



REUTERS
INSTITUTE for the
STUDY of
JOURNALISM

REPORT

News Plurality in a Digital World

Robin Foster

July 2012





THE Joseph Rowntree
REFORM TRUST LTD

This report has been supported by a grant from the Joseph Rowntree Reform Trust, a grant-making trust which seeks to promote democratic reform, civil liberties and social justice. It seeks to correct imbalances of political power by strengthening the hand of individuals and organisations who are striving for reform.

Preface

Media plurality is once again under the policy spotlight, prompted by recent revelations about press behaviour and concerns arising from the proposed (and then dropped) acquisition of BSkyB by News Corporation. The Leveson Inquiry¹ has been tasked with making specific recommendations in relation to plurality and media ownership regulation. In parallel, Ofcom, the media regulator, has recently published its report on measuring plurality. In particular, in its discussion of online, Ofcom notes the potential for new gatekeepers to emerge which could have implications for plurality.²

This report, supported by the Joseph Rowntree Reform Trust, is intended as an input to these ongoing deliberations, and in particular examines the role of powerful new digital intermediaries such as search engines, social networks, and app stores. They play a key role in enabling users to access an increasing range of news sources in the online world, but they may themselves, through their control of pathways to content and payment mechanisms, become as significant a threat to plurality in future as old-world media mergers appear to us today. This report examines the nature and scope of their activities and their implications for plurality – both good and bad – in a fast-changing digital world.

It is based on research carried out in April, May, and June of 2012, including a review of existing literature, submissions to the Ofcom consultation, and evidence presented to the Leveson Inquiry. It also draws on new consumer research into patterns of news consumption carried out for the Reuters Institute for the Study of Journalism (RISJ).³ To provide general background to the work, the author held informal discussions with a number of practitioners from news organisations and digital intermediaries in the UK. They all spoke in a personal capacity and are not directly quoted in this report. A small expert reference group provided comments and guidance.

Thanks are due to all who cooperated in the interview programme, and to the reference group who reviewed an early draft: Mandy Cormack, Ian Hargreaves, Nic Newman, Robert Picard, Stewart Purvis, and Tim Suter. Thanks are due also to Aileen Dennis of Communications Chambers, who helped with data analysis and charts. The final report is, of course, the responsibility of the author alone.

¹ The Leveson Inquiry was asked, among other things, ‘To make recommendations . . . for a new more effective policy and regulatory regime which supports the integrity and freedom of the press, the plurality of the media, and its independence . . .’

² Ofcom, *Measuring Media Plurality* (2012).

³ Nic Newman (ed.), *Reuters Institute Digital News Report 2012* (RISJ, 2012), a survey of over 2,000 online users.

Contents

Executive Summary

1. News Plurality: Challenges and Opportunities

2. Digital Transformation

3. The New Digital Intermediaries

4. Policy and Regulatory Implications

Select Bibliography

About the Author

Executive Summary

Context

News media have a significant role to play in supporting the effective functioning of a democratic society. There is a clear and widely accepted public interest in ensuring that measures are taken, where needed, to secure at least two key goals: first, that all citizens can access a range and diversity of high-quality news, opinion, and analysis from different sources, and second, that no single media owner can exercise undue power and influence over the political agenda.

What these measures should be is a topic of gathering significance, not just in the UK but the rest of the EU. Here we have relied on a 'public-interest test' which can be applied in the event of certain media mergers, plus a ban on large newspaper groups owning a significant proportion of the main commercial broadcaster, Channel 3. Elsewhere, caps on market share and media ownership are sometimes used, alongside public funding to fill any gaps in market provision (especially in broadcasting).

But there are threats to commercial news provision, and plurality rules face stresses and strains. Caps on media ownership are very blunt tools when faced with the twin challenge of convergence and the increasingly uncertain long-term viability of the news sector as a whole. Public funding is under scrutiny and for some carries the risk of too much compliance or self-censorship. Even a media market as big as the UK's may not in future be able to support the range of competing local and national news brands that have been available to date.

Some hope that digital media will help to address this plurality gap. It has the potential to transform our consumption of news, and the way in which we engage in the democratic debate. It can help users find many more sources of news than ever before. Over time it may support new business models for high-quality news. But there are risks, too. New and powerful digital intermediaries, such as Apple, Google, Amazon, and Facebook, are emerging. They can play a hugely positive role in facilitating wide and open access to news content. But the decisions they take could equally constrain or control access to news and affect the viability of third-party news providers. The scale and scope of their activities could have wider consequences for society as a whole.

This report focuses on those digital intermediaries, examines their activities and their implications for plurality – now and in future – and assesses options for addressing any concerns through changes to the existing plurality framework.

Digital intermediaries

Digital intermediaries can be classified into four broad groups: news aggregators like Yahoo, search engines like Google, social media like Facebook, and digital stores/ devices like Apple.⁴ They all bring news content from third-party providers to consumers, using a variety of digital software, channels, and devices. They are increasingly important providers of access to news. According to the recent *Reuters Institute Digital News Report*, 30% of online news users use search engines as one of the main ways they access news, 22% use news aggregators, and 20% use social media.⁵

The first group – news aggregators – are close to established news media in the way that they operate, providing carefully curated packages of news content for their users, and sometimes originating new content themselves. They should be treated in the same way as established news media when considering plurality, ownership, and press regulation.

The other intermediaries – search, social, and apps – are rather different, being neither neutral ‘pipes’ nor full media companies. One way of thinking about these enterprises is as gatekeepers, controlling information flows, selecting, sorting, and then distributing information. In doing so, they have a potentially profound impact on how we take part in and think about our democratic society and culture. Their activities could have a bearing on plurality of news in four broad areas:

- their control of what might be thought of as distribution bottlenecks through which users access news;
- the editorial-like judgements they make about the news content they link to or carry;
- their role in shaping future economic models for news provision;
- their inclination and ability to influence the political agenda.

Together, these could have an important impact on the range and diversity of news readily available to users in the UK – that is, on news plurality.

Regarding *distribution bottlenecks*, it would be hard to argue that any of these intermediaries is as yet an ‘essential’ channel for news: news providers have other routes to market, and news consumers can find news on many different platforms. Nevertheless, as the importance to news of digital media grows – especially for some key demographic groups – their role will collectively become more critical. Decisions taken by these privately owned players could impact significantly on the public-interest goal of securing universal access to high-quality news.

Regarding *editorial-like judgements*, most digital intermediaries do not currently originate news or make the sorts of editorial decisions that are the everyday currency of mainstream news providers. But their judgements and policies do affect the nature and range of news content that we have access to. To varying degrees, they sort and select content to provide news which is of ‘relevance’ to their customers, and decide which sources of news to feature prominently. Whether intentionally or not this can have an impact (positive or negative) on the range and diversity of news available to their users. They also take decisions about the nature of content they are prepared to link to or

⁴ Many of these intermediaries operate in more than one of these fields, increasing their potential influence.

⁵ Newman (ed.), *Reuters Institute Digital News Report*.

carry. Such decisions, as they affect privacy, fairness, and other content standards, are a matter of public interest.

Regarding *future economic models* for news, digital intermediaries have so far had a mixed impact. They have helped news suppliers to find new markets, customers and revenue sources, but at the same time they have contributed to the disruptive effect of the internet on advertising markets and enabled disaggregation of news content, hence making it harder for news suppliers to make money. The future of commercial news provision will depend on news providers, with the cooperation of digital intermediaries, finding compelling and viable new propositions, such as apps for smartphones and tablets.

Regarding *political influence*, it is clear that very large global companies like Google and Apple will increasingly expect to have a seat at the table when governments and regulators are considering actions which might affect their business interests. It is less clear (yet) whether any of these organisations has the inclination or means to get more involved in shaping the wider political agenda – in the manner of newspaper proprietors of old. Should they in future decide to acquire content companies or to invest in news media in their own right, this would give them more leverage in any such lobbying activity, and would be a plurality concern.

A related concern to emerge during research for this report is connected with the increasingly important and pervasive role which – at least some – digital intermediaries play in the everyday lives of their individual users. This touches on, for example, issues of privacy, identity, social relationships, notions of acceptable behaviour, shared culture, and values. While not strictly relevant to this discussion of *news* plurality, and hence not covered in detail in this report, these wider concerns add to the case for including these enterprises in any overall discussion of plurality in its broader sense.

Across all these areas, a common concern is how to ensure that intermediaries face appropriate levels of accountability to the UK public and parliament for their actions – actions which can have a profound impact on all our lives. They are large global players, and understandably approach their businesses from an international perspective. Some maintain only a nominal corporate presence in the UK. It will be an important challenge for policy-makers and others to find ways of ensuring that these intermediaries understand and fully engage with the UK's own particular public interest and citizenship concerns in the area of news plurality and beyond.

Policy and regulatory implications

A new framework for news plurality will need to last for at least the next decade. It must therefore reflect and respond to these four concerns. Policy-makers and regulators must pursue a balanced approach, taking care not to chill innovation or penalise success while acting where justified to address evident plurality concerns. A range of tools will need to be considered. Competition law should be the starting point, especially where concerns arise about the potential dominance of intermediaries and their ability to distort competition. A competitive market outcome may still leave plurality shortfalls, however. It does not guarantee either the range and diversity of news prized by most democratic societies, or the principle of universal access to such news across different networks and platforms. Additional measures may therefore be needed.

This suggests a four-tiered approach:

- Securing effective competition: active use of existing competition rules to ensure that news consumers and suppliers are protected from any anti-competitive behaviour.
- A new plurality dialogue, involving government, intermediaries and other relevant parties, to ensure that intermediaries understand and are fully engaged with UK citizenship priorities, and are properly accountable to the public.
- Incorporation of digital intermediaries within the new plurality review framework proposed recently by Ofcom.
- Consideration of remedies or backstop regulatory approaches, particularly in the area of access, that might be called on should intermediaries over time prove to be a threat to plurality.

SECURE EFFECTIVE COMPETITION News suppliers now have to deal with powerful digital intermediaries to distribute their content to users. The commercial terms on which they can do this will have a big impact on the future viability of high-quality news. These are in the first instance business negotiations, but could also have implications for longer term plurality if powerful intermediaries use their market power to restrict or distort competition.

Using existing competition powers to secure effective competition in relevant markets should therefore be a key priority. These are complex and fast-moving markets, however, and competition processes can sometimes be lengthy. It will be important therefore to seek ways of ensuring that the relevant authorities have a good and up-to-date understanding of these markets, and that developments are kept under review to ensure quick and effective action in the event of any emerging concerns. Regular monitoring of market developments by a designated authority – perhaps the communications regulator – could be part of this process.

A PLURALITY DIALOGUE There is an opportunity here, building on the initiatives some intermediaries have already taken, to engage them fully in the plurality debate and to ensure that their actions and policies are properly informed by the UK public interest. Three main issues could be on the agenda:

- how intermediaries will help secure universal access to a diversity of news;
- how intermediaries will ensure that the news content they provide access to meets UK public expectations in areas such as accuracy, privacy, fairness, and compliance with UK laws (this could cover, for example, notification and take-down policies and any pre-approval processes);
- how intermediaries will ensure that any decisions they take in these areas are properly accountable to the UK public.

The overarching principles should be open access, consistency with UK public expectations, transparency of policies, and clear accountability for any decisions taken.

Intermediaries should be encouraged, as many do already, to publish the criteria used in making access decisions, including access to news. Search

companies, for example, would be encouraged to publish in a clear and simple format the principles they use in designing search algorithms.⁶ Digital stores would likewise be asked to publish details of their approval processes and how they decide to give prominence to certain apps.

In parallel, they should be encouraged to participate in sector-wide initiatives to help devise a transparent, coherent, and widely understood approach to content regulation as it applies to their unique roles, including news. This does not mean that intermediaries would be forced to take responsibility for all the content they provide access to, but that appropriate guidelines, codes, and processes would be put in place for the types of editorial decision they do take – whether in response to complaints about illegal content, or in applying any wider standards.

In both cases, digital intermediaries should be encouraged to build on their current processes to put in place procedures for responding effectively to complaints and ensuring appropriate action is taken in the event of any breach of published criteria or codes. Such processes could include a clear route for content suppliers or users if they wish to complain about any significant and unexplained changes in search rankings or other forms of prominence, and any decisions to block access to content.

While much of this can be left to intermediaries themselves, experience of media self-regulation elsewhere suggests that there are advantages in having some form of statutory underpinning, to secure public trust and clear and independent accountability. There may therefore be a role for an independent body, such as Ofcom, to establish the basic principles and ground rules, to keep processes under review, and to take action in the event that they prove unsatisfactory.

For UK policy-makers, a dialogue of this sort will help avoid the need for potentially intrusive regulation. For intermediaries it would help sustain public confidence in their activities, and, perhaps, help them develop models of good behaviour which could be adopted elsewhere. Digital intermediaries could also be challenged by government to voluntarily play a more proactive role in securing future news plurality. For example, they could be asked to help create a ‘breathing space’ for news providers to develop compelling new products by looking again at all aspects of their relationships with news providers, especially access to customer data.

PLURALITY FRAMEWORK Alongside this, digital intermediaries should be incorporated in the new plurality framework proposed by Ofcom. They should be included in any future review of plurality, whether carried out periodically or triggered by a market event. In a plurality review, Ofcom could, for example, examine:

- the positive effects associated with digital intermediaries – improved access to a wider variety of news, multi-sourcing, etc.;
- the potential risks to diversity, including the observed availability of news via different platforms, the ways in which search, social media, and app stores are selecting and sorting news, and the impact of any ‘filter bubble’ effect.

⁶ This would need to be designed to avoid revealing information which is commercially valuable, and which might enable news providers to ‘game’ the system to maximise traffic. For an example of Google’s current guidance here, see: www.google.com/competition/howgooglesearchworks.

In carrying out its assessment Ofcom could, for example, examine indicators of consumption and impact, such as the share of news consumed via intermediaries collectively and via any single intermediary, levels of user satisfaction and trust associated with intermediaries, and the extent to which intermediaries enable easy access to sources of impartial news and other news deemed to be of public interest.

The conclusions of such reviews would indicate whether any measures needed to be introduced to help secure desired plurality outcomes. The legislative framework would need to be adjusted to enable such action to be taken – either directly by Ofcom (as with existing telecommunications regulatory powers) or perhaps via referral to the competition authorities. Such action would need to include plurality concerns arising from organic growth or change in the market, not just mergers or acquisitions. Consideration would need to be given to whether regulation was best formulated at a UK or EU level – given the cross-border nature of many intermediaries, the latter might be more appropriate.

REGULATION Ofcom in its recent review of plurality measurement has concluded that bright-line ownership caps would not be effective in securing plurality of news media. This is even clearer in the case of digital intermediaries, whose value to users often comes from scale or network benefits. Nevertheless, if plurality concerns are identified, Ofcom would need to consider the available remedies or actions it could take. The focus should be on ensuring transparent and open access to news. Approaches might include:

- A requirement that digital intermediaries should guarantee that no news content or supplier will be blocked or refused access, unless for legal or other good reason, such reason to be explained with reference to publicly available criteria.
- A requirement that digital intermediaries should carry or link to in a prominent position a range of news content deemed to be in the public interest (for example, a search engine could be asked to list at least x different news sources on the first page of a search, app stores could be asked to provide appropriate prominence to public-interest news over a period of time).
- Establish an independent review body which could audit access practices and take complaints.

Such steps could be taken after Ofcom has carried out a plurality review and found that there are significant concerns, and has also demonstrated that regulation will not impose any net costs.

A risk of relying on periodic plurality reviews and specific remedies, however, is that there is a time delay between reviews and action, during which plurality could be significantly affected. An alternative approach, therefore, would be to consider some form of backstop regulation, either to secure fair and open access and/or to address media ownership concerns.

A precedent for *access regulation* exists in the existing application of ‘must carry’ and ‘appropriate prominence’ rules to broadcast content on digital transmission networks and electronic programme guides. These might be adapted to apply to some or all digital intermediaries, although designing appropriate rules will not be straightforward.

