

# **CPBF Submission to House of Lords Select Committee on Communications Consultation on Media Convergence and its Public Policy Impact (September 2012)**

## **ABOUT THE CPBF**

1. The Campaign for Press and Broadcasting Freedom (CPBF) is a leading independent organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership-based, drawing its support from individuals, trade unions, cultural and civil society organisations. Since it was established, the CPBF has consistently advocated policies designed to encourage a more pluralistic media, and has regularly intervened in public and political debates over the future of media across the United Kingdom.

## **SUMMARY**

### **2. Media Plurality and ownership regulation**

**The CPBF proposes that the 'Public Interest' (PI) test, established by the Communications Act 2003, should be revised and extended.** We regard the test as one important means of helping to secure media pluralism across converging media, and extend PI obligations to commercial media firms that have a significant reach and influence.

**3. Strong cross-ownership rules are needed with clear ceilings on the share across media markets.** Any supplier with a 15 per cent share in a designated media market should be subject to a PI test in respect of any merger or acquisition in the same or another media market. Ownership concentration and cross-ownership above the 15% threshold may be permitted subject to organisations meeting certain public interest obligations in their operation. The maximum permitted holding in any of the following designated market should be 30% (national news; regional news on all platforms and in each of the following platforms - radio, television, newspapers, online).

**4. Media content and standards.** We do not favour a single regulator for all content. We favour an overhaul of the communications regulator Ofcom. Ofcom's remit needs to be drastically changed to make it a democratically accountable body, and to redefine its primary job as the promotion of the public interest in communications into the converged digital future. In addition, we propose the creation of a separate body, a Media Standards and Freedom Council (MRFC) established by statute. Its remit would not include media providers already regulated by Ofcom under the provisions of Communications legislation. Its **aims** should be:

- To foster high standards in the presentation of news and information in all forms
- To promote both the free dissemination of news and information in the public interest, and professional and ethical standards.

**5. Media and Advertising.** The principles of transparency (marketing communications should be recognisable as such) and separation (editorial and marketing communications should be identifiably separated) should be sustained across convergent media to the fullest extent possible within UK communications regulation.

**6. The BBC.** The BBC is an essential component of UK broadcasting and should continue to be funded by the licence fee. It should continue to provide a full range of broadcast programmes and digital services. The BBC Trust should be abolished. A new democratically elected body should regulate the BBC and ensure that the BBC can provide a full range of public service programming on TV, radio and online and is protected from assaults by politicians and commercial interests.

## **MEDIA CONVERGENCE AND REGULATION**

7. Media convergence and digitalisation has involved significant shifts of power and control to consumers. The rise of social media, co-creation, interactivity and participation involve and enable shifts from top-down, one-to-many mass communications. Yet claims for digital empowerment become a dangerous myth if they are not accompanied by recognition of the continuing power and influence exercised by media owners, producers, advertisers, investors and others who affect the content and services made available. The basis for media and communications policy remains the same, to ensure that powerful interests are organised and regulated so that they serve the public interest.

8. Over the last two decades, commercial media interests have tended to be much stronger than societal interests in shaping policy and the communications environment in the UK. Regulation is needed to ensure that the interests and voices of users and all those affected by the quality, range and provision of communication services are heard, not only in market transactions but in democratic decisions concerning how and by whom communication services are provided. Regulation is required to ensure that media serve citizens and consumers.

9. Convergence processes, and the transnationalisation of media, do generate profound challenges for regulation and governance. However, liberalisation has been a political response, never merely an imperative arising from technological, industrial and market developments. Convergence has occurred during a period of

ascendency for neoliberal ideas that market mechanisms are sufficient and can supplant regulatory intervention. Successive governments have pursued a deregulatory approach to media ownership and the regulatory framework. This approach has failed citizens. From the scandals of corporate abuse laid before the Leveson Inquiry to the problems of media market concentration and control, old verities that market freedom is the best way to meet communication needs of society have been found wanting. Media convergence does not warrant the abandonment of public interest regulation, it requires it.

### **Convergence: definitions and processes**

10. Media convergence, the coming together of different technologies and industries to create new ways of producing, distributing and using cultural goods and services, began in earnest in the late 1980s, although the term was used in its modern sense from the 1950s. By 2005 convergent media devices and services were becoming incorporated into people's daily lives, reaching a majority of adults in advanced economies by 2010.

