaper publishers and editors has not diminished with circulation declines, and where online and social media (in particular, Twitter and Facebook) offer further reach and magnification for established

newspaper columnists. Further support for this view, in the context of the UK's 2015 general election, came from Mike Darcey, chief executive of Murdoch's newspaper publishing arm in the UK, who wrote at the beginning of 2015:

I do not dismiss the role of broadcasters. TV will capture the drama, and document what the different parties are up to. Radio coverage will be intelligent, immediate and intimate. Social media will set the pace for claim and counter claim. But far from following on the sidelines, I'll happily predict now that papers will again prove dominant in setting the agenda, clarifying the choice and shaping the outcome. (Darcey, 2015)

Ofcom's own research provides confirmation that, despite declining circulations, 40 per cent of the UK population still 'use daily newspapers for news', of which a quarter read the *Sun* and one in five read the *Daily Mail*. Alongside a further 9 per cent who read the *Times*, a combined figure of one-third of newspaper readers therefore still read papers owned by Rupert Murdoch's News UK (or one in eight of the UK population as a whole) (Ofcom, 2013a, p. 8).

Unwittingly, therefore, Ofcom appears to have provided some useful empirical cover for those who wish to make the BBC rather than an increasingly consolidated private sector the focus of plurality debates. While the relative influence of public service broadcasters will differ across countries – and in the US or Australia, for example, it will be less pronounced – the BBC's dominance as a source of news in the UK makes it an easy target, particularly when the independent regulator purports to demonstrate that the BBC is responsible for nearly half (44 per cent) of all news consumption. As we have seen, this apparently overwhelming superiority was a natural consequence both of television's continued dominance as the main platform for news consumption, and the BBC's continued pre-eminence as audiences' first choice for television news. While extrapolating from the UK experience may not therefore be entirely relevant for other nation states with public broadcasters, the principles involved in determining their inclusion for plurality purposes are certainly comparable.

Protecting PSBs from plurality calculations

In general, there are at least four reasons why a publicly funded broadcaster – as long as appropriate safeguards for accountability and

transparency are in place – should be protected from plurality regimes designed to promote the public interest. First, it is axiomatic that public ownership means there are no proprietorial or corporate influences to dictate or influence output. This is not just a matter of the application of impartiality rules, which in most European countries apply to all broadcasters (and certainly to those which are wholly or partially funded out of public money). It is also about the absence of an overarching corporate pressure which can dictate agendas, skew story selection and impose a unidirectional vision of the world.

In the UK, there are regular allegations of bias levelled at the BBC, predominantly but by no means exclusively from the right, but none based on rigorous empirical evidence. Indeed, the only systematic study of recent times, conducted by Cardiff University, has concluded that the BBC ‘tends to reproduce a Conservative, Eurosceptic, pro-business version of the world, not a left-wing, anti-business agenda’ (Berry, 2013). Over the years, allegations have been levelled from both political wings without any evidence of systematic institutional bias. In fact, the BBC’s journalistic integrity and reputation is protected by a robust (and very lengthy) set of ‘producer guidelines’ as well as internal training and peer reinforcement designed to provide insulation from a corporate world-view.

Second, publicly funded broadcasters are generally forbidden from any expression of views, either explicitly or implicitly. In countries where the publicly funded broadcaster has no mechanisms for ensuring independence and is little more than a barely disguised mouthpiece for pro-government propaganda, this clearly does not apply. But in most mature democracies where public funding equates with clear public service principles, there is a chasm of difference between the untrammelled partisanship of the press (both hard copy and online) and the circumscribed institutional values of PSBs whose measured and opinion-free approach can be assumed to have less impact on the formation of attitudes and opinions.

Third, genuinely independent public broadcasters have mechanisms of accountability which prevent any blatant compromise of the institutional values they are bound to uphold. In the UK, the BBC is accountable to its licence payers and to Parliament through transparent reporting and structural mechanisms – and in particular to the BBC Trust, which was established in 1997 as its governing body – which ensure that its output complies with detailed editorial guidelines which in turn are derived from its constitutional obligations laid down in the BBC Royal Charter, Agreement and accompanying Service Licences (for

a full analysis of the BBC's governance structures and changes in 2006 see Barnett, 2008). The BBC cannot be captured for private gain, operates transparently in the public interest, and cannot editorialise. To include it in any plurality calculations, and thereby artificially diminish the potential influence of corporate owners willing and able to promote a single viewpoint, is bound to distort efforts aimed at assessing the range of cultural influences and sources of cultural power.

Finally, many public broadcasters, far from speaking with a single institutional voice, strive to provide a platform for different and dissenting voices. The BBC itself pursues a policy of internal plurality, whereby individual services and programmes are encouraged to develop their own editorial 'voices' within an impartiality framework. Both in the way stories are covered and in terms of story selection, there will be different editorial agendas between, say, the *Today* programme on Radio 4 or *Newsbeat* on the BBC's popular music station Radio 1; or even between two news bulletins on the same channel which are scheduled at different times and therefore aimed at different audiences. In its submission to Ofcom's media plurality review in 2012, the BBC emphasised its commitment both to reflecting a range of views within individual stories and to different treatment of the same stories across platforms and programmes (BBC, 2012). This fits entirely within an established institutional approach to impartiality which emphasises the need to address different audiences and allow different expressions of opinion without sacrificing integrity or resorting to editorialising (Barnett, 2011, pp. 234–242).

Writing in the *Guardian* in June 2012, its editor Alan Rusbridger elaborated on these issues when he posed 'seven critical questions' to assess the potential threat of a powerful media organisation (Rusbridger, 2012):

- a) Does it have strong internal governance?
- b) Is it effectively externally regulated?
- c) Is it subject to, and does it comply with, the law?
- d) Is it subjected to normal scrutiny by press and parliament?
- e) Does it overtly try to exert public political influence?
- f) Does it privately lobby over regulation or competition issues?
- g) Does it actively work to expose the private lives of politicians or other public figures?

He concluded that 'On such a scorecard, the BBC would score one out of seven – in the sense that only one of the issues, f), is engaged. News

Corp would score seven.’ Even on (f), it could be argued that the BBC lobbies in the public rather than in its own corporate interest, as civil society groups find it hard to make their voices heard.

Conclusion

It would be unrealistic – and probably wrong – to expect public broadcasters to be excluded entirely from any consideration within national plurality frameworks. Some account needs to be taken of their contribution to the cultural and democratic mix, as is equally true of the burgeoning ‘digital intermediaries’ such as Google, Twitter, and Facebook, despite their lack of involvement – so far – in news production rather than distribution. But we would all do well to remember Tony Blair’s phrase about newspapers as ‘instruments of political power’. Newspapers and their electronic versions set agendas and influence opinion. Circulations may be in decline and business models under threat, but there is still plenty of scope for the concentration of colossal media power in very few private hands. Policymakers should therefore not be sidetracked by anxiety – often manufactured or deliberately exaggerated by private sector competitors – over a publicly funded broadcaster which is owned by the British public, and which often contributes to rather than detracts from cultural diversity. This was clearly recognised by the European Commission’s High Level Group in its 2013 report, where it drew on the EU’s long-standing recognition of the contribution of PSBs:

As regards Public Service Broadcasting, the ‘Amsterdam Protocol’ annexed to the EU Treaties acknowledges the important and positive role of these broadcasters for democracy and pluralism and sets at the same time some limits to the national funding systems. These have been further developed in the Commission’s Communication on state aid rules applying to Public Service Broadcasters. At the same time, it is evident that public ownership of the media is not synonymous with government propaganda (as it clearly is in many non-democratic countries) and the editorial and artistic independence of Public Service Broadcasters must rigorously be respected by the governments in power. (European Commission, 2013, p. 39)

Implicit within the High Level Group’s analysis, however, are some important caveats which should apply globally to PSBs if they are to be considered net contributors to plurality: that funding should not

unreasonably distort competition from the private sector; that transparent codes of conduct should ensure high quality and impartial output; and that effective and transparent accountability measures should ensure both that these codes are properly observed and that revenues are spent in accordance with clearly stated principles and purposes. Moreover – and crucially – there should be robust mechanisms in place to ensure proper and complete independence from any state or government interference with PSB output. In the UK, the BBC Trust established in 2006 and the Charter which lays down its public purposes act as a guarantor of its continuing operation in the public interest and its overall contribution to media plurality in Britain. Despite attempts by its private sector competitors to claim otherwise – and despite flawed measurement processes being advocated by the communications regulator Ofcom which severely underestimate the real-life influence of Britain’s national publishers – the BBC offers an important template for other countries wishing to protect their public broadcaster within an independent and effective regulatory framework that helps to promote plurality and protect it both from government interference and from inclusion in a plurality regime aimed at curbing private conglomerates.

Notes

1. Rt Hon. David Cameron MP, House of Commons, 20 July 2011: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110720/debt-ext/110720-0002.htm#110720110000003>
2. Rt Hon. Nick Clegg MP, 14 July 2011: <http://www.dpm.cabinetoffice.gov.uk/news/speech-freedom-accountability-and-plurality-media>
3. Rt Hon. Ed Miliband MP, House of Commons, 20 July 2011: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110720/debt-ext/110720-0002.htm#110720110000003>
4. Lord Justice Leveson, *An Inquiry into the Culture, Practices and Ethics of the Press: Report* (HC 780), 2012, Vol III, p. 1432, para. 2.12.
5. *Ibid.*, p. 1439, para. 3.7.
6. *Ibid.*, pp. 1464–1465, para. 2.13.
7. That the Government deliberately briefed this message is not mere inference: I was told by a policy adviser close to the political process that this had been precisely the message which the (Conservative) minister had wanted to convey, in a bid to curry favour with a popular press notoriously hostile to the BBC.
8. For further background and discussion of this attempted transaction, see Gibbons in this volume.
9. As chair of the session, I asked Peston the question on BBC news agenda setting, expecting a rather more neutral reply!
10. The mogul in question was widely believed to be James Murdoch who, as Rupert Murdoch’s son and then chairman of News International (News

Corp's UK operation), was leading News Corp's bid for full takeover of BSKyB. Ofcom had indicated its desire to refer the bid to the Competition Commission: <http://www.dailymail.co.uk/news/article-2882173/We-know-live-Astonishing-threat-James-Murdoch-head-Ofcom-BSkyB-takeover-bid.html> (last accessed 6 March 2015).

References

- Barnett, S. (2008) 'Can the Public Service Broadcaster survive? A case study of renewal and compromise in the new BBC charter' In: Jo Bardeol and Greg Lowe (eds) *From Public Service Broadcasting To Public Service Media*, Nordicom, pp. 87–104.
- Barnett, S. (2011) *The Rise and Fall of Television Journalism: Just Wires and Lights in a Box?* London: Bloomsbury Academic.
- BBC (2012) 'BBC's response to Ofcom's invitation to comment on measuring media plurality', *Ofcom*: <http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/responses/bbc.pdf> (last accessed 6 March 2015).
- Berry, M. (2013) 'Hard evidence: How biased is the BBC?' *The Conversation*, 23 August: <http://theconversation.com/hard-evidence-how-biased-is-the-bbc-17028> (last accessed 6 March 2015).
- Brown, M. and Deans, J. (2014) 'Robert Peston: BBC follows the Daily Mail's lead too much', *The Guardian*, 5 June: <http://www.theguardian.com/media/2014/jun/06/bbc-obsessed-agenda-daily-mail-robert-peston-charles-wheeler> (last accessed 6 March 2015).
- DCMS (2013) 'Media ownership and plurality: Consultation', *DCMS*, July 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225790/Media_Plurality_Consultation_2013.pdf (last accessed 6 March 2015).
- Darcey, M. (2015) 'Why newspapers will play a dominant role in shaping the outcome of this year's general election', *Press Gazette*, 5 January: <http://www.pressgazette.co.uk/content/why-newspapers-will-play-dominant-role-shaping-outcome-years-general-election> (last accessed 6 March 2015).
- Davies, N. (2014) *Hack Attack: How the Truth Caught up with Rupert Murdoch*. London: Chatto and Windus.
- Dean, M. (2013) *Democracy Under Attack: How the Media Distort Policy and Politics*. Bristol: The Policy Press.
- European Commission (2013) *A free and pluralistic media to sustain European democracy* The Report of the High Level Group on Media Freedom and Pluralism: <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf> (last accessed 6 March 2015).
- Nelson, F. (2013) 'Press freedom and fairness should be enshrined in a British Bill of Rights', *Daily Telegraph*, 3 October: <http://www.telegraph.co.uk/news/uknews/leveson-inquiry/10353230/Press-freedom-and-fairness-should-be-enshrined-in-a-British-Bill-of-Rights.html> (last accessed 6 March 2015).
- Ofcom (2012) 'Measuring media plurality: Ofcom's advice to the Secretary of State for culture, olympics, media and sport', *Ofcom*: <http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf> (last accessed 6 March 2015).

- Ofcom (2013a) 'News consumption in the UK: Research report', *Ofcom*, 25 September: http://stakeholders.ofcom.org.uk/binaries/research/tv-research/news/News_Report_2013.pdf (last accessed 6 March 2016).
- Ofcom (2013b) 'News consumption in the UK: Research report', *Ofcom*, 25 September (slide pack): http://stakeholders.ofcom.org.uk/binaries/research/tv-research/news/News_Report_2013_slides.pdf (last accessed 6 March 2015).
- Rusbridger, A. (2012) 'The overwhelming case for plurality', *The Guardian*, 24 June: <http://www.theguardian.com/media/2012/jun/24/overwhelming-case-media-plurality> (last accessed 6 March 2015).
- Sweney, M. (2014) 'Sky news boss criticises press influence on television newsrooms', *The Guardian*, 12 June: <http://www.theguardian.com/media/2014/jun/12/sky-news-boss-criticises-influence-newspapers-daily-mail> (last accessed 6 March 2015).

Part II

4

Plurality and Local Media

Martin Moore

This chapter examines the plurality of news and information at a local level, focusing on the UK. It shows how radically the provision and distribution of local news and information is changing as we transition from print and analogue to digital. It points to the gradual emergence of new news services, but suggests many of these – as well as many existing – local news services may not survive into the digital era. Their bid to become sustainable may also be hampered, the chapter suggests, by the colonisation of local space by new media technology corporations like Google and Facebook. Public policy, the chapter concludes, has yet to acknowledge the growing problem of news provision at a local level.

The crisis in local newspapers

‘It’s our town at the end of the day’, Emma Jones, who runs Holland & Barrett Port Talbot told journalist and researcher Rachel Howells, ‘and the more they keep us in the dark, the more they can get away with’. ‘They’ are the Welsh Government, and they are planning the closure of Junction 41 of the M4 in South Wales. Following a trial period, the closure may be made permanent, and would cut off Port Talbot from the rest of South Wales.

Locals are outraged at the lack of consultation, at their powerlessness to prevent it happening, and about the likely impact it will have on the town. ‘I think it will turn us into a ghost town’, Emma Jones said. ‘It will devastate the town’, a local hairdresser told Howells (Howells, 2015).

How different would this have been if Port Talbot still had a local paper? A local paper reaching a critical mass of residents ought to have made more people aware of the plans early on, and provided a platform

for consultation. It might have given greater voice to local outrage and an opportunity for the authorities to respond. It might have sparked a local campaign to stop or amend the plans.

The *Port Talbot Guardian* closed down in 2009. Now the only local daily or weekly paper to serve the area (Neath-Port Talbot has a population of 139,800) is the *South Wales Evening Post* based in Swansea, over 10 miles away and with a very different demographic, history, and set of local priorities. The Port Talbot edition of the *Post* always carries a few local stories but is primarily seen as a Swansea paper and serves many towns in addition to Port Talbot. There are two *Post* reporters covering Port Talbot, though working from the Swansea office. A few decades ago there were as many as four newspaper offices and a dozen journalists based in the town (ibid.).

In response to the closure of the *Guardian* a few journalists, including Howells, formed a news co-operative and launched the *Port Talbot Magnet* online. The *Magnet* does what it can to cover local news and politics, but with revenues of under £25,000 per annum, no paid employees, and a handful of freelancers and volunteers covering the patch, there is a limit to how much it can report.

Port Talbot is not the only town in South Wales to lack dedicated professional reporters. Most local newspapers in Wales have lost reporters. In some areas there is just one senior reporter left per newspaper. There are 'just six senior reporters and five trainees to cover the seven remaining local titles in communities like Pontypridd, Merthyr, Aberdare, Llantrisant and the entire Rhondda Valleys' (Williams, 2011).

Nor is the loss of local print reporters limited to Wales. Reporters and other editorial staff have been cut at most UK news groups. Johnston Press, the largest regional newspaper group in the UK in terms of number of titles, cut 1,300 jobs in 2012, 23 per cent of the workforce (Turvill, 2013). Northcliffe Media reduced its workforce by almost half between 2008 and 2012, from 4,200 to 2,200 (Sweney, 2012). Over the course of five years, 40 per cent of jobs in the UK regional press have gone, according to media analyst Claire Enders (2011).

Local newspapers have closed too. *Press Gazette* estimates that 242 local newspapers closed between 2005 and 2012 (Ponsford, 2012). The job losses and closures are in response to the precipitous drop in the circulations of local print newspapers, and the collapse in advertising and classified revenues. The *Reading Evening Post* had a circulation of approximately 20,000 and was published daily until 2009. In 2014, when it was closed by Trinity Mirror, it was published twice a week and the circulation had dropped to 12,000 (Turvill, 2014a).

In those locations where local newspapers remain, content is increasingly produced elsewhere. Newsquest, the UK's second largest regional group by titles, is moving newspaper production from its newspapers in the North East to Newport in Wales (Turvill, 2014b). Trinity Mirror has a shared content unit in Liverpool (Sweeney, 2013). This reduces the local-ness of these papers, distances them from the local community, makes it more difficult to cultivate and check sources and to perform the watchdog role, and compromises the 'scarecrow' function of the local press (Bell et al., 2013).

The consequence of this is fewer professional newspaper journalists reporting from local council meetings, from local courts, from local police, and on local issues like health, education, and transport (Fenton, 2011). It also means that there is less plurality in local newspapers and, in some areas of Britain, no plurality at all. The Media Reform Coalition has calculated that 'Out of 406 Local Government Areas, 100 (25%) have no daily local newspaper at all while in 143 LGAs (35% of the total) a single title has a 100% monopoly' (Media Reform Coalition, 2014, p. 1).

The emergence of a hyperlocal Fourth Estate

There are new forms of local journalism emerging, some as a direct response to the decline of local newspaper reporting. In 2012 Tim Dickens quit his job on the *Iford Reporter*. He was frustrated at not being able to leave the office and disillusioned by having to turn around press releases. He wanted to do what he had trained to do at journalism school. He joined Zoe Jewell, who had already built a following for her Brixton Blog, and grew it into a local news site that in 2014 had approximately 100,000 page views a month, and a monthly print version with distribution to 10,000 homes (interview with author, November 2014). Dickens is one of hundreds of people doing local news in a new way. The Brixton blog is one of 496 active hyperlocal blogs in the UK, according to research done by Dave Harte in 2013 (Harte, 2013).

These sites range enormously in distribution, scale, reach, type, and regularity of output. There is, for example, a large variation in the spread of sites across the UK. Most sites are concentrated in metropolitan areas like London and Birmingham, with some large rural areas lacking any sites. Some 90% of the sites are in England. In Northern Ireland there are only three (Ofcom, 2013). Sites also vary considerably in terms of purpose and aims. Many were set up as a means of sharing of information within a community, and providing a forum for discussion.

Of hyperlocals surveyed in 2014, 94% had covered community events in the previous two years (Williams et al., 2014a).

However, from a 2014 survey of 183 UK hyperlocals, we also know that many hyperlocal sites are performing similar democratic functions to local newspapers (Williams et al., 2014a). The survey found that 81% of the hyperlocal sites that responded had covered local government council meetings in the last two years, 79% had covered local government planning issues, and 75% had covered local businesses (Williams et al., 2014b, p. 10). It also found that 'Seven out of ten producers see what they do as a form of active community participation, over half see it as local journalism, and over half as an expression of active citizenship'. Of 183 producers surveyed, 73% had been producing news for over three years (Williams et al., 2014a).

Certain sites have been reporting from local councils for years (since 2007 in the case of *OntheWight.com*). Others, like *YourThurrock.com*, give space to politicians to write about local political issues. Many of these hyperlocal sites are not yet able, or aiming, to perform an ongoing 'accountability' function of the type associated with a local press. Many sites choose to focus on community news, providing a public forum or publishing listings information rather than acting as the Fourth Estate. For almost all hyperlocal sites there continue to be questions around sustainability and growth. In terms of revenue and resources, most hyperlocals are 'in their infancy' and 'There is still ... a huge disparity with legacy local media in terms of resources' (Barnett and Townend, 2014). Only 16% of hyperlocal sites surveyed made enough money to more than cover the costs (Williams et al., 2014a). The ecosystem of hyperlocals is therefore both nascent and fragile.

The opportunity for innovation

Many of these new news services are able to gather, analyse, publish, and distribute local news thanks to the remarkable number and range of digital newsgathering and publishing tools now available. These tools, and the digital foundations on which they are based, provide the opportunity for innovation in the provision of local news and information. This opportunity is enhanced by the burgeoning amount of open data being released.

Digital publishing tools are now so freely accessible and useable that even government departments opt to use Twitter, WordPress, or Tumblr rather than create their own (for example *@dcms*, *helengrant-dcms.tumblr.com*, DCMS Intranet). Many of these tools are also now

geographically specific so have even greater local potential. As NESTA wrote:

The landscape is potentially very exciting. New online services can be more geographically specific than ever before, and there is an explosion in the adoption of 'location – aware' devices. Moreover, the economic costs of running hyperlocal services means that practically anyone who wants to can set up and provide valuable information about where they live or work. (NESTA, 2013, p. 9)

In addition to accessible digital publishing tools, news publishers now have access to reams of 'open data' that were previously unavailable or of restricted availability. This open data lowers the cost – in terms of both finance and time – of doing local journalism.

In 2013 the UK led the world in release of open data, according to the 2013 Open Data Barometer index (Davies, 2013: 26). This was thanks to the prioritisation of open data by central government, coupled with legislation to ensure release of data across local government. The 2010 Coalition Government decided to 'to throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account' by 'setting government data free' (Cabinet Office, 2010, p. 20).

Local authorities are now required to make spending data available to the public, including details of all expenditure over £500. This has led to the release of significant quantities of data by local authorities. The LGA 2012 survey found that all those who responded to the survey (37% of the total) had made spending data transparent. Two-thirds of these had gone beyond spending data (Local Government Transparency Survey, 2012, p. i). Other authorities have opened data too. Data.police.uk provides open data about crime and policing in England, Wales, and Northern Ireland. Aspects of health care data, like complaints made to NHS hospitals and prescribing by GP practice, are made available at data.gov.uk (see <http://www.hscic.gov.uk/transparency>).

There was an expectation within the Coalition Government that such transparency would mobilise an 'army of armchair auditors' who would keep local government accountable, and provide accessible information to the public (Pickles, 2010). Yet, by the end of 2013, there was still little sign of this army of auditors, according to research by Dr Benjamin Worthy (2013):

There is no sign of an 'army' of auditors In contrast to the idea of an 'army', the auditor is very much atypical

The publication of local government spending has led to some accountability, though from those already monitoring government rather than citizen driven initiatives. (2013, pp. 13, 18)

This is not to argue that open data is not important or that the release of more data should be decelerated or even stopped. Open data enables more people and organisations to assess public authorities. The release of open data is a prerequisite to the delivery of local digital news and information. However, as the Public Administration Committee wrote in its 2014 Statistics and Open Data report, ‘Simply putting data “out there” is not enough to keep Government accountable’ (Public Administration Committee, 2014). There needs to be people with the time, expertise and inclination to assess, critique, and report on the data.

The state of UK local news

The best way to describe the state of the UK’s local media is messy and unequal, and becoming more so. Some urban areas, like Birmingham, are well served by a mixture of old and new local news services (Ofcom, 2014a, p. 55). Other areas – particularly rural ones – are poorly served or hardly served at all. There is no question that the old print model is in steep decline. One can manage that decline – for example by preventing incumbent newspaper groups from closing a newspaper without first offering it to the local community (as proposed by the NUJ in 2013) – but not reverse it.

A new model of news provision is emerging, but slowly and sporadically. In some instances an existing newspaper is successfully transitioning to a digital news service. In other cases new players, often individuals working on a volunteer or semi-volunteer basis, are starting to provide a news service. However, this transition is slow, the new models are fragile and lack funds, and there is a dearth of home grown civic technology or digital platforms on which to build.

Comparing the UK with the US

The problem of funding public interest news in mature democracies, particularly at a local level, has been recognised for many years (Davies, 2008; Fenton, 2010a). In the US the problem has been widely acknowledged for at least five years. As Len Downie and Michael Schudson

wrote in their influential 2009 report *The Reconstruction of American Journalism*:

What is [now] under threat is independent reporting that provides information, investigation, analysis, and community knowledge, particularly in the coverage of local affairs. (Downie and Schudson, 2009)

Recognition of the threat in the US has led to investment and innovation by media organisations themselves, but also by foundations and private investors.

The Knight Foundation alone has invested over \$235m in the last eight years in journalism and media innovation (LaFrance, 2013). The MacArthur Foundation, Rockefeller, Open Society, Ford and other foundations have also supported innovation in this area. Private investors have invested even more, particularly in civic technology. Between 2011 and 2013, private funders put \$364m into civic technology in the US (Patel et al., 2013).

This has sparked considerable innovation in the field of community news and information in the US, particularly in technology that either facilitates communication within communities, or that enables civic engagement and public accountability. This is often referred to as 'civic tech' and includes digital services like Nextdoor.com – the private residents' social network, or neighbor.ly – the crowdfunding site for local civic projects, or openplans.org – digital tools that involve people more closely in planning decisions.

Investment in the US is facilitated by the ease with which news organisations and civic tech start-ups can set up as charities – as defined as 501(c)(3) not-for-profit organisations. News is not considered a charitable purpose in the UK, and organisations that apply for this purpose can be – and have been – rejected (for example, The Bureau of Investigative Journalism, based at City University). This is despite a recommendation by the House of Lords Select Committee on Communications that the Charity Commission reconsider its purposes in this respect (Communications Committee, 2012).

By contrast, the UK does not have Foundations of the size or reach of those in the US. Nor does it have more than a handful of foundations that prioritise media access, community cohesion or civic engagement over other issues. There has been some investment but it has been tiny by comparison with the US. The Carnegie UK Trust has given £10,000

each to five local initiatives through its Neighbourhood News project (Talk About Local, 2014). The Media Trust has built a 'Local 360 network' of 'citizen journalists, community reporters and local storytellers' with Lottery Funding (Media Trust, 2014).

Separately, NESTA and the Technology Strategy Board (both funded by the government) have made investments. NESTA/TSB recently invested £2.4m in four projects through their Destination Local programme. This was split between four initiatives: TownFizz, Near You Now, Community Channel South West and MediaMill (NESTA, 2014). Altogether this amounts to less than £5m in the UK over three years, as compared to over \$400m in the US over two years (the UK figure does not include private investment).

UK public policy interventions aimed at managing decline

The UK, like many European countries, does make public policy interventions at a local level and does provide subsidies for local news. However, these tend to be 20th-century legacy policies that have remained mostly unchanged for the last decade. As such they are now chiefly aimed at managing decline, not at promoting innovation or growth.

Print newspapers in the UK – local and national – benefit from VAT-zero rating which, from a 2008 analysis, equates to a subsidy of about £594 million per annum (Toivonen, 2008). Digital news sites do not benefit from the same subsidy, and are currently taxed at the normal VAT rate. Some other EU member states maintain discounted VAT rates. In Finland in 2011 the government decided to transition from VAT exemption to VAT reduction for printed newspapers (Nielsen, 2014). In France in 2014 the Assemblée Nationale approved legislation to align its discounted VAT rate of 2.1% for the printed press to its rate for the digital press (ENPA, 2014).

Print newspapers in the UK also benefit from statutory notices, which local councils are required to place in local papers (such as notices on local road closures, planning applications, alcohol licensing etc.) Though no aggregate figures are available it has been estimated that this equates to £45–50 million a year (Barnett, 2013). There is no link made between this subsidy and the commitment the paper makes to local news reporting or civic engagement. The BBC provides local media to the nations and regions through radio, television news and online. Spending on BBC local radio in 2013 was over £220 million (Talk

About Local, 2014). Community radio receives grants of approximately £429,000 via OFCOM and the DCMS (*ibid.*).

In 2011 the Coalition Government announced its scheme for Local TV, to be broadcast on the terrestrial free-to-air Freeview platform (Channel 8). By September 2014 Ofcom had awarded 30 licences, six local stations had begun broadcasting, and one had gone into administration (Ofcom, 2014b). To broadcast on the digital terrestrial platform requires construction of new transmitters, for which the BBC is contributing up to £25 million (DCMS, 2011).

This represents a change in local policy, though a number of people have questioned the policy's effectiveness and sustainability. A report commissioned by the government, designed to examine the conditions necessary for financially viable local television stations, concluded that all but a dozen or fewer of the broadcast channels were likely to be economically unsustainable (Shott, 2010). The scheme will not be ubiquitous (Claire Enders, quoted in Sweney, 2011), the stations will cover areas much larger than is generally defined as 'local' (Perrin, 2010), and the transmission of local TV via Comux transmitters is a short-term solution (Shott, 2010). Also, it will not provide a network for wider participation or a base from which to build other services or applications, nor is it a mobile solution. Neither Local TV nor any of the other UK public policy interventions is targeted at innovation in local news and information. Rather, public policy in the UK appears to be focused on managing decline, rather than enabling transition and innovation. There is no indication that existing public policy in the UK aims to address the decline in plurality at a local level, or support innovation to ensure a healthy provision of local news and information in the future, or question the colonisation of local space by international digital intermediaries.

The UK is not alone in its failure to make significant changes to local media policy for the digital era. Rasmus Kleis Nielsen's 2013 study of the media policies of six democratic countries – including the UK, France, Germany, and the US – found that there was 'little real change in media subsidy arrangements in the last 10 years in the six countries covered' (Nielsen 2013, p. 132). Interviewees for the study told Nielsen that the failure to change media policy was due to a combination of 'limited political attention to the problem; ... strong incumbent industries protecting their interests; and ... a perceived shortage of desirable, cost-effective, and governable alternatives to existing policies' (*ibid.*).

The result, however, is that only in the US, where charitable foundations and private investors have filled the public policy gap, has there been both a recognition of the problem and a significant investment in innovation. In the UK and in other European countries, innovators in this field have been starved of funds and the capacity to experiment. This is occurring at exactly the moment – during the transition from print to digital – when experimentation is most likely to yield results. The consequence of this is that the experimentation that is taking place is necessarily limited in scope and slow to develop.

The danger of transitioning too slowly

There is a danger that, in transitioning slowly, local territory in the UK will be colonised by other players, many of them technology organisations rather than news organisations, and many non-UK based. Digital intermediaries like Google and Facebook, for example, are increasingly looking to local businesses and services as central to the successful delivery of their mobile services. Mobile phones are becoming a key tool for us to find local news and information, and for it to find us (Ofcom, 2014a). Our phones know where we are – thanks to geo-location software – and can provide local information that is directly relevant to our location (travel updates, weather, local events). Recent Ofcom research found a significant increase in the number of people looking for local news online and on mobile devices:

Our research shows very clearly that there is a phenomenal growth in the proportion of people who are now accessing local news through digital and mobile devices. (Thickett, 2014)

Google, Facebook, and other digital intermediaries are well placed to be the platform for this information, as well as the advertising platform for local businesses and services. In 2014 Google launched ‘Google My Business’, a free service that ensures that all the information associated with a particular business is on Google Search, Google Maps, and Google+ so that it shows up on people’s smart phones – the majority of which are now powered by Google’s Android and have Google Search and Maps installed by default (Google, 2014). Given the penetration of Google, local businesses would be damaging their own commercial prospects if they did not sign up. Yet, once signed up, it becomes far easier to advertise via Google than elsewhere.

Google already provides the bulk of hyperlocal sites and blogs with their advertising platform through Google AdSense. Some of the revenue from these services is income that would previously have funded local media. Increasingly, there is a danger it will disappear from the local area and go instead to transnational digital intermediaries. NESTA highlighted this risk in *Destination Local*:

While there are global platforms which do host hyperlocal content, there is a risk that advertising revenues which flow to them are leaving the UK's content economy, reducing the sums available for investing in hyperlocal news and other socially valuable services. (NESTA, 2013, p. 8)

Although these tech giants may provide efficient platforms for advertising and basic local information, they have no ambition themselves to perform the public service function of a Fourth Estate. Google does not, and has stated no intention to, pay people to report on local councils nor to investigate local planning decisions. These digital intermediaries could, therefore, both hasten the decline in local media and undermine the emergence of a new digital Fourth Estate by diverting funding from public interest journalism and preventing experimentation aimed at finding a business model to support local news into the 21st century.

Ways of addressing the growing democratic deficit

If the UK accepts that there is a problem with the provision of news at a local level, and should it want to enable digital transition and support innovation in local news and information in order to address the issue of pluralism and enable a digital Fourth Estate, a range of positive interventions has already been proposed.

These potential interventions include: establishing a contestable fund for news, financed through a digital levy; allowing news organisations to establish themselves as charities; linking the placement of statutory notices to a commitment to local reporting; requiring the BBC to allow re-use of its news content; creating news hubs; and accelerating the release of open data.

Establishing a contestable fund for news has been proposed by the present author in 'Addressing the democratic deficit in Local News through Positive Plurality' (Moore, 2014). The report proposes the

establishment of a UK version of the Knight News Challenge, a US initiative that has awarded \$5 million a year to numerous projects since 2007. A competitive pot of £10 million a year over five years, split into awards of £10,000–£50,000, could fund over 2,000 local news and information projects. This is well over 50 times the number of Local TV stations that have been licensed so far. Such a competition would, the report argues, generate innovation and invention across the UK, as well as address the growing democratic dilemma.

The report proposes three possible ways to fund such a competition, none of which uses existing public funds. It cites the €60 million news transition fund in France, paid for by Google (following a dispute about whether Google should pay to display news content in its search results), and suggests a similar sized fund could be set up in the UK. Alternatively, there could be a charge for the collection and commercial re-use of personal data. The report also points to the voucher scheme idea, originally proposed by Dean Baker and subsequently extended into a ‘Citizenship News Voucher’ scheme by Robert McChesney (Baker, 2003; McChesney, 2013).

In their 2011 Reuters Institute report ‘Is there a better structure for news providers?’, David Levy and Robert Picard (eds) examine the benefits of charitable status for news organisations. While concluding that such status would not be a panacea, and nor would it solve the economic problems confronting news, it can – they write – ‘deliver valuable outcomes that might not otherwise be achievable’ (Levy and Picard, 2011).

The statutory notice system, where local councils are obligated to advertise notices in local papers, is ‘outdated’, expensive, and does ‘very little to enthuse people to engage with a local authority’ according to a report by the Local Government Information Unit (2012). The report, based on a survey of 110 councils, said that reform of the statutory notice system could lead to better democratic engagement, more cost-effective advertising, and a source of funding for hyperlocal neighbourhood websites, as well as traditional local media.

Andrew Miller, the Chief Executive of the Guardian Media Group, proposed that the BBC should make available its raw news feed and back catalogue for both UK commercial and non-commercial use:

Where there’s a clear commercial value – especially in territories in which we compete with the BBC for advertising revenues – that content would come at a cost, along the same lines as the agreement the BBC currently has with its own commercial news service. Where

there's no commercial value, it should be made freely available for national, local and hyper-local organisations to explore. (Miller, 2014)

Natalie Fenton proposed the development of local news hubs (Fenton, 2010b). These would act as centres not just for the production of journalism with shared resources, but as centres of training, as a means of collaborating with universities, and as public meeting places. Such hubs would, Fenton writes, 'reinvent local newsrooms fit for the digital age while ensuring that local communities are given a renewed role in local democratic life' (Fenton, 2010b).

The Open Data Institute has evangelized about the benefits of open data since its launch in 2012. At its summit in 2014 the Chair, Sir Nigel Shadbolt, said that 'there is much more to do' with respect to releasing data. 'It's a sense of urgency I am trying to instil here', Shadbolt concluded, 'There is so much more to do' (Shadbolt, 2014).

None of these positive interventions has yet been adopted by the UK government.

Conclusions

The UK, like many other mature democracies, is going through a period of radical digital transition. During this period the collection, provision, and distribution of local news and information are being transformed. The business model of print newspapers has been upended. As a consequence of this transition the local news and information environment will soon look quite different from the way it did in the 20th century. The public will receive much of their local news and information on their mobiles. Much of this 'news' is likely to consist of updates from their friends, advertisements for local events and special deals, weather, and travel.

Whether this includes news about a council decision to close the local lido, or a planning decision to build a bypass, or information about flood risks, will depend on developments in the next five to ten years, and on whether existing news sources adapt to the digital era and new news entrants find ways to sustain themselves. New and older local news services are, as yet, a long way from identifying sustainable new models of news provision, partly because there has been so little experimentation in this field in the UK compared to the US. Public policy towards local news languishes in the 20th century. It is focused on managing decline rather than enabling transition and innovation. Meanwhile, US technology giants are moving in and colonising local territory.

As a consequence there is a danger that, in five years' time, the local news and information landscape will be highly reliant on US technology platforms with little revenue flowing to existing or new news providers. Outside major UK cities local public interest news will rely on volunteers sporadically and inconsistently performing the functions of a Fourth Estate. As a consequence, while some areas may be well served, others will not be served at all.

As a society we need to decide whether we are comfortable with this inequality. Do we care, for example, if some local councils go unreported (except by the councils themselves)? History suggests that such a lack of scrutiny can lead to a failure to expose corruption. If we are not comfortable with this inequality then we need to work out ways to address it. This is made doubly difficult by justified concerns about preserving press freedom from encroachment by the state (however benign initial intentions may be).

If, after the trial closure of Junction 41 of the M4, the Welsh government decides to make the closure permanent, it will have a substantial economic, social, and psychological impact on Port Talbot. It could severely affect the financial sustainability of the town. Many residents will feel they were not properly informed and their voices were not heard. The lack of a dedicated local newspaper or digital equivalent could then have profound consequences for social cohesion and the future of a sizeable Welsh town.

References

- Baker, D. (2003) *The Artistic Freedom Voucher: An Internet Age Alternative to Copyrights*. Center for Economic and Policy Research. Washington DC, pdf Available Here: http://www.cepr.net/documents/publications/ip_2003_11.pdf, accessed 14 March 2015
- Barnett, S. (2013) 'Evidence to House of Lords Select Committee on communications', *Inquiry on Media Plurality*, 18 June 2013, p.45.
- Barnett, S. and Townend, J. (2014) 'Plurality policy and the local – Can hyperlocals fill the gap?', *Journalism Practice* (forthcoming), published online 9 September 2014.
- Bell, E., Anderson, C. W., and Shirky, C. (2013) 'Post-industrial journalism', *Tow Center for Digital Journalism*: <http://towcenter.org/research/post-industrial-journalism/>, date accessed 27 November 2014.
- Cabinet Office (2010) *The Coalition: Our Programme for Government*. London: Cabinet Office: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf, date accessed 27 November 2014.