Given the problems associated with ownership caps even in the established media, it is unlikely to be appropriate to consider fixed limits on

ownership and control for intermediaries. However, *cross-media ownership* could be an exception to this general rule. As suggested earlier, if large digital intermediaries decided to move extensively into content production in their own right – perhaps through acquisition – then their ability to exercise political leverage might be enhanced. Consideration could be given, therefore, to formulating specific cross-media ownership constraints, which would seek to enshrine the principle that any company with a large market share (level to be determined) in ‘mediating’ activities should not also be a major player in content creation. The potential risk associated with any cross-media merger would, of course, need to be weighed against the opportunity that might be created to secure increased investment in high-quality content.

Concluding observations

There is no doubt that some of the digital intermediaries examined in this report are large and powerful organisations, with the ability, whether intentionally or not, to influence both our everyday lives and more specifically the range and diversity of news content to which we have access. They may pose challenges for future plurality regulation, not all of which can easily be addressed. It would be wrong to assume that extensive regulation is feasible or justified, although sensible measures could be introduced now to address some of the concerns identified above. At the same time, Ofcom will need to monitor over time the behaviour of intermediaries both as editorial bodies and as potential access bottlenecks – if they take on more of the characteristics of either, then their impact on plurality may call for further action.

Above all, it will be important to engage seriously with digital intermediaries on all these issues. They can play a big part in helping secure a greater degree of plurality in future at a time when established structural solutions seem less and less likely to work. They can be challenged to show a willingness to behave responsibly in the public interest – and perhaps set an example to the rest of the news media in doing so.

The rest of this report

The report is structured as follows:

- Chapter 1 sets the context with a brief look at plurality policy and the challenges faced by existing rules.
- Chapter 2 examines the effects of the ‘digital transformation’ on supply and consumption of news, and describes how the new digital intermediaries are developing an increasingly important role.
- Chapter 3 looks in detail at how digital intermediaries operate, and assesses their impact on news plurality, both now and in future, under four main headings: editorial judgement, access control, news economics, and political influence.

Chapter 4 concludes by setting out implications for policy and regulation.

1 News Plurality: Challenges and Opportunities

1.1. *The Importance of Plurality*

Media in general play a vital role in shaping our culture, values, and society. For that reason, the ownership, governance, and regulation of media enterprises have always been seen to be of particular importance both at home in the UK and around the world. Whereas competition rules are generally believed to be sufficient to protect consumers in most other markets, media markets are widely felt to require additional measures to safeguard the public interest.

While there is a good case for thinking about media plurality from a wide cultural perspective (films, TV, publishing, and the arts all have an impact on shaping our culture and values), news media in particular have a significant part to play in supporting the effective functioning of a democratic society, by ensuring wide and free dissemination of a diverse range of information, opinions, and arguments. High-quality news helps us find out what is going on in the world and enables us to debate key issues of the day. Effective journalism can also play an important role campaigning, interrogating the work of public and private institutions, and holding authorities to account.⁷

Because news is so important, societies have a legitimate interest in the activities of organisations which invest in newsgathering, report and analyse the news, and package it together for public consumption – whether newspapers, broadcasters, or online. In turn, those organisations have special responsibilities to act in the public as well as their own commercial interest. The House of Lords Communications Committee⁸ summarised the role of news media as follows:

A free and diverse media are an indispensable part of the democratic process. They provide a multiplicity of voices and opinions that informs the public, influences opinion, and engenders political debate. They promote the culture of dissent which any healthy democracy must have.

1.2. *Plurality Rules*

In brief, plurality rules generally take the form of market share caps (no one can own more than, say, 25% of the newspaper market) or limits on the number of media titles that can be owned (for example, number of TV stations or national newspapers). Specific cross-media ownership limits are sometimes used to prevent build up of influence across print, broadcast, and online media. These sorts of rule have two main aims: to ensure that there are a reasonable number of news organisations in a defined market, and that no single player is too influential.⁹

⁷ E.g. Steven Barnett, *Journalism, Democracy and the Public Interest* (RISJ, 2009), talks about the role of news in informing, representing, campaigning, and interrogating. Pippa Norris, in *A Virtuous Circle: Political Communications in Post Industrial Society* (CUP, 2000), suggests thinking about news media in terms of civic forum, mobilising agent, and watchdog.

⁸ House of Lords Select Committee on Communications, *The Ownership of the News* (2008).

⁹ A so-called 'public interest' test, which examines plurality, can be called for in the event of a major media merger/acquisition, and there are constraints on certain types of cross-media ownership, most notably limits on combined ownership of national newspapers and Channel 3 licences.

- A reasonable number of players in a market, it is hoped, will
- secure a range of perspectives on the news;
 - ensure that if bias or misrepresentation occurs in one source, it is exposed in others;
 - through competition for readers/ audiences, ensure news reaches a wider audience and is of high quality.

The concern here is not just about how news is reported but about how it might be selected, interpreted, or suppressed to support a particular point of view. For example, news media might editorialise for or against particular points of view, cover stories with a particular angle, or choose to focus on certain types of stories (say, crimes or public spending cuts) over others. A range of different voices in the news media will help ameliorate the worst effects of the above.

The second aim is to prevent any single news provider from becoming too influential. Overpowerful owners, as the Leveson Inquiry is revealing, might secure privileged access to governments and influence policy through the carrot of favourable coverage or the stick of withdrawing support. Powerful news providers might also from time to time be tempted to depart from normally accepted codes of conduct, fuelled by the sense that they are above the law. While ownership plurality would not necessarily prevent such lapses, the more powerful an organisation perceives itself to be, the more likely it may think it is to get away with behaviour for which it would otherwise be held to account.

1.3. Implications of Convergence

Convergence means that these old approaches are no longer fit for purpose.

THE IMPACT OF COMMERCIAL PRESSURES Convergence leads to increased competition for both audiences and revenues. It is becoming clear that the use of ownership rules to secure plurality may be increasingly problematic in a world in which established news providers face rising commercial pressures, and consolidation not diversity may be the prevailing market trend. As many commentators have explained,¹⁰ established news media are facing multiple competitive threats as traditional revenue sources dry up and consumers slice and dice their content with the help of new digital media. Even a media market as big as the UK's may not in future be able to support the range of competing local or national news brands that have been available to date.

This makes it hard to design effective remedies to address shortfalls in media plurality. While ownership caps of the type proposed by several witnesses during the Leveson Inquiry might appear superficially attractive, on closer inspection they seem like very blunt tools, of value more as a political gesture than as a practical way of addressing plurality concerns. Mergers or acquisitions may increasingly be necessary to secure ongoing viability of news provision (and to provide a better product to consumers). If a news provider becomes 'too powerful' through organic growth, options for

¹⁰ E.g. see Robert Picard, 'Digitisation and Media Business Models', in Mapping Digital Media, for the Open Society Media Programme, 2011, and David A. L. Levy and Rasmus Kleis Nielsen (eds), *The Changing Business of Journalism and its Implications for Democracy* (RISJ, 2010).

intervention are even more limited. It is hard to imagine much public good coming from mandating a successful media company to close titles, divest parts of its business, sell fewer newspapers, or make its product less attractive to consumers. If plurality has diminished not because one company has become too successful, but because one or more have declined or dropped out of the market, then it is even harder to conceive of appropriate remedies.¹¹ In the end, it is not within the powers of any regulator to create plurality if the market will not support it.

MEASUREMENT CHALLENGES There are also non-trivial measurement issues in ascertaining whether there is sufficient plurality in the market and whether any organisation is too influential. Existing plurality rules were devised for a largely unconverged world. But as Ofcom found in the case of News Corporation/BSkyB, a proper assessment of plurality must examine news supply and consumption across all media, including online. How then, for example, can one compare on any meaningful basis an hour's reading of *The Times*, with watching a TV news bulletin or dipping into an online news site. How important is a foreign-news online site compared to a UK-focused site? As Ofcom¹² has explained, no single indicator can do the job properly and, although consumption measures can be devised, it is very difficult to measure actual impact or influence.

NEW ISSUES There are also new issues to address. The News Corp/BSkyB case highlighted the limited scope of existing rules when addressing the implications for plurality of control of wider media assets – such as a pay-TV platform. Should distribution platforms be considered at all in a plurality assessment and, if so, on what basis? Does control of a media platform in any sense provide the sort of political power and ability to influence the news agenda attributed to control of a news channel or newspaper? Such questions are likely to become more, not less, important in future as we see further growth in a range of new digital platforms and intermediaries, many of which are becoming increasingly important conduits of news.

1.4. Looking to the Future

Given these developments, it is likely that the regulatory toolkit will have to draw increasingly on new approaches to try to protect the public interest. In this digital world, we will need to take a closer look at so-called 'behavioural' interventions which might be used to improve the range of content available, or to place constraints on the extent to which owners can influence the editorial decisions made by their news media. For example, in the case of a media merger, or if one owner is considered to have become too powerful through organic growth, then behavioural interventions might include requiring the relevant party or parties to put in place content investment commitments, requirements to make space available for the inclusion of alternative viewpoints, effective right of reply procedures, and independent editorial boards.¹³

¹¹ Reflecting widespread concerns about media plurality, EC Vice President Neelie Kroes has set up a High Level Group to advise on media freedom and plurality in Europe, to report in autumn 2012.

¹² Ofcom, *Measuring Media Plurality*.

¹³ In Germany e.g. one option available to the regulator is to require access (to broadcast airtime or to newspaper/online content) to be given to third parties.

More importantly, we need to make sure that we maximise the potential of developments in digital news media to provide potential new sources of news plurality. In that context we may need to place more emphasis on 'access' rather than 'ownership' issues. As the next chapter shows, given the right conditions, online developments offer the potential for more plurality – and more user control over the news agenda – than has ever been offered by the established press. As old media decline, powerful new digital players such as Apple, Google, Facebook, and Amazon are emerging. In their different ways, they all have a key role to play in helping users find, use, create, and share high-quality news material, and in enabling news providers to make money from digital media.

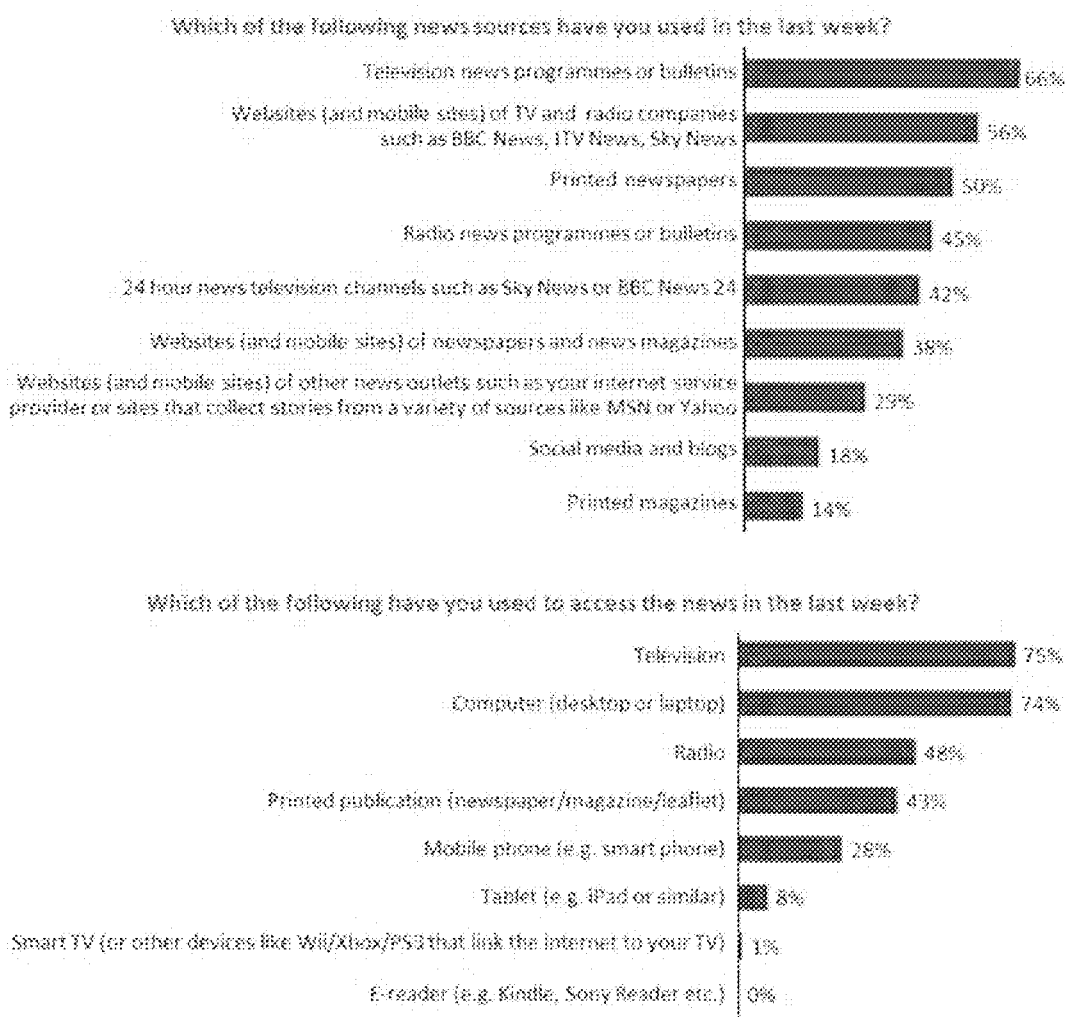
At the same time, however, these organisations can all also be thought of as new gatekeepers who may, deliberately or otherwise, control or constrain access to news, or affect its commercial viability. Critically, for new media to play its full potential role, we must make sure that these new gatekeepers do not block or distort access to a wide range and diversity of news. They are increasingly important for the distribution of and monetisation of news in the digital world, but the plurality framework described above has little to say about their activities at all. The rest of this report examines those intermediaries in more detail.

2 Digital Transformation

There have already been significant changes in the way news is consumed, shared, and debated, accompanied by equally radical changes in the way it is produced packaged, and distributed. But has the early promise of the internet – that of a vastly more open and democratic electronic exchange for news and views – been delivered? After all, data show that many old-media brands are still the main sources of news in the new digital world.

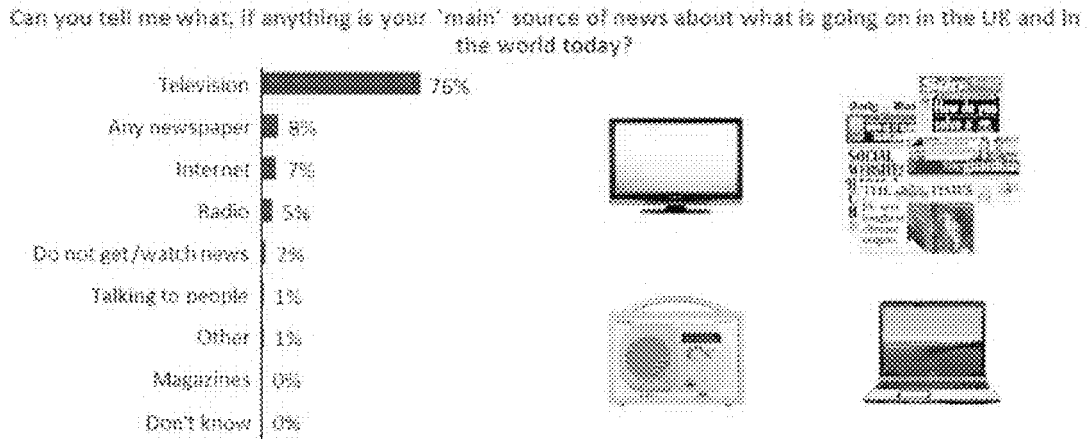
2.1. Internet News Consumption

It is unquestionably the case that the internet is now an important source of news. UK internet penetration is now around 80% and various studies have underlined its significant role in news consumption. The RISJ digital survey of over 2,000 online users found that broadcast websites are second only to TV in the UK as a source of news ‘used in the last week’, and that in aggregate websites are likely the most used, while TV and computers are far ahead of printed newspapers in terms of media platforms used.