11. The term media convergence has been applied to a great range of processes and practices, but it is more fruitful to disassemble rather than merely conflate these. Technological convergence remains the most manifest dimension, but to understand the various components, and the issues that arise, the term needs unpacking. Murdock (2000) delineates three convergence processes: the convergence of cultural forms, as formerly distinct forms of expression like musical sounds, texts and images, can be combined and recomposed; the convergence of communication systems, as historically separate networks and platforms can start to carry the same kind of services; and the convergence of corporate ownership, as firms have sought to occupy lucrative positions right across the value chain linking content creation, production, distribution and retail of services. Others, including Garnham (1996) provide longer lists encompassing convergence across production, circulation and consumption, while the UK regulator, Ofcom (2006), identifies device convergence (accessing different services from the same device), billing convergence, and platform convergence. It is vital to keep in mind the range of convergence processes occurring within and across technology, industry, markets, media forms and genres, cultural practices and communications behaviour.

12. Many accounts of convergence are stagist, conceiving a transition from old traditional media to new 'digital' media. Media **consumption** patterns confound stagist accounts by showing the coexistence of rapid and radical shifts with relatively stable engagements with media, as measured by expenditure and time spent. Television is a prime example. Despite predictions that the rise of new media would lead to a decline in TV consumption,

television viewing increased in the decade 2000-2010 in the UK (Ofcom 2012a), and elsewhere. More viewers now access TV programmes via the Internet and mobile devices, as well as DVRs and games consoles for catch-up services. Globally, almost as many web users view online videos each day as watch TV (24%, compared with 27%). Multi-screening is a growing trend. Nevertheless, consumption patterns show the persistence and popularity of linear broadcasting viewing. The typical young adult in the US watched almost 137 hours of traditional TV per month, compared with 31 hours of time-shifted TV, in 2011 (Admap 2012). In the UK, average time spent viewing TV and listening to radio has remained fairly stable, despite the increased availability of other means of consuming media. According to BARB, UK adult viewing averaged 4.3 hours, with 25-34 year olds viewing 3.3 hours (Ofcom 2012a: 6).

**13. Media industries and production.** The Internet has been a hugely disruptive set of technologies. Many analysts view this as heralding fantastic opportunities not only for new services and new relationships between suppliers and users, but for a dramatic expansion in provision. The Internet, it has been argued, would create a more level playing field in which innovative newcomers would nimbly leapfrog over slothful incumbent firms because the advantages of the latter would diminish. There are powerful supporting examples of innovation from enterprises such as Google, Amazon, Tencent and Twitter. Yet the presumption that new conditions would generally favour market entrants over incumbents has been wide of the mark. There is clearly too much diversity to reduce this to any simple pattern but understanding some of the reasons why established media businesses have tended to prevail is a vital corrective to earlier claims, such as Negroponete's (1995: 57) that established big media would dissolve into an array of cottage industries.

14. Accounts of the radical transformation of media markets have presumed that the technology would shake up existing suppliers. A new digital economy would 'kill scarcity and create opportunities in abundance' (Jarvis 2009: 59). This 'new economy' thesis failed to take adequate account of the continuing economic advantage of corporate size and reach (Curran, Fenton and Freedman 2012). Digitalisation has involved a very significant cascade of challenges and risks for media businesses but also opportunities and ways of capitalising on strengths. Existing media firms have had advantages of available content, established brand identities, developed markets and consumer relationships and sunk investments in infrastructure and know-how. Large corporations have had the benefits of financial resources, bigger budgets and greater access to capital than small companies. Big companies can enjoy greater economies of scale, reducing the unit costs of production. Another important benefit for multimedia conglomerates has been

economies of scope where activities in one area can lead to savings in another. Producing content that can be repurposed in other forms, with the efficiency benefits of shared costs, and shared marketing is an integral feature of contemporary media production and distribution.

15. In Chris Anderson's (2009) influential analysis, the Internet enables a wider inventory of goods to reach small, niche markets in place of the winner-takes-all strategies and advantages of large firms. Applied to media goods, the 'blockbuster' strategy that dominated in the mass media era can be challenged by a 'long tail' of niche provision, ushering in a new era of cultural diversity. There is plausibility and evidence for the long tail thesis; it fits the growth of online retailing well and the massive expansion of a digitalised back catalogue of content such as music that would until recently have been much less available. However there are various flaws in the account when applied across the media. It underestimates the persistence and effectiveness of blockbuster strategies. It downplays the vital role of marketing and branding in making content attractive and visible. Above all, it fits retail and certain kinds of media content well but '[t]alk about the long tail or narrowcasting is irrelevant to online markets where the barriers to entry remain high' (Hindman 2009: 100) and where there are high first-copy costs for content production such as newspapers, magazines, film entertainment and other expensive audiovisual products.

