3.1. The media in a democratic society
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Executive Summary

This chapter reviews the available evidence relating to the five ‘search questions’ concerned with the media in a democratic society.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

(a) Areas of improvement

1. The Communications Act 2003 gives recognition to the need for an integrated regulatory framework in light of growing media convergence.

Rapid technological developments are serving to blur the distinctions between telecommunications and broadcasting and are serving to reconfigure long-established media business models. These dynamics of media convergence have also rendered the tasks of measuring and maintaining media pluralism significantly more complex. The new regulatory provisions introduced by the Communications Act 2003, including the creation of Ofcom as an integrated regulator of all communications industries, sought to respond to these new realities. However, the legislation was controversial from the outset, particularly in view of its deregulatory ethos, and is already widely regarded as inadequate, less than a decade after it received royal assent. (For further details and discussion, see Case Study 3.1b)

2. Access to media reporting has been enhanced by digital services.

UK citizens have long enjoyed excellent access to media reporting via a relatively diverse press and extensive public service broadcasting provisions. This access has widened in recent years as a result of digitalisation. Around 80 per cent of UK households had access to the internet in 2010, which compares well with other established democracies (see Figure 3.1k). The leading UK internet news sites are well developed and receive high levels of traffic (see Figure 1.3e). Meanwhile, the successful roll out of digital television in the UK has seen the proportion of households with access to digital services grow from under 10 per cent in 2000 to over 90 per cent in 2012 (see Figure 3.1j). Despite this evidence of improved access to news reporting, however, it is important to note that the growth of digital news poses huge economic challenges for news providers. All newspapers are struggling to find a viable business model to manage the transition from print to digital. Meanwhile, viewing figures for television news are falling, placing broadcast news under growing economic pressure. (For further details and discussion, see Section 3.1.2)


The UK’s libel laws have long been seen as a threat to media freedom, owing to the manner in which they impose the burden of proof on the defendant. Recent court cases have redressed the balance to some degree, particularly since Reynolds vs Times Newspapers (1999), by strengthening the ‘public interest’ defence in cases where journalists can demonstrate they have acted responsibly. In addition, the coalition proposes to give statutory recognition to this common law understanding via its draft Defamation Bill. However, concerns that UK libel laws continue to stifle the press continue to be widely heard, not least because of the enormous costs associated with defending a defamation case in the courts. (For further details and discussion, see Section 3.1.4)

4. Increased willingness of the courts to use the Human Rights Act 1998 to protect against media invasions of privacy.

As well as providing statutory recognition of the right to freedom of expression, the Human Rights Act (HRA) 1998 introduced a countervailing right to privacy. While concerns about media invasions of privacy remain at least as prevalent as they did in the 1990s, the courts have shown some willingness to use the HRA to prevent the publication of stories in the press which contravene this right to a private life. The principal mechanism which the courts have applied to this end, namely the granting of injunctions, has proved both controversial and, in some cases, unenforceable. Moreover, injunctions do not amount to a privacy law; the cost of applying for injunctions means that they would remain beyond reach for the vast majority of citizens. Nonetheless, we take the view that the willingness of the courts to grant injunctions with reference to the HRA represents an improvement, however modest, in restricting the harmful effects of media intrusions into the private lives of citizens. (For further details and discussion, see Section 3.1.5)

(b) Areas of continuing concern

1. The UK scores relatively poorly compared to other established democracies on international measures of press freedom.
Indexes of press freedom compiled by both Freedom House and Reporters Without Borders confirm that a free press operates in the UK. Reforms introduced prior to our last full Audit enhanced existing press freedoms, most notably through the establishment of a statutory right to freedom of expression under the Human Rights Act 1998 and the granting of greater journalistic access to information via the Freedom of Information Act 2000. However, the UK continues to perform relatively poorly when measured against other established democracies, particularly within northern Europe. Over the last decade, the UK has generally ranked outside the top 20 countries in the world for press freedoms; in 2010, the UK was ranked equal 26th globally by Freedom House, and 19th by Reporters Without Borders (see Table 3.1a). The gap between the UK and the Nordic countries on the Freedom House index remains almost as great as it was two decades ago (see Figure 3.1a). (For further details and discussion, see Section 3.1.1)

2. Media ownership remains highly concentrated, albeit no more so than in other established democracies.

Conventional measures of media concentration in the UK underline the continued dominance of four publishers of national newspapers, who control almost 90 per cent of market share between them. News International alone accounts for one-third of all national newspaper circulation (see Table 3.1b and Figure 3.1c). A similar pattern is evident with regard to the regional press, where five publishing groups account for three-quarters of circulation (see Table 3.1c). In television and radio, the BBC remains dominant, although due consideration must be given to the nature of public service broadcasting which provides for ‘internal pluralism’ as well as political balance in BBC output (see Tables 3.1d and 3.1e). It is also important to underscore that the UK’s levels of media concentration are by no means unusual by international standards (see Figure 3.1d) and that cross-media ownership is increasing in the UK and elsewhere. (For further details and discussion, see Section 3.1.1)

3. Economic pressures on media providers may well lead to a loss of media diversity.

There is powerful evidence of a rapid undermining of the business models which have for decades sustained the press and news broadcasting in the UK and other established democracies. The problem is most apparent with regard to newspapers, which have lost income as a result of declining sales and reduced advertising revenue, while struggling to move to viable models of generating income from online content. To date, the greatest impact has been felt in the regional press, where a number of titles have merged, been discontinued, or moved from daily to weekly publication. However, it is widely recognised that many national newspaper titles are loss making, and that it is a matter of time before one or more established broadsheet is forced into closure on economic grounds. Similar pressures on broadcasters also raise concerns about television news programming, particularly in light of intense competition for audience share. (For further details and discussion, see Sections 3.1.2 and 3.1.3)

4. Periodic conflicts between governments and the BBC raise issues about media independence.

Periodic tensions between the BBC and governments have been a feature of UK politics since at least the 1980s. Previous conflicts have raised concerns in some quarters about the possibility of the BBC engaging in ‘self-censorship’ in response to government criticism, partly for reasons of self-preservation. The fallout between the BBC and the Blair government of 2001-05 over the corporation's reporting of the war in Iraq was particularly acute. The focal point of this conflict, Andrew Gilligan’s report on the changes allegedly made to the Joint Intelligence Committee’s dossier on Iraq’s weapons of mass destruction at the behest of 10 Downing Street (see Case Study 3.1c), highlights important, but complex, questions about government-BBC relations. While we find no grounds to assume that the independence of the BBC was threatened over the long-term by the ‘Gilligan affair’, it nonetheless signals that the BBC’s autonomy from government is by no means without challenge. (For further details and discussion, see Section 3.1.1 and Case Study 3.1c)

5. Pressures on investigative journalism.

The dynamics of the new media economy continue to raise concerns about the extent to which journalists have the time to research, rather than merely reproduce, stories and the degree to which media outlets are able to ensure resources, including staff time, are available for investigative journalism. While there is clearly still scope for newspapers and broadcasters to undertake some detailed media investigations, as exemplified by the Guardian’s sustained focus on the phone-hacking (see Case Study 3.1n), there is genuine concern about the degree to which the media has the capacity to respond to the growth of the public relations industry, particularly with regard to the latter’s scope to set the news agenda in business and financial affairs. (For further details and discussion, see Section 3.1.3)

6. The Communications Act 2003 does not provide sufficient protection for media pluralism.

We recognise the rationale for integrated regulation of communications industries, as well as the need for media ownership regulations to recognise the challenges of maintaining pluralism during a period of profound change in media markets. However, the concerns we expressed in our last Audit with regard to the deregulatory impetus of New Labour’s reforms have been borne out. Cross-media ownership has increased under the new legislative framework provided by the Communications Act 2003, adding to, rather than reducing, media
concentration. Most significantly, News Corporation's bid to take full control of British Sky Broadcasting (see Case Study 3.1d) revealed significant problems with the regulatory framework, particularly with regard to the operation of the 'public interest test' provided for by the act. (For further details and discussion, see Section 3.1.1 and Case Study 3.1d)

7. UK libel laws continue to act as a restriction on press freedom.

While there has been some shift in UK libel laws to give greater recognition to the 'public interest' defence in press reporting, concerns within the media about the restrictive implications of libel law continue to be widely heard. Perhaps most significantly, fundamental problems remain owing to the enormous costs associated with defamation cases in the UK, particularly in comparison to other European countries (see Figure 3.1m). As a result, newspaper may refrain from contesting libel cases, even if confident that they would win, because of the huge financial implications of doing so. (For further details and discussion, see Section 3.1.4)


Long-standing concerns about press intrusion and media harassment of private citizens have reached new heights over the last decade. The scale of phone-hacking at the News of the World only became apparent in 2011, despite the fact that initial evidence of its use dates back to 2005 (see Case Study 3.1g). The details revealed by the phone-hacking scandal may yet establish that phone-hacking has been practised widely in the UK press. It is certainly clear from the Operation Motorman investigation that a huge range of publications were using private investigators to obtain information about individuals, illegally, in the early 2000s (see Table 3.1k). Despite the fact that the creation of the Press Complaints Commission (PCC) was widely described as the 'last chance' for the press to avoid statutory regulation, the revelations about phone-hacking reveal that the press has failed to make 'self-regulation' work. However, while it is accepted that the PCC will be abolished, it is by no means clear what it will be replaced with. (For further details and discussion, see Section 3.1.5)

(c) Areas of new or emerging concern

1. Media convergence has created growing uncertainty about how to approach media regulation.

The role of digitalisation in eroding the distinctions between the press and broadcasting was a key rationale for the establishment of Ofcom as an integrated regulator of telecommunications. Yet, the rise of the internet as a medium creates regulatory dilemmas which go far beyond those envisaged by the Communications Act 2003. The growth of online reporting and news consumption raises serious questions about conventional approaches to measuring market share across different media platforms (see Section 3.1.1). Meanwhile, the rise of social media has raised serious questions about the scope to enforce injunctions designed to protect individuals from intrusions of privacy. (see Section 3.1.5)

2. Newspaper circulation is declining rapidly and consumption of television news is falling.

Newspaper circulation, which began to decline in the 1990s, is now falling rapidly (see Figure 3.1p). Virtually all newspapers have experienced steep declines in circulation over the last decade, partly as a result of the shift towards (free) online content. The decline of the print media has bolstered the relative significance of television as the dominant source of news for UK citizens. However, total viewing of television news is also falling. Over the last decade, television viewing in general has fragmented enormously as a result of the growing availability of digital services (see Figure 3.1h). With audience shares no longer restricted to a small number of outlets with public service broadcasting commitments, television news viewing has dropped from an annual average 103 hour per person in 2001 to 88 hours per person in 2010. (For further details and discussion, see Section 3.1.2)

3. The use of court injunctions to prevent media reporting of corporate activity.

Recent debates surrounding the granting of injunctions and 'super-injunctions' by English courts have centred on attempts by celebrities, notably Premiership footballers, to prevent newspapers publishing details of extra-marital affairs. We reject the view that these injunctions, generally granted with reference to the right to privacy provided for by Article 8 of the Human Rights Act, constitute a threat to the freedom of the press. However, this debate has obscured evidence that injunctions have been granted which prevent the media reporting on the activities of major corporations, despite clear public interest grounds for publication. The super-injunction initially obtained by Trafigura to prevent the Guardian from reporting on allegations of the company dumping toxic waste in West Africa has been the most high-profile case to come to light. (For further details and discussion, see Section 3.1.4 and Case Study 3.1f)

4. Restrictions on media freedom arising from anti-terror legislation.

The impact of anti-terror legislation on media freedom has become a concern across most established democracies in recent years and the UK is no exception. The investigative powers which police have over journalists, including the requirement on journalists to disclose
information relating to actual, or potential, terrorist activity raises particular concerns in the UK context. (For further details and discussion, see Section 3.1.4)

Introduction

It is widely recognised that democracy requires the availability of alternative and relatively independent sources of information if citizens are to develop an enlightened understanding of key political issues, participate effectively in political debate and be able to influence the political agenda (Dahl, 2000, p. 97). The evolution of liberal democracy alongside rapid developments in communication technologies over the last century has given rise to varied forms of such alternative and independent sources of information, notably newspapers, radio, television and, most recently, the internet. Collectively, these ‘mass media’ have come to be seen as absolutely integral to democratic politics, providing for freedom of expression, ensuring that citizens are informed, their concerns identified (and, where necessary, amplified) and helping to hold governments and elected representatives to account (Norris, 2000; Beetham et al., 2002; Rowbottom, 2010).

In order for the media to operate in this way, there must be extensive media freedoms in a democracy. The media must be fully independent from government and must be able to operate without censorship. Journalists must be free to investigate those who wield power, including governments and large corporations, and be able to legally request and obtain information to this end. However, while guarantees of basic press freedom must be regarded as a necessary condition for ensuring that the democratic functions of the media can be carried out, they is by no means a sufficient basis for doing so. Indeed, the development of the mass media has given rise to widely-expressed concerns that, far from fulfilling the idealised democratic functions outlined above, the media ‘exerts political power on behalf of its owners, staff or advertisers’ (Rowbottom, 2010, p. 171). Issues such as the concentration of media ownership, evidence of sustained political bias in media coverage and the impact of partisan media reporting on voting behaviour have all been raised as examples of how a ‘free media’ can itself become one of the dominant centres of political power, rather than a space for democratic debate (Beetham et al., 2002). There are also long-standing concerns, dramatically illustrated by the emergence of the phone-hacking scandal in 2011, about how press freedom should be balanced against the need to ensure that private citizens are protected from media intrusion and harassment.

The questions addressed in this chapter are derived directly from the issues raised by the need to strike an appropriate balance in a democracy between media freedom and media regulation. We begin by assessing the extent to which the UK media operate freely, with full independence from government, and the degree to which media ownership can be described as pluralistic. The chapter then examines the extent to which media outlets in the UK provide for a diversity of opinion and evaluates whether the information and analysis they provide are widely accessible to UK citizens. In addition, we assess the degree to which the media in the UK is able to hold powerful interests to account and whether journalists are able to operate without constraints imposed by unnecessarily restrictive laws or exposure to intimidation or harassment. Finally, we examine the issues associated with media respect for privacy by asking how far citizens are free from media intrusion and harassment.

Media functions and media systems

Before turning directly to the specific issues raised by the search questions in this section of the Audit, it is important to contextualise the nature of the UK’s media system with regard to the range of media functions we have alluded to above. Despite widespread misgivings about media power in established democracies, it would be churlish to deny that the media fulfills a number of essential democratic roles, however imperfectly they are achieved in practice. Following Norris (2000), the media’s democratic functions can usefully be captured using a threefold classification. In this view, the media in a democratic society acts as:

- **A civic forum** - by providing for pluralistic competition among those seeking political office; acting as a focal point for public deliberation and debate; and functioning as a conduit for communications between government and the governed.
- **A mobilising agent** - by promoting informed public participation in political debate; encouraging citizens to learn about, and take part in, politics; and enabling the public to help shape the political agenda, including via support for, and instigation of issue-specific campaigns.
- **A watchdog** - by scrutinising the actions of those with power and seeking to hold the powerful to account; investigating potential abuses of power, including cases where governmental, corporate or other actors appear to have engaged in corrupt or illegal practices; challenging the government on issues of key social concern; and protecting the interests and rights of citizens, including vulnerable and minority groups within a society.

It is highly unlikely that the activities of all sections of the media could ever be described with reference to these functions. Clearly, the extent to which individual media outlets fulfil each of these functions, as well as the manner in which they interpret and seek to realise them, will vary enormously. Inevitably, some of these roles may also be contradictory, or at least become matters of democratic controversy. For instance, one media outlet’s activities as a ‘mobilising agent’ on a particular activity may result in another outlet, operating in ‘watchdog’ mode, ringing alarm bells about such examples of media campaigning. In this sense, it is also crucial to note that there are contrasting models through which the media as a whole may operate to fulfil these functions in a democracy. In particular, it is useful to distinguish...
between ‘partisan’ or ‘polarised’ media systems, on the one hand, and ‘public service’ media systems, on the other (c.f. Rowbottom, 2010).

In the partisan/polarised model, a diversity of perspectives are provided for by a range of overtly biased media outlets, which engage in debate and critique with one another. Under this model, a citizen will receive a relatively full overview of key issues and perspectives, so long as a broad spectrum of different viewpoints are reflected in the media and they themselves, as citizens, choose to engage with, and reflect on, at least a cross-section of them. By contrast, in the public service model, media outlets do not adopt political positions but instead act as ‘a space for different views to be heard alongside one another’ (Rowbottom, 2010, p. 176). In the public service model, news reporting and discussion of current affairs are governed by notions of impartiality and political balance. There are clear contrasts to the way in which partisan/polarised and public service media systems are assumed to provide for pluralism and diversity. In the partisan/polarised model, there is assumed to be ‘external pluralism’, whereby a diversity of information and viewpoints is provided for via the existence of a wide range of competing media outlets. Conversely, in the public service model, the emphasis is on providing for ‘internal pluralism’, whereby a broad and balanced spectrum of political viewpoints are represented within the coverage offered by a relatively small number of media organisations (Rowbottom, 2010; Hanretty et al., 2011).

The UK’s media system is effectively a hybrid between these two contrasting models, due to its sharp demarcation between the respective roles of the print and broadcast media (Scammel and Langer, 2006). On one hand, the UK print media has tended to be characterised by a privately-owned and self-regulating press, which is both relatively pluralistic and highly partisan in character - something which it shares with the ‘liberal’ free-market media system in operation in the United States (c.f. Hallin and Mancini, 2004). UK broadcasting, on the other hand, has been more tightly and formally regulated, dominated by public-service broadcasters, most obviously the BBC, and guided by highly prescriptive rules about editorial impartiality and party political balance in coverage of news and current affairs. In this regard, the UK also has much in common with what Hallin and Mancini (2004) describe as the ‘democratic corporatist’ media systems of Northern Europe. One inevitable consequence of this ‘dual media model’ is that the politics of the UK press has tended to be a matter of far greater controversy than the politics of UK broadcasting. It is generally agreed that the UK press is ‘highly partisan by most western standards’ (Newton and Brynin, 2001, p. 267) and that, with the notable exception of the Blair years, newspaper owners have overwhelmingly sided with the Conservative Party (Wright, 2000). By contrast, political consensus about the impartiality requirements in broadcasting has ensured that ‘UK television has been remarkably free from politicisation’ in comparison to much of western Europe (Humphreys, 2009, p. 198).