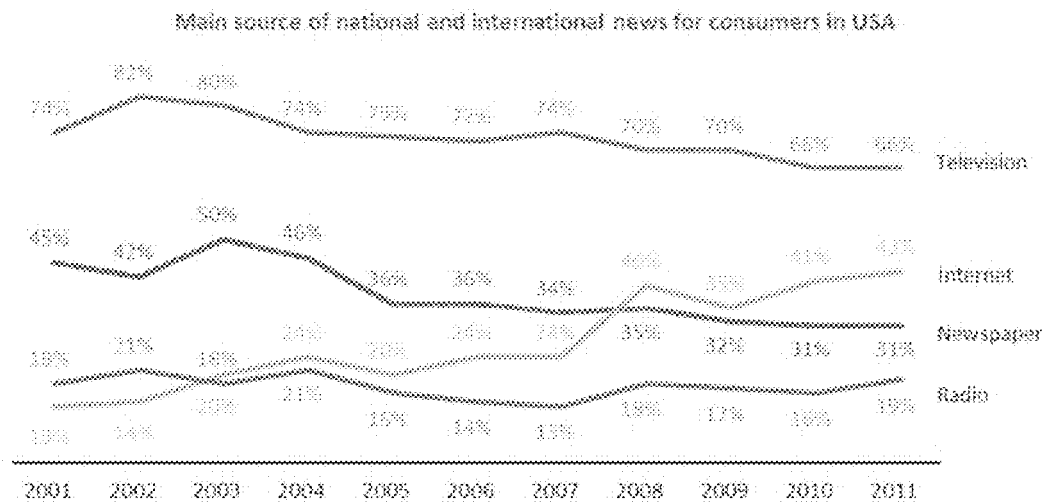
Source: Newman, Reuters Institute Digital News Report (2012).

This broad finding is supported by other survey data. Oliver & Ohlbaum,¹⁴ for example, in their annual media survey of 2011, reported that while TV is still the UK's most important source of news (75% of those surveyed said they turn to TV for news), online is now close behind (68%, compared with 54% for newspapers). Data in Ofcom's recent report¹⁵ on measuring plurality shows that 41% of adults use the internet for news 'nowadays'. When asked by Ofcom about their 'main source of news', however, most respondents place TV well ahead of the internet.



Source: Ofcom.

In the US, where current developments often point to trends we will see later in the UK, the internet, social media, and tablets are increasingly key platforms for news.



Source: Pew Research Center.

According to the OECD¹⁶ the internet is already the main source of news for the 16-24 age group.

¹⁴ Oliver & Ohlbaum, *Annual Media Survey* (2011), as reported in www.paidcontent.org.

¹⁵ Ofcom, *Measuring Media Plurality*.

¹⁶ *The Evolution of News and the Internet* (OECD Working Paper, 2010).

This story also extends beyond the PC. According to the Reuters Institute digital survey, news apps are popular as a means of accessing news among tablet and smartphone users, and tablet users appear more willing to pay for news than general online news users. This pattern is confirmed by other surveys. For example, comScore in 2012 reported a ‘big increase in smartphone users accessing news sites’ – 46.8% of smartphone users in UK say they accessed news at least once over the last month via an app or a browser in January 2012 – a 63% growth over the year earlier.¹⁷

2.2. Impact on Plurality

But what are the implications of these trends for plurality, good or bad? Many commentators are persuaded of their positive impact. They point to new sources of both commercial and not-for-profit news services available on the web, and the rise of social and community media, which enable people to take a more active and participative role in newsgathering and dissemination – sharing news and opinion via social networks, influencing the news agenda via blogs and Twitter, and contributing to local news sites.¹⁸ Such forms of participative media, citizen’s journalism, or user-generated content provide an alternative and often a counter-balance to the vested interests of established media.¹⁹

MORE RANGE AND DIVERSITY Evidence also supports the claim that digital media provide users with access to a greater range and diversity of news, although perhaps not as much as first hoped. There is a range of options in addition to the websites offered by established UK news media such as the *Guardian*, BBC, or *Daily Telegraph*.

- Alternative internet-only news sources are available – ranging from generalists such as the Huffington Post, to specialists such as Gawker (entertainment) and TechCrunch (ICT).
- News aggregators –such as Yahoo – provide users with easy access to a much wider range of news material from many different sources than they could ever have easily accessed in the analogue world, and also increasingly invest in their own content.
- All online users now have easy access to a vast number of websites produced by local news media in countries around the world, from the *NY Times*, to the *Sydney Morning Herald*.

However, mainstream news brands still account for a large share of digital news supply and consumption:

- In the UK, Ofcom’s public-interest test report²⁰ shows that, in terms of share of page views and minutes, the top 50 news sites are dominated by old-media news brands.
- In Europe, according to comScore (November 2011), ‘nearly 50% of internet users in Europe visit newspaper sites’.

¹⁷ ‘Nearly 50% of Internet Users in Europe Visit Newspaper Sites’, comScore, 19 Jan. 2012.

¹⁸ A summary of these trends is given in Robin Foster, *Informing the UK: The Role of TV News in the Digital World* (ITV, 2011).

¹⁹ See e.g. the discussion in P. Valcke, *Risk-Based Regulation in the Media Sector: The Way Forward to Advance the Media Pluralism Debate in Europe* (ICRI Working Paper, University of Leuven, Feb. 2011).

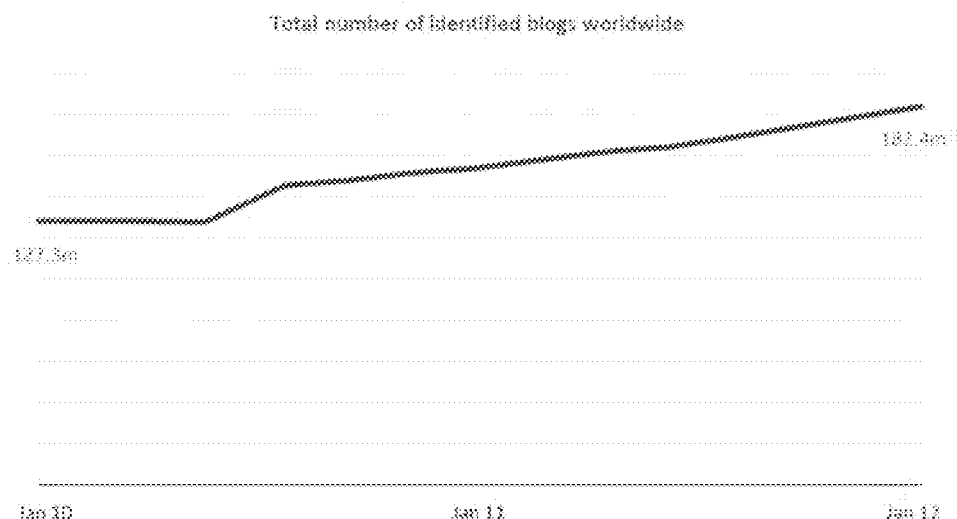
²⁰ Ofcom, *Report on Public Interest Test on the Proposed Acquisition of BSkyB plc by News Corporation* (2010).

- In the US,²¹ two-thirds (17) of the 25 most popular news sites are run by traditional news organisations.

This is not surprising. Mainstream news providers are often the only organisations with the resources and expertise to sustain effective newsgathering and journalism around the world. Even successful new entrants such as the Huffington Post rely heavily on third-party content and blogs alongside their own material.²²

Moreover, not all websites have the same impact on plurality. A US or Asian newspaper site, even if available in English, would be unlikely to carry a significant amount of news and commentary on the UK domestic political scene. A specialist technical website is much less likely to play a significant role in setting the political news agenda in the UK than would a mainstream generalist newspaper.²³

A WIDER DEBATE If news *supply* of direct relevance to the UK itself is only modestly improved by the internet, there is a much greater increase in the volume and diversity of discussion, commentary, and opinion. Some of this is, of course, uninformative babble, but that should not devalue the importance overall of the internet in providing a much more open and democratic forum for debating the big (and small) ideas of the day. Blogs and niche discussion sites can have an important influence on the way in which their users form their own opinions on the main political issues. The importance of blogs can also extend beyond their direct audience because they are so widely read within other news organisations and thus have an influence on the wider news agenda.²⁴



Source: Blogpulse via WayBackWhen.

²¹ Pew Research Center, *The State of the News Media 2012* (2012).

²² E.g. in a recent report consultants Mediatique estimate that UK online spend on news provision was only £111m compared with around £2bn for the whole news market. This supported 660 full-time posts compared with 24,000 in total. (Mediatique, 'The Provision of News in the UK', annex to Ofcom, *Measuring Media Plurality*, 2012).

²³ Although in some areas of economic, cultural, and social significance, small specialist sites may have an impact disproportionate to their readership through the dissemination of new ideas or their critique of existing thinking.

²⁴ One example would be 'order-order.com', the Guido Fawkes blog.

MULTI-SOURCING OF NEWS Arguably a bigger impact on plurality arises from the ways in which digital media change both patterns of news consumption and how users debate and discuss the news. A world in which everyone accesses a range of news sources is inherently more pluralistic than one in which most people watch only one TV news channel or read only one newspaper. Consider, for example, a market in which there are three newspapers. In the first scenario, each reader takes only one newspaper and readership is split equally between the three newspapers. In the second scenario, each reader spreads his consumption across all three newspapers in equal amounts. In both cases, all newspapers have a one-third market share, but the second scenario is clearly more plural than the first.

Here the data are encouraging. According to the Oliver & Ohlbaum 2011 survey,²⁵ the average online news consumer in the UK visits 5.2 sites, compared with the average newspaper reader who only reads two newspapers. Perspective,²⁶ in its submission to the Ofcom public-interest test, reported that online users in 2010 visited on average 3.46 sites. Ofcom's latest cross-media audience research suggests that the average number of sources consumers use for news is 4.8, drawn from 2.4 platforms. 77% use three or more sources.²⁷ The recent Reuters Institute survey reveals similar behaviour, with 70% of respondents using two or more online news sources each week. Clearly the more that online news encourages multi-sourcing – as it appears to do – the more we can feel comfortable about the range of news and views actually accessed by the UK public. And this has a multiplicative impact – the more news sources that each individual user consults, the more those news stories and opinions are likely to be disseminated in conversation with friends, colleagues, or family.

SEARCH AND SOCIAL MEDIA Search engines and online news aggregators have played a large role in facilitating multi-sourcing of news, by making it easy for each news consumer to very quickly consult a range of sources for any single story. Most recently, social media – especially Facebook and Twitter – are bringing another sea change in the way users find out about news stories and communicate them to each other. Social media as a source of news traffic have been growing their share at the expense of search. New Facebook apps enable mainstream news providers to access a new demographic and achieve much wider circulation of their news content than might otherwise have been the case. The Huffington Post reportedly generates as much traffic from social media as from search, working very closely with Facebook and the like. In the UK, the *Guardian* reported positive early experience after launching an app for the new Facebook social reader. UK research²⁸ found that 75% of shared news links on Twitter in the UK came from traditional sources. Pew Research²⁹ in the US finds that stories shared on Facebook are most likely to come in the first instance from friends and family, but still largely originate from mainstream sources.

²⁵ Oliver & Ohlbaum, *Annual Media Survey* (2011).

²⁶ Robert Kenny, Tim Suter, and Robin Foster, *Past and Future Trends in Plurality and the Setting of the News Agenda* (Perspective, 2010).

²⁷ Ofcom, *Measuring Media Plurality*.

²⁸ Nic Newman, *The Rise of Social Media and its Impact on Mainstream Journalism* (RISJ, 2009).

²⁹ 'What Facebook and Twitter Mean for News', in Pew Research Center, *State of the News Media* (2012).

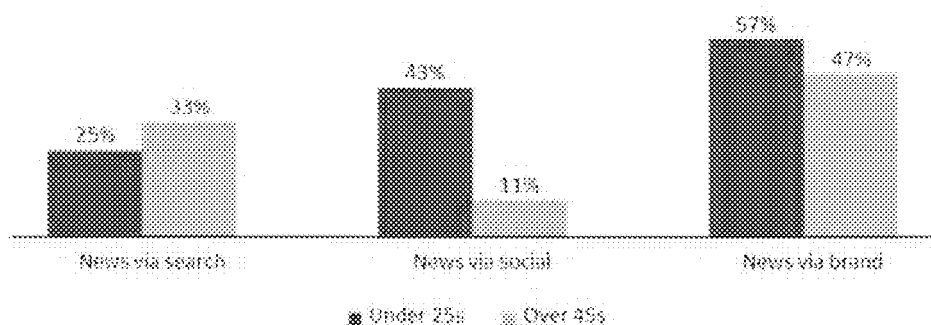
Social media also have the potential, through the engagement of large numbers of users, to create an alternative news agenda, with different priorities to those selected by mainstream news editors. Nic Newman³⁰ describes the role played by YouTube, Facebook, and Twitter following the Iranian elections in 2009. More recently, the process has been replicated with an even greater impact in the so-called Arab Spring and now in Syria. Stories broken this way by new digital media are then often contextualised and validated by established news media.

IMPROVED MAINSTREAM NEWS CONTENT In parallel with these developments, many established news players have upped their game. As noted above, the top established news brands are doing well in terms of most popular news websites visited. This is both a reflection of the strength of their brands and their successful development of compelling new products. It has for some time been recognised that it is not enough to replicate existing newspapers online. In fact the more successful online versions of established newspapers have embraced the potential offered by the internet to become more open, collaborative, and immersive. They take advantage of the new technologies to incorporate:

- more comment/blogging (for example, in the *FT*);
- data/resources/archives (as in the *Guardian*);
- more live material (as in the *Telegraph*);
- better visuals and graphics (e.g. *The Times*);
- more links to other content on the internet (as practised by the BBC).

These changes open up established newspaper brands to greater influence from their readers and contributors, and also expose readers to a wider range of content through external links.

Thinking about how you FIND news online, which are the main ways that you come across news stories?



Source: Newman, *Reuters Institute Digital News Report* (2012).

THE 'FILTER BUBBLE' Not everyone agrees that these developments have been universally positive. Early criticisms of digital news media focused on the uneven quality of internet news – for example, the challenge of separating fact from prejudice and of finding something of value among the multiplicity of unreliable or inaccurate content sources. These concerns have to a degree been addressed by the increasing effectiveness of search, social media, and

³⁰ Nic Newman, *Mainstream Media and the Distribution of News in the Age of Social Discovery* (RISJ, 2011).

mainstream news brands in helping users find content which is relevant and trustworthy. More worrying from the plurality perspective is the contention that, through the filtering of stories via friends, or via the personalisation of search, digital media encourages people to remain within their own comfort zone. Eli Pariser³¹ uses the term 'filter bubble' to describe this phenomenon – in which search engines and social networks use algorithms and personal data to select only content which matches existing tastes and preferences. The risk, some have suggested, is that people access only those news stories in their direct field of interest, and read only those opinions with which they are familiar and agree. As a result, they get less exposure to conflicting viewpoints and become closed to new ideas, subjects, and information. Tim Berners-Lee³² warns that social networks like Facebook constitute one of the 'several threats to the Web's universality', arguing that such sites create 'closed silos of content' that may threaten the internet's original open status.

Others have disputed Pariser's findings, arguing that personalisation still works in a very crude way, and does not prevent users seeking a wide range of voices. And to the casual observer it is hard to believe that the scope for searching and finding news offered by digital media can be any less mind-broadening than the much narrower range of news and comment available from some traditional newspapers. Recent research carried out in the US by the Pew Research Center³³ concludes, for example, that social media are currently more used as an additional source of news rather than as a replacement source, hence widening not narrowing the 'filter'. For example, 71% of those who ever follow news on Facebook (and 76% on Twitter) also get news somewhat or very often from a news organisation's website or app. Twitter scored relatively well in providing news which users felt they would never have found elsewhere.