16. The impact of digitalisation on media industries, while profound, has been uneven. The notion that 'new media' has replaced 'old media' is true in some markets and sectors but is inaccurate and misleading when applied across the media as a whole. There are considerable advantages for large firms with market dominance in high costs content creation (regular professional news) and in distribution and retail. While markets are volatile there are advantages for vertically integrated companies over competitors and for those who can benefit from factors that help to lock in consumers (purchase, sunk investment, etc.) and from cross-promotion and other economies of synergy (Arsenault and Castells 2008). Some sectors such as news are threatened. This does create opportunities for new entrants but most are undercapitalized, or cross-subsidised. The trends, evident in the US, are likely to become more apparent in the UK. New is becoming a division within large multimedia corporations who are presiding over a disinvestment of resources in newsgathering, with profound consequences for democracy (Fenton 2009; Picard and McChesney 2011; Pew 2012).

17. The analysis above highlights the risk that, under the cover of claims of choice, participation and empowerment, pursuing liberalization risks communications systems

that combine features of digital diversity with high levels of concentration and control.

The traditional tools of media regulation have been structural (ownership; licencing); content and behavioural. All need continued revision and adaptation, but all remain necessary in our view. Media regulation is required to tackle concentrations of ownership and media power.

## **MEDIA PLURALITY**

18. Plurality matters. A healthy media culture should mean that there is a real range and diversity of voices, of creative expression, ideas, information and opinion. Such a plurality of voices, reflected in the media citizens use and consume, is necessary for democracy. But such a range of voices is also needed to foster understanding and dialogue. The widest possible range of creative expression is vital for social and cultural, as well as economic, enrichment.

19. In order to protect plurality it is essential that there is adequate recognition of the breadth of plurality concerns. UK regulation should reflect the Council of Europe (CoE)'s identification of media plurality as the scope for a wide range of social, political and cultural values, opinions, information and interests to find expression through the media. The CoE understands media pluralism to encompass 'the diversity of media supply, use and distribution, in relation to 1) ownership and control, 2) media types and genres, 3) political viewpoints, 4) cultural expressions and 5) local and regional interests' (European Commission 2009:5). Plurality concerns include:

1. Content variety and cultural diversity
2. Media access (social, cultural and economic access for individuals and groups in society, especially marginalized groups)
3. Independence of creators, programmers and journalists
4. Owner influence affecting media content and performance in entertainment, fiction and factual programmes as well as 'news'
5. Plurality of sources of funding for media

### **Media ownership and control**

20. Diversity of news provision is more likely to come from a plurality of types of news outlets, platforms and funding models as well as a diversity of news owners. There have always been anxieties over the ownership of the media because of its agenda-setting role. Media owners have, over time, been shown to influence the way their organisations present news and in turn have some bearing on public debate and political opinion. Owners can have an effect on news output through various means including, at times, direct intervention. More frequently, however, it is likely to be via

indirect means: through the appointment of like minded editors, emphasising particular business approaches, or by prioritising certain types of journalism. Owners can also influence the journalistic ethos of a news organisation and this can filter through to the processes of news production.

21. Despite the ownership regulations currently in place, a handful of owners in the national and regional press have a large market share allowing a disproportionate influence over the media agenda, public debate and political opinion.

*Market share of UK national daily newspapers (%) (1997-2009)*

<b>Title/ Company</b>	<b>1997</b>	<b>2001</b>	<b>2002</b>	<b>2008</b>	<b>2009</b>
News International	34.4	31.8	32.2	34.8	33.8
Trinity Mirror	23.9	21.0	20.2	15.6	16.2
Northern & Shell (formerly United Newspapers)	14.3	12.5	13.8	14.9	13.5
Daily Mail & General Trust	13.6	18.7	18.5	21.2	19.9
Telegraph Group	7.7	7.7	7.3	7.4	7.3
Pearson	1.3	3.8	3.5	4.0	4.1
Guardian Media Group	2.7	3.1	3.0	3.0	3.3
Independent Print Ltd	2.1	1.5	1.4	1.8	1.9

Source: Audit Bureau of Circulations

22. Richard Desmond's Northern and Shell, for instance, now owns Channel 5, four national newspapers, celebrity magazines such as OK! and Portland TV which runs 17 UK broadcast channels with carriage on Sky, Freeview, Virgin and BT Vision and includes adult channels such as Television X and Red Hot TV.

23. There has been a marked consolidation of newspaper ownership. Today, just four companies control over 72 per cent of the market. In commercial radio just four companies have an almost 80 per cent share of the market. The case advanced for such consolidation was that it would offer the prospect of substantial economies of scale and cost-efficient operation. Instead, according to the National Union of Journalists, the impact of consolidation on local newspapers and local radio has been a narrowing of the range and diversity of editorial voices and massive job cuts, sometimes driven by creating

regional hubs/newsrooms or subbing pools covering a number of titles.