- Davies, Nick (2008) *Flat Earth News: An Award Winning Reporter Exposes Falsehood, Distortion and Propaganda in the Global Media*. London: Windus.
- Davies, Tim (2013) *Open Data Barometer – 2013 Global Report*: <http://www.open-data-research.org/dl/odb2013/Open-Data-Barometer-2013-Global-Report.pdf>, date accessed 27 November 2014.
- Department for Culture, Media and Sport (2011) *A New Framework for Local TV in the UK*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72920/Local-TV-Framework_July2011.pdf.
- Department for Culture, Media and Sport (DCMS), Intranet: <http://www.helpfultechnology.com/case-study/dcms-intranet/>, date accessed 21 November 2014.
- Downie, L. and Schudson, M. (2009) *The Reconstruction of American Journalism*: http://www.cjr.org/reconstruction/the_reconstruction_of_american.php?page=all#sthash.GrHmACIp.dpuf, date accessed 27 November 2014.
- Enders, C. (2011) 'Competitive Pressures on the Press', presentation to Leveson Inquiry: <http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Presentation-by-Claire-Enders1.pdf>, date accessed 28 November 2014.
- ENPA (2014) 'Press Publishers in Europe Fully Support the Call from the German and French Culture Ministers for Immediate Action to Lower VAT on Digital Press', 21st February 2014: http://www.enpa.be/en/news/press-release-press-publishers-in-europe-fully-support-the-call-from-the-german-and-french-culture-ministers-for-immediate-action-to-lower-vat-on-digital-press_119.aspx, date accessed 21 November 2014.
- Fenton, N. (Ed.) (2010a) *New Media, Old News – Journalism and Democracy in the Digital Age*. London: Sage.
- Fenton, N. (2010b) 'Meeting the news needs of local communities', *Media Trust*: <http://www.mediatrust.org/uploads/128255497549240/original.pdf>, date accessed 27 November 2014.
- Fenton, N. (2011) 'Deregulation or democracy? New media, news, neoliberalism and the public interest', *Continuum: Journal of Media & Cultural Studies*, 25(1), 63–72.
- Google (2014), 'Help your business shine with Google My Business', 11 June 2014: <http://googleandyourbusiness.blogspot.co.uk/2014/06/help-your-business-shine-with-google-my.html>, date accessed 21 November 2014.
- Harte, D. (2013) 'Hyperlocal Publishing in the UK – A 2013 Snapshot' available at: <http://daveharte.com/hyperlocal/hyperlocal-publishing-in-the-uk-a-2013-snapshot/> accessed 13 March 2015.
- House of Lords Select Committee on Communications (2012) 'The future of investigative journalism', *3rd Report of Session 2010–2012*, London: HMSO.
- Howells, R. (2015) unpublished, forthcoming PhD, Cardiff University (with permission of the author).
- LaFrance, A. (2013) 'By reinventing the Knight Foundation, Alberto Ibargüen helped reinvent the news', *fastcompany.com*, 30 July 2013: <http://www.fastcompany.com/3014961/how-alberto-ibarguen-is-reinventing-the-knight-foundation>, date accessed 21 November 2014.
- Levy, D. and Picard, R. G. (eds) (2011), *Is There a Better Structure for News Providers? The Potential in Charitable and Trust Ownership*. Oxford: Reuters Institute for the Study of Journalism.

- Local Government Transparency Survey 2012: http://www.local.gov.uk/documents/10180/11541/Local_Government_Transparency_Survey_2012.pdf/dd4c24ed-20ba-4feb-b6eb-fea21e4af049.
- McChesney, R. (2013) *Digital Disconnect*. New York: The New Press.
- Media Reform Coalition (2014) 'The Elephant in the Room: A survey of media ownership and plurality in the United Kingdom': <http://www.mediareform.org.uk/wp-content/uploads/2014/04/ElephantintheroomFinalfinal.pdf>, date accessed 20 November 2014.
- Media Trust (2014) *Local 360*: <http://www.mediatrust.org/our-projects/community-media/local360-network-1/>, date accessed 25 November 2014.
- Miller, A. (2014) 'Global news media: The next horizon', *LSE Public Lecture*, 23 October 2014: <http://www.theguardian.com/gnm-press-office/2014/oct/23/andrew-miller-global-news-media-the-next-horizon>, date accessed 26 November 2014.
- Moore, Martin (2014), 'Addressing the democratic deficit in local news through positive plurality – Or why we need an equivalent of the Knight News Challenge in the UK', Media Standards Trust, October 2014: <http://mediastandardstrust.org/wp-content/uploads/2014/10/Positive-Plurality-policy-paper-9-10-14.pdf>, date accessed 27 November 2014.
- National Union of Journalists (2013), *NUJ Briefing on the Future for Local Newspapers*. London: NUJ.
- NESTA (2013), *Destination Local: Our Lessons to Date*: http://www.nesta.org.uk/sites/default/files/destination_local_our_lessons_to_date.pdf, date accessed 20 November 2014.
- NESTA (2014) 'Communities set to get hyperlocal as £2.4m fund allocated', 30 April 2014: <http://www.nesta.org.uk/news/communities-set-get-hyperlocal-%C2%A324m-fund-allocated>, date accessed 21 November 2014.
- Nielsen, R. K. (2014) 'Frozen media subsidies during a time of media change: A comparative analysis of media policy drift in six Western democracies', *Global Media and Communication*, 10(2), 121–138.
- Ofcom (2013) *Internet Citizens*: <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/Internet-Citizens-Report.pdf>.
- Ofcom (2014a) *Internet Citizens*: http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/Internet_Citizens_Report_14.pdf.
- Ofcom (2014b) 'Update on local TV in the UK', 15 September 2014: <http://media.ofcom.org.uk/news/2014/local-tv-progress/>, date accessed 21 November 2014.
- Patel, M., Sotsky, J., Gourley, S., and Houghton, D. (2013) 'The emergence of civic tech: Investments in a growing field', Knight Foundation: http://www.knightfoundation.org/media/uploads/publication_pdfs/knight-civic-tech.pdf.
- Perrin, W. (2010) 'Shott review of economics of local television – why not use the web?' 9 August 2010: <http://talkaboutlocal.org.uk/shott-review/>, date accessed 25 November 2014.
- Pickles, E. (2010) 'New era of transparency will bring about a revolution in town hall openness and accountability', 4 June 2010: <https://www.gov.uk/government/news/new-era-of-transparency-will-bring-about-a-revolution-in-town-hall-openness-and-accountability--2>.
- Ponsford, D. (2012) 'PG research reveals 242 local press closures in 7 years': www.pressgazette.co.uk, 30 April 2012: <http://www.pressgazette.co.uk/node/49215>, date accessed 20 November 2014.

- Public Administration Committee (2014) 'Statistics and open data: Harvesting unused knowledge, empowering citizens and improving public services', *Tenth Report*, 17 March 2014, London: The Stationary Office: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/564/564.pdf>.
- Local Government Information Unit (2012) *Public Notices: The Case for Radical Reform*: www.lgui.org.uk.
- Shadbolt, N. (2014) Quoted by Sarah Aston on [Civilserviceworld.com](http://www.civilserviceworld.com), 6 November 2014: <http://www.civilserviceworld.com/articles/analysis/more-still-do-open-data-say-mike-bracken-and-nigel-shadbolt-odi-summit>, date accessed 26 November 2014.
- Shott, Nicholas (2010) *Commercially Viable Local Television in the UK*, A review by Nicholas Shott for the Secretary of State for Culture, Olympics, Media and Sport.
- Sweney, M. (2011) 'Jeremy Hunt: ITV could pull out of regional news if local TV plans work', [guardian.com](http://www.guardian.com), 19 January 2011: <http://www.theguardian.com/media/2011/jan/19/jeremy-hunt-itv-regional-news>, date accessed 21 November 2014.
- Sweney, M. (2012) 'Daily Mail & General Trust cut more than 3,000 staff in the past four years': www.guardian.co.uk, 25th September 2012: <http://www.theguardian.com/media/2012/sep/25/daily-mail-general-trust-cut-staff>, date accessed 20 November 2014.
- Sweney, M. (2013) 'Trinity Mirror to cut more than 90 regional roles in digital content move': www.guardian.co.uk, 29 January 2013: <http://www.theguardian.com/media/2013/jan/29/trinity-mirror-digital-content>, date accessed 20 November 2014.
- Talk About Local (2014) *Neighbourhood News: Interim Evaluation Report for Carnegie UK Trust*: <http://www.carnegieuktrust.org.uk/CMSPages/GetFile.aspx?guid=dca3071c-3856-4c9d-922c-1d1ef2aaf118>, date accessed 21 November 2014.
- Thickett, J. (2014) 'World's first community journalism MOOC', 23 January 2014: <http://www.communityjournalism.co.uk/news/worlds-first-community-journalism-mooc/>.
- Toivonen, T. (2008) 'Appendix' In: Nielsen, R.K. with Linnebank, G. (eds) *Public Support for the Media: A six country overview of direct and indirect subsidies*, Oxford: Reuters Institute for the Study of Journalism, 2011.
- Turvill, W. (2013) 'Johnston Press cuts 1,300 jobs as revenue shrinks by 12 per cent': www.pressgazette.co.uk, 19 March 2013: <http://www.pressgazette.co.uk/johnston-press-cuts-1300-jobs-revenue-shrinks-12-cent>, date accessed 20 November 2014.
- Turvill, W. (2014a) 'A Sad Day for the People of Reading' Says rival editor as industry mourns loss of seven Trinity Mirror newspapers', 14 November 2014: <http://www.pressgazette.co.uk/sad-day-people-reading-says-rival-editor-industry-mourns-loss-seven-trinity-mirror-newspapers>, date accessed 20 November 2014.
- Turvill, W. (2014b) 'Latest Newsquest subbing hub move and newspaper closure puts 33 jobs at risk', 2 May 2014: <http://www.pressgazette.co.uk/33-jobs-risk-newsquest-moves-north-west-titles-welsh-subbing-hub-and-closes-surrey-weekly>, date accessed 20 November 2014.
- Williams, A. (2011) 'Stop Press? Crisis in Welsh newspapers and what to do about it', *Radical Wales*, 10 October 2011: <http://www.radicalwales.org/2011/10/stop-press-crisis-in-welsh-newspapers.html>, date accessed 20 November 2014.

- Williams, A., Barnett, S., Harte, D., and Townend, J. (2014a) 'The State of Hyperlocal Community News in the UK: Findings from a survey of practitioners': <https://hyperlocalsurvey.wordpress.com/>.
- Williams, A., Harte, D., and Turner, J. (2014b) 'The Value of UK hyperlocal community news: Findings from a content analysis, an online survey and interviews with producers', *Digital Journalism* (forthcoming), published online 17 October 2014.
- Worthy, B. (2013) 'David Cameron's Transparency Revolution? The Impact of Open Data in the UK', Birkbeck College, 29 November 2013: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2361428, date accessed 26 November 2014.

5

Hyperlocal Media and the News Marketplace

Judith Townend

Introduction

When the BBC began life in the 1920s, the '7 o'clock rule' applied: it could only broadcast news between 7pm and 1am. Why? Press interests in Britain and elsewhere 'saw broadcasting as a directly competitive medium' to newspapers (Schlesinger, 1978, p. 15). The restrictions to reduce the impact of broadcasting competition were relaxed a little by 1927, when the corporation was allowed both to broadcast news earlier and to produce its own bulletins rather than rely on the newspapers' 'approved' agencies (Briggs, cited in Schlesinger, 1978, p. 16; Barnett, 2011, p. 22). Jump forward 86 years: the new Secretary of State for Culture, Media and Sport declared that 'as news moves online, local newspapers with five or even four figure circulations have found themselves going head to head with one of the world's biggest broadcasters'. Is it, he asked a room full of newspaper journalists at the 2014 Society of Editors conference, 'healthy for a publicly funded broadcaster to compete with commercial newspapers?' (Javid, 2014).

The minister's declaration reflected a familiar complaint about the BBC's online expansion. In 2008, newspaper editors and representative bodies reacted vociferously to proposals for more locally tailored BBC online content, arguing it would damage their own local offerings (see e.g. Gallagher, 2008; Ponsford, 2008). The BBC local video scheme was subsequently halted following the BBC Trust's Public Value Assessment; one reason given by the Trust's chairman at the time, Sir Michael Lyons, was 'the negative impact that the local video proposition could have on commercial media services which are valued by the public and are already under pressure' (BBC Trust, 2008). This is just one recent illustration of a longstanding tension between the private and public sectors,

based on competition concerns. While there has always been tension in the news marketplace over the past century, both the protagonists and their organisational structures and output have been transformed – not least at the BBC, now radically different from its original incarnation as a commercial monopoly disseminating news agency content at limited times of the day.

One of the most recent entrants to the local news market are the metonymic ‘hyperlocals’. These are generally small online news operations of limited resource interested in local geographic areas, although their form and scope varies (see Radcliffe, 2012; Pearson et al., 2013). What is their role in assisting democracy at the local level? Are they being given enough room to grow, or would support through public policy initiatives give them an unfair disadvantage? This chapter explores issues of media plurality at the local and regional level, a debate that is often marginalised in national and European policy discussion. It draws on the most extensive UK hyperlocal survey to date by researchers at Westminster, Cardiff, and Birmingham City Universities working with the hyperlocal umbrella group TalkAboutLocal, and a series of research seminars with practitioners in London, Cardiff, and Glasgow conducted under the auspices of our funded study at the University of Westminster.

It explores the benefits and drawbacks of a number of possible policy options for invigorating and sustaining local media, including methods of public subsidy, the development of charitably funded media, and the development of inter-organisational partnerships. No form of intervention is without its problems, but the issue of democratic marginalisation at the local level is too important to ignore. It also considers a broader theoretical question about the assumptions of the ‘marketplace’ model used to develop pluralism-friendly policy: to what extent does this metaphoric terminology hinder the preservation of media plurality and diversity of voices and editorial content?

Civic information in the news marketplace

The news market is not like any other. While newspapers – in the main – are created as profit-making ventures, they have a particular democratic importance in everyday life: the suppliers’ product feeds citizens’ understanding of the world they live in and is ‘central to most understandings of democracy’ (O’Neill and O’Connor, 2008, p. 488). The case is made persuasively elsewhere that news media meet democratic needs by providing information and representation, and through campaigns and investigations (see Curran, 2005; Barnett, 2009). Changes in the

news media market, then, have significance for the maintenance of a democratic society, which is why market interventions to promote diversity, particularly where it is severely threatened, are both necessary and appropriate.

Cuts to local journalism are particularly concerning in the UK, where there are fewer outlets to meet democratic needs. These cuts have been brutal over the past few years, including, in some towns, the wholesale disappearance of local newspapers (Moore, 2014). Withdrawal of news content has important ramifications for local democracy: the risk is that local citizens are starved of information, with local institutions left less accountable. This has a greater impact at the local level, where there are fewer resources and fewer actors available to perform a journalistic or news media role. Although an over-romanticised history of local accountability journalism should be avoided, there is strong evidence that in the UK recent cuts and centralisation of local news operations have had a detrimental effect on the flow of civic information to local communities. Local newspaper groups protested against the BBC's development of local content, but in many areas newspaper online content is not serving its readers (paying or otherwise) with the kind of high-quality and locally specific information that enhances local democracy. Local newspaper employees complain of under-resourcing and staffing, relentless managerial pressure and a reliance on news agency material (see Williams and Franklin, 2007; O'Neill and O'Connor, 2008).

For example, in spring 2011, journalists at North London & Herts Newspapers, part of the Tindle group, went on strike complaining that more than a third of editorial staff had left without being replaced and that conditions were impacting on their ability to perform their public role (Anon, 2011a; 2011b). The journalists, described as the 'Enfield Nine', contended that reporters did not have time to leave their desks 'meaning they are missing stories of vital importance', and that they were unable to cover a range of council meetings, community events and court cases. This, the striking journalists maintained, was leading to a 'failure to uphold the newspapers' fine tradition of holding public bodies to account and the worst kind of "churnalism"'. In response, Tindle News maintained that although a reporter was leaving, the remainder of staff could 'easily produce' the papers in question and claimed it was 'alone among the newspaper groups in not making one single journalist redundant' (Tindle News, 2011). A second strike was called off in June 2011, following 'concessions by management' (Anon 2011a); nonetheless, Enfield was chosen to launch an NUJ campaign to save local newspapers in July (NUJ, 2011).

The problem continues into the mid-2010s, and at other groups: for example, in autumn 2014, the National Union of Journalists reported survey findings among Johnston Press staff that indicated ‘dangerously high levels of stress as [staff members] are put under pressure to work long hours with few breaks’ and ‘unrealistic time pressures’ (NUJ, 2014).

Yet while there have been drastic staffing cuts and discontinuation of titles across the UK, the regional newspaper groups have continued to make high profits that exceed even those of national newspapers (Williams and Franklin, 2007). The campaigners at North London & Herts Newspapers observed that while Tindle Newspapers said it needed to cut costs, the year before the company had made £3 million in profit (Anon, 2011b); similarly, an Early Day Motion tabled in June 2011 by Andrew Love MP in support of the journalists’ action noted that ‘the parent company made 8.6 million profit two years ago’ (Parliament.uk, 2011). As O’Neill and O’Connor observe, the major groups are ‘highly responsive to the requirements of shareholders but essentially removed from the local communities of readers’ (2008, p. 489). The complaints by journalists detailed above suggest that the commercial model does not necessarily fulfil the democratic function that media owners claim to perform (see evidence by the Daily Mail Group to the House of Lords Select Committee on Communications Inquiry into Media Plurality, Parliament.uk, 2013, p. 282).

Hyperlocal growth¹

In the past few years, a new model has developed for the production of local and community-oriented news, although it is by no means uniform in shape and output. New initiatives are springing up in the form of hyperlocal and community online media, often independent although some are part of larger organisations; around 500 active sites covering local geographic areas have been identified by Harte (2013).

As discussed in the last chapter, research by Williams et al. (2014) indicated that the UK community news sector is relatively well established, and dominated by players who have achieved a degree of longevity. The research, which analysed responses from 183 hyperlocal and community news contributors, showed a wide variety of local news of both civic and cultural value, including news about local community groups and events, and local government issues and planning in particular. Nearly three-quarters of respondents said they had covered local campaigns instigated by others, and over a third had instigated their own. Issues related mostly to planning disputes, cuts to local

public services, improvements to local amenities, and local council accountability. Despite lacking institutional and professional support, a significant minority had also carried out local watchdog investigative journalism such as uncovering plans to close local facilities and monitoring the conduct of elected officials (Williams et al., 2014, p. 4).

However, the hyperlocal sites did not tend to rely on the same commercial models as local newspapers. The survey showed that most community news producers work part time on their sites (57 per cent work up to ten hours a week and 26 per cent work between 11 and 30 hours). Many community news operations are participatory and collaborative efforts. Most of the news producers funded the running costs of their sites themselves, but around one in four said they raised enough money from outside sources to cover their costs. Advertising was cited as the dominant form of income generation, but a number of other methods were employed such as running sponsored features or obtaining grant funding. Around a third of participants said they made money, but mostly quite small amounts: only 13 per cent said they generate more than £500 per month. Despite the low proportion of economically successful community news producers, nine out of ten thought they could sustain, or increase, current levels of output in the coming year (Williams et al., 2014, p. 5).

The research demonstrated how difficult it is to generalise about the focus, form, and size of hyperlocal sites (Barnett and Townend, 2014). Both in terms of their own self-images and in terms of the functions they perform within their own community, there is a huge range and diversity of operations, from city-wide enterprises publishing dozens of items each week to single-person part-time projects publishing one or two items a week to the local parish. We should also be careful about imposing the 'journalism' label on self-publishing activities which do not fit traditional norms and ideas of reporting or investigating, although almost half of participants said they had journalistic training or experience working in the mainstream media and over half described their activity as 'local journalism'.

On the other hand, a broader view of both the current activities and aspirations of most hyperlocal sites suggests a potentially major role in compensating for the decline of traditional local media and making a genuine contribution to local plurality by providing local knowledge, holding local elites accountable and helping local people lobby for change. In the survey, several respondents took the opportunity to discuss their relationship with existing commercial media outlets, seeing themselves as comparable players in the local media landscape.

It cannot be assumed that hyperlocals always intend to serve democratic needs or necessarily describe themselves as journalistic operations, but the research suggests that many are driven by the desire to provide important civic information as well as promote campaigns and investigations. However, this growing sector is not without its own sustainability and funding problems. If independent hyperlocals are to achieve their full potential in the local news marketplace, additional support will almost certainly be required.

Anachronisms in the digital age

Hyperlocals do not necessarily benefit from existing public support of UK local media, such as the longstanding implicit subsidies to the local press, including VAT exemption for copy and subscription sales and income from the publication of statutory notices, paid by local councils. Those subsidies are likely to be substantial, though precise calculations are impossible: a Reuters Institute study estimated that VAT exemption for the whole UK press was worth £594 million per annum in 2008 (Nielsen with Linnebank, 2011, p. 8), although it is not clear what proportion of that figure might be subsidies to the local and regional press. In addition, the statutory duty on local councils to place notices in the local paper on planning, licensing, and traffic orders is likely to be worth at least £40–45 million per year.²

A recent report by the Carnegie UK Trust, which has funded a number of pilot local news projects, suggests that the UK government should stimulate hyperlocal media by ‘reworking existing interventions in the local news market that are currently heavily skewed to support existing providers and can act as a barrier to market entry for the emerging hyperlocal sector’ (White et al., 2014, pp. 14–15). Among its numerous recommendations on funding, institutional recognition and peer support, it also suggests that the Department for Communities and Local Government could intervene to permit local authorities to spend a small portion of their statutory advertising budgets on hyperlocal news providers. Crucially, this would require:

[A] proper overview by DCMS of the significant market interventions by the UK Government in local media; and attaching some conditionality to what are now support schemes such as statutory notices, for example, the provision of at least some ‘public interest’ content; and sensitive rebalancing so that undue harm is not caused to traditional media who have become dependent upon these interventions (White et al., 2014, pp.14–15).

Critics, and in particular those representing the local newspaper industry,³ have raised concerns about the notion of direct public subsidy to news players, both in terms of increased vulnerability to political interference and the potential impact of subsidies on the market. However, this fails to acknowledge existing subsidies to local newspaper titles, such as VAT benefits and statutory notices income, and subsidies to other media, such as Local TV and Community Radio. Instead, implicit subsidies should be recognised as such and there should be an informed debate on how these should be managed in the digital age.

Assumptions of the marketplace metaphor

Thus far, this chapter has used the terminology of the marketplace model that litters media plurality discussions. The ‘marketplace of ideas’ is often used with little explication; for example, while a discussion paper issued by the Council of Europe Human Rights Commissioner in 2011 acknowledges the theoretical complexity of media pluralism, its summary states that media pluralism ‘advances the ends of freedom of speech by facilitating a robust marketplace of ideas and placing additional checks on the power of states’ (Haraszti, 2011, p. 5). The author recognises the ‘marketplace of ideas’ model as one of two dominant models in media pluralism initiatives; the other is the ‘public sphere’: ‘Both are meant to serve the public good, the former with the competition and freedom of choice, the latter in its aim to provide the whole of society with political views and cultural values’ (Haraszti, 2011, p. 14).

What is this notional marketplace of ideas serving the public good with competition and freedom of choice? It is a metaphor that has taken hold in policy as well as judicial discourse in determining the legitimacy of speech, and allowing the dissemination of ‘truth’. While it has been said to originate in the works of John Milton and John Stuart Mill, Bosmajian argues that neither explicitly situates their account of truth in the *marketplace*. And neither is Thomas Jefferson responsible for the metaphor, as some have proposed (1992, p. 54). In fact, Bosmajian suggests, the metaphor’s overt introduction into American jurisprudence was in 1919, in a Supreme Court First Amendment case regarding the distribution of revolutionary leaflets, in which Justice Holmes, in his dissenting opinion, stated that ‘... ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market ...’ (Bosmajian, 1992, p. 50).

The exact phrase was uttered by Justice Brennan in *Lamont v Postmaster General* ([1965]): ‘It would be a barren marketplace of ideas that had only sellers and no buyers’, and since has been invoked frequently in

free expression cases. But it was not the first instance; rather, as Napoli has identified (1999, p. 154), it was used in a concurring opinion over ten years earlier by Justice Douglas: 'Like the publishers of newspapers, magazines, or books, this publisher bids for the minds of men in the market place of ideas' (*United States v Rumely*, [1953]).

How relevant is this metaphor today? Can a 'marketplace of ideas' provide a diversity of media content which allows truth to prevail, as Justice Holmes saw it? Bosmajian argues not. In his view, the marketplace of ideas is a 'nostalgic notion'. Writing in 1986, he suggests:

The market of today, the supermarket, does not have the elements that go into making up a marketplace as it existed earlier in the century when [Justice] Holmes spoke of the 'competition of the market' ... we neither see the farmer [in the market] nor do we converse with the conglomerate owner of the supermarket Today one does not bargain nor negotiate with the supermarket personnel; the goods are displayed and priced and there are not sounds of the old 'free-market' The sellers in today's markets are not the sellers we found in the free-markets of yesterday. (Bosmajian, 1986, p. 451)

This particular trope has been overly extended, to describe scenarios that are not comparable to the marketplace it first described, with its 'equality of access to consumers and equal facilities to display one's goods and wares' ... 'no such equality exists in the ideas market', argues Bosmajian (1992, p. 66). Worryingly, 'the outdated metaphor distorts our perception of reality' (1992, p. 71). As Napoli puts it, based on the evidence of a detailed empirical analysis of the US Federal Communications Committee's (FCC) use of the marketplace of ideas metaphor, it 'may be becoming less dynamic and, consequently, may be illuminating a narrower range of policy objectives and decision options than it has in the past'. The consequence is that 'there appears to be a decreasing likelihood that the FCC will continue to work for a marketplace of ideas that promotes citizen knowledge, informed decision-making, and a well-functioning democracy' (Napoli, 1999, p. 166).

Recent policy discussions in the UK are firmly connected to the 'market', if not explicitly the 'marketplace of ideas'. Written and oral evidence supplied to the recent House of Lords Communications Committee inquiry on media plurality indicated that witnesses varied in their opinion of what the market can provide. For the Daily Mail Group (DMG), a longstanding principle held true, in its written evidence to the committee: 'Plurality is guaranteed by the marketplace'

(in Parliament.uk, 2013, p. 282). For specialist consultant Robin Foster, however, there are 'areas where the commercial marketplace is just not going to provide the right range or diversity or quality'. In his view, expressed in oral evidence to the committee, rather than focusing on undue concentration of media ownership and structural remedies, other sorts of behavioural remedies may be needed, such as 'pushing up the list of priorities the scope for public intervention to support news' (in Parliament.uk, 2013, p. 410).

Although the House of Lords Communications Committee has made some helpful recommendations on public intervention in support of public interest journalism and news, it adopted 'a largely cautious approach' to the pluralism problem in its final report from this inquiry (Freedman, 2014). Furthermore, the approach advocated by Foster was not evident in the UK Government's dual purpose report, which responded both to comments received on its own consultation and to the House of Lords Communications Committee report (DCMS, 2014). The loyalty to market terminology, and all it denotes, may be inhibiting the development of policy initiatives that would help increase diversity and quality of media content, with civic and democratic benefits. As has been shown above, hyperlocal media can be varied in scope, ambition, and structure, but it is obvious that a wholly commercial market approach to local news plurality is an inappropriate response to this growing population of civic information producers.

Instead, we need to also look to behavioural remedies, as Foster suggests, including different types of public intervention. The possibilities for positive plurality interventions may be overlooked if pluralism is only considered in terms of the commercial market. In actuality, the free market does not guarantee a plural media, and can even inhibit it, as the data analysed in a recent co-produced campaign report suggests (TUC, NUJ, CPBF and Media Reform Coalition, 2014). This is not to suggest that the plight of some local newspapers is unimportant and that such titles do not warrant policy consideration; quite the reverse. However, existing titles should not be privileged through favourable policy approaches at the expense of assisting other types of initiatives, especially when local newspaper groups are making cuts to the type of journalistic activity that performs an important civic role. Media policy should be increasingly directed towards encouraging additional expression, through a wider range of actors. The rest of this chapter explores two specific policy interventions which could help to increase the diversity of news media content at local level, developing Moore's observations in the previous chapter.

Policy option 1: Assisting charitably funded media

Charity law in the UK does not recognise journalism as a specific purpose within its legal framework, but there is no specific prohibition on producing media content and journalism as part of an organisation's charitable activities. Journalistic and media work can plausibly be covered by the description of other purposes, such as the advancement of education or citizenship, or community development. To be charitable under the Charities Act 2011, a charity must also fulfil and demonstrate the public benefit requirement, although it can be difficult to evidence the 'impact' of communication activity. A charity might be involved as the owner of a media organisation; or by owning shares in a non-charitable company that runs a publication. Examples of UK-based media operations supported in this way include China Dialogue (China Dialogue Trust), openDemocracy (OpenTrust) and Wikinews (Wikimedia UK).

This set-up is far from ideal, however, and other organisations have struggled to obtain charitable status and support for their activities. The Charity Commission – the body charged by Parliament to implement the Charities Act – has tended to be conservative in its interpretation of the Act when considering requests from organisations involved in journalism, and the laws themselves are ambiguous. In the United States, the Inland Revenue Service (IRS) has granted the equivalent of charitable status to a number of non-profit news organisations with an educational remit; no such model exists in the UK. The Charity Commission has not publicly endorsed the US approach, and remains wary of journalism-type organisations.

There has been a modest push for reform: as noted in the last chapter, a parliamentary committee called for 'greater clarity and guidelines on which activities related to the media, and in particular investigative journalism, are charitable in the current state of the law'. It encouraged the government to reconsider reforming the law in this area: 'While recognising the Government's current disinclination to legislate in this area, it seems to us that reform of charity law is the only way in which certainty in this area could be achieved' (House of Lords, 2012, para. 202). Additionally, an ad hoc Advisory Group on Journalism and Charitable Status suggested that charitable status should be available in principle to non-profit news organisations, using the US IRS approach as a 'template' for 'constitutional and practical arrangements of news charities so as to protect the integrity of the charitable sector' (2012, p. 13).

However, there has been no subsequent policy movement. In 2013–2014, as part of our research project at the University of Westminster, we hosted several discussions with specialist legal, media, and policy practitioners, and found that there would be considerable public and plurality benefits in allowing charitable status to non-profit organisations engaged in public interest journalism; and that the time is right for Parliament to consider how this might best be achieved. Discussions indicated that a community local news provider could be well positioned to seek charitable status, particularly if it was part of an established media regulation system, but it was acknowledged there might be more obstacles at the national level.⁴

Charitable status brings financial benefits as well as valuable reputational gains, and many non-profit sites are clearly making important contributions to information, knowledge, and democratic accountability in their local area. These civic benefits need to be recognised through a more flexible charitable regime that would not only enable existing sites to grow but would encourage new initiatives. That is not to say that charitable status would not bring additional burdens for publishers (such as the obligations placed on trustees), but it is an avenue that merits further policy attention with a view to reform, not only in the UK but in other developed and developing nations, which might benefit from the flexibility of a US-style charity regime that allows the growth of not-for-profit journalism.

Policy option 2: Institutional collaborations with new players

This chapter opened by describing the way in which newspaper groups have complained of unfair intrusion into their news supply territory and reacted unfavourably to the BBC's plans for local expansion, just as national proprietors did when the BBC began its very first radio news broadcasts. This is a response framed in terms of the perceived threat to the commercial news market. But does inhibition of BBC content really help 'ensur[e] the public are exposed to a range of different opinions, views and information from a variety of sources' (as plurality has been described by the Government) (DCMS, 2014, p. 8)? In fact, more locally specific digital services, which encourage interaction with local populations, seem likely to help meet the civic concerns at the heart of the pluralism initiative. It does seem reasonable, however, that some locally specific BBC content should be delivered in an increasingly open way to counter the charge of unfair competition from the BBC against other

local news publishers: the BBC might share some of its content on a fair and equitable basis with other publishers under Creative Commons licences, for example (Perrin, 2014; cf. Miller, 2014).

Rather than inhibit the BBC, plurality might be better served by positive initiatives where the BBC becomes an enabling institution, as encouraged by Moore (2014) and White et al. (2014). The BBC could be obliged, as part of its new Charter which will run from January 2017, to enter into local partnerships with nascent hyperlocal operations, providing expertise in editorial, web design, legal advice, promotion, and marketing. This fits with an approach advocated by the BBC Director General, Tony Hall, who has repeatedly emphasised that partnerships with other organisations and sectors are an integral part of the BBC's future (e.g. Hall, 2013).

In June 2014 the BBC announced the creation of a new working group to look at how the corporation works with other local news providers (Harding, 2014). While it is the concerns of commercial news organisations that seem to have prompted this initiative, a broader set of players needs to be considered if the BBC is to support media plurality and diversity, or more specifically, as Gibbons describes earlier in this book, exposing media users to 'all significant standpoints of opinion'. The BBC should engage in partnerships that support new types of local publishers, as well as traditional ones, many of which are run entirely by volunteers and with scant resources. There are promising signs that the BBC will take such an approach, such as a special data journalism training workshop for hyperlocal publishers which took place in 2015. Even though this sector has little co-ordinated representation and no official industry body, the BBC could and should continue to involve it in future activities.

It is not only the BBC that is in a position to forge better collaborations with hyperlocals and other small local news providers. In Wales, the National Assembly, concerned by a lack of media coverage about its daily activity, is encouraging bloggers to attend and cover its proceedings. It ran a specific 'hyperlocal news day' in October 2014 to find out how hyperlocals can use 'content and platforms to report the work of the Assembly', and offered publishers guidance and advice from the Centre of Community Journalism at Cardiff University (Butler, 2014; Caerphilly Observer, 2014).

One-day training events may be perceived as having a modest and short-term impact, but they contribute to a broader cultural shift that needs to take place if local media is to serve the democratic needs of local communities in Britain. As well as training days, other local

institutional initiatives might include putting independent bloggers on press lists, giving them access to press events, and answering their inquiries to press offices. Of course, this will require the development of new policies and a mind-set change which recognises new forms of digital journalism, but is crucial in ensuring information supply to local communities. There is a major role for publicly funded institutions to act as game-changers in conferring legitimacy on these nascent journalism enterprises, as well as helping to make them more effective. Again, this is not only applicable in a UK-news context; it is especially relevant to other European countries with a tradition of public service broadcasting.

Conclusions

Hyperlocal news may not always be called that. The self-applied labels might change. But it seems likely that digital technology will continue to facilitate independent and grass-roots media operations covering local and regional areas, allowing them to reach larger and more participative audiences far more easily and cheaply than in the pre-internet age. Based on empirical study of the emerging hyperlocal sector and analysis of policy and academic texts of local news provision, this chapter has suggested that a wholly market-oriented approach to pluralism is inappropriate, particularly at the local and regional levels. Instead, proposals for public intervention – although not in the form of direct subsidy – are suggested for assisting the growth of new local initiatives and encouraging cultural change at institutions that control access to local information. Thus, the emphasis should be on positive, rather than inhibitory policy measures that can be developed to enhance diversity of media content, and to ensure that media users can access accurate civic information, and are exposed to a range of opinions and perspectives. While policy conclusions have focused on the UK news landscape, the general thrust of these arguments is potentially relevant in any nation state where very local digital media enterprises are emerging to challenge the traditional local newspapers, TV, and radio stations.

Notes

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1. This section is based on two previously published works co-written by the author: Barnett and Townend (2014) and Williams et al. (2014).
2. This figure is based on annual figures that were cited on the Newspaper Society's website (referenced hyperlinks no longer work, since the Newspaper Society was merged with the Newspaper Publishers Association to become the News Media Association in November 2014): for statutory notices on planning (£15 million; Newspaper Society, 2009), traffic regulation orders (£20 million, Newspaper Society, 2013b) and alcohol licences (between £6.2 and £7.9 million, Newspaper Society, 2013a), the total (£42.9 million) will be higher if inflation since 2009 is taken into account. Estimated figures given by the Local Government Association range from £26 million on statutory public notices (Local Government Association, 2013) to £40 million on statutory planning notices and £67.85 million on notices and advertising across the whole sector (Local Government Association, 2010). But estimates are rough, non-specific about whether they are UK-wide or limited to England, and may even be conservative; as Blair notes, 'the problem is that no-one counts the same thing' (2014).
3. This was particularly noticeable at a series of round-table events organised as part of our funded research project, details above.
4. A summary of this, and other events, can be found on the project website: <http://mediaplurality.com>.

References

- Advisory Group on Journalism & Charitable Status 2012. *Good News? A report by the Advisory Group on Journalism & Charitable Status*. London.
- Anon (2011a) 'Enfield nine strike a deal with Tindle', *Gazette, Advertiser and Press on Strike Blog*: <http://strikegazadpres.wordpress.com>, date accessed 16 December. 2014.
- Anon (2011b) *Staff at North London & Herts Newspapers say 'enough is enough' in the first strike in Tindle Newspapers' history*. strikegazadpres.wordpress.com, date accessed 28 November. 2014.
- Barnett, S. (2009) *Journalism, Democracy and the Public Interest: Rethinking media pluralism for the Digital Age*. Oxford: Reuters Institute for the Study of Journalism.
- Barnett, S. (2011) *The Rise and Fall of Television Journalism Just Wires and Lights in a Box?*. London; New York: Bloomsbury Academic.
- Barnett, S. and Townend, J. (2014) 'Plurality, Policy and the Local: Can hyperlocals fill the gap?' *Journalism Practice*, 1–18 <http://dx.doi.org/10.1080/17512786.2014.943930> accessed 12 March 2015.
- BBC Trust (2008) *BBC Trust Rejects Local Video Proposals*. [bbc.co.uk: http://www.bbc.co.uk/bbctrust/news/press_releases/2008/local_video_prov.html](http://www.bbc.co.uk/bbctrust/news/press_releases/2008/local_video_prov.html), date accessed 15 December 2014.
- Blair, A. (2014) *The Future of Public Notice Advertising in Wales*: <http://www.thepotentmix.co.uk>, date accessed 16 December 2014.
- Bosmajian, H. (1986) 'Judiciary's use of metaphors, metonymies and other tropes to give first amendment protection to students and teachers,' *Journal of Law and Education*, 15, 439.