Another concern is sometimes raised about the nature of news search results. This is the fear that Google News and other news search engines tend to favour mainstream news providers at the expense of a more diverse range of news sources. If a search algorithm considers a site's popularity and page ranking, then its results may well create a 'virtuous' circle in which a limited number of news sources are always near the top of the list. It is certainly the case that searches for major current news stories on Google News in the UK commonly produce links to the main news providers such as the BBC, *Telegraph*, *Guardian*, and *Daily Mail*. These brands gain high rankings by virtue of their existing popularity, timely coverage, and perceived relevance to users. But, although not on the first page of search results, many other sources are also there, so that those keen on finding alternative news voices still have the tools with which to do so, if they are prepared to dig a little deeper.

2.3. *New Digital Intermediaries*

Critically many of these changes depend on another key development – the rise of new digital intermediaries, who are playing an increasingly important role in helping news providers get to market and news users find and access news content on a range of digital devices.

In the old world, newspapers and broadcasters were typically responsible for the entire news value chain from newsgathering to distribution. At one level, the internet enables this to continue with little

³¹ Eli Pariser, *The Filter Bubble: What the Internet is Hiding from You* (Penguin Press, 2011).

³² Tim Berners-Lee, 'Long Live the Web', *Scientific American*, 22 Nov. 2010.

³³ Pew Research Center, *State of the News Media* (2012).

change: newspaper websites, for example, can translate their established branded package of news, comment, entertainment, and ads into the digital space. They help save costs by cutting out some stages of the value chain. All customers need to access their favourite newspaper is to know the correct website address.

But increasingly access to digital content is being mediated through third parties. They help users navigate the open web, but also – in the form of new closed networks – can exercise much greater control over the delivery of content and the devices on which it can be accessed. If they wish to reach the widest possible audience, news providers now need to find ways of distributing their content via these digital intermediaries to ensure they reach their intended market:

- via content aggregators like Yahoo and MSN;
- via search engines like Google and Bing;
- via social networks like Facebook and Twitter;
- via digital stores linked to specific consumer devices, like Apple’s iTunes, Amazon, and Google Play.

Although physical production and distribution costs are reduced, some of these alternative routes to market impose new costs – such as commission on sales. They may also require agreement to disaggregate news content – providing access to individual stories rather than selling a complete news product or service – which can impact adversely on news-provider business models. Nick Harkaway, in his recent book *The Blind Giant*,³⁴ argues that: ‘The Internet is sometimes heralded as the end of the middleman. In fact at the moment, it’s more like the ascension of the middleman to an almost godlike status – it’s just that the old middlemen have in many cases *been cut out of the loop.*’

AN INCREASING PRESENCE A few facts serve to illustrate the potential importance of these new players. According to the recent Reuters Institute survey,³⁵ although the majority (just) of news users online include website/browsers as one of the main ways in which they access news, search engines, aggregators, and social networks also account for substantial amounts of traffic.



Source: Reuters Institute Digital News Report, 2012.

³⁴ Nick Harkaway, *The Blind Giant: Being Human in the Digital World* (John Murray, 2012).

³⁵ Newman, *Reuters Institute Digital News Report*.

In the US, the patterns are very similar. According to Pew Research Center:

- the most common way of accessing news is to visit the news site directly;
- 21% of news traffic comes from search engines (although this is slowly falling);
- 8.6% of traffic to news sites comes from social networks (and this is rising).

An earlier Pew survey, of just the top 25 news sites in 2010, suggested that search accounted for 30% of traffic – these sites still depend a lot on casual visitors, despite their brand appeal. Most of the referrals emerged from *topic-related searches*, not newspaper *names*. Most of those who had used Google News did click through to a news story – but the main beneficiaries were the big brands such as *NY Times*, CNN, and ABC.

2.4. Intermediaries and Plurality

The first part of this chapter outlined the crucial benefits that digital media – and in particular changing patterns of news consumption – could deliver. While digital media are not yet generating significant new revenue streams for news, they are making it easier for users to access many different sources of news and to engage more actively in the news debate. But these benefits will only be realised if the new digital intermediaries continue to facilitate wide and open access to news content, rather than constraining or controlling it, and help create the conditions in which news providers can monetise their content. How they behave is therefore critical to securing plurality in future. In the next chapter these issues are examined in more detail.

3 The New Digital Intermediaries

3.1. *What is a Digital Intermediary?*

An intermediary is a person or organisation that acts as an agent between other people or things. In the context of this discussion, digital intermediaries can be defined as organisations which bring news content from third-party providers to consumers using a variety of digital software, channels, and devices.³⁶ This sounds initially like a neutral and entirely positive role. But intermediaries can, through the way they carry out this activity and the charges they levy, exert significant influence over their suppliers and customers. Their closest counterparts in established media are the operators of pay-TV platforms like BSkyB, who distribute third-party content but also add value through packaging, promotion, EPG, PVR, and subscriber management. In this chapter, the implications of that influence for plurality are explored.

At the outset of this research, four types of intermediary were identified for analysis, reflecting their relative importance and shared characteristics:³⁷

- news aggregators;
- search engines;
- social media;
- digital app stores.

NEWS AGGREGATORS News aggregator sites generally provide a carefully selected (or curated) package of news stories from different providers. According to the recent Reuters Institute digital survey, 22% of online news users say that aggregators like Yahoo or MSN are among the main ways they find news online. Yahoo, for example, is still one of the top-performing news websites in the UK.

Of the four types of intermediary examined, they are the closest to traditional news media – they choose the content they want to deliver to users, license it from agencies, individual contributors, and other news sources, and promote it under an umbrella brand. They typically exercise editorial judgement in selection of news content, and increasingly invest in their own content. They adopt policies on offence, privacy, etc. and are subject to UK law if registered in UK. Some also increasingly originate their own content: the Huffington Post shows the potential for growth in this sector based on investment in original journalism as well as licensed content and blogs.³⁸ They impact positively on plurality in three main ways:

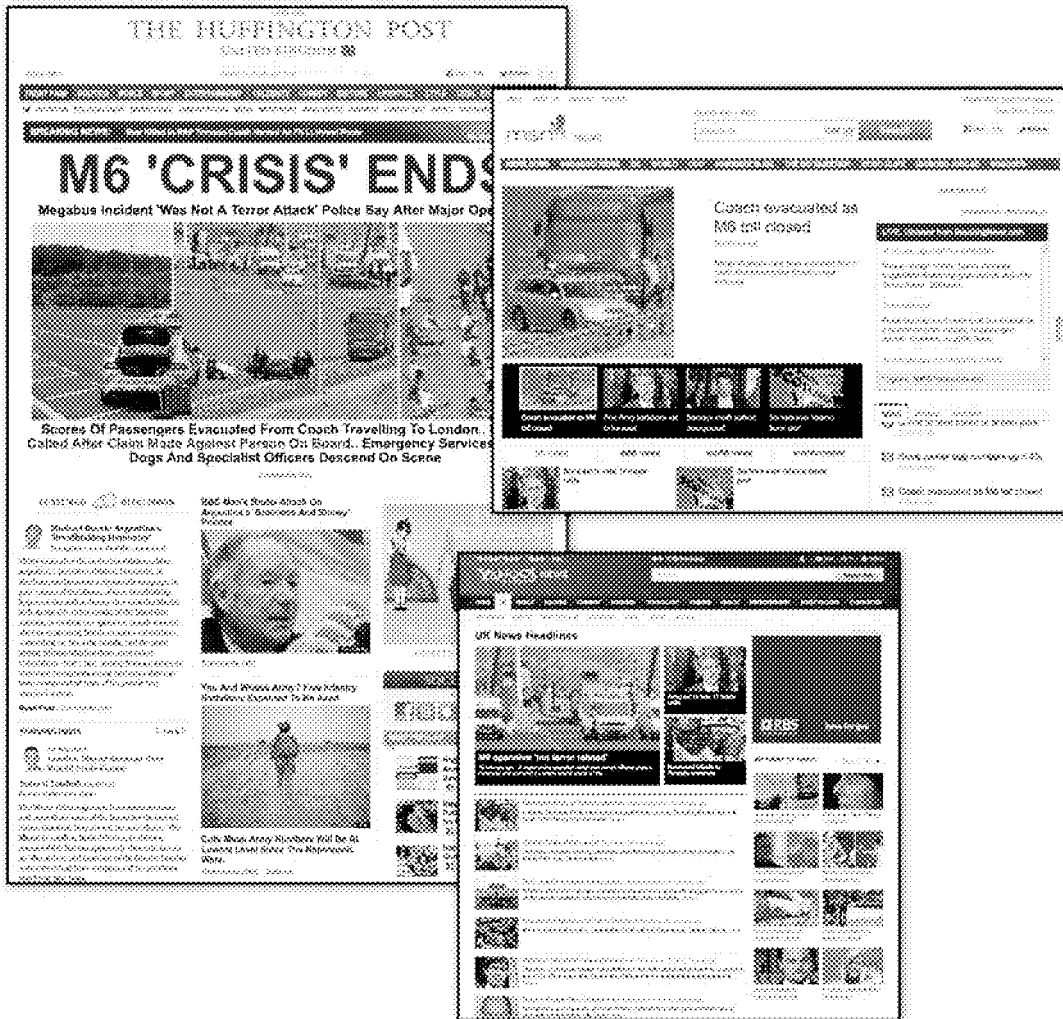
- they provide convenient access to a range of news stories from several different sources and hence facilitate active multi-sourcing of news;
- they act as a forum for a diverse range of opinions and blogs;
- they invest in (some) original news content.

³⁶ An economist would describe these as classic ‘two-sided markets’

³⁷ Internet Service Providers (ISPs) and Mobile Network Operators (MNOs) have been excluded from this analysis, because they act more like neutral ‘pipes’ than organisations with a degree of editorial engagement.

³⁸ Google News, although sometimes thought of as an aggregator, is more akin to a search engine.

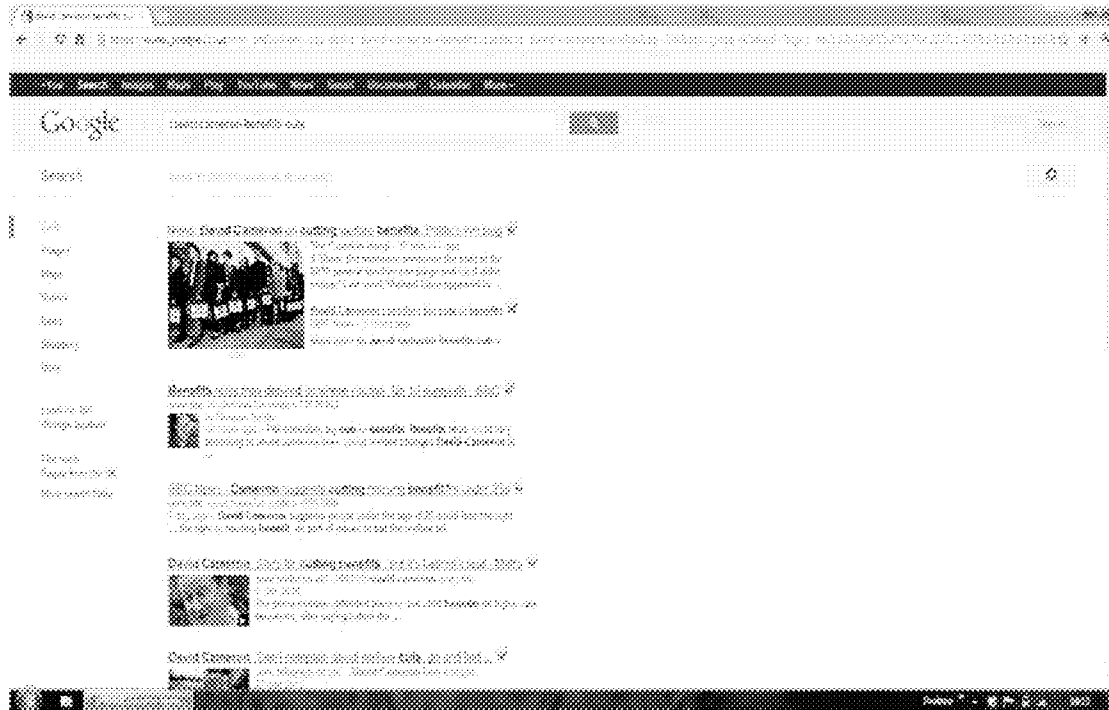
Examples of news aggregators



SEARCH ENGINES Search engines provide the tools with which users can trawl the internet for the news stories they want to find, from an almost limitless range of available sources. Google is by far the market leader in the UK, accounting for 91% of all searches.³⁹ According to the recent Reuters Institute digital survey, 30% of news users say that a general search engine like Google or Bing is among the main ways they find news online. Search engines have been a huge positive force in opening up access to content that would previously have been very difficult or costly to find. But the fact that they are now an indispensable part of our lives also means that they have the potential to exert significant influence over public access to different types of content, including news.

³⁹ Experian Hitwise, Jan. 2012.

Example of news search, Google



SOCIAL MEDIA Social media play another critical part in the creation, distribution, and consumption of news: the Reuters Institute survey reports that 20% of news users include social media in the main ways they find news online. Facebook and Twitter are the principal players in the UK, but a range of others play their own part in this phenomenon, e.g. Google+, Tumblr, and LinkedIn. They provide platforms which allow users/members to contribute (tweet and post) and share their own and others' news and views. Increasingly some also provide a platform used by professional news providers to gain profile for their stories, and as a source of stories.

Facebook's Open Graph technology, introduced in 2011, has allowed news providers to create 'social reader' apps, which enable automatic sharing of news stories between friends. Once a user is logged in via an app, Facebook tracks the articles being read and may publish this information on the news feeds of the user's friends. Twitter, though smaller than Facebook, has also had a huge impact on news, through its role in spreading breaking news, in creating a platform for the easy expression of ideas, comment, and gossip, and in providing a means for the subjects of news stories to speak directly to audiences.

DIGITAL APP STORES Digital app stores act as electronic retailers for news content and apps, primarily for use on tablets and smartphones, and are typically tied to particular devices – iTunes App store for the iPhone and iPad, Amazon for the Kindle, Google Play for Android devices. Apple's UK market share in smartphones is around 30%, and although Android is pulling ahead in terms of number of smartphones in the market (now around 50%), iTunes is still the major channel for paid-for news apps.

The increasing popularity of smartphones and tablets has brought a new opportunity for digital news. Established news providers have been able to develop applications which offer more controlled access to their packages of branded news and commentary – unlike the more chaotic and fragmented

marketplace offered by internet search and social media. They are seen as a good way of winning new digital customers, charging for content, and countering the effects of disaggregation.

3.2. Intermediaries as Gatekeepers

The above descriptions suggest that a distinction can be made between intermediaries which explicitly adopt an editorial approach to the news they provide – the aggregators like Yahoo – and those which have chosen to adopt a more passive or neutral role to the content they carry. While the former present a carefully curated package of news and are similar in many ways to print newspapers of old, the latter position themselves as gateways to an almost unlimited amount of content from many different suppliers. While the former present plurality challenges which are similar to those associated with established media, the latter are rather different animals with potentially different implications for plurality. The main body of this report therefore focuses on search, social, and digital app stores.

These intermediaries can be thought of as *gatekeepers* of digital content. Existing media-related examples include cable companies that decide which TV channels to distribute and bookstores that choose what books to order and display. This gatekeeping role is often beneficial to consumers – helping them to find relevant content and access new ideas. But it can also be restrictive – for example when a gatekeeper controls terms of access to information or restricts the scope of information available.

There are no exact parallels for the new digital intermediaries identified here – most are not neutral ‘pipes’ like ISPs, through which all internet content flows (although Twitter is close to this); nor are they pure media companies like broadcasters or newspapers, heavily involved in creative and editorial decisions. But they do perform important roles in selecting and channelling information, which implies a legitimate public interest in what they do.

‘Internet Information Gatekeepers’

Emily Laidlaw, at the LSE suggests defining internet information gatekeepers in terms of the control they exercise over information flows, and – in turn – their impact on participation and deliberation in a democratic culture.