24. Some argue that while 'legacy' publications remain under concentrated ownership, the growth of online publication means plurality concerns, and the case for intervention, has diminished. Yet, it would be wrong to draw the conclusion that the massively increased availability of content online diminishes concern about the sources and supply of news, or the share and reach of media companies operating across various platforms. As Ofcom (2010: 13) has highlighted, 'traditional media providers account for 10 of the top 15 online providers of news (eight newspaper groups plus the BBC and Sky), with the remainder predominantly being news aggregators rather than alternative sources of news. This suggests that today online news tends to extend the reach of established news providers as opposed to favouring the use of new outlets that are not present on traditional media'.

25. Britain's media ownership laws have been unfit for purpose for several decades. As Will Hutton (2010) explained in his seminal Observer article in September 2010, despite our long history of democracy, Britain is lagging behind. 'We impose no nationality requirement. We do not tightly police the share of a media market held by one proprietor, nor make demands about limiting owners' power to take ownership chunks across the media domains; we do not even care much about preventing market dominance. The assumption has been that lightly applied competition law, along with self-regulation, is all that is required, with little thought for any political and cultural consequences'.

### **Regulatory responses**

26. With the Leveson Inquiry report due and a new Communications Act pending, this is an important moment and historic opportunity to address the totality of communications regulation. The UK media system has high levels of concentration of ownership, bottlenecks and gateway control at key points across the press, TV, radio and online media markets. Current media ownership rules do not adequately protect pluralism. As Ofcom (2010: 15) highlighted in its review of the proposed News Corporation/BSkyB merger, once a merger is approved, 'there is no subsequent opportunity or mechanism to address...plurality concerns that may emerge in future'. Under the merger proposals, News Corp/BSkyB would have increased its reach amongst regular news consumers to 51 per cent. That level of market concentration contradicts the presumption that media ownership rules can be relaxed due to naturally occurring digital diversity. Strong *ex ante* powers are required to assess and where necessary prevent levels of concentration that would stifle innovation, domestic production, and choice and quality for viewers and users. We propose an approach that is democratic, flexible and

responsive to media plurality problems in the way media content services are organised and supplied across the UK.

## **REVISING THE PUBLIC INTEREST TEST**

**27. The CPBF proposes that the “Public Interest” (PI) test established by the Communications Act 2003**, should be revised and expanded. We regard the test as one important means of helping to secure media pluralism and extend PI obligations to commercial media firms that have a significant reach and influence.

**28. Strong cross-ownership rules are needed with clear ceilings on the share across media markets.** Any supplier with a 15 per cent share in a designated media market should be subject to a PI test in respect of any merger or acquisition in the same or another media market. Ownership concentration and cross-ownership above the 15% threshold may be permitted subject to organisations meeting certain public interest obligations in their practice. The maximum permitted holding in any of the following designated market should be 30% (national news; regional news on all platforms and in each of the following platforms - radio, television, newspapers, online).

**29. Ofcom should have concurrent powers to initiate the PI test rather than control resting exclusively with the Secretary of State.** The test could be applied in accordance with any of the following conditions:

- The passing of market share thresholds.
- In response to evidence of ‘significant public concern’
- Initiated by Ofcom or the Secretary of State when public interest considerations arise.

30. Determining media pluralism should involve a combination of quantitative measurement, qualitative assessment, democratic input and oversight. The PI test should be initiated principally on the basis of market share. However, we recommend a discretionary dimension that would allow the Secretary of State or Ofcom to initiate a PI test in accordance with criteria and processes established in law. Ofcom should be required to have regard for evidence of significant public concern and to initiate the test in response to such concern. Ofcom should be subject to periodic review by the Culture Select Committee on the operation of the test as part of a review of media plurality and regulation. We have set out our proposals in more detail in submissions to Ofcom ‘Measuring Plurality across Media (November 2011); the House of Commons Culture, Media and Sport Committee Inquiry into Media Pluralism (January 2012); submission to Leveson Inquiry, module 4.

## **Scope of public interest interventions**

31. Ofcom (2012b) proposes that reviews of plurality should be limited to news and current affairs considered across television, radio, the press and online. The PI test should not be limited to news markets alone nor to criteria solely concerned with news and information services. The existing PI test provides grounds for intervention in media mergers on behalf of considerations including

- Accurate presentation of news (newspapers).
- Free expression of opinion (newspapers).
- A sufficient plurality of persons controlling media enterprises serving an audience (broadcasting).
- The need for 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 (broadcasting).
- The need for persons carrying on media enterprises to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003 (Broadcasting).