- Bosmajian, H. A. (1992) *Metaphor and Reason in Judicial Opinions*. SIU Press.
- Butler, R. (2014) 'Hyperlocal news day at the National Assembly for Wales,' *communityjournalism.co.uk*: <http://www.communityjournalism.co.uk>, date accessed 15 December 2014.
- Caerphilly Observer (2014) 'National Assembly for Wales hosts community journalism event.' *Caerphilly Observer*: <http://www.caerphillyobserver.co.uk>, date accessed 15 December 2014.
- Curran, J. (2005) 'Mediations of democracy' In: J. Curran, J. and M. Gurevitch (eds) *Mass Media and Society*, London; New York: Hodder Arnold ; Distributed in the U.S.A by Oxford University Press, pp. 122–149.
- DCMS (2014) *Media Ownership & Plurality Consultation Report/Government response to the House of Lords Select Committee on Communications Report into Media Plurality*. London: Department for Culture, Media & Sport.
- Freedman, D. (2014) 'Why are we so frightened of breaking up "Big Media"?' *Huffington Post*: <http://www.huffingtonpost.co.uk>, date accessed 31 December 2014.
- Gallagher, R. (2008) 'Regional press delight at Halt to BBC local video', *Press Gazette*, 21 November: <http://www.pressgazette.co.uk>, date accessed 16 December 2014.
- Hall, T. (2013) *Speech*: <http://www.bbc.co.uk/mediacentre/speeches/2013/tony-hall-vision.html>, date accessed 15 December 2014.
- Haraszi, M. (2011) *Media Pluralism and Human Rights: Issue discussion paper*. Strasbourg: Commissioner for Human Rights: <http://www.coe.int>, date accessed 15 December 2014.
- Harding, J. (2014) *Speech*: <http://www.bbc.co.uk/mediacentre/speeches/2014/james-harding-local-journalism-conference>, date accessed 16 December 2014.
- Harte, D. (2013) *Hyperlocal Publishing in the UK – A Snapshot (2013 update)*: <http://daveharte.com>, date accessed 15 December 2014.
- House of Lords (2012) *House of Lords Select Committee on Communications: The future of investigative journalism*. London: House of Lords.
- Javid, S. (2014) *Speech to Society of Editors Conference 2014*: <https://www.gov.uk/government/speeches/society-of-editors-conference-2014>, date accessed 15 December 2014.
- Lamont v. Postmaster General* [1965] 381 U.S. 301: <https://supreme.justia.com/cases/federal/us/381/301/case.html>, date accessed 15 December 2014.
- Local Government Association (2010) *LGA Response to Publicity Code*: <http://www.lgcplus.com>, date accessed 16 December 2014.
- Local Government Association, 2013. *Local Government Association (LGA) Response to DCLG Consultation on 'Protecting the Independent press from Unfair Competition' 2013*: <http://www.local.gov.uk>, date accessed 16 December 2014.
- Miller, A. (2014) *Global News Media: The Next Horizon*: <http://www.theguardian.com/gnm-press-office/2014/oct/23/andrew-miller-global-news-media-the-next-horizon>, date accessed 15 December 2014.
- Moore, M. (2014) *Addressing the Democratic Deficit in Local News through Positive Plurality*. London: Media Standards Trust: <http://mediastandardstrust.org>, date accessed 15 December 2014.
- Napoli, P. (1999) 'The marketplace of ideas metaphor in communications regulation', *Journal of Communication*, 49(4), 151–169.

- Newspaper Society (2009) 'Government rejects plans to scrap planning notice advertising,' *Newspaper Society*: <http://www.newspapersoc.org.uk/23/dec/09/government-rejects-plans-to-scrap-planning-notice-advertising>.
- Newspaper Society (2013a) 'Government Proposes to Withdraw Alcohol Licence Notices from Local Papers,' *Newspaper Society*: <http://www.newspapersoc.org.uk/24/jan/13/government-proposes-to-withdraw-alcohol-licence-notices-from-local-papers>.
- Newspaper Society (2013b) 'Traffic regulation orders to stay in local papers', *Newspaper Society*. Previously available at: <http://www.newspapersoc.org.uk/11/feb/13/traffic-regulation-orders-to-stay-in-local-papers>.
- Nielsen, R. K. with Linnebank, G. (2011) *Public Support for the Media: A six-country overview of direct and indirect subsidies*. Oxford: Reuters Institute for the Study of Journalism.
- NUJ (2011) *Campaign to Save Local Newspapers Launched in Enfield*: <https://www.nuj.org.uk>, date accessed 16 December 2014.
- NUJ (2014) Survey shows dangerous levels of stress at Johnston Press – National Union of Journalists: <https://www.nuj.org.uk>, date accessed 28 November 2014.
- O'Neill, D. and O'Connor, C. (2008) 'The passive journalist: How sources dominate local news', *Journalism Practice*, 2(3), pp.487–500.
- Parliament.uk (2011) *Early Day Motion 1896: North London and Herts newspaper group*. Parliament.uk, date accessed 16 December 2014.
- Parliament.uk (2013) *House of Lords Select Committee on Communications Inquiry into Media Plurality: Written and Corrected Oral Evidence*.
- Pearson, M., Kingsbury, J., and Fox, D. (2013) *Destination Local: Our Lessons to date*. London: Nesta.
- Perrin, W. (2014) 'Guardian CEO Andrew Miller joins talk about local's call for BBC to give away local content to hyperlocal media', *Talk About Local*: <http://talkaboutlocal.org.uk>, date accessed 15 December 2014.
- Ponsford, D. (2008) 'Newspaper society takes legal action against BBC trust', *Press Gazette*, 3 November: <http://www.pressgazette.co.uk>, date accessed 15 December 2014.
- Radcliffe, D. (2012) *Here and Now: UK Hyperlocal Media Today*. [Landscape report] London: Nesta: <http://www.nesta.org.uk>, date accessed 15 December 2014.
- Schlesinger, P. (1978) *Putting 'Reality' Together: BBC News*. London: Constable.
- Tindle News (2011) *Enfield Facts*. [Tindlenews.co.uk](http://www.tindlenews.co.uk): <http://www.tindlenews.co.uk>, date accessed 15 December 2014.
- TUC, NUJ, CPBF and Media Reform Coalition (2014) *Media Ownership Reform: A Case for Action*: <http://www.mediareform.org.uk>, date accessed 3 December 2014.
- United States v Rumely* [1953] 345 U.S. 41: <http://www.law.cornell.edu/supreme-court/text/345/41>, date accessed 15 December 2014.
- White, D., Pennycook, L., Perrin, W., and Hartley, S. (2014) *The Future's Bright – The Future's Local: Findings from the Carnegie UK Trust's Neighbourhood News Initiative*. Dunfermline: Carnegie UK Trust: <http://www.carnegieuktrust.org.uk>, date accessed 15 December 2014.
- Williams, A., Barnett, S., Harte, D., and Townend, J. (2014) *Hyperlocal Community News in the UK*. London/Cardiff: <https://hyperlocalsurvey.wordpress.com/>, date accessed 15 December 2014.
- Williams, A. and Franklin, B. (2007) 'Turning around the tanker: Implementing Trinity Mirror's online strategy'. Cardiff University.

Part III

6

Media Ownership and the Political Economy of Research in US Media Policymaking

Philip M. Napoli

Introduction

In United States media policy, issues of media pluralism and diversity have been tightly intertwined with the issue of media ownership. In the US, the media ownership issue involves not only concerns about ownership concentration and its anti-competitive effects in the economic marketplace and in the marketplace of ideas; but also concerns about the levels of media ownership amongst historically disadvantaged groups such as women and minorities. In this regard, then, the media ownership issue in the US becomes interconnected with pluralism and diversity-related concerns about a robust marketplace of ideas and minority and gender representation in both the structure and content of the media system. And, of course, these social and political dimensions coexist with economic concerns about the relationship between the ownership structure of media markets and the economic functioning of these markets. From a policy standpoint, all of these concerns need to be addressed within a media environment that has, over the past two decades, been in a period of tremendous volatility and ongoing technological change.

As should be clear, the media ownership issue represents a complex interplay of policy concerns within an industry context that is far from stable. It stands to reason, then, that the primary media policy-making body in the US – the Federal Communications Commission (FCC) – has, since 1996, been mandated by the US Congress to evaluate and to adjust as necessary its media ownership policies every four years. It also stands to reason that, given the complexity of the media ownership issue, these policymakers would want their process of evaluating these media ownership policies to be well informed by relevant research.

And, beginning in 2001, we see what appears to be an increased commitment by policymakers to conducting and utilising research in the evaluation of US media ownership policies. The then Federal Communications Commission Chairman Michael Powell initiated in 2002 what he described as the ‘most comprehensive look at media ownership regulation ever undertaken by the FCC’ (Federal Communications Commission, 2002, p. 1). Powell specifically emphasised the importance of developing the necessary factual record to guide the Commission’s decision making in this area. As he stated in 2001, at the beginning of the media ownership inquiry, ‘Rebuilding the factual foundation of the Commission’s media ownership regulations is one of my top priorities’ (Federal Communications Commission, 2001, p. 1). As this statement suggests, the factual foundation undergirding US media ownership regulations had fallen into a state of disrepair. Every four years since Powell’s pronouncement, research has played a prominent – and consistently controversial – role in the FCC’s media ownership proceedings.

Therefore, understanding how media ownership policy is formulated and evaluated in the US requires a detailed examination of how research is used, and perhaps even abused, in the policy-making process. The relationship between research and policymaking has received a substantial amount of academic attention (e.g. McGarity, 1991; Stone, 2001; Henig, 2009). As this literature frequently reminds us, policy research is inherently political. Naïve notions of policy decision making being dictated by objective social-scientific analysis fail to capture the more complex realities surrounding how policy research is conducted and used in the policy-making process.

There is also a less discussed economic dimension to the dynamics of policy research. Successful stakeholder participation in the policy process depends, to some extent, on the ability to conduct and inject research into the process, and to evaluate and critique the research conducted by others (Napoli and Seaton, 2007). Policymakers themselves often encounter resource constraints in this regard, and thus are forced to rely upon third parties for the data and research that guide their decision making. Here, resource imbalances in the ability to conduct and evaluate research impact the relationship between research and policymaking (Napoli and Seaton, 2007).

It is this complex political economy of policy research that this chapter explores, within the specific context of US media ownership policy. This chapter offers a critical perspective on the research–policy-making dynamic, examining a range of troubling tendencies in the relationship

between research and policymaking. These include: inconsistency in the research questions being asked and methodological approaches being employed; apparent efforts to commission and conduct research designed to support predetermined policy positions, and to suppress research undermining these positions; and a tendency to fail to systematically gather the types of data relevant to the questions at the core of the quadrennial media ownership policy reviews, and to thus become increasingly reliant on commercial data providers. This chapter considers the implications of these patterns for our understanding of the relationship between research and policymaking, and puts forth suggestions for improving this relationship.

This analysis will be grounded in the relevant legal and policy documents, including: regulatory agency decisions and research reports; court decisions; congressional reports and correspondence; and filings by third parties in FCC proceedings. In addition, there is an impressionistic dimension to this analysis, drawn from the author's direct experiences in the realm of media diversity and media ownership-related policy research. These experiences include: serving as a peer reviewer for media ownership studies conducted by, and submitted to, the FCC; conducting media ownership-related research, both independently and for organisations such as the Benton Foundation, the Center for American Progress, the National Association of Broadcasters, the American Television Alliance, the Federal Communications Commission, and the Center for Creative Voices in Media; and providing expert testimony before both the US Senate and the Federal Communications Commission on media diversity and media ownership issues.

The research-policy relationship is examined in the three sections that follow. The first section focuses on the nature of the policy questions that guide media ownership research. The second section examines issues related to the data utilised on media ownership research. The third section examines the processes through which research is commissioned and conducted. The concluding section considers the broader implications of the analyses presented here.

Asking the questions

The relationship between research and policymaking is mediated – even constrained – first and foremost by the questions that policymakers establish as relevant to addressing the policy issue under consideration. It is in this early stage of a policy issue's lifecycle that policymakers (and, to some extent, external stakeholders) have the ability to define

the boundaries of the analytical playing field (Kingdon, 2010). This is the point at which certain questions are legitimised as relevant and worthy of research attention, while other (potentially relevant) questions are marginalised and thus most likely excluded from the policy research agenda. The key questions established by policymakers as relevant ultimately serve to establish the research agenda for those within the policy-making body and for those external stakeholders seeking to conduct research with the capability of influencing policy outcomes.

In the realm of media policy, policymakers have frequently been criticised for focusing exclusively on questions of the economic impact of altering or maintaining specific policies. As has been convincingly demonstrated, the research record that has been produced in connection with the media ownership issue has also been overwhelmingly oriented toward economic questions and economic analysis, to the neglect of social and political questions that many would argue are equally important to understanding the necessity and impact of media ownership regulations (Blevins and Brown, 2006; 2010).

That being said, perhaps one of the defining elements of the more recent iterations of the media ownership proceedings has been the extent to which FCC has expanded the analytical framework beyond traditional economic considerations. As the media ownership proceedings have progressed, the FCC's media ownership research has investigated questions involving the relationship between ownership and partisanship in news content (Milyo, 2007), ownership, and news quality (Rennhoff and Wilbur, 2011), and ownership, civic engagement and political knowledge (Vavreck et al., 2011; for more on the broadening of the media ownership research agenda, see Napoli and Gillis, 2006).

In many ways, perhaps a bigger problem than the nature of the questions being asked has been the extent to which the ownership proceedings have not been guided by a consistent set of questions. One of the most troubling aspects of the relationship between research and media ownership policy in the US is the extent to which the specific questions that guide the Commission's research agenda seem to change every four years, undermining any possibility of crafting an iterative, longitudinal empirical record that would facilitate meaningfully assessing the impact of specific policy decisions over time.

One important pattern we see in this regard involves how different ownership-related concerns have migrated in and out of the purview of the quadrennial media ownership proceeding. For instance, despite the fact that the Commission conducted studies on minority media ownership in connection with the 2006 and 2010 media

ownership proceedings (Beresteanu and Ellickson, 2007; Hammond, 2007; Waldfogel, 2011), the Commission has asserted that a wide range of minority media ownership policy proposals that were under consideration in the 2010 proceeding are now 'outside the scope' of the 2014 media ownership proceeding (Federal Communications Commission, 2014, p. 147).

Similarly, back in 2004, the FCC initiated a separate localism proceeding that was focused on examining the extent to which local media outlets were serving the needs of their communities; and how they might perform better in this regard (Federal Communications Commission, 2004). The creation of this separate proceeding was premised on the controversial assertion that these issues, which have historically been naturally intertwined with the issue of media ownership (see Napoli, 2001), should now be considered distinct and separate from the Commission's assessment of its media ownership regulations (Federal Communications Commission, 2004). In these ways, the very parameters of the media ownership issue seem to change from proceeding to proceeding, seemingly being narrowed down at various times in an effort to divest the proceeding of its more politically charged elements.

This tendency of course impacts the nature of the research that is conducted in connection with each proceeding. If we look at the set of studies that the FCC commissions every four years in connection with its quadrennial media ownership review, there is very little consistency from proceeding to proceeding in terms of the questions that the Commission seeks to have answered. For each media ownership proceeding, the collection of studies commissioned bears very little relationship to those commissioned in the previous media ownership proceeding. The net effect is that every four years it appears that the wheel is being reinvented in terms of the media ownership policy research agenda.

This tendency would seem to run counter to the very logic of evaluating media ownership policies every four years. Conducting the proceeding on a quadrennial basis provides the opportunity to gather and analyse data longitudinally, to examine ownership and marketplace trends over time, and even to potentially assess the short- and long-term impact of changes in specific regulations on the character of individual media markets and the performance of different types of media outlets. In many ways, the inconsistency that has characterised the quadrennial media ownership proceeding in the US represents a lost opportunity to build a substantial, robust body of knowledge that could contribute to well-informed decision making.

The reality, however, is that every four years various political battles over the parameters and points of focus for the media ownership proceeding are refought (see e.g. Scott, 2004). The agency personnel involved in conducting the proceeding change, and policy and research priorities change with them. And, of course, the executive, congressional and FCC leaders who play a central role in determining policy and research priorities change. Further, it is often the case that a court decision connected with one media ownership proceeding can, to some extent, dictate the parameters and research priorities of the next proceeding (see e.g. Napoli and Gillis, 2006). Through all of these patterns, the nature of the research that informs the media ownership issue is constantly being reformulated to reflect the changing political context in which it is being conducted. This kind of instability creates challenging circumstances for research and policymaking to work effectively in unison.

Data inadequacies

Another defining aspect of the FCC's media ownership proceedings has been the extent to which the research agenda established by the Commission runs aground, to some extent, upon inadequacies or gaps in the data needed to fulfil this research agenda effectively (see e.g. Kunz, 2012). Obviously, this is another tendency that undermines the extent to which research can meaningfully inform policy decision making.

In some cases, the Commission has found that the specific research questions it has asked could not be answered effectively because the data needed to answer the questions either were not available, or were not of sufficient quality or comprehensiveness to support robust analysis. This scenario is particularly well illustrated by the FCC's assessment of the state of minority media ownership, which has proven to be built upon incomplete, inaccurate and erratically gathered data (see Turner and Cooper, 2006).

In one minority ownership study sponsored by the FCC, the researchers concluded that the Commission's data were inadequate for conducting basic analyses of changes in minority ownership over time. Focusing specifically on Form 323, which the Commission uses to gather such data, the authors noted, '[u]nfortunately, there are a variety of problems associated with Form 323 data when the data are considered for use in constructing a time series' (Bush, 2007, p. 13). These problems included irregular filing deadlines, filing exemptions

for sole proprietorships or partnerships comprised entirely of natural persons (rather than corporate or other business entities), and incorrect responses by many stations.

These shortcomings were reflected in the assessment contained in another FCC-commissioned study that examined the levels of minority and female ownership of media outlets. The authors of this study concluded that '[t]he data currently being collected by the FCC is extremely crude and subject to a large enough degree of measurement error to render it essentially useless for any serious analysis' (Beresteanu and Ellickson, 2007, pp. 2–3). The authors consequently recommended that 'the FCC take serious steps to ensure that a complete census of media firms is carefully assembled so that ownership patterns can be accurately reported and tracked over time' (Beresteanu and Ellickson, 2007, pp. 20). Not surprisingly, the Congressional Research Service has reached similar conclusions about the inadequacy of the FCC's minority ownership data for research purposes (Goldfarb, 2007).

The FCC subsequently set about making substantial improvements in its minority media ownership data (Federal Communications Commission, 2009). The irony here, of course, is that, as was noted above, the Commission has since gone on to declare minority ownership outside the scope of the quadrennial media ownership reviews. Thus, the policy applications of this data and the resulting research are significantly curtailed.

In some cases, the Commission's decisions to forego certain types of data gathering have had a bearing on its ability to conduct robust media ownership research (see Napoli, 2008). This situation is well illustrated in a 2008 speech by FCC Commissioner Robert McDowell, in which he expressed his opposition to a decision by the Commission to reverse the decades-long trend of reducing the amount of information gathered from broadcast licensees by increasing licensee reporting requirements. Under its new rules, the Commission would require licensees to provide, on a quarterly basis, information on a range of programming categories that have historically been linked with serving the public interest. Commissioner McDowell (2008) questioned why the Commission would want such information, suggesting that it would most likely open the door to increased content regulation.

An alternative answer as to why the Commission would want such information can be found in the FCC's 2002 and 2006 media ownership studies. The Commission's *own efforts* to investigate the question of whether its media ownership regulations serve the public interest included detailed studies of the relationship between media ownership and market

characteristics and the provision of exactly the kinds of programming categories articulated in the new reporting requirements (Spavins, et al., 2002; Crawford, 2007; Shiman et al., 2007). And because the FCC made no efforts to gather such information until 2008, the Commission's studies were crippled by inadequate data (see Napoli and Karaganis, 2007).

A second data problem (that in many ways arises from the first) involves policymakers' increased reliance on commercial data sources. Essentially, various areas of data gathering have been 'outsourced' to commercial firms (Napoli and Seaton, 2007). The policy-specific concerns that arise from this are: (1) that the access terms and provisions associated with commercial databases are often too restrictive to facilitate an open and transparent policy-making process; and (2) that the data is often gathered with the needs of commercial clients in mind, rather than the needs of policymakers and policy researchers, which limits the analytical utility of the data.

Considering the first concern, there have been a number of controversies about the accessibility of the data that underlie a wide range of media policy decisions. While it would seem axiomatic that public policy should be made with publicly available data (Napoli and Karaganis, 2010), the restrictive access terms associated with most commercial databases mean that public access to the data that guides policymaking is often severely limited (Napoli and Seaton, 2007). Even access to data gathered by the FCC has proven difficult (Institute for Public Representation, 2007). Such access limitations constrain participation in the process and, of course, raise questions about the transparency of the process and the integrity of the research that feeds into the process.

With the second concern, the key issue is that data gathered for the commercial market is not necessarily gathered or organised in ways that best meet the needs of policymakers and policy researchers. For instance, many commercial data sources have gaps in their coverage of media markets or media outlets that are particularly pronounced in relation to minority-owned/targeted media outlets or minority audiences (Napoli and Seaton, 2007).

This issue rose to prominence within the context of the FCC's efforts to determine the extent of cable penetration in the US in conjunction with its annual report on competition in the video-programming market – a report that naturally is of particular relevance to media ownership policy. An early draft of the competition report was said (Make, 2007) to rely upon data from Warren Communications (a commercial publisher of media industry data) in determining that national cable penetration met the 70 per cent threshold that triggers greater FCC regulatory

authority over the industry. This data contradicted other commercial data sources, which demonstrated penetration levels in the 60 per cent range (McSlarrow, 2007). More importantly, Warren Communications conceded that its data were not well suited to determining whether the threshold had been met (Make, 2007). The issue triggered a debate over the current state of cable penetration in the US and the validity of the different commercial data sources available for making such a determination (see Napoli and Karaganis, 2010).

It is important to consider the reasons behind this overall degradation of the information environment. In some instances, the explanation involves the implementation of a deregulatory philosophy and the inclusion of data gathering and reporting activities within the overall deregulatory agenda. In other cases, the situation is perhaps best seen as an issue of resources, as the FCC lacks the resources necessary to engage in the full range of data-gathering activities needed to inform its policymaking. Consequently, it is forced to neglect certain data-gathering activities or comes to rely increasingly on third-party data providers. The unfortunate result is that, through a combination of political and economic circumstances, the information environment fails to reflect the analytical environment in which media policymakers operate.

Research process

Aside from issues related to the questions asked and the data employed, the integrity of the process through which media ownership research is conducted has, in some cases, been called into question. Perhaps the most prominent manifestation of this involves instances in which the FCC has been accused of selectively withholding relevant research or data. For instance, in the fall of 2006, two unreleased FCC studies pertaining to the Commission's media ownership and localism proceedings – both of which contained conclusions that raised questions about the appropriateness of relaxing certain media ownership regulations – were leaked to US Senator Barbara Boxer (Office of the Inspector General, 2007). This led to widespread speculation and criticism that the FCC was attempting to manipulate the analytical process in favour of deregulation. This controversy served as the catalyst for an internal investigation by the FCC's Office of the Inspector General (2007), and the studies ultimately were released to the public.

Such criticisms of the FCC intensified, however, upon the subsequent release of a paper authored by the FCC's then-Chief Economist that was described by the author as 'an attempt to share some thoughts and ideas

I have about how the FCC can approach relaxing newspaper-broadcast cross-ownership restrictions' (Marx, 2006, p. 3). In terms of relevant research, the paper outlines 'some studies that might provide valuable inputs to support a relaxation of newspaper-broadcast ownership limits' (Marx, 2006, pp. 14–15). Statements such as these raised concerns that the FCC conducts results-driven research under the guise of an evidence-driven analytical process (Cooper, 2007; 2008).

The process through which research is commissioned and evaluated also has been called into question. For instance, the FCC's selection of researchers for the 2006 media ownership studies, and the soliciting and incorporating of external peer reviews for these studies, were the subject of congressional inquiry (Hinckey et al., 2007). A number of academic and public interest organisation analyses of these processes have been similarly critical, with the primary concern once again being biases in favour of predetermined policy outcomes affecting the decision-making process (see e.g. Cooper, 2007; 2008; Mihal, 2008).

The political pressures imposed upon policy research clearly can become quite intense. This became clear when, in 2012, the FCC commissioned a report on how media outlets were meeting the critical information needs of the American public (Friedland et al., 2012). This report included suggestions for future empirical work, which ultimately led to the FCC commissioning a research methodology that was to be pilot-tested in six US communities (Social Solutions International, 2013). One element of the methodology included interviews with journalists and editors in these communities, in an effort to gain a deeper understanding of how news decisions are made.

This element of the study touched off a firestorm of controversy, and intense attacks from conservative politicians, media industry trade associations, news outlets and advocacy groups, who perceived (or at least portrayed) the intended research as a dangerous intrusion by the federal government into the workings of the press, and as a precursor to more intensive government regulation (see e.g. Jessell, 2013; Pai, 2014). Authors of the original report (including myself) had their backgrounds and political contribution histories examined and made public by conservative journalists and bloggers (see e.g. York, 2014). Sixteen members of Congress reacted to the planned study with an angry letter to FCC Chairman Tom Wheeler (Upton et al., 2013). Leaders of the House of Representatives' Energy and Commerce Committee threatened to hold hearings and introduce legislation to block the study (Eggerton, 2014).

In the face of all of this pressure, the FCC initially scaled back the research design to a single community, but ultimately cancelled the

study (Flint, 2014). This example highlights an important, though often overlooked, dimension of the policy-making process – the extent to which political and economic interests in maintaining knowledge vacuums in certain areas can curtail the kind of data gathered and research conducted. Knowledge is often perceived as a very dangerous thing in the making and evaluating of public policy.

It is, of course, naïve to assume that policy research is ever conducted in a purely objective manner and devoid of broader political considerations. However, should the credibility of the policy research–policy-making relationship suffer too many hits, then the widely accepted notion that policymaking has in some way evolved from the more intuitive approach of the past to a more objective, evidence-driven one becomes something of a farce.

Conclusion

In light of the above analysis, it is perhaps not surprising that the 2014 media ownership review includes, at this point, very few newly FCC-commissioned research projects to inform the proceeding, and there have been few indications that much additional work is forthcoming. Instead, the FCC has stated that it will draw heavily on the research conducted in connection with the 2010 proceeding (Federal Communications Commission, 2014). One cannot help but wonder whether the controversies and challenges documented here that have accompanied the process of media ownership research over the past decade have led the current FCC administration to decide to eschew this kind of work – and the potential pitfalls that accompany it.

If that is the case, then we are witnessing a system that is truly broken and in need of massive repair. Or perhaps more likely, it is a system that has never functioned according to any idealised notion of rigorous, objectively conducted research informing and influencing policy. In either case, the status quo for now and the foreseeable future seems to be one in which the research conducted and submitted by those parties with a stake in the policy outcomes, and with the resources to conduct the most convincing research in support of their preferred outcomes, will increasingly influence the FCC's decision making, and/or be used to justify decision outcomes. Such a scenario, in which policy research is essentially nothing but a tool of policy advocacy, is a sad perversion of the idealistic principles underlying true evidence-based approaches to public policymaking (Bogenschneider and Corbett, 2010).

This is a situation that is certainly difficult to change. However, there may be some ways in which the situation can be improved. In previous work, colleagues and I have put forth a variety of suggestions for how to improve the current state of affairs (see e.g. Napoli and Karaganis, 2007, 2010; Napoli and Seaton, 2007). These suggestions have addressed specific areas in which the FCC's data-gathering activities should be bolstered (e.g. industry financial data, media content data); as well as suggestions for how policy-relevant data can be made more broadly accessible (more expansive interpretations of the Data Quality Act; the use of regional, secured data repositories along the lines of those utilised for census data).

However, such proposals really only tinker at the margins of the problem by facilitating broader and more effective participation in the *research-as-advocacy* process. The preferable, more significant challenge would be creating institutional contexts and cultures in which rigorous, objective policy research is conducted and has legitimate potential to appropriately inform and influence decision making – contexts that are somehow better insulated against the pressures and influences associated with the contemporary political economy of policy research. Any such proposals are, however, dependent upon the existence of the political will to engage in this kind of reconfiguration of the institutional contexts in which policy-relevant data is gathered, and in which policy-relevant research is conducted, consumed and utilised. It is unclear, at this point, where and how this necessary political will could be generated, as the status quo is one that well serves those stakeholders with the most invested, and the most directly at stake, in media policy outcomes. The hope here is that by documenting the scope and magnitude of the problems confronting the intersection of media policymaking and policy research – within even just a single context such as media ownership – this chapter helps to generate and mobilise the political will necessary for such changes.

References

- Beresteanu, A. and Ellickson, P. B. (2007) *Minority and Female Ownership in Media Enterprises*. Washington, DC: Federal Communications Commission.
- Blevins, J. L. and Brown, D. (2006) 'Political issue or policy matter?: The US federal communications commission's third biennial review of broadcast ownership rules', *Journal of Communication Inquiry*, 30, 21–41.
- Blevins, J. L. and Brown, D. (2010) 'Concerns about the disproportionate use of economic research in the FCC's media ownership studies from 2002–2007', *Journal of Broadcasting & Electronic Media*, 54, 603–620.

- Bogenschneider, K. and Corbett, T. J. (2010) *Evidence-Based Policymaking: Insights from Policy-minded Researchers and Research-minded Policymakers*. New York: Routledge.
- Bush, C. A. (2007) 'Minority and women broadcast ownership data' In: Duwadi, K., Roberts, S., and Wise, A. (eds) *Ownership Structure and Robustness of Media: FCC Media Ownership Study #2*: http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A3.pdf, date accessed 10 December 2014.
- Cooper, M. (2007) 'Biased questions yield biased answers: How the FCC loaded the dice in setting its media ownership research agenda', Report from the Consumer Federation of America: http://www.savetheinternet.com/sites/default/files/resources/biased_fcc_research_agenda.pdf, date accessed 10 December 2014.
- Cooper, M. (2008, May). 'Junk science and administrative abuse in the effort of the FCC to eliminate limits on media concentration', Paper Presented at the Annual Meeting of the International Communication Association.
- Crawford, G. S. (2007) 'Television station ownership structure and the quantity and quality of TV programming: FCC media ownership study #3': https://apps.fcc.gov/edocs_public/attachmatch/DA-07-3470A4.pdf, date accessed 12 December 2014.
- Egerton, J. (2014) 'House to hold hearing on FCC study', *Multichannel News*, 25 February: <http://www.multichannel.com/news/policy/house-hold-hearing-fcc-study/307382>, date accessed 10 December 2014.
- Federal Communications Commission (2001) 'FCC chairman Powell announces creation of media ownership working group', *News Release*: http://www.fcc.gov/Bureaus/Miscellaneous/News_Releases/2001/nrmc0124.html, date accessed 10 December 2014.
- Federal Communications Commission (2002) 'FCC releases 12 studies on current media marketplace' *News Release*: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A1.pdf, date accessed 10 December 2014.
- Federal Communications Commission (2004) 'In re broadcast localism, notice of inquiry', *19 F.C.C.R.* 12,425.
- Federal Communications Commission (2009) 'Promoting diversification of ownership in the broadcasting services, Report and Order and Fourth Further Notice of Proposed Rulemaking', MB Docket No. 07-294, 24 FCC Rcd 5896.
- Federal Communications Commission (2014) '2014 Quadrennial Regulatory Review – Review of the commission's broadcast ownership rules and other rules adopted pursuant to section 202 of the telecommunications act of 1996, further notice of proposed rulemaking and report and order, MB Docket No. 14-50: https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-28A1.pdf, date accessed 10 December 2014.
- Flint, J. (2014) 'FCC cancels study after backlash from lawmakers', *LA Times*, 28 February: <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-fcc-cin-study-20140228-story.html>, date accessed 16 December 2014.
- Friedland, L., Napoli, P. M., Ognyanova, K., Weil, C., and Wilson, E. J. (2012) 'Review of the literature regarding critical information needs of the American public: Report prepared for the federal communications commission': http://transition.fcc.gov/bureaus/ocbo/Final_Literature_Review.pdf, date accessed 10 December 2014.

- Goldfarb, C. B. (2007) 'CRS report for Congress: The FCC's 10 commissioned economic research studies on media ownership: Policy implications', *Congressional Research Service*: <http://cdm15025.contentdm.oclc.org/cdm/ref/collection/p266301coll9/id/113>, date accessed 10 December 2014.
- Hammond, A. S. (2007) 'The impact of the FCC's Duopoly rule relaxation on minority and women owned broadcast stations, 1999–2006', *Report Prepared for the Federal Communications Commission*: https://apps.fcc.gov/edocs_public/attachmatch/DA-07-3470A9.pdf, date accessed 10 December 2014.
- Henig, R. (2009) *Spin Cycle: How Research is used in Policy Debates: The Case of Charter Schools*. New York: Russell Sage Foundation.
- Hinchey, M. D., Stupak, B., Baldwin, T., Slaughter, L. M., and Price, D. (2007) 'Letter to Kevin Martin, FCC Chairman' 14 September: <http://votesmart.org/public-statement/231585/letter-to-fcc-chairman-kevin-j-martin-economic-studies-on-media-ownership#.VJCbdk3wtD8>, date accessed 10 December 2014.
- Institute for Public Representation (2007) 'Complaint for declaratory and injunctive relief' 16 November.
- Jessell, H. A. (2013) 'The FCC should stay out of TV newsrooms', *TV NewsCheck*, 13 December: <http://www.tvnewscheck.com/article/72691/the-fcc-should-stay-out-of-tv-newsrooms>, date accessed 10 December 2014.
- Kingdon, J. (2010) *Agendas, Alternatives, and Public Policies* (updated 2nd ed.), New York: Pearson.
- Kunz, W. M. (2012) 'FCC studies of the television marketplace under George W. Bush: Flawed measurements and invalid conclusions', *Democratic Communicque*, 25(2), 1–21.
- Make, J. (2007) 'November FCC Meeting to Focus on Cable Industry', *Communications Daily*, 14 November.
- Marx, L.M. (2006) 'Summary of ideas on newspaper-broadcast cross-ownership': <http://transition.fcc.gov/ownership/materials/newly-released/newspaper-broadcast061506.pdf>, date accessed 10 December, 2014.
- McDowell, R. M. (2008, April 23) 'Keynote address at the Quello communications law and policy symposium': http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281772A1.pdf, date accessed 10 December 2014.
- McGarity, T. O. (1991) *Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy*. New York: Cambridge University Press.
- McSarrow, K. E. (2007) 'Letter to Kevin J. Martin, FCC Chairman', 14 November.
- Mihal, C. (2008, June) 'Research as Alibi: Analysis of the FCC's 2007 media ownership studies'. Paper presented at the National Conference for Media Reform.
- Milyo, J. (2007) 'The effects of cross-ownership on the local content and political slant of local television news': https://apps.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf, date accessed 10 December 2014.
- Napoli, P. M. (2001) *Foundations of Communications Policy: Principles and Process in the Regulation of Electronic Media*. Cresskill, NJ: Hampton Press.
- Napoli, P. M. (2008) 'Paradoxes of media policy analysis: Implications for public interest media regulation', *Administrative Law Review*, 60, 801–812.
- Napoli, P. M. and Gillis, N. (2006) 'Reassessing the potential contribution of communications research to communications policy: The case of media ownership', *Journal of Broadcasting & Electronic Media*, 50, 671–691.
- Napoli, P. M. and Karaganis, J. (2007) 'Toward a Federal data agenda for communications policymaking', *CommLaw Conspectus: The Journal of Communications Law & Policy*, 16, 53–96.

- Napoli, P. M. and Karaganis, J. (2010) 'On making public policy with publicly available data: The case of US communications policymaking', *Government Information Quarterly*, 27, 384–391.
- Napoli, P. M. and Seaton, M. (2007) 'Necessary knowledge for communications policy: Information asymmetries and commercial data access and usage in the policymaking process', *Federal Communications Law Journal*, 59, 295–329.
- Office of the Inspector General (2007) 'Report of investigation into allegations that senior management ordered research suppressed or destroyed', Federal Communications Commission.
- Pai, A. (2014) 'The FCC wades into the newsroom,' *Wall Street Journal*, 10 February.
- Rennhoff, A. D. and Wilbur, K. C. (2011) 'Local media ownership and media quality': <http://ssrn.com/abstract=1803256>, date accessed 10 December 2014.
- Scott, B. (2004) 'The politics and policy of media ownership,' *American University Law Review*, 53, 645–677.
- Shiman, D., Lynch, K., Stroup, C., and Almoguera, P. (2007) 'News operations: FCC media ownership study #4': https://apps.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf, date accessed 10 December 2014.
- Social Solutions International (2013) 'Research design for the multi-market study of critical information needs'. Prepared for the Federal Communications Commission: <http://www.fcc.gov/encyclopedia/research-design-multi-market-study-critical-information-needs>, date accessed 10 December 2014.
- Spavins, T., Dennison, L., Frenette, J., and Roberts, S. (2002) 'The measurement of local television news and public affairs programs: FCC media ownership study #7': http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A12.pdf, date accessed 10 December 2014.
- Stone D. (2001) *Policy Paradox: The Art of Political Decision-making* (3rd ed.). New York: W.W. Norton.
- Turner, S. D. and Cooper, M. (2006) 'Out of the picture: Minority and female TV station ownership in the United States': http://www.freepress.net/sites/default/files/fp-legacy/out_of_the_picture.pdf, date accessed 10 December 2014.
- Upton, et al. (2013, December 10) 'Letter to FCC chairman Tom Wheeler': <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20131210FCC.pdf>, date accessed 10 December 2014.
- Vavreck, L., Jackman, S., and Lewis, J. B. (2011) 'Report to the FCC: How the ownership structure of media markets affects civic engagement and political knowledge, 2006–2008': https://apps.fcc.gov/edocs_public/attachmatch/DOC-307489A1.pdf, date accessed 10 December 2014.
- Waldfoegel, J. (2011) 'Radio station ownership structure and the provision of Programming to minority audiences: Evidence from 2005 to 2009', Report prepared for the federal communications commission: https://apps.fcc.gov/edocs_public/attachmatch/DOC-308591A1.pdf, date accessed 10 December 2014.
- York, B. (2014) 'Four of five FCC study authors gave to Obama', *Washington Examiner*, 27 February: <http://www.washingtonexaminer.com/four-of-five-fcc-study-authors-gave-to-obama/article/2544837>, date accessed 10 December 2014.

7

From Media Policy to ‘Big’ Media Policy: The Battle for Pluralism in Australia

Benedetta Brevini

The year 2012 was a crucial turning point for media and journalism in many regions of the Western world. Sociologists frequently employ the term ‘critical junctures’ to explain the windows of opportunities for social change presented at specific times in history. The UK Leveson Inquiry into Culture, Practices, and Ethics of the Press was certainly one of the best examples of these ‘critical junctures’ that offered an unprecedented occasion to achieve structural reforms concerning media structures, journalism ethics and news standards. Certainly, the closure of the *News of the World* had a tangible effect in Australia, a country with direct links to UK media conglomerates, notably part of the Murdoch’s empire. In fact, the debate in the UK triggered the establishment in September 2011 of the Independent Media Inquiry into the Media and Media Regulation in Australia, frequently referred to as the Finkelstein Review. When the *News of the World* scandal spread, Australia’s Labor Government had already initiated an official appraisal of the country’s media systems with the aim to review ‘the operation of media and communications legislation in Australia and to assess its effectiveness in achieving appropriate policy objectives for the convergent era’ (Convergence Review, 2012, p. 110).

This chapter will examine policy approaches and proposals to tackle media pluralism in Australia in light of the two Inquiries. Firstly it will summarise the history of the two distinct reviews with a particular emphasis on the Convergence Review. Secondly it will define and problematise the media policy-making discourses in which the recommendations of the two government reviews were received. It will then examine the main factors which are thwarting opportunities for change. In particular, it will assess the role and influence of powerful media corporations on media policy. If the power to decide media

plurality goals is progressively dictated by and delegated to established, incumbent media players, then – the chapter argues – media policy inevitably turns into *Big Media Policy*.

A snapshot of the Australian media landscape

Australia's increasing media concentration has been a matter of concern for policy makers since the first development of radio, when it witnessed the growing concentration of licences by a handful of newspaper owners (Papandrea and Tiffen, 2011).