A gatekeeping process in her view involves some of the following: selecting, channelling, shaping, manipulating, and deleting information.

Crucially she argues that enterprises engaged in such activities may have certain public or human rights responsibilities rooted in freedom of expression, privacy, and freedom of association, depending on their size and degree of influence or control exercised. Those who carry most responsibility of this nature she describes as ‘macro-gatekeepers’ – she includes search engines as part of this category.

(Emily Laidlaw, ‘A Framework for Identifying Internet Information Gatekeepers’, *International Review of Law, Computers and Technology*, 29 Oct. 2011)

In the context of the general debate about news plurality, there are arguably four broad and interrelated aspects of the conduct of digital intermediaries which could be of public concern, reflecting their hybrid nature.

- The first is the extent to which these intermediaries each or collectively are becoming bottlenecks for the distribution of news. The larger their role in the overall news distribution market, or in a particular part of it, the more they have the potential to exercise control over the way in which users access news and news suppliers reach their users.
- The second is the extent to which these intermediaries commission, select, promote, and make other (editorial-like) judgements about the news content they make available to users, potentially influencing the news agenda. The more such activity they engage in, the more direct their impact on plurality might be.
- The third is the role they play in shaping future economic models for news provision: if they significantly affect – either positively or negatively – the future viability of news, then they could have an important impact on future news supply.
- The fourth is the extent to which, based on the above, they themselves have the capacity and incentive to influence the political agenda, not just by virtue of their size, but as a result of the role they play as distributors and occasionally commissioners of news.

A fifth and slightly different concern to emerge during research for this report is connected with the increasingly important and pervasive role which – at least some – digital intermediaries play in the everyday lives of their individual users. This touches on, for example, issues of privacy, identity, social relationships, shared culture and values, and so on.⁴⁰ While not strictly relevant to this discussion of *news* plurality, and hence not covered in detail in this report, these wider concerns add to the case for including these enterprises in any overall discussion of plurality in its wider sense. Emily Bell, of Columbia University, identified some of these concerns in a recent *Guardian* article, referring to ‘a series of decisions made by an elite of ferociously competitive business owners, whose consequences are unclear and whose methods are poorly understood by those who are increasingly dependent on the products and services of these opaque companies’.⁴¹

3.3. *Distribution Bottlenecks*

If news plurality is to be sustained in a digital world, it will be highly dependent on widespread and convenient access to the range of news sources available. There would be a real public-interest concern if one or a small number of digital intermediaries became so important to users that their decisions about which content to carry, promote, or block could have a significant adverse impact on the overall range and diversity of news content available.

At present, the evidence is mixed – as the next box shows. Although intermediaries are important to news suppliers who want to reach certain

⁴⁰ For a wide-ranging discussion of these issues, see Andrew Keen, *Digital Vertigo* (St Martin's Press, 2012).

⁴¹ ‘The real threat to the open web lies with the opaque elite who run it’, Emily Bell, *Guardian*, 16 Apr. 2012.

demographic groups, and are increasingly the main source of news for some users, they are far from the only way of accessing news content in the UK.

A COMPETITION PERSPECTIVE One way of addressing potential bottlenecks is to use competition law. From a competition perspective, two questions might be asked. First, at the extreme, we might examine whether any of these intermediaries controls what is known as an ‘essential facility’ – that is, something (usually a natural monopoly like a telecoms network or a port) which is essential to competition but cannot feasibly be duplicated. If so, then steps could be taken to mandate access to that facility. A preliminary analysis suggests, however, that it is unlikely that any digital intermediary operating in the UK would currently be found to be an ‘essential facility’ for either the distribution or consumption of news, given the many other options available to both news suppliers and their customers.

Second, we could ask whether any of these intermediaries is in a dominant position in its relevant market, and hence able to take advantage of that position to distort competition. An intermediary found to be dominant in its relevant market might have the incentive and ability to set excessive access prices, restrict supply, or adopt other unfair terms of use. Where an intermediary also provides content services in its own right in competition with third-party content services, it could have an incentive to discriminate unfairly in favour of its own services when providing access to any ‘gateway’ it controls. This is a key issue as far as Google is concerned, as set out in a recent European Commission statement.⁴²

But the issues are complex and varied. There are arguments about dominance. Google for instance has always argued that competition is only ‘one click’ away. Apple would say that there are other smartphones (and app stores) available. All would say that users can access news via a range of alternative routes. Much depends on the market definition being adopted.⁴³ As Cave and Williams⁴⁴ note that, while Google’s vast superiority in market share is not in doubt, there is room for debate about whether it is persistent or transitory.

⁴² There are currently several competition-led inquiries into Google’s behaviour, which predominantly look at the extent to which Google might have used its search engine to discriminate unfairly in favour of its own services, such as maps, travel listings, or price comparison services. The claim is not that some content has been blocked, but that it has been unfavourably treated in the search rankings. A recent statement from Vice President of the European Commission, Almunia (21 May 2012) set out four concerns:

- possible preferential treatment in search of Google’s own vertical search services;
- the way in which Google copies material from other sites and uses it in its own offerings, e.g. user reviews;
- exclusivity agreements regarding search advertising;
- portability of online search advertising campaigns.

⁴³ A preliminary review of some of these competition issues is given by Angela Daly in ‘Recent Issues for Competition Law on the Internet’ (paper presented in May 2011). E.g. in considering whether Apple has market power one must first determine whether the relevant market is one for apps in general, apps specifically for Apple devices, digital content, or all digital and print media content. The more narrowly the market is defined, the more likely it is that Apple will be found to be in a dominant position.

⁴⁴ Martin Cave and Howard Williams, ‘Google and European Competition Law’, paper for Telecommunications Policy Research Conference, 2011.

Access in Practice

In practice, the current picture is quite complicated, and varies by types of digital intermediary.

Search engines

These play an important role in channelling news content to market, and Google is by far the largest. Few news providers argue that Google's search results are intentionally biased against them, but they do worry about lack of transparency in the search algorithms. Some news providers maintain that they have to agree to Google's terms to be included in search rankings – e.g. news providers that operate pay walls must allow a limited number of free searches to be included in Google search results. The alternative is a complete loss of search visibility.

Social media

Facebook and Twitter are also seen by news providers as key routes for getting access to new markets and demographics, but they as yet account for a relatively small share of news consumption. If and as they grow in importance – like Google – they may call for greater public interest scrutiny – for example in the way Facebook determines presentation of its news feed.

Digital stores

Stores like Apple's iTunes control the gateways to the smartphone and other devices which operate on their systems. Whereas in the open internet world anyone can develop software and applications using commonly available tools, in the closed smartphone/tablet world applications are subject to technical approval and have to be distributed via the relevant store. In Apple's case, not only is there an approval process, but Apple expects all paid-for apps to agree to standard terms, which require Apple to be granted a 30% share of revenues, and – possibly of greater importance to news providers – retain valuable customer data. Some refer to these as 'take it or leave it' terms. Users, once they have purchased their device, are locked in to the iTunes app store for the short/medium term. Apps suppliers – including news apps – have to deal with Apple to reach that valuable customer base.

There are ways of avoiding the Apple gateway. The *Financial Times*, for example, baulked at the standard terms – especially the lock on customer data – and developed an alternative web-based product using HTML5, which can be accessed via a smartphone web browser. (See e.g. 'FT's Mobile Web App Shows Apples Are Not the Only Fruit', *Themediabriefing.com*, 8 June 2011, and 'FT Pulls its App from the Apple Store', *Reuters*, 31 Aug. 2011.) This can be an expensive option to pursue, however (it involves substantial software development and subscriber management costs), and may not be appropriate for all news providers (e.g. those which rely more on advertising than subscriptions).

In the case of news, it could be argued that, given news providers have to reach a wide number of customers to have a viable business, they cannot afford *not* to establish relationships with any individual intermediary. This thus confers some degree of market power on each intermediary, even though they may not individually appear to have dominant market shares. Likewise, users may be 'locked in' to certain intermediaries: if they have bought an iPad, for example, they are locked into Apple for a period of time if they wish to purchase apps. If they have chosen Facebook, it may be hard to switch to an alternative social network, because of data portability costs and network effects. To the extent that search works best when it uses personal data to improve relevance, there may be costs, too, in switching from one search engine to another.

These are often grey areas and, in general, application of competition law in a fast-changing and complex market is not straightforward. Joaquin Almunia, Vice President of the EC responsible for competition policy, has noted that dominance on the internet is difficult to establish, market definitions are tricky, and contestability remains a real question.⁴⁵

PUBLIC INTEREST In any event, an acceptable competition outcome does not guarantee an acceptable plurality outcome. Competition law helps protect the economic interests of individuals *as consumers* and acts to secure a reasonable level of choice and value in any commercial market. Society as whole, however, may take the view that the outcome of a competitive market does not best serve the interests of *individuals as citizens*. For example, markets might provide high-quality news to only the most commercially attractive segments of a population, while society would prefer all to benefit. Markets might focus only on the most popular types of news, society would like a much deeper and more diverse range of news and views to be widely available. Whereas competition authorities might be prepared to live with a market in which there are a small number of intermediaries providing a selective range of the top news sources to their users, the public-interest goal of universality might suggest that all intermediaries of a reasonable size, whether or not dominant, should be obliged to provide access to a very wide range of news sources.

The principle here could be that, if a network is sufficiently important for some groups of people in ensuring access to certain types of public-interest content, then access should be mandatory, whether or not the entity involved has been found to have market power. Likewise, appropriate prominence should be secured for that content. This approach has already been adopted in Europe in the context of mandating access to distribution networks for public service broadcasters.

Moreover, intermediaries may at some stage see a tension between their own business interests and certain types of news coverage. A public-interest or human-rights perspective, such as that referred to above, implies that securing reasonably open access to influential intermediaries for such news would be justified even in the event that there are no or uncertain competition concerns.

⁴⁵ Joaquin Almunia, 'Competition in Digital Media and the Internet', UCL Jevons Lecture, July 2010.

Distribution Bottleneck: Verdict

While not essential facilities, digital intermediaries are increasingly important as channels of access to news, especially for certain demographic groups. News suppliers see them as vital routes to market if they are to maximise potential revenues from their digital services. Users increasingly rely on them as their main news source. At present, intermediaries have an interest in delivering what their users demand – a wide range of ‘relevant’ content, and competition rules offer a degree of protection from any monopoly behaviour. But the consumer interest (or indeed their own business interests) might not always equate to the public interest. To guarantee that all citizens continue to have access to a wide and diverse range of news in future (the principle of *universality*), it will be important to ensure that, as they become increasingly important news conduits, intermediaries do not use their position to limit the sources of news that are available or easily found.

3.4. Editorial Influence

Setting aside bottleneck issues, how much do these intermediaries, through their own operational judgements, directly influence the nature and scope of the news we have access to in the UK? Digital intermediaries in the main do not exercise editorial control in a way which would be understood by traditional media companies – who commission and then accept responsibility for the content they deliver to their customers. Indeed, to date most have maintained that they act as neutral platforms. Search engines help users find content, but they don’t produce it themselves. Social networks act as neutral platforms for content produced and shared by their members. Digital stores sell content provided by other media companies. Under UK and European law, companies which operate in the online space as intermediaries do not have a general obligation to monitor the information they transmit or store, and the European Directive on E-Commerce precludes the imposition of such obligations. There is, however, provision for a system of ‘notice and take down’ whereby online intermediaries are obliged to take action when they have actual knowledge that illegal content can be reached via their services.

Even so, intermediaries are involved in some types of judgement which demonstrate similarities with some of the judgements made every day by mainstream editorial bodies. To varying degrees they do the following.

- They select and sort content, in order to help create a good experience for their users.
- They apply (their own) guidelines and codes on the acceptability or otherwise of the content they make available, and observe local laws relating to illegal content.⁴⁶

⁴⁶ Google and Facebook, although incorporated outside the UK, have a stated policy of operating in a manner consistent with UK law.

SEARCH Google and other search engines are not in the business of producing their own news content. Nevertheless, elements of editorial judgement are present in generating search results:

- in the design of their search algorithms, which aim to ensure that search results are as relevant to users as possible;
- in their presentation of sponsored search results;
- in the way they profile their own services, e.g. incorporation by Google of YouTube and Google+ in search results.

According to Google, its search algorithms rely on more than 200 signals, including page ranking, which works by counting the number and quality of links to a page. Other signals include topicality (e.g. how often search terms appear on a webpage) and personal information about the user, such as location (to improve relevance). Google News, which applies slightly different search tools, attempts to find news stories which are up to date, authoritative, and relevant.

Recently, Google released a paper by US academic Eugene Volokh,⁴⁷ which argues persuasively that search is not a neutral activity, and that each search engine's judgement is much like many other familiar editorial judgements. Search, he argues, uses sophisticated computer algorithms which inherently incorporate the search engine company's engineers' judgements about what material users are most likely to find responsive to their queries. In this respect, search judgements mirror judgements made by newspapers about which daily agency stories to run, which columnists are worth carrying regularly, and guidebooks' judgements about which local attractions and restaurants to mention.

Critics of Google complain about the opaque way in which these 'editorial' judgements are made. Most complaints are prompted by competition concerns.⁴⁸ But some critics raise more general public-interest issues. For them, the internet is a public good requiring special protection. While Google sees manipulation of search engine results as essential to deliver user value, its critics see it as a threat to the openness and diversity of the internet, and call for more public scrutiny.⁴⁹ Some have suggested that regulation should go further, and require so-called 'search neutrality'. But search neutrality is probably an illusory goal. An effective rebuttal of the concept is provided by James Grimmelman,⁵⁰ who argues that, although 'search engines should not be given a free pass' from competition or other public scrutiny, search neutrality would in fact prevent search engines from helping users find the websites they really want.

⁴⁷ Eugene Volokh, 'First Amendment Protection for Search Engine Results', commissioned by Google, 20 Apr. 2012.

⁴⁸ E.g. see Media Institute, *Google and the Media: How Google is Leveraging its Position in Search to Dominate the Media Economy*, White Paper, submitted to FTC, Washington, DC, 30 Aug. 2011.

⁴⁹ See e.g. the summary provided in Patrick Vogl and Michael Barrett, 'Regulating the Information Gatekeepers', *Communications of the ACM* (Nov. 2010), 67–72.

⁵⁰ James Grimmelman, 'Some Scepticism about Search Neutrality', in B. Szoka and A. Marcus (eds), *The Next Digital Decade* (Techfreedom.org, 2010), 435–59.

Search: Editorial Judgement or Neutral Platform?

The Volokh case

- Search engines select and sort results in a way which is aimed at giving users what the search engine companies see as helpful and useful information.
- They design algorithms to accomplish this – a process which involves significant human judgement.
- Conscious choices are made to include links to search engines' own services (e.g. maps).
- This is similar to editorial choices made by any media enterprise.
- As such (in the US) search is protected by the First Amendment, which protects all forms of speech from government regulation.

The Grimmelmann argument

- Search neutrality, even if it were desirable, as currently proposed is unworkable and would harm users.
- Search does differentiate between sites. That is why we use search engines – to find relevant content.
- Search always involves guesswork about users' real needs – search is inherently subjective in attempting to interpret these needs.
- Search is naturally biased – ideally in favour of finding stuff that users will value, and rejecting stuff which is of little relevance/ adds no value.
- Search is often self-interested. Google for example does display prominent links to its own services. But these links are often of value to its users – who do after all have a choice.
- Mechanisms proposed to create more search neutrality are potentially flawed (e.g. more transparency of algorithms, non-discrimination).

Apart from designing search algorithms, Google and other search engines generally resist taking direct responsibility for the content they find for users.⁵¹ While prepared to block search results for content already shown to be illegal, Google in the UK is resisting pressure to block search results to sites which appear to promote piracy, and is also unenthusiastic about measures to block access to (legal) pornographic material. Google can and does block access on a country-by-country basis to blogs which are illegal in those countries, without blocking global access.⁵² This builds on earlier policies – for example, to remove Nazi-related content from Google.de.