Developments since our last Audit

In our last Audit, we raised specific concerns about patterns of media ownership in the UK and, in particular, about the extensive interests of News Corporation/News International, which span the print and broadcasting sectors (Beetham et al., 2002). We also expressed serious reservations about the manner in which quality news reporting and investigative journalism was being ‘squeezed out’ by the combined impact of de-regulation and economic pressures associated with intensifying market competition. In this regard, we found it difficult to be sanguine about the likely impact on the broadcasting sectors of the legislative proposals which were later to make up the Communications Act 2003. In particular, we warned that further market concentration was virtually inevitable and that the new regulator, Ofcom, might well ‘find it impossible to reconcile the government’s twin aims of more competition and greater pluralism of content’ (Beetham et al., 2002, p. 297). Meanwhile, with regard to the print media, we noted that no solution had been found with regard to the issue of intrusion and harassment in some sections of the press, and that the scale of the problem was almost certainly escalating, despite the fact that concerns about it had been recognised for decades.

These same issues feature strongly in our current Audit, although we also place emphasis on two additional core sets of concerns. The first of these arises from the profound significance of the challenges posed by changing patterns of news production and news consumption. Newspaper circulation is declining, audience shares in broadcasting are fragmenting, particularly in television, and the internet is rapidly growing in significance as a source of news and information about politics, blurring the boundaries between print and broadcasting. As we discuss in Sections 3.1.1 and 3.1.2, these trends, which are by no means unique to the UK, pose significant challenges for the traditional business models of established media outlets. As such, they also have potentially serious implications for the maintenance of a diverse and pluralistic media; for the balance of opinions presented in the UK media; and for the manner in which UK citizens access them. We also find evidence to suggest that the increasingly unfavourable economic context in which newspapers and news broadcasters operate has further restricted the scope for investigative journalism (see Section 3.1.4).

Our second set of additional concerns, compared to our last periodic Audit, relate to issues operating at the intersection of press freedom and press intrusion. As this Audit was being finalised, the Leveson Inquiry into the culture, practice and ethics of the press, established in response to the phone-hacking revelations of 2011, had just begun its work. While the Leveson Inquiry’s report is not expected before the end of 2012, the witness sessions to date have already pointed to a huge volume of evidence relating to illegal practices in the media, including phone-hacking, email-hacking, as well as numerous forms of journalistic harassment. Meanwhile, the period since our last Audit has also witnessed ongoing concerns about the scope for investigative journalism to fall foul of libel law as well as associated issues raised by the growing use of court injunctions to prevent the press reporting on specific matters. As we note in Sections 3.1.4 and 3.1.5, the
considerations arising from these developments are genuinely complex and raise significant democratic tensions with regard to the balance between the right to privacy and the protection of freedom of expression.

3.1.1 Media freedom and pluralism

How independent are the media from government, how pluralistic is their ownership, and how free are they from subordination to foreign governments or multinational companies?

If the media are to provide the core democratic functions outlined in the introduction to this chapter, it is essential that they operate in a context in which they are independent from government, and that they enable a plurality of perspectives to be expressed. It is equally vital that editorial independence is not usurped by proprietors exercising control over content. In an era of globalised media ownership and reporting, the danger of media coverage becoming subordinate to major multinational corporate interests or to control via foreign governments, for instance for the purposes of propaganda, also needs to be taken into account. Taken together, these concerns underline the core importance of media freedom in a democracy and we therefore begin with a consideration of the UK’s relative performance in widely-used international measures of the freedom of the press. While this analysis confirms that media organisations in the UK operate in the context of a free press, it also identifies a number of specific concerns about press freedom in the UK, particularly in comparison to other north European democracies. Each of the concerns identified is considered in more depth in the remainder of the chapter, beginning with a fuller consideration in this section of issues surrounding media ownership and media independence.

**Media freedom**

There are two principal indexes which seek to measure press freedom globally. The first, and longest established is produced by the American organisation Freedom House, which has run since 1980. The Freedom House measures are updated annually, based on surveys of journalists and human rights organisations, as well as on reports produced by governments, multilateral bodies and other organisations. This information is considered with respect to three main categories, encompassing the legal, political and economic environments in which the media operates (see Case Study 3.1a for further details). Initially, the Freedom House measures placed each country into one of three groups (‘free’; ‘partially free’ or ‘not free’) but, since 1994, numerical index scores have been added. Under this scoring system, a country is categorised as ‘free’ if its score is between 0 and 30, ‘partially free’ if the score is between 31 to 60 and ‘not free’ if it receives a score of 61 to 100. These scores are also used to rank the countries studied - a total of 196 in 2010.

### Case Study 3.1a: Freedom House assessment of press freedom

The Freedom House index is derived from the assumption that a free press primarily involves ensuring that the media enjoys ‘freedom from’ various types of restriction on their activities. Scores are therefore an indicator of the presence of factors which restrict press freedom, meaning that a country with a free press receives a lower score than a country where the press is not free. The criteria used by Freedom House are grouped under three main headings, relating to restrictions on media freedom which may be either legal, political or economic in nature. Each country is allocated a separate score for each of these areas, as well as an overall aggregate score which is used to compile the final rankings. The three headings and the areas they cover are as follows:

1. **Legal environment - this measures the extent to which there are:**
   - legal mechanisms through which governments can seek to influence media content;
   - restrictions on reporting imposed by security legislation or other statutes;
   - restrictive requirements for media outlets and journalists to register, or on the scope for journalists’ groups to operate freely;
   - instances of governments seeking to use such laws and regulations to restrict media reporting;
   - excessive legal penalties issued for libel and defamation which may effectively prevent media reporting, particularly of the wealthy and powerful;
   - defined legal and constitutional protections for freedom of expression;
   - legal provisions for freedom of information;
   - mechanisms for legal appeal and review, either through the judiciary or official media regulatory bodies, which are independent of government.

2. **Political environment - this measures the extent to which there is:**
   - political control over news reporting;
   - editorial independence among media outlets (state- and privately owned);
   - access for journalists to official information and sources;
• official censorship or self-censorship by journalists;
• vibrant and diverse news reporting;
• scope for all journalists, including overseas reporters, to operate freely and without harassment;
• journalistic freedom from intimidation by the state or others, including freedom from detention, imprisonment, violent assault, and all other threats.

3. Economic environment - this evaluates factors such as:

• the overall business structure of the media, including concentration and transparency of ownership;
• the extent to which the costs of establishing and maintaining media outlets restricts market access;
• evidence of the state or other actors engaging in selective withholding of subsidies or advertising;
• evidence of corruption and bribery influencing the content of media reporting;
• the degree to which the economic context impacts on the development and sustainability of the media.

The second index is the ‘Press Freedom Index’, which has been produced annually by the Paris-based organisation, Reporters Without Borders (RWB), since 2002. The RWB methodology is very similar to that adopted by Freedom House. The data is gathered via a survey of freedom of expression groups, journalists, researchers, lawyers, and human rights activists. The survey includes 44 criterion covering: the extent to which journalists are subjected to physical violence, intimidation or harassment; forms of ownership and control and their impact on editorial and journalistic independence; the extent of censorship and self-censorship; and the wider governmental and legal environment. This information is converted into numerical scores (ranging from 0 to 105) for a total of 179 countries in 2010. Again, the scores are used to produce rankings of press freedom for all the countries studied, with the lowest score indicating the highest levels of press freedom.

### Table 3.1a: UK Ranking in Freedom House and Reporters Without Borders indexes of press freedom, in comparison to top 10 countries, 2010

<table>
<thead>
<tr>
<th>Rank</th>
<th>Country</th>
<th>Freedom House Score</th>
<th>Rank</th>
<th>Country</th>
<th>Reporters without Borders Score</th>
</tr>
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<tbody>
<tr>
<td>1=</td>
<td>Finland</td>
<td>10</td>
<td>1=</td>
<td>Finland</td>
<td>0</td>
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<tr>
<td>1=</td>
<td>Iceland</td>
<td>10</td>
<td>1=</td>
<td>Iceland</td>
<td>0</td>
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<tr>
<td>1=</td>
<td>Norway</td>
<td>10</td>
<td>1=</td>
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<tr>
<td>1=</td>
<td>Sweden</td>
<td>10</td>
<td>1=</td>
<td>Netherlands</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>Denmark</td>
<td>11</td>
<td>1=</td>
<td>Sweden</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>Belgium</td>
<td>12</td>
<td>7</td>
<td>Austria</td>
<td>0.5</td>
</tr>
<tr>
<td>6</td>
<td>Luxembourg</td>
<td>12</td>
<td>8</td>
<td>New Zealand</td>
<td>1.5</td>
</tr>
<tr>
<td>8</td>
<td>Andorra</td>
<td>13</td>
<td>9=</td>
<td>Estonia</td>
<td>2</td>
</tr>
<tr>
<td>10</td>
<td>Liechtenstein</td>
<td>14</td>
<td>9=</td>
<td>Ireland</td>
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<td>26=</td>
<td>United Kingdom</td>
<td>26</td>
<td>19</td>
<td>United Kingdom</td>
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Despite the slight differences of approach, the two indexes produce very similar rankings. As Table 3.1a shows, the democracies of northern Europe dominate the top 10 rankings in both indexes, with Finland, Iceland, Norway and Sweden included among those placed joint first in both cases. This broad pattern is consistently repeated, albeit with some movements in the relative positioning of the countries, year on year. The UK, meanwhile, was ranked equal 26th in the Freedom House index in 2010 and 19th in the Reporters Without Borders index. Again, the UK’s position is relatively consistent; since 2002 its ranking has averaged 30th on the Freedom House studies and 24th in those produced by Reporters Without Borders. Figure 3.1a charts the UK’s numerical score in the Freedom House index since 1994, in comparison with the average score for each of our chosen groups of comparator democracies. The scores have been shown as negative
numbers in this instance, to illustrate that a score of ‘0’ would represent perfect press freedom. As with most datasets presented in this Audit, the graph underlines the gap between the Nordic countries and the other groups of democracies for which we have collected data. Once again, the UK is also ranked some way below the consensual democracies and also falls short of the average for the EU-15. However, it is also evident from the graph that the UK’s scores on the Freedom House index improved markedly from 1994 to 2001, raising its global ranking from 40th to 27th. Since 2001, however, the UK’s score has been stable and it is only as a result of an apparent deterioration in press freedom in other countries that the gap between the UK and both the Westminster and consensual democracies has narrowed over the past decade.

Figure 3.1a: Freedom House press freedom score, UK and groups of comparator democracies, 1994-2010

Source: Freedom House (1994-2011)

Two of the key factors responsible for the UK’s improved scores in the Freedom House index were the Human Rights Act of 1998 and the Freedom of Information Act 2000, both of which were passed by the first Blair government. The Human Rights Act (see Section 1.2.2) establishes a statutory right to freedom of expression, while the Freedom of Information Act (see Section 2.3.5) greatly enhanced the legal scope for journalists to obtain information from public bodies. It would also appear that improvements in the Freedom House assessment of UK press freedom from 1994 onwards reflects the decline in governmental attempts to censor the media in the post-Thatcher years (Humphreys, 2009; see also Introduction to Chapter 1.3 for cases of censorship recorded in the Cingranelli-Richards Human Rights Index).

At the same time, it is possible to identify the factors which have prompted Freedom House to consistently rank the UK below the great majority of other established democracies (Humphreys, 2009; Freedom House, 2009; 2010). While the UK is recognised to respect the freedom of the press, and receives significant credit for its tradition of independent public broadcasting, the principal concerns identified by Freedom House include:

- the concentration of media ownership, including the national and regional press, most notably with regard to titles and outlets owned by Rupert Murdoch’s News Corporation (see below);
- occasional governmental pressure on media outlets, especially broadcasters, for instance during the Iraq war (see below);
- the existence of specific exemptions from freedom of information provisions (see Section 3.1.3);
- the restrictive nature of the UK’s libel laws, which heavily favour the plaintiff and place the burden of proof on the defendant (see Section 3.1.4);
- legislation which can be used to compel journalists to reveal information in court, if it is deemed essential to a police investigation (see Section 3.1.4);
- unlawful intimidation encountered by journalists when reporting in Northern Ireland (see Section 3.1.4);
- potential restrictions on freedom of expression and media reporting arising from anti-terrorism legislation and measures intended to prevent incitement to religious hatred (see Section 3.1.4).
These observations span the criterion contained in all three categories (legal, political and economic) used by Freedom House to measure press freedom. As Figure 3.1b illustrates, in 2010 the UK performed less well than two of our chosen comparator democracies, Sweden and the Netherlands, in all three of these categories. The contrasts between the UK and Sweden are particularly clear with regard to the legal and political environments in which the media operate. Moreover, while the differences between the six countries can be regarded as relatively modest, particularly with respect to the wider international picture, Figure 3.1b also highlights that the UK, USA and Australia have remarkably similar profiles.

Figure 3.1b: Measures of press freedom with regard to legal, political and economic environments, UK and comparator democracies, 2010

Source: Freedom House (2011)

Media ownership and pluralism

In our previous Audit, we noted how, in common with other established democracies, ownership of the mass media in the UK ‘is steadily moving into fewer corporate hands in the wake of accelerating technological change’ (Beetham et al., 2002, p. 192). In particular, we noted the dominance of News International, as the UK arm of Rupert Murdoch’s global News Corporation group, particularly in the national newspaper market. We also pointed to the prospect that further relaxation of the rules on cross-media ownership would increase the scope for individual corporations to control large sections of the media. In the context of rapidly developing communication technologies, notably the growth of digital services, we also pointed to the intensification of anti-BBC lobbying by commercial providers who were keen to break up the dominant position the corporation has obtained by virtue of its unique status as a public service broadcaster. Finally, we expressed concern about Labour’s proposals, as contained in what was then the Communications Bill (now Act), to engage in further deregulation of media ownership as a route to protecting and enhancing media pluralism (see Case Study 3.1b). Despite the inclusion, in the Bill (Act), of plans for a new, integrated communications regulator (Ofcom), with a duty to monitor media pluralism, we suggested the proposals carried the very real danger of further enhancing already high levels of media concentration and of diluting media pluralism as a result. We issued a particular warning about how robust the provisions for protecting media pluralism were likely to be in face of a concerted bid from News International to increase its share of the broadcasting market, suggesting that ‘the prospect of any government being quite so foolhardy as to confront the UK’s most powerful press baron in such stark terms is frankly remote’ (Beetham et al., 2002, p. 195).

Case Study 3.1b: The Communications Act 2003

The regulatory environment in which the UK media operates was substantially reformed by the Communications Act 2003. The act
introduced new rules relating to media ownership, particularly with regard to cross-ownership of press, radio and television outlets, and established Ofcom as an integrated, independent regulator for the communication industries. The profound significance of the legislation for the development and operation of the UK media is undeniable. Indeed, it has been suggested that the act ‘ushered in a sweeping programme of regulatory change in the communications industries and is the most comprehensive legislation of its kind in British history’ (Doyle and Vick, 2005, p. 75).

The rationale for the introduction of radical and comprehensive new legislation for the communications industries had a number of elements. In particular, it was argued that there was a need for a new regulatory framework which would take account of:

- the dynamics of ‘media convergence’, particularly those associated with digitalisation, which were seen to be eroding the boundaries between once distinct media and telecommunication sectors;
- the complexities of defining or measuring media pluralism, and of protecting media diversity, in the context of this process of media convergence;
- the need to ensure that UK media law was consistent with EU competition regulations;
- the desire of government and the communications industry to capitalise on the economic opportunities offered by the UK’s perceived strengths in the cultural and creative industries.

In light of these developments, the act sought to switch the focus of regulation from ownership to content. As part of this rationale, the act had a strong deregulatory focus, which included the abolition of:

- the 15 per cent upper audience limit which any one UK television company may control;
- the rule banning the two ITV London licenses being owned by a single entity;
- the ‘points system’ limiting ownership of UK-wide radio broadcasts to a maximum 15 per cent share of the commercial audience;
- rules preventing non-EU media companies from holding UK broadcasting licenses;
- a variety of cross-ownership rules, including the ban on common ownership of national television and radio licenses;
- the rule preventing joint ownership of a national ITV license and Channel 5;
- the rule precluding common ownership of a regional ITV license and a local radio license for the same area;
- rules which had prevented a national newspaper proprietor with more than a 20 per cent market share from also owning Channel 5.

In addition, the act established the Office of Communications (Ofcom) as an integrated regulator for the broadcasting and telecommunications industries. Ofcom absorbed the functions of what had previously been five separate agencies and was given specific powers to regulate broadcasting content via a new three-tier system of broadcasting regulations. These regulations distinguish between basic obligations applying to all broadcasters (tier 1) and those applying to public service broadcasters (tiers 2 and 3). It has also been suggested that the act gave Ofcom ‘unprecedented powers in relation to the BBC’, including the scope to impose financial penalties on the corporation (Doyle and Vick, 2005, p. 82).

As a result of pressure in the House of Lords, in particular as a result of a campaign led by Lord Putnam, the act also introduced arrangements for a ‘public interest test’ in media mergers. Under this regime, mergers which raise concerns about market concentration or a reduction in media pluralism can be referred to Ofcom to make recommendations if the secretary of state issues an intervention notice.

All of the issues we identified in 2002 remain central to debates about UK media ownership a decade on from our last full Audit. Media concentration remains a significant issue, particularly with regard to the size of News International’s share of the daily newspaper market. Cross-media ownership has intensified, predictably, following the relaxation of the ownership rules introduced by the Communications Act 2003 (see Case Study 3.1b). Moreover, the attempt by News Corporation during 2010-11 to acquire full control of British Sky Broadcasting (BSkyB) came to constitute a major test of the legal framework introduced by the Communications Act and of Ofcom’s powers to intervene where the new ‘public interest’ test was invoked (see Case Study 3.1b). As we note in Case Study 3.1d, while News Corporation’s bid was referred to Ofcom, whose report recommended investigation by the Competition Commission, the process revealed that much discretion rested with the secretary of state responsible. Indeed, it would appear that the regulatory framework was relatively toothless in the face of apparent political support for the takeover within the Conservative Party. It is widely accepted that News International’s bid was ultimately only stopped as a result of the revelations of the phone-hacking scandal in 2011 (see Section 3.1.5).