32. This list needs to be expanded and updated for convergent media. Criteria for the PI test and remedies should include:

- source diversity
- content diversity
- freedom of expression (including protection for editorial freedom)
- transparency (disclosure)
- fair dealing
- adherence to standards (i.e. relevant self-regulatory codes; compliance with relevant rules and law)
- application of the fit and proper person test.

33. The scope to influence political opinion formation and public opinion makes the control of news and current affairs information and discussion the most important area of concern. However, as we have argued, media pluralism is much broader than this. It includes the diversity of content, share of voice and quality of access to ideas, information, imagery and opinions. The regulation of media plurality must not be restricted to news media but encompass all media services that are public facing and which provide content services to large aggregated audiences. This includes print, television, radio, and online content services. We believe that Ofcom should be required to include all such public media in assessing pluralism. Such assessment would need to include the totality of domestically produced programmes, and domestically-produced children's programmes, for instance, both of which have been acknowledged concerns for Ofcom in recent reports. It matters that children have access to UK national and regional programmes that can educate, entertain and inform them, and which reflect both cultural diversity and cultural proximity.

34. We argue that the public interest test should not be restricted to news, not only because of the need to embrace wider notions of cultural pluralism but also because this is the best way to safeguard plurality in news. If media plurality is shrunk to news it allows commercial media services to expand and consolidate relatively unchecked, but these services and their profit maximising dynamics increasingly impinge on the production and circulation of news.

### **35. Conditions and obligations**

**Firms may be permitted to operate up to a market share of 30% subject to meeting any conditions imposed by Ofcom or undertakings drawn up and agreed with the regulator.** No commercial entity would be permitted to have control above 30% in designated markets. A higher share would only be permitted where the supply was under public ownership and governance. Ofcom would have powers to safeguard public interest consideration by requiring divestment, above 15% market share, or other structural remedies, or by requiring behavioural conditions.

36. Public interest obligations (PIOs) would be applied

- to place specific structural or behavioural requirements on the activities of firms with a market share above 15%
- as a means of monitoring and enforcing adherence to broader standards of conduct, including codes of conduct
- as a broader agreed set of standards and requirements for media service providers in particular markets. For instance in news there might be obligations concerning investment in investigative journalism; in television services there might be obligations concerning investment in original programming.

37. The public interest test is not designed to restrict the size of publicly funded or publicly owned media. The BBC is publicly funded and has to meet requirements for pluralism and diversity. Channel Four is governed by a public trust and has explicit obligations for cultural diversity, pluralism and impartiality. The commercial PSBs, ITV and Channel Five have weaker public service obligations, and as commercially-funded organisations should be included in the calculation of market share thresholds for the PI test, but should also be granted special consideration as public service media.

38. There are other issues that policies for media plurality need to address. We have set out our proposals in responses to the Ofcom consultation on measuring media plurality and to the Culture, Media and Sport Committee Inquiry into Media Pluralism.

One important problem to remedy concerns **distribution**. The move from rail to road distribution and the dominance of the system by the major publishers make it difficult for smaller publications to have equal access to markets as their larger competitors. This is an issue that needs to be addressed in the interests of plurality and

equal access to markets. The French system, which guarantees distribution to smaller titles, is one that deserves careful consideration.

### **Democratic involvement**

39. Ofcom (2012b) objects to calls for greater democratic involvement in media plurality decisions by arguing that it could create 'perverse incentives among well-funded or organised campaigns to 'flood' the process, making it a costly process to organise and run'. We do not propose that any one organisation or co-ordinated campaign should exercise undue weight. It is also important to guard against astroturf campaigns (pseudo - grassroots campaigns) orchestrated by commercial operators which would bring the process into disrepute. However, we do not think it is difficult to assess 'significant public concern' based on evidence of such concerns expressed across civil society. The risk of abuse is a poor argument against facilitating greater democratic participation in media public interest decisions.

### **Measuring plurality**

40. Ofcom, in its response to the consultation on measuring media plurality, rejects any discretionary basis for a public interest review based on market share or any other metrics. Its principal objection is that this would result in a lack of 'lack of certainty to market players - since at any point in time it is possible that a change in market share by one player will trigger a review of the entire market, in a manner that may not be particularly transparent to the market as a whole'.