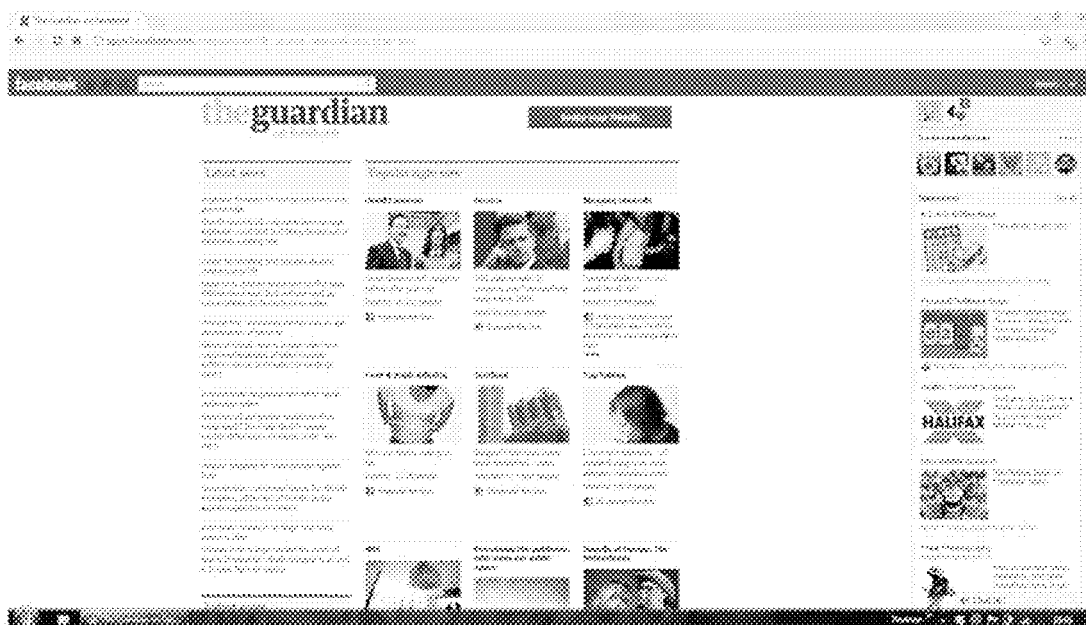
Ironically, while some are worried that Google is exercising too much judgement in the design of its search results, others are arguing that it should take more responsibility for intervening in search results to prevent access to 'undesirable' types of content.

⁵¹ E.g. in its submission to the Leveson Inquiry, Google states that it is not responsible for the content of third-party websites, but does remove items from search when they contravene the law of the land.

⁵² See e.g. 'Google Changes Enable "Per Country" Blog Takedowns', bbc.co.uk, 2 Feb. 2012. Google currently publishes details of removal requests from government entities in the UK.

SOCIAL MEDIA Social media companies, too, argue that they have little control over the news and other content which are found on their networks. To a large extent this is true. They do not produce the content that is shared via their services. They do not actively control the posts and tweets placed by users, and they do not prevent professional news organisations from using their networks to disseminate news. Users/members determine broadly what they wish to read/share with each other.

Example of news on social media, Guardian app on Facebook



Facebook, however, does have control over the way in which its news feed is presented, and in the priority given to news items, some of which may refer to news articles that friends have recently read. Since the launch of social reader apps, Facebook has made several changes to help improve users' experience, and these changes seem to have been partly responsible for some quite wide fluctuations in Facebook traffic to news providers like the *Guardian*.⁵³

According to TechCrunch, Facebook 'controls the news feed like an editor-in-chief controls a newspaper's front page'. It decides what types of content its users see. Recently, it carried news feed stories about friends registering to be organ donors, as part of a campaign to help save lives. Reportedly, Facebook set the weight of the news feed stories created by this feature to 'high' to help increase interest and registrations.

Social media platforms like Facebook also offer the safety of a more controlled 'walled garden', in contrast to the open internet accessed via Google. In doing so, they make more decisions about what types of content to accept or take down.⁵⁴ Facebook's policy, for example, covers posts, messages, and links which are libellous, defamatory, or an invasion of privacy.⁵⁵ Complaints from users are reviewed internally and, if content or links appear

⁵³ 'Decline of Reader Apps Likely Due to News Feed Changes', TechCrunch.com, 7 May 2012.

⁵⁴ See e.g. Jonathan Zittrain, 'The Personal Computer is Dead', *Technology Review* (Nov. 2011).

⁵⁵ As explained by Richard Allan of Facebook in his witness statement to the Leveson Inquiry, 17 Jan. 2012.

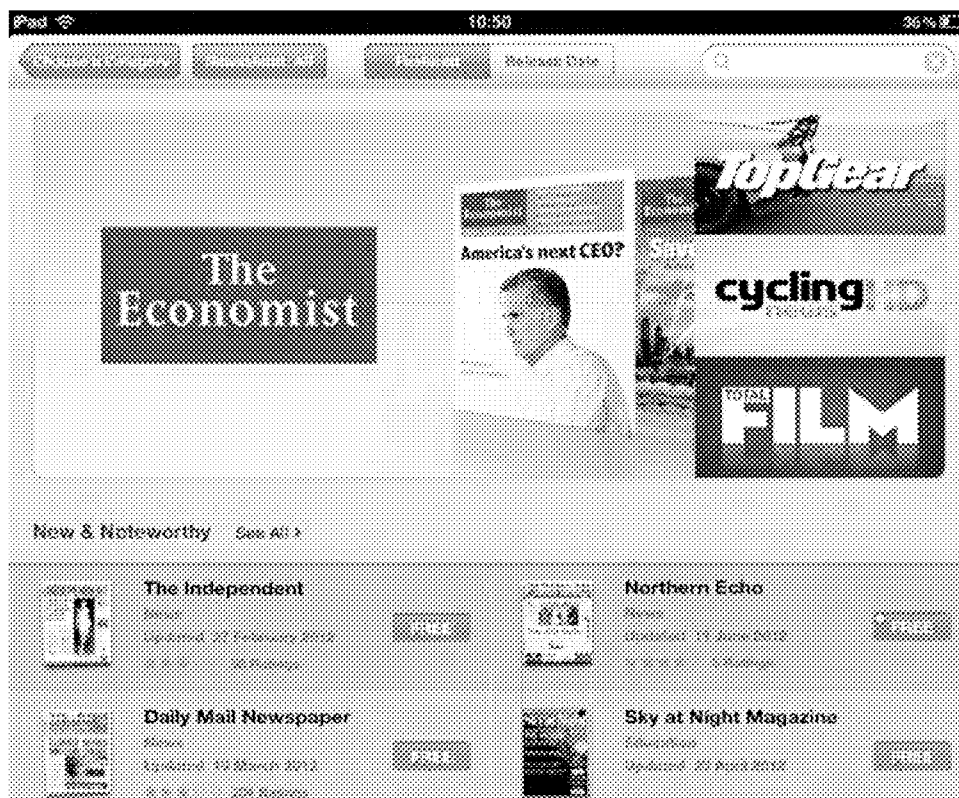
to be illegal under UK law, they will normally be removed. Facebook will not allow images containing nudity, for example. Like Google, its policy is to comply with all applicable local laws in jurisdictions in which it operates.

Twitter likewise has a process for dealing with complaints, and a published policy on its website. Complaints are dealt with by Twitter in the US. For example, an abusive user who has posted private, personally identifiable information on Twitter or who has made a credible violent threat, can be reported using a special website form. Twitter can also selectively block tweets on a country-by-country basis.

DIGITAL APP STORES The digital app stores, and the walled gardens with which they are associated, tend to be more like conventional newspaper and book retailers than full-service media companies. Like retailers, they are active in finding good ways of displaying and selling their content (in the form of apps). Publishers have been known to pay high street book stores for a prominent display position in the shop. Apple and other digital stores do not charge for this (yet), but how an app is displayed in the store can have an influence on its success, especially given the vast number (reportedly 1m plus) apps which are now available.

In the main Apple and others rely on customer-driven 'most popular' or 'highest grossing' lists, but they do also promote 'apps of the week', 'editors' choice', and 'new and noteworthy' – apps which they think are of particular interest to their users. Observers of this process are not really clear how Apple makes these decisions, which could be seen as a (fairly limited) form of editorial judgement.

Example of news on tablet, the Newstand on iPad



Apple also has an approval process for apps. Its main focus is on technical quality, but it has been known to reject some apps on editorial grounds. In a filing to the FCC,⁵⁶ Apple describe their approval process which 'reviews every application submitted to Apple for the App Store in order to protect consumer privacy, safeguard children from inappropriate content, and avoid applications that degrade the core experience of the iPhone'. Some types of content such as pornography are rejected outright. Others such as graphic combat scenes in action games may be approved but with an appropriate age rating. Most rejections, they said, were based on bugs found in applications. Apple's Appstore Review Guidelines include sections on personal attacks, violence, objectionable or crude content, privacy, pornography, religion, culture, and ethnicity.

Notwithstanding these guidelines, they sometimes get things wrong – as with a fuss in the US last year when Apple first approved and then removed a controversial app created by a religious organisation that seeks to help individuals become heterosexual.⁵⁷

Editorial Influence: Verdict

Although they do not make editorial judgements in the way that mainstream news media do, digital intermediaries can and do influence the nature of content which is made available to users, albeit currently in a limited way. Google applies judgements to make its search results relevant, Facebook does the same with its news feed, Apple gives prominence to content it thinks is of interest to customers. All have policies and guidelines on content acceptability and how to deal with illegal content. Although this is not in the same league as the level of editorial engagement found in established news media, it confirms that digital intermediaries cannot be treated as neutral 'pipes'. The decisions they make affect us all, and can affect the range and diversity of news available. There is thus a public interest in understanding how these decisions are made and ensuring that they are properly accountable to the public.

3.5. News Economics

News is a relatively small part of the activities of most digital intermediaries, and probably not an important revenue generator. With app stores, for example, news is simply offered the standard terms of trade available to all other apps suppliers, in their hundreds of thousands. Intentionally or otherwise, however, digital intermediaries could have a major impact on the future viability of high-quality news provision.

The positive side of the story involves new markets, new customers, and new revenue sources. News aggregators are gradually reinvesting in original news content. Google search directs a substantial amount of traffic to other news providers, which can then earn their own advertising revenue based on that traffic volume. Social media enable traditional news organisations to reach new demographics – and reportedly convert casual

⁵⁶ Response by Apple to the US Wireless Telecommunications Bureau's Inquiry, 31 July 2009.

⁵⁷ See e.g. 'Apple Under Fire', Huffington Post, 19 Mar. 2011.

readership into more loyal subscribers. Apple has created a new market for news providers, with an efficient charging mechanism where none existed before.

Nevertheless there are some concerns. A high search ranking for a news provider can be vital for maintaining traffic volume to its website. As a result, many news organisations invest significantly in understanding how search algorithms work and have search engine optimisation strategies to help ensure they retain visibility in the rankings of all key search engines. But they worry that changes in Google's algorithms could have a dramatic impact on their traffic from day to day. Some news providers express concern that, at some stage, Apple or its rivals might start to request payment for prominence, rather like the high street bookstores of old.

For some, the worry is about free-riding on top of their content. They argue, for example, that Google adversely affects their businesses by providing convenient access to news headlines without paying for that content, and by incorporating advertising around those headlines (not the case for Google News).⁵⁸ For others, the concern is disaggregation of their content – although Google and Facebook generate traffic to news sites, they allow users to pick and choose between stories and avoid paying for the full curated package of news and analysis.

News providers who have opted for pay walls have argued that they automatically lose visibility in Google search results unless they agree to at least some of their content being made available free of charge via Google search. This could be a concern if pay walls become vital for the continuing economic viability of news provision, although some providers – like the *Financial Times* – comply with the Google requirement while still preserving their pay model largely intact.

More importantly, news providers are worried about lack of access to basic information about their own customers from intermediaries like Apple, Google, and Facebook. If news providers are to maintain investment in news, they argue, they will need to be able to access appropriate customer data at a reasonable level of detail in order to provide advertisers with a more targeted demographic, but also to help build and maintain paid-for subscriptions. The recent Reuters Institute survey⁵⁹ found that people who use tablets are more willing to pay for news than those using other online news channels, underlining the potential importance of news apps to future news business models.

⁵⁸ Many have pointed to the wider impact of Google on the advertising income of traditional newspapers. It is true that search-based advertising has proved to be much more effective than old-style newspaper classified ads, and that newspapers have to find a new business model. But it would be wrong to conclude from this that somehow Google and other search engines 'owe' newspapers some compensation. The truth of the matter is that search is a business which provides huge value in its own right to its users as well as to its operators. Much of search advertising comes from putting users in touch with suppliers of products and services they want to buy, not from providing 'free' access to other people's news content. Where news stories do appear in search findings, most users click through to the original news provider.

⁵⁹ Newman, *Reuters Institute Digital News Report*.

News Economics: Verdict

Intentionally or otherwise, digital intermediaries could have a significant impact on the future economics of news. Most of the concerns reported here are matters for commercial negotiation between news providers and intermediaries. Where they raise specific competition concerns they are on the whole best dealt with by reference to the competition authorities. However, it is the case that the terms on which intermediaries do business with news providers now are particularly important as news media try to create a 'breathing space' while they transit from old media to their new digital products. It would therefore help protect news plurality if digital intermediaries were to recognise the role that news plays in society and voluntarily take a more proactive role in creating an environment more conducive to the long-term sustainability of news – perhaps through more flexible terms of engagement.

3.6. Intermediaries and Political Influence

The final area of concern for plurality is the extent to which the new digital intermediaries will have the inclination or means to translate their growing power into the sort of political influence which powerful newspapers display today. It is certainly true that, as large enterprises which help create economic wealth in the UK,⁶⁰ they will increasingly expect to have a 'seat at the table' when governments are considering policies and regulation which might directly impact on their businesses. In this respect, they are like any other large corporate enterprise, which will attempt to build relationships with and lobby government to protect its own corporate interests. The global scale of their activities, their importance to economic growth, and their ability to move people and capital around the world may further increase their leverage.⁶¹ At the same time, their very global nature may reduce their interest in understanding 'local' sensibilities and addressing 'local' concerns.

It is not clear, however, that any of these organisations – at least for now – are motivated to influence the wider political agenda in the way in which some newspaper proprietors enjoy doing, or have the means to do so. Being largely US-based, it could be argued that they will have less interest in UK politics than news organisations based here.⁶² They do not yet appear to have a political agenda extending beyond their immediate corporate interests. This may not always be the case, of course.

A more difficult question is whether the nature of their activities – in particular their role in the dissemination of news and information – gives them any greater leverage than, say would be available to a major defence or pharmaceutical company. They create little of their own content, and arguably are primarily driven by the actions and demands of their users in deciding on news selection and presentation. Could Google rig its search results to deliver high rankings for unfavourable content about politicians of governments it did not like? Would Facebook be able to manipulate its social

⁶⁰ See e.g. Carl Kalapesi, Sarah Willensdorf, and Paul Zwillenberg, *Connected Kingdom*, published by BCG for Google, Oct. 2010: www.connectedkingdom.co.uk.

⁶¹ E.g. 2011 global revenues earned by Apple (£69bn), Google (£24bn), and News Corp (£21bn) far exceed those of UK-based media organisations like the BBC (£5bn) and DMGT (£2bn).

⁶² Although this could also mean that they are less inclined to understand or support UK policy and regulatory concerns.

reader to share only stories which criticised certain political parties? Today, it seems unlikely that such crude measures could be taken without alienating large numbers of their users.

However, subtler approaches may be open to them. For example, both Facebook and Twitter represent potentially new ways for media power and influence to be exercised and have shown how large numbers can be galvanised to support specific political issues or campaigns. At present, such movements are largely driven by the public, who through social media are empowered to promote their own causes. But it is not too far-fetched to envisage a time when this ‘people power’ could be motivated in support of causes of interest to the owners of those social media organisations. Facebook’s organ donor campaign is a small indication of how this might take hold.