In the current Australian media landscape we should draw a distinction between metropolitan and regional markets in terms of the control and ownership of the major media outlets (Australian Government, 2014). Regional markets tend to exhibit higher levels of media concentration, while metropolitan markets have traditionally shown a larger number of media outlets, with a slightly greater level of diversity of ownership and services (*ibid.*).

As the most recent policy paper, 'Media control and ownership', published by the Department of Communication in June 2014, says:

The print sector has historically exhibited relatively high levels of concentration, dominated by News Corp Australia, Fairfax and APN. In this regard, it is notable that News Corp Australia and Fairfax titles are, on average, read each week by around 60 per cent and 36 per cent respectively of the newspaper reading public in Australia. (Australian Government, 2014, p. 21)

A small number of companies also control the commercial radio and television networks with six dominant commercial television networks and 12 major commercial radio networks. The problem is exacerbated by content-sharing deals between media organisations that are becoming more commonplace. Network Ten, for instance, provides Fairfax Digital access to its own media coverage. In addition, both radio and TV news networks draw heavily on newsfeeds from the Australian Associated Press, which is majority-owned by the two major competitors Fairfax (45%) and News Limited (45%), with detrimental effects on the diversity of output. This type of influence on the diversity of media content is not picked up by the standard economic analysis of market concentration used to evaluate the TV and radio sectors.

There is also an alarming degree of concentration in new digital services and platforms. Subscription television is dominated by Foxtel (25 per cent

owned by News Limited) and Austar that has just recently merged with Foxtel, with a few limited alternatives in local subscription services. As the most recent data by Nielsen shows, Australians have become heavy consumers of news online. With 34 per cent of the news market, online news consumption almost equates to free terrestrial television's consumption (36 per cent) against a mere 11 per cent of hard copy newspapers and 8 per cent of radio (Nielsen, 2013). While the online world has enabled new market entrants to provide what seemed to be an endless supply of alternative news and information sources,¹ Australia seems to confirm the trend of Europe, Britain, and the US where dominant national news organisations are still controlling the online news offering.

As the most recent figures illustrate, News Corp's news.com.au topped the Australian rankings of news websites in January 2014 with an audience of 2.767 million, followed by Fairfax's smh.com.au and the Microsoft-Nine Entertainment Company's co-owned site NineMSN (Nielsen Online Ratings, 2014).

Media ownership regulations and the proposal of the two inquiries

Media ownership regulation has historically considered who owns the newspapers and TV licences in each radio licence area as the basic unit for assessment. As we can see in the timeline of Table 7.1, individual commercial television owners were initially prohibited from holding a controlling interest – conceived as 15 per cent or more of the shares in the company holding the television licence – in more than one television station in any one area and two stations nationally. Plus, there was a 'two station' ownership rule that ensured widespread ownership of television assets. This obviously enabled a lower level of concentration until 1987, although newspaper owners were also major players in commercial television and radio. However, Australian policies over the last two decades have kept reinforcing the tendency towards major concentration (Papandrea and Tiffen, 2011; Flew and Swift, 2013). After 1987, the adoption of a new regulatory regime generated the formation of major commercial networks controlling individual stations in each of the state capital cities. Currently, the primary safeguards that exist against media concentration are the specific controls over media ownership contained in the Broadcasting Services Act 1992 that limits the control of licensed commercial broadcasting services and associated newspapers. Below, Table 7.2 details the complex system of current media ownership rules.

Table 7.1 Timeline of media ownership rules

	Number of licences	Reach	Cross-media
Pre-1987	Commercial TV Limited to 2 licences. Commercial radio limited to 6		No restrictions
1987–2006	Commercial TV limited to 75% national reach in any one licence area. Commercial Radio limited to 2 licences in one licence area	75% national reach in any one licence area	No cross-media owner- ship between televi- sion, newspapers, and radio in a licence area beyond 15% (control stake)
After 2006	No major changes 3 digital services per licence in any licence area	No major changes	Minimum number of voices: the '4/5' rule – there must be no fewer than 5 independent and separately con- trolled media operators or groups in a metro- politan commercial radio licence area, and no fewer than 4 in a regional area

Source: Broadcasting Act 1988, Broadcasting Services Act 1992.

Although the rules were originally intended to support media diversity (in mono-markets or cross-media markets like the '2 out of 3 rules'), the current measures are clearly limited in scope, and do not apply to influential media sources. So, for example, while licence-area based rules are important to guarantee diversity in regional areas, they also create the aberration that influential newspapers such as *The Australian* or *The Australian Financial Review* of the Murdoch empire cannot be captured by these provisions. The cross-media ownership provision – the '2 out of 3 rule' – is also not applicable for example to subscription television, which doesn't operate on a licence area-based regulatory system. The 75 per cent 'reach' rule is also not effective: on the one hand it prevents a company from controlling a commercial television station in each of the five mainland capital cities (approximately 67 per cent of the population), on the other it does not apply to subscription television, commercial radio, or IPTV services and does not consider the fact that regional TV broadcasters are broadcasters that carry the same

Table 7.2 Current media ownership rules

Media	Current media ownership rules
Commercial television, radio, newspapers	'5/4' rule (the 'minimum voices rule') At least 5 independent media 'voices' must be present in metropolitan commercial radio licence areas, and at least 4 in regional commercial radio licence areas.
Commercial television, radio, newspapers	'2 out of 3' rule (the 'cross-media ownership rule') Mergers can't involve more than 2 of 3 regulated media platforms (commercial television, commercial radio and associated newspapers) in any commercial radio licence area.
Commercial television	'75 per cent audience reach' rule A person, either in their own right or as a director of one or more companies, must not be in a position to exercise control of commercial television broadcasting licences whose total licence-area population exceeds 75 per cent of the population of Australia.
Commercial television	'One-to-a-market' rule A person, either in their own right or as a director of one or more companies, must not be able to exercise control of more than one commercial television broadcasting licence in a licence area.
Commercial radio	'Two-to-a-market' rule A person, either in their own right or as a director of one or more companies, must not be able to exercise control of more than 2 commercial radio broadcasting licences in the same licence area.

Source: Broadcasting Services Act 1992.

content as the metro broadcasters. What the provisions also seem to overlook is a serious system of assessments of the national implications of cross-media mergers.

The Convergence Review raised similar alarms to the Finkelstein Inquiry with regard to media pluralism. Both the reviews, albeit with radically different remits,² restated the necessity to sustain media pluralism in Australia and to 'promote a diverse range of owners at a local and national level' (Convergence Review, 2012, p. xvi). The Finkelstein Inquiry's report repeatedly asserted that 'Australia's newspaper industry is among the most concentrated in the developed world' (Finkelstein, 2012, p. 59), but it was overall more focused on reform of journalistic standards than with finding solutions for issues of media concentration.³

While, as noted earlier, the remit of the Convergence Review goes beyond the scope of this chapter, it made a number of fundamental proposals around media pluralism, and concluded that rules preventing the undue concentration of ownership remain crucial to foster diversity of media content.

In summary, these are the Review's most relevant proposals on pluralism:

- Introduce a new communications regulator to administer the new rules;
- Keep regulation of ownership of local media through a 'minimum number of owners' rule; so, for example, the existing 4/5 rule should be updated to take into account all entities that provide a news and commentary service and have a significant influence in a local market (p. 12).
- Cancel radio licence areas as the basic unit, in favour of local areas identified by an independent regulator.
- Assess large-scale mergers based on a 'public interest test', introducing a national approach to mergers.
- Delete the 75 per cent reach rule, the 2 out of 3 rule, and the restrictions on numbers of radio and TV licences that can be held.
- Introduce the innovation that significant media enterprises should be defined as 'content service enterprises' and be subject to regulation. Organisations would be defined as content service enterprises if they: have control over the professional content they deliver; have a large number of Australian users of that content; have a high level of revenue derived from supplying that professional content to Australians.⁴

Understanding media policymaking as order of discourse

It is crucial at this point of the analysis to theoretically define the domain in which the recommendations of the Inquiries were debated: how can the failure of the reforms advanced by the Inquiries be accounted for?

The literature tends to understand policy and policymaking in different ways (Ham and Hill, 1993; Colebatch, 2002). A familiar model applied to the study of policy is the 'cycle model' (Colebatch, 2002, p. 55) that sees policymaking as a sequence of stages: 'agenda setting (problem recognition), policy formulation (proposal of a solution), decision making (choice of a solution), policy implementation (delivery),

and policy evaluation (checking the results)' (Howlett and Ramesh, 2003, p. 10). But in reality, the policy-making process is more convoluted than the cycle model assumes.

A particularly fruitful analysis of policymaking is the so called 'interest group approach to policy' that explains policy as the outcome of preferences advanced by competing powerful interest groups (Galperin, 2004), from NGOs to trade union organisations to business organisations and so on. As Galperin (*ibid.*) explains, 'policy outcomes are typically explicated by the organization and the resources available to interest groups and their support coalitions' (p. 160). Yet, this account shares with the cycle-model approach a tendency to overlook the complexities built into the policy-making process and neglects an analysis of social and cultural power at play. As Pickard (2013) succinctly explains, 'policy narratives often help solidify relationships in favour of dominant incumbent players. Yet despite the power of incumbency, institutional inertia, and the pull of path dependency, maintaining hegemonic control over media policy requires a tremendous amount of maintenance and is always a messy, incomplete process' (Pickard, 2013, p. 5).

In this analysis, I argue that for a better understanding of media policymaking we should instead embrace Foucault's work on Discourse and Governmentality (Foucault, 1980). His theory asserts that the rules of government are not themselves defined by the rule of law, but rather by the rules of knowledge, power, and discourse formation (Brevini and Scholsberg, 2015 in press).

In his work on 'The Order of Discourse' (1981 [1970]), Foucault investigates the social practices of disciplines and shows how discourses are embedded in social practices (and disciplines) through rituals, values, and routines. According to this thesis, relations of power 'permeate, characterise and constitute the social body, and these relations of power cannot themselves be established, consolidated nor implemented without the production, accumulation, circulation and functioning of a discourse' (Foucault, 1980, p. 93). These ideas are extremely valuable in an analysis of policymaking because they challenge the belief that media policy is a rational process. Norman Fairclough (1989) has pushed the approach further and stressed the relevance of specific and dominant ideologies in policy, thus explaining why certain narratives are more resilient to change: 'Since discourse is the favoured vehicle of ideology, and therefore of control by consent, it may be that we should expect a quantitative change in the role of discourse in achieving social control' (Fairclough, 1989, p. 37). Thus I argue that media policy becomes the

realm of an order of discourse structuring what can and cannot be said as well as who has the power to speak.

Discourse formation and the failure of media reform in Australia

During the time the Government took to reflect upon the recommendations of the Finkelstein Review and the Convergence Review Committee, the response from the commercial media has been united and fierce: all recommendations had to be rejected, otherwise freedom of the press would be restricted with detrimental effects for democracy (Flew and Glen, 2013). It should be noted, however, that the media response to the Review's report has been less brutal (Jolly, 2013) because the Review committee had adopted a more subtle tone and produced 'a less provocative blueprint for regulation' than the one advocated by the Finkelstein Inquiry.⁵

Nevertheless, it was already clear from the tenor of the submissions to the reviews that the commercial media world would act as a monolithic bloc to maintain the status quo. In classic neo-liberal fashion, News Limited's submission concisely summarised why new proposals for media reforms had to be rejected:

Decision makers should not fall in the trap of thinking that because a market is not perfect, it needs to be regulated. Regulation, in whatever form, will limit the availability of information to consumers, it will limit choice and it will be disincentive to investment. Regulation can only act to close a market. (News Limited, 2012)

In a study conducted by Lindberg, (out of the 33 media industry submissions to the two reviews), the 'old media' companies such as News Limited, the commercial broadcasters, Fairfax Media and the publishers' associations were conveying a clear and sound message: 'The current system was sufficient and that more or reformed regulation was not needed. If anything, the mainstream media companies wanted less regulation' (Lidberg, 2012, p. 76). The content analysis also showed that 84 per cent of the submissions defended the current system of self-regulation for print and online media (Lidberg, 2012).

When the proposed legislation in response to the Inquiries (to be realised in a package of six Bills) was finally presented by Communication Minister Conroy on 12 March 2013, the response from commercial media was merciless, despite proposals having been decisively watered down from the recommendations of the Inquiries. The timid reforms

by the Government can certainly be explained in light of the continuous campaigns against media reforms by all commercial media, but also by the vulnerabilities of a minority Labor Government that was struggling before the Federal Election (Flew and Glen, 2013). Among the main recommendations were a press standards model that increased the role of the Australian Press Council (with competence that extends to online media) and the introduction of a Public Interest Test for future media takeovers and mergers, including the creation of a Public Interest Media Advocate (PIMA) to evaluate their implications for media diversity.

The (Murdoch-owned) *Daily Telegraph's* reaction to the package is perhaps one of the most significant examples. In a dramatic front-page story it claimed that Minister Conroy had joined a band of authoritarian despots of the calibre of Joseph Stalin, MaoTse-Tung and Robert Mugabe as political leaders who wanted to control the media – and illustrated its point with a picture montage of these figures (Jones, 2013).

As Di Lizia (2014) demonstrates in a study of the main headlines of legacy media news websites, corporate media called for maintaining the status quo on the basis of a classic libertarian position of government non-intervention as the only option to protect press freedom. The headlines read: 'Draconian law crosses the line' (*The Courier Mail*, 2013), 'Press freedom is public freedom' (*The Daily Telegraph*, 2013), 'An aggressive attempt to silence your media' (Williams, 2013), 'A long wait for a dog's breakfast' (Day, 2013) and 'Full impact of Conroy's media proposals is hidden' (Tingle, 2013) (Di Lizia, 2014, p. 15).

These findings perhaps substantiate recent scholarship in the field of media policy studies (see above all Pickard, 2013) that found that when these dominant narratives are accepted as conventional wisdom, they go unchallenged (2013, p. 339). When media ownership is concentrated, policy narratives are defined by established incumbent players, becoming dominant and hegemonic. In other words, media policy becomes *Big Media Policy*.

During the campaign leading up to the Australian Federal Election of September 2013, Labor abandoned the media reform Bills while the Liberal Party that was going to win the election chose deliberately not to release a media policy agenda. The current Liberal Government seems to have already started a campaign to further deregulate the Australian media market by continuing to advance the same neo-liberal ideology as a common-sense solution to the status quo of concentrated ownership (Mitchell, 2014).

Dwyer notes that the current Communications Minister Turnbull had a meeting with the most powerful media executives:

It is no secret that those attending the meeting were, for the most part, keen to repeal existing concentration rules. As well as the 75 percent reach rule, also in the owner's sights are removal of the 'two out of three' rule, which prevents a single entity owning more than two newspaper, television, or radio assets in the same market. (Dwyer, 2014)

The transformation of media policy into Big Media Policy was perfectly illustrated on 21 August 2014 by the headline of a popular news outlet of the Fairfax galaxy that read 'Communications Minister Malcolm Turnbull: higher level of consensus needed between media owners before cross-media ownership change' (White, 2014). This headline once again reiterates who has the legitimate power to decide policy goals (Hudson, 2014; Mitchell, 2014). The article went on to reaffirm that 'The Prime Minister has made clear he does not want a fight with powerful media companies' (White, 2014).

A good example of Big Media Policy as the dominant narrative is the recent cuts to Australia's two public broadcasters ABC (Australian Broadcasting Corporation) and SBS (Special Broadcasting Services) by the Abbott Government, with detrimental consequences for media pluralism. The two broadcasters will from 2015 have to absorb budget reductions, respectively \$254m for ABC and \$53m for SBS. These cuts will result in 400 job losses at ABC, about 10 per cent of its work force, with a dramatic impact on the news division. SBS has responded by saying that it will shorten one of its flagship shows and will have to increase its advertising revenues.

Conclusion

As Edwin C. Baker writes in *Media Concentration and Democracy* (2007), concentration of media ownership undermines the normative values of equality and autonomy embedded in the 'egalitarian structural distribution principle of democracy' (Baker, 2007, p. 5). As Barnett (2010) explains, 'The fewer owners or gatekeepers, goes the argument, the fewer the number of voices and the more damaging the consequences for diversity of expression' (p. 2).

Certainly, the coverage of the Australian inquiries offers a troublesome example of the danger of media concentration. In the words of Matthew Ricketson who co-chaired the Finkelstein Review:

The most recent and persuasive case study showing why there is an urgent need to reform regulation of the news media has been

provided by the news media itself. And it's been provided in the way they have reported on the Independent Media Inquiry. What they have done is to under-report a lot of what was presented to the Independent Media Inquiry late last year, and to either misreport the inquiry's findings or to ignore large parts of the report altogether. (Ricketson, 2012)

So, how might the inexorable transformation of media policy into *Big Media Policy* be reversed? What are the prospects for media policy to 'emancipate' the commercial media from its profit motive and methods of social control (Garnham, 2000, p. 12)? How can the dominant order of discourse – that is, common sense neo-liberalism – be reversed? That discourse was the context – and challenge – for the Australian inquiries: an established and oligopolistic commercial media system combined with the hegemonic credo of market neo-liberalism, where media 'democratisation' becomes synonymous with deregulation (Hackett and Carroll, 2006). This in turn is presented as a disinterested response to technologically and economically inevitable conditions. Pickard (2013) suggests that a possible means of achieving reform would be to uncover 'recurring themes, contradictions and tensions' (p. 341) in the dominant narrative. Since the neo-liberal narrative presents policy change as a 'product of objective reality' (Kunzler, 2012, p. 56), perhaps the only way forward is to unmask the illusory nature of this objectivity and those 'common sense' solutions which ultimately work to disempower citizens and further enrich Big Media.

Notes

1. International websites such as *The Huffington Post*, *BuzzFeed*, or outlets include *The Conversation*, *Henry Thornton*, *Crikey* and *New Matilda*.
2. When the Convergence Review was announced in March 2011, it was asked to 'review the current policy framework for the production and delivery of media content and communications services ... [and] develop advice for the government on the appropriate policy framework for a converged environment'. In doing so, the Committee was required to 'have regard to all legislation and regulatory frameworks relevant to [its] terms of reference' (Convergence Review Committee, 2012, p. 110). In September 2011, the Independent Inquiry into the Media and Media Regulation – also known as the Finkelstein Inquiry after its chair, the Hon. Ray Finkelstein QC – was established, with a remit to examine the effectiveness of current media codes of practice in Australia, how to strengthen the independence and effectiveness of the Australian Press Council (APC) as a newspaper-industry self-regulatory agency, and other issues pertaining to media regulations on the basis of public interest criteria.

3. Finkelstein's report made two key proposals: to establish an independent statutory body called the News Media Council to enforce standards in the media (Finkelstein, 2012, p. 290) and to establish a system of enforcement of corrections and replies (Finkelstein, 2012, p. 297).
4. As a guideline, an analysis conducted for the Review indicates that around 15 media operators in Australia would be classified as content service enterprises.
5. Jolly (2013) refers to the statement by commentator Chris Berg, who explained that the reason why The Convergence Review recommendations had been more favourably reviewed by the media was to be found in the fact that the Committee 'had gone to a lot of effort to make their reports subtle, not too-obvious, politically-feasible and to avoid obviously upsetting the status quo' (Chris Berg, quoted in Jolly, 2013, p. 56).

References

- Australian Government (2014) 'Media control and ownership: Policy background paper' June 2014: http://www.presscouncil.org.au/uploads/52321/ufiles/Control_Background_Paper_Australian_Government_Department_of_Communications.pdf, date accessed 25th October.
- Barnett, S. (2010) 'What's wrong with media monopolies? A lesson from history and a new approach to media ownership policy', MEDIA@LSE Electronic Working Papers, No 18: <http://www.lse.ac.uk/media@lse/research/mediaworkingpapers/pdf/ewp18.pdf>
- Baker, E. (2007). *Media Concentration and Democracy: Why Ownership Matters*. United Kingdom: Cambridge University Press.
- Brevini, B. (2014) 'Australia swims against the tide of democratic media reform', *The Conversation*, 18h March: <http://theconversation.com/australia-swims-against-the-tide-of-democratic-media-reform-24337>, date accessed 25th October.
- Brevini, B. and Schlosberg, J. (in press) 'Between philosophy and action: The story of the media reform coalition' In: J. Obar, D. Freedman, R. McChesney and C. Martens (eds) *Strategies for Media Reform: International Perspectives*. New York: Fordham University Press.
- Colebatch, H. K. (2002). *Policy*. Buckingham: Open University Press
- Convergence Review (2012). *Convergence Review Final Report*. Canberra, ACT: Department of Broadband, Communications and the Digital Economy.
- Daily Telegraph* (2013) 'Press freedom is public freedom,' 13th March: <http://www.dailytelegraph.com.au/news/opinion/press-freedom-is-public-freedom/story-e6frezz0-1226595867820>
- Day, M. (2013, March 13). A long wait for a dog's breakfast. *The Australian*. Retrieved from: <http://www.theaustralian.com.au/national-affairs/opinion/a-long-wait-for-a-dogs-breakfast/story-e6frgd0x-1226595923345>
- Di Lizia, F. (2014) 'How have press freedom and press freedom debates in Australia developed following the report of the independent inquiry into the media and media regulation by the Finkelstein review?' unpublished Thesis, Sydney, 2014
- Dwyer, T. (2014) 'Press freedom discourse after Leveson: Ethics, elections and media concentration in Australia', *The Political Economy of Communication*, 2(1), 49–59: <http://www.polecom.org/index.php/polecom/article/view/>

- Fairclough, N. (1989) *Language and Power*. London: Longman.
- Foucault, M. (1981 [1970]) 'The order of discourse. Inaugural lecture at the Collège de France 2nd December 1970' In: Young R. (ed.) *Untying the Text, a Post-structuralist Reader*. Boston: Routledge and Kegan Paul.
- Finkelstein, R. (2012) *Report of the Independent Inquiry into the Media and Media Regulation. Report to the Minister for Broadband, Communications and the Digital Economy*. Canberra, ACT: Department of Broadband, Communications and the Digital Economy.
- Flew, T. (2013) 'Academics and activists in the policy process : Engagement with Australian media inquiries 2011–13' In: *The Role of Advocacy in Media and Telecom Policy*, 29 September–1 October 2013, New America Foundation, Washington DC.
- Flew, T. and Swift, A. (2013) 'Regulating journalists? The Finkelstein review, the convergence review, and news media regulation in Australia', *Journal of Applied Journalism and Media Studies*, 2(1), 181–199.
- Flew, T. and Goldsmith, B. (2013) 'FactCheck: Does Murdoch own 70 per cent of newspapers in Australia?' *The Conversation*, 8 August: <https://theconversation.com/factcheck-does-murdoch-own-70-of-newspapers-in-australia-16812>, date accessed 3 November 2014.
- Foucault, M. (1980) *Power/knowledge: selected Interviews and other writings, 1972–1977*. In Gordon, C. (ed.) Brighton: Harvester Press.
- Hackett, R.A and Carroll, W.K. (2006a) *Remaking Media: The Struggle to Democratize Public Communication*. New York: Routledge.
- Ham, C. and Hill, M. (1993). *The Policy Process in the Modern Capitalist State*, 2nd Edition. Brighton: Harvester Wheatsheaf.
- Howlett, M. and Ramesh, M. (2003). *Studying Public Policy: Policy Cycles and Policy Subsystems*. Oxford: Oxford University Press.
- Hudson, P. (2014) Malcolm Turnbull says ABC cuts no big deal. *The Australian*, 14 September 2014: <http://www.theaustralian.com.au/media/malcolm-turnbull-says-abc-cuts-no-big-deal/story-e6frg996-1227072056164>.
- Joint Select Committee on Broadcasting Legislation (2013) *Three Broadcasting Reform Proposals*: http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jscbl/report/chapter1.htm.
- Jolly, R. (2012) *Media Reviews: All Sound and Fury?* Parliament of Australia: http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1958137/upload_binary/1958137.pdf;fileType=application%2Fpdf.
- Jolly, R. (2013) *Media Reform: In Shallows and Misery*. Parliament of Australia: http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/2798879/upload_binary/2798879.pdf;fileType=application%2Fpdf.
- Jones, G. (2013) 'These despots believe in controlling the press: Conroy joins them', *Daily Telegraph* 13th March.
- Jones, T. and Mortensen, J. (2013). *Proposed Media Reforms*: <http://www.corr.com.au/publications/corr-in-brief/proposed-media-reforms/>, date accessed 10 November 2014
- Galperin, H. (2004) 'Beyond interests, ideas, and technology: An institutional approach to communication and information policy', *The Information Society*, 20(3), 159–168.
- Garnham, N. (2000). *Emancipation, the Media, and Modernity: Arguments about the Media and Social Theory*. Oxford: Oxford University Press.

- Kunzler, M. (2012). "It's the idea, stupid!" How ideas challenge broadcasting liberalization' In: Just, N. and Puppis, M. (eds) *Trends in Communicating Policy Research: New Theories, Methods and Subjects*. ECREA Book Series (Vol. 7, pp. 55–74), United Kingdom: Intellect.
- Leveson B. (2012) 'An inquiry into the culture, practices and ethics of the press: Executive summary', *The Leveson Inquiry*, November. London: The Stationery Office.
- Lidberg, J. (2012). 'If it ain't broke, don't fix it – Australian media industry attitudes to regulation and accountability reforms', *Pacific Journalism Review*, 18(2), 68–88.
- Lidberg, J. and Hirst, M. (2013) 'In the shadow of phone hacking: Media accountability inquiries in Australia,' *The Political Economy of Communication*, 1(1), 111–121: <http://polecom.org/index.php/polecom/article/view/15/152>, date accessed 7 May 2013.
- Mitchell, J. (2014) 'Media executives join forces to put their case for repeal of regulations to Turnbull,' *The Sydney Morning Herald: Business Day*, 8 March, p. 11.
- Mitchell, J. (2014) 'Turnbull pushes ahead on moves that could reshape industry,' 17th July: <http://www.smh.com.au/business/turnbull-pushes-ahead-on-moves-that-could-reshape-industry-20140716-3c1mr.html>, date accessed 10 November 2014.
- News Limited (2012) 'Submission to the independent inquiry into media and media regulation,' 11 November 2011: http://www.dbcde.gov.au/__data/assets/pdf_file/0018/143055/News-Limited.pdf, date accessed 10 November 2014.
- Nielsen (2013) *Australian Connected Consumers 2013*, p. 194.
- Nielsen Online Ratings (2014) *Top News Websites by unique Australian Audience*, January 2014.
- Papandrea, F. and Tiffen, R. (2011) Media concentration in Australia: http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Finternationalmedia.pbworks.com%2F%2FDraft%2BAustralian%2BChapter%2B%2528June2011_Rev%2529.docx&ei=ROxvVMiYFI_q8AXt7YGABA&usg=AFQjCNGNu4OqNq_rL0rGfLxp5Vdkl3Vs3Q&bvm=bv.80185997,d.dGc
- Pickard, V. (2013). 'Social democracy or corporate libertarianism? Conflicting media policy narratives in the wake of market failure', *Communication Theory*, 23 (4), pp. 336–355.
- Ricketson, M. (2012) 'The Finkelstein inquiry: You wouldn't read about it', 21th May: <http://www.abc.net.au/news/2012-05-21/ricketson-the-finkelstein-inquiry3a-you-wouldn27t-read-about/4022628>, date accessed 28 October
- The Courier Mail* (2013) 'Draconian law crosses the line', 13th March: <http://www.couriermail.com.au/news/editorial-draconian-law-crosses-the-line/story-e6frerc6-1226596023358?nk=e2ea0ba090de0104a2686cbbf27beea6>, date accessed 1 November.
- Tingle, L. (2013) Full impact of Conroy's media proposals is hidden. *Financial Review*. Retrieved from: http://www.afr.com/p/national/full_impact_of_conroy_media_proposals_837fL7ioMkztlWyclwh8CO
- White, D. et al. (2014) 'Scrap cross-media ownership rules: Fairfax,' 24th February 2014: <http://www.smh.com.au/business/media-and-marketing/scrap-crossmedia-ownership-rules-fairfax-20140224-33chq.html>, date accessed 14 November.

White, D. (2014) 'Communications Minister Malcolm Turnbull: Higher level of consensus needed between media owners before cross-media ownership change,' 21th August: <http://www.smh.com.au/business/communications-minister-malcolm-turnbull-higher-level-of-consensus-needed-between-media-owners-before-crossmedia-ownership-change-20140821-106141.html>, date accessed 14 November.

Williams, K. (2013) An aggressive attempt to silence your media. *The Daily Telegraph*. Retrieved from: <http://www.dailytelegraph.com.au/news/opinion/an-aggressive-attempt-to-silence-your-media/story-e6frezz0-1226595884130>

8

Media Plurality: What Can the European Union Do?

Alison Harcourt

Introduction

This chapter provides insight into the approach of the European Union institutions to media plurality. These institutions have long been pressured by interest groups and the European Parliament (EP) to take action on threats to media pluralism and freedom at national levels (Harcourt, 1998; 2005; Harcourt and Picard 2009).¹ However, the European Commission (EC) has been constrained by the lack of a Treaty basis for initiatives in this field. This chapter analyses recent EU action on media plurality, in particular the 2011 European Parliament's Resolution on media law in Hungary (European Parliament, 2011a), the subsequent 2013 report of the High Level Group on Media Freedom and Pluralism, and the European Commission's response through its 2013 proposals and 2014 actions (European Commission, 2013a, 2103b; 2014). The conclusion is that the EC is reliant on soft governance measures because of a weak Treaty basis for a Directive and continued Member State opposition to EU level action on media plurality.

European Parliament resolution

In 2011, the European Parliament called on the European Commission to introduce a Directive on media freedom, pluralism, and independent governance in its Resolution on media law in Hungary.² The Resolution criticised Hungarian media law for not 'respect[ing] the fundamental right to freedom of expression and information enshrined in Article 11 of the Charter of Fundamental Rights'; lack of 'compliance with the principles governing public-service broadcasting' based upon a 2010 OSCE report;³ exerting 'disproportionate and extreme penalties

imposed for debatable and undefined reasons'; 'violation of the principle of the confidentiality of journalistic sources'; and 'exert[ing] pervasive and centralised governmental and political control over all media'.

The Resolution is vague both in identifying a basis for EU legislation and national laws to address. The only basis identified is Article 11 of the Charter of Fundamental Rights of the European Union which states that 'the freedom and pluralism of the media shall be respected'. However, although the Charter merely needs to be adhered to by member states, it cannot be utilised as a basis for a Directive. The Resolution does not mention Article 151(4) of the Treaty 'to take cultural aspects into account' which is, in any case, considered a weak instrument, its link to media pluralism tenuous and requiring unanimity. Rather, the 2011 Resolution drew upon three former EP Resolutions and an EP LIBE Committee Recommendation,⁴ two Council of Europe reports⁵ and one report and two communications from the OSCE. The Resolution also references the 2009 Charter on Freedom of the Press.⁶ None of these are actions of the European Union institutions. Even though the European Commission supports the Charter on Freedom of the Press,⁷ it is not an EU action but a self-regulatory initiative signed by a proportionally small representation of editors-in-chief and journalists working in the newspaper industry within and externally to the EU, and no-one representing the main newspapers in the United Kingdom.

The EP Resolution did not name or footnote specific Hungarian legislation. Rather, it alludes to 'media law and constitutional changes enacted in Hungary between June and December 2010' which affect and curtail essential media freedoms. The Resolution also refers to Hungary's 'extreme penalties imposed for debatable and undefined reasons' but it does not directly specify that, for example, under Sections 226 and 227 of the Criminal Code of Hungary, defamation constitutes a criminal offence. Hence, the Resolution is neither specific nor does it indicate to the European Commission which laws should be targeted for harmonisation, which is the function of a Directive. The focus on Hungary is also problematic, as Directives must cover cross-border activity or harmonisation of existing legislation in an area where the EU has jurisdiction.

Political control of the media does not occur under populist radical right-wing governments alone, such as Hungary or others named in the Resolution. For example, in its criticism of excessive political control, the Resolution specifically identifies the Hungarian Media Council. Although the European Commission could intervene if the Media Council made rulings on broadcasts from abroad under the Audiovisual

Media Services Directive (AVMSD) (Llorens and Costache, 2014, p. 10), the European Parliament was clearly objecting to excessive control exercised by *government appointees* – which EU law does not cover. Moreover, political control of domestic media by Councils takes place across existing EU member states which have high degrees of political parallelism (as defined by Hallin and Mancini, 2005), as well as across Central and Eastern Europe (OSI, 2004). Relaxation on requests for disclosure of journalistic resources has been enacted in many states across Europe under anti-terror Acts in the post-9/11 era. As Mudde reminds us, many current threats to ‘liberal democracy have come from the political mainstream rather than the political extremes’ (2012). Hence, one has to query whether the Resolution was aimed at tackling media plurality and freedom specifically, or was part of a ‘name and shame’ exercise targeted at declining democratic standards in Hungary and across Central and Eastern Europe in general. The non-specificity of the Resolution and the lack of any Treaty basis for action presented difficulties for the European Commission which are reflected in its response.

European Commission response

In reply to the Resolution, the European Commission established a High Level Group (HLG) on Media Freedom and Pluralism in 2011. The Vice President of the European Commission, Neelie Kroes, instructed the HLG to provide a report to the European Commission with recommendations for ‘respect, protection, support and promotion of pluralism and freedom’ with focus on: limitations on media freedom; limitations to media independence; the question of concentration of media ownership; existing threats to journalists; independence of regulatory authorities; existing or potential measures in favour of quality journalism. Following public consultation,⁸ the HLG published a report entitled ‘A free and pluralistic media to sustain European democracy’ in January 2013⁹.

The HLG report made a number of important recommendations relevant to media plurality, as follows (numbering below corresponds to relevant numbers in the HLG):

- 2) A European fundamental rights agency established to monitor media freedom and pluralism; or instead,
- 3) An independent monitoring centre to be set up;
- 4) European-wide standards for media councils;
- 6) A network of national regulatory authorities (NRAs) to be established;

- 7) EU-level competence for the media sector under competition law, and reporting mechanisms to be put in place for national authorities;
- 8) Net neutrality considered in market definitions;
- 9) Media pluralism to be a requirement for EU accession;
- 11) Communications market 'convergence' to be considered in any EU legislative proposal;
- 12) Consumer rights be established to switch off personalisation of Internet news services ('filter bubbles') based upon algorithms;¹⁰
- 15) State aid for media to be restricted to organisations with codes of conduct;
- 16) Codes of conduct should be transparent;
- 19) Media literacy in schools to be improved;
- 22) Public events, particularly political broadcasts, to be objective and publicly available;
- 26) State aid for public service broadcasting to be permissible;
- 27) An independent body to be set up for public service broadcasters;
- 28) Funding to be made available for journalists reporting on more than one EU member state and cross-national journalism networks;
- 29) Jean Monnet funding to be channelled to communications departments specialised in EU reporting;
- 30) EU institution presidents to promote EU news coverage by establishing an EU-level panel of national news providers.

In May 2013, the European Commission made 30 recommendations following closely those made by the HLG. Condensed into nine main categories, these are to:

- 1) Fund a European fundamental rights agency (EFRA) or independent centre to monitor the role of media freedom and pluralism;
- 2) Set up a national audio-visual regulatory authority (NRA) network based upon the IRG to report directly to the European Commission;
- 3) Recommend EU-wide standards for media councils, journalistic practice and media literacy;
- 4) Subsidise media content, in particular 'increasing national coverage of EU affairs', journalism scholarships, academic research, cross-national media networks, and open-access policies;
- 5) Revise EU legislation on privacy and introduce libel restrictions at the EU (which would also cover the Internet);
- 6) Include media pluralism under competition rules at the EU level;

- 7) Make a pluralist media environment a precondition for EU membership and receipt of EU aid;
- 8) Promote net neutrality;
- 9) Mandate opt-outs to third-party data transfer.

Neither the HLG nor the EC's proposals responded to the European Parliament's request for a Directive on media freedom and pluralism. Nor did they directly address the Resolution's call to address threats to journalistic freedom. Both these lacunae reflect the lack of an EU Treaty basis for such initiatives. Hence, what can we make of the proposals? Many of the proposals serve to support and promote the existing agenda of the European Commission, or to promote EU issues in the national news media. Other proposals repeat and/or flank the work of institutions elsewhere. For example, the European Commission's proposal to establish an EU monitoring centre would probably duplicate, perhaps even undermine, work of other organisations such as the Council of Europe's European Audiovisual Observatory.¹¹ An NRA network for audiovisual media already exists in the form of the European Platform for Regulatory Authorities (EPRA)¹². The EC's proposal is clearly aimed at internalising best practice and information exchange, and co-ordinating meetings under the European Commission itself. Financing the European Union Agency for Fundamental Rights (FRA, established in 2007) to work on media plurality would spread its funding too thinly. The proposal relating to media literacy is somewhat redundant as existing initiatives can be found under the lifelong learning programme¹³.

Funding to promote media coverage of EU issues reflects self-promotion efforts rather than media plurality. National media pluralism rules are also protected under subsidiarity through Article 21 (4) of the Merger Regulation and it is difficult to envision member states agreeing to its future removal.¹⁴ Any revision of competition at the EU level would in any case need to observe subsidiarity as outlined in Article 5 of Maastricht and the TEU. The 2009 Better Law Making Directive¹⁵ recognises state preferences for net neutrality and, again, given national differences, it is difficult to imagine EU level agreement on this (European Commission, 2009a). Although EU competition law could address Internet gateway operators, the likelihood of net neutrality being 'enshrined within EU law' (HLG) is low given that traffic management has been implemented across most of Europe (BEREC, 2012).¹⁶

Even though the HLG did refer to the 'less subtle or direct economic pressures exercised by owners of the media, as well as by their advertisers', there has been no effort thus far by the Commission to address problems

of media concentration and power beyond the recommendation that ‘at the EU level, there should be pro-active market assessment under competition policy in the form of a sectoral inquiry’. The European Commission is implying that jurisdiction for competition law in the media sector be moved to the European level. Currently, lowered thresholds and public interest tests applied in national competition decisions on media mergers and acquisitions are protected under subsidiarity with an exemption from competition law for national media decisions under Article 21 (4) of the 2004 Merger Regulation which states that ‘Public security, plurality of the media and prudential rules shall be regarded as legitimate interests’. Article 21 (3) provides that ‘Notwithstanding paragraphs 1 and 2, Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by the Merger Regulation and compatible with the general principles and other provisions of Community law’. For example, when the European Commission approved News Corporation’s bid to takeover BskyB,¹⁷ the then UK business secretary was able to initiate further scrutiny by OFCOM under grounds of ‘media plurality’. The removal of these rules is a somewhat dangerous premise given the EU’s lack of Treaty remit to assess competition cases on grounds of media plurality.

This is not to suggest that reporting mechanisms on media ownership could not be put in place by the European Competition Network. Further, queries as to why domestic media are treated differently to cross-border media could be made by DG Competition. For example, the Austrian Cartel Act (CA) 2005 includes a section on media mergers (introduced in 1993) which has additional requirements for media companies. This prevents publishers and print media from acquiring radio or television stations and requires reporting to the FCA. Decisions on media mergers are taken by the Cartel Court and can be appeal in the Supreme Cartel Court.¹⁸ Companies are required to notify media mergers to the FCA. However, this only applies to companies operating within the Austrian market and not those operating abroad. Differential treatment could be queried by the DG Competition.