The view that proprietors seek to exert political influence via their ownership of media organisations is a widely held one - although, as we discuss in Section 3.1.2, the forms and extent of such influence remain a matter of some dispute. Nonetheless, the House of Lords Select

3.1. The media in a democratic society
Published: 12th May 2011
Updated: 24th Apr 2012

Democratic Audit
Committee on Communications (2008, p. 7) has concluded that 'owners can and do influence the news in a variety of ways [...] They are in a position to have significant political impact'. In this context, the committee took a clear view that patterns of media concentration in the UK serve to enhance 'the risk of disproportionate influence':

‘In the United Kingdom, the national newspaper industry is run by eight companies - one of which has over 35% of the national newspaper market. The regional and local press has seen a particularly marked concentration of ownership where four publishers now have almost 70% of the market share across the United Kingdom. Radio news is dominated by the BBC, which accounts for over 55% of radio listening and the commercial radio sector is dominated by four companies which have a 77% share of the commercial radio market. National television news in the United Kingdom is produced by three companies: the BBC, ITN and BSkyB. There may now be many new channels but only these three companies produce national content. At the same time there have been increasing levels of cross-media ownership’ (Select Committee on Communications 2008, p. 7).

The evidence collated by the Select Committee on Communications (2008), which we summarise below, provides a valuable overview of the scale of media concentration in the UK on a sector by sector basis. The committee’s forensic analysis, which we have updated in the light of developments since 2008, also offers significant insight into the growing extent of cross-media ownership. There are, however, some genuine difficulties with seeking to measure media plurality in this way, as we note following our discussion of the evidence.

The extent of concentration in the UK newspaper industry is revealed in Tables 3.1b and 3.1c. Both the national and regional newspaper markets exhibit high levels of ownership concentration and are effectively oligopolistic in nature. As Table 3.1a shows, the national newspaper market in the UK is dominated by four major players, each of which owns multiple titles. News International is the largest of these groups, with 35.5 per cent of all newspaper circulation in 2008, derived from its ownership of The Times, the Sunday Times, the Sun and the now defunct News of the World. Trinity Mirror, publisher of the Daily and Sunday Mirror and a number of other titles, accounted for 20.3 per cent of circulation in 2008, its position bolstered by its portfolio of Sunday titles. Meanwhile, the circulation of the Daily Mail and Mail on Sunday were sufficient to secure a 19.3 per cent market share for Daily Mail General Trust. Finally, Northern and Shell, owners of the Star and Express titles (Daily and Sunday), accounted for a further 11.9 per cent of circulation in 2008. As the smallest of the ‘big four’, Northern and Shell could still boast a market share almost as great as the combined 13.1 per cent claimed by the remaining four publishers, who have seven national titles between them.

**Table 3.1b: Publishers of major UK national newspapers (daily and Sunday titles), 2008**

<table>
<thead>
<tr>
<th>Publisher</th>
<th>National newspaper titles</th>
<th>Total national market share (% circulation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>News International (a wholly owned subsidiary of News Corporation plc)</td>
<td>The Times; Sun; The Sunday Times; News of the World (1)</td>
<td>35.5%</td>
</tr>
<tr>
<td>Trinity Mirror</td>
<td>Daily Mirror; Sunday Mirror; The People; Daily Record; Sunday Mail</td>
<td>20.3%</td>
</tr>
<tr>
<td>Daily Mail and General Trust</td>
<td>Daily Mail; The Mail on Sunday</td>
<td>19.3%</td>
</tr>
<tr>
<td>Northern and Shell</td>
<td>Daily Express; Daily Star; Sunday Express; Daily Star Sunday</td>
<td>11.9%</td>
</tr>
<tr>
<td>Telegraph Media Group</td>
<td>The Daily Telegraph; The Sunday Telegraph</td>
<td>6.1%</td>
</tr>
<tr>
<td>Guardian Media Group</td>
<td>The Guardian; The Observer</td>
<td>3.4%</td>
</tr>
<tr>
<td>Independent News &amp; Media</td>
<td>The Independent; The Independent on Sunday</td>
<td>1.8%</td>
</tr>
<tr>
<td>Pearson</td>
<td>Financial Times</td>
<td>1.8%</td>
</tr>
</tbody>
</table>

Source: Select Committee on Communications (2008, pp. 42-5).

Note: (1) News International opted to close the highly profitable *News of the World* in July 2011 in response to the phone-hacking crisis (see Case Study 3.1a).

Similar patterns of concentration are evident with regard to the publishers of regional newspaper titles. In 2008, five publishing groups accounted for 831 of the UK’s regional titles between them, representing a 70 per cent combined market share by circulation. As Table 3.1c illustrates, the largest of these groups, Trinity Mirror, was responsible for a 16.7 per cent market share in 2008, followed closely by...
Newsquest Media Group (14.4 per cent), Associated Newspapers (13.5 per cent), Johnston Press (13.2 per cent), and Northcliffe Media (11.8 per cent). Trinity Mirror's acquisition, in February 2010, of the regional titles previously held by the Guardian Media Group has further boosted its market share, to around 20 per cent of circulation.

### Table 3.1c: Major publishers of UK regional newspapers, 2008

<table>
<thead>
<tr>
<th>Publisher</th>
<th>Key titles</th>
<th>Number of titles</th>
<th>Combined weekly circulation (m)</th>
<th>Total group market share (based on circulation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trinity Mirror plc</td>
<td>Birmingham Post; Coventry Evening Telegraph; Liverpool Echo; Western Mail; Newcastle Sunday Sun</td>
<td>185</td>
<td>11.2</td>
<td>16.7%</td>
</tr>
<tr>
<td>Newsquest Media Group Ltd (wholly owned subsidiary of Gannet plc)</td>
<td>The Argus; Northern Echo; The Herald</td>
<td>215</td>
<td>9.7</td>
<td>14.4%</td>
</tr>
<tr>
<td>Associated Newspapers (owned by DMGT plc)</td>
<td>Evening Standard; Metro; London Lite</td>
<td>13</td>
<td>9.1</td>
<td>13.5%</td>
</tr>
<tr>
<td>Johnston Press plc</td>
<td>The Scotsman; Yorkshire Post; London Lite</td>
<td>283</td>
<td>8.8</td>
<td>13.2%</td>
</tr>
<tr>
<td>Northcliffe Media Ltd (owned by DMGT plc)</td>
<td>Nottingham Evening Post; Halifax Courier</td>
<td>135</td>
<td>7.9</td>
<td>11.8%</td>
</tr>
<tr>
<td>Guardian Media Group (1)</td>
<td>Manchester Evening News; Stockport Times; Macclesfield Express; and Rochdale Observer</td>
<td>43</td>
<td>2.6</td>
<td>3.9%</td>
</tr>
<tr>
<td>News International Newspapers</td>
<td>The London Paper</td>
<td>1</td>
<td>2.4</td>
<td>3.5%</td>
</tr>
<tr>
<td>The Midland News Association</td>
<td>West Midlands Express and Star; Shropshire Star</td>
<td>19</td>
<td>2</td>
<td>2.9%</td>
</tr>
<tr>
<td>DC Thomson &amp; Co Ltd</td>
<td>Aberdeen Evening Express</td>
<td>6</td>
<td>1.9</td>
<td>2.8%</td>
</tr>
</tbody>
</table>

**Notes:** (1): The Guardian Media Group sold all of its regional titles to Trinity Mirror plc in February 2010

**Source:** Select Committee on Communications (2008, pp. 47-8).

Given our observations in the introduction to this section about the nature of the UK's dual media system, it is unsurprising that the market for television news is very differently structured to that for the press. As a legacy of public service broadcasting requirements, the total number of television news providers in the UK is restricted, with two broadcasters, BBC and ITV, accounting for a combined total of almost 90 per cent of total news viewing. As Table 3.1d illustrates, the BBC is by far the most dominant player in TV news, with 60 per cent of total viewing in 2006. Meanwhile, despite the widely acknowledged, and often acclaimed, content of their coverage, Channel 4 could only boast a 4.5 per cent share of news viewing in 2006. As a relatively new entrant, BSkyB has also struggled to take significant market share away from the principal public service broadcasters, in particular the BBC. However, while these viewing patterns do suggest very strong market concentration in television news, it would a mistake to infer a lack of media pluralism from this market profile. As Hanretty et al. (2011, p. 1) note, the BBC is characterised by considerable internal pluralism whereby it 'broadcasts or otherwise conveys a wide range of diverse viewpoints on important political and social controversies of the day'. The same authors note that there are clear arrangements in place to assess whether the scale of the BBC's operations risk ‘crowding out' private investment in broadcasting.

### Table 3.1d: Television news broadcasters and producers
Similar patterns of market concentration are evident in radio broadcasting, with the BBC accounting for 55.5 per cent of all radio listening in the last quarter of 2011 (see Table 3.1e). While commercial radio broadcasters make up the remaining 44.5 per cent of audience share, only two other radio groups, Global Radio and Bauer Radio, account for 10 per cent or more of total radio listening, despite some recent consolidation (in June 2008, Global Radio completed a £375m takeover of GCap Media plc, increasing its market share of all radio listening from five to 16 per cent). The BBC’s share of listening is comprised of multiple outlets, including five principal UK networks, separate networks for Scotland, Wales and Northern Ireland, and 40 local stations in England. Again, the BBC’s content is characterised by internal pluralism, not only with regard to ensuring the expression of a range of political views, but also in the diversity of content provided across BBC Radio as a whole.

### Table 3.1e: Radio news broadcasters: listening share and ownership

<table>
<thead>
<tr>
<th>Radio Group</th>
<th>Share of total radio listening (2011)</th>
<th>Major shareholders/owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBC Radio</td>
<td>55.5% (1)</td>
<td>Public corporation established by Royal Charter.</td>
</tr>
<tr>
<td>Global Radio</td>
<td>16.30%</td>
<td>UK private limited company and wholly owned subsidiary of GRG. Tabor family trusts indirectly held 87.7% shares in GRG in 2008. The remaining approximately 12.3 % of GRG's shares are held by the Global Radio Directors.</td>
</tr>
<tr>
<td>Bauer Radio</td>
<td>10.40%</td>
<td>Bauer Radio Ltd is the wholly owned subsidiary of German private company, H Bauer.</td>
</tr>
<tr>
<td>GMG Radio</td>
<td>4.50%</td>
<td>Wholly owned subsidiary of Guardian Media Group (owned by the Scott Trust).</td>
</tr>
<tr>
<td>UTV Radio (Inc. TalkSport)</td>
<td>3.20%</td>
<td>Wholly owned subsidiary of UTV Media (a UK plc)</td>
</tr>
<tr>
<td>Absolute Radio</td>
<td>1.10%</td>
<td>Times Infotainment Media Ltd (a wholly owned subsidiary of Times of India Group).</td>
</tr>
</tbody>
</table>

Notes: (1) BBC’s listening share comprises 46.6% from national networks (Radio 1, 2, 3, 4, 5 and 6) and 8.9 per cent local radio; 2) Absolute Radio was formerly known as Virgin Radio

Source: Select Committee on Communications (2008, pp. 53-4), with details updated for Global Radio following its takeover of GCap Media plc in 2008; for Absolute Radio following its rebranding in 2008; and for all radio listening shares using Rajar quarterly listening figures from December 2011.
examples of cross-media ownership. Among the most significant instances of overlapping ownership across media sectors are the following:

- Trinity Mirror, which has a 20 per cent share of UK newspaper circulation, is also the largest UK regional newspaper publisher (See Table 3.1c). Trinity Mirror currently has an estimated 23 per cent share of regional newspaper circulation after acquiring GMG Regional Media from the Guardian Media Group in February 2010 (Financial Times, 2010);
- Daily Mail and General Trust, which has a 19.3 per cent share of national newspaper circulation, has held a 20 per cent stake in ITN, which makes news for ITV and Channel 4, since 1996 (see Table 3.1d);
- News Corporation, which accounts for over one-third of the circulation of the UK’s national press via its News International subsidiary, also owns a 39 per cent controlling stake in BSkyB (see Table 3.1d). News Corporation launched a bid to acquire full control of BSkyB in 2010, which was close to agreement before it was withdrawn in July 2011 in the wake of the phone hacking scandal (see Case Study 3.1d);
- BSkyB owns a 7.5 per cent share in ITV1 (in December 2006, the company acquired 17.9 per cent of shares in ITV1, but was ordered by the court of appeal in January 2010 to reduce its stake to a maximum of 7.5 per cent) (see Table 3.1d);
- Northern and Shell acquired Five Group, which owns Channel 5, from RTL in July 2010 (see Table 3.1d);
- Guardian Media Group (owned by the Scott Trust), has a 3.4 per cent share of UK national newspaper circulation and also owns GMG Radio, which has a 4.5 per cent share of all radio listening.

While the above analysis points to significant evidence of market concentration and cross-ownership in the principal media markets, it is important to contextualise this evidence in three ways. First, there is nothing particularly new about media concentration in the UK. Second, the UK is far from exceptional in exhibiting such concentrations of media ownership. Third, the most significant contemporary danger to media plurality, particularly in the national and regional newspaper sectors, is arguably not the economic strength of the principal market players, but rather the extreme economic vulnerability of individual media outlets and organisations.

The dominance of a relatively small number of media groups has been evident in the UK for several decades. As Figure 3.1c shows, the combined market share of the four largest publishers of UK national newspapers (currently News International, Trinity Mirror, Northern and Shell and Daily Mail and General Trust) has remained virtually unchanged since 1992, at about 85 per cent. The single most dominant newspaper group, News International, has maintained a consistent market share, by circulation, of about one-third of the total. Similarly, the share of circulation accounted for by Northern and Shell (formerly United Newspapers) has remained constant at around 15 per cent. The most significant shift has been in the relative position of the two other largest newspaper groups, Trinity Mirror and Daily Mail and General Trust, within the context of the continued market dominance of the ‘big four’ newspaper groups. Trinity Mirror was the biggest loser in this process, seeing its market share drop from 26 to 16 per cent from 1992 to 2008. The biggest gainer was, without doubt, Daily Mail and General Trust, whose market share rose from 12 to 21 per cent over the same period.
Concentrated ownership is not only a well-established feature of media markets in the UK; the same pattern is very much in evidence in most, if not all, established democracies (Doyle, 2002; Ward, 2004; Just, 2009). Indeed, in comparison to other west European media economies, the UK can be argued to have relatively low levels of ownership concentration. In his study of media concentration in ten European countries, Ward (2004) calculated the combined market share taken by the three largest players, which he terms the 'C3 calculation', in each of the four main media markets (national press, regional press, television and radio). Based on these calculations, the UK was ranked third out of five countries for market concentration in which national newspaper markets can reasonably be said to exist, and fifth out of 10 countries with regard to concentration in the regional newspaper market. With regard to broadcasting, where linguistic sub-markets in Switzerland and Belgium increased the total number of cases to 13, the UK was found to have the lowest market concentration in television and was ranked sixth out of 13 for market concentration in radio. Figure 3.1d compares Ward's C3 calculations for the UK and the three other countries in his study for which measures could be derived for all four media sectors. As the graph shows, concentration of media ownership in the UK is significantly below that found in the Netherlands and is by no means out of line with the levels in France or Germany.

Figure 3.1d: Market concentration in the principal media sectors in four European countries (% of market share taken by largest three players).

The extent of market concentration and cross-media ownership in press and broadcasting are, however, only part of the dynamic impacting on media pluralism. Changes in communication technologies and formats are also playing a crucial role particularly, although by no means exclusively, with regard to the print media. Newspapers and broadcasters have increasingly embraced the internet as a medium over the past decade and a half. In doing so, media outlets have sought to benefit from the opportunities the web offers for augmenting print or broadcast content and for expanding their audience reach. A number of UK media organisations have been hugely successful in realising these objectives. As Figure 3.1e shows, the BBC News website was visited by just under 9.5 million unique web browsers in the UK in December 2011, making it easily the most-visited news website. More striking, perhaps, are the web visits recorded by both the Guardian and the Daily Mail websites, both of which secured around 6.5 million UK visitors in December 2011. The Guardian's position as one of the leading UK news websites is especially noteworthy in view of its modest 290,000 print circulation. Yet, while all newspapers have sought to re-position themselves, with varying degrees of success, by offering both print and digital content, they have also struggled to find a way of compensating for declining circulations and print advertising with sufficient income from their online offerings. As we detail in Section 3.1. The media in a democratic society
3.1.2 Both the national and regional press appear to be locked into a precipitous decline, which has accelerated rapidly since 2008. The threat to media plurality in regional news is already highly apparent, and it is widely assumed to be only a matter of time before one or more of the UK’s principal ‘quality’ national newspapers ceases to exist.

Figure 3.1e: Unique UK visitors (web browsers) to principal media sites, December 2011 (000s).

With the re-ordering of the media market posing particularly stark challenges to the business models of most national newspapers, vertical and horizontal integration has become increasingly common as media owners attempt to sustain loss-making outlets. This process of concentration has, moreover, been facilitated by governments and regulators moving to relax existing rules about cross-ownership and market share, over a number of decades, in an avowed attempt to preserve media plurality (Humphreys, 2009). In addition, the associated dynamics of media convergence have led policy-makers in the UK and other established democracies to take the view that new approaches are required, combining integrated regulation with a relaxation of media ownership rules (Just, 2009). As in the USA, Germany, Austria and elsewhere, media policy debate in the UK from 2000 onwards began to reject previous assumptions that sector-specific controls were the best means of preventing media concentration and promoting media pluralism. Instead, the view was increasingly taken that new legal frameworks would be required in which regulations relating to ownership would be scaled back, with greater competition becoming the protector and driver of media pluralism. At the same time, the role of regulators would become one of actively monitoring media pluralism via ‘indices of concentration’ or ‘plurality tests’ and proposing action, where necessary, to protect the diversity of the media (Just, 2009). The reforms introduced by the Communications Act 2003 (see Case Study 3.1a) are an archetypal example of these wider international developments in media regulation.