Concern here would be heightened if at some future stage any of these companies were to become more active in content origination, especially news. It is not obviously now in their commercial interests to do this, but should it happen then there would need to be closer scrutiny of how they treated their own content compared to that provided by third parties, and the extent to which their political leverage was increased due to their involvement in original news content.

Political Influence: Verdict

Digital intermediaries are powerful global companies which will engage in serious political activity to protect their own interests, like any other large corporate enterprise. Their global scale may make them less willing to acknowledge local sensibilities and interests. They do not (yet) seem interested in a wider political agenda, but this could of course change under different ownership in future. While they have some tools which give them more political leverage than, say a defence contractor or pharmaceutical company – e.g. search engines may be able to influence information flows, social media may be able to galvanise wide single-issue support – they do not yet match the power or impact of today’s front-page headlines or editorials. They would gain more such leverage if they also owned media assets involved in content origination, including news.

3.7. Overall Impact on Plurality

In conclusion, the new digital intermediaries do have a significant and potentially positive role to play in news plurality.

- News aggregators have introduced alternative news sources and facilitated multi-sourcing of news.
- Search engines help us find news stories from a wider range of sources, and provide click-through to news sites (which can then monetise the traffic).
- Social media help us find news stories we wouldn’t otherwise come across. Twitter and Facebook have made a major contribution to getting news out from countries with authoritarian regimes. Social media also play a big role in enabling multi-sourcing of news, with friends sharing news stories more widely than would otherwise have been possible.

- Digital stores increase the range of titles which are easily accessible to customers. Smartphone and tablet apps help sustain news brands, improve access to existing products, and provide a platform for improved product features, as well as making charges for news more acceptable to users. These more compelling news products may help sustain and build future demand for high-quality news.

They do give rise to some public-interest issues, though.

- They occupy an increasingly influential gatekeeper position for news, which could allow them, if they chose to do so, to determine which sources of news we have easy access to.
- Although unlikely to be classed as essential facilities, a combination of supplier and user 'lock-in' underpins their influence, and could enable them to favour some news sources over others. Competition law could offer only partial protection of the public interest in such circumstances.
- Although few intermediaries are active in producing their own news content, they do make editorial-like judgements which, at the margin, might affect the nature of news content which we can access in the UK.
- Whether intentionally or not, they could have a big impact on the economics of news provision, and the way in which they do business with news providers has implications for the longer term viability of high-quality news in the UK.
- Their capacity and appetite for engaging in the wider political debate is an important issue for the future.

Perhaps most of all, there are questions about their level of engagement with local sensibilities and concerns, and their accountability to the public and politicians in the UK. A new plurality framework needs to consider how it would address those challenges for the next decade and beyond. The final chapter turns to what that might mean in practice.

4 Policy and Regulatory Implications

4.1. Introduction

A new framework for the regulation of plurality will need to last for at least the next decade. Those ten years could bring the end of traditional print newspapers and real convergence of content on digital networks and devices. We still cannot be certain of the precise extent and timescale of these changes, but any lasting framework must include measures which are sufficiently adaptable to remain effective as the market changes. That means, among other things, that it must recognise and respond to the potential role of the new digital intermediaries discussed in this report.

Equally, however, we should not jump too quickly to the assumption that more regulation is the answer to any identified concern, nor that it can always be effective. First, some of the complaints made by established news media about the terms on which they do business with, say Apple or Google, are a matter for commercial negotiation between the parties concerned (just as, in days gone by, newspaper publishers had to agree distribution deals with wholesale/retail companies such as W. H. Smith). Second, even if digital intermediaries are large and powerful global companies, some checks and balances are already in place:

- their own commercial interests may in many areas be aligned with the general public interest – for example, to provide open and wide access to content;
- markets are still changing quickly – players which are dominant now may be overtaken by new entrants within a short space of time.

Third, regulatory remedies may be difficult to devise and hard to apply without creating more harm, especially if they chill innovation or prevent the emergence of successful business models. A key challenge here is that digital intermediaries are hard to classify in terms of any existing regulatory framework. They are not neutral pipes, and hence do not lend themselves to traditional types of access regulation that would be applied to, say, BT. Nor are they editorial bodies of the type which existing plurality rules are drawn up to deal with, even though, as this analysis has shown, they do exhibit some of the characteristics of existing platforms and publishers which have called for a policy/regulatory response in the past.

Nevertheless, the analysis presented demonstrates that digital intermediaries are potentially powerful players and, by virtue of the key roles they play in the organisation and dissemination of information, are legitimate priorities for public policy attention.

What then should be done? The balance of this discussion suggests that we will need a new toolkit specifically designed to address the very particular challenges raised by intermediaries. Part of this will involve effective use of existing competition laws to ensure that powerful intermediaries do not exploit their market positions. Part must involve dialogue between policy-makers and intermediaries to see how far some of the concerns raised can be addressed by responsible voluntary action. Part will be about bringing intermediaries within the new plurality framework proposed by Ofcom. And part will be about developing backstop approaches to regulation which could be used should the commercial aims of intermediaries at some future stage diverge significantly from the UK public interest. In particular, there is a great opportunity to enter into a serious dialogue with the key intermediaries

discussed in this report to ensure that they become more engaged in UK policy and plurality concerns, and can be encouraged to play their part in ensuring we have an open and plural internet, which pays due regard to the public interest.

4.2. *Competition Laws*

As described earlier in this report, news suppliers now have to deal with powerful digital intermediaries to distribute their content to users. For some, the internet means that access is free, opening up the market to many new citizen journalists and bloggers. But for professional news suppliers seeking to support a high-cost newsgathering operation, the terms (including the ability to charge for content) on which they can reach end-users will have a big impact on their future viability – and in turn on the availability of high-quality news. These relationships in the first instance are purely business negotiations, but could also have implications for longer term plurality if powerful intermediaries use their market power to restrict or distort competition, or make it difficult for news suppliers to experiment with new business models.

Using existing competition powers to secure effective competition in the supply of mediating services (whether app store, search, or social) should therefore be a key priority. As noted earlier, these are complex and fast-moving markets, however, and competition processes can sometimes be lengthy. It will be important therefore to seek ways of ensuring that the relevant authorities have a good and up-to-date understanding of these markets, and that developments are kept under review to ensure quick and effective action in the event of any emerging concerns. Regular monitoring of market developments by a designated authority – perhaps the communications regulator – could be part of this process.

In this context, it is interesting to note the recent recommendations of the EU Media Futures Forum, established by EC Vice President Neelie Kroes. As part of an eight-point plan, they argue that Europe must avoid new barriers to entry in order to protect competition and innovation. Their recommendations include close monitoring of developments in the online and offline environment ('many examples of possible new barriers exist') and for competent authorities to take effective action when such developments threaten competition and/or innovation.⁶³

4.3. *A Plurality Dialogue*

Competition laws can only do so much however. They might be able to promote a degree of competition between firms, but they cannot insist on a wide variety of different suppliers and perspectives. They can ensure that consumers pay a fair price and get a reasonable choice of goods and services, but they cannot guarantee that the range and diversity of news thought desirable for a democracy will be available, or that everyone will have access to that news whatever digital network or platform they choose to use.

In parallel, therefore, policy-makers should enter into a continuing dialogue with the key digital intermediaries which goes beyond competition and consumer interests. The aim should be to establish common ground in working towards an internet which takes into account UK social and cultural (or 'citizenship') aims as well as consumer and commercial interests. This

⁶³ Executive Summary of the *EU Media Futures Forum Report* (Brussels, June 2012).

would build on work already done by the main intermediaries, and ensure that it properly addresses UK sensibilities.

To start the dialogue, it would be of value to establish some common principles which would describe what, from the UK's perspective, a 'civilised' internet might look like. For example, it might include:

- freedom of speech and expression;
- open access to a range and diversity of information and opinions;
- protection for individual rights such as privacy, fair treatment, right of reply;
- concern for the vulnerable, especially children;
- observation of relevant UK laws.

Many intermediaries already subscribe to these aims. Equally important though is the question of transparency and accountability. There is a public interest in understanding how these aims are translated into practice, and what action can be taken if intermediaries act in a manner contrary to these principles.

This means the need for more detailed guidelines and policies, which are consistent with overall UK public expectations, guarantee transparency of approach, and provide a clear course of redress should things appear to go wrong. The two key and related areas of concern identified in this report are the policies and processes which relate to providing news access, and how intermediaries make decisions about the content they are prepared to carry / provide links to.

ACCESS TO A RANGE AND DIVERSITY OF NEWS As part of the proposed dialogue, intermediaries could be challenged to demonstrate how they intend to ensure that they will continue to secure fair and open access to a wide and diverse range of news sources.

Transparency of approach should be a key principle here. Public trust depends on a confidence that access decisions are being taken in a fair and transparent manner. Already, Google and others provide some public information on how their access decisions are made (for example, broad guidelines about how search works). It is less clear, though, that there is a good level of public understanding of such issues across all intermediaries, or that there are easily available measures that could be taken if news consumers or suppliers feel a lack of confidence in how those decisions are being made. Intermediaries could therefore be encouraged to make clear what their policies are on access to and selection of news content. In doing so, they would draw consumer attention to their policies and decisions, and consumers would be able to make choices between intermediaries based on a better understanding of how they make those decisions. Options to be explored might include the following.

- Publication of the criteria used in making access decisions, in a user-friendly format. Search companies, for example, would be encouraged to publish in a clear and simple format the principles they use in designing search algorithms, the outcomes that should be expected by their users, and any approaches they take to displaying their own services alongside search results on the search pages.⁶⁴ Digital stores

⁶⁴ It is not intended that this would require publication of detailed search algorithms, which would reveal commercially valuable information to rivals and encourage more gaming of the system by SEO experts, including those affiliated with news providers.

would likewise be encouraged to publish details of their approval processes and how they decide to give prominence to certain apps. The aim would be to engage user/supplier pressure in ensuring fair behaviour.

- Provision of a clear route for content suppliers or users to take if they wish to complain about any decisions to block content or significant and unexplained changes in search rankings or other forms of prominence.

In many ways this approach would be similar to Ofcom's approach on net neutrality.⁶⁵ Here the concern was that ISPs might block or degrade access to certain types of internet content in favour of content from suppliers prepared to pay for preferential carriage. To deal with this, Ofcom has preferred so far to rely on the checks provided by competition between ISPs alongside transparency to consumers about the terms of any such arrangements. For example, ISPs must

- explain that traffic management takes place and why;
- provide clear and easy to understand information on traffic management so that customers can better compare broadband packages;
- publish a common key facts indicator table summarising their traffic management policies.
-

CONTENT POLICIES As noted, all intermediaries to a greater or lesser extent operate content policies or guidelines. As part of the proposed dialogue, intermediaries could be challenged to take part in a wide and open public debate on the principles which should underpin those policies. It would then be for digital intermediaries to translate those principles into detailed guidelines and rules. Given their differences, it may not be realistic to expect a single 'intermediaries' code, but that option should at least be explored, along with other possibilities, such as a code for all search engines, one for all social networks, and so on. It would be for each company then to explain how it had translated the principles into action in a way relevant to its own situation and customers. This does not mean that intermediaries would be forced to take responsibility for all the content they provide access to, but that appropriate codes and processes would be put in place for the types of editorial decision they do take – whether in response to complaints about illegal content, or in applying any wider standards.

⁶⁵ Ofcom, *Approach to Net Neutrality* (2011).

Possible scope of a code

Substance

- Clear take-down policies for illegal content;
- clear pre-publication approvals processes, where relevant;
- explanation of what content is/is not considered to be inappropriate, especially to protect vulnerable groups such as children;
- labelling of different types of content to indicate the degree of pre-publication vetting.

Accountability

- Publication of clear guidelines and codes;
- explanation of how decisions are made;
- clear and effective appeals processes to be used by users or suppliers if they are unhappy with any action taken;
- how compliance would be ensured including provision for independent governance, review and sanctions, if any.

ACCOUNTABILITY This leaves the question of who, if at all, should provide independent oversight of these guidelines. While much of this could be left to intermediaries themselves, experience of media self-regulation elsewhere suggests that there are advantages in having some form of statutory underpinning, to secure public trust and clear and independent accountability. There may therefore be a role for an independent body, such as Ofcom, to establish the basic principles and ground rules, to keep processes under review, and to take action in the event that they prove unsatisfactory.

One model⁶⁶ emerging from the recent debate would require each broad type of player in the converged media economy to develop their own codes of practice, relevant to their particular circumstances, but within an overall set of broad principles, perhaps defined by the media regulator. Ed Richards of Ofcom has, for example, suggested⁶⁷ that it might be possible to establish a core set of principles and aims which are held in common across a diverse media terrain, and to agree minimum standards in some key areas which we would like to see in the UK, regardless of the nature of the service or its specific regulatory setting. Presumably the regulator might help establish the topics which codes should cover, and some broad principles which might apply. The advantage of this approach would be to provide some greater consistency and structure at a broad-brush level – helpful to give reassurance to the public and news suppliers – while still allowing flexibility in detailed implementation. This approach could include access issues as well as content standards.

For UK policy-makers, a dialogue of this sort will help avoid the need for potentially intrusive regulation. For intermediaries it would help sustain public confidence in their activities, and perhaps help them develop models of good behaviour which could be adopted elsewhere.

⁶⁶ See e.g. Tim Suter's witness statement to the Leveson Inquiry, June 2012.

⁶⁷ Speech to the Oxford Media Convention, by Ed Richards, Ofcom CEO, 25 Jan. 2012.

4.4. Plurality Framework

Much of the above can be done without explicit regulation. There is a real opportunity for intermediaries to take the lead in demonstrating that they understand UK public-interest concerns, and showing how they can deal with them.

Alongside such initiatives, however, the analysis presented in this report suggests that any future plurality framework should also explicitly take into account the activities of digital intermediaries. Ofcom, in its recent approach, proposed a new regime based on periodic reviews of plurality and the inclusion of online news in any measure of plurality. Ofcom also noted that digital gatekeepers such as search engines, app stores, and social media might need to be included in any such analysis. This report argues that this would indeed be an appropriate next step in modifying the UK plurality framework.

REVIEWS AND TRIGGERS At present, the plurality framework is designed to focus on broadcasters (media enterprises) and newspapers. Public-interest tests, which examine plurality, are triggered by mergers or acquisitions involving media enterprises or newspapers. In future, while mergers/acquisitions would still trigger regulatory scrutiny, reviews of plurality would also sensibly be carried out on a periodic basis (i.e. without waiting for an external trigger) and their scope should be broadened to ensure that the role played by digital intermediaries in securing or reducing plurality is properly taken into account.

One option, as suggested by Ofcom, would be to widen the current definition of media enterprise to include large digital intermediaries like Google, Apple, and Facebook.⁶⁸ Alternatively, Ofcom could be simply required to have regard to the activities of a newly defined category of digital intermediaries when determining whether or not there is sufficient plurality. Intermediaries would not be classified as full media enterprises, but would still be relevant to any plurality review.

In practice this would mean that

- digital intermediaries should be included in any Ofcom review of plurality, whether carried out periodically or triggered by a market event such as a merger;
- their impact on plurality – positive or negative – should be taken into account when reaching a view on ‘sufficiency’ of plurality.

In a plurality review, Ofcom could, for example, examine

- the positive effects associated with digital intermediaries – improved access to a wider variety of news, multi-sourcing, etc.;
- the potential risks to diversity, including the observed availability of news via different platforms, the ways in which search, social media, and app stores are selecting and sorting news, and the impact of any ‘filter bubble’ effect.

⁶⁸ E.g. the recent Convergence Review in Australia concluded that significant enterprises which control professional media content should have obligations no matter how they deliver their services. It is therefore proposed to replace the old approach of different rules for different media with a new concept: the Content Service Enterprise (CSE). CSEs would be defined as enterprises above a certain size, which ‘control’ the supply of professional content to the public. Of course, much would depend on how ‘control’ is defined.

