

MEDIA FREEDOM AND PLURALISM IN THE UNITED KINGDOM (UK)

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Key political systemic and media systemic features

According to Hallin and Mancini's (2004) much-cited typology of models of media and politics, the UK media system corresponds to the 'North Atlantic/Liberal' model, which is characterized by:

- Market-domination (however, they note, except the BBC).
- A neutral commercial press characterized by internally pluralistic journalism (again, except that in Britain they acknowledge that there is external pluralism, namely party political 'parallelism'), and
- Professionalization and non-institutionalized self-regulation.

In fact, as the exceptions noted by Hallin and Mancini already suggest, the UK media system is far from bearing any close resemblance to that of the United States. Like the media system of France, or that of Germany, or Italy, it is in many respects *sui generis* (see Humphreys 1996). It functions in a very different cultural and socio-political context from the United States, or indeed from other 'North Atlantic' (taken to mean 'Anglo-Saxon') countries.

Politically, following Lijphart's (1984) well-known models of democracy, the United Kingdom is institutionally 'majoritarian' in significantly more respects than the United States, which has important consensual features such as federalism, strong judicial review and the separation of powers. None of the latter have featured in the United Kingdom as key restraints on the exercise of majoritarian power by the single party governments that typically win elections, making all the more remarkable the consensual approach to broadcasting in the United Kingdom (see below). In terms of political and economic development, the two countries may have shared a 'weak state' tradition compared to many countries of Continental Europe, making historically

for less extensive or intrusive regulation of the press, but in the United Kingdom's case this too has to be qualified. With regard to freedom of information and the reporting of matters deemed sensitive for national security, the United Kingdom has – at least, until recently – featured as a rather strong, quite 'secretive' state, again in considerable contrast to the United States.

Key, one might say 'striking', characteristic features of the UK media system, some of which contrast strikingly with the United States (and other 'Anglo-Saxon' countries) as well as with other European countries, have been:

- Strong public service broadcasting (in contrast to the other 'Anglo-Saxon' countries: United States, Canada and Australia)
- Relatively politically independent public service broadcasting (in comparison to many countries in the rest of Europe)
- High professional standards in the 'quality press' (like Hallin and Mancini's 'North Atlantic' model and also like their 'Northern European' model), but a particularly strong and vibrant 'tabloid' press (compared to the United States and much of the rest of Europe)
- A tradition of weak freedom of information and strong state secrecy (compared to the United States and much of Europe).

In common with other Anglo-Saxon countries, there is a strong tradition of relatively independent journalism in the United Kingdom. The press sector has been by international standards relatively free from state regulation. Issues of state security (and criminal law) aside, the limits of journalistic autonomy are largely set by proprietorial power. UK national newspapers pursue a distinct editorial politico-philosophical line, generally determined by their owners, with regard to issues of politics and society. Though much more closely regulated by the state, UK television has been remarkably free from politicisation. All holders of a UK licence to broadcast are bound by law and regulation to be impartial. Further, unlike public service broadcasting in much of the rest of Europe, the UK broadcasters have benefitted from a political consensus that has long existed in favour of non-politicisation of broadcasting. Media policy, too, has generally been comparatively consensual (except during the Thatcher premiership), with government generally respecting the advice of regulatory bodies, cross-party committees and periodic non-partisan commissions that have informed broadcasting and press policy (Humphreys 1996: 111–58).

Thus, the latest Freedom House survey of global press freedom (Freedom House 2007) notes that the UK media are: 'free and largely independent from government interference. The United Kingdom has a strong tradition of public broadcasting, and the British Broadcasting Corporation, although funded by the government [through levying a household TV licence fee], is editorially independent.' While press ownership is 'concentrated in the hands of a few large companies', the Freedom House report goes on to note that '[t]he law provides for freedom of the press, and the government generally respects this right in practice'. The United Kingdom ranked as 'free' and 32nd in the global ranking. However, it only ranked eighteenth out of the 25 West European countries in the Freedom House survey (Freedom House 2007). The reason for the United Kingdom's comparatively low ranking in Western Europe would appear to be the unlawful intimidation encountered by journalists in reporting Northern Ireland and, from the side of the state, the existence of exemptions from freedom of information, limitations on freedom of expression relating to encouragement of terrorism and also incitement to religious hatred,

and restrictions with regard to national security and the combatting of terrorism. Reporters Without Borders' (2007) latest worldwide index of press freedom similarly placed the United Kingdom at 27th, behind nineteen other European countries, mainly because of the hostile nature of Northern Ireland for journalists despite the peace process (because of the murder of the *Sunday World* reporter Martin O'Hagan, the failure of the police investigation, other death threats and so on).