There can be no doubt that the News Corporation bid to take full control of BSkyB highlighted significant weaknesses in the framework introduced by the Communications Act 2003, as well as unresolved difficulties about how media pluralism should best be defined, measured and protected (see Case Study 3.1d). After the News Corporation bid was withdrawn, the secretary of state for culture, media and sport, Jeremy Hunt, wrote to Ofcom in October 2011 asking the regulator to assess the options for measuring plurality across different media and to submit its recommendations to the Leveson Inquiry (see the Introduction to this section) by June 2012. Among other matters, Ofcom was asked to assess whether it was practical or advisable to set limits based on market shares; what role websites should play in assessing media plurality; and how the BBC’s presence should be factored into any assessment of plurality. As part of its review of media plurality, Ofcom invited comments on the questions posed by the secretary of state, prompting one respondent to ask whether Ofcom may now be acknowledging that the methodology it used in judging the BSkyB case was inherently deficient (Elson, 2011).

Taking just two of the submissions to the Ofcom plurality review underlines how contested concepts of plurality are within the media sector. The Guardian Media Group (2011) suggests the News Corporation bid for BSkyB, together with developments such as Northern and Shell
acquiring Channel 5, the changing ownership of several national newspapers and the closure of regional press titles, underline the ‘clear need to review both media ownership rules and processes by which public interest concerns are defined and addressed’. The Guardian Media Group (2011) also stresses that any failure to take account of the role of online media would ‘exacerbate current problems’. By contrast, News Corporation’s (2011) submission to the review contends that the regulatory framework put in place by the Communications Act 2003 ‘provides adequate protection for plurality’ and that ‘markets are working [...] the clear trend since 2003 has been towards a greater plurality of voices available to UK audiences and a more plural consumption of news’. In addition, News Corporation (2011) contends that since competition offers the best guarantee of plurality, the BBC’s dominance in broadcast and on-line news should be reviewed, and that it would be a mistake to set limits on market share for commercial media providers.

One issue raised by such contrasting perspectives, as Elson (2011) elaborates, is that there is simply no consensus about any of the measures Ofcom uses to measure media plurality, whether by ‘reach’, ‘news consumption’, ‘references’ or ‘main source of news’. Just as importantly, there has been a highly problematic tendency for the debate to be couched in terms of market plurality, without any recognition of the dynamics of political influence. There are, however, signs that the regulatory debate is finally shifting to consider how economic power in media markets may give rise to political influence. Indeed, Ofcom’s chief executive, Ed Richards, has expressed the view to the Leveson Inquiry that the plurality test was deficient on the grounds that it did not consider the possible political influence a company could exercise by virtue of its market position. In doing so, Richards appeared to give belated recognition to the fact that media ownership can be a source of significant political power:

‘we’re obviously going to look at the issue of measurement and how you assess plurality from the perspective of things that you can actually quantify [...] the other dimension which we will also consider in light of the events of the last 12 or 18 months [...] which is also at the heart of people’s concerns about plurality, is the risks around concentration of ownership and media influence [...] we can now see there is another analysis, which is what influence in the political process might I have by virtue of a control of particular media assets’ (Richards, 2012, pp. 59-60).

Independence from government

On the other side of the coin from the debate about the potential political power of those who ‘own the news’ is the question of the extent to which media outlets operate independently of government. Given our above observations about the nature of the press in the UK, we have very few concerns indeed about the degree of its independence. However, the question of the autonomy of UK media organisations from the government does matter in one very important respect. Given the character of the UK’s ‘dual media’ system (see the introduction to this section), as well as the dominant position occupied by the BBC as a public service broadcaster, the potential for government interference in broadcasting has been widely noted (Beetham et al., 2002; Wring, 2006; Hanretty, 2011). As Wring (2006, p. 243) notes, politicians have shown an increasing tendency to ‘appease rather than confront editors and proprietors’ in the print media. By contrast, the nature of the regulatory regime requiring public sector broadcasters to report current affairs impartially has meant that elected politicians have been far more willing to challenge these media outlets. Given its hugely dominant role in news broadcasting, it is the BBC that has been subject to the vast bulk of these challenges.

The BBC’s independence from government has been hard-won, developing from the struggle its predecessor, the British Broadcasting Company (1922-27) had to secure governmental permission to include any coverage of political matters in radio broadcasts. Following its establishment as a public corporation under a royal charter in 1927, the BBC’s first director general, John Reith, was able to progressively expand the BBC’s political coverage as a result of its development of notions of impartiality and expertness. Over time, these values became the basis for codes governing output and the foundation for high levels of public confidence, both domestically and internationally, in the accuracy of the BBC’s reporting and the balance of its coverage (Hanretty, 2011). However, with these principles underpinning the BBC’s development into ‘the largest, most important and most influential PSB in the world’ (Hanretty, 2011, p. 89), conflict between the government and the BBC has been virtually inevitable. Briggs (1979) identified ten significant cases of government interference in the BBC from 1934 to 1972, while Hanretty (2011) points to the particularly tense period of government-BBC relations from 1984 to 1986, associated with broadcasts such as Maggie’s Militant Tendency and Real Lives. Such moments of conflict have frequently prompted the BBC to exercise caution. As we noted in our last full Audit, ‘though fiercely guarding its journalistic independence most of the time, there have been instance of BBC self-censorship throughout the BBC’s history’ (Beetham et al., 2002, p. 195; see also Case Study 3.1c). The basis for this caution and periodic self-censorship is not difficult to identify, given the potential influence of the UK government over its operations and funding. As one recent account notes:

‘The BBC has often felt particularly vulnerable to government pressures, not least because the government is responsible for appointing members of the BBC board of governors, setting increases in the level of the television licence fee and, crucially, periodically approving renewal of the BBC Charter’ (Wring, 2006, p. 243).

In the period since our last Audit, the relationship between the BBC and the Labour governments of 1997-2010 has raised particularly significant issues about the independence of the media from government interference. New Labour’s strategies of media management
including, where required, robust media rebuttal, were masterminded by Alastair Campbell and Peter Mandelson in opposition, as a means of limiting the political damage which might be done to Labour as a result of a hostile press. Yet, once elected, Labour's concern in government to 'spin' its communications and control media messaging reached new heights (Lloyd, 2004; Wring, 2006). Moreover, the BBC became an increasingly important focal point for New Labour's efforts at media management. These issues came to a head in the shape of the so-called 'Gilligan affair', perhaps the most serious case of conflict between the government and the BBC since the corporation was founded. The affair stemmed from a broadcast featuring the BBC's defence correspondent, Andrew Gilligan in May 2003, and ultimately resulted in a judicial review which exonerated the government and prompted the resignations of both the director general of the BBC, Greg Dyke, and its chairman, Gavyn Davies (for full details, see Case Study 3.1c).

However, the Gilligan affair was arguably just the most dramatic manifestation of a deeper shift in relations between the government and the BBC during New Labour's period in office, which happened to be centred on the BBC's coverage of the government's highly controversial decision to go to war in Iraq. In his autobiography, Dyke (2004) revealed that Tony Blair had sent several letters to himself and Gavyn Davies prior to the Gilligan affair complaining about the BBC's coverage of Iraq. Similarly, Hanretty (2006) notes that 'government pressure on the BBC was at least as insistent before Gilligan as after [...] Campbell actually wrote more letters to the BBC in the three weeks after Gilligan's broadcast'. In this particular instance, it appears that the aggressive stance adopted by Labour backfired. As Case Study 3.1c documents, the legacy of the Gilligan affair was to prove far more negative for the government than it did for the BBC. The Gilligan affair is perhaps best interpreted as a warning sign, rather than as evidence of the BBC's independence being diminished. As Hanretty (2011, p. 123) suggests, while such cases 'call into question the degree of the BBC's independence, we should not let this overshadow the realization that the BBC is amongst the more independent PSBs'.

### Case Study 3.1c: The Gilligan affair

On 24 September 2002, during the run-up to the war in Iraq, the government published a dossier on Iraq's weapons of mass destruction (WMD) prepared by the Joint Intelligence Committee (JIC). The document, which carried a foreword by Tony Blair and was published on the day that parliament was recalled to debate its contents, alleged that Iraq possessed chemical and biological weapons and that it had recommenced its nuclear weapons programme. In addition, the dossier asserted that some of these WMD were capable of being launched at 45 minutes' notice. The publication of such a JIC assessment prior to war was unusual. As Blair put it in his foreword to the dossier 'it is unprecedented for the Government to publish this kind of document' (Blair, 2003 p. 3). This innovation had little or nothing to do with the government's desire to promote transparency. Rather, it can be argued that 'the dossier was a form of propaganda intended to build or consolidate support for the government's policy' (Humphreys, 2005, p. 156). That said, it was arguably also highly unusual that such a high-profile government publication was not finalised within Downing Street, particularly given the political context at the time.

Despite widespread public opposition to military intervention in Iraq, the dossier attracted little controversy upon its publication. Indeed, following media coverage in the wake of its publication, in which the 45-minute claim featured significantly, little further reference was made to the dossier until February 2003, when a second dossier, prepared by the Communications Information Centre within the Foreign and Commonwealth Office, was published. This second dossier proved to be a significantly less credible document, not least because it included substantial material reproduced without proper attribution of sources, including a doctoral thesis which had been posted on the internet (Wring, 2006). In light of these reservations about what was to be dubbed the 'dodgy dossier', concerns about the reliability of the earlier 'September dossier' also began to be expressed. Indeed, as it became increasingly clear, following the US-led military invasion of Iraq in March 2003, that Iraq did not possess weapons of mass destruction, growing scepticism was expressed about the contents of both dossiers. There was also a common tendency to conflate or confuse the February and September dossiers (Humphreys, 2005).

On 29 May 2003, with the search for WMD continuing, BBC Radio 4 broadcast an item on its flagship Today programme in which the BBC's defence correspondent, Andrew Gilligan, told presenter John Humphrys about high-level claims that the government had instigated significant changes to the September dossier shortly before its publication. Specifically, Gilligan reported that he had been told by 'one of the senior officials in charge of drawing up [the September] dossier' that Downing Street had 'ordered it to be sexed up, to be made more exciting and ordered more facts to be [...] discovered'. During the same feature, Gilligan referred to his source suggesting that the dossier's claim about Iraq being able to launch WMD within 45 minutes had been added at a late stage and that 'the government probably knew that the 45 minute figure was wrong, even before it decided to put it in' (cited in Lloyd, 2004, p. 3). Similar claims that the dossier had been embellished by Downing Street were also made by BBC journalists Gavin Hewitt on the 10 O'clock news on the evening of 29 May 2003 and by Susan Watts on Newsnight on 2 June 2003, both of whom had spoken independently to the same source. Perhaps most significantly of all, however, Gilligan also published an article in the Mail on Sunday on 1 June, in which he pointed the finger at Alastair Campbell, the prime minister's director of communications and strategy, as the person responsible for 'sexing up' the dossier (Wring, 2006).
On 6 June, Alistair Campbell wrote to the BBC's director of news, Richard Sambrook, challenging the story and demanding an apology. With the BBC initially standing by the story and defending its reporting, Campbell was joined by government ministers and Labour MPs in placing the BBC under concerted pressure about its coverage (Wring, 2006; Hanretty, 2011). Central to these communications was the claim that the BBC had violated its own guidelines by relying on a single source (Hanretty, 2011). As the row escalated, both Gilligan and Campbell were called to give evidence to the Foreign Affairs Select Committee and speculation grew about who the source might be. On 30 June, Dr David Kelly, a weapons expert at the Ministry of Defence, informed his line manager that he was the source. On 9 July, press officers at the Ministry of Defence confirmed Kelly as the source when his name was put to them by newspaper journalists. Kelly was subsequently called to give evidence to the Foreign Affairs Select Committee on 15 July and to the Intelligence and Security Committee on 16 July. On the following day he was found dead in a field near his home, having apparently committed suicide.

On the day after David Kelly's death, the government announced that a judicial inquiry into the matter would be carried out by Lord Hutton, starting in August. When Hutton reported in January 2004 he cleared the government of any wrongdoing and concluded that there were no grounds at all to believe that Kelly's death was anything other than suicide. Hutton did accept that Alastair Campbell, who had stood down from his role as the prime minister's director of communications and strategy in August 2003, had made it clear to John Scarlett, the Chair of the JIC, that the government wanted the document to make as strong a case as possible that Iraq possessed WMD. He also noted that the intelligence purporting to show that Iraq could launch WMD at 45 minutes' notice only came to light in late August 2002 and had indeed been added to the dossier shortly before its publication. However, Hutton nevertheless concluded that the BBC's claims had been unfounded. He took the view that the BBC's editorial system had been defective and also that its management system had been at fault for failing to properly investigate the government's complaints (Hanretty, 2011). On publication of the Hutton report, Alistair Campbell 'made a rather ungracious victory speech [in which] he effectively called for the resignation of four key BBC people: the Chairman, the Director General, the journalist Andrew Gilligan, and [...] John Humphrys' (Barnett, 2006, p. 61). While Humphrys was to survive, there were to be three resignations from the BBC: Greg Dyke as director general, Gavyn Davies as chair of its governing body, and Andrew Gilligan as the journalist who had broken the story.

The Hutton report and the high-profile BBC resignations were far from the end of the story, however. In June 2005, John Humphrys was to comment on the affair in an after-dinner speech at the Communication Directors' Forum, stating that: 'The fact is that we got it right. If we were not prepared to take on a very, very powerful government, there would be no point in the BBC existing - that is ultimately what the BBC is for' (cited in Barnett, 2006, p. 58). These comments subsequently came to light after The Times obtained a video of the speech, and ran a two-page feature on 3 September 2005 under the headline "Radio's king of rude launches another salvo at Labour "liars"". It transpired that Humphrys' speech had been recorded by Richmond Events, the PR company that had approached the presenter to speak at the event and that, according to Richmond Events, the only possible source of the story was Alastair Campbell, who had managed to obtain a copy of the video (Barnett, 2006).

Views on the Gilligan affair are strongly polarised. Upon resigning, Greg Dyke immediately rejected Hutton's findings and drew strong support from BBC staff. Much of the print media, with the exception of titles owned by Rupert Murdoch's News International, reacted with harsh criticism of the Hutton report and backed the BBC. The Independent was particularly forthright, running a front page on which the word 'Whitewash' appeared without any other text or imagery. By contrast, Lloyd (2004) presents the BBC's reporting of the 'sexing up' of the September dossier as a primary exemplar of what has gone wrong with British journalism. In Lloyd's account, Gilligan's report was carelessly introduced and presented, making a grave charge without sufficient basis, and was subsequently defended by the BBC in a manner which was defective but, at least initially, refused to admit any fault whatsoever on the part of the corporation. Lloyd asserts that it was the sheer strength of the BBC, rather than the facts of the case, which allowed it 'to justify to its critics and to itself a report of huge significance, which broke most of the proclaimed rules of journalistic inquiry (Lloyd, 2004, p. 8).

While there is unlikely to ever be consensus about who was at fault for the breakdown in relations between the government and the BBC which arose from the episode, it is clear that its impact was felt more keenly by the Blair government that by the corporation. It is widely agreed that the swift decisions of Dyke and Davies to resign were crucial to minimising the damage to the BBC's reputation or independence (Barnett, 2006; Wring, 2006; Hanretty, 2011). By opting to stand down, Dyke and Davies 'ensured the pressure and media coverage remained on Blair, the intelligence services and wider government's conduct' (Wring, 2006, p. 244). While it would appear that the BBC was initially more cautious in its coverage, possibly exercising a degree of 'self-censorship' in the short-term, it seems equally clear that there was no lasting effect on its journalism (Barnett, 2006, p. 61). Meanwhile, opinion polls demonstrated that a clear majority of the British public sided with the BBC rather than the government (Barnett, 2006; Hanretty, 2011). It also seems clear that the perceived one-sidedness of the Hutton report was to damage Labour's performance at the 2005 general election and served to 'crystallise the doubts across various media about Blair's judgement over Iraq' (Wring, 2006, p. 244).
**Freedom from subordination**

As in our last Audit, we have found no evidence to suggest that the UK media are subject to subordination to foreign governments. However, in an era of globalisation (see Section 4.1.1), it is inevitable that sections of the UK media are under the ownership of multinational corporations or other overseas interests. Since 2009, the Russian billionaire, Alexander Lebedev, has acquired the *Evening Standard, the Independent* and the *Independent on Sunday*, and has also launched the *i*, a cut-price daily with a circulation of over 150,000. All of these titles are currently loss-making and there have been no concerns expressed about Lebedev, who is also the owner of Russia’s major opposition newspaper, *Novaya Gazeta*, interfering with the editorial independence of the titles.

Of more substantial concern, however, is the extent of News Corporation’s media assets in the UK. Headquartered in New York, News Corporation is the second largest global media conglomerate by revenue and has extensive media assets in the USA, Australia and the UK in particular. News Corporation owns, among others, the *New York Post*, the *Wall Street Journal*, and Fox Broadcasting, as well as approximately 150 national and regional newspaper titles in Australia. It would be misleading, of course, to assume that either News International’s newspaper titles in the UK or News Corporation’s shareholdings in BSkyB constitute automatic evidence of these outlets being subordinate to multinational corporations. The extent to which the Murdoch family, or News Corporation’s senior executives, seek directly to influence the editorial line of newspapers or broadcasters controlled by the company is difficult to establish. In the case of News Corporation’s Australian interests, for instance, it has been suggested that editorial influence on the part of the owners is much diminished compared to previous decades (Sawer et al., 2009). Yet, it has also been established that Rupert Murdoch’s personal support for the war in Iraq was echoed by all of the 175 newspaper titles which he controlled globally in 2003, leading Roy Greenslade to note that not a single editor ‘has dared to croon the anti-war tune. Their master’s voice has never been questioned’ (*Guardian, 2003*).