In carrying out its assessment, Ofcom could examine indicators of consumption and impact, such as

- the share of news consumed via intermediaries collectively and via any single intermediary;
- the extent to which users can easily switch between intermediaries or choose other ways of accessing news;
- levels of user satisfaction and trust associated with intermediaries;
- the extent to which intermediaries provide access to a sufficiently wide range of news, in an easily accessible format;
- the extent to which intermediaries enable easy access to sources of impartial news and other news deemed to be of public interest.

The conclusions of such reviews would indicate whether any measures needed to be introduced to help secure desired plurality outcomes. The legislative framework would need to be adjusted to enable such action to be taken – either directly by Ofcom (as with existing telecommunications regulatory powers) or perhaps via referral to the competition authorities. Such action would need to include plurality concerns arising from organic growth or change in the market, not just mergers or acquisitions. It is for consideration whether this is best done at UK or EU level. The latter may be more appropriate given the cross-border nature of many intermediaries' services, and the location of their European HQs outside of the UK.

4.5. Remedies

If an individual digital intermediary or intermediaries together were found in any future Ofcom review to be adversely affecting news plurality, a range of remedies might need to be considered. These could include:

- Access commitments – focused on whatever problem has been identified.
- Commitments to establishing independent 'access' or 'editorial' boards, who would provide oversight of the decisions made by relevant intermediaries.
- Funding commitments – for example, elsewhere media mergers have been allowed on condition that the merging parties commit to invest in certain types of original news content (local news being one example).

Given the nature of the role played by intermediaries, the first two of these are perhaps more relevant.

ACCESS COMMITMENTS One approach would be to consider some form of access guarantee. In the first instance, digital intermediaries found to be affecting plurality could be required to guarantee that no news content will be blocked or refused access, unless for legal or other good reason, such reason to be explained with reference to publicly available criteria. Beyond this, it might also be possible to develop some broad commitments which ensured that certain types of news content deemed to be in the public interest would be carried by digital intermediaries,⁶⁹ and in a prominent position.

⁶⁹ Existing must carry rules (and indeed those relating to access services) do not require market power to be demonstrated in the first instance, and in some cases they have been interpreted to include carriage in a channel portfolio, as opposed to by a transmission network. Both of these precedents could be useful if a similar approach were to be designed for digital intermediaries.

It is possible to imagine requirements which could be imposed on search engines like Google. For example:

- More proactive requirement to – for example – always list at least x different news sources on the first page of a search.
- Add a search result box on the front page which is designed to find news/views specifically from a range of 'non-mainstream' sources.
- Require one 'public-interest' news source on the front page of any news search, where such sources offer something of relevance to that news story.

Likewise, it is possible to envisage requirements for digital stores, for example:

- featured news apps could be rotated to include all available news apps over a period of time;
- public-interest news apps could always be listed on the front page of the app store.

Measures such as these clearly pose risks as well as offer possible benefits, and could be seen as attempts at censorship rather than interventions in the public interest. Moreover, none of these approaches may be future-proof, as search results and app store presentation and design are bound to change over time. Public reaction would need to be carefully tested to ensure that there is public support for any such intervention, and costs as well as benefits carefully weighed.

INDEPENDENT BOARDS An alternative approach⁷⁰ would be to introduce some form of independent review or audit body for key intermediaries, which would have the powers to review the application in practice of search algorithms or of digital store listings and to act as a body of appeal should news providers feel that they were being downgraded arbitrarily in their search rankings or prominence. Search engines could also be required to provide reasons for any significant demotion in ranking.

COMMITMENTS TO INVEST The future viability of high-quality news, and the capacity of the market to deliver a reasonable level of plurality in its supply, is still uncertain. Should a future plurality review find that powerful intermediaries are adversely affecting plurality, consideration could be given to requiring some or all the key players to contribute to an independent news investment fund, which would help support high-quality journalism.

Short of this approach, digital intermediaries could be challenged by government to voluntarily play a more proactive role in securing future news plurality. This means engaging at a senior regulatory and political level with companies which have so far been largely technology-driven to ensure that they understand the aims of news plurality and their potential roles in supporting it. For example, they could be asked to help create a 'breathing space' for news providers to develop compelling new products by looking again at all aspects of their relationships with news providers, especially their access to customer data.

⁷⁰ As proposed for example in Vogl and Barrett, 'Regulating the Information Gatekeepers'.

4.6. Backstop Regulation

Rather than relying on reviews plus remedies or ex-post undertakings, a more urgent and direct approach would be to introduce ex-ante backstop regulation. There are two areas in which this might be considered if intermediaries are thought to pose significant and enduring plurality threats: access and cross-media ownership.

ACCESS REGULATION One option would be to adapt existing forms of access regulation so that they applied to designated types of digital intermediary. Precedents exist for this type of approach, as shown in the next box. Moreover, they have recently been extended beyond their original public service broadcasting (PSB) focus, to local TV. Access rules may, though, be harder to apply in the context of digital intermediaries. Such rules would not be relevant to news aggregators like Yahoo, and it is difficult to see how they would apply to social media platforms like Facebook or Twitter, which are principally user-driven.

Access Regulation

To date, regulation has been used to ensure that certain types of news services are as widely available to the public as possible across key distribution networks. These rules are intended to secure universal access to a plurality and diversity of content. The European Commission's Universal Services Directive enables member states to impose reasonable 'must carry' obligations for the transmission of certain television broadcast channels and services. Such obligations must be necessary to meet clearly defined general interest objectives and must be proportionate and transparent. They can be applied to any network where a significant number of end-users of those networks use them as their principal means to receive television broadcasts, i.e. they are not dependent on establishing significant market power. (They can also be interpreted as requiring 'must carry' as part of pay-TV channel portfolios – e.g. as has been done in France.) These rules are transposed in the UK through the Communications Act, and currently apply to the main PSBs.

In parallel, the Access Directive requires access to conditional access systems (e.g. those run by BSkyB) to be provided on fair, reasonable, and non-discriminatory terms. These conditions apply to all such access-related services, and do not require any market power finding. They can, however, be changed/removed following subsequent market reviews. In effect, these two measures ensure that everyone has access to PSB content, including impartial news, whatever distribution platform they choose. There is also a requirement for the provision of appropriate prominence for the listing of such channels on electronic programme guides.

Before considering significant new access measures of the type suggested above, it would be important to monitor market developments carefully, and to establish explicit thresholds which would have to be crossed before any additional measures were introduced. This could be done on a continuing basis or in periodic reviews. Such thresholds could be defined in terms of potential influence, plurality outcomes, or user experience.

OWNERSHIP LIMITS Some argue that periodic plurality reviews are not enough. They should be supplemented by clear ‘bright line’ caps on ownership in each designated media market. For the reasons set out earlier in this report, it is not clear that such caps would achieve their desired effect in today’s rapidly changing media market. If this is true of old media, it is likely to be even more so of new digital intermediaries. There are good reasons to tread cautiously here.

- The markets in which they are operating appear unlikely to support many individual players (economies of scale, network effects, etc.).
- Equally, success can be quite transitory, as new ideas and entrants displace existing players.
- Even more than in traditional media, it is not obvious what structural remedies could be introduced if UK authorities found Google or Facebook – for example – to be too big in their respective markets.

So, introducing fixed limits on ownership and control in this sector would be problematic. However, *cross-media ownership* could be an exception to this general rule. As suggested earlier, if large digital intermediaries decided to move extensively into content production in their own right – perhaps through acquisition – then their ability to exercise political leverage might be enhanced. Consideration could be given, therefore, to formulating specific cross-media ownership constraints, which would seek to enshrine the principle that any company with a large market share (level to be determined) in ‘mediating’ activities should not also be a major player in content creation. The potential risk associated with any cross-media merger would, of course, need to be weighed against the opportunity that might be created to secure increased investment in high-quality content.

4.7. Concluding Observations

There is no doubt that some of the digital intermediaries examined in this report are large and powerful organisations, with the ability to influence both our everyday lives and more specifically the range and diversity of news content to which we have access. They may pose challenges for future plurality regulation, not all of which can easily be addressed. It would be wrong to assume that extensive regulation is yet feasible or justified, although sensible measures could be introduced to ensure that their activities are fully recognised in any plurality review, and that they make public transparent information about their own codes and guidelines. At the same time, Ofcom will need to monitor over time their behaviour both as editorial bodies and as potential access bottlenecks – if they take on more of the characteristics of either, then their impact on plurality may call for further action.

Alongside this, it will be important to engage seriously with these enterprises on plurality issues. They can play a big part in helping secure a greater degree of plurality at a time when established structural solutions seem less and less likely to work. They can be challenged to show a willingness to behave responsibly in the public interest – and perhaps set an example to the rest of the news media in doing so.

Select Bibliography

Joaquin Almunia, 'Competition in Digital Media and the Internet', UCL Jevons Lecture, July 2010.

Steven Barnett, *Journalism, Democracy and the Public Interest* (Oxford: RISJ, 2009).

Martin Cave and Howard Williams, 'Google and European Competition Law', Paper for Telecommunications Policy Research Conference, Arlington, VA, 2011.

Andrew Currah, *What's Happening to our News* (Oxford: RISJ: 2009).

Angela Daly, 'Recent Issues for Competition Law and the Internet', presented at the 5th Competition Law and Economic European Network (CLEEN) Workshop, European University Institute, May 2011.

European Commission, *Media Pluralism in the Member States of the European Union*, Staff Working Document (Brussels: Commission of the European Communities, 2007).

James Grimmelman, 'Some Scepticism about Search Neutrality', in Berin Szoka and Adam Marcus (eds), *The Next Digital Decade* (Washington, DC: techfreedom.org, 2010), 435–59.

Robin Foster, *Informing the UK: the Role of TV News in the Digital World* (London: ITV plc, 2011).

Nick Harkaway, *The Blind Giant: Being Human in the Digital World* (London: John Murray, 2012).

House of Lords Select Committee on Communications, *The Ownership of the News* (London: HMSO, 2008).

Carl Kalapesi, Sarah Willensdorf, and Paul Zwillenberg, *Connected Kingdom*, published by BCG for Google, Oct. 2010: www.connectedkingdom.co.uk.

Andrew Keen, *Digital Vertigo* (New York: St Martin's Press, 2012).

Robert Kenny, Tim Suter, and Robin Foster, *Past and Future Trends in Plurality and the Setting of the News Agenda* (London: Perspective, 2012).

Emily Laidlaw, 'A Framework for Identifying Internet information gatekeepers', *International Review of Law, Computers and Technology* (Oct. 2011), 263–76.

David Levy and Rasmus Kleis Nielsen, *The Changing Business of Journalism and its Implications for Democracy* (Oxford: RISJ, 2010).

Media Institute, *Google and the Media: How Google is Leveraging its Position in Search to Dominate the Media Economy*, White Paper submitted to the Federal Trade Commission (Washington, DC, Aug. 2011).

Nic Newman, *The Rise of Social Media and its Impact on Journalism* (Oxford: RISJ, 2009).

Nic Newman, *Mainstream Media and the Distribution of News in the Age of Social Discovery* (Oxford: RISJ, 2011).

Nic Newman (ed.), *Reuters Institute Digital News Report 2012* (Oxford: RISJ, 2012).

Rasmus Kleis Nielsen and Geert Linnebank, *Public Support for the Media* (Oxford: RISJ, 2011).

Pippa Norris, *A Virtuous Circle: Political Communications in Post Industrial Society* (Cambridge: Cambridge University Press, 2000).

Ofcom, *Report on Public Interest Test on the Proposed Acquisition of British Sky Broadcasting Group plc. by News Corporation* (London: Ofcom, 2010).

Ofcom, *Approach to Net Neutrality* (London: Ofcom, 2011).

Ofcom, *Measuring Media Plurality* (London: Ofcom, 2012).

OECD, *The Evolution of News and the Internet* (Paris: OECD Working Paper, 2010).

Eli Pariser, *The Filter Bubble: What the Internet is Hiding from You* (London: Penguin Press, 2011).

Pew Research Center's Project for Excellence in Journalism, *The State of the News Media 2012* (Washington, DC: Pew Research Center, 2012).

Robert Picard, 'Digitisation and Media Business Models', in Mapping Digital Media, Open Society Media programme, 2011.

Peggy Valcke et al., 'The European Media Pluralism Monitor', *Journal of Media Law* (2010), 85–113.

Peggy Valcke, *Risk Based Regulation in the Media Sector: The Way Forward to Advance the Media Pluralism Debate in Europe?* ICRI Working Paper (Leuven: University of Leuven, 2011).

Patrick Vogl and Michael Barrett, 'Regulating the Information Gatekeepers', *Communications of the ACM* (Nov. 2010), 67–72.

Eugene Volokh, 'First Amendment Protection for Search Engine Results', commissioned by Google, April 2012.

Jonathan Zittrain, 'The Personal Computer is Dead', *Technology Review* (Nov. 2011).

In addition, much useful analysis and debate is contained in the various submissions to the Ofcom consultation on measuring media plurality, and in witness statements submitted to the Leveson Inquiry into the Culture Practices and Ethics of the Press.

About the Author

Robin Foster is an adviser on regulatory, policy, and strategic issues in the communications sector, and a founder member of the UK-based media consulting group, Communications Chambers. He has held senior executive positions at Ofcom, its predecessor the ITC, and at the BBC. He now advises communications organisations and governments at a senior level. His recent work has included an analysis of the future of TV news, for ITV plc, an evaluation of digital terrestrial TV for the Irish Broadcasting Authority, and media plurality regulation for the BBC. He was an independent member of the UK Government's Digital Britain Steering Board, which developed proposals for UK broadband policy and regulation. Robin ran the Global Communications Consortium research programme at London Business School from January 2006 to March 2008, and was previously Research Fellow at Bournemouth Media School. He is currently a member of the Ofcom Spectrum Advisory Board, and a member of the ComReg Electronic Communications Expert Advisory Panel. Robin's many publications include recent reports on the economic impact of the audio-visual sector (*Creative UK*), and the importance of TV news (*Informing the UK*).

SELECTED RISJ PUBLICATIONS

James Painter

Poles Apart: the international reporting of climate scepticism

Lara Fielden

Regulating for Trust in Journalism. Standards regulation in the age of blended media

David A. L. Levy and Robert G. Picard (eds)

Is there a better structure for News Providers? The potential in charitable and trust ownership

David A. L. Levy and Rasmus Kleis Nielsen (eds)

The Changing Business of Journalism and its implication for Democracy

Tim Gardam and David A. L. Levy (eds)

The Price of Plurality: choice, diversity and broadcasting institutions in the digital age
published in association with Ofcom

John Lloyd and Julia Hobsbawm

The Power of the Commentariat

published in association with Editorial Intelligence Ltd

CHALLENGES

Nick Fraser

Why Documentaries Matter

Nicola Bruno and Rasmus Kleis Nielsen

Survival is Success. Journalistic online start-ups in Western Europe

Paolo Mancini

Between Commodification and Lifestyle Politics. Does Silvio Berlusconi provide a new model of politics for the 21st century?

John Lloyd

Scandal! News International and the rights of journalism

Stephen Coleman (ed)

Leaders in the Living Room. The Prime Ministerial debates of 2010: evidence, evaluation and some recommendations

Richard Sambrook

Are Foreign Correspondents Redundant? The changing face of international news

James Painter

Summoned by Science: reporting climate change at Copenhagen and beyond

John Kelly

Red Kayaks and Hidden Gold: the rise, challenges and value of citizen journalism

Stephen Whittle and Glenda Cooper

Privacy, Probity and Public Interest

Stephen Coleman, Scott Anthony, David E Morrison

Public Trust in the News: a constructivist study of the social life of the news

Nik Gowing

'Skyful of Lies' and Black Swans: the new tyranny of shifting information power in crises

Andrew Currah

What's Happening to Our News: an investigation into the likely impact of the digital revolution on the economics of news publishing in the UK

James Painter

Counter-Hegemonic News: a case study of Al-Jazeera English and Telesur

Floriana Fossato and John Lloyd with Alexander Verkhovsky

The Web that Failed: how opposition politics and independent initiatives are failing on the internet in Russia