Implementation

Pilot projects

Implementation of the European Commission’s proposals began in 2014. The main actions, apart from existing measures outlined in the last section, are soft measures such as the funding of pilot projects and

co-ordination of networks. As there is no legal competence for establishing EU-wide standards of media councils/journalistic practice, the only initiatives addressing concerns around media freedom, defamation, and plurality are funded projects. The European Commission committed €800,000 to 'pilot projects on media freedom' in 2014.¹⁹ The first, *Strengthening Journalism in Europe*, funds two projects by the European University Institute's *Centre for Media Pluralism and Media Freedom* (CMPF) and the Central European University's *Centre for Media and Communication Studies* respectively. Both projects offer training courses to journalists for news reporting, while the latter CEU project also specifically addresses threats to journalist freedom. The CEU's 'Mapping Journalism' project includes a clickable map which outlines legislative restrictions to journalistic freedom. For example, the map reports that in Hungary 'defamation or slander is punished with imprisonment with a term that may extend to two (2) years' and '(i)n November 2013, the Hungarian Parliament introduced changes ... to the distribution of potentially defamatory video or sound recordings ... imprisonment may extend to three years'²⁰. Hence, EU-funded projects can provide evidence of undue journalistic restrictions in nation states that cannot be directly addressed by EU institutions both for political reasons and due to limited legal areas of competence.

Similarly, the pilot project *Strengthening Journalists' Rights, Protections and Skills*,²¹ run by the Austrian International Press Institute, concentrates on defamation. It records 'disproportionate measures' in cases of defamation with a news feed with comment,²² and it published three reports in 2014.²³ Disproportionate measures refer to when states issue excessive fines or criminalise defamation which could lead to, for example, imprisonment of journalists. A fourth UK-based pilot funds an *Index on Censorship*²⁴ project, run by the Writers and Scholars Educational Trust, which operates a news feed and some advocacy campaigns on media freedom²⁵, albeit most stories and activities focus on states external to the EU²⁶ (with the exception of three 2014 reports covering artistic freedom in the UK). The EC is funding a fifth pilot project, *Safety Net for European Journalists*,²⁷ run jointly by the Italian-based Osservatorio Balcani e Caucaso,²⁸ Ossigeno Informazione,²⁹ the Serbian-based South East Europe Media Organisation (SEEMO)³⁰ and the academic Eugenia Siapera (Dublin City University) which concentrates on media freedom monitoring in Italy, South East Europe and Turkey. SEEMO established an online database tracking ownership in Macedonia.³¹ In May 2014, Index on Censorship teamed up with the Osservatorio Balcani e Caucaso (OBC) to work on a map which gathers news on threats to pluralism

and media freedom in EU member states.³² The EC is funding a sixth pilot project to implement the 2013 *Media Pluralism Monitor* (MPM) which produced indicators for media pluralism. A trial of the indicators is being tested in Belgium, Bulgaria, Denmark, Estonia, France, Greece, Hungary, Italy, and the UK by the CMPF at the European University Institute.³³ Lastly, although not a direct response to the EP Resolution, the European Commission is running a blog from its Representation office in the United Kingdom to counter misreporting of EU issues by UK newspapers.³⁴

NRA networks

Another soft form of governance is policy co-ordination between national regulatory authorities (NRAs). The HLG proposal for a specific independent monitoring centre beyond the *Media Pluralism Monitor* project has not yet been realised. However, a European Union Decision established an EC European Regulators Group for Audiovisual Media Service (ERGA) in 2014.³⁵ Although supported by the HLG's proposal, this group was long in the making as it was initially proposed under Article 30 of the Audiovisual Services Directive (European Commission, 2010).³⁶ The initial idea was to create a group for audiovisual services, similar to BEREC which oversees telecommunications,³⁷ but this was resisted for a long period by member states due to questions of subsidiarity. However, the increasing need for European-level coordination on audiovisual services, exacerbated by funding cuts suffered by EPRA (which is an independent NRA network), created a window of opportunity for the European Commission to establish the new group. The Decision states that the 'group should serve as an advisory body to the Commission in its implementation activities concerning areas coordinated by the Directive 2010/13/EU'. Hence, ERGA's remit is implementation and revision of the Audiovisual Services Directive which includes 'ensuring freedom of information, diversity of opinion and media pluralism'.

As with the Independent Regulators Group (IRG³⁸) and BEREC, EPRA, and ERGA meet both separately and then together. Each is chaired by a representative from the European Commission. In addition to AVMSD implementation, ERGA acts as a forum for best practice exchange and policy learning under stakeholder governance, and there is great potential for further initiatives such as dealing with pluralism monitoring, freedom of expression and recommendations on editorial independence (though only in relation to audiovisual services, including online newspapers). Although soft, ERGA could therefore be a highly

effective forum, building on the pilot work of MGM and the European Parliament's Resolutions (particularly the 2013 Resolution on the EU Charter³⁹), and responding to recent calls for media transparency.

Currently, ERGA is taking on the work of the European Commission on the independence of the audiovisual regulatory bodies⁴⁰ and could potentially be involved in scrutinising proposals for their effectiveness as well as their independence. For example, in Croatia, when the 2004 media law came into being, companies were required to report media ownership to the Croatian Competition Authority (CCA). In 2011, reporting was moved from a state body (the CCA) to an independent association (the CCE), thus placing the institution responsible for transparency at arm's length from government. Another proposal from Georgia is to exclude public servants from owning media.⁴¹ ERGA could potentially design benchmarking indicators to gauge actual effectiveness of NRA independence.

In terms of media transparency, ERGA could potentially provide a publicly accessible database for monitoring media ownership, building on the existing Mavise database – currently run by the Council of Europe, but funded by the European Commission – which provides profiles of companies broadcasting nationally and cross-nationally (including ownership).⁴² Information on media ownership could be directly provided to Mavise by ERGA after being gathered from NRAs. Additional webpages could be allocated to civil-society organisations registered in the joint Transparency Registry, and interest groups could upload their current reports on media ownership and supplement the information provided by NRAs. Resources could also be pooled and links made between Mavise and existing NRA databases such as the KEK's database⁴³ on media German companies (e.g. detailing ProSiebenSat1's ownership in the Cayman Islands) and third-sector groups such as OpenCorporates.⁴⁴ As stakeholder governance includes liaison with third-sector groups, information provided to NRAs by companies could be made available to third-sector groups listed in the EU's joint Transparency registry.⁴⁵

ERGA could also identify national best practice on media transparency for application throughout Europe under the EU's 2004 Transparency Directive and 2007 Transparency Recommendations, should the Commission's proposals on public disclosure of beneficial owners not come to fruition (see next section). Many national media laws include a requirement to disclose ownership to NRAs, and third-sector groups can now request information from the government Open Government Data Portal⁴⁶ in Austria. In Cyprus, a report on media

market concentrations is mandated every three years by Article 3(2) (h) of the 1998 Law.⁴⁷ Under Italian law, when a company registered in the Register of Communications (ROC) is controlled by another company, the latter must also provide information on its own shareholders and their respective voting shares. This could be an example of good practice although, as the InfoAccess Europe report observes, the Italian communications authority AGCOM⁴⁸ does not sufficiently monitor information provided to Italian ROC Operators⁴⁹ and not all types of company are included. The national expert's suggestions to require AGCOM to launch multi-stakeholder consultations to review rules and to add a section to the website on media operations are suggestions that the European Commission could recommend via ERGA to all member states. If NRAs were asked to report ownership information to the European Commission, ERGA could monitor implementation of reporting requirements at national levels. However, as the next section argues, general company law measures improving transparency of company operations for all sectors would be more desirable.

Media transparency

Recognising the EU's inability to initiate a Directive on media plurality, advocacy groups such as OSI and Access Info Europe are increasingly focused on media transparency in Europe, on the basis that national governments are unable to regulate for media ownership if they do not know who the media owners are. The idea for this began at a workshop at the University of Exeter on 10 June 2008 with a presentation of a Council of Europe (CofE) report on pluralism and diversity which recommended a move away from a focus on media ownership instruments (market restraints) towards strengthening media transparency (Harcourt, 2007). Building on the CofE report, the OSI commissioned some preliminary studies and then commenced its Transparency of Media Ownership project in 2010 (Craufurd-Smith and Stolte, 2010). In 2011, Access Info Europe was commissioned by OSI to administer a questionnaire to 20 countries across Europe (a selection of Council of Europe countries from Iceland to Azerbaijan) on media transparency.⁵⁰ OSI and Access Info Europe then published a number of reports identifying best practices and problems, and provided some recommendations for reform of law and practice at national and European levels.⁵¹ Subsequently, at an EC workshop held in Brussels on 24 September 2013, Access Info Europe presented the project results.⁵² Concrete outcomes of this advocacy are the recognition that 'transparency of media ownership and of funding sources [are] essential with a view

to guaranteeing media freedom and pluralism' in a November 2014 European Council meeting,⁵³ and guidelines issued by a 2014 Foreign Affairs Council meeting (European Council, 2014).⁵⁴ Under the section on actions, the guidelines state that 'Support actions by third countries to improve transparency of media ownership, the adoption of measures against media concentration and fair and transparent licensing allocation as the associated risks have grown more acute in the digital age'. Thus the EU approves of national measures (legislative or other) to support the financial transparency of media companies operating in non-EU states, and efforts to prevent market concentration.

Recent European Commission actions have addressed media transparency from a company law perspective. This was the focus of an EC workshop in Brussels on transparency of media ownership in October 2014.⁵⁵ Kallina Simeonoff, in charge of anti-money laundering from DG Internal Market and Services, explained how general EU company law and current proposals on public beneficial ownership could address problems of media transparency. Regarding company law, a 2009 Directive requires companies to record the legal representatives, capital subscribed and registered office of companies in a national company register (European Commission, 2009b).⁵⁶ A 2012 Directive,⁵⁷ amending the 2009 and other company laws, establishes an electronic interconnection of national company registers at the EU level (European Commission, 2012). This register, the European e-Justice portal, is currently being set up by the European Commission under its European e-Justice action plan and will allow any member state to search for companies and access information. However, public access is not guaranteed in all member states and fees often apply to citizens.

The second relevant piece of legislation updates the 2007 Transparency Directive which requires companies to publish financial information including major holdings and voting rights on a yearly and half-yearly basis. In 2013, the Directive was amended to ensure that member states ensure public access to this information.⁵⁸ Again, although public access is guaranteed, fees can be substantial in some member states. The Directive proposes that a 'European electronic access point' be established by 1 January 2018, to be hosted by the European Securities and Markets Authority (ESMA), grounded in Regulation (EU) No 1095/2010. Lastly, a new Directive is being proposed by the EU, the fourth Anti-Money Laundering Directive (AMLD) reforms,⁵⁹ as recommended by the Financial Action Task Force which would require companies to provide states with information on natural owners (beneficiaries) as well as legal representatives. The European Commission proposed an EU-level public

register but this was not supported by member states in the European Council (the relevant discussion is outlined well in a September 2014 Council of Europe background report for the Committee on Culture, Science, Education, and Media (Valcke, 2014)⁶⁰). The Finnish Chairman of the Council for Mass Media in Finland, Risto Uimonen, expressed concern at the October 2014 workshop that EU legislation on company transparency would exert downward regulatory pressure on the Nordic states' higher standards, as it would allow companies to register and operate abroad. If public disclosure of beneficial owners were to be adopted, however, it would mean substantial progress for transparency of media ownership and, as the European Commission argues, no need for sector-specific legislation. As it now stands, there is substantial opposition from member states from both ends of the debate. As outlined in the previous section, this could prompt a greater interim role for ERGA on media transparency.

In the meantime, the EU could apply existing EU law to the media sector. For example, the European Commission could query why Austria is permitted to treat domestic media companies differently from foreign companies. The Bulgaria Media Holdings GMBH, which is licensed in Austria and broadcasts abroad, is not subject to the same rules as domestic media operating in Austria. The European Commission could also push companies to comply with implementation of the International Accounting Standards (IAS) on financial accounts and audit reports. For example, there are differences in transparency/disclosure requirements for corporations (AG) as opposed to limited liability companies (GmbH) in Germany. This differs greatly from requirements in Nordic states and the UK, demonstrating the real potential for harmonisation.

Conclusion

Despite national and EU-level interest-group campaigns for a Directive on media plurality, most notably the European Initiative for Media Pluralism,⁶¹ there is no legal basis for such an initiative at the EU level. Although some national-level groups view national media concentration as a threat to democratic freedom, the EU approach is one of market regulation only. Indeed, competition cases have shown that the EU has no difficulties with further concentration of groups such as News Corporation in the UK.⁶² As discussed, Article 21 (4) of the Merger Regulation allows states to assess media plurality at national levels but the EU has no competence to do this. Rather, national concentration is assessed in the same way as other sectors. Expansion of national groups,

such as Canal Plus, Mediaset, and Prisa, has been encouraged by the EU institutions (Harcourt, 2005, p. 200), as large European media companies fit well with European champion policies. As the analysis shows, even though EU-level politicians within the European Parliament and the High-Level Group have shown concern for excessive media concentration at national levels, the EU's focus is on government control of the media particularly in those states (mainly in Central and Eastern Europe) struggling with declining democratic standards.

The proposals put forward both by the HLG and the European Commission address some of the concerns outlined by the European Parliament, namely lack of independence of public service broadcasters, protecting the confidentiality of journalistic sources, and political control of the national regulatory authorities by political parties. However, most measures are being handled by soft initiatives, namely funding or recommendations, rather than hard measures (Directives, Regulations, Decisions). In terms of hard law, the European Commission's efforts aimed at applying existing company law to media enterprises and strengthening transparency are gaining ground. This would address some problems of national jurisdiction avoidance by media companies and produce greater accountability due to increased scrutiny mechanisms. In the meantime, ERGA provides the most potential for improving transparency and benchmarking media plurality and independence of regulatory authorities at the European level.

Notes

1. This began in the 1980s with four Resolutions by the European Parliament to introduce measures protecting media pluralism in the 1989 Television Without Frontiers Directive: 1985 Resolution on the economic aspects of the common market for broadcasting; 1986 Resolution on the Fifteenth Report of the CEC on Competition Policy; 1987 Resolution on the Sixteenth Report of the CEC on Competition Policy; and two amendments to the Draft Directive *TWF* in the *Barzanti Report*.
2. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN>
3. Analysis and assessment of a package of Hungarian legislation and draft legislation on media and telecommunications, prepared by Dr Karol Jakubowicz for the OSCE <http://www.osce.org/fom/71218?download=true>
4. P5_TA (2004)0373 Freedom of expression and information European Parliament resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (2003/2237(INI)); P7_TA-PROV(2010)0438; Public service broadcasting in the digital era: the future of the dual system European Parliament resolution of 25 November 2010 on public service broadcasting

- in the digital era: the future of the dual system (2010/2028(INI)); European Parliament resolution of 7 September 2010 on journalism and new media – creating a public sphere in Europe (2010/2015(INI)).
5. [http://www.coe.int/t/commissioner/News/2011/110201Hungary_en.asp] and [<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289>].
 6. <http://www.pressfreedom.eu>
 7. http://europa.eu/rapid/press-release_IP-09-891_en.htm?locale=en
 8. <http://ec.europa.eu/digital-agenda/en/public-consultations-media-issues>
 9. <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf>
 10. Although not named in the report, the HLG is clearly referring to algorithms used in social networking and news aggregation provision by companies such as Facebook and Google.
 11. <http://www.obs.coe.int/en/home>
 12. <http://www.epra.org/>
 13. Media literacy has long been supported under the Lifelong Learning programme today housed in DG Education and Culture [<http://www.euro-medialiteracy.eu/>]. This has resulted in a number of initiatives including a Charter for Media Literacy (2004, 2009) A European Media Education Network; A European Media Education Network; and a Commission Recommendation of 20 August 2009 on media literacy in the digital environment for a more competitive audiovisual and content industry and an inclusive knowledge society [<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009H0625>].
 14. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384055/CMA2_Mergers_Guidance.pdf
 15. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0140>
 16. BEREC found that most EU states have sanctioned traffic management systems [http://berec.europa.eu/eng/document_register/subject_matter/berec/reports/45-berec-findings-on-traffic-management-practices-in-europe]. For example, OFCOM has promoted traffic management in the UK [<http://consumers.ofcom.org.uk/internet/internet-traffic-management/>]
 17. http://europa.eu/rapid/press-release_IP-10-1767_en.htm
 18. Annual reports are published online by the FCA [<http://www.bwb.gv.at/>]. Court decisions are published separately [<http://www.ris.bka.gv.at/>].
 19. http://europa.eu/rapid/press-release_MEMO-14-327_en.htm
 20. <http://journalism.cmpf.eui.eu/maps/journalists-status/>
 21. <http://www.freemedia.at/ecpm>
 22. <http://www.freemedia.at/ecpm/eu-defamation-project-articles.html>
 23. 2014 Report on Defamation Law analysing EU member states defamation law in relation to international benchmarking standards [<http://www.freemedia.at/ecpm/defamation-law-report.html>]; a Perceptions Survey [<http://www.freemedia.at/ecpm/perceptions-survey.html>] on the views of media professionals on the effects of defamation law; and an International Standards report [<http://www.freemedia.at/ecpm/international-standards.html>] which claims to update Article 19's standards on freedom of expression and defamation based upon European Court of Human Rights (ECtHR) principles.
 24. <http://www.indexonensorship.org/>

25. <http://www.indexonensorship.org/category/campaigns/>
26. <http://www.indexonensorship.org/category/europe-central-asia/>
27. <http://www.balcanicaucaso.org/eng/Media-Freedom-Net>
28. <http://www.balcanicaucaso.org>
29. Osservatorio sui giornalistici minacciati in Italia promosso da FNSI e Ordine dei Giornalisti, an observatory run by the unions, the National Federation of the Italian Press and the Ordine Nazionale dei Giornalisti with the NGOs, Libera Informazione, Unione Nazionale Cronisti Italiani and Articolo 21.
30. An NGO affiliate of the Vienna-based International Press Institute (IPI) comprising over 800 media professionals across South East Europe [<http://www.seemo.org/>].
31. <http://mediapedia.mk/>
32. <http://mediafreedom.ushahidi.com>
33. <http://cmpf.eui.eu/News/All/131211MPMninecountries.aspx>
34. <http://blogs.ec.europa.eu/ECintheUK/>
35. http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=4294
36. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the co-ordination of certain provisions laid down by law, regulation, or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive) OJ L 95, 15.4.2010.
37. The ERG runs in parallel to the European Council's Communications Committee set out in Articles 22 of the Framework Directive. The Communications Committee is composed of national ministries or NRAs of the member states.
38. <https://www.irg.eu/>
39. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+20130521+SIT+DOC+WORD+V0//EN&language=EN>
40. http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=7310
41. http://www.access-info.org/documents/Access_for_Rights/Media_Transparency/tmo_georgia_5aug2013.doc
42. <http://mavise.obs.coe.int/>
43. The German KEK publications [http://www.kek-online.de/Inhalte/programmliste_2010.pdf] and [<http://www.die-medienanstalten.de/service/publikationen/programmliste-kek.html>] are useful but could provide more information similar to the US Securities and Exchange Commission. The Federal Gazette provides a lot of additional information. It would help greatly if the KEK could provide a copy of this in English because German companies are so large and operate all over Europe. The KEK's yearly report [<http://www.kek-online.de/Inhalte/jahresberichte.html>] is very detailed but could be better organised according to group and combined with Federal Gazette information (e.g. Federal Gazette reports on individual companies).
44. <https://opencorporates.com/>
45. http://europa.eu/transparency-register/index_en.htm
46. <http://www.data.gv.at/>
47. [http://www.cylaw.org/nomoi/enop/ind/1998_1_7/section-sc4277efca-1e5e-40df-bf3a-d63d8352f83b.html]. I would add to the Cyprus report – under

- Section K – that ‘under section 23 of the Radio and Television Stations Law 7(I)/1998 (as amended subsequently), no change may be effected without first obtaining the relevant consent of the Authority. Therefore, in the case where there are applications for the change in the ownership structure, we refer you to the following Circular and to the specimen forms to be submitted to the Authority’ [<http://www.crta.org.cy/default.asp?id=313>].
48. Autorità per le garanzie nelle comunicazioni <http://www.agcom.it>
 49. Regolamento per l’organizzazione e la tenuta del Registro degli operatori di comunicazione.
 50. <http://www.access-info.org/index.php/en/media-transparency/488-background-research>
 51. [http://www.opensocietyfoundations.org/sites/default/files/Transparency_Media_Ownership_Europe_20121217_0.pdf]; [<http://www.mediaplurality.com/tag/open-society/>]; [http://www.access-info.org/documents/Access_Docs/Transparency_of_Media_Ownership_in_the_EU_24sep2014.pdf].
 52. <http://website-pace.net/documents/10704/109544/20130924-TransparencyMedia+Ownershipparticipantslist-EN.pdf/109544-4c72-860d-dfbecdd26e7>
 53. http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/educ/139725.pdf
 54. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf
 55. <https://scic.ec.europa.eu/streaming/index.php?es=2&sessionno=1f029c1e1abaaf0605807b7f91552d36>
 56. Directive 2009/101/EC on co-ordination of safeguards which, for the protection of the interests of members and third parties, are required by member states of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent.
 57. Directive 2012/17/EU of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial, and companies registers.
 58. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0013:0027:EN:PDF>
 59. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013PC0045>
 60. <http://www.coe.int/t/dghl/standardsetting/media/cdmsi/Valcke.pdf>
 61. <http://www.mediainitiative.eu/about/>
 62. http://ec.europa.eu/competition/mergers/cases/decisions/m5932_20101221_20310_1600159_EN.pdf

References

- BEREC (2012) Findings on traffic management practices in Europe, *BoR*, (12), 30. 29 May 2012.
- Craufurd-Smith, Rachael and Yolande Stolte (2010) *European Union Action to Promote Media Transparency: An Evaluation of the Scope for Regulatory Intervention*. SCRIPT and Europa Institutes: University of Edinburgh.
- European Commission (2009a) Directive 2009/140/EC amending Directives 2002/21/EC on a common regulatory framework for electronic communications

- networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (Text with EEA relevance). OJ L 337, 18 December 2009, pp. 37–69.
- European Commission (2009b) Directive 2009/101/EC on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent.
- European Commission (2010) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) OJ L 95, 15 April 2010.
- European Commission (2012) Directive 2012/17/EU of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers.
- European Commission (2013a) Directive 2013/50/EU amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.
- European Commission (2013b) Proposal for a directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. COM/2013/045 final – 2013/0025 (COD).
- European Commission (2014) Decision of 3.2.2014 on establishing the European regulators group for audiovisual media services. C(2014) 462, 3 February 2014.
- European Council (2014) EU Human Rights Guidelines on Freedom of Expression Online and Offline Foreign Affairs Council Meeting, Brussels, 12 May 2014.
- European Parliament (2011a) Media law in Hungary European Parliament resolution of 10 March 2011 on media law in Hungary OJ C 199E , 7.7.2012, pp. 154–157.
- European Parliament (2011b) Resolution of 21 May 2013 on the EU Charter: Standard settings for media freedom across the EU (2011/2246(INI) P7_TA-PROV(2013)0203.
- Hallin and Mancini (2005) *Comparing Media Systems: Three Models of Media and Politics*. Cambridge University Press. Cambridge.
- Harcourt, Alison (1998) EU media ownership regulation: Conflict over the definition of alternatives, *Journal of Common Market Studies*, 36(3), 369–389.
- Harcourt, Alison (2005) *European Union and the Regulation of Media Markets*. Manchester University Press. Manchester.
- Harcourt, Alison (2007) 'Report on methodology for the monitoring of media concentration, pluralism and diversity', Background Report Prepared for the Group of Specialists on Media Diversity (MC-S-MD), Council of Europe, 7 February 2008.

- Harcourt, Alison and Robert Picard (2009) 'Policy, economic, and business challenges of media ownership regulation', *Journal of Media Business Studies*, (3), 1–17.
- Llorens, Carles and Andreea Madalina Costache (2014) 'European Union media policy and independent regulatory authorities: A new tool to protest European media pluralism?' *Journal of Information Policy*, 4, 396–420.
- Mudde, Case (2012) *Three Decades of Populist Radical right Parties in Western Europe: So what? The 2012 Stein Rokkan Lecture*. USA: University of Georgia.
- Open Society Institute (2004) *Media Ownership and its Impact on Media Independence and Pluralism*. Ljubljana, Slovenia: Peace Institute.
- Valcke, Peggy (2014) 'The unbearable lightness of media ownership transparency' Background Report Prepared for the Committee on Culture, Science, Education and Media (PACE), Council of Europe, Increasing Transparency of Media Ownership. 24 September 2014.

Part IV

9

Transferable Media Pluralism Policies from Europe

Peter Humphreys

Introduction

The chapter will first look briefly at press and broadcasting subsidies comparatively across Europe, identifying general patterns and trends, before considering the significance of digital convergence for the question of subsidies for press, broadcasting, and new online content providers. It then turns to some transferable lessons from Europe, the aim being to relate to the future development of UK policy in the era of converged digital media. Specific case studies of transferable policies will include, from France, mechanisms for supporting national content production, notably the levy on all distributors of broadcasting content (including new mobile and online media operators). It is argued that this could provide the mechanism for funding a revived Public Service Publisher, in the shape of a 'Channel Four for the Digital Era', commissioning digital content from independent producers, whether from broadcasting, press, or online sectors. In the digital and internet era, with its converged media markets, and less scope for traditional structural and behavioural regulation, public intervention should focus on supporting diverse, quality media content production and distribution in order to maintain media pluralism. Yet, this innovation should not come at the expense of existing support for established public service broadcasters (PSBs) whose adaptation into public service media (PSM) institutions will be crucially important.

To help secure the BBC's important future role, potential policy transfers from Germany might be the establishment of an independent expert body to determine the level of the licence fee, thereby depoliticising the process, and the future-proofing of the licence fee by making it a household levy. Since media concentration is likely to

remain a problem in the digital era, continued structural regulation for media pluralism will certainly be required. In this connection, further interesting transfers from Germany might be the establishment of an independent regulatory body to monitor, regularly report on, and help control media concentration (such an institution could be housed within Ofcom), and also the regulatory provision that dominant private-media operators provide 'window' air-time to smaller operators, supporting the independent production sector.

Press subsidies

Unlike heavily regulated and subsidised public service broadcasting (PSB), the newspaper sector has been a market activity, subject to comparatively little regulation and regulatory change. For long, the commercial press was regarded as purely a free-market activity. This was its 'first age'. However, a 'second age' commenced in the 1960s/1970s when a number of European countries intervened to combat what was widely termed 'newspaper mortality', a trend towards a declining number of titles and increased press concentration. In this second age, a very modest degree of state support – by comparison to PSB – now aimed to stem the decline in the number of newspapers, to promote competition in newspaper markets, to combat the Europe-wide trend towards press concentration, and – importantly – to help sustain a diversity of opinion in the press.

The modalities of aid varied. Indirect support, such as preferential rates of VAT, given typically to the whole of the sector, was commonplace. Other measures included tax breaks for investment and other tax reliefs. Generally, indirect aid was uncontroversial, regarded as an industry subsidy rather than as an instrument of politicisation, though general subsidies tended to favour publishers who were already strong. Direct support, typically in the shape of a transfer by the state, was usually selective and carried an obvious danger of a degree of politicisation. However, this could be avoided by stipulation of objective qualification criteria, including such factors as the circulation of the newspaper, its financial situation/ability to attract advertising, its competitive position in the market, and its significance in terms of diversity of opinion and social, cultural, and political value. Subsidies also varied according to their function. They might be designed to support the establishment of new newspapers, to compensate for production and/or distribution costs, to promote capital investment and/or restructuring, to offset declining sales and advertising revenues (Humphreys, 1996; 2006).

Looking at press subsidies, there are some identifiable patterns. Clearly, a mix of factors go a long way to explaining the incidence and extent of press subsidy systems: differences in national political culture; political incumbency in government; differences of political economic approach (liberal, statist, democratic corporatist); and the economic strength or weakness of the sector. Countries that traditionally generously subsidised the press sector included France and Italy with their interventionist state traditions, weak newspaper industries, and a longstanding tradition of public subsidies for industry. Subsidy systems were developed in politically consensual northern European countries with strong social-democratic and 'democratic corporatist' political and economic cultures, namely Austria, Finland, Norway, and Sweden, all of which had a strong social-welfare orientation (Humphreys, 1996; 2006). Germany and the UK, with a liberal political economic orientation and historically strong newspaper industries, eschewed press subsidies other than substantial VAT relief or exemption (Humphreys, 2006), though the value of the latter should certainly not be underestimated (Nielsen with Linnebank, 2011).

However, we are now entering a 'third age' of the press: the era of digital convergence. This throws up a paradox. Many now point to the non-sustainability of subsidies in the new media environment and argue that subsidies sustain inefficiencies and inhibit the restructuring that is required to meet the challenge of increased inter-media competition. It is held that the proliferation of media outlets and convergence of media sectors that have accompanied digitalisation remove the rationale for media specific regulations and market interventions, the assumption being that choice and diversity in the media have become unprecedentedly abundant. Also, subsidies have come under pressure as governments have become keen to reduce public expenditure. Yet, the 'third age' strengthens – rather than weakens – the case for press subsidies. This has been powerfully argued by scholars and journalists in the US, where the Internet's impact on the newspaper sector has been particularly dire (see Downie and Schudson, 2009; Nichols and McChesney, 2009; McChesney and Nichols, 2010).¹ In many European Union (EU) member states too, including the UK, newspaper circulation has been in relentless decline for a number of years and the number of titles has also been in long-term decline. Accordingly, newspapers have become increasingly dependent on advertising, yet their advertising revenue has been falling quite dramatically as the share of the new Internet companies has soared (for a fuller discussion see Humphreys, 2006).

As *Guardian* editor-in-chief Alan Rusbridger has argued (2009), there is a case for UK policymakers to consider introducing press support policies (beyond VAT exemption); he specifically mentioned suggestions from Ofcom and Lord Carter's digital review for contestably funded local news consortia and also an idea, being worked on at the Press Association (PA), of subsidies for the PA acting as a public service organisation to subcontract news reporting that could then be shared across the local newspaper sector.

Certainly, public subsidies could be offered to support newspapers suffering from a drop in advertising income, to promote local and regional news, and to facilitate adaptation to the digital era. This has been the case in France. According to a recent NUJ France report, '... government funding is made available under a complex set of criteria which takes into account the newspaper's efforts to modernize, and its contribution to diversity and the regions. A big part of the subsidy serves to aid distribution costs, including postage'.² In 2013, at the instigation of France's financial audit authority, the Cour de Comptes, detailed figures on the extent and nature of French press subsidies were published. France's two most prestigious daily newspapers, the Centre Left *le Monde* and the Centre right *Figaro* each received more than €16 million in government subsidies, with the widely read regional daily *Ouest France* following close behind with €10.4 million in 2013. Altogether, French press subsidies amounted to €400 million in 2013³ (see also the Kuhn chapter in this volume). Were they to be extended in the UK, subsidies – including the VAT exemption – might be tied to clear journalism requirements, such as freedom from proprietorial interference in editorial policy where newspapers are part of a dominant press company, and for promoting foreign news content, investigative journalism, guaranteed investment in training, and all manner of conceivable measures aimed at improving the quality of information. In Europe, there are already a number of initiatives that might serve as models.

A particularly interesting idea is a fund to support investigative journalism. In 1998, in the Flemish part of Belgium, the Pascal Decroos Fund – since 2013 operating as the 'journalismfund.EU' – was established as a non-profit organisation to promote investigative journalism. It was financially supported by the Flemish government and also received funding from foundations, notably the Dutch Adessium foundation and the Open Society foundation, as well as individual donations. According to the Fund's website, the rationale for the subsidy was the fact that:

The media are under pressure. The market economy determines to an increasing extent what is considered news and what is not. The result

of this trend is that there is hardly any space for in-depth, mind-broadening journalism. Despite the fact that we have the journalistic talent and that there is a genuine public interest, investigative and special journalism is seldom practised in Flanders. The main obstacle always seems to be the financing of such projects, both for the written and the audio-visual press.⁴

Broadcasting subsidies

In contrast to the press sector, the degree of subsidy in the television sector has been far more generous across Europe. This reflects the fact that during the 'first age', broadcasting in Europe was a public service monopoly, entirely or largely funded by public subsidy. Path-dependent (to use the language of historical institutionalism) policy commitment to the institution of PSB into the third age of broadcasting (the digital era, the second age being that of commercialisation in the 1980s) has meant that it continues to be funded very generously compared to the press sector. This disparity has been made very clear by a 2011 Reuters Institute six-country comparative report on public support for the media (see also the Moore and Townend chapters in this volume). The same report also showed the disparity between countries with highly funded PSB (Finland, Germany, and UK) and less well funded PSB (France and Italy), the US of course being the outlier with very little PSB at all (Nielsen with Linnebank, 2011). Numerous studies have told the same story, identifying high spenders, medium, and low spenders on PSB, with the UK and Germany coming out top on absolute measures and near the top on per capita measures, and France among a range of middle-spending countries in Europe, with the commercial US and Canadian systems being low spenders (Gibbons and Humphreys, 2012).

This suggests that in terms of public subsidies for both press and television, Hallin and Mancini's (2004) widely cited typological account clearly falls down. Whereas the UK looks 'liberal' (i.e. American) with regard to its lack of public subsidy for the press, it most definitely does not look 'liberal' with regard to its comparatively very generous public subsidy for PSB. France might look statist with regard to its press subsidies, but it has been far less supportive of PSB than the notionally 'liberal' UK, despite being comparable in size in terms of population and affluence. As will be seen, France makes up for this PSB deficit to some extent (but not completely) by operating a complex system of production and distribution quotas and subsidies. Our research at

Manchester suggests that historical processes of institutional development, associated path-dependent policymaking, and political commitment are major explanatory variables, though the resource constraint also explains much of the differences between northern, southern, and eastern Europe in the level of subsidies (Gibbons and Humphreys, 2012). Clearly, though, the idea that the UK is by nature averse to media subsidy is simply wrong, when PSB is considered.

Subsidy issues raised by digital convergence

Digital convergence in the 'third age' has opened up a lively policy debate about the future direction of PSB. Some recommend the future development of PSBs as public service media organisations (PSMs), engaged in the delivery of a range of new digital and online media services beyond traditional radio and television programmes (Ferrell Lowe and Bardoel, 2007; Iosifidis, 2010). The PSBs themselves have embarked upon the development of PSM services, with varying degrees of enthusiasm, resourcing, and public policy support (Brevini, 2013). Others, however, have questioned an extensive role for PSB organisations in an age of communications abundance (Elstein et al., 2004; Armstrong and Weeds, 2007; Elstein, 2008). Private media groups have argued against any significant engagement of PSBs in new media, seeing them as a harmful distortion of the market (ACT et al., 2009).

One thing is clear: convergence is blurring the boundaries between print media and audiovisual media. Press companies have been amongst the loudest complainants about the PSBs' expansive online activities in countries like Germany and the UK. The Internet is clearly an arena of growing competition between organisations traditionally rooted firmly in hitherto separate markets, the press and audiovisual media. Online newspapers are offering audiovisual content, and broadcasters are engaged in press-like activities, while both are experimenting with all manner of new media formats and platforms. The issues raised by this convergence are being picked up by competition courts, particularly the European Commission's competition authority. The cases have arisen because of private-media complaints, including from the press sector, about the alleged anti-competitive activities of PSBs.

Some scholars have expressed considerable concern about the damaging effect of the Commission's application of EU state aid rules to PSB (see e.g. Bardoel and Vochteloo, 2008; 2012). Our research, in fact, produced little evidence of this from the Commission's rulings so far (Gibbons and Humphreys, 2012, pp. 154–161). Indeed the Commission's published

guidelines have recognised the legitimacy of PSBs' use of new distribution platforms to fulfil their remit (EC, 2009). However, the wider regulatory questions opened up by digital convergence have yet properly to be addressed. The media are converging, yet everywhere print and audiovisual media remain subject to their different regulatory regimes: the press are rooted in the free market, with limited public support; regulation of the audiovisual media continues to be considered to have a special PSB element and be deserving of – by press standards – huge public subsidy; and online-only media organisations have received no significant public support at all (Nielsen with Linnebank, 2011, p. 4).

This chapter is certainly not developing a line of argument for rolling back the subsidy to Europe's established PSB institutions. Quite the reverse, this chapter proceeds from the understanding that there are a number of very strong grounds to argue that generously funded PSM will be more important than ever in the digital age, not least to counterbalance the declining scope for media law and regulation to ensure that all society's communication needs are met on the Internet, a global medium that is hardly amenable to traditional mechanisms of regulating for pluralism; to maintain quality content standards in the context of widespread commercialisation; to act as a counterweight to powerful private-media companies; and to promote national and societal cultural identities and media and culture industries in the face of globalisation. The chapter argues that it is crucial that the public service remit continue to be defined comprehensively and that PSBs – or rather PSMs – continue to be subsidised extensively. Regulatory change should not relegate PSBs/PSMs to a public service 'ghetto', providing only that which the market is deemed unable to provide. How though to reconcile the questions raised by digital convergence of press and broadcasting? After all, newspapers as well as television fulfil a key public service function, providing 'public service' journalism and news publishing (Rusbridger, 2009). And as seen, the press is struggling. And what about new online providers of journalistic content?

Digital convergence of the media, it has been argued, requires a 'reregulation', rather than 'deregulation'. Gibbons (1998, pp. 301–302) has suggested that there is:

a need to tailor regulation to fit the values which are sought to be promoted. Here a functional approach is required, one that does not depend on technology or forms of delivery, but which recognizes the nature of the service being provided and the character of the audience receiving it.

The same argument can be applied to subsidy. Rather than see digital convergence as an existential threat to the future of press subsidies, and maybe even broadcasting subsidies, it could be argued that subsidy systems should be restructured in a technology-neutral way towards supporting the functions of PSM. This logic should certainly not serve to undermine the comparatively generous funding basis of established PSB institutions; indeed their evolution into strong PSM institutions with a far-reaching digital and online presence is a crucial part of this necessary restructuring. But it also implies not merely a continued legitimacy for traditional press subsidies, but also adequate funding for others fulfilling public service journalistic and media functions online, whether they be formerly broadcast, press, or new online providers. Here the chapter concentrates on the funding issue. Where will the funding come from? How might it be distributed?

Policy transfer from France: Funding a public service publisher by industry levy

The technology neutral distribution question can be answered by reviving at least the basic principle of Ofcom's Public Service Publisher (PSP) concept. The source of finance question can be answered, again at least in principle, by an element of policy transfer from France. The PSP concept was mooted by Ofcom in response to the problems that its first PSB review (2004) identified for the plurality of UK PSB. Among its proposals for remedies was the idea of establishing a PSP to ensure that there would continue to be competition for the BBC as the commercial public service broadcasters ITV and C5 reduced their public service content, as the value of the analogue licence diminished and – with digital switchover completed in 2012 – as it potentially disappeared entirely. In addition, Ofcom also feared for the long-term future of Channel 4. The PSP, it was proposed, would commission material from the UK's independent media sector and this would then be distributed on a range of new digital platforms. The PSP would be publicly funded, rather than by advertising, sponsorship, or subscription. The material it promoted would be chosen on the basis of competitive tender (Ofcom, 2005, p. 68; 2007a).