Perhaps the more significant point with regard to News Corporation is that Murdoch’s vast international media empire has been built upon, and continues to disseminate, a particular set of social and political values, which might be described as broadly neo-liberal in character. The influence of Rupert Murdoch’s political views on the editorial line of *The Australian* newspaper between 1976 and 1983, which played ‘a pioneering ideological role’ in ‘changing and challenging the prevailing post-war consensus’, has been catalogued by McKnight (2003, p. 356). During the same time period, Murdoch’s close relationship with Margaret Thatcher in the UK, which McKnight (2003, p. 348) describes as ‘mutually beneficial and based on a shared outlook’, saw his acquisition of *The Times* and *The Sunday Times* in 1981 also becoming an apparent mechanism for the propagation of his own particular set of political values. According to Andrew Neil, who became editor of *The Sunday Times* in 1983:

> ‘Rupert expects his papers to stand broadly for what he believes: a combination of right-wing Republicanism from America mixed with undiluted Thatcherism from Britain […] the resulting potage is a radical-right dose of free market economics, the social agenda of the Christian Moral Majority and hardline conservative views on subjects like drugs, abortion, law and order and defence’ (*Neil, 1996*, cited in McKnight, 2003, p. 349).

Rather than amounting to subordination to multinational companies, it might be argued that News Corporation’s extensive media holdings have led to a range of media outlets in the UK and elsewhere becoming subordinate to a particular ideological viewpoint over a period of several decades. It is within this context that the controversy surrounding News Corporation’s bid to take full control over BSkyB (see Case Study 1.3d) is best understood.

**Case Study 3.1d: News Corporation’s proposed acquisition of BSkyB**

On 15th June 2010, News Corporation, a minority shareholder in BSkyB, announced its plans to purchase the remaining 60.9 per cent of shares it did not already own, in a deal estimated to be worth £7.8 billion. Although the proposed deal stalled over differences in the share valuation, negotiations were set to resume once News Corporation had gained regulatory clearance. On 3rd November 2010, News Corporation notified the European Commission of the proposed transaction under the EU Merger Regulation. The following day, Vince Cable as the secretary of state for business, innovation and skills, referred the proposed acquisition to Ofcom and to the Office of Fair Trading (*Barasso and Long, 2011, pp. 267-68*). The intervention by Vince Cable was prompted by complaints from News Corporation’s competitors in the UK, including the BBC, Channel Four, the *Daily Telegraph*, the *Daily Mail*, the *Guardian* and the *Daily Mirror*, that the deal should be blocked on the grounds that it could reduce media diversity and plurality in the UK. Nevertheless, on 21st December 2010, the European Commission unconditionally cleared the proposed acquisition with regards to the competition aspects of the deal, but highlighted the unresolved issues of the impact on media plurality in the UK, which was beyond its remit (*European Commission, 2010*).

During the European Commission’s consultation, Vince Cable was secretly recorded by undercover *Daily Telegraph* journalists making disparaging remarks about the coalition government. In further revelations, released on the day of the European Commission’s announcement, Cable was also reported to have made personal remarks about the proposed acquisition, saying that...
he had affectively ‘declared war on Mr Murdoch [Rupert Murdoch, chairman and chief executive of News Corporation] and I think we’re going to win’ (Daily Telegraph, 2010a). Following his comments about News Corporation, Cable was stripped of responsibility for media competition, which was consequently transferred over to Jeremy Hunt, secretary of state for culture, olympics, media and sport.

In January 2011, Ofcom’s report was released. Its conclusion stated that:

‘it reasonably believes that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences […] there is, therefore, a need for a fuller second stage review of these issues by the Competition Commission to assess the extent to which the concentration in media ownership may act against the public interest’ (Ofcom, 2010, p. 15).

Moreover, the report by the Office of Fair Trading, released at the same time, recommended that:

‘the Secretary of State has jurisdiction to make a reference to the CC [Competition Commission] under Article 5(3) of the Order to address any media plurality concerns if the Secretary of State believes that the conditions set out in Article 5(3) of the Order are satisfied’ (Office of Fair Trading, 2010).

In response to Ofcom’s and the Office of Fair Trading’s concerns, News Corporation offered undertakings in lieu of reference to the Competition Commission that would require Sky News to be ‘spun off’ to a separate company, Newco, independent of News Corporation and BSkyB control. On 3rd March 2011, Jeremy Hunt announced to the House of Commons that:

‘the independent media regulator, Ofcom, had advised me that undertakings in lieu offered by News Corporation would address the plurality concerns that Ofcom had identified in its report to me of 31 December 2010. I also announced that the OFT considered the undertakings to be practically and financially viable for up to 10 years. In the light of this independent advice, I propose to accept such undertakings instead of referring the matter to the Competition Commission […] However, I will of course reach a final conclusion on that and other aspects of the undertakings only after the consultation is complete’ (cited in Seely, 2011, pp. 23-4).

On 30 June 2011, following the first consultation in which minor amendments were made to the undertakings in lieu, Jeremy Hunt announced that the measures taken would ‘remedy, mitigate, or prevent the threats to plurality’ (cited in Seely, 2011, p. 27) and that, as such, he would accept the proposals after a further consultation. However, throughout 2011, a string of phone-hacking allegations appeared concerning the News of the World, a News Corporation publication. These allegations reached a critical point on 5th July, when the Guardian newspaper published reports that News of the World journalists had hacked the phone of murdered schoolgirl Milly Dowler (Guardian, 2011).

Following a wave of political and public condemnation, the News of the World was closed down on 7th July. As the furor increased, the secretary of state wrote to both the Office of Fair Trading and Ofcom asking each whether ‘any new information that has come to light causes you to reconsider any part of your previous advice’ (Hunt, 2011). Any response to the letter was pre-empted when News Corporation announced the withdrawal of the undertakings in lieu, resulting in the secretary of state referring the deal to the Competition Commission. Then on 13 July 2011, News Corporation officially announced the withdrawal of their bid to purchase the remaining shares of BSkyB that they did not already own. During the Commons debate that day, MPs lined up to vent their anger at News Corporation, including former prime minister Gordon Brown, who defended himself from charges that he had been complicit in relinquishing regulatory control at the bequest of News Corporation, by making an impassioned speech, testifying that:

‘[i]t is no secret that the 2009 MacTaggart lecture given by Mr James Murdoch, which included his cold assertion that profit not standards was what mattered in the media, underpinned an ever more aggressive News International and BSkyB agenda under his and Mrs Brooks’ leadership that was brutal in its simplicity. Their aim was to cut the BBC license fee, to force BBC online to charge for its content, for the BBC to sell off its commercial activities, to open up more national sporting events to bids from BSkyB and move them away from the BBC, to open up cable and satellite infrastructure market, and to reduce the power of their regulator, Ofcom. I rejected those policies’ (Hansard, 13 July 2011, column 399).

While News Corporation’s bid for BSkyB ultimately failed because of the fallout from the hacking scandal, the charges levelled against News Corporation and some of its senior figures in the days after it abandoned the deal highlight the possibility that the threat to media plurality was significantly underestimated. Although measures were proposed that seemingly resolved the issue, certainly from the perspective of the secretary of state, Ofcom and the Office of Fair Trading, the allegations that emerged after the failure of the bid suggest that methods for assessing potential impacts on media diversity and plurality are far from adequate. In
particular, it is clear that Ofcom were unable to provide any clear assessment of the likely future effects of a News Corporation acquisition of BSkyB, either in terms of media plurality or in relation to the broader political implications of a shift in media ownership.

3.1.2 Media diversity and accessibility

How representative are the media of different opinions and how accessible are they to different sections of society?

The nature of the UK’s dual media system has important implications for the extent to which the media is representative of different opinions. As noted in the introduction to this chapter, the British newspaper market is dominated by large national titles which tend to adopt a clear editorial line, favouring one political party over others. By contrast, the broadcast news media are required, as part of their public service broadcasting commitments, to give representation to a range of political viewpoints. Given these contrasts, it is significant that surveys consistently reveal television to be the dominant, and also most trusted, source of news and information about politics. However, the rapid reshaping of the UK’s dual media system as a result of digitalisation and media convergence (see Section 3.1.1) also has important implications, both for the balance of opinion in media reporting and for access to the media. The volume of news dissemination via the internet has grown enormously, but its relative importance in overall news consumption appears to be more modest than is commonly supposed. Meanwhile, the decline of newspaper readership has reached a point at which the future of a number of national print titles, and the news websites they sustain, is in serious doubt. Over the short-term, at least, these shifts have served to enhance the relative significance of television as a medium, but they have done so within the context of an overall decline in news consumption.

Patterns of UK media consumption

Given the contrasting ways in which they provide for a plurality of political opinions, the relative balance of the press and broadcasting in UK news consumption is a significant issue. Surveys show that television is by far the most dominant news medium for UK citizens, and that its importance compared to newspapers and radio has increased since the mid-2000s. In 2009, 74 per cent named television as their main source of news in 2009 - up from 68 per cent in 2005 and 2007 (see Figure 3.1f). By contrast, newspapers were named as the principal source of news by just eight per cent of those surveyed in 2009, down from 15 per cent in 2005. There also appears to be a decline in the relative significance of radio, described by seven per cent as their main news source in 2009, compared to 11 per cent in 2005. Taking a longer view, the shifts are even more dramatic. In 1962, television was cited as the main source of news by 58 per cent of the population, compared to 33 per cent for newspapers and 17 per cent for radio (Eldridge, 1995, p. 44).

Figure 3.1f: Main sources of news, 2005-09

![Graph showing the main sources of news from 2005 to 2009. Television has increased significantly, while newspapers have decreased.](Source: Ofcom (2009))
Figure 3.1f suggests that the growth in the relative significance of the internet as a news medium has so far been relatively modest. In 2009, just six per cent said that the internet was their main source of news - although this represented twice the level reported in 2005, and put it on a par with both radio and newspapers. However, it is likely that the key significance of the rise of the internet as a news medium to date has been its impact on the print sector. As we discuss in Section 3.1.3, while newspapers have been at the forefront of the shift towards new media, they have also been placed under intense pressure by these developments. As Figure 3.1g illustrates, national newspaper circulation has been declining rapidly since the 1990s. Whereas the combined average daily circulation of UK daily newspapers was relatively stable at around 15 million from 1951-1980, it had fallen to 9.5 million by 2010. In the period from 2000-10, every newspaper other than the Daily Star experienced a drop in circulation. Declining circulation was most obvious at the Daily Mirror (-44 per cent), the Daily Express (-31 per cent) and the Daily Telegraph (-30 per cent), closely followed by The Times and the Guardian (both -25 per cent).

Meanwhile, there is clear evidence to suggest that, despite its dominant position, television news viewing is in decline and is becoming increasingly fragmented (Currah, 2009). Figure 3.1h, which shows the trends in overall television viewing (not just news) by channel since 1981 illustrates the overall nature of this audience fragmentation. In 1981, the BBC and ITV accounted for roughly 50 per cent each of all television viewing. During the 1980s, Channel 4 ate into ITV’s share of viewing, securing almost 10 per cent of audience share by the end of the decade, with the BBC’s overall share remaining at around 50 per cent throughout the decade. However, with the rapid growth of satellite and cable services from the early 1990s, the viewing shares attributed to ITV1 and BBC1 declined dramatically, with BBC2’s and Channel 4’s viewing figures also being squeezed substantially. By 2010, the combined audience share accounted for by the five terrestrial channels with public service broadcasting commitments represented a little more than 50 per cent of the total. With audience shares fragmenting in this manner, news consumption has unsurprisingly fallen. Currah (2009, p. 23) notes that average annual consumption of television news dropped from 103.3 to 90.8 hours per person in the period from 2001 to 2006. While this decline has since slowed, Ofcom (2011) found that the figure had declined to 88 hours per person per annum by 2010. This decline has affected all terrestrial channels other than BBC1, with ITV1 showing an especially dramatic drop in news viewing (Currah, 2009; Ofcom, 2011).
The representativeness of media opinion

There is rarely any significant concern expressed about the extent to which UK news broadcasting is representative of different political opinions. As we note in Section 3.1.1, the BBC's own codes and guidelines have been highly successful in maintaining its reputation for balanced reporting and for ensuring that a platform is provided for a range of political views to be heard. In addition, Section 2.1.3 considers the arrangements for party election broadcasts, and more recently with respect to televised leaders' debates, for which there are clear rules about the allocations to each political party based on their respective levels of electoral support. While there have been occasional controversies, these should not deflect attention from the widespread consensus that the BBC provides impartial and balanced coverage. A survey conducted by Ipsos MORI (2008) found that levels of public trust in the BBC were far higher than those for the media in general and that the BBC was regarded as the most trusted of seven organisations, which included the NHS, the Church of England and the military. We therefore concentrate here primarily on the issue of the balance of political opinion in the UK national press and its potential political implications.

Given the absence of any requirements for individual newspapers to offer balanced news reporting and comment, the range of views on offer in the British press derived largely from the extent to which there is pluralism of ownership and, in turn, the degree to which owners seek to influence editorial direction. As we noted in Section 3.1.1, newspaper ownership in the UK, as elsewhere, is strongly concentrated and there have been widespread concerns expressed about the extent to which this has restricted a plurality of viewpoints. Writing almost two decades ago, Marsh (1993, p. 335) noted that 'the press overwhelmingly supports the Conservative Party'. Likewise, Wright (2000, p. 163) suggests that 'the businessmen and corporations who own newspapers have generally felt their interests coincided with Conservative policies and their editors have reflected this view'. That most newspaper owners should seek to define the political stance taken by their publications is not especially surprising. As Marsh (1993, p. 336) suggests, newspapers are rarely profitable and it is therefore difficult to avoid the conclusion that 'the press barons are in newspapers for power, influence and easy access to the establishment'. Likewise, the mechanisms through which owners can, and do, interfere with or shape content to promote particular viewpoints are not difficult to identify; they range from directly dictating the line a newspaper should follow on particular issues, to appointing senior staff with a shared political outlook, as well as forms of indirect influence over the ethos of the organisation which may prompt journalists to engage in 'self-censorship' (Rowbottom, 2010).

Yet, it would also be misleading in the extreme to assume that the UK press as a whole presents a unified, default pro-Conservative position, as dictated by their owners. The extent to which proprietors interfere with content is entirely unquantifiable, but there are also clear limitations on the extent to which they will be able to do so. The size and complexity of national newspapers and broadcasters, and the competing professional values and political views of journalists, editors and producers ensure that a media organisation represents far more than simply 'the voice of its owner' (Rowbottom, 2010, p. 179). Just as importantly, there is also evidence to suggest that the political affiliations of the UK's national newspapers has become significantly more fluid. With voters increasingly de-aligned from political parties, there is a powerful rationale for the press to follow suit, if only to avoid alienating their own readers (Wright, 2000).
Figure 3.1i shows the partisan orientation of the UK national press, by share of circulation, at general elections from 1945 to 2010. Measured in this way, the Conservatives typically enjoyed 50-55 per cent of press support by circulation, Labour between 38 and 44 per cent and the Liberals 5 to 10 per cent. However, this relatively stable pattern of partisan support was clearly disrupted from the mid-1970s. There was an initial shift of support towards the Conservatives, who could count on the endorsement of around three-quarters of press circulation from 1979 to 1987. However, from 1997 to 2005, the proportions were essentially reversed, owing partly, but by no means entirely, to Tony Blair's success in persuading Rupert Murdoch to switch the allegiance of his newspapers.

Figure 3.1i: Newspaper partisanship at General Elections, by % of circulation, 1945-2010

Sources: Butler and Butler (2000, p. 537); Butler and Butler (2006, p. 274); Wring and Ward (2010, p. 806).

There has been much debate about the extent to which press bias impacts on voting behaviour (Marsh, 1993; Denver, 2007). The Sun's infamous claim following the 1992 general election that 'It's the Sun Wot Won it' is widely known. Yet, as Price (2010, p. 16) notes, in almost half of all general elections since 1918 'one newspaper or another has claimed to have swung the result'. Indeed, Price (2010, p. 16) argues that the case for media supremacy in politics is far from proven and that 'elections are won or lost by parties and their rival candidates for the post of prime minister, not by the media'. There are certainly significant methodological difficulties which arise from any attempt to establish the degree of cause and effect in media reporting and voting behaviour (Denver, 2007). It has been found, for instance, that 68 per cent of Sun readers at the time of the 1979 general election were unable to correctly identify that the paper advocated voting Conservative (Marsh, 1993).

Clearly, there is a relationship between the partisan position of newspapers and voting preferences among their readers. As Table 3.1f shows, only nine per cent of Guardian readers voted Conservative in 2010, compared to 70 per cent of Telegraph readers. Similarly, the strongly Labour-supporting Mirror was the only tabloid with a majority of readers (59 per cent) voting Labour in 2010. What is also evident from Table 3.1f is that, while the voting swing among readers of all newspapers, other than the Guardian, was broadly in line with the national result, the shift was much stronger among readers of the Sun and the Star. However, it should also be underlined that the spread of party support among readers of different newspapers is such that, in 2010, one-third of readers of the staunchly pro-Conservative Daily Mail voted either Liberal Democrat or Labour, while the same proportion of Mirror readers opted for either the Liberal Democrats or the Conservatives. Moreover, even if we accept that there is, broadly speaking, a clear fit between the political views expressed by newspapers and those held by their readers, it is by no means clear how this relationship should be interpreted: '[i]t might indicate either that readers' political views are shaped by the paper that they read or that they choose to take a paper which is politically congenial to them' (Denver, 2007, p. 142).
Table 3.1f: Party choice by newspaper readership, 2005 and 2010

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<tr>
<td>Result</td>
<td>35</td>
<td>29</td>
<td>32</td>
<td>36</td>
<td>22</td>
<td>23</td>
<td>5</td>
</tr>
<tr>
<td>The Guardian</td>
<td>43</td>
<td>46</td>
<td>7</td>
<td>9</td>
<td>41</td>
<td>37</td>
<td>*3.5</td>
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<tr>
<td>The Independent</td>
<td>34</td>
<td>32</td>
<td>13</td>
<td>14</td>
<td>44</td>
<td>44</td>
<td>1.5</td>
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<td>The Times</td>
<td>27</td>
<td>22</td>
<td>38</td>
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<td>8</td>
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<tr>
<td>The Telegraph</td>
<td>13</td>
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<td>65</td>
<td>70</td>
<td>17</td>
<td>18</td>
<td>5.5</td>
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<tr>
<td>The Star</td>
<td>54</td>
<td>35</td>
<td>22</td>
<td>21</td>
<td>15</td>
<td>20</td>
<td>10</td>
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<tr>
<td>The Daily Express</td>
<td>28</td>
<td>19</td>
<td>48</td>
<td>53</td>
<td>18</td>
<td>18</td>
<td>7</td>
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<tr>
<td>The Daily Mail</td>
<td>22</td>
<td>16</td>
<td>57</td>
<td>59</td>
<td>14</td>
<td>16</td>
<td>4</td>
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<tr>
<td>The Sun</td>
<td>45</td>
<td>28</td>
<td>33</td>
<td>43</td>
<td>12</td>
<td>18</td>
<td>13.5</td>
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<tr>
<td>The Mirror</td>
<td>67</td>
<td>59</td>
<td>11</td>
<td>16</td>
<td>17</td>
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Note: * swing among Guardian voters was from Liberal Democrat to Labour.