41. We agree these are important considerations but not that the system we propose lacks appropriate safeguards. Firms will be able to plan within the parameters of market thresholds and guidance, such as that which supports the existing public interest test. Changes arising from the market exit of other providers can be addressed by allowing a suitable period for firms to address public interest obligations. Predictability for business is an important criteria by which the public interest test should be measured and enforced, but it is the public interest that should be the overriding consideration for regulation.

42. The breadth of plurality concerns has implications for the measurement and assessment of plurality. No single form of measurement is adequate to capture the range of plurality concerns that arise. The recent *Independent Study on Indicators for Media Pluralism*, prepared for the European Commission by an international expert group, shows how varied are the measures applicable and how complex is the task of finding suitable indices. It is possible to start more simply. We advocate the use of ownership and market share measures to determine thresholds. The principal

measure should remain that of the number of persons controlling media in designated markets. The market share of suppliers in designated markets remains the second key measure for the purposes of identifying media concentration and cross ownership.

### **Regulatory proposals**

43. We favour the presumption that any provider of media and communications services meets core standards of public interest considerations. Such standards should be upheld by a combination of statutory regulation and self-regulation with statutory underpinning. Such a framework would combine general rules across all providers of public communication services reaching large aggregate audiences/service users. There should be safeguards against undue or inappropriate regulatory burdens on small-scale providers reaching small audiences or not providing sustained forms of public communication services and content.

### **National/international**

44. While there are problems of regulatory reach and enforcement across transnational media, the UK government should establish a benchmark for public communications subject to UK jurisdiction and should contribute to European and other supranational rules on media ownership and pluralism to supplement existing rules on media mergers and competition.

## **MEDIA STANDARDS AND REGULATION**

45. We do not favour a single regulator for all content. We favour an overhaul of the communications regulator Ofcom. We propose the creation of a separate body, a Media Standards and Freedom Council (MRFC) established by statute. Its remit would not include media providers already regulated by Ofcom under the provisions of Communications legislation.

46. Its **aims** should be:

- To foster high standards in the presentation of news and information in all forms
- To promote both the free dissemination of news and information in the public interest, and professional and ethical standards.

Its **duties** should be:

- To investigate and monitor matters relating to the freedom of expression, media standards, ownership and control in the industry and to report to Parliament on any matters it thinks appropriate to this end.
- To produce a code of ethical standards, which is applicable to the presentation of news and information across the media (other than those regulated by Communications legislation), in consultation with the media industry and the general public.

- To issue advice and guidance to the media and the public on matters relating to its responsibilities.
- To report annually to Parliament and consider any matter referred to it by either House of Parliament.
- To administer a public right to redress on matters relating to the application of its code of ethical standards.
- To maintain and publish detailed records of all its activities, including records of complaints mediated, and the progress and results of those taken further by the Council, calibrated closely to the provisions of the code of ethical standards.

Its **powers** should be:

- To assist members of the public in making a complaint to a media organisation under the Council's code of ethical practice, with a view to achieving resolution within 14 days of the complaint being laid before it.
- Where no resolution based on mediation is achieved to determine the question of whether there has been a breach of its code of ethical standards;
- Where it is satisfied that a complainant has established that there has been a breach, to order the publication to print an immediate acknowledgement online, and, where it considers appropriate, order a printed correction, retraction, clarification or apology in a section on the editorial page dedicated to the publication of responses to criticisms by readers. The wording will be agreed by the two parties with the council's ombudsman overseeing the process.
- Where an editor or publication does not comply with an order of the Council, to seek an order to enforce its ruling from the Courts of law; **or**
- Where the editor or publication is outside UK jurisdiction to order the relevant internet service provider(s) to suspend its distribution until the matter is resolved.

47. The Council will employ an **ombudsman** to receive complaints and handle the process of mediation. Its **membership** shall consist of representatives of

- media owners and editors (20%)
- media trade unions (20%)
- members of the public nominated by civil society organisations (50%)
- members of the public selected by a process of public application (10%) – or some similar proportions.

48. The **financing** of the Council must be separate from government, should not be a burden on the taxpayer and should be borne by the widest cross-section of the media industry according to ability to pay. We have described the Media Standards and Freedom

Council in more detail in our submission to the Leveson Inquiry Module 4.

## **MEDIA AND ADVERTISING**

49. There are two contrary but related trends that have profound consequences for convergent media, and for regulation: media and advertising integration, and media and advertising separation. The characteristic relationship of media and advertising in mid-20th century media was *integration with separation*. Advertising was integrated in the sense that it was physically combined with the media product. In newspapers and magazines, adverts appeared alongside editorial; in linear television, spot (or block) advertising appeared in designated breaks within or between programmes. While advertisers controlled their commercial communications, media firms controlled the editorial content, packaging and distribution of the ad-carrying media. There have always been opportunities and pressures to integrate but the principle of separation of media and advertising content was generally upheld by journalists, and by creative professionals in television, supported by managers, underpinned by self-regulatory codes of conduct in both media and advertising and subject to stronger statutory regulation in some sectors, such as UK broadcasting.