Responses to an Ofcom consultation on the PSP (Ofcom, 2007b) showed that opinions sharply diverged in the media sector. The idea was welcomed by some respondents, most notably by the Producers Alliance for Cinema and Television (PACT, 2007) which embraced the idea as a 'potential Channel 4 moment for the UK's creative economy'. Channel

Four itself made a pitch for a close relationship with the PSP (Channel Four, 2007). Cautious support was expressed by the broadcasting union (BECTU, 2007) and the Campaign for Press and Broadcasting Freedom (CPBF, 2007). The BBC was averse (BBC, 2007), clearly fearing that the PSP would be funded at its expense. The Satellite and Cable Broadcasters Group (SCBG) expressed a 'natural bias against unnecessary public intervention' and concern that 'a publicly funded competitor inevitably affects investment decisions and commercial strategy' and that 'such a proposal could serve to dis-incentivize commercial companies from investing in new media ventures' (SCBG, 2007, p. 7). It was perhaps hardly surprising, then, that the PSP idea was quietly dropped.

Media scholar Des Freedman (2009) was pleased to see it go, having worried that the PSP debate had 'foster[ed] a consensus among government, media regulator and the BBC's commercial competitors that the BBC should no longer have exclusive access to the licence fee' (2009, pp. 113–114). Freedman judged the PSP to be part of a wider agenda of restricting, rather than expanding PSB and in particular of 'disciplining' the BBC (Freedman, 2008). However, so long as it is not funded by 'top-slicing' the BBC's licence fee income, the idea of the introduction – alongside existing PSBs – of a new PSP-type public service institution, to disburse funds on a transparent and contestable basis, arguably needs reviving. There is much to recommend an approach that recognises that new technologies, not least the Internet, have released the potential for new forms of public value that deserve public funding. As argued above, established PSB institutions should certainly be given the means to evolve into PSM institutions to ensure they play a central role in the digital era, which means for the BBC safeguarding the licence fee, but there is also a need to explore innovative ways of protecting and developing public service content and journalism beyond the BBC.

Rather than top-slicing the BBC's licence fee income, the subsidies and running costs of the new institution itself could be financed through raising a French-style industry levy on the profits (only on profits) of distributors of digital content whether they are broadcasting platforms, telcos, or ISPs. In France, a complex system of quotas and subsidies exists to promote French film and television production. It rests on three pillars: a transfer fund called the *Compte de Soutien* (Support Fund) which levies money from broadcasters and redirects it towards French film and television production; a system of production and diffusion quotas; and other measures to support the independent production sector (Dagnaud, 2006, p. 186; Gibbons and Humphreys, 2012, pp. 75–79; see also Kuhn in this volume). Apart from being

subject to stricter diffusion quotas than the EU prescribes, individual broadcasters are also subject to production quotas that require them to invest in French audiovisual and cinematic production, the sums being calculated in relation to their revenues of the previous year (from advertising, sponsorship, subscription and, in the case of the PSBs, the licence fee).

A key instrument is the *Compte de Soutien*, which was originally an instrument established in 1946 for the funding of cinematic production, but which was extended during the Mitterrand presidency (1986–1995) to subsidising the production of audiovisual works as well as cinema films. It is financed by an 11 per cent levy on cinema tickets, a 5.5 per cent levy on the turnover of broadcasters both public and private, and a 2 per cent levy on the sale and rental of DVDs and VHS cassettes. In 2007, legislation – referred to as the ‘Television of the Future’ law (*Assemblée Nationale et Sénat*, 2007) – was enacted to cater for digital switchover and the introduction of new services like high definition, broadband, and mobile TV. This contained a key provision that obliged all distributors of audiovisual content, including those doing so via new media like mobile TV and the Internet, to pay the levy on their turnover into the COSIP fund. It is important to understand that the rationale of the mechanism is to support French cultural production, not PSB. In reality it supports a wide range of French audiovisual production, though not news and information, game shows, talk shows, reality TV and the like. It has been suggested that its culture-industrial support dimension is at least as strong as any quality selectivity consideration. Nonetheless, it does provide a model for the kind of system that might be introduced to fund a PSP-type institution (for more detail on the French quota and subsidy system, see Gibbons and Humphreys, 2012, pp. 75–79).

So far the idea of an industry levy has been promoted by certain stakeholders and academics. Steve Morrison, chief executive of independent production company All3Media, has pushed the idea. It has also been supported by the Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU). An Institute of Public Policy report for BECTU and the NUJ explored a range of possibilities, including direct levies charged on the revenue of broadcasters, cinemas, and video labels, and new media levies, charged on organisations such as Internet Service Providers and mobile phone operators. The report estimated that a 1 per cent levy on UK pay television would yield £70 million per annum, based on assessments from Virgin and Sky. A similar 1 per cent levy on UK mobile phone operators would yield an estimated further £208

million per annum (Withers, 2009). Arguing in favour of the idea, Professor Patrick Barwise (2009) has estimated that a 1 per cent levy on the roughly £50 billion annual revenue of UK consumer telecoms, technology, and pay-TV would generate about £500 million per annum. The Coalition for Media Reform (2011, p. 7) has advocated a 1 per cent levy on search engine and social media advertising sales in the UK, suggesting that '[i]n 2011 alone, such a tax would have generated over £50 million of funds for reinvestment in public interest media'.

The idea has been given some consideration in the UK policy community, but is apparently not seriously entertained by government. In relation to a feared crisis in Channel Four's funding, Ofcom's second PSB review noted that '... funds could be raised through a new industry levy, as used in some other countries' (Ofcom, 2009, p. 12). Ofcom had done some research in connection with the possibility of an industry levy, and interestingly its 2009 review report noted that 'consumers found an industry levy to be the most acceptable of ... potential new sources of funding' (Ofcom, 2009, p. 52). A House of Lords committee report the following year (2010) expressed disappointment that Ofcom's PSB review 2009 did not make more of a suggestion by Steve Morrison that 'levies on a range of different providers – hardware, software, equipment manufacturers, all kinds of things – should be looked at as an alternative source of funding'. Drawing on Morrison (and BECTU), the committee report gave positive consideration to the possibility of raising additional funding for UK content by levying fees of various kinds: reuse fees, in other words a tax on devices used to record copyrighted material; retransmission fees, namely fees paid to copyright owners by those who own channel distribution systems or platforms in return for the right to replay programmes on their systems; a fee on search engines such as Google and Yahoo! 'which routinely use copyright material from other organizations and content creators to drive their own page impressions and thus generate significant advertising revenue'; and, citing the French case, fees 'derived from ISPs and mobile phone operators which increasingly benefit from the use of third party creative content but pay nothing towards it' (House of Lords, 2010, Chapter 4).

Policy transfer from Germany: A media concentration authority?

It has been argued above that PSB (evolving into PSM) should continue to be supported, at least as strongly as in the past, and that the BBC should remain the sole beneficiary of the licence fee income. However,

there are problems with the licence fee. First, setting its level is a matter of governmental discretion, which is a source of uncertainty and, potentially at least, also a source of political pressure on the Corporation. Secondly, there is a debate about the sheer sustainability of a tax on ownership of a TV set in the digital era, when many watch television via home computers, mobile phones and tablet devices.

The first problem was addressed in Germany by a Constitutional Court ruling of 1994, followed by another ruling in 2007. After years of highly politicised rounds of licence fee settlement, German PSBs were now given an important degree of financial certainty and confidence about their ability to remain strong in the digital online world. An earlier ruling from 1986 had made clear that the very *sine qua non* for allowing commercial broadcasting (introduced during the 1980s) was the guarantee that PSB would remain strong and be allowed to develop. The 1994 ruling now underlined this core principle of Germany's 'dual system' (public/private).

It also recommended a depoliticised procedure for licence fee settlement rounds, whereby the PSBs would submit their case for increasing their budgets to a new independent body responsible for assessing these financial requirements. This Commission for the Financing of the Broadcasters (*Kommission zur Ermittlung der Finanzierung der Rundfunkanstalten*) would then make a recommendation to the politicians (the collective prime ministers of Germany's Länder), who would be expected to abide by and enact the settlement. This proposal was duly implemented by legislation. Subsequently, the new approach was tested and confirmed by a second Constitutional Court ruling in 2007, which arose because the politicians reduced the level of the licence fee recommended by the KEF for the 2006 settlement. The Court now ruled that the PSBs' lost revenue should be duly made up, thereby underpinning the independent role of the KEF foreseen by its 1994 ruling. Furthermore, the Court's 2007 ruling updated the principle articulated in 1986 about the centrality of PSB in the 'dual system', by affirming the PSBs' new media (digital and online) expansion (Gibbons and Humphreys, 2012, pp. 116–117).

The second problem, relating to sustainability in the era of online and mobile TV of a tax on ownership of a TV set was settled pragmatically, with relatively little fuss and without a Constitutional Court intervention. It was achieved through a law promulgated by the Länder governments in 2010, ratified by their parliaments in 2011 and entering into force in 2012, which made the licence fee a household tax, a simple expedient that is now being promoted in the UK by the BBC (Gibbons and Humphreys, 2012, pp. 120–201).

Finally, as suggested in the introduction above, it is an assumption of this chapter that media concentration will continue to be a problem in the digital, online world. The arguments about the reason why have been made elsewhere and will not be rehearsed here (see e.g. Hindman, 2009; and Curran et al., 2012). Therefore, there will continue to be need for structural regulation. However, in the UK, since the deregulation of the 1990s culminating in New Labour's Communications Act 2003, the UK media ownership rules have been minimalist. Fixed limits on media ownership, and ceilings for media enterprises' market share, have been nearly entirely dispensed with and media mergers integrated into the general (non-media) merger scheme, with a flexible public interest test that allows for ministerial discretion as to whether or not to intervene on grounds of a public interest consideration. Only then do the regulators – whether Ofcom or the Competition Commission – have a role to investigate and to advise on the public interest, but this is non-binding on the minister. At the end of the process, the minister decides whether the merger 'operates or may be expected to operate against the public interest' (for more detail see Gibbons and Humphreys, 2012, p. 105).

Clearly, considerably more than a competition-law approach is required. Whatever measurement framework might be developed for gauging the danger of excessive media concentration as distinct from, or in addition to, competition concerns (a good discussion is provided by Crauford Smith et al., 2012; and Crauford Smith and Tambini, 2012), a strong case might be made for providing a dedicated and politically independent media pluralism monitoring body with the final say, thereby removing the element of ministerial discretion in the decision making which is potentially vulnerable to unwelcome pressures and considerations. Indeed, in order to address both the competition and non-economic aspects of the problem, it could be appropriately 'housed' in Ofcom.

Here, consideration of the German model is helpful. A media concentration commission (*Kommission zur Ermittlung der Konzentration im Medienbereich* – or 'KEK') was established in 1996, principally to monitor and help the regulators control media concentration in the private commercial television sector but also cross-media concentration. It is composed of six experts in media and economic law, nominated by the prime ministers of the German Länder, which are responsible for broadcasting policy. Television licences, before being granted by the Länder private television regulatory authorities (the equivalent of Ofcom), have to be vetted by the KEK. In Germany, an audience-share model provides the measurement criteria for the KEK. A 30 per cent aggregated audience

share of the channels owned or part-owned (25% or above – the stake normally required for a blocking vote according to German company law) is assumed to represent a ‘predominant influence on public opinion’ (*vorherrschende Meinungsmacht*). If a media enterprise is approaching the threshold (25 per cent or above), its interests in other media and media relevant markets (*medienrelevante Märkte*) are taken into consideration by the KEK to determine if it amounts to a potential unwelcome degree of influence on public opinion. An instance of the KEK’s impact was the withdrawal of a €2.5 takeover-bid for one of Germany’s two big private commercial television concerns, *ProSiebenSat.1 Media*, by Springer, the largest press concern, when both the KEK and the federal competition authority, the *Bundeskartellamt*, expressed their concern in 2006 (Gibbons and Humphreys, 2012, p. 128).

Apart from examining compliance with the provisions for ensuring plurality of opinion in the private broadcasting sector, the KEK has an important transparency function. It provides an annual list of TV-services and their shareholders; and every three years a detailed report on the state of media concentration and on measures to secure diversity of opinion in the private broadcasting sector, taking into account horizontal, cross-media and international concentration.⁵

A further interesting feature of the German model that might be transferred, not least to help maintain plurality of PSB, is the measure specifying that if the audience share of an individual channel reaches 10 per cent, it is obliged to make available part of its airtime to an independent ‘window service’, chosen by the regulators. This independent window service should contribute to the diversity of the broadcaster’s offer, particularly in the fields of culture, education, and information. The window service must be given a minimum of 260 minutes per week, of which at least 75 minutes must be prime viewing time (for further detail on how this German model came about see Humphreys and Lang, 1998). Thus, three channels – RTL, SAT 1 and VOX – play ‘host’ to dctp TV (standing for Development Company for Television Program mbH), which serves as a platform for independent productions and co-operates with partners from the press sector like the quality newspapers *Neue Zürcher Zeitung* and the *Süddeutsche Zeitung*, the well-known German investigative news magazines *Spiegel* and *Focus*, BBC Worldwide and others.⁶

Conclusion

The principal purpose of this chapter was to demonstrate that there are transferable media policy lessons from Europe. It has suggested several

key areas of potentially fruitful policy transfer from Europe in the twin fields of subsidy and regulation. It has presented a number of reasons why subsidies will be needed more than ever in the digital, online age as a means to maintain a healthy supply of public service content and journalism. It has identified investigative journalism as just one particular function that will need support. Press subsidies in a number of European countries show that the risk of politicisation can be minimised by tying subsidies to objective qualification criteria. In the UK, the BBC's reputation for political independence also demonstrates that politicisation is avoidable. Further, the chapter has pointed out that the UK is not somehow 'naturally' subsidy averse, the BBC's special position exposing the myth of the existence of a 'North Atlantic or Liberal' model (Hallin and Mancini, 2004).

However, the chapter has highlighted a problem that still rather has the quality of an 'elephant in the room', namely that while media are converging they remain subject to different regulatory regimes: the press rooted in the free market with limited public support; an important branch of the audiovisual media receiving special public service treatment in terms of comparatively generous subsidy; and new online public service journalism receiving no public support at all. To address this issue, the chapter has argued that PSBs like the BBC should continue to benefit from ring-fenced and generous subsidy, so that they can continue to evolve into PSM providers. At the same time, to fund public service content and journalism across the digitally converging media, a new public service institution might be introduced along the lines of the Public service Publisher originally conceived by Ofcom to address the threats to public service plurality in broadcasting. To fund this, as an alternative to an undesirable top-slicing of the support for PSB/PSM, the chapter has suggested policy transfer of a French style industry levy. To safeguard the level of PSB/PSM funding enjoyed by the BBC, and safeguard independence from government, the chapter has proposed policy transfer of a German-style independent body to assess the level of public funding required for the Corporation to fulfil its PSB/PSM remit.

The chapter has also proceeded from a premise that has been established by other scholarship that media concentration will continue to be a problem in the digital online age. Accordingly, it has suggested that continued structural regulation will be required to help maintain a healthy degree of media pluralism and diversity. In the UK, however, fixed limits on media ownership have been replaced by a flexible media plurality test which allows the responsible minister an inordinate degree of discretion. The chapter does not discuss the metric that might

be employed for measuring pluralism-threatening degrees of concentration, which has been done elsewhere. Instead, it has suggested policy transfer of a German-style independent regulatory body – which might be suitably housed within Ofcom – with the remit objectively to determine if a media enterprise attains a level of media market dominance that threatens a ‘predominant influence on public opinion’. Its remit would include an important transparency function, such as the requirement to maintain a register of media ownership and regularly to report on the state of media concentration and on measures to secure diversity in the private sector. A further policy transfer would be the obligation for media enterprises, whose media power exceeds a certain threshold, to provide German-style ‘window services’ to independent third-party media providers.

The chapter certainly does not suggest that these policies should be taken lock, stock, and barrel, only that they should serve as inspiration for UK policymakers to consider and suitably adapt to UK circumstances. Indeed, the ideas – of an industry levy, or window requirements for independent production (but for PSBs, rather than powerful private media companies) – are familiar already. The fact remains that there is a pressing need radically to re-think policy and regulation in the light of the ongoing transformations surrounding digital convergence. Traditional sector-based approaches to media policy in general, and pluralism and diversity policies in particular, are being challenged, and there is much that can be mutually learned among close neighbours in Europe about how to adapt to meet the challenges.

Notes

1. Leonard Downie is a former *Washington Post* executive editor and Michael Schudson a professor at Columbia University. Robert W. McChesney is a professor at the University of Illinois at Urbana-Champaign and John Nichols the *Nation's* Washington correspondent and associate editor of *The Capital Times* in Madison, Wisconsin.
2. James Overton, ‘French press receive big subsidies’, NUJ Paris, 20 May 2014. See <http://www.nujcc.org/paris/French-press-receive-big-subsidies> (accessed on 24 November 2014).
3. See the Culture Ministry webpages at <http://www.culturecommunication.gouv.fr/Presse/Communiqués-de-presse/Aides-a-la-presse-les-chiffres-2013>. (accessed on 5 March 2015).
4. See http://www.fondspascaldecroos.org/EN/special_journalism - accessed on 15/10/07. The Pascal Decroos Fund has operated under the label Journalismfund.eu vzw since 2013. See <http://www.journalismfund.eu/> (accessed 2 December 2014).

5. For these reports, see <http://www.kek-online.de/information/publications/media-concentration-reports.html?L=1> (accessed on 5 March 2015).
6. See <http://www.dctp.de/> (accessed on 5 March 2015).

References

- ACT, AER, ENPA, EPC and VPRT (2009) *Joint Letter to Commissioner Kroes on the Revision of the Broadcasting Communication*. Brussels: ACT, AER, ENPA, EPC and VPRT.
- Armstrong, M. and Weeds, H. (2007) 'Public service broadcasting in the digital world' In: Seabright, P. and von Hagen, J. (eds) *The Economic Regulation of Broadcasting Markets: Evolving Technology and Challenges for Policy*, Cambridge: Cambridge University Press, pp. 81–149.
- Assemblée Nationale et Sénat (2007) *LOI no 2009-258 du 5 mars 2009 relative à la communication audiovisuelle et au nouveau service public de la télévision* (Paris: OJRF no 0056 du 7 mars).
- Bardoel, J. and Vochteloo, M. (2008) 'Squeezing public broadcasting from the mainstream to the margin? EU State Aid Policy vis-à-vis Public Service Broadcasting', Paper Presented at the RIPE Conference, Public Service Media in the 21st Century: Participation, Partnership and Media Development, Mainz, Germany: 8–11 October.
- Bardoel, J. and Vochteloo, M. (2012) 'Conditional access for public service broadcasting to new media platforms: EU state aid policy vis-à-vis public service broadcasting – The Dutch case' In: Just, N. and Puppis, M. (eds) *Trends in Communication Policy Research: New Theories, Methods and Subjects*, Bristol, UK, and Chicago, USA: Intellect, pp. 301–315.
- Barwise, P. (2009) 'New forms of funding for PSB', Speech to a Seminar Organized by the Federation of Entertainment Unions, 22 June 2009: <https://www.bectu.org.uk/news/315>, date accessed 2 December 2014
- BBC (2007) *BBC Response to a New Approach to Public Service Content in the Digital Media Age*: <http://www.ofcom.org.uk/consult/condocs/pspnewapproach/responses/bbc.pdf>
- BECTU (2007) Ofcom: 'A New Approach to Public Services Content in the Digital Media Age'. *BECTU Comments*: <http://www.ofcom.org.uk/consult/condocs/pspnewapproach/responses/bectu>.
- Brevini, B. (2013) *Public Service Broadcasting Online: A Comparative European Policy Study of PSB 2.0*. Basingstoke: Palgrave Macmillan.
- Campaign for Press and Broadcasting Freedom (CPBF) (2007) *Response to Ofcom's Document: A New Approach to Public Service Content in the Digital Media Age: The Potential Role of the Public Service Publisher*: <http://www.ofcom.org.uk/consult/condocs/pspnewapproach/responses/cpb.pdf>
- Channel Four Television Corporation (2007) *Channel 4 Response to the Ofcom Consultation: A New Approach to Public Service Content in the Digital Media Age – The Potential Role of the Public Service Publisher*: <http://www.ofcom.org.uk/consult/condocs/pspnewapproach/responses/4.pdf>
- Coalition for Media Reform (2011) *Time for Media Reform: Proposals for a Free and Accountable Media*. London: CMR: <http://www.mediareform.org.uk/wp-content/uploads/2012/09/time-for-media-reform.pdf>

- Crauford Smith, R., Tambini, D., and Morisi, D. (2012) *Regulating Media Plurality and Media Power in the 21st Century*. London: LSE Media Policy Project, Media Policy Brief 7: <http://www.lse.ac.uk/media%40lse/documents/MPP/Policy-Brief-7-Media-Pluralism.pdf>.
- Crauford Smith, R. and Tambini, D. (2012) 'Measuring media plurality in the United Kingdom: Policy choices and regulatory challenges', *Journal of Media Law*, 4(1), 35–63.
- Curran, J., Fenton, N., and Freedman, D. (2012) *Misunderstanding the Internet*. Abingdon, UK, and New York, NY: Routledge.
- Dagnaud M. (2006) *Les Artisans de l'Imaginaire: Comment La Télévision Fabrique la Culture de Masse*. Paris: Armand Colin.
- Downie Jr., L. and Schudson, M. (2009) 'The reconstruction of American journalism', *Columbia Journalism Review*, 19 October.
- European Commission (2009) *Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting*. Brussels: Official Journal of the European Communities, 2009/C 257/01.
- Elstein, D., Cox, D., Donoghue, David, B., Graham, D., and Metzger, G. (2004) *Beyond the Charter: The BBC After 2006*. London: The Broadcasting Policy Group.
- Elstein, D. (2008) 'How to fund public service content in the digital age' In: T. Gardam, and D. Levy (eds) *The Price of Plurality: Choice, Diversity and Broadcasting Institutions in the Digital Age*. Oxford: Oxford University Reuters Institute for the Study of Journalism, pp. 86–90.
- Ferrell Lowe, G. and Bardoeel, J. (eds) (2007) *From Public Service Broadcasting to Public Service Media*. Göteborg: Nordicom, University of Gothenburg.
- Freedman, Des, D. (2008) *The Politics of Media Policy*. Cambridge: Polity.
- Freedman, D. (2009) 'The public service publisher – An obituary', *Journal of British Cinema and Television*, 6(1), 103–121.
- Gibbons, T. (1998) *Regulating the Media*. London: Sweet & Maxwell.
- Gibbons, T. and Humphreys, P. (2012) *Audiovisual Regulation under Pressure: Comparative Cases from North America and Europe*. Abingdon, UK, and New York, USA: Routledge.
- Hallin, D. and Mancini, P. (2004) *Comparing Media Systems: Three Models of Media and Politics*. Cambridge: Cambridge University Press.
- Hindman, M. (2009) *The Myth of Digital Democracy*. Princeton: Princeton University Press.
- House of Lords (2010) *Communications Committee First Report, The British Film and Television Industries*. London: House of Lords: <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcomuni/37/3702.htm>, date accessed 24 November 2014
- Humphreys, P. (1996) *Mass Media and Media Policy in Western Europe*. Manchester: Manchester University Press.
- Humphreys, P. (2006) 'Press subsidies in the context of the information society. Historical perspective, modalities, concept and justification' In: I. Fernández Alonso, M. de Moragas, J. Joaquín Blasco Gil and N. Almiron (eds) *Press Subsidies in Europe*, Barcelona: Generalitat de Catalunya/INCOM/UAB, pp. 38–55.
- Isosifidis, P. (2010) *Reinventing Public Service Communication: European Broadcasters and Beyond*. Basingstoke: Palgrave.

- McChesney, R. W. and Nichols, J. (2010) *The Life and Death of American Journalism: The Media Revolution that Will Begin the World Again*. Philadelphia, PA: Nation Books.
- Nichols, J. and McChesney, R. W. (2009) 'The death and life of great American newspapers', *The Nation*, 18 March. <http://www.thenation.com/print/article/death-and-life-great-american-newspapers>
- Nielsen, R. with Linnebank, G. (2011) *Public Support for the Media: A Six-Country Overview of Direct and Indirect Subsidies*. Oxford: Oxford University Reuters Institute for the Study of Journalism.
- Withers, K. (2009) *Mind the Funding Gap: The Potential of Industry Levies for Continued Funding of Public Service Broadcasting*. London: Institute of Public Policy Research, an IPPR report for BECTU and the NUJ.
- Ofcom (2004) *Ofcom Review of Public Service Broadcasting. Phase 2 – Meeting the Digital Challenge*. London: Ofcom. http://www.ofcom.org.uk/consult/condocs/psb2/psb2/psb_phase2.pdf
- Ofcom (2005) *Review of Public Service Television. Phase 3. Competition for Quality*. London: Ofcom. <http://www.ofcom.org.uk/consult/condocs/psb3/psb3.pdf>
- Ofcom (2007a) *A New Approach to Public Service Content in the Digital Media Age*. London: Ofcom. <http://www.ofcom.org.uk/consult/condocs/pspnewapproach/newapproach.pdf>. Viewed August 2008
- Ofcom (2007b) *Responses to A New Approach to Public Service Content in the Digital Media Age. The Potential Role of the Public Service Publisher*. London: Ofcom.
- Ofcom (2009) *Ofcom's Second Public Service Broadcasting Review: Putting Viewers First*. London: Ofcom. http://stakeholders.ofcom.org.uk/binaries/consultations/psb2_phase2/statement/psb2statement.pdf
- PACT (2007) *Response to Ofcom's Discussion Paper on PSP*. <http://www.ofcom.org.uk/consult/condocs/pspnewapproach/responses/pact.pdf>
- Rusbridger, Alan, A. (2009) *Why Journalism Matters*. London: Media Standards Trust, Speech: <http://mediastandardstrust.org/wp-content/uploads/downloads/2010/08/Why-Journalism-Matters-Alan-Rusbridger.pdf>
- Satellite and Cable Broadcasters' Group (SCBG) (2007) *Ofcom Consultation: Public Service Publisher. Submission by the Satellite and Cable Broadcasters' Group*: <http://www.ofcom.org.uk/consult/condocs/pspnewapproach/responses/scbg.pdf>

10

Media Plurality in France

Raymond Kuhn

Since the end of the Second World War the concept of plurality has been an important objective of media policymaking in France. In 1944 the Liberation government introduced legislation with the aim of ensuring pluralism in the ownership and control of newspapers as part of a comprehensive package of structural reforms of the press, while in broadcasting a succession of statutory regulatory authorities has since the early 1980s sought to guarantee pluralism in the political coverage of radio and television (Kuhn, 1995). Some of the state's policy instruments are designed to secure 'external pluralism', defined in terms of the plurality of supply – the range and distinctiveness of outlets operating both within and across specific media sectors. In this context selected appropriate measures have included legislation on ownership concentration, a system of state financial aid to the press, and government support for a designated public service component in a broadcasting system which since the late 1980s has to a significant extent been dominated by privately owned commercial radio stations and television channels. The enforcement of 'internal pluralism', defined in terms of equity and diversity of voice – the range and balance of different political views disseminated within any single media outlet – has been restricted to the broadcasting sector. Here the main policy instrument has been the regulation of political expression across all domestic radio and television services. Compliance is monitored by the relevant regulatory authority, which since 1989 has been the Conseil Supérieur de l'Audiovisuel (CSA).

These public policy measures have been applied within the context of a media system that has changed radically over the past 20 years, particularly in terms of supply. The development of online platforms and the roll-out of digital television have hugely expanded the number

of sources of information available to the user, more than compensating for any decline in provision in traditional media sectors such as the press. As a result, on the supply side, the French media show significant variety and choice in terms of the level of system diversity (McQuail, 2013). Changes on the demand side have been more evolutionary. Readership of newsprint newspapers continues to decline, amplifying a trend that dates back to the arrival of television as a mass medium in the 1960s. Surveys continue to put television well ahead of radio, the press or the Internet as the public's primary source of national and international news. For instance, at the start of 2014, television was the primary source of national and international news for 57 per cent of citizens, followed by 17 per cent for radio, 10 per cent for the press (down from 14 per cent in 2010) and 15 per cent for the Internet (including 10 per cent via the websites of the legacy media, notably the press, and 5 per cent via other websites) (La Croix, 2014). Thus, for the French citizenry as a whole, television is a more frequent primary source for national and international news than radio, press, and the Internet combined. However, news consumption patterns also show important generational differences. For instance, at the start of 2013 for all those aged under 35, the Internet (24 per cent) came well ahead of both the press (6 per cent) and radio (14 per cent) though still behind television (55 per cent) as the most important source of national and international news. In contrast, among those aged over 65, the press came second after television, ahead of both radio and the Internet (La Croix, 2013).

Policy instruments designed to maximise external and internal pluralism are of necessity confined to the supply-side aspects of the issue. They seek to create the conditions for the expression of diversity of opinion and voice in the production and distribution of political content. In practice they cannot directly influence audience consumption habits, with the result that there can be no guarantee that media users will routinely access the full range of choice made available. It is quite possible – and even likely – that most media users will in practice be highly selective in terms of the outlets and messages they access. If anything, the spread of online media sources has exacerbated rather than attenuated this practice of selective filtering; more than ever before, media users can choose media content that is in line with their political views and, to a significant extent, abstain from exposing themselves to counter-views – the so-called 'silo' effect. In short, however extensive the systemic changes in terms of the variety in supply and whatever measures French policymakers may implement to create the conditions for a pluralistic marketplace of ideas, there is no sure-fire way in practice

of ensuring pluralism in terms of usage of different outlets and reception of diverse content by audiences.

External pluralism

Media ownership

In any assessment of the extent of external pluralism in the contemporary French media there are three main reasons for examining the configuration of ownership within different sectors as well as across them. First, even in the 'hybrid media' age of interdependence between old and new media (Chadwick, 2013), it remains the case that some companies still focus their activity mainly or wholly in one specific sector. Second, a sector-specific approach recognises that traditional boundaries between media still retain their importance for some audiences, who in accessing content do not simply substitute one medium for another. Finally, in France, ownership regulations continue to be applied within media sectors as well as across them.

The press

Does the French newspaper sector provide an adequate level of external plurality to readers, allowing them to choose among a range of distinct information sources in the marketplace? This apparently simple question is in reality quite complex, not least because there are two distinct newspaper markets in France: national and regional, with the latter being much more important in terms of circulation figures. The total circulation of national daily titles is under 2 million, while that of regional dailies is over 6 million. There is little shared ownership across the two sectors. Among national dailies, ownership is diverse, in that there is no significant concentration of titles in the hands of any single press group. Indeed, no company owns more than one daily title (if one excludes the sports newspaper *L'Équipe*). The main national titles – *Le Monde*, *Le Figaro*, *Libération*, *La Croix*, *Les Échos* and *Aujourd'hui en France* – are all under separate ownership. Moreover, even when the criterion of circulation is introduced into the equation, the level of ownership concentration in the national daily newspaper market is modest. There is certainly no equivalent in France of Rupert Murdoch's share of the national newspaper market in Britain.

Potentially the main ownership concentration issue in the French newspaper industry is at the regional level. In the early 2000s there was a notable increase in ownership concentration in the regional newspaper market, with the result that six main regional press groups – Est Bourgogne

Rhône-Alpes, Centre-France, Hersant Média, Rossel, Sipa-Ouest-France and Sud-Ouest – now dominate the market across provincial France. For the consumer, however, it is not ownership concentration of regional titles across the country as a whole that is of concern, but rather possible concentration within their particular region. In this respect the restructuring of the regional newspaper sector further consolidated the pre-existing practice whereby in any particular French region a single daily newspaper title frequently enjoys a *de facto* monopoly position and is usually well able to protect its territorial fiefdom against potential competitors (Martin, 2002).

Although they do not constitute a monopoly in the strict sense of the term (since they may still be in competition with smaller local papers, the national dailies and, in the larger towns, with local editions of free newspapers), the big regional titles have secured a strategic position in their respective subnational markets, frequently absorbing previously independent papers into a powerful regional press chain. The Sipa-Ouest-France group, the largest regional press group in France, is a good example of this tendency, with its dominant position in Brittany, parts of Normandy and the Pays de la Loire. Pacts have also been made between different regional newspapers not to penetrate into one another's established circulation area. In short, while concentration of the regional newspaper market across France as a whole may well be only moderately high, in any particular region it is likely to be very high indeed.

Broadcasting

In the broadcasting sector there is reasonable diversity of ownership at both national and subnational levels. In addition to the public company Radio France, there are four main commercial groups in radio – RTL, NRJ, Lagardère (owners of Europe 1) and Next (owners of Radio Monte Carlo) – as well as several small-scale independent and community radio stations. In television the dominant players are the private channels TF1 (part of the TF1 group controlled by the communications and construction company Bouygues), Canal+ (owned by Vivendi) and M6 (owned by the RTL group), and the state-owned public service channels France 2 and France 3, organised in a single company France Télévisions. The significant expansion of the sector as a result of the roll-out of digital free-to-air terrestrial television in the early 2000s has had little impact on the configuration of ownership, since several of the new channels are owned by the existing major groups, such as TF1 and Canal+.

Cross-media ownership

For most media companies in France, cross-media diversification has proved an elusive chimera. Attempts by newspaper groups to extend their business interests out of their core market into the broadcasting sector have generally been a failure. The financial weakness of national newspaper companies in France has largely prevented them from being successful major players in other domestic media sectors, especially national television; indeed, the lack of significant cross-media diversification by national newspaper groups remains striking. There has been even less movement in the opposite direction: the newspaper sector has been insufficiently attractive for broadcasting groups to wish to move across to take an ownership stake in the press. In comparison with the media markets of other major EU states, therefore, France has no equivalent of a company on the scale of Murdoch's News Corporation in the UK, Bertelsmann in Germany or Berlusconi's Mediaset in Italy, all of which have extensive cross-media interests within their respective national markets. In contrast, several regional newspaper companies in France have moved to take a stake in other media sectors with the result that cross-media concentration is more in evidence at the subnational level. For example, the Sipa-Ouest-France group has an ownership stake in the following: the daily newspaper *Ouest France*, local radio, a variety of Internet websites, a publishing house and the national free newspaper *20 minutes*.

Have the arrival and spread of digital and online media had a significant impact on the configuration of ownership and so on external plurality of media supply? Yes, but in practice this is only to a limited extent, largely due to the continuation of ingrained practices of content consumption among audiences. Since significant resources are required to manage a website, in general the established mainstream media have an in-built competitive advantage in maintaining a strong Internet presence because of their existing expertise in content production and distribution. For instance, the dominant websites for political information in France are those of the legacy media, especially those in the print sector such as *Le Monde*, *Le Figaro*, *L'Express*, *Le Point* and *L'Obs*. These websites are not just comparatively well resourced, but also enjoy the benefit of brand recognition among the public – they are trusted sources of news, information, and comment. New competition has come in recent years from independent news websites. The best known of these is Mediapart, which, under the direction of former *Le Monde* journalist Edwy Plenel, has broken several major political stories in recent years and whose output has had a significant influence on the political content of mainstream news media. While Mediapart

has managed to retain its ownership independence, other online news websites have ownership links to legacy media, including the French version of the *Huffington Post* (in which *Le Monde* group has an ownership share) and Rue 89 (owned by the news magazine *L'Obs*, in which *Le Monde* group has a controlling share).

Media ownership and commercial conflicts of interest

Under conditions in which much of the private-sector media in France are owned by companies with wider industrial and business interests, media ownership is an important issue because of the possibility of conflict between the profit maximisation of the company's non-media activities on the one hand and the capacity of its media outlet(s) to report on those activities freely and without bias on the other. For example, it is difficult for TF1 news staff to cover in a wholly dispassionate manner the investment decisions and business performance of the Bouygues group in the telecommunications and construction sectors. Bias may have an impact on the news agenda, with stories about the Bouygues group's activities being given more (or less) coverage than merited by the normal application of the channel's news values. It may also influence the framing of such stories, so that the activities of the Bouygues group are reported sympathetically rather than neutrally or even critically. At worst, news coverage may amount to little more than a publicity puff for the parent company. This was said by some critics to have happened in 2009, when TF1 news gave highly positive coverage of the Bouygues group's project to construct a huge skyscraper, the *Tour Signal*, in the business sector of La Défense on the western outskirts of Paris (the project was later abandoned because of the financial crisis) (Mamère and Farbiaz, 2009).

This type of media bias does not require overt and explicit proprietorial (or even managerial/editorial) interference. Instead, socialisation processes within the newsroom, whereby staff internalise the values and culture of the media organisation, have an impact on journalists' behaviour that often translates into a willingness to conform. It is likely that a culture of self-censorship will exist in newsrooms when it comes to coverage of the business or industrial activities of the media company's parent group. For instance, one of the fears of journalists working for the daily financial newspaper *Les Échos* was that after its takeover by Bernard Arnault in 2007 it would be difficult for them to cover impartially the activities of Arnault's luxury goods group LVMH (Louis Vuitton and Moët Hennessy). Similarly, it has been argued that *Le Figaro* cannot be relied on to cover in a balanced fashion the activities of

the Dassault group with regard to the market for military aircraft sales because of the group's involvement as a constructor of the Rafale fighter plane (Acrimed, 2014).

Media ownership rules

Structural rules on media ownership both within and across different media sectors have been in place for many years in France in an attempt to secure an acceptable level of external plurality. Key technical questions for policymakers to address have included how to define relevant markets, what are the optimal means to measure the market dominance of a company within and across different media sectors (for example, by advertising share, financial turnover or audience figures) and whether there is a need for sector-specific structural limits on media ownership in addition to general competition rules. A more fundamental political concern is how to balance economic/industrial considerations, which may favour media concentration, against the pursuit of the democratic goals of pluralism and diversity, which may be best promoted by anti-concentration measures. French policymakers have thus sought to address three objectives in the formulation and implementation of regulatory policy on media ownership: first, to maintain and promote competition in national media markets; second, to ensure adequate levels of external plurality of supply; and third, to provide conditions for the emergence and sustainability of domestic companies capable of competing in transnational markets. Since these objectives are not necessarily mutually compatible, there are inevitably cross-cutting tensions at the heart of policymaking in this field.

As well as being subject to general competition rules, the French media are the object of specific structural regulations in terms of ownership. These were included in the 1986 communications statute and have been updated on several occasions since. Their application falls within the remit of the CSA, which monitors mergers and issues concerning cross-media ownership. However, the CSA has no remit to intervene if changes of ownership, even major ones, take place within the rules.

The details of the structural ownership rules are as follows. First, in the television sector in particular there are limits on the percentage share of a media company that an individual person (or company) may own. For instance, in the case of a national television service (that is, one covering an area of more than 10 million inhabitants), the upper limit is 49 per cent if the average annual audience of the service exceeds 8 per cent of the total television audience. If a person/company owns more than 15 per cent in one national television service, then they may

not own more than 15 per cent in a second one; if they have more than 5 per cent in two such services, then they may not own more than 5 per cent in a third. In addition, foreign (that is, non-EU) interests are limited to a maximum 20 per cent share in a terrestrial radio or television service and in newspapers. Governments of both right and left have been keen to ensure that significant sections of the national media remain wherever possible in French hands.