Citizens’ access to the media

There is no doubt that news media have long been highly accessible to UK citizens under the dual press/broadcasting model. Levels of newspaper readership have long been relatively high by international standards. Norris (2000) found that the UK’s newspaper circulation per 1000 of population was the sixth highest in the OECD, despite having suffered the second largest fall in circulation from 1952-96. Meanwhile, television ownership has long been near universal. As Figure 3.1j shows, 97 per cent of UK households have a television, a figure which has been virtually static since 2000.

Figure 3.1j: UK households with a television and with digital television, 2000-2012
In addition, UK citizens are clearly well placed in relation to the digital revolution in communications. Whereas less than 10 per cent of households had access to digital television in 2000, the proportion has grown rapidly on an annual basis ever since and, as of 2012, virtually all households now receive digital television services (see Figure 3.1j). Meanwhile, levels of access to the internet are high by international standards, at around 80 per cent. As Figure 3.1k demonstrates, internet access is available to a higher proportion of households in the UK than the average for the EU-15 and the OECD, although it still lags about eight percentage points behind the average for the Nordic countries.

Figure 3.1k: Households with access to the Internet, UK and groups of comparator democracies, 2010 (or nearest available year)

Given the high levels of access across all media, the more significant questions for the UK concern which sources are most widely used, and to what extent they are trusted, by citizens. In addition to the patterns of news consumption reported at the beginning of this section, evidence about how voters obtain information during general election campaigns provides some useful insight into how UK citizens choose to access media reporting on politics. A survey carried out during the 2001 general election campaign by Ipsos Mori (2001) found that 88 per cent of those surveyed obtained information about politics and current affairs from television, 74 per cent from national daily newspapers, 54 per cent from Sundays newspapers, 42 per cent from leaflets, 48 per cent from radio and 13 per cent from the internet. In 2010, a similar survey carried out by YouGov suggested that the significance of all sources other than the internet had fallen, in some cases dramatically. In 2010, 76 per cent of those surveyed said they had used television to learn about the general election, compared to 49 per cent for national newspapers, 29 per cent for national radio and 14 per cent for local radio. The increase in the proportion accessing information about the election from the internet between 2001 and 2010 is difficult to determine because the YouGov (2010) survey allowed respondents a choice between more than five categories of websites. However, the increased use of the internet is clear from the figures as the proportions reporting they had made use of newspaper websites and television websites were 20 and 19 per cent respectively.

Table 3.1g: Role of television and newspapers as sources of information about politics during election campaigns, 2001 and 2010

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>Rank</th>
<th>2010</th>
<th>Rank</th>
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<tbody>
<tr>
<td>Democratic Audit</td>
<td></td>
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</tbody>
</table>
Used TV as a source of information | 88 | 1 | 76 | 1
Used national newspapers as source of information | 74 | 2 | 49 | 2
TV was main or most influential source of information | 48 | 1 | 41 | 1
Newspapers were main or most influential source of information | 28 | 2 | n/a | n/a
Trusted TV most to be accurate & impartial/TV presented issues most fairly | 49 | 1 | 40 | 1
Trusted newspapers most to be accurate & impartial/TV presented issues most fairly | 12 | 2 | 7 | 2

Sources: Ipsos MORI (2001); YouGov/Deloitte (2010).

Nonetheless, it is evident from the 2010 survey that television remains the dominant medium in election campaigns, and that its significance relative to the press continues to grow. While national newspapers remained the second most commonly cited source of information about the 2010 general election, Table 3.1g shows that the 'gap' between television and newspapers increased from 14 to 27 percentage points from 2001 to 2010. There can be little doubt that the hosting of the first televised leaders' debates in 2010 were central to ensuring the dominance of television as a medium, despite widespread speculation that it could prove to be the 'first internet election' (Wring and Ward, 2010). Yet, it also seems likely that television's continued dominance as a source of information at election time is, at least in part, associated with its superior reputation for presenting issues fairly and impartially. When asked by MORI in 2001 which source they trusted most to provide accurate and impartial information, 49 per cent opted for television compared to just 12 per cent each for daily newspapers and radio. In response to a similar question in 2010, 40 per cent of those taking part in the YouGov survey said that television presented election issues mostly fairly, compared to just seven per cent each for newspapers or radio.

With the evidence presented in Table 3.1g providing additional grounds to be sceptical of press influence on voting behaviour, it seems clear that the role of television in UK general elections will be a focal point for future research, particularly in light of the leaders' debates. The televised debates brought an entirely different, and frequently unpredictable, dynamic to the election campaign (Kavanagh and Cowley, 2010) and there is evidence to suggest that they may have been particularly influential in helping 18-39 year olds decide who to vote for (Coleman, 2011). Whether this is a healthy development, from a democratic perspective, is far from clear. As we have shown in this section, while the access which UK citizens have to news reporting is greater than ever, overall news consumption appears to be falling. It is far from clear that the innovation of televised leaders' debates, and the huge volume of media analysis which they generated in 2010, offer any kind of solution to the issue of declining engagement with news media outlined above.

3.1.3 Media's role in holding the powerful to account

How effective are the media and other independent bodies in investigating government and powerful corporations?

The ability of the media and other independent bodies to effectively scrutinise government and powerful corporations clearly depends, to a great extent, on the extent of media freedom and level of media plurality (see Section 3.1.1) and also on the degree to which journalists are free from restrictive laws and intimidation (see Section 3.1.4). Here, however, we are less concerned with what might be considered to be some of the legal and structural prerequisites for a robust, independent 'fourth estate' than with the empirical assessment of its actual practices and output.

Traditional news media under siege

As we have noted in Section 3.1.1 and Section 3.1.2, newspapers and television news broadcasters - the 'old' news media - are facing increasingly difficult economic circumstances. Readerships and audiences are declining alongside advertising revenues, and the emergence of the internet and other 'new' media is stimulating further competition and upheaval within an already convulsive and fiercely-contested marketplace. Long-term commercial pressures - whether from corporate owners, market competition or new technology - have led to fundamental changes in both the editorial orientation of many outlets and the wider news production process itself; while short-term pressures flowing from the recent recession have led to a spate of closures and job losses.

Of course, most of these problems - and the unhappy consequences that they lead to - are far from new. The 2002 Audit, for instance, also noted the severity of the commercial pressures faced by newspapers and news broadcasters, as well as the detrimental effects which these pressures were having on the quality of news reporting and the volume of serious investigative journalism (Beetham et al., 2002). Yet the results of recent empirical studies have arguably given these concerns even greater urgency. In 2006, for example, researchers at Cardiff
University performed a content analysis of domestic news stories published by a handful of high-quality UK national daily newspapers (and the Daily Mail) over the course of two weeks (Lewis et al., 2006). Worryingly, the results (see Table 3.1h below) showed that most of the stories printed by these newspapers consisted entirely - or almost entirely - of copy derived from newswires or PR releases; that most statements of fact within stories went uncorroborated; and that only 12 per cent of the stories appeared to have been composed entirely by the journalists themselves (Davies, 2008; see also Phillips, 2010 for a study which reaches similar conclusions). The findings were also largely replicated - albeit to a slightly lesser extent - in the Cardiff University study’s sample of broadcast news (Lewis et al., 2006). Other studies, of the local press and online news, have all come to similar conclusions. In 2008, an analysis of local newspaper content in West Yorkshire reported that, on average, over three quarters (76 per cent) of news reports were based on a single source only (O’Neill and O’Connor, 2008). More recently still, a content analysis of online news by researchers at Goldsmiths College found that reporting by major news groups is systematically ‘cannibalised’ and largely homogenous (Redden and Witschge, 2010).

<table>
<thead>
<tr>
<th>Press</th>
<th>Broadcast</th>
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<td>38</td>
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Source: Lewis et al. (2006, p. 25)

In a way, these deficiencies in our news ‘diet’ should not come as a surprise, given the pressures which the traditional news media are under. As Table 3.1i shows, the average editorial output of newspapers (and the journalists that they employ) has increased enormously since the mid-1980s (Davies, 2008). Similar pressures are being felt by news broadcasters - with the result that many journalists in both sectors now feel they no longer have the time to do their job properly (Lewis et al., 2006; Redden and Witschge, 2010). Indeed, in the well-publicised book Flat Earth News, journalist Nick Davies argues that much of what is published now is not journalism at all, but rather ‘churnalism’ - a mode of journalistic practice which is said to involve:

‘cutting out human contact and with it the possibility of finding stories; cutting down time and with it the possibility of checking; [...] producing stories in greater numbers at greater speed and of much worse quality’ (Davies, 2008, p. 62).

It would clearly be inaccurate to claim that all contemporary broadcast and newspaper journalism fits this definition: after all, the mainstream media has produced a number of important exposés in recent years - including the Guardian’s lengthy investigation into phone-hacking at the News of the World, and Panorama’s investigation into the abuse of patients at Winterbourne View care home. However, the evidence uncovered by academics at Cardiff, Goldsmiths and elsewhere does suggest that journalism of this kind is now the exception rather than the norm - and that, if anything, it is likely to become even more exceptional in the future (Lewis et al., 2008).

<table>
<thead>
<tr>
<th>Year</th>
<th>Average number of editorial staff</th>
<th>Average number of pages (minus ads)</th>
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<tbody>
<tr>
<td>1985</td>
<td>786</td>
<td>14.6</td>
</tr>
<tr>
<td>1995</td>
<td>533</td>
<td>26.4</td>
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<tr>
<td>2004</td>
<td>741</td>
<td>39</td>
</tr>
<tr>
<td>2006</td>
<td>-</td>
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Source: Lewis et al. (2006, p. 25)
Since the publication of the previous Audit in 2002, a whole host of technologies have emerged or matured which have effectively revolutionised the way the media works. Yet, contrary to the expectations of many, not all of these innovations have strengthened the hand of news broadcasters, newspapers and other bodies with an interest in holding government and powerful corporations to account. Indeed, in many ways, competition from the internet and other ‘new media’ can be said to have contributed to the deterioration of standards among professional journalists working in the mainstream media, by catalysing (or perhaps acting as a pretext for) the frantic - and seemingly ceaseless - search for ever more efficient organisation and ever greater output (Freedman, 2010; Davis, 2010).

Major news groups quickly came to dominate the online news sphere (see Section 3.1.1); but journalistic standards have arguably suffered, as a result of this hegemony. As industry figures point out, involvement in online news media means that many professional journalists must now produce copy for two different formats - thus stretching their already thin resources even further (Phillips, 2010). In addition, the immediacy of online journalism, and the way in which it allows instant awareness of competitors’ practices, has exacerbated the ‘pack mentality’ that leads to greater convergence of coverage (Davis, 2010), while at the same time diminishing the commercial incentive for investigative journalism - as any ‘exclusive’ story can now be stolen by a competitor within minutes (Phillips, 2010). This is a situation which is clearly not economically sustainable As the Guardian’s editor, Alan Rusbridger, put it to the House of Lords Communications Select Committee, the ‘truth about or market is that, with the exception of the Daily Telegraph, we all exist on some form of subsidy’ (cited in Freedman, 2010, p. 50)

Of course, the impact of new media and technology has not been entirely harmful. As Alan Rusbridger has also pointed out, the internet has facilitated the mobilisation of the Guardian’s readership as an invaluable investigative resource during a number of its investigations - including those into tax avoidance, police brutality and MPs’ expenses (Rusbridger, 2010). Were it not for the modern mobile phone, meanwhile, video footage of the police attack on Ian Tomlinson may never have emerged; the official version of events surrounding Mr Tomlinson’s death might never have been challenged; and the wider media narrative of ‘protestor violence’ at the G20 demonstrations might have lain intact (Greer and McLaughlin, 2010; see also Section 2.5.2). On a global scale, the success of sites such as Wikileaks shows perhaps best of all that new technology, such as the internet, has genuine potential as a platform for organisations that are critical of governments or major corporations (Coulardy, 2010).

All of these instances attest to the potential which the internet and new media has to empower members of the public with an interest in investigating government and powerful corporations. Yet it ought to be stressed that this is a potential which, for the most part, remains underdeveloped. Certainly, there is little evidence, so far, to suggest that ‘citizen journalists’ would be capable of shouldering the investigative burden of professional journalists working for newspapers and television stations (Barnett, 2009). Online news remains dominated, for the most part, by the same corporations that dominate print-based and broadcast news (Fenton, 2010): few blogs or smaller, independent news sites have succeeded in producing valuable investigative reporting (or influencing the news agenda to an appreciable degree), and most lack the time and resources to do so (Coulardy, 2010).

The growth of the public relations industry

As the strength of the mainstream media has been depleted, that of the public relations industry has swelled. Indeed, since the 1970s, the number of public relations professionals has grown at such an exponential rate that where once a few large companies, government departments or local authorities employed press officers, now almost all of them do (Davies, 2008; see also Davis, 2002). If one considers one of the media’s most important roles to be that of the public ‘watchdog’ then this is undoubtedly an unhealthy development: after all, journalists can hardly be expected to effectively investigate powerful institutions if their ‘opposite numbers’ in press offices possess increasingly superior, and in some cases overwhelming, resources (Davis, 2002). Indeed, Davis (2002, p. 172) is emphatic that changes in the relative size of the two industries have ‘clearly undermined the independence of journalists’ and that ‘Journalists are being outnumbered and outsourced by their PR counterparts’.

And yet the growing strength of the PR industry (relative to that of a declining news media) not only hinders the ability of the media to investigate government and corporate elites, but has also led to a flood of PR material into the news. This influx would not necessarily be a bad thing if it facilitated expansive public debate through the dissemination of accurate, newsworthy information from a range of viewpoints (Phillips, 2010). But there is little evidence to suggest that it has. Indeed, the Cardiff study of news content (cited above) found that articles based on PR material were markedly less likely to be of high news value (Lewis et al., 2006). Other research, meanwhile, suggests that it is typically the larger organisations, with deeper pockets, that are most successful in getting their message across via the media (Davis, 2002; Fenton, 2010). To an extent, the preference given to bigger organisations is also because journalists, under great constraints of time, tend to favour sources which are better-known and therefore judged to be ‘safe’ (Phillips, 2010).

Recent events demonstrate the damage that can result from PR colonisation of sections of the news media. According to Aeron Davis of City University, the stifling of critical and independent financial journalism by the power of the City was the main reason why journalists in
the sector largely failed to forewarn the public of the possibility of the financial crisis which hit in 2007 (Davis, 2011). In this case, control over the news agenda was possible because, as Davis explains, financial and business journalism is not like general reporting: it is almost entirely dependent on financial and business interests, both for information and advertising revenues, and is aimed almost exclusively at an audience of financial and business elites (Davis, 2002; Davis, 2011).

The mainstream media cannot be expected to effectively investigate government or powerful corporations if its journalists are confined to their desks and made to work under wholly unreasonable constraints of time. As Davies bluntly, this simply leads to a situation where ‘Most of the time, most journalists do not know what they are talking about’ (Davies, 2008, p. 42). Clearly, the drip-feed of ‘information subsidies’ from news agencies (themselves understaffed) and PR professionals is no substitute for independent investigative journalism - especially when such sources are used by journalists in isolation. While new technologies have in many ways complemented the investigative role of professional media outlets, there is no evidence thus far to suggest that enthusiastic amateurs could replace newspapers or television news; or that their impact has managed to compensate for the seemingly massive reductions in the volume of professional investigative journalism. As Kelly (2009, p. 4) writes ‘the health of the Western news media, newspapers especially, is failing faster than new forms of news gathering and revenue can arise to fill the gap.’

3.1.4 Journalistic freedom

How free are journalists from restrictive laws, harassment and intimidation?

By international comparison, the work of journalists in the UK is relatively safe and unfettered. As we noted in Section 3.1.1, Freedom House’s Freedom of the Press surveys consistently place the UK alongside other western democracies of similar stature - albeit usually some way below the likes of Finland, Sweden, Denmark and a number of other countries within the EU15. Physical harassment and intimidation, though not uncommon in Northern Ireland, is far rarer on the British mainland (Freedom House, 2010). As a result, concerns over press freedom in the UK raised by both Freedom House and Reporters Without Borders centre for the most part on legal matters such as defamation law, anti-terrorist measures and the compelled disclosure of journalistic sources (see Section 3.1.1). We elaborate on each of these concerns below. In addition, we give consideration to the issues of whether court injunctions impose restrictions on journalists, an issue which we return to in Section 3.1.5 in relation to the privacy of citizens.

Libel law

Under UK libel law, the burden of proof lies not with the claimant but with the defendant, who must prove that the allegedly defamatory material is either true; a fair comment on a matter of public interest; or otherwise protected by ‘privilege’ (Kenyon and Marjoribanks, 2008, p. 375). While it is often claimed that this state of affairs unduly constrains the UK media, court rulings during the past decade or so have shifted the balance in its favour to some degree (Kenyon and Marjoribanks, 2008, p. 373). For instance, since the case of Reynolds vs Times Newspapers in 1999, journalists can, most notably, escape legal punishment for publishing untrue statements, providing that they can convincingly demonstrate that they acted ‘responsibly’ and that there was a clear public interest in the publication of the story concerned (Tambini, 2010). In handing down its judgment, and giving grounds to what would henceforth be known as the ‘Reynolds defence’, the House of Lords explicitly sought to champion the freedom of the media against the individual’s right to reputation - an intention since reaffirmed by its judgment in Jameel vs Wall Street Journal Europe.