Press freedom in the United Kingdom: Legal provisions

Having no written Constitution as such, the United Kingdom lacks any explicit constitutional guarantee of press freedom. Nonetheless, the principle of press freedom is an important element of Britain's 'unwritten constitution'. Courts often refer to 'constitutional principles', including freedom of speech and press freedom. Moreover, the United Kingdom has always been party to the European Convention of Human Rights (ECHR) and in 1996 the United Kingdom accepted the right of its citizens to individual petition, since which time applications to the European Commission and Court of Human Rights have struck down several aspects of UK law deemed incompatible with freedom of expression (Nicol and Bowman 1993: 167). New Labour's 1998 Human Rights Act went much further, by actually incorporating the ECHR into UK law, thereby strengthening freedom of expression (therefore press freedom). It also strengthened protection of individuals' rights to privacy, but in such cases UK judges are required to pay particular regard to freedom of expression (Humphreys 2000: 233).

Governments have been generally non-interventionist *vis-à-vis* the press. Ever since the licensing of the press was abolished in 1684, there has existed a general right to publish newspapers, books or magazines without state authorization; no licence has been required. Moreover, since becoming a highly commercial industry – from the early twentieth century onwards – the independence of the press has been underpinned by its commercial freedom. The UK press is not subsidized (apart from VAT exemption), so governments have never had this particular lever of potential influence. As is generally the case among liberal democracies, newspapers and magazines have been free to pursue their own politico-philosophical editorial line, a freedom that UK proprietors of national newspapers have taken advantage of, aligning their titles with various moral stances on socio-political and politico-economic issues, and indeed producing newspaper/political party system 'parallelism'. Unlike broadcasting (see below), there is no statutory duty of impartial reporting.

Unlike many European countries with their own bodies of specific press law, newspapers and magazines in Britain have been subject to little sector-specific regulation; the press is subject only to the general laws of the land, such as the anti-defamation and anti-obscenity laws, the law against incitement to racial hatred, or the law of trespass (for example in the pursuit of information). Otherwise, the press has regulated itself (see below). As Gibbons (1998: 26) notes, the formal approach in the United Kingdom is libertarian: 'there being no prior restraint on speech,...an individual may communicate without first seeking official approval and thereby risking unpredictable, possibly ill-motivated and bureaucratic exercises of discretion'. However, as Gibbons explains, the law does provide certain significant restraints; it 'effectively inhibits speech [and press freedom in the absolute sense] in the interests of preserving reputations, official secrets and confidences, and safeguarding intellectual property'.

One of the main restrictions on what the press have been able to publish has undoubtedly been presented by Britain's comparatively strict libel laws. UK libel laws place the onus of proof on the defendant, a state of affairs which has traditionally generally favoured the plaintiff. Unsurprisingly, many have observed that this has had a 'chilling effect' on the media's freedom of expression. However, in 2006 UK libel laws were reformed following a key Law Lords ruling in favour of the defendant – the *Wall Street Journal Europe* – despite the paper's lack of evidence in its defence, on the grounds that the article was in the public interest. As Freedom House (2007) reports, this latest ruling 'should afford journalists greater freedom to report allegations against public figures without fear of reprisal'.

As suggested already, state restrictions on press freedom have largely been limited to issues of 'national security', though as the (above mentioned) Freedom House ranking of the United Kingdom suggests, the United Kingdom has resorted to such measures rather more than a considerable number of other European countries. Indeed, one academic cross-national study of censorship, looking at nine liberal democracies, six of which were West European, found that the United Kingdom censored the most over the period 1970–90, particularly during the (Thatcherite) 1980s. The study concluded that key features of the United Kingdom's political system presented 'the opportunity to censor': notably, the absence of a written constitution and Bill of Rights, the country's 'majoritarian' political institutions, the weakness of freedom of information, and the draconian nature of the United Kingdom's secrecy laws (Newton and Artington 1994). Only since 2000 has the United Kingdom actually had a Freedom of Information Act (introduced by New Labour). The Official Secrets Act has used criminal law to guard against disclosure of state secrets. In the United Kingdom, civil servants are bound by confidentiality; there is no protection for 'whistleblowers'. The Contempt of Court Act provides for protection of the confidentiality of journalistic sources, but also provides for disclosure in the interests of justice, national security, or the prevention of disorder or crime (Nicol and Bowman 1993; Humphreys 1996: 53–6).