There are also upper limits applied to the market share allowed companies in distinct media sectors. In the press sector, a company is not allowed to have more than 30 per cent of total newspaper circulation. There are no such limits in the case of magazines. In the broadcasting sector the limits placed on ownership are measured by both number of franchises and audience share. In national television a company may not own more than one analogue franchise or seven digital franchises. In radio the maximum aggregate audience is 150 million for analogue services and 20 per cent of the potential total audience for digital services. Finally, cross-media ownership rules are based on a 'two out of three' formula, applied in both local/regional and national markets. For example, at the national level a company may not exceed two of the following: holding a franchise for terrestrial television services reaching more than four million viewers; holding a franchise for one or more radio services reaching more than 30 million listeners; publishing or controlling one or several daily newspapers with a total circulation share of over 20 per cent.

State aid to the press

The second main policy instrument designed to help secure external pluralism in media supply consists of a system of state aid to the press. This aid takes the form of both direct financial support and indirect subsidies (such as preferential postage rates), with the latter historically the more important of the two. Although it is difficult to make exact calculations, it has been estimated that prior to the reforms made by President Nicolas Sarkozy, state aid accounted for around 10 per cent of the total turnover of the French press (Albert, 2008, p. 59) and higher in the case of some daily newspapers. During Sarkozy's presidency (2007–12) this system of state aid was reinforced. Further state intervention was supported on the grounds that newspaper groups were finding it difficult to monetise content in the online environment, sales of newsprint newspapers were in steep decline and Google was draining away increasing amounts of advertising revenue from the French press. A large proportion of the additional subsidy was allocated to improving distribution networks – with a significant planned increase

in household delivery and the freezing of postal tariffs – as well as additional assistance to modernise printing works.

Against this background, it is reasonable to ask how effective and desirable the longstanding system of state aid to the press has been in practice. In the past, criticisms of state aid have focused both on the principle and the practicalities of its operation. The objection on principle is that such aid has unjustifiably distorted the mechanisms of the free market, making newspapers less likely to take risks, to be dynamic and entrepreneurial, and to respond to changing social and economic circumstances. In general this objection has not been very strongly held among French policy stakeholders. Criticism has been more commonly directed at the way in which the system has functioned in practice. In this context, the key question has been: Has state aid helped newspapers with a weak financial base but a significant information function? The answer, according to critics, was that it had not, or at least not well enough (Charon, 2013). To avoid possible charges of political bias and at the same time not alienate powerful press groups that benefited from the arrangements in place, the system of aid has been politically neutral. It is managed by the Ministry of Culture and Communication and is widely accepted as a defensible element of public subsidy to the media to ensure plurality of supply – an element of contrast with the United Kingdom where newspapers have traditionally been opposed to state intervention on the grounds that this would be an infringement of the ‘free press’ (Kuhn, 2007).

However, it has been argued that this concern with neutrality and formal equity, however understandable it may be, has thrown state aid off course (Eveno, 2008). By appearing to help all, state aid to the press has been too indiscriminate, not differentiating between the needy and the already well-off. Indeed, the system may even have been perverse, with unintended consequences that run counter to the principles that underpinned its operation: it may actually have helped the better-off newspapers. For example, the mechanism of postal aid helped only those papers with a big postal distribution; these tended to be the papers that were already commercially successful. A paper may have been receiving 80 per cent of its income in advertising and still be eligible for state assistance. This means that state aid was available and of great benefit to newspapers that were already prospering in the market place. At the same time, the system was limited in scope. For example, there was no state aid, either in the form of subsidy or preferential loans, to help in the foundation of new newspapers. Overall, therefore, the system tended to favour the status quo rather than encouraging new initiatives.

By the standards of other advanced democracies, this policy response of the French government to the problems of the newspaper industry was both wide-ranging and financially generous. However, this does not necessarily mean that the response is properly focused or guaranteed to succeed. First, some aspects of the old postwar model in publishing and distribution, including chronic overstaffing, have not been satisfactorily addressed for fear of the industrial unrest that might ensue. Second, some of the policy responses, such as improvements in the home delivery system, look anachronistic in an age when many citizens, especially the young, have become accustomed to accessing their news and information online. Indeed, in financial terms, the vast bulk of state expenditure is being used to address problems in the newspaper sector such as printing and distribution that preceded the transition to the digital age, rather than preparing the industry for the current and future 'shock of the Internet' (Plenel, 2010, pp. 87–88). Finally, as newspapers haemorrhage revenue, even the large amounts of state aid will not necessarily guarantee the vitality of the press as a whole, nor the survival of any particular title. In short, despite the huge amount of public money being mobilised, the state's restructuring policy may prove to be limited in scope, ill-directed and ineffective. More still needs to be done in policy terms on how to save professional journalism (a particular information function) rather than simply protect the newspaper industry (a particular set of structures and practices). Yet it is not clear how the policy process, dominated by established newspaper professionals with an attachment to traditional organisational modes of behaviour, can easily achieve this.

Public service broadcasting

The third main policy instrument designed to help secure external pluralism in media supply consists of government support for a specific public service component in broadcasting. Public service broadcasting, organised in the separate companies Radio France and France Télévisions, has been endowed with a specific mission to devote resources and scheduling time to the coverage of domestic politics. In the radio sector the big national commercial stations such as RTL and Europe 1 do cover politics in their morning news programmes, which routinely include long interviews with leading politicians. These stations also stage weekly political debate programmes. Thus, the public service station France Inter competes head-on with these commercial outlets in terms of political coverage. In contrast, outside of major election campaigns and news programmes, there is little coverage of

domestic politics on commercial television: instead, debate programmes and current affairs coverage are largely confined to the public service television channels, notably France 2 and France 3. For instance, as part of its public service remit, France Télévisions provides, in prime-time slots, debate-style programmes such as *Des paroles et des actes* in which leading politicians are interviewed at length. During the 2012 presidential campaign, for example, all 10 candidates were interviewed over two lengthy prime-time evening programmes – an initiative that commercial television channels would not wish to emulate.

In the historical context of the development of French television it is somewhat ironic that the public broadcaster has emerged as a major contributor to the securing of external pluralism. During the years of the state monopoly, which ended with the passing of the 1982 broadcasting reform, the political output of public television was frequently regarded as being supportive of the government of the day, most notably during the period of de Gaulle's presidency when the public broadcasting corporation was effectively an arm of the Gaullist government. Despite some attempts at reform under governments of the right, the liberalisation of public television's political coverage did not really take effect until the arrival of the left in power in 1981. Since then, the establishment of a regulatory authority for broadcasting, successive alternations in power between governments of left and right and less ideologically fuelled political competition between the mainstream parties have combined to attenuate the links between the public broadcaster and the party in power. As a result, whereas in the 1960s the political output of state television was tantamount to government propaganda, contemporary public television in France makes a significant contribution to plurality in the supply of political information to its audiences. In contrast, it is only recently that France Télévisions has committed itself to a strategy in which its online services, including news, will be given prominence. There is as yet no major public service equivalent in France of the online BBC news service in the UK.

Internal pluralism

The press and Internet

On the issue of internal pluralism, individual newspaper titles, news magazines and websites are under no obligation to provide equity and diversity of voice. Instead, they are free to disseminate politically partisan opinions, to be as one-sided as they like in their editorial content and to support whichever political parties and candidates they choose

to in election campaigns. For branding purposes as well as from a historical association with particular sets of values, national newspaper titles such as *Le Figaro* and *Libération* continue to identify themselves in terms of certain political, economic, and cultural ideas. Readers are perfectly familiar with the general worldview of their favoured title and many read it to have their opinions (and even prejudices) reflected back to them in its columns. Yet every newspaper now has to be careful of how the values of its brand influence the stance it takes in terms of partisan political engagement, both during and outside of election campaigns. Too close an association with a particular political party or leadership figure may have negative consequences for the financial bottom line. As a result, many newspaper titles (notably the major regional papers) tend to eschew overt political partisanship, while several titles exhibit a degree of internal pluralism in their commentary pages, for example by publishing the views of different political parties and social groups.

Politics on the broadcast media

Internal pluralism is a key objective in the political output of the broadcasting sector, where the ideal of equitable coverage has long been enshrined in regulatory provisions as well as being part of the journalists' code of professional practice. The Constitutional Council has also ruled as a general statement of principle that respect for pluralism is one of the conditions of democracy. One of the responsibilities of the broadcasting regulatory authority is to monitor the amount of time allocated by broadcasters to different political actors in news coverage outside of election periods and to candidates and parties during election campaigns, with the findings made public on a regular basis on the authority's website (<http://www.csa.fr/>). In 2007 and 2012, for example, the CSA scrupulously monitored the quantity of broadcast coverage given candidates in the presidential and parliamentary elections. Political commercials are not allowed on French radio or television either during or outside of campaign periods. Instead, broadcasts are allocated to parties and candidates according to rules that place a premium on equitable treatment.

While charges of partisan political bias continue to be levelled, especially concerning television news, there is no evidence of overt and intended partisan bias with regard to the amount of coverage given the major mainstream parties of left and right on radio and television. Indeed, there has been a formally institutionalised degree of pluralism in the allocation of time accorded the parties of the mainstream opposition on the one hand against time given to government and the parties

of the parliamentary majority on the other. In the past, presidential appearances were not included in the regulatory authority's framework since the president was regarded as the head of state and therefore not deemed to be involved in the cut-and-thrust of party politics. However, in the light of Sarkozy's hyper-occupation of broadcast media space after his presidential victory in 2007, the rules were changed in 2009 so that interventions by the president and his advisors that are 'in terms of context and content relevant to national political debate' would now be taken into account in the official calculations (CSA, 2014). The new rules specify that political figures from the parliamentary opposition must receive at least half the time given to appearances by the president, government ministers, the parliamentary majority and presidential advisors combined. Minor parties that are not part of either the governing or opposition coalitions, as well as parties not represented in parliament, are also supposed to receive 'equitable' coverage.

A concern on the part of broadcasters and regulators with achieving 'stopwatch pluralism' between the major political forces of government and opposition should not be undervalued in the context of a broadcasting system that was for many years used by the governing party in a crude partisan fashion. Yet it clearly only scratches the surface of how to ensure pluralism in radio and television's political coverage. For instance, one charge frequently made against broadcasters is that the alternative and oppositional views of minor parties are frequently squeezed out. Smaller parties, such as the Greens, often complain about the amount of coverage they receive – testimony to the difficulties of defining and then operationalising the concept of internal pluralism in what is still in many respects a fragmented multi-party system (there were 10 candidates in the first round of the 2012 presidential election). In the long run-up to presidential elections, for example, the broadcast media usually decide in advance who are the major candidates and skew coverage accordingly.

For many years the extreme-right Front National (FN) was also under-represented in broadcast coverage, despite some significant electoral performances, including most notably the success of its leader Jean-Marie Le Pen in the 2002 presidential election, where he came ahead of the Socialist Party candidate and outgoing prime minister Lionel Jospin in the first round of voting. In recent years the continued electoral success of the FN and the so-called 'detoxification' strategy followed by the new leader Marine Le Pen have compelled broadcasters to give the party more coverage (just as British broadcasters have done in the case of the recent rise of UKIP). Nonetheless, there remains a structural bias in favour of the mainstream parties of government and opposition.

Another problem in terms of a stopwatch approach to internal pluralism arises in how broadcasters cover an issue where there is a high degree of consensus across the main parties of right and left. To a significant extent this is what happened in the referendum campaign for the ratification of the EU constitution in 2005, even if the Socialist Party was internally split on the issue. Broadcast media coverage of the campaign focused disproportionately on the 'Yes' camp, since this was the choice of many of the mainstream political and economic elites, as well as of leading media commentators. The decisive victory of the 'No' vote showed that much of the campaign coverage had failed to reflect the concerns of a majority swathe of public opinion. As a result, critics talked of a lack of pluralism and of a democratic deficit in the coverage of the mainstream media (Maler and Schwartz, 2006). This was in marked contrast to much of the referendum-related content on the Internet, where supporters of a 'No' vote were particularly vocal.

The main defect of the stopwatch approach, however, lies not so much in the difficulties associated with its application, but in its inherent limitations as a guarantor of internal pluralism and safeguard against bias. For instance, the concern with monitoring time allocation tells us nothing about the tone and style of coverage. This is where the qualitative concept of 'directional balance' comes in (Norris et al., 1999). In general, it would be difficult to demonstrate a significant and consistent difference in journalistic tone between news items or interviews featuring politicians of the government and parliamentary majority on the one hand and those representing the mainstream opposition on the other. In contrast, broadcast interviews with spokespersons for the FN, including the party leader, have often been characterised by an adversarial or oppositional journalistic framing, which has at times descended into a hostile, inquisitorial tone of questioning.

Finally, if internal pluralism in political coverage is to be fully achieved, then it could be argued that there should be no bias in the construction of the issue agenda or the framing of issues by the broadcast media. Neither 'stopwatch' nor 'directional' balance is sufficient. In addition, and most importantly, the issues focused on by the broadcasters must not consistently advantage or disadvantage one party or leadership figure over the others. Internal pluralism at this level is notoriously difficult to achieve. Even during election campaigns, when broadcasters are particularly on their guard and content is closely monitored by the regulator, intense competition takes place between parties and candidates to raise their favourite issues which they hope will be picked up and highlighted by the news media. To some extent, therefore, the resources and professionalism of a particular candidate may

give him or her a competitive advantage in setting the media's campaign news agenda. As a result, what at first sight may appear as media bias in favour of a particular candidate may be due not to partisanship on the part of editors and journalists but rather to the capacity of the politician to impose themselves and their favoured issues on the media agenda and have these framed in a sympathetic fashion.

Sometimes the 'background news' agenda may put a candidate severely on the defensive, as happened to Jospin in 2002 when the overwhelming media focus on the issue of insecurity directly benefited his right-wing rival for the presidency, Jacques Chirac, and allowed Le Pen to surf on a series of television news items concerning petty crime and an apparent breakdown of law and order in French society. In the 2005 EU referendum, much of the 'background news' coverage, with its emphasis on the alleged negative consequences of liberal EU policies on French employment, actually worked to the benefit of the 'No' vote, whatever the imbalance of the official campaign coverage in favour of a 'Yes'. In recent years extensive media coverage of an alleged 'Islamisation' of French society has objectively furthered the interests of the FN, even while much editorialising has been critical of the party of the extreme right.

In short, the task of ensuring internal pluralism and equity in broadcast news and political coverage is immensely complex. It certainly involves achieving a reasonable stopwatch balance between mainstream parties of left and right, taking into due consideration the time allocated the government and the president. It also includes a mechanism to provide a fair platform for the views of minor parties, without at the same time overstating their importance. It embraces a level playing field in terms of qualitative aspects such as the tone and style of reporting. Finally, in an ideal world, neither the mediated campaign agenda during elections nor the news agenda in general should unduly and systematically favour one party or candidate in terms of the range of issues covered – although it is hard to see how this can be consistently achieved in practice. Little wonder that the operationalisation of the concept of internal pluralism should so often prove a minefield for broadcasters both during and outside of election campaigns.

Conclusion

Diversity of media supply in terms of sources of information (external pluralism) and equity in political coverage (internal pluralism) are widely regarded as essential features of a healthy democratic public

sphere. From a sociopolitical perspective, pluralism in ownership is generally regarded as more likely than monopoly or oligopoly to create the necessary conditions for diversity of content to flourish. Yet some concentration of media supply may well be considered economically desirable, especially if a strong commercial presence is to be secured in transnational markets and/or the domestic market is to be protected from challenges posed by foreign companies. In drafting rules on media ownership, therefore, a satisfactory level of external pluralism in the national media market has been just one objective for French policymakers. With regard to internal pluralism, the current situation in broadcasting bears no resemblance to the one-sided nature of news coverage during the period of Gaullist hegemony. Instead there is now a reasonable balance of views given an airing on radio and television, at least across the mainstream of the political spectrum.

It may appear, therefore, that several of the problems with regard to media plurality in contemporary France are now more socioeconomic than (partisan) political in nature, including a continuing decline in newspaper readership, the difficulties of monetising content on the web and the possible spread of resources too thinly across multiple information providers. Moreover, even though the main television news programmes on TF1 and France 2 appear to buck these negative market trends by managing to attract a combined audience of between 10m and 12m each evening, the average age profile of their viewers (52 for TF1 and 60 for France 2) seems to indicate disaffection with these traditional information sources and formats among the younger generation (Constant, 2014). In short, the competitive battle for audiences and revenue is now intensely fought, with not just the expansion but the very survival of some media outlets at stake.

There has certainly been a considerable and extensive marketisation of the French media landscape since the Liberation. Yet while the relationship between the state and the media has undergone radical change during the intervening 70 years, the state has not simply abandoned its policymaking and regulatory functions. Indeed from a cross-national comparative perspective the French state continues to be particularly interventionist in seeking to protect and support national media companies through sympathetic regulation, financial assistance and beneficial tax regimes. Providing financial aid to the press, protecting national media sectors from foreign ownership, setting quotas in different genres of broadcast content and defending the interests of the French film industry are just some of the practices that continue to be undertaken by the state, often with the support of indigenous media

companies. This chapter has shown the extent of the supply-side efforts made ‘upstream’ by French policymakers to seek to ensure external and internal media plurality through a broad range of policy instruments. Yet it has also sought to highlight some of the practical limitations of guaranteeing their efficacy on the demand side in a turbulent media landscape increasingly influenced by market forces and new patterns of audience usage.

References

- Acrimed (2014) ‘*Le Figaro se pâme devant le Rafale*’: <http://www.acrimed.org/article4247.html>, date accessed 3 January 2015.
- Albert, P. (2008) *La presse française*. Paris: La documentation française.
- Chadwick, A. (2013) *The Hybrid Media System*. Oxford: Oxford University Press.
- Charon, J.-M. (2013, 3rd edition) *La presse quotidienne*. Paris: La Découverte.
- Constant, A. (2014) ‘Le “20 heures”, une passion française’: http://abonnes.lemonde.fr/televisions-radio/article/2014/10/17/le-20-heures-une-passion-francaise_4508233_1655027.html, date accessed 8 November 2014.
- CSA (2014) ‘Le pluralisme hors période électorale’: <http://www.csa.fr/Television/Le-suivi-des-programmes/Le-pluralisme-politique-et-les-campagnes-electorales/Le-pluralisme-hors-periode-electorale>, date accessed 28 December 2014.
- Eveno, P. (2008) *La presse quotidienne nationale: fin de partie ou renouveau?*. Paris: Vuibert.
- Kuhn, R. (1995) *The Media in France*. London: Routledge.
- Kuhn, R. (2007) *Politics and the Media in Britain*. Basingstoke: Palgrave Macmillan.
- La Croix (2013) TNS Sofres *Baromètre de confiance dans les media 2013*, Paris.
- La Croix (2014) ‘Médias: les Français en quête d’informations constructives’ <http://www.la-croix.com/Culture/Medias/Medias-les-Francais-une-quete-d-informations-constructives-2014-01-22-1095023>, date accessed 3 January 2015.
- McQuail, D. (2013) ‘La diversité de l’information dans toute sa diversité: évolution d’un concept pour les médias et les politiques publiques’ In: Rebillard, F. and Loicq, M. (eds) *Pluralisme de l’information et media diversity*, Brussels: De Boeck, pp.19–38.
- Mamère, N. and Farbiaz, P. (2009) *Petits arrangements entre amis*. Paris: Jean-Claude Gawsewitch.
- Maler, H. and Schwartz, A. (pour Acrimed) (2006) *Médias en campagne*. Paris: Éditions Syllepse.
- Martin, M. (2002) *La presse régionale*. Paris: Fayard.
- Norris, P., Curtice, J., Sanders, D., Scammell, M., and Semetko, H. (1999) *On Message: Communicating the Campaign*. London: Sage.
- Plenel, E. (ed.) (2010) *N’oubliez pas! Faits et gestes de la présidence Sarkozy*. Paris: Don Quichotte.

11

Media Subsidies: Editorial Independence Compromised?

Josef Trappel

Introduction

In September 2014 the recently established Swiss Federal Media Commission trailed its first report reflecting on policy measures supporting Swiss media.¹ But it was not welcomed. The report innocently suggested financially supporting national news agencies, innovation in the media sector and outstanding journalistic projects. While some journalist organisations agreed with the general claim that the media needed support, the representatives of the large publishing companies indignantly rejected any supportive action by the Swiss government as undue intervention into the press and media freedom. Media policy, it turned out once again, is a thorny policy field, even if the purpose is – as in the Swiss case – to provide support for the media.

There is also a fair amount of hypocrisy in this debate. Media owners who enjoy presenting themselves as the ultimate defenders of press freedom and freedom of opinion do not reject preferential treatment by the state when it comes to taxes, such as reduced rates of value added taxes, lower postal tariffs for the distribution of newspapers and magazines, or public support when establishing their printing presses or broadcasting studios in a specific location.

All these measures and preferential treatments can be summarised under the heading of media subsidies. Subsidies are in general alien to the strict liberal catechism of the market economy. Businesses which are not sufficiently profitable have to exit the markets; other companies which are better adapted to market conditions will replace them, the rhetoric goes. Subsidies of all kinds are believed to disturb or ultimately paralyse functioning market mechanisms. Furthermore, subsidies as a core component of state aid are declared incompatible with the Internal

Market of the European Union, unless specific subsidies are formally accepted as exceptions to the rule. Article 107 TFEU stipulates that any aid granted by member states which distorts or threatens to distort competition shall be incompatible with the internal market (Treaty on European Union and Treaty on the Functioning of the European Union; TFEU).

Despite these legal provisions, subsidies are commonly employed almost everywhere in Europe: not only in the agricultural, aviation, and banking industries, but also in the media and communication business. Country studies throughout Europe and beyond (Nielsen with Linnebank, 2011; Murschetz, 2014a) have shown that press subsidies are common practice. However, press and media subsidies are – and should be – treated with suspicion because of the risk of government influence on editorial decisions and content. From an orthodox market-economy perspective, state aid for media not only disturbs competition, but explicitly or implicitly exerts undue influence on editorial content. Therefore, subsidies have to be rejected at all costs in defence of fair competition and freedom of speech.

However, such crude argumentation could also be made with regard to the influence advertisers exert on the media; or the influence by the growing armada of public relation agents. They too are liable to exert undue influence on pure independent journalism. In the latter cases, the influence is supposedly even more blunt and direct than state money spent on media outlets. The latter happens at least under public supervision by Courts of Audit of similar institutions, which are entitled to scrutinise routinely public expenditure, including subsidies.

The focus of this chapter is upon the question of whether or not, and to what extent, state subsidies for the media may be provided with due respect for editorial independence, and what kind of governance architecture such media subsidies would require. In turn, this chapter does not examine the notorious issue of alleged distortion of competition by state aid in the media field, in particular with regard to public service broadcasting.² Furthermore, this chapter does not search for answers about whether or not state subsidies are needed and, if so, under what circumstances. Nor will it address the question of to what extent subsidies are effective with regard to media policy objectives.

Instead, this chapter introduces the concept, the architecture and design of media subsidies on the basis of two case studies in Austria and Switzerland. These countries are not only similar in size and geographic location but also in their attempts to keep media policy at an appropriate distance from subsidy beneficiaries.

Subsidies and state aid for media: Definitions, forms, beneficiaries, and critique

For Des Freedman, subsidies are one instrument among a variety of media policy tools (2008, p. 10) to shape the structure and behaviour of media systems. For media economists subsidies are ‘a form of state intervention in the economics of competitive markets that provide additional resources or reduce costs in the industry or in specific firms’ (Picard, 2006, p. 213). Thus, subsidies can be considered as interventions by the state to alter the outcome of a market economy. Seen from the perspective of free-press theory, subsidies would qualify as one component of a positive or alternative view of freedom which ‘supports public interventions designed to compensate for the inequalities and failures that develop in real markets and to achieve goals that the market does not serve’ (McQuail, 2013, p. 35).

Subsidies for the media come in different forms. Observers distinguish *direct* from *indirect* subsidies (Nielsen with Linnebank, 2011, p. 11; Murschetz, 2014b, p. 23f). According to these authors, direct subsidies are well documented cash grants by governments to media companies, while indirect subsidies refer to tax reductions or tax breaks, as well as favourable rates for public utilities including telecommunication and postal services. But there are additional forms of subsidies which are implicit and more difficult to identify. Such measures include, for example, public sector advertisements in newspapers, magazines, radio, or television, as well as welcoming investment packages for media companies which intend to establish themselves in a specific community or town. Nielsen with Linnebank (2011) also qualify licence fee payments for public service broadcasters as subsidies although such systems are enacted by law and addressed to just one organisation which has to deliver a legally defined output in exchange (its public service remit). State aid other than public service licence fees are normally addressed to the media industry or a section thereof (such as newspapers), but not to a single company or organisation.

Media subsidy critiques reflect different perspectives. Economics-centred arguments maintain that subsidies distort competition, lead to resource dependency and tend to prop up sunset industries at the expense of innovators and new market entrants (see Nielsen with Linnebank, 2011, p. 12). Picard argues that subsidies might help pay variable costs rather than fixed costs and do not solve the economic and market problem of newspapers (2006, p. 213f). Subsidies might even produce adverse economic effects ‘if lobbying for a favorable regulatory

environment is cheaper than building a more efficient production ... and money is thus spent on lobbying activities rather than on improved business practices' (Murschetz, 2014b, p. 27). Thus, economic concern is centred on the market failure argument and subsidies applied in all other cases would lead to competition distortion. Market failure, however, is hard to identify clearly and subsidies are therefore seen critically.

A different set of critiques can be formulated from a political perspective. In liberal and republican democracies, journalism is entrusted to hold those in power to public account. Journalists and media companies are therefore advised to maintain distance between political and economic power and the newsrooms. Critics argue that government subsidies would compromise the independence of journalism and editors 'who are meant to critically scrutinise people in positions of power' (Nielsen with Linnebank, 2011, p. 12). In particular, 'selective subsidies expose the press to the danger of covert government control since they could be allocated to favor pro-government papers' (Murschetz and Trappel, 2014, p. 381).

Although both strands of argumentation – economic and political – convincingly describe potential threats attached to media subsidies, the overall assessment of this media policy tool needs to recognise the context. News media, in particular newspapers, are exposed to strong currents of change, following from the ongoing decay of their traditional business model (Starr, 2012). Steven Barnett called the structural and irreversible shift of advertising to the Internet and the fragmentation of audiences moving gradually to non-linear consumption a 'perfect storm' (Barnett, 2009, p. 217). Revenue streams are strained from both ends. Advertising revenues decline in response to new and cheap facilities of generating attention by Internet-based applications. Sales revenues decline in response to changed user habits and the growing reluctance to pay for news which can be obtained seemingly free-of-charge on the internet.

It is certainly true that crises are neither new nor exceptional for the newspaper industry (Picard, 2014a, p. 50). But contrary to earlier crises, such as the dissolution of the party press in Europe in the 1970s and 1980s, today's crisis affects what Curran has called the core media sector, which is expected to 'sustain a culture of "civil democracy" designed to promote conciliation and compromise' (Curran, 2007, p. 40). These core media are so important that it is no rational policy option to simply observe the waning of the news industry and along with it the disintegration of this system of scrutinising power in society. Under conditions of severe economic crisis, media subsidies might be

reconsidered as policy tools. To ease the economic constraints that lead to the revenue crisis, government funds look acceptable as long as these subsidies do not compromise editorial independence. It is therefore necessary to investigate carefully possible threats to journalistic freedom from government subsidies.

Factors compromising editorial freedom

Factors that potentially compromise editorial freedom are manifold and stretch from blunt intimidation and threats of physical violence against journalistic investigators to more subtle attempts to corrupt the independence and integrity of individual journalists; from commercial pressure (for example, withdrawals of advertising) to media policy responses, ameliorating or deteriorating conditions for running media businesses. Among these, granting (or withholding) of subsidies qualify as subtle (or perhaps more civilised) menaces to editorial freedom, although the relative importance of subsidies needs to be measured against the overall economic performance of the media companies concerned. In order to avoid or indeed exclude direct or indirect influence on editorial freedom by the state and governments arising from subsidies, the following requirements are paramount. This list is based on the understanding that direct and indirect subsidies are granted to media companies (not individual journalists) and in descending order of importance:

- *Institutionalisation*: Subsidies must be institutionalised in the most transparent possible way, preferably by laws or decrees, and fully separated from individual politicians such as ministers. Any direct and immediate grant from government agency to news media would be unacceptable as an attempt to purchase pro-government coverage. However, such payments are common in some countries where state agencies such as ministries buy advertising space in news media in considerable quantities to promote their political work.
- *Eligibility*: Laws or decrees need to clearly state criteria for eligibility which are non-discriminatory for all those media companies which fall within the scope of the subsidy scheme. To avoid any undue advantage provided to companies competing with one another, a thorough competition analysis is required before the release of the subsidy scheme. Companies competing directly with one another (for example, newspapers within the same local or regional market) should be equally eligible for subsidies. Negative (or positive)

discrimination in terms of eligibility would encourage political compliance.

- *Discretion*: Modalities of distributing state aid money can lend themselves to exerting influence on the editorial independence of beneficiaries. As a general rule, the more discretionary power any person or commission or committee has to allocate subsidies to beneficiaries, the more editorial freedom is endangered. Allocation committees or commissions are subject to lobbying or even corruption. If such committees are established at all, their leeway should be as limited as possible. Discretion can best be limited by strict legislation (see *Institutionalisation* above).
- *Duration*: Subsidy schemes differ in terms of duration. There are one-off subsidies such as investment grants (for example, in new printing presses), as well as perennial or even permanent subsidy schemes such as reduced VAT rates for media products. As a general rule, the shorter the term of the subsidy scheme, the higher the risk for editorial influence. One-off state aid might more easily be employed as reward for past, present, or indeed future supportive behaviour by the beneficiary than transparently evaluated longer-term subsidies which can be scrutinised by competitors and other stakeholders.
- *Predictability*: As with any other company, media companies need to plan ahead. Subsidies are intended to contribute financially to the budget, often earmarked for certain requirements. Investment in quality or enhanced journalism requires planning, probably training and changes in the company's governance structures. Such processes take time and their effects might not be visible immediately. Media companies should be willing to undertake such processes if support is envisaged to cover these periods of change and beyond. *Predictability* and *discretion* are linked to one another. More leeway for committees corresponds with less predictability as opinions and assessments among committee members can change, thus making outcomes less predictable.
- *Transparency*: Objectives as well as allocation rules of subsidies must be transparent for all stakeholders, including competitors, observers, academic researchers, journalists, and other interested civil-society parties. Any alleged tie-ups between beneficiaries and persons involved in the subsidy allocation process need to be made transparent and subject to scrutiny – in particular to 'peer' scrutiny by journalists.
- *Rigidity*: For once, flexibility is not welcome in policymaking. The more flexibility in the design of subsidy instruments, the more

leeway will be provided for an unwelcome behavioural model of exchanging ‘money for positive coverage’. The more rigid the rules, the less opportunity for such a mind-set to develop.

- *Objectives*: Subsidy schemes need clear objectives. Those objectives, however, should abstain from any general normative content-related value statements or requirements (such as, for example, quality of news coverage). Evaluating such requirements would be necessarily controversial and would constitute an undue interference in editorial matters. Rather, subsidies should either focus on identified weaknesses (such as, for example, innovation, investment in research and development), or be based on self-binding statements by beneficiaries who commit themselves to an observable set of measures post-allocation.
- *Evaluation*: Beneficiaries should publicly present a self-evaluation report on their achievements enabled by the subsidies granted on a regular basis (annually, bi-annually). These self-evaluation reports must be made publicly available and subject to supervision by relevant authorities. Indirect subsidies should be regularly reviewed politically.

This list is certainly not exhaustive and needs to be adapted to national standards and to specific policy objectives which might be attached to certain subsidies in specific cases. Indirect subsidies such as tax breaks or reduced postal tariffs can certainly not be measured in terms of achieved objectives or by self-evaluation reports of media companies. Instead, such indirect subsidies should be reviewed regularly through cost-benefit analysis.

Introducing the case studies

This list of requirements will now be applied as a yardstick to two selected subsidy schemes which exist in Austria and Switzerland. The Austrian case provides evidence of a longstanding practice and accompanying changes over the years. It encompasses direct and selective press subsidies which are granted to daily and weekly newspapers in Austria. The scheme was introduced in the 1970s and frequently amended over time. Despite its state-aid character, the press subsidy scheme was part of the accession negotiations of Austria to the European Union and was ultimately accepted by the European authorities. Since 2012, in response to persistent demands by the Newspaper Publishers’ Association, there have been government efforts to reform the press subsidy law but no Bill has been presented up to the time of writing (early 2015).

The Swiss case concerns regional and local radio and television stations which have received state aid from top-sliced licence fee income since 2006, previously allocated entirely to the Swiss public service broadcaster. This allocation procedure is very different from the Austrian press subsidy scheme and provides insights into how to allocate state aid without undue scope for editorially based selection criteria.

In both countries, there are other subsidy schemes beyond the two case studies, in particular indirect support such as reduced VAT rates for media products, but also further direct payment in the form of film and television funds or similar instruments. In Austria, public sector advertising has grown in volume far beyond the press subsidy and has led to a Law on Transparency (2011) obliging all public sector companies to report their spending on advertising quarterly, including the beneficiary media titles. The data is published by the media authority (Rundfunk & Telekom Regulierungs-GmbH; RTR) on their website. However, those schemes are excluded from the following case studies.

'Robot subsidies': Austria

Austrian newspapers will celebrate the 40th anniversary of the press subsidy law in their favour in 2015. Today, the Law on Press Subsidies (BGBl. 136/2003) applies to all daily newspapers and all weekly newspapers in Austria. When it was first implemented in the 1970s newspapers received subsidies in compensation for the newly introduced value added tax. Since then, its purpose and objective have changed. After several amendments (Murschetz and Karmasin, 2014, p. 136), the law currently addresses three main purposes: distribution, diversity, and quality. The overall goal as defined in Paragraph One of the Law is to support diversity of the Austrian press. The Law does not distinguish between diversity as represented by the number of newspapers (external pluralism) or by diversity of opinions. It is therefore difficult to assess its overall success or failure.

According to the Law, all daily and weekly newspapers are eligible for funding as long as they publish at least 240 editions per year (41 editions in the case of weekly newspapers) with a minimum number of 10,000 copies sold (5,000 for weeklies). Furthermore, they must have been running for at least six months before applying for funds, they must be sold at a usual market price (freesheets are thus excluded), and they must employ a minimum number of fully employed journalists (six for dailies, two for weeklies).

Distribution subsidies are granted to all newspapers which fulfil these eligibility criteria. The available funds are divided into equal parts among all applicants. If one corporation publishes more than one eligible newspaper, the amount for those additional newspapers is reduced according to a pre-set key defined in the Law. There is no requirement for beneficiaries to document how the money has been spent.

Diversity subsidies are more selective. Daily newspapers get funding up to the ceiling of 100,000 copies sold, provided that more than 50 per cent of their pages are used for editorial content (rather than advertising), and they are not market leaders measured in terms of daily reach at the national or at the regional level (in one of the nine political regions in Austria). If newspapers fulfil these criteria, they receive a lump sum of 500,000 EUR per year and an additional premium which depends on the copies sold. Again, this subsidy scheme does not require beneficiaries to show how they used the money.

Finally, *quality subsidies* are granted for specific purposes, such as journalism training institutions (beneficiaries are not newspapers, but training institutions such as journalism schools), foreign correspondents (newspapers can apply for up to EUR40,000 to cover parts of the cost), and newspaper research (newspapers, but also research institutions like universities, can apply for small grants to undertake newspaper-related research). The overall amount of state money allocated to this press subsidy scheme is earmarked in the annual federal state budget, which also determines the internal allocation among the three subsidy purposes. The Press Subsidy Law also establishes a Press Subsidy Commission which has to check the eligibility of applications, verify the number of printed copies and allocate quality subsidies according to applications. The Commission has six members. Two each are nominated by the Prime Minister, the Austrian Newspaper Association and the Association of Journalists. In 2014, EUR8.7 million (reduced from EUR10.8 million in 2013) were allocated to this press subsidy scheme. Of this amount, 44 per cent was allocated to the *distribution* scheme, 38 per cent to *diversity*, and 18 per cent to *quality*. Taken together, no Austrian newspaper received more than EUR1 million out of the press subsidy scheme.

How does this press subsidy scheme comply with the requirements on editorial freedom outlined above? The Austrian press subsidy scheme is enacted by law and the eligibility for funding is well defined. The Press Subsidy Commission has a say only on the distribution of 18 per cent of the funds, and even there the Law stipulates how much of the allocated money has to be used for the different purposes. The Law is established on a permanent basis and has not been changed for many

years (Murschetz and Karmasin, 2014, p. 136). Newspapers can draw up their future budgets with some certainty as they can calculate the amount of subsidy they are entitled to receive. However, the government can amend the amount of money allocated to press subsidies within the provisions of the federal budget. This is certainly a weakness of the system. The budget allocated was cut by almost 20 per cent from financial year 2013 to 2014, although beneficiaries did not suffer proportionally as two newspapers failed to fulfil the eligibility criteria (one went bankrupt, the other employed less than the minimum number of journalists). Thus, the available amount was distributed among fewer beneficiaries.

The process as well as the result of the press subsidy is fully transparent. All figures are published on the website of the responsible Communication Authority for all interested stakeholders.³ Furthermore, the press subsidy scheme is rigid as it does not allow for lobbying or bargaining, apart from minor decisions within the quality scheme. The weakest point is the absence of reporting obligations for the distribution and diversity schemes. It is therefore unclear what benefit these schemes deliver.

An overall assessment of the research question – Does the Austrian press subsidy scheme respect editorial independence? – therefore invites a positive conclusion. As the design of the press-subsidy scheme does not allow for substantial bargaining and limits the leeway of the Commission to an absolute minimum, intervention by the state or by the government is manifestly excluded. The only available lever is the allocation of the overall budgetary allocation to the press subsidy scheme, which largely depends on budgetary constraints. The scheme excludes, moreover, any undue intervention for or against any single newspaper title. It is in this sense that the Austrian press subsidy could be qualified to be an intervention-free ‘robot’ subsidy: once programmed by law, the subsidy system operates on its own without further intervention or instruction.

Compensation subsidies: Switzerland

State aid for broadcasting (radio and television) is tightly regulated by the Swiss Federal Law on Radio and Television (Broadcasting Law; RTVG 2006) and the corresponding Radio and Television Decree (Broadcasting Decree; RTVV 2007). Both Acts address all providers of radio and television in Switzerland, the public service broadcaster SRG/SSR and its private commercial and non-commercial competitors alike. This legislation

inclusively regulates all matters concerning radio and television in all four language areas and in all 26 regions (cantons) in Switzerland. According to the Swiss Constitution, and contrary to most other policy fields, broadcasting matters are regulated at the federal level.

Broadcasting subsidies are not defined in this way in the RTVG. Rather, the Law stipulates that every household (and every enterprise) which uses a radio or TV set to receive the services of any radio and television provider has to pay a radio and television fee. The sum of the collected licence fee is then distributed among all providers and the collecting society. The distribution key is simple: after deducting the costs of collection, 4 per cent of the overall sum is allocated to private operators, the rest to the public service broadcaster (Art. 40 RTVG). Therefore, funds for broadcasting subsidies are not part of the federal state budget, but come from the licence fee, paid by listeners and viewers. Nonetheless, listeners and viewers have no choice and their usage preferences have no bearing on the allocation of the licence fee money.