Perhaps unsurprisingly, views differ as to whether these judicial developments have helped strike the right balance between media freedom and the right to reputation: some argue that Reynolds now provides adequate cover to journalists, while others - particularly those within the media - disagree and continue to campaign for more far-reaching reform of the UK’s libel laws. In a lecture at City University in May 2011, Guardian editor Alan Rusbridger argued, for instance, that despite the innovation of the ‘responsible journalism’ defence for defamation trials, ‘[i]t is still comparatively easy to stifle the press’ (Rusbridger, 2011). However, Mullis and Scott (2010) argue quite the opposite, expressing scepticism as to whether ‘the substantive law of libel contributes at all directly to the existence of the perceived problems’ with defamation proceedings. Indeed, they argue that libel law has become significantly more media-friendly in the past 15 years, and that the Reynolds defence - as reinforced by Jameel - provides an adequate and appropriate public interest defence for journalists (Mullis and Scott, 2010). Yet for now, at least, there appears little chance of a change on the size and scale envisaged by reform advocates. Although the coalition government’s draft Defamation Bill, published in March 2011, will give a statutory basis to the ‘public interest’ defence, it does not appear - in most respects - to be a very radical departure from the approach which has evolved thus far through common law (Guardian, 2011f; Rozenberg, 2011).

Recent legal changes aside, debates over libel reform often seem to ignore what is arguably the real elephant in the room: namely, the astronomical costs associated with fighting or defending a defamation case through the courts. The cost of defamation proceedings is often cited as a major problem for the media - an understandable grievance when one considers that, according to one recent study, libel cases in England and Wales can cost 140 times more than the European average (Centre for Socio-Legal Studies, 2008, p. 3). It is not entirely clear why civil litigation is such an expensive business in the UK, but some inflationary factors are evident. For instance, the number of
lawyers typically involved in defamation trials is markedly higher in England and Wales than in other European countries (Centre for Socio-Legal Studies, 2008, p. 171); similar cases have the potential to take much longer in courts in England in Wales than they would elsewhere (Centre for Socio-Legal Studies, 2008, p. 176); and conditional fee agreements (CFAs) have caused costs to balloon while at the same time effectively rendering some libel cases ‘no win’ situations for the unfortunate newspaper or broadcaster concerned (see Case Study 3.1e below).

Figure 3.1l: Number of lawyers representing each party in libel cases in two hypothetical scenarios, England and Wales in comparison to 10 other European countries

![Figure 3.1l](image)


Figure 3.1m: Defendant and claimant costs (£s) in two hypothetical libel scenarios (Sc1 and Sc2), England and Wales in comparison to 10 other European countries.

![Figure 3.1m](image)

3.1. The media in a democratic society
Published: 12th May 2011
Updated: 24th Apr 2012
Government action in this area has been generally ineffective (Culture, Media and Sport Select Committee, 2010). The previous government published consultation papers on the high cost of defamation cases (Ministry of Justice, 2009; Ministry of Justice, 2010) - narrowly failing to pass a measure to reduce the recoverability of success fees by 90 per cent before the dissolution of parliament in 2010 (Daily Telegraph, 2010b); while Lord Justice Jackson published a lengthy and authoritative report on the costs of civil litigation, generally, in January 2010. This latter initiative has fed into the coalition government's own proposals - at the centre of which are plans to stop the recovery of ‘success fees’ and after-the-event (ATE) insurance payments from losing defendants sued by CFA-supported claimants (Lidbetter et al., 2011). The current regime, in which success fees under CFAs are recoverable from defendants, looks doomed in any case, following the verdict handed down by the European Court in MGN vs UK in January 2011.

The government has suggested that their proposed scheme will restore some degree of ‘balance to the system’ (Ministry of Justice, 2011), but its provisions - perhaps like those of its draft Defamation Bill - seem, at best, likely to ameliorate, rather than solve, the problems which they address. Although it is true that the media will be shielded to some extent from bearing the punitive costs of the former CFA regime, the underlying problem of hugely costly litigation is unlikely to be solved (Novarese, 2011a). At the same time, it is possible that changes to the CFA funding arrangement will deter poorer claimants from bringing cases, thus preventing citizens of more modest means from seeking redress through the court system. As one critic of the proposals has argued, ‘libel will remain expensive in general and increasingly even further beyond the reach of most individuals’ (Novarese, 2011b).

### Case Study 3.1e: Conditional fee agreements (CFAs)

Conditional fee agreements were introduced by the Conservatives in the early 1990s, and later modified by the Labour government in 1999 so as to allow the recovery of ‘success fees’ and after-the-event insurance premiums from losing defendants (Ministry of Justice, 2011, p. 9). As the most well-known form of ‘no win no fee’ arrangement, the scheme was intended to widen access to justice for those who were too rich to qualify for legal aid, but too poor to incur sizeable legal costs. However, for newspapers and broadcasters, the CFA regime has made libel cases significantly more onerous. This is partly because, as shown by Figure 3.1m, CFAs have an in-built tendency to exacerbate the problem of exorbitant litigation costs. Yet it is also because in a case between, say, a newspaper and a CFA-backed litigant, the embattled newspaper knows not only that the costs of defeat will be greater, but that their enormous legal fees may not be recovered even in the event of a successful outcome. This was amply demonstrated in the case of Musa King vs The Telegraph Group: here, the paper argued that, even in the event of its vindication, it would still be faced with a bill for around £400,000 as King did not have the requisite financial means to foot the legal bill (Centre for Socio-Legal Studies, 2008, p. 12).

### Court injunctions

In October 2009, the law firm Carter-Ruck obtained a court injunction, on behalf of its client Trafigura, preventing the Guardian from reporting details of an internal report commissioned by the London-based firm with regard to its alleged dumping of toxic waste in West Africa (see Case Study 3.1f). Only following citation of the case in parliament, and subsequent legal challenge from the Guardian, was the newspaper able to publish details of the report, which it had obtained as a result of its ongoing investigation into the incident. In the wake of the affair, the Guardian suggested that the case was by no means unusual: ‘the use of “super-injunctions”, under which commercial corporations claim the right to keep secret the fact that they have been to court, has been growing’ (Guardian, 2009).

### Case Study 3.1f: Court injunctions and journalistic freedom - the Trafigura case

On 12 October 2009, Labour MP Paul Farrelly submitted a written question to the then secretary of state for justice, Jack Straw, enquiring about threats to press freedom. The question related to two cases where injunctions obtained in the high court had placed restrictions on investigative media reports of those cases (Guardian, 2009). The second of these cases specifically concerned the publication by the Guardian of an internal report commissioned by a commodities trading firm based in London, Trafigura, which referred to the alleged dumping of toxic waste by the company in West Africa that led to a personal injuries claim by 31,000 registered claimants in 2006 (Cox, 2010). The case for the injunction was made on the basis that publication of the report
would unfairly harm Trafigura’s interests. The company argued that the report was subject to legal professional privilege, its contents were inaccurate and outdated, and that it had been unlawfully leaked to the Guardian. Crucially, Trafigura also claimed that publication of the report risked derailing negotiations about a comprehensive settlement being reached with regard to the personal injury claimants who had brought actions against the company (Spearman, 2011).

The specific nature of the injunction obtained by Trafigura not only prohibited the Guardian from publishing the details of the report, but also prevented them from acknowledging that an injunction even existed. As Nick Cohen (2012, p. xii) put it: 'the censors censored the fact of censorship'. It was only through the parliamentary privilege of absolute freedom of speech, enshrined in the 1689 Bill of Rights, that Farrelly was able to raise the question in the Commons. In response, Trafigura’s legal representatives sought to extend the injunction to prevent the media reporting the contents of Farrelly’s question; a clear contravention of the Parliamentary Papers Act 1840 which provides absolute immunity for all reporting of parliamentary proceedings by the media without interference. Only after widespread public condemnation and criticism by a variety of organisations and individuals, as well as a European-wide internet campaign, were the restrictions lifted when Trafigura’s lawyers withdrew their application to have the injunction extended to cover parliamentary proceedings. Following these events, the term ‘super-injunction’ became an irrevocable part of the public lexicon in the UK, although it was to be cases involving the extra-marital affairs of Premiership footballers, rather than the Trafigura case, which became the focal point for debates about press freedom (see Case Study 3.1g).

However, beyond the pages of the Guardian, the Trafigura case, and the wider issues which it raises about the scope for commercial interests to use the courts to suppress media reporting, have received very little coverage. Instead, the debate about the restrictions which court injunctions impose on the UK media has overwhelmingly focussed on cases involving celebrities seeking to prevent press reporting of their private lives (see Section 3.1.5). Since the passage of the Human Rights Act 1998, the UK courts have shown a growing willingness to grant injunctions to prevent the media from reporting on matters of a personal nature where there is no clear public interest for publication. As we suggest in Section 3.1.5, the actions of the courts in intervening to protect against the invasion of privacy by the press are in many ways a welcome development, offering further evidence of the significance of the Human Rights Act 1998 (see Section 1.2.2). It is, of course, undeniable that the use of injunctions highlights a dynamic tension between Article 8 (right to privacy) and Article 10 (freedom of expression) of the Human Rights Act. Yet, the debate surrounding injunctions cannot be divorced from more fundamental questions about access to justice and whether the UK should adopt stronger privacy laws and establish more robust, possibly statutory, regulation of the press (see Section 3.1.5).

The effects of anti-terror legislation

There is no question that, as it stands, UK anti-terror law grants police greater investigative power over journalists involved in the research of terrorist organisations and activities (Cram, 2006, p. 339). In the case of terrorist investigations, police seeking access to journalistic material are governed not by the Police and Criminal Evidence Act (PACE) 1984, but by the Terrorism Act 2000 (Cram, 2009, p. 112). Unlike under PACE, a journalist who is subject to a production or disclosure order under the auspices of the Terrorism Act need not be given any prior notice, and can also be ordered to submit to the order by a certain deadline (Cram, 2009, p. 113). The broad and vaguely-worded remit granted by the Terrorism Act – as it pertains to disclosure - means that journalists who investigate terrorist activity are more vulnerable to production orders than ordinary journalists (Cram, 2009, p. 112; Banisar, 2009, pp. 58-61).

In addition, journalists who are involved in the research or investigation of terrorism are also subject to a number of liabilities which other journalists are not. For instance, it is currently an offence to fail to disclose information on terrorist activity to the police; to disclose information which may prejudice ongoing or proposed terrorist investigations by the police; and to make or possess any record which might be judged to ‘be useful to a person committing or preparing an act of terrorism’, unless in each of these cases a defendant can prove that they had ‘reasonable excuse’ for failing to observe the law (Banisar, 2009, p. 61; Cram, 2009, p. 115).

The UK media are, of course, not alone in having been affected by the introduction of anti-terror legislation during the past decade; media across Europe, and beyond, have also fallen under the ambit of similar laws, imposed in the name of national security following the events of 11 September 2001 (Banisar, 2009).

The protection of journalistic sources

A journalist’s protection from source disclosure is frequently cited as one of the defining features of a free press (Wallace, 2009, p. 268).
Without it, advocates claim, potential whistleblowers would be discouraged from coming forward to the media with information, and powerful individuals who abuse their positions would go unpunished (Wallace, 2009, p. 269). While absolute immunity from journalistic source disclosure would not necessarily be desirable (Castiglione, 2007, p. 118), an increasing number of countries have come to recognise the importance of protecting journalistic sources - and, as a result, now afford some degree of qualified protection to journalists in this area (Youm, 2006).

The UK does not appear to deviate drastically from the trend which can be observed among other comparable democracies. As is the case elsewhere, journalists caught up in civil litigation can be compelled to disclose their sources under certain legally-defined circumstances; but these circumstances are exceptional. The incorporation of the European Convention on Human Rights (ECHR) into law has afforded greater protection to journalistic sources than was previously the case (Wallace, 2009, p. 278; Cram, 2009, pp. 125-7), and recent rulings by UK courts demonstrate a keen awareness of the state’s Convention obligations (Wallace, 2009, p. 283). Interestingly, as far as criminal cases and source disclosure are concerned, the reverse is true (Wallace, 2009, p. 285) - with the ECHR generally unsympathetic towards journalists in such instances. However, domestic cases such as that involving Irish journalist Suzanne Breen have shown that, even here, disclosure requirements are not absolute, and that it is still possible for a journalist - under certain circumstances - to appeal successfully against production orders (Wallace, 2009, p. 285; Independent, 2009).

3.1.5 Media respect for privacy of citizens

How free are private citizens from intrusion and harassment by the media?

Achieving an appropriate balance between the media’s right to freedom of expression and the private citizen’s right to privacy has always been a difficult task. However, the uncertainty created by recent developments in the law, technology and media practice has arguably made this task more intractable than ever. As clamorous - and frequently irascible - public debate rages over the thorny issue of privacy, arriving at an ‘objective’ judgment has become close to impossible; but some broad trends in freedom from media intrusion are identifiable nonetheless.

‘Feral beasts’

In one of the last speeches before he left office, Tony Blair argued that the changing environment in which the media operates is leading it to act - more so than ever before - like a ‘feral beast [...] tearing people and reputations to bits’ (Blair, 2007). In the absence of a reliable gauge of media intrusiveness, Blair’s theory of increasing media rabidity is difficult to test. However, the results of various opinion polls do seem to suggest that the public agrees with the former prime minister’s general characterisation of the media - particularly with respect to tabloid newspapers (Committee on Standards on Public Life, 2008; Media Standards Trust, 2009). On the question of the press and privacy, specifically, a poll conducted on behalf of the Media Standards Trust in 2008 - just over a year after the former prime minister made his ‘media’ speech - found that an overwhelming majority (70 per cent) of the public felt that newspapers were indeed invading people’s privacy too often (see Table 3.1j). However, as Table 3.1j also shows, almost half of those polled also took the view that there are circumstances where it would be appropriate for newspaper journalists to violate this right, in the pursuit of the legitimate aim of getting at the truth.

<table>
<thead>
<tr>
<th>Table 3.1j: Public attitudes to privacy and the press, 2008.</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are times when it is justified for newspaper journalists to invade people’s privacy in order to get at the truth</td>
</tr>
<tr>
<td>----------------------------------------------------------------</td>
</tr>
<tr>
<td>There are far too many instances of people’s privacy being invaded by newspaper journalists</td>
</tr>
<tr>
<td>There are far too many instances of people’s privacy being invaded by newspaper journalists</td>
</tr>
</tbody>
</table>


Invasions of privacy by the media can, of course, take many forms. Some - such as the publication of a person’s personal life on the front page of a newspaper, or physical harassment by a tabloid journalist - are more brazen and perhaps more obvious. However, it is revelations of the more secretive and surreptitious methods of the media - those which we cannot observe so easily - which have arguably
provoked the greater level of opprobrium in recent years. The ongoing *News of the World* phone-hacking scandal (see Case Study 3.1g) is perhaps the best-known example of what have been called the ‘dark arts’ of the press; but it was not the first time that allegations have arisen in connection with illegal data-gathering by the media since the last Audit reported in 2002. Indeed, in 2003, an investigation by the Information Commissioner’s Office - code-named ‘Operation Motorman’ - found that almost every major newspaper group had, at some stage or another, paid a private investigator, Steve Whittamore, to retrieve personal information on their behalf (*Culture, Media and Sport Select Committee, 2010*). Mr. Whittamore was subsequently convicted under Section 55 of the Data Protection Act (*Independent on Sunday, 2010*). However, the newspapers and journalists implicated by the report escaped unscathed (*Culture, Media and Sport Select Committee, 2010*).

**Case Study 3.1g: The News of the World phone-hacking scandal**

The *News of the World* phone-hacking scandal began in November 2005, when suspicions that the mobile phones of aides to Prince William had been hacked prompted a police investigation (*BBC News, 2011a*). This investigation subsequently led to the arrest, trial and prosecution in 2007 of Clive Goodman, the *News of the World*’s then royal editor, and Glenn Mulcaire, a private investigator (*BBC News, 2011b*). Throughout the affair, the newspaper adamantly maintained that Goodman had acted alone. Yet, in 2009, fresh allegations emerged through the press that appeared to blow this argument apart - revealing not only that hacking had taken place on a far wider scale than was initially thought, but that the inadequate police response to the scandal had effectively obfuscated this fact from the wider public (*Culture, Media and Sport Select Committee, 2010*). Indeed, the (*Culture, Media and Sport Select Committee, 2010, p. 103*) felt that it was ‘inconceivable that no-one else at the *News of the World*, bar Clive Goodman, knew’ about the illegal practice. A major report by the *New York Times* in September 2010 reached much the same view, quoting anonymous former employees who alleged that the practice was endemic - so much so that apparently even ‘the office cat knew’ (*New York Times, 2010*).

In the wake of new press revelations, a slew of high-profile public figures either threatened, commenced or concluded legal proceedings against the *News of the World* in relation to alleged phone-hacking - a steady stream of litigation which undoubtedly influenced the Metropolitan Police’s decision to re-open its own investigation in January 2011, after twice closing it (*BBC News, 2011b*). From April 2011, the pressure on both the *News of the World* and the Metropolitan Police intensified. Three *News of the World* journalists - Ian Edmondson, Neville Thurlbeck and James Weatherup - were arrested on suspicion of involvement in phone-hacking (*Guardian, 2011a*). Meanwhile the *Guardian* revealed that, during the first four years of the scandal the Metropolitan Police had contacted just 36 of the 4,000 people whose information was supposedly discovered among Mulcaire’s notes in 2006 (*Guardian, 2011b*).

On 4 July 2011, the scandal reached dramatic new heights, with the *Guardian* reporting that the voice mail of the mobile phone belonging to missing schoolgirl, Milly Dowler, had been hacked by the *News of the World* in 2002 (*Guardian, 2011c*). A string of further shocking revelations followed over the next few days, including that other victims of phone-hacking by the *News of the World* may have included the relatives of soldiers who had died in Iraq and Afghanistan and those who died or were injured during the terrorist bomb attacks on London on 7 July 2005 (*BBC News, 2011b*). In addition, evidence emerged to suggest that Metropolitan Police officers had accepted payments from *News of the World* journalists in exchange for information (*Guardian, 2011d*), raising serious concerns about the closeness of the relationship between the Metropolitan Police and the *News of the World* at a time when the former was supposed to be investigating the latter’s activities.