Two other features set the United Kingdom apart from the European norm. Firstly, in the United Kingdom, privacy of the individual citizen has been exceptionally weakly protected from the press; there is no special statute on privacy. On the positive side, this has worked to the advantage of investigative journalism, which has undoubtedly flourished in the United Kingdom rather more than in a number of other European countries. On the negative side, however, it has also encouraged a characteristically prurient culture of intrusive 'tabloid journalism', and there have been periodic calls for stricter regulation (see below). Equally unusual for a European country is the fact that UK law provides for no statutory Right of Reply. As with press standards and privacy (largely), this matter has been left to the press's self-regulatory instruments (self-regulatory bodies, codes and so on).

The regulatory structure of the UK press sector: Self-regulation

Reflecting a perhaps surprisingly consensual approach to media policy for a 'majoritarian' polity, policy innovations regarding the press have generally occurred following the recommendations of Royal Commissions (of inquiry). Thus, in 1947 the first Royal Commission on the UK press (the Ross Commission) recommended the establishment of a self-regulatory institution, the Press Council. The reason was mounting public and political concern about declining press standards and also about press concentration, though nothing was actually done about the latter (which

remains a key feature of the UK press – see later). The Press Council proved to be a weak regulatory institution regarding press behaviour. This was unsurprising; its entire membership was drawn from the press itself and it had no real sanctions other than criticism. Following a second Royal Commission (the Shawcross Commission), the Press Council's membership was extended to some representatives of the public and following a third Royal Commission in 1974 (the McGregor Commission) the public's representation was increased to half of its membership, though these members were actually chosen by the Council itself and it continued to lack authority and was perceived to lack independence from its regulatees, the press. By now there was serious concern about the issue of tabloid newspapers' intrusions into citizens' privacy, a matter addressed by a parliamentary private members' Bill, and the government established a special committee of inquiry (the Calcutt Committee) to address the issue. The Committee's first report (Calcutt 1990) recommended improving self-regulation, and the Press Council was duly replaced by a new institution called the Press Complaints Commission (PCC). However, it was mainly composed of newspaper editors. A second report (Calcutt 1993: xi) famously deemed it to be a 'body set up by the industry, financed by the industry, dominated by the industry and which [was] over-favourable to the industry' and recommended the introduction of a statutory regulatory regime for the press (Humphreys 1996: 60–1).

Despite persisting criticism of the PCC's alleged weakness, successive governments – Conservative and New Labour – have continued to favour self-regulation of the press over statutory regulation, though – in the wake of calls for privacy legislation following Princess Diana's death and alleged hounding by newspaper reporters – newspaper editors did tighten up the PCC's code of conduct with effect from 1998 onwards (Humphreys 2000: 232–3).

Press pluralism in the United Kingdom

The UK national press is generally characterized as consisting of three categories of newspaper. 'Quality' papers – notably, *The Guardian*, the *Independent*, the *Daily Telegraph*, and *The Times*, and their Sunday namesakes (in the *Guardian's* case, the *Observer*), and also the *Financial Times*, have catered to an 'upmarket' educated middle class readership. (Until recently these papers appeared in broadsheet format, though they now all appear in tabloid format). In 2006, these titles accounted for between a quarter and a fifth (22.6 per cent) of the total circulation of national newspapers. The popular 'midmarket' tabloids – notably, the *Daily Mail* and the *Daily Express*, and their Sunday editions – have appealed to a mainly white-collar middle class readership. In 2006, they accounted for over a quarter (26.9 per cent) of the circulation of national newspapers. Finally the 'downmarket' tabloids – the dailies being the *Sun*, the *Daily Mirror* and the *Daily Star*, the Sunday papers being the *News of the World*, the *Sunday Mirror*, the *Daily Star Sunday*, the *People* and the *Sunday Sport* – have served a largely working class and lower middle class readership with their content heavily orientated towards celebrity, sport, sex and crime. In 2006, they accounted for half of the circulation of the national newspapers.¹ In addition, 1,313 local and regional newspapers registered a total weekly circulation of 64.3 million (Mediaguardian/Gibson 2007: 26). The national press is without any question the much more important source of national and international news and information, and also of celebrity gossip, national sports news and suchlike; with the significant exception of several titles (notably the Scottish national press and a few English titles such as the *Yorkshire Post*) the local and regional press serves more local communication needs.