50. In both ad-dependent print media and television, there was an institutionalised effort to capture the benefits of advertising finance while protecting the quality, integrity and independence of media speech. This drew on a combination of values derived from democratic; consumer welfare; artistic and cultural concerns. Media and advertising should be separated to ensure that consumers know when they are in a selling environment, and to ensure that advertisers do not exercise undue influence over media content and provision.

51. Media and advertising integration is by no means a new phenomenon, having a long history across all media forms. Yet, arguably, the most profound change in the 21<sup>st</sup> century is that the commercial digital environment has brought increased pressures from marketers, met with increased accommodation by media. The emergent forms are *integration without separation*, but this coexists with trends towards disaggregation of media and advertising. While these trends are in some senses diametrically opposed, they both reflect a new shift towards marketer power in an era of increased competition for and dependence on advertising finance.

### **Media and advertising integration**

52. The traditional form of advertising via spots between programme segments has been the subject of intense discussion since the 1970s. Dire predictions of imminent collapse have been

confounded by a more gradual decline in spot advertising revenues, but they served a function in widespread industry lobbying for relaxations on the regulation of marketing communications on television. Marketers have pushed to extend marketing opportunities beyond designated advertising into programme surrounds (sponsorship) and into programmes themselves via advertiser-financed content, product placement and brand integration. Some have argued that integrating brand communications into media content is a necessary response to the declining effectiveness of spot advertising, a necessary means of financing audiovisual production and, with branding pervasive, '[i]t is inevitable, and even natural, that movie and broadcast entertainment scenes reflect this cultural reality' (Hackley 2010: 173). For critics, product placement permits brands to pay for presence in ways that can damage the editorial integrity and independence of information, the artistic integrity and autonomy of fiction and entertainment, and grants marketers an influence over content decisions that is damaging for media cultures and unhealthy for democracy (Hardy 2010).

### **Media and advertising disaggregation**

53. Like integration, disaggregation of media and advertising takes various forms with different consequences. The most challenging feature is that advertising is much less dependent on media vehicles. Media content matters, since it attracts the consumers that advertisers seek to reach. However, marketers have much greater opportunity to reach consumers without subsidising or accommodating media content providers. The intermediary role of media in creating an audience to sell to advertisers is being undermined, in part because the production and distribution of physical goods are expensive ways to reach audiences, and in part because of the advantages of new ways to reach target consumers via online and digital communications. As online search illustrates, advertising can be connected to media content but finance search engines.

Advertisers can link advertising to search and users' activity online so that advertising follows people's profiles rather than being bundled with media content.

54. The greater range of opportunities to reach target consumers also diminishes the value and exclusivity of mass media vehicles. There is still a value in content that attracts prospects desired by advertisers but the affordances of digital communications and targeting are driving marketers to demand that they pay only the actual costs of delivering an advert onto a selected platform (Turow 2011). Consequently the traditional subsidy supporting the news, information or entertainment surrounding advertisements is set to diminish, with truly profound consequences for democratic communication resources, public media and cultural pluralism.

55. Advertising integration and disaggregation trends are obviously contrary tendencies: the embedding of advertising within content, and the disembedding of advertising from content publishing and packaging online. Yet both tendencies spring from the same underlying dynamics and reflect responses to increasing dependence of media on advertising finance. Taking advantage of the competition among web creators and distributors, 'media buyers are eroding the power of Web publishers and causing them to play by advertisers' new rules to survive' (Turow 2011:112).

### **Regulatory issues**

56. The principles of transparency (marketing communications should be recognisable as such) and separation (editorial and marketing communications should be identifiably separated) should be established across convergent media. The pressures on ad-dependent media to accommodate advertisers increases with the expansion of choice for advertisers of media platforms and vehicles. At the same time marketers face pressures to maximise information-gathering and targeting, return on investment and effectiveness. All of this increases pressures to accommodate and integrate marketing communications into media content. Regulation is needed to ensure that commercial interests do not prevail over public interests.