While the SRG/SSR has to fulfil a legally defined remit comparable to other European public service broadcasters (providing universal services, respecting diversity, striving for quality, catering for identity and for minorities, etc.),⁴ private broadcasters have two basic choices according to the Law. One option is simply to register their radio or television activities with the Broadcasting Authority (BAKOM). Registered broadcasters have no privileged access to cable or terrestrial distribution and are not eligible for subsidies out of the licence fees. The second option is to apply for a radio or television licence. Successful applicants have legally determined access to cable systems (must-carry rules) and they are eligible for subsidies. In the latter case, broadcasters have to commit themselves to stricter rules, such as editorial bylaws and an approved mission statement. Such broadcasters have to fulfil a remit which is less rigorous and comprehensive than the public service remit of the SRG/SSR. A third option is to apply for a non-profit radio licence, which provides access to subsidies but excludes additional advertising funding.

In order to allocate the public funds in the most effective way, Switzerland has been divided by the Broadcasting Authority into 34 regions for FM-radio broadcasts and into 13 regions for private television. These regions are built on demographic data including criteria such as population (both households and place of employment), socio-economic parameters (income, labour, employment) and topography (geographical characteristics). For each of these regions, one or two licences are advertised and broadcasters can apply.

Successful broadcasters are then awarded a share of the licence fee fund. The complex key for distribution is based on demographic and socioeconomic advantages and disadvantages of the respective region. Advantaged regions are those with higher population, higher household incomes and higher numbers of established companies. Broadcasters in such regions are considered to have better chances of attracting advertising funds and are thus less in need of subsidies. Disadvantaged regions, in turn, are those with smaller populations, lower household income and fewer established companies, often within mountainous areas.

Furthermore, the RTVV stipulates that subsidies must not exceed 50 per cent of the overall budget of the benefiting radio or television broadcaster (70 per cent in the case of non-profit radios). The BAKOM is responsible for allocating the entire budget coming from the top-sliced licence fee along these lines. All beneficiaries have to disclose their annual accounts to the BAKOM. In addition, licensed broadcasters are subject to research on the fulfilment of their remit. Annual surveys are undertaken by accredited research companies who report to BAKOM.

In the year 2013, licence fee collection delivered some CHF1.3 billion. From this amount, the lion's share of some CHF1.2 billion was allocated to SRG/SSR, some CHF54 million to licensed private radio and television and CHF44 million were needed to collect the licence fee. It is worth mentioning that in many larger regions local newspaper companies also run the regional radio and/or television stations; while they reject direct subsidies for their *newspapers* for political reasons, public subsidies are accepted by these newspaper publishers for their broadcasting activity.

The Swiss broadcasting subsidy scheme complies well with the requirements on editorial freedom outlined above. The entire model is firmly rooted in broadcasting law and the corresponding decree. Eligibility criteria are well defined and each broadcaster can opt for competing for the remit-bound licence with subsidies or for simply registering with no further obligations. The subsidy system does not contain any discretion for decisions taken by politicians or the government or the broadcasting authority. Even the amount of money allocated to private broadcasters cannot be influenced by politics. Money allocation is fairly automatic in respect of the socio-economic characteristics of each region. As the licence fee model is well established, the subsidy scheme is predictable and durable. The process of calculating advantages and disadvantages of each region is based on demographic factors and is fully transparent. Objectives are formulated in law and evaluation is undertaken by accredited research organisations.

Conclusions

Austria and Switzerland are small countries with limited resources for newspapers, radio, and television. The current financial crisis affects all media and calls for entrepreneurial but also media policy responses. Picard (2014b, p. 8) points out that today's media companies are diversifying their revenue streams from readers and advertisers to e-commerce and other commercial services. An additional option is state subsidies which come in various formats. Concerns about economic inefficiencies aside, political objections centre on concerns that subsidies would necessarily influence editorial independence. Contrary to this claim, these two case studies show that it is possible to design subsidy mechanisms which are sufficiently distant from the state and from government to practically exclude such interventions. Key elements are high degrees of predictability and legal determination, and restricted leeway for commissions to decide upon the allocation of funding.

Notes

1. At the time of writing, the report itself has not yet been published.
2. For this debate, see the corresponding chapters in Donders et al., 2014.
3. <https://www.rtr.at> (11 March 2015).
4. For public service principles see among many others Bardoel and Lowe, 2007; Leurdijk, 2007; Donders, 2012.

References

- Bardoel, J. and Lowe, G. F. (2007) 'From public service broadcasting to public service media. The core challenge' In: Lowe, G. F. and Bardoel, J. (eds) *From Public Service Broadcasting to Public Service Media. RIPE 2007*, Göteborg: Nordicom. pp. 7–26.
- Barnett, S. (2009) 'Media ownership policy in a recession: Redefining the public interest', *Interactions: Studies in Communication and Culture*, 1, pp. 217–232.
- Curran, J. (2007) 'Reinterpreting the democratic role of the media', *Brazilian Journalism Research*, 3, pp. 31–54.
- Donders, K. (2012) *Public Service Media and Policy in Europe*. Basingstoke, NY: Palgrave Macmillan.
- Donders, K., Pauwels, C., and Loisen, J. (eds) (2014) *The Palgrave Handbook of European Media Policy*. Basingstoke: Palgrave Macmillan.
- Freedman, D. (2008) *The Politics of Media Policy*. Cambridge: Polity Press.
- Leurdijk, A. (2007) 'Public service broadcasting Dilemmas and regulation in a converging media landscape' In: Lowe, G. F. and Bardoel, J. (eds) *From Public Service Broadcasting to Public Service Media*, Gothenburg: Nordicom. pp. 71–85.
- McQuail, D. (2013) *Journalism and Society*. London, New Delhi, Singapore, Thousand Oaks: Sage.

- Murschetz, P. (ed.) (2014a) *State Aid for Newspapers. Theories, Cases, Actions*. Heidelberg: Springer.
- Murschetz, P. (2014b) 'State aid, subsidies & newspapers economics – First theoretical disputes' In: Murschetz, P. (ed.) *State Aid for Newspapers. Theories, Cases, Actions*, Heidelberg: Springer. pp. 21–46.
- Murschetz, P. and Karmasin, M. (2014) 'Austria: Press subsidies in search of a new design' In: Murschetz, P. (ed.) *State Aid for Newspapers, Theories, Cases, Actions*, Heidelberg: Springer. pp. 133–148.
- Murschetz, P. and Trappel, J. (2014) 'State aid for newspapers: A summary assessment' In: Murschetz, P. (ed.) *State Aid for Newspapers, Theories, Cases, Actions*, Heidelberg: Springer. pp. 375–391.
- Nielsen, R. K. with Linnebank, G. (2011) *Public Support for the Media: A Six-Country Overview of Direct and Indirect Subsidies* Oxford: Reuters Institute for the Study of Journalism.
- Picard, R. G. (2006) 'Issues and challenges in the provision of press subsidies' In: Fernandez Alonso, I., de Moragas, M., Blasco Gil, J. J. and Almiron, N. (eds) *Press Subsidies in Europe*, Barcelona: Generalitat de Catalunya. pp. 211–220.
- Picard, R. G. (2014a) 'State support for news: Why subsidies? Why now? What Kinds?' In: Murschetz, P. (ed.) *State Aid for Newspapers, Theories, Cases, Actions*, Heidelberg: Springer. pp. 49–71.
- Picard, R. G. (2014b) 'Twilight or new dawn of journalism? Evidence from the changing news ecosystem', *Journalism Practice*, (15) 5, 1–11.
- Starr, P. (2012) 'An unexpected crisis: The news media in postindustrial democracies', *The International Journal of Press/Politics*, 17, 234–242.

12

Putting Ends and Means in the Right Place: Media Pluralism Policies in Central and Eastern Europe

Beata Klimkiewicz

Introduction

The role of the media has long been seen as profoundly important in fostering diversity in the public sphere and in the creation of a collective imagination. Diversity enables us to question taken-for-granted beliefs, and helps us to inspire, to invent, and to attune ongoing social action to political and cultural representations, as well as to technological change. In normative terms, pluralistic media structures are expected to create an environment that provides multiple ‘frames of reference’ and offers an open space where various groups in society can articulate their opinions and interests (Schulz, 2004). At the same time, this diversity is connected to sameness – the common place – that derives its significance from each person being able to see and hear from a different perspective (Arendt, 1958, p. 57). In other words, media diversity is a means not an end to a well-functioning society, with a vibrant public sphere, well-informed and knowledgeable citizens, and sustainable cultural and economic development.

In recent years, media pluralism has evolved into a policy rationale with a clear normative framework: that it is beneficial to a well-functioning democracy, to generating knowledge from diverse sources, to the formation of a cultural identity, and to the effective and competitive operation of markets. In other words, the normative view of pluralism does not encompass ‘everything’ or ‘any kind of diversity’ but arrangement of diversity in a media system that facilitates performance of key media functions in society (Klimkiewicz, 2014).

Precisely which type of media environments and arrangements would support such diversity has puzzled media scholars and policymakers

for some time, and has become more complex with rapidly changing communication environments and new forms of media use. In terms of evolving policies, the Central and Eastern European (CEE) countries offer an interesting case study for the comparative analysis of media diversity. Over the last 25 years new media structures have been introduced in the region and policies adapted at high speed. Many of these were dictated by the necessity to comply with international standards and EU conditionality. This chapter aims to shed some light on the catalogue of policies, measures, and selective developments concerning media pluralism in the CEE countries,¹ with a particular focus on individual cases.

Media pluralism as a market rationale

Diversification of media environments played an essential role in media reforms in the CEE after 1989. Consistent with European tradition, different regulatory frameworks were put in place for press and broadcasting sectors. The process of press de-monopolisation started with elimination of institutionalised censorship, replacing licensing of the press with registration and privatisation. Policy approaches usually favoured the idea of a diverse press system as a robust market absorbing an unprecedented number of eager new entities. New or amended national press laws since the 1990s have therefore not addressed structural media pluralism, particularly issues of ownership concentration or mergers, most commonly relying on general competition rules. In addition, most countries of the region (except Poland), did not introduce a regulatory and legal basis for press privatisation that would allow differentiated forms of ownership, or subsidies designed to benefit, for example, small community or local newspapers (Klimkiewicz, 2014). Thus, no instruments beyond general competition rules were available to tackle the mergers and acquisitions that quickly followed that initial proliferation of press outlets. As a result, media pluralism served mainly as a rationale for developing a press free market, supported by a widely shared conviction that deregulation would serve the public interest.

In the case of broadcasting, more complex forms of regulation were designed in order to establish a dual system of public and private broadcasters, supplemented by some forms of support for community or social broadcasters. The broadcasting laws adopted in the 1990s, and often updated or replaced by new acts, stipulated to varying degrees the protection or promotion of media pluralism. These legal provisions have defined ownership conditions for licence holders or applicants, or required some forms of ownership and financial transparency. They also introduced 'must carry' rules and preferential treatment

of community, minority, or social broadcasters, and, in some cases, cross-media ownership rules in addition. In general, media pluralism was conceived as a goal to be achieved through licensing policies and spectrum allocation, with media regulatory agencies given the primary role in this process. However, these normative expectations met practical flaws, in particular: insufficient independence of media regulatory authorities both from political forces and economic interests; lack of political vision and will to fully adopt a model of sustainable public service media (PSM); and minimal incentives to help community and minority media to thrive.

Since the mid-1980s, media pluralism has been promoted as a policy model by international institutions as well, though with different understandings of how plurality and diversity might evolve from exogenous policy models. The US model favoured extensive media deregulation with a primary focus on privatisation and liberalisation of audiovisual media markets. On the other hand, the European model, promoted through the Council of Europe and the European Union, foresaw the 'cultural' protection of European audiovisual works and public support for PSM. Media pluralism has also been recognised as a normative expectation during the fifth EU enlargement, continuing to define media policy discourse in the post-accession period, with CEE-specific problems resonating in various EU policy documents.

The new policy conditions

With EU accession and subsequent enforcement of the AVMS Directive in 2007 (European Parliament and the Council, 2010), new media policy conditions emerged in CEE countries. Insufficient capacities of the media regulatory bodies, political pressures and communications deficits led to delays in the implementation of the Directive in the case of Poland and Slovakia (in Poland at the end of 2012 and Slovakia at the beginning of 2013), while in the case of Hungary concerns were raised by the Commission about the political control over the National Media and Communications Authority established by media laws passed in 2010. While the Directive does not include direct measures in relation to media pluralism, there are various direct and indirect references (for example, Recitals 5, 8, 34 and 94). As it stands, the Directive does not impose any form of media pluralism measurement or monitoring by member states, but creates a context for interpretation of other provisions such as content.

Recognition of pluralism in CEE media policies can therefore be seen as a cumulative exercise, manifested in amendments to the initial media

or broadcasting laws as well as new legislation implementing the AVMS Directive. In general, media pluralism provisions can be divided into three large categories:

- general recognition of media pluralism as an important value justifying regulatory decisions
- pluralism provisions concerning content and services
- structural pluralism provisions.

Each of these is described in the following sections.

Media pluralism as a general regulatory value

There is general recognition of media pluralism as an important value underlying regulatory decisions. As can be seen from the table below, the regulatory rationales for pluralism might be expressed in many different ways (Table 12.1).

Crucially, media diversity is recognised as a fundamental principle in the 2010 Hungarian Act on Media Services and Mass Media.² The Act not only acknowledges the particularly important value of the ‘diversity of media services’, it also suggests that all provisions of the Act will be interpreted in terms of protection of diversity. The Act refers to ‘the avoidance of the formation of ownership monopolies and any unjustified restriction of competition on the market’, but suggests that other aspects of diversity are included as well. Without a more precise definition of ‘diversity of media services’, the concept remains ambiguous and therefore leaves some interpretive discretion to the National Media and Communications Authority (NMHH) for the purpose of regulatory intervention.

In the case of other countries (the Czech Republic, Poland, Slovakia), media pluralism is seen as a possible end of regulatory policies and a concrete task of the national media regulatory authorities. This task though is framed quite differently. In the Czech Republic, the Council is expected to cater for ‘plurality in the programme portfolio and information offered’, which emphasises the connectedness between structural decisions on licensing with the ‘internal dimension’ of a variety of programmes. In Poland, the Council must ensure the ‘open and pluralistic nature’ of broadcasting, which affords considerable discretion in how this might be interpreted through content, genre, ownership, function etc. In Slovakia, the Council is expected to take care of maintaining ‘plurality of information in news services’ of broadcasters, thus relating plurality more narrowly to news and current affairs content.

Table 12.1 General recognition of media pluralism as a regulatory rationale in national media and broadcasting laws in Czech Republic, Hungary, Poland, and Slovakia

Country	Type of provision	Provisions concerning media pluralism	Legal basis
Czech Republic	*Task of the Council (RRTV)	Section 4 (2) ‘The Council ... supervises the maintaining and further development of plurality in the programme portfolio and information offered in the field of radio and television broadcasting ...’	Act No. 231/2001 of 17 May 2001 on Radio and Television Broadcasting and on Amendment to Other Acts
Hungary	*Recognition of diversity as a fundamental principle	Article 4 ‘The diversity of media services is a particularly important value. The protection of diversity shall also include the avoidance of the formation of ownership monopolies and any unjustified restriction of competition on the market. The provisions of this Act shall be interpreted in consideration of the protection of diversity.’	Act CLXXXV of 2010 on Media Services and Mass Media, as amended
Poland	*Task of the Council (KRRT)	Article 6 (1) KRRT shall ‘... ensure an open and pluralistic nature of radio and television broadcasting’.	1992 Broadcasting Act adopted on 29 December 1992, as amended
Slovakia	*Task of the Council (RRTV)	Article 4 (2) The Council undertakes to maintain plurality of information in news services of broadcasters.	Act No 308 of 14 September 2000 Coll. ¹ On Broadcasting and Retransmission (as amended)

Sources: Derived from respective national broadcasting laws in the Czech Republic, Hungary, Poland, and Slovakia. See also: Klimkiewicz (2014).

¹The abbreviation Coll. is widely used in the English translations of Slovak and Czech laws, derived from the Slovak name for the Official Journal – Collection of Laws.

Media pluralism as a content value

Pluralism provisions concerning content and services are based on the premise that various viewpoints, opinions and cultural expressions are to be represented in the programming offer or services of media providers (Table 12.2).

As the table demonstrates, broadcasters in Hungary with significant market power are obliged to broadcast news programmes, which are seen as an important contribution to supply diversity. In Slovakia, broadcasters are expected to ensure diverse programming output in contents and services that are of vital public interest. Both obligations stem from an assumption that news and public interest content might be under-represented by broadcasters without preventative regulatory safeguards.

In media regulatory policy, the premise of balanced news and information has often been associated with internal diversity (for example, America's fairness doctrine). In journalistic practice, however, a mere technical confrontation of opposing views and claims does not necessarily generate valuable internal diversity. Article 13 of the 2010 Hungarian Act on Freedom of the Press and the Fundamental Rules on Media Content³ obliges linear media services engaged in the provision of information to provide balanced coverage. This provision in its former wording raised many objections from various international organisations, including the Council of Europe, OSCE, European Parliament and the Commission, because of the considerable discretion allowed to the regulatory agency. When Hungary adopted its new media laws in 2010, including the Press and Media Act⁴ and the Mass Media Act,⁵ critics emphasised three points: first, that the system for media content regulation (including internet and ICT media content) reaches beyond the needs of a democratic system of social communication; second, that a highly centralised and politically controlled regulatory institution and regulatory system may have a seriously chilling effect on media freedom and independence (OSCE, 2010, pp. 5–6); and third, that a provision on the requirement of 'balanced reporting' might lead to the abuse of regulatory power, a concern which arose directly from the powers granted to the regulatory agency. A very similar measure applies to all broadcasters under the 2001 Czech Act on Radio and Television Broadcasting⁶ that obliges broadcasters to 'provide objective and balanced information necessary for opinions to be freely formed' and to ensure that 'principles of objectivity and balance are complied with in news and political programme units'.

Table 12.2 Pluralism measures concerning content and services in national media and broadcasting laws in Czech Republic, Hungary, Poland, and Slovakia

Country	Type of provision	Provisions concerning internal media pluralism	Legal basis
Czech Republic	*Provisions on balanced news	Section 31 (2) 'A broadcaster shall provide objective and balanced information necessary for opinions to be freely formed. ...'	Act No. 231/2001 of 17 May 2001 on Radio and Television Broadcasting and on Amendment to Other Acts
	*Conditions in licence-granting process	Section 31 (3) 'A broadcaster shall ensure that principles of objectivity and balance are complied within news and political programme units. ...'	
Hungary	*Provisions on balanced news	Section 17 (1) The programme structure proposed by the licence applicant is to be assessed with regards to existing diversity of programmes.	Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content as amended
	*News provision	Article 13 'Linear media services engaged in the provision of information shall provide balanced coverage on local, national and European issues that may be of interest for the general public ...' Article 38 (1) An obligation to broadcast news by linear audiovisual media service providers with significant market power.	

(continued)

Table 12.2 Continued

Country	Type of provision	Provisions concerning internal media pluralism	Legal basis
Slovakia	*Diversity of News provision	Article 16 (3) 'A broadcaster should ensure comprehensiveness of information and plurality of views in broadcasting its service.'	Act No 308 of 14 September 2000 Coll. On Broadcasting and Retransmission (as amended)
	*Public interest provision	Article 18 (1) "A broadcaster is obliged to ensure a diverse programming output, especially with regard to a majority proportion of programmes in the public interest ..."	
	*Conditions in licence-granting and extending process	Article 47 (d) A balance of programming output is taken into account in decisions about licence granting. Article 52 (3) Contribution to the cultural development and the well-informed public, as well as the development of original production, is taken into account in the process of extending the licence term.	

Sources: National media and broadcasting laws in the Czech Republic, Hungary, Poland, and Slovakia. See also Klimkiewicz (2014).
Note: The table does not cover the specific content rules for PSM, nor content rules on European and national works discussed in the section below, nor content rules not directly relevant for internal media pluralism.¹
 Poland has not been included in the table as the relevant internal pluralism provisions are only reflected in Article 36 (1) (4) of the 1992 Broadcasting Act, and these refer to the proportion of European works.

Protection of European and national works

In addition to content rules designed to stimulate viewpoint diversity, content measures which contribute to cultural diversity are integral to internal pluralism. European quotas constitute a key element of the AVMS Directive, and are a protective measure designed to ensure an appropriate proportion of European and national material. Apart from the Czech Republic, all Central European countries introduced provisions on European works in their media or broadcasting laws before the formal start of pre-accession monitoring in 1997, and all CEE countries currently have national or broadcasting laws with provisions for protecting European works. Figures from AVMSD implementation reports, however (European Commission, 2008; 2012a; 2012b; 2012c), suggest there is some variation in implementation. Between 2005 and 2010, two countries – Slovakia and Hungary – witnessed a growth of transmission time devoted to European works, while Poland experienced a slight drop and the Czech Republic a more significant decrease. All CEE countries demonstrated a higher share than the EU average in 2009, and only the Czech Republic displayed a lower share in 2010 (58.1%). The high and relatively stable share of European works, especially in Poland and Hungary (around 75–80%), suggests that a significant proportion of audiovisual production originates in the EU countries (European Commission, 2008; 2012a; 2012b; 2012c).

Media pluralism as a desired structural condition

The relevance of policies stimulating or protecting structural media pluralism derives from an assumption that structural diversity is closely related to performance diversity, and will therefore guarantee or, at least, foster the production of diverse information (Voltmer, 2000, p. 5). In addition to content and performance-related aspects of structural pluralism, there is the rationale of controlling media power. Given its antecedents, it is perhaps understandable that structural regulation generates the most complex policy approaches to media pluralism, because it attempts to engineer the whole environment within which media as institutions operate (Hitchens, 2006, p. 65).

While policy debates continue, a range of more or less successful policies has been implemented recently in a number of countries, mainly to measure and monitor media pluralism. None of the CEE countries has so far followed that trend, although the protection of structural media pluralism has taken a variety of hybrid forms. The table below summarises these provisions in the Czech Republic, Hungary, Poland, and Slovakia (Table 12.3).

Table 12.3 Structural pluralism measures in national media or broadcasting laws in Czech Republic, Hungary, Poland, and Slovakia

Country	Type of provision	Provisions concerning external and structural media pluralism	Legal basis
Czech Republic	*Cross-media ownership and concentration	Sections 55, 55a One licence only rule for nationwide analogue or digital TV or radio broadcasting; limits on ownership interests and consolidation. Section 56, 57 Limits on the audience reach of local and regional TV and radio broadcasters, and programme networks. Section 58 Obligatory pre-consolidation notification of broadcasters and rebroadcasters; definition of a substantial influence.	Act No. 231/2001 of 17 May 2001 on Radio and Television Broadcasting and on Amendment to Other Acts
	*Must-carry rules	Section 54 Must-carry rules to offer one local channel. Must-carry rules to offer PSM.	
	*Media transparency	Section 17(1) The transparency of ownership taken into account in the licence-granting process by the Council.	
Hungary	*Cross-media ownership, concentration, and excessive control	Article 68 Setting the threshold of 35% of an average audience annual share for linear media-service providers and 40 per cent of a joint audience share for linear radio and media-service providers. Article 69 Definition of media-service providers with significant market power. Article 70	Act CLXXXV of 2010 on Media Services and Mass Media, as amended.

- Procedures preventing media market concentration and identifying media-service providers with significant power.
Article 71
- Rules governing media-service providers of analogue media linear services.
Article 64 (1)
- Rules on connecting to a network, expansion of the reception area.
Article 72
- Thresholds on the number of media services distributed on the given transmission system.
- *Must-carry rules**
- Article 73
Must-carry obligations.
Article 74
Media-service distributors obliged to carry media services of the PSM free of charge.
Article 75
Media-service distributors obliged to contract regional or local audiovisual community media services.
Article 78
Rules on the obligation to offer media services.
Article 66 (1)
Definition of linear community services, the procedure of recognition.
Article 136
Rules on the operation of a Media Service Support and Asset Management Fund, established to promote and support public service and community-media services.
Article 137
Forms of support and conditions of tendering overseen by the Media Council.
- *Rules on community media**

(continued)

Table 12.3 Continued

Country	Type of provision	Provisions concerning external and structural media pluralism	Legal basis
	*Media transparency	Article 41 Rules on general notification applicable to providers of media services. Article 41(6) rules on public access to the data collected in the registers Article 42 rules on media transparency (including ownership data) applicable to providers of linear services	
Poland	*Media ownership and concentration	Article 36 (2) No award of licences to applicants that may achieve a dominant position. Article 38 (2) Revoking a licence if a broadcaster achieves a dominant position or ownership or control changes without approval. Article 38a(3) Assessment of merger cases in terms of transferring licence rights to transformed entities.	1992 Broadcasting Act adopted on 29 December 1992, as amended
	*Must-carry rules	Article 43 Must-carry rules for the PSM.	
	*Rules on social broadcasters	Article 4 (10) Definition of a social broadcaster. Article 39b Entities eligible for the status of social broadcasters; exemption of social broadcasters from fees payable for awarding or altering the licence.	

*Media transparency	Article 37a Media-service providers required to deliver financial statements to the Council on an annual basis.	
*Cross-media ownership and concentration	Article 42 (1) The publisher of a national daily newspaper cannot hold a licence for national or multi-regional broadcasting. Article 42 (2) A physical or legal entity can have ownership share only in one broadcaster with a national or multi-regional coverage. Article 42 (3) A physical or legal entity can have ownership share in more broadcasters with local or regional coverage but target audience cannot exceed 50% of all inhabitants. Article 43 The TV or radio broadcaster cannot have ownership shares in, or be the publisher of, a nationally distributed daily newspaper.	Act No 308 of 14 September 2000 Coll. On Broadcasting and Retransmission, as amended
*Must-carry rules	Article 17(1) Must-carry rules (e.g. for carrying at least one locally oriented channel).	
*Media transparency	Article 52 (3) Media ownership transparency is taken into account in the process of extending the licence term, as well as the contribution to the development of a media market. Article 54 The Council may withdraw a licence due to substantial ownership changes without prior notification.	

Sources: derived from national media and broadcasting laws in the Czech Republic, Hungary, Poland, and Slovakia. See also Klimkiewicz (2014).
Note: Structural rules concerning PSM only have not been included in the table with the exception of must-carry rules.

The table above demonstrates that measures incorporated into national media and broadcasting laws in the CEE countries can be divided into four groups. The largest of those relates to ownership rules which are designed to limit media power and to control dominant players in broadcasting markets. These are examined in some detail before dealing briefly with the three other types.

Media ownership rules

Rachel Craufurd Smith et al. (2012, p. 12) point out that ‘the greater the degree of sophistication and discretion involved, the greater the likelihood of uncertainty for industry and “agency capture”’. The most effective method of avoiding such uncertainty is through fixed ownership limits. Among the countries studied, only Hungary introduced specific ownership thresholds, in addition to competition law and policy.⁷ However, in comparison with the former Act I of 1996 on Radio and Television which was in force until 2010, the scope of cross-ownership limitations has reduced. It is important to add in this respect that, unlike the Czech Republic, Poland, and Slovakia, the Media Council (Médiatanács) of the NMHH is authorised to monitor media market concentration, distortions of media markets, and abuses of dominant position. Measurement criteria mostly involve audience share.

The Czech Republic and Slovakia introduced limits on cross-media ownership, setting a restriction on the number of operating licences. Under Czech broadcasting law, a broadcaster can hold only one licence for a nationwide analogue or digital TV or radio. The law also prevents cross-ownership between the operator of an electronic communications network and the holder of a broadcasting licence.⁸ At the same time, there are no restrictions on cross-media ownership involving print and broadcasting sectors (OSF, 2013, p. 62). In Slovakia, the rule of granting one licence only to a broadcaster of a national or multi-regional TV or radio station is paired with limits on cross-ownership pertaining to eventual mergers or cross-ownership between broadcasters and publishers ‘of a daily newspaper distributed in at least 50 per cent of Slovak territory’.⁹

In comparison with other CEE countries, Poland seems to employ the most relaxed rules on cross-media ownership and concentration. In fact, the 1992 Broadcasting Act¹⁰ limits only mono-media or horizontal concentration.¹¹ A broadcasting licence may not be awarded if transmission of a programme service by the applicant results in a dominant position in a given area. A broadcasting licence may be revoked on the

same grounds. Yet, the Broadcasting Act does not explicitly define 'a dominant position in the mass media in a given area'. It is the Act on Competition and Consumer Protection¹² which provides for an interpretation of dominance.

Craufurd Smith et al. (2012, p. 13) note that companies that attract more than 30 per cent of the television audience are presumed to exert too great an influence on public opinion. National thresholds established in the CEE countries surpass this limit, suggesting that those specific ownership rules that exist are more permissive than those imposed in many other EU countries. Moreover, existing regulatory regimes seem to support the broadcasting status quo which emerged during the first licence-granting processes from 1993–96.

Dominant media power is not only defined by quantitative market measurement. Structural limits such as those described above are designed to restrict the kind of dominance that is perhaps associated with owners defined by Katrin Voltmer as profit-seeking and largely concerned with economic profits (2013, p. 168). Yet, two other types of owners might be identified, whose media power and influence are not targeted by the structural measures discussed above. One group includes what Voltmer describes as policy-seeking owners who exploit their media outlets to promote a particular political idea or party, occasionally even when this runs counter to their own economic interests (Voltmer, 2013, p. 168). In practice, some policy-seeking owners act with discretion, others articulate their political endorsements more blatantly. This category includes media owned by foundations or private individuals under the strong control or influence of political parties or movements, such as the Hungarian daily newspapers with various political orientations including the right-wing daily *Magyar Nemzet*, which supports the Fidesz Party.

The other group is defined as warranty-seeking owners who aspire to establish or buy media outlets in order to influence political decisions in respect of other businesses they control, to further their own economic interests (Klimkiewicz, 2014). One of several examples is the recent acquisition by the Penta financial group of a 45 per cent stake in Slovak Petit Press (the publisher of leading daily *Sme*). The controversy about Penta's entry into the media market is connected with the 'Gorila' corruption scandal which exploded in 2011 and 2012 in Slovakia, when Tom Nicholson (an investigative journalist co-operating formerly with *Sme*) exposed privatisation deals and intricate links between Slovak business and politics in his book *Gorila* (Nicholson, 2012).

Other structural rules

Apart from media ownership rules, three other categories of structural media controls are relevant. The first concerns specific media types financed from non-commercial sources, recognised as 'community media' in Hungary and 'social broadcasters' in Poland. The Hungarian 2010 Act on Media Services and Mass Media defines community media as services provided to satisfy special information needs and to enable access to cultural programmes for particular social, national, cultural, or religious communities, or for residents of a given settlement or region.¹³ They are eligible for funding from the Media Service Support and Asset Management Fund. In Poland, the 1992 Broadcasting Act exempts social broadcasters from fees payable for awarding or altering the licence. A social broadcaster is defined as one which promotes learning and educational activities, charitable deeds, respects a Christian system of values, and strives to preserve national identity in programme services.¹⁴

Second, must-carry rules were introduced in national media and broadcasting laws in all CEE countries covered above, often in combination with digital or digital switch-over Acts. These usually stipulate an obligation to carry public service channels and locally oriented channels. And third are provisions for media transparency that can be seen as an essential component of structural media pluralism. Stolte and Craufurd Smith (2010) note that availability of accurate and up-to-date data on media ownership lies at the very heart of any media pluralism regulation, as a prerequisite for placing limitations on excessive media concentrations. There is also an important public dimension: not only should regulators and relevant public agencies have mandatory access to relevant ownership data, but media users should be able to know who owns the media they use. A transparency mandate would oblige media companies to publicly disclose and share relevant ownership data in a clear, easily accessible and free-of-charge form. As the third table demonstrates, media transparency rules in the CEE countries seem rather limited. Mostly they refer to obligations in terms of informing regulatory authorities (rather than the general public) about broadcasters' ownership, subsequent changes, the current financial situation, and any planned mergers or acquisitions.

Conclusions: how to cope with complexity?

In the CEE countries, equating *principles* of media pluralism with *measures* to achieve media pluralism has produced varied results. In

policy terms, CEE broadcasting and media laws generally recognise the importance of media pluralism. Particularly in Hungary, the pursuit of media diversity is acknowledged as essential in interpreting the whole framework of media law. In terms of pluralism measures around content and services, Hungary and the Czech Republic introduced provisions on balanced news which, in the case of Hungary, provoked widespread criticism from international organisations.

Most structural pluralism measures are reactive in their character and relatively permissive, especially in respect of media ownership policies and consolidation. The Czech Republic and Slovakia introduced limits on cross-media ownership, setting a restriction on the numbers of operating licences. In Hungary, the cross-media ownership rules were relaxed in 2010, but concurrently the Media Council was equipped with a stronger competence to decide on matters of media concentration. By comparison, Poland seems to employ the most permissive rules on regulation of ownership and concentration. Interestingly, structural pluralism measures tackling ownership focus mainly on economic power, leaving other types of power (e.g. political) outside the scope of possible regulation.

This variety of responses to media pluralism policies suggests that emerging regulatory choices and frameworks have been rooted in the right questions, centred on communication needs rather than a pure market philosophy. What do we expect from remedies that are underpinned by the need for media diversity? Is it increased choice of media services for consumers, as seen from the media market perspective? Or is it the creation of a media environment free of dominant media power being exerted by a limited number of actors for their own economic or political benefits? Who should be the primary beneficiaries of media pluralism: consumers, citizens, or media users? Media pluralism is directly linked with communication needs that cannot be conceived only in economic and commercial terms. Thus, the crucial issue for policymaking is to avoid confusing ends and means; the ends should ultimately determine the means, and not be adjusted to the most available and most convenient means.

This also impacts the setting of priorities: critics of preventative measures claim that ex-ante actions can put media companies at risk, unduly penalise innovation and competitiveness, and could even lead to immediate divestment (Schlosberg, 2013, p. 5). Such arguments are even more convincing in media environments that experienced profound and radical transformation in a compressed period of time, as in all CEE countries. On the other hand, organic growth can be just as

damaging to the public interest (Craufurd Smith et al., 2012, p. 19). The demand side of media pluralism necessarily points to an involvement and empowerment of media users through media literacy initiatives, especially since users are often challenged by fast-changing markets (Tambini, 2011, p. 11). In this sense, a more comprehensive and serious approach to understanding and measuring exposure diversity could pave the way for more robust and coherent pluralism policies.

Notes

1. This chapter focuses on four CEE countries: Czech Republic, Hungary, Poland, and Slovakia.
2. Act CLXXXV of 2010 on Media Services and Mass Media published on 31 December 2010 in *Magyar Közlöny* (Official Journal) and amended in March 2011.
3. Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content published on 9 November in *Magyar Közlöny* (Official Journal) 2010 and amended in March 2011. The Act has been notoriously referred as the 'Press Freedom Act', although the official translation of the Act establishes the abbreviated version: Press and Media Act.
4. Act CIV of 2010 on the Freedom of the Press.
5. Act CLXXXV of 2010 on Media Services and Mass Media.
6. Act No. 231/2001 of 17 May 2001 on Radio and Television Broadcasting and on Amendment to Other Acts, Section 31 (2), <http://www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf> (accessed 5 November 2013).
7. Act CLXXXV of 2010 on Media Services and Mass Media
8. Act No. 231/2001 of 17 May 2001 on Radio and Television Broadcasting.
9. Act No 308 of 14 September 2000 Coll. On Broadcasting
10. The 1992 Broadcasting Act adopted on 29 December 1992.
11. Mono-media or horizontal-media concentration refer to integration of capital or ownership within a single media-sector activity such as the print press, TV broadcasting, online news, etc.
12. Act on Competition and Consumer Protection adopted on 15 December 2000, *Official Gazette* No 122, item 1319, 2000, as amended.
13. Act CLXXXV of 2010 on Media Services and Mass Media, Article 66.
14. 1992 Broadcasting Act Article 4(1).

References

- Arendt, Hannah (1958) *The Human Condition*. Chicago and London: The University of Chicago Press.
- Craufurd Smith, Rachael, Tambini, Damian, and Morisi, Davide (2012) 'Regulating media plurality and media power in the 21st century', Media Policy Brief no. 7: <http://www.lse.ac.uk/media@lse/documents/MPP/Policy-Brief-7-Media-Pluralism.pdf>, date accessed 7 December 2013.

- European Commission (2008) Commission staff working document – Accompanying document to the communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions: Eight communication on the application of Articles 4 and 5 of the Directive 89/552/EEC ‘Television without frontiers’, as amended by Directive 97/36/EC, for the period 2005–2006. 22 July 2008. SEC (2008) 2310.
- European Commission (2012a) Audiovisual media services and connected devices: Past and future perspectives. First report from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions on the application of directive 2010/13/EU ‘audiovisual media service directive’. 4 May 2012. COM (2012) 203 final.
- European Commission (2012b) Promotion of European works in EU scheduled and on-demand audiovisual media services. Report from the commission to the European parliament, the council, the European economic and social committee and the committee of the regions: First report on the application of articles 13, 16 and 17 of Directive 2010/13/EU for the period 2009–2010. 24 September 2012. COM(2012) 522 final.
- European Commission (2012c) Commission staff working document: Promotion of European works in EU scheduled and on-demand audiovisual media services – PART II – on the application of Articles 16 and 17 of Directive 2010/13/EU for the period 2009–2010. 24 September 2012. SWD (2012) 269 final.
- European Parliament and the Council (2010) Directive 2010/13/EU of the European parliament and the council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version). O.J. 15 April 2010 L 95/1–24.
- Hitchens, Lesley (2006) *Broadcasting Pluralism and Diversity: A Comparative Study of Policy and Regulation*. Oxford: Hart Publishing.
- Klimkiewicz, Beata (2014) *A Polyvalent Media Policy in the Enlarged Europe*. Krakow: Jagiellonian University Press.
- Nicholson, Tom (2012) *Gorila*. Bratislava: Vydavateľstvo Dixit.
- Open Society Foundations (OSF) (2013a) ‘Mapping digital media: Czech republic,’ available at: <http://www.opensocietyfoundations.org/projects/mapping-digital-media>, date accessed 20 August 2014.
- OSCE (2010) ‘Analysis and assessment of a package of Hungarian legislation and draft legislation on media and telecommunications’: <http://www.osce.org/fom/71218>, date accessed 11 October 2014.
- Schlosberg, Justin (2013) ‘Modelling media ownership limits: The impact of current policy proposals on the UK media market’, *Media Policy Brief 10*. LSE Media Policy Project: <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-10-Modelling-media-ownership-limits.pdf>, date accessed 20 August 2014
- Schulz, Winfried (2004) ‘Reconstructing mediatization as an analytical concept’, *European Journal of Communication*, 19(1), 87–101.
- Stolte, Yolande and Craufurd Smith, Rachel (2010) ‘The European union and media ownership transparency: The scope for regulatory intervention’, Open Society Media Programme, London: <http://mediapolicy.org/>

wp-content/uploads/the-european-union-media-ownership-transparency.pdf, date accessed 11 December 2013.

Tambini, Damian (2011) 'Reforming consumer representation in UK communications' *Media Policy Brief 4*: <http://www.lse.ac.uk/media@lse/documents/MPP/LSEMPPBrief4.pdf> (accessed 5 January 2014).

Voltmer, Katrin (2000) Structures of diversity of press and broadcasting systems: The institutional context of public communication in Western democracies. Discussion Paper FS III 00-201. Wissenschaftszentrum Berlin für Sozialforschung (WZB).

Voltmer, Katrin (2013) *The Media in Transitional Democracies*. Cambridge: Polity Press.

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