Table 1: National newspaper ownership in 2006.

<i>Group</i>	<i>Market share</i>	<i>Titles</i>	<i>Executive Control</i>
News International	34.4%	<i>Sun, Times, Sunday Times, News of the World.</i>	Rupert Murdoch (News International)
Daily Mail and General Trust	20.5%	<i>Daily Mail, Mail on Sunday</i>	Viscount Rothermere
Trinity Mirror	15.1%	<i>Daily Mirror, Sunday Mirror, People</i>	Victor Blank
Northern and Shell	13.6%	<i>Daily Express, Daily Star, Sunday Express, Daily Star Sunday</i>	Richard Desmond
Telegraph Group	7.5%	<i>Daily Telegraph, Sunday Telegraph</i>	Barclay brothers
Guardian Media Group	3.4%	<i>Guardian, Observer</i>	Scott Trust
Pearson	3.3%	<i>Financial Times</i>	Pearson board
Independent Newspapers	2.2%	<i>Independent, Independent on Sunday</i>	Anthony O'Reilly

Source: Adapted from Table in Mediaguardian/Gibson (2007: 24). The data is for the period January–June 2006.

Both of these markets are highly concentrated in terms of newspaper ownership and/or control. As Table 1 illustrates, in 2006 the leading two national newspaper groups controlled over half of national newspaper circulation (54.9 per cent), and the leading four groups accounted for over four fifths (83.6 per cent).

Control of the United Kingdom's 1,313 local and regional titles was similarly highly concentrated. Trinity Mirror, with the United Kingdom's third largest circulation of national titles (see above), also owned 234 local/regional titles with a weekly total circulation of 13.8 million, representing a market share of 21.5 per cent. Next came Newsquest Media Group with a market share of 15.4 per cent, (219 titles, weekly total circulation of 9.9 million); followed by Johnston Press with a market share of 14.1 per cent (282 titles, weekly total circulation of 9.1 million). The Northcliffe Newspapers Group had a market share of 11.7 per cent (111 titles, weekly total circulation of 7.5 million). Associated Newspapers, part of the national Daily Mail group, with eleven local titles accounting for a total weekly circulation of 6.7

million, had a market share of 10.4 per cent. As of July 2006, these five newspaper groups between them accounted for nearly three quarters (73.1 per cent) of the readership market (Mediaguardian/Gibson 2007: 26). Furthermore, most UK regional markets are characterized by local monopolies, even in the largest cities. Thus, the *Evening Standard* (owned by Daily Mail and General Trust) controlled the London market, the *Manchester Evening Post* (owned by Guardian Media Group) the Manchester market, and the *Evening Times* (Newsquest) the Glasgow market. Press pluralism has been increased somewhat by the ubiquitous appearance of free newspapers. The big-city *Metro* free newspapers, however, were owned by one of the largest press groups, the Daily Mail and General Trust (Humphreys 2006: 321–2).

Public service broadcasting in the United Kingdom and the ‘paradigm shift’ towards ‘lighter touch’ regulation for commercial broadcasting

Whereas the newspaper sector has supplied (a degree of) ‘external pluralism’ through a multiplicity of outlets, the broadcasting sector – characterized until fairly recently by a ‘scarcity of frequencies’ – has needed to be regulated to provide ‘internal pluralism’ within licensed programme services. Indeed, until 1954, broadcasting in the United Kingdom was a public service monopoly of the British Broadcasting Corporation (BBC), which – according to the formula of its first Director General Lord John Reith – had a remit to inform, educate and entertain. Over the years, the BBC’s programme remit evolved considerably in step with societal changes, but the core principle remained that the Corporation should provide a (‘internally pluralistic’) range of high quality programmes. This principle was to serve as a model when additional broadcasters, with varying degrees of public service remits, were licensed (see below).