### **Cross-media promotion**

57. Corporate integration increases the opportunities for cross-media promotion. Intra-firm promotional resources may strengthen firm's dominance and raise barriers against competitors that serve to limit the range and diversity of content available. Firms may restrict advertising opportunities, or otherwise "lock out" competitors, for instance by ignoring or denigrating rival suppliers in editorial. Aside from some specific but limited content rules in broadcasting, the main proposed remedy is behavioral, using competition law and rules on fair dealing between firms. However competition law is less able to address problems of *media power*. Cross-promotion may undermine editorial independence, and serve corporate interests over viewers' or wider social interests. Extending the public interest test, as we have proposed could address cross-promotion, in both its competition and cultural dimensions.

### **IMPARTIALITY**

58. Impartiality rules do not inhibit diversity in media, instead they provide safeguards that those who own and control powerful, public communication resources, must adhere to standards to safeguard the quality of information and the range of opinions necessary for political opinion formation in a democracy. Impartiality rules are

vital, but they are not sufficient safeguards on their own for editorial independence and standards, and they do not, as some argue, provide sufficient safeguards to justify liberalisation of media ownership rules.

59. As newspapers, that are not subject to impartiality requirements, become 'broadcasters', with online audiovisual content, there are renewed threats to impartiality rules. If there is a free-for-all in the area of online newspaper content, established broadcasters like the BBC will risk having their own standards driven ever lower in order to compete with the online versions of newspapers like the *Sun* and *Express*. The standards of public service broadcasting, and in particular the all-important requirements for impartiality and balance, could be seriously jeopardised by the effects of politically partisan broadcasting creeping in through the back door. In our view, online versions of newspapers should therefore come within the regulatory scope of Ofcom, but with a lighter regime than for conventional broadcasters.

### **BBC, LICENCE FEE AND PUBLIC SERVICE MEDIA**

60. **The BBC** should maintain the breadth of its output, and should expand its scope with the move to digital and multi-platform formats. The licence-fee settlement has resulted in damaging cuts to the BBC and its services, and threatens a great loss of UK originated original and creative output. The licence fee settlement should be renegotiated.

61. Ideological pressure towards market solutions, and consequent attacks on the BBC, began with the Conservative government of the 1980s and has been taken up with enthusiasm by the current government. Yet, most broadcasting historians agree that it has been competition for audiences and quality between regulated commercial channels (specifically ITV and Channel Four) and the publicly-funded BBC - in every genre, from entertainment to investigative journalism - that has raised the quality of both, and increased the benefits for the audience and society. This regulated 'public service ecology' is no longer possible in the same way in the multichannel, digital age, but the lesson should be learned that strong, publicly-funded media challenges rather than 'chills' commercial provision, and that the ability to focus on audience interests, rather than merely delivering audiences to advertisers, increases the depth and appeal of the *whole* media ecology not just specific 'public service' programmes.

62. We argue that the attack on the BBC by the current government is politically and ideologically driven, and that the government has put unacceptable pressure on the Corporation in response to powerful and influential commercial interests. In particular, at the

time of the licence fee agreement, Rupert Murdoch was negotiating full control of BSkyB, which the government was 'minded' to grant. The BBC is an essential component of UK broadcasting and should continue to be funded by the licence fee. It should continue to provide a full range of broadcast programmes and digital services.

63. The BBC Trust was established in 2006 to replace the Board of Governors. Its creation was very much a political act in the turbulent aftermath of the Hutton Inquiry, the report into the death of government scientist Dr David Kelly that slammed the BBC over its reporting of the build-up to the Iraq war. The Trust was given powers essentially to oversee, limit and control the corporation. Any attempt to introduce new BBC services has to be subjected to 'public service tests' and 'market impact assessments' and a number have been blocked. Ofcom also has oversight of the BBC in matters concerning broadcasting standards and service for consumers.

64. The BBC Trust should be abolished and the BBC should be removed from Ofcom's remit. A new democratically elected body should regulate the BBC and ensure that the BBC can provide a full range of public service programming on TV, radio and online and is protected from assaults by politicians and commercial interests.

## **SUMMARY**

65. As media industries and forms converge there is increasing need for a common set of standards for those providing communication services to public audiences and users. We believe communications regulation should uphold the principle that with size and reach come public obligations and responsibilities. Those providing public communication services with size and reach in local, national or specific markets should be required to act within a framework of public interest duties and obligations that upholds commitments on freedom of expression and the promotion of cultural diversity.

66. Public utility principles for communications were established in the 1930s in an era of scarcity. Our era is one in which scarcity coexists with abundance. Communication resources are distributed more widely throughout society, allowing greater consumer choice and control. Yet communication resources remain, and can be expected to remain, concentrated in some areas of great importance for democratic and cultural life: in the provision of independent, high quality news, current affairs, sports, artistic and entertainment content. That is why effective regulation in the public interest remains necessary to realise the full benefits of media convergence.

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