In the wake of these revelations, and the decisions of large numbers of companies to cease to take out paid advertisements in the paper, News International took the decision to discontinue publication of the *News of the World* following a final edition on 10 July 2011. Three days later, News International’s parent company, News Corporation, announced that it was withdrawing its bid to take full control of BSkyB (see Section 3.1.1). There was also a series of high-level resignations including those of the News International’s chief executive, Rebekah Brooks and its chief legal officer, Tom Crone, and those of Sir Paul Stephenson and John Yates, respectively commissioner and assistant commissioner of the Metropolitan Police (Baston, 2012). Andy Coulson, a former *News of the World* editor, had already resigned from his post as the prime minister’s director of communications in January 2011, stating: ‘Unfortunately, continued coverage of events connected to my old job at the *News of the World* has made it difficult for me to give the 110% needed in this role’ (*Guardian, 2011e*).

As of February 2012, the full extent of phone-hacking at the *News of the World*, and the degree to which it was practised at other newspapers, including the *Daily Mirror*, the *Sun* and even the *Sunday Times*, remains unknown. Civil litigation, police inquiries and the Leveson Inquiry into the culture, practice and ethics of the press are all still ongoing. In January 2012, News International reached settlements with 37 victims of phone-hacking (*Guardian, 2012a*), with a further 17 settlements announced the following month (*Guardian, 2012b*). By 11 February 2012, the Metropolitan Police had made a total of 30 arrests relating to its two parallel investigations into the affair - Operation Weeting (into phone-hacking) and Operation Elveden (into illegal payments to police...
officers) - including the arrests on 11 February 2012 of five senior journalists at the *Sun* newspaper (*Guardian, 2012c*). Meanwhile, the evidence heard by the Leveson Inquiry to date has led to growing accusations that phone-hacking was rife in large sections of the UK press, including those made by actor Hugh Grant who claimed that he could not ‘think of any conceivable source’ for a *Mail on Sunday* story from 2007 other than an intercepted voicemail messages (*BBC News, 2011c*).

Based on the information uncovered by Operation Motorman and the details that continue to emerge in relation to phone-hacking at the *News of the World* (see Case Study 3.1g), it may well be demonstrated that illicit information-gathering practices operate on an almost endemic level within certain sections of the press - and perhaps even within the media, more generally. Indeed, it may well be that Whittamore and Mulcaire - the private investigators at the centre of Motorman and the *News of the World* cases - represent just the ‘tip of the iceberg’ in a far more extensive network of journalists and the fraudsters that they employ. Though this argument might appear conspiratorial to some, it is one which has the support of a number of experienced investigative journalists - including the *Guardian’s* Nick Davies and David Leigh (*Whittle and Cooper, 2009*). Whilst Nick Davies concedes that there has always been a degree of corruption among members of the press, he contends that the use of private investigators and bribery expanded markedly in the 1980s - the beginning of a new wave of corrupt practice which has now, in his opinion, reached ‘epidemic’ proportions (Davies, 2008). Although it was the *News of the World* that hit the headlines so dramatically in 2011, Davies (2008) claims that journalists at both the *Daily Mail* and the *Daily Telegraph* have confessed to him personally that either they or their colleagues have been involved in the payment of cash bribes to police officers and civil servants, in the past.

### Table 3.1k: Publications which had contracted the services of private detective, Steve Whittamore, as identified by ‘Operation Motorman’

<table>
<thead>
<tr>
<th>Publication</th>
<th>Number of transactions positively identified</th>
<th>Number of journalists / clients using services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily Mail</td>
<td>952</td>
<td>58</td>
</tr>
<tr>
<td>Sunday People</td>
<td>802</td>
<td>50</td>
</tr>
<tr>
<td>Daily Mirror</td>
<td>681</td>
<td>45</td>
</tr>
<tr>
<td>Mail on Sunday</td>
<td>266</td>
<td>33</td>
</tr>
<tr>
<td>News of the World</td>
<td>182</td>
<td>19</td>
</tr>
<tr>
<td>Sunday Mirror</td>
<td>143</td>
<td>25</td>
</tr>
<tr>
<td>Best Magazine</td>
<td>134</td>
<td>20</td>
</tr>
<tr>
<td>Evening Standard</td>
<td>130</td>
<td>1</td>
</tr>
<tr>
<td>The Observer</td>
<td>103</td>
<td>4</td>
</tr>
<tr>
<td>Daily Sport</td>
<td>62</td>
<td>4</td>
</tr>
<tr>
<td>Sunday Times</td>
<td>52</td>
<td>7</td>
</tr>
<tr>
<td>The People</td>
<td>37</td>
<td>19</td>
</tr>
<tr>
<td>Daily Express</td>
<td>36</td>
<td>7</td>
</tr>
<tr>
<td>Weekend Magazine (Daily Mail)</td>
<td>30</td>
<td>4</td>
</tr>
<tr>
<td>Sunday Express</td>
<td>29</td>
<td>8</td>
</tr>
<tr>
<td>The Sun</td>
<td>24</td>
<td>4</td>
</tr>
<tr>
<td>Closer Magazine</td>
<td>22</td>
<td>5</td>
</tr>
<tr>
<td>Sunday Sport</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>Night and Day (Mail on Sunday)</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Sunday Business News</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Daily Record</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Saturday (Express)</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Sunday Mirror Magazine</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Real Magazine</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>
Privacy law and injunctions

Prior to the Human Rights Act of 1998, there was - as the previous Audit put it - 'a patchwork of civil actions and legislative measures' pertaining to privacy, but no legal right to privacy per se (Beetham et al., 2002, p. 53). The Human Rights Act gave citizens such a right, through the incorporation of the European Convention on Human Rights into UK law; but its practical effects should not be overstated. As the Select Committee on Culture, Media and Sport argued in 2010, the limited number of cases brought before the courts concerning breaches of privacy means that the law has yet to take a clear form (Culture, Media and Sport Select Committee, 2010). Indeed, even if it were the case that, through the decisions of the European court, the UK is moving steadily closer to a privacy law similar in form to those found in France and Italy (Tomlinson, 2011), one would be excused for wondering whether such a shift might result in any appreciable reduction in press intrusion and harassment. The case of Max Mosley is a telling one, in this respect. Through appealing to Article 8 of the convention, Mosley was able to win his high court privacy action against the News of the World and was awarded £60,000 in damages - a landmark ruling. Yet this was a Pyrrhic victory, in many ways: the massive cost of the action left Mosley out-of-pocket despite the considerable damages awarded, and there was, of course, no way of recapturing the offending information once it had been released into the public sphere (Mosley, 2010, pp. 52-66). Indeed, the unflattering video footage of Mosley is said to have been viewed 1,424,959 times on the News of the World website on the day of its publication alone (Callender Smith, 2011) - a factor which weighed heavily in the judge's decision that to grant an injunction, even so shortly after publication, would have been futile (BBC News, 2008).

In Mosley's case, there was no prior notification by the News of the World and thus little opportunity to prevent a breach of privacy. However, where such opportunity does exist, celebrities and other wealthy individuals have increasingly turned to injunctions as an expedient way to stop details of their private lives being splashed across the news (see Case Study 3.1h). Indeed, so popular have injunctions become in recent years, that they have been dubbed the 'new libel' (Callender Smith, 2011). Yet developments in cyberspace have shown that, now, even the most formidable injunctions and super-injunctions cannot always be furnished into impenetrable fortresses of privacy. Private information relating to an individual, which a newspaper may consider either too dangerous or otherwise unfit to print, can quite easily find its way onto a blog, a gossip site or a social network - a fact demonstrated in dramatic style in May 2011, when a small army of Twitter users defied the courts by revealing footballer Ryan Giggs as one of the several public figures that had applied successfully for a privacy injunction.

Case Study 3.1h: Super-injunctions and privacy law

In the aftermath of the Trafigura controversy (see Case Study 3.1f) and another high-profile super-injunction case involving England football captain John Terry (see below), a judicial committee headed by Lord Neuberger was set up to examine the application and perceived growth of super-injunctions. The subsequent report, released in May 2011, defined a super-injunction as:

> "an interim injunction which restrains a person from: (i) publishing information which concerns the applicant and is said to be confidential or private; and, (ii) publicising or informing others of the existence of the order and the proceedings (the "super" element of the order)" (Master of the Rolls, 2011, p. 20).

An important contrast is made here between a super-injunction and an anonymised injunction, which is defined as:

> "an interim injunction which restrains a person from publishing information which concerns the applicant and is said to be confidential or private where the names of either or both of the parties to the proceedings are not stated" (Master of the Rolls, 2011, p. 20).
In the UK, broadcasters are answerable to a statutory regulator, Ofcom, while the job of regulating press standards is performed by the

The effectiveness of media regulators

In the UK, broadcasters are answerable to a statutory regulator, Ofcom, while the job of regulating press standards is performed by the
industry-appointed Press Complaints Commission (PCC). Yet while both perform broadly similar duties, it is the PCC which seems to receive the lion's share of criticism, and the PCC alone which has been regularly taken to task for its under-performance in protecting privacy. Of course, this is partly because the press has a far greater appetite for sensational details of people’s private lives than most broadcasters - thus arguably leaving the PCC with the more difficult job of the two regulators. However, many would argue that there are also clear problems with the structure of the PCC itself.

First, while the PCC does recognise the citizen’s right to privacy from unwarranted press intrusion and harassment in its editors’ code of practice - a voluntary agreement that outlines the standards by which all members of the press are expected to abide - it is still primarily a complaints-handling body with little interest in directly policing press conduct (Media Standards Trust, 2009). As such, it cannot, generally speaking, do much to prevent infringements of privacy by the press until long after they have occurred. This was most notably demonstrated between 2007 and 2008, when the commission’s failure to calm the frenzy of (often libellous) press reporting regarding the disappearance of Madeleine McCann led to heavy and widespread criticism (Culture, Media and Sport Select Committee, 2010).

Moreover, many would argue that - in the McCann case and others like it - the fact that the PCC has failed to intervene decisively in the interests of the public and, more importantly, the unfortunate individuals concerned, is not only suggestive of the commission’s lack of organisational ambition but also its inherent bias. For while the PCC claims to be independent, the fact remains that it is funded by the press, appointed by the press, and indeed constituted to a great extent by newspaper editors (Coad, 2009). These arrangements invariably cast doubts over the PCC’s independence - doubts that were hardly assuaged by its toothless, and roundly-condemned, investigation into alleged phone-hacking at the News of the World in 2009 (Coad, 2009; Media Standards Trust, 2009). The PCC’s apparent lack of organisational independence is matched, moreover, by a lack of transparency. Despite performing many of the functions of a public body, the PCC refuses, for instance, to be bound by the Freedom of Information Act; does not allow lay members to sit on the committee which drafts its code of practice; and declines to allow complainants a right to attend adjudications (Coad, 2009).

A number of proposals have been put forward recently to enhance the PCC’s efficacy, transparency and accountability - some by the Culture, Media and Sport Select Committee, and others by the Media Standards Trust. However, the PCC’s response to their suggestions has been somewhat underwhelming. Although the commission established its own independent review of PCC governance in 2009, the changes which the PCC has subsequently introduced have - for some reformers - been rather paltry, piecemeal and inadequate (Media Standards Trust, 2011). Most would concede that the PCC does a lot of good work (Culture, Media and Sport Select Committee, 2010), for instance, in the issue of ‘desist notices’ where individuals complain of press harassment (Media Standards Trust, 2009). However, the Media Standards Trust (2009) has also clearly shown that, even if the will to regulate proactively existed, the fact is that the PCC simply do not have enough money to do so: its budget has failed to rise in line with inflation since its creation in 1991 and is a fraction of that of similar bodies, such as the Advertising Standards Authority.

The problems associated with press regulation are long-standing. Indeed, there is a powerful sense of deja-vu about current debates on how best to regulate the press, which are strongly reminiscent of those played out during the Calcutt Committee's inquiry into Privacy and Related Matters, which reported in 1990. When the Calcutt Committee recommended the abolition of the Press Council, and its replacement with a new Press Complaints Commission, it was clear that it regarded this as the final chance for the press to demonstrate that voluntary self-regulation could work (Munro, 1991). Yet, the criticisms of press behaviour, and of the failings of self-regulation, have continued unabated. Even with the Leveson Inquiry ongoing, as of February 2012, it is apparent that 'self-regulation' has failed and that the case for replacing the PCC with a more independent and robust regulatory body has largely been accepted by the press. However, given the concerns on virtually all sides about how state regulation might compromise press freedom, it remains to be seen what form the PCC’s successor will take.

Conclusion

The analysis presented in this chapter has led us to identify a worrying cluster of issues relating to the role of the media in the UK democratic process. International indices continue to highlight that there are greater restrictions on press freedom in the UK than in most other north European countries. Moreover, levels of media concentration remain high and there is no evidence that the deregulatory measures introduced via the Communications Act 2003 have provided a framework suitable for maintaining pluralism in a period of media convergence. Meanwhile, the intensification of economic pressures on media outlets carries genuine risks that high-quality reporting, particularly that based on investigative journalism, will suffer disproportionately. News consumption appears to be falling and the first major victim of the painful transition in media business models will almost certainly be one of the UK’s daily broadsheet newspapers. Yet, it is the generally profitable tabloid press which has been the primary focus of concerns about media regulation – and not without reason. Despite long-standing concerns about the invasions of privacy on the part of the UK press, the revelations about illegal and unethical media activity arising from the phone-hacking scandal are genuinely unprecedented.

The events surrounding News Corporation’s (ultimately failed) bid to take full control of British Sky Broadcasting (BSkyB) encapsulate virtually all of these above concerns. It seems apparent that the existing framework of media regulation would have permitted a company...
which controls one-third of UK national newspaper circulation to acquire full ownership of a major broadcasting concern. Instead, it took a lengthy investigation by the Guardian, a low-circulation broadsheet newspaper, into phone-hacking at the News of the World, a mass-market tabloid, to derail the controversial bid. It is far from reassuring that it was a major public scandal, prompted by press investigation that carried out in the face of police indifference and, later, police opposition, that ultimately provided the impetus for News Corporation to withdraw their bid for BSkyB, when the deal was edging close to final agreement. There is now widespread discussion of the weaknesses of the regulatory framework used to assess such takeovers, which may well not have taken place without the events of the phone-hacking scandal. Equally worrying is the fact that these events hinged on the sustained, investigative journalism undertaken by a heavily loss-making newspaper. Should The Guardian disappear from UK newsstands over the next decade, a mere two per cent market share of circulation would be up for grabs, but the significance of its reporting for the UK democratic process could well prove irreplaceable.

Of course, it is important to keep recent events, as well as conjecture about future developments, in perspective. We do not question that media freedom in the UK is fully assured. Media access to official information has also been bolstered as a result of the implementation of the Freedom of Information Act 2000. The continued existence of diverse media in the UK is also beyond doubt, and the significance of independent public service broadcasting, spearheaded by the BBC, remains a core element of the UK’s media landscape. It can also be added that digitalisation offers, at least for the time being, greater access to news reporting than has ever previously been the case. Meanwhile, the Human Rights Act 1998 has gone some way to promoting a better balance between press freedom and the right to privacy. We would also underscore that many of the concerns we outline in this chapter are replicated across almost all established democracies. Indeed, on some measures of media concentration, the UK can be argued to have greater plurality of ownership than many of its north European neighbours.

Yet, none of these observations take away from the concerns that we identify in this chapter. Moreover, as the balance between print and broadcast media is reordered, and the web gains in significance, these concerns may well intensify. As we have outlined in this chapter, recent technological and commercial developments are serving to reshape, and increasingly, undermine the UK’s traditional ‘dual media’ system. Given that simultaneous processes of media convergence and media fragmentation are at work, predicting the impact of these shifts is difficult. However, it does seem evident that the UK media landscape is being rapidly reshaped by the:

- erosion of the once clear demarcations between the press and broadcasters, owing to the growing significance of the web as a medium;
- rapid acceleration of the decline of the press, at least in its conventional form as a print medium, raising serious questions about the economic viability of several existing national newspapers;
- increasingly direct competition between the two major interests in the UK media system, the BBC and News Corporation, which would have previously been seen as operating in distinct markets;
- emergence of significant regulatory dilemmas, with regard to both ownership and content regulation, which have by no means been resolved by the radical changes introduced by the Communications Act 2003.

The evidence presented in this chapter has both a direct and an indirect relationship to the five key themes identified in our Audit as a whole. First and foremost, our findings on media ownership underline the extent to which the UK press is dominated by a small number of large media organisations, several of which have begun to develop interests in other media sectors. The position of News International, which accounts for one-third of UK national newspaper circulation, and whose parent company, News Corporation, holds a 39 per cent stake in BSkyB, alongside a wide-ranging portfolio of media interests internationally, is particularly noteworthy. Yet, there are other significant examples of cross-media ownership, including the common proprietorship of Channel 5 and the Express and Star newspaper titles by Northern & Shell. It is, of course, difficult to demonstrate the extent to which ownership influences editorial decisions. Yet, there can be little doubt that media owners do help shape the political positioning of their media outlets to some degree and that the possibility of exerting such influence forms part of the motivation for owning what are often loss making concerns. As such, we would suggest that media ownership is an important source, and wider representation of, the dynamics of growing corporate power which we point to throughout this Audit.

This chapter also illustrates concerns which relate to two of our other overarching themes, albeit in a broader, and more indirect, sense. While our Audit does not include any content analysis of media reporting, we have highlighted patterns of declining news consumption, an acute fragmentation of audience shares in television (now clearly the dominant medium) and a continued resource squeeze in the quality press and news broadcasting. These trends clearly serve to undermine the scope for media outlets to perform the core functions which we outlined in the introduction to this chapter as being central to representative democracy. At the same time, we have little doubt that the media have been pivotal in the processes associated with the growth of transparency in UK democracy over the last two decades. As we make clear elsewhere in this Audit, we fully welcome initiatives such as freedom of information and the establishment of registers of donations to political parties. However, we also recognise that part of the rationale for such measures has proved flawed, namely that they will automatically promote integrity by virtue of the fact that ‘sunshine is the best disinfectant’. Given the continued concerns which we identify in this Audit with regard to issues such as integrity in public life (see Chapter 2.6) and the funding of political parties (see Section 2.2.4), enhanced media access to material that was once confidential has partially empowered journalistic
investigation in these areas. Yet, these legitimate democratic impulses also give rise to an obvious paradox, since it became more, rather than less, likely that material comes into the public domain which has the potential to further undermine public confidence in UK democracy.

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3.1. The media in a democratic society