After the Second World War, the BBC quickly acquired a world-wide reputation for political independence. Several factors help explain this feature, which was (as with media policy generally) perhaps rather surprising given the scope for politicisation that a ‘majoritarian’ political system obviously presents for government control or interference. As Tunstall and Machin (1999: 91–2) explain, the origins of the BBC’s independence can be traced to the deeply embedded notions of the ‘public good’ in the United Kingdom (as in the United States), to the role played by Post Office civil servants in its establishment, which led it to adopt the non-partisan principles of the British civil service, and also to the fact that during its early decades the BBC relied heavily on British news agencies (the most famous of which was Reuters) which had a tradition of political neutrality. Some other factors should also be acknowledged. Certainly, the BBC’s relative autonomy from the state owes much, too, to the independent ethos of its management and journalists. Moreover, although government determines the level of the household licence-fee which funds it, which has presented some scope for political pressure, the BBC has always been left discretion as to how it allocates its licence-fee so long as it respects the broad public service guidelines which are established by its Royal Charter and Agreement. Importantly, the BBC has benefitted from a large degree of self-regulation in that, until very recently, it has been internally regulated by its own Board of Governors. Though appointed directly by the relevant government ministry, the Governors always functioned as ‘trustees of the public interest’, rather than as political place-men, to the extent that they soon became seen as guardians of the Corporation’s independence, as much as its regulators. However, the criticism that the Governors too closely identified with BBC and were not sufficiently detached

in fulfilling their regulatory duties was the principal reason why the government decided that the BBC's new Charter (entering effect in 2007) should replace the Board with the supposedly more critical BBC Trust.

In 1954, following a particularly vigorous political campaign largely on behalf of the advertising industry lobby, Independent Television (ITV) was introduced, as a system of fifteen regional private television franchises (later joined by a breakfast TV franchise) for 'programme contractor' companies, namely the privately owned 'ITV' companies. The franchises were allocated by the regulator, the Independent Television Authority (ITA), in 1973 renamed the Independent Broadcasting Authority (IBA), which was a public corporation. A unique feature of ITV was that, apart from exercising licensing and supervision powers, it was the regulator, rather than the ITV companies, which actually owned and operated the ITV transmission network. The ITV contractors provided programme services, which were funded by attracting advertisers. ITV was subject to a strict regulatory regime, to the extent that it came to be considered as one part of a public service 'duopoly', the other being the BBC.

In 1982, this duopoly structure was broken by the introduction of Channel Four, a non-private, but advertising-funded, public service broadcaster. Until 1990, the IBA allocated Channel Four a share of ITV's advertising revenue. Since 1990, Channel Four has been entirely independent of the ITV sector, responsible for its own commercial success, but still a non-private public service broadcaster. It has always had a special remit to be innovative and to serve minority interests and tastes. At the same time as Channel Four, a Welsh public service channel called S4C was also introduced. In 1997, a fifth terrestrial broadcaster was introduced, namely Channel Five, a privately owned and advertising-funded channel with only light public service obligations.

By this time, a series of Conservative government legislation – the Cable and Broadcasting Act 1984, the Broadcasting Act 1990, and the Broadcasting Act 1996 – had introduced 'lighter touch' regulation for private commercial broadcasting in the United Kingdom. For the terrestrial broadcasters, which are still all regarded officially as public service broadcasters, this meant significantly lighter public service programme content obligations and expectations regarding standards for ITV (now termed Channel Three) and Channel Five than for the BBC and Channel Four. By the end of the 1990s, there was also a well-established private commercial cable and satellite sector, which was subject to minimal – but still important – regulatory obligations such as the political impartiality rule, and rules governing taste, decency and advertising standards. The Broadcasting Act 1990 replaced the IBA with the Independent Television Commission (and the Independent Radio Authority), which no longer owned the ITV network (sold to a private transmission company) and which now served as regulator for all commercial broadcasting in the United Kingdom.

The regulatory paradigm shift towards 'lighter touch' regulation was justified largely by reference to new technological realities. While there continued to exist good grounds for retaining strong public service broadcasters (Graham and Davies 1997), the principal justification for across-the-board strict regulation for all operators had fallen away when 'scarcity of frequencies' was replaced by technologies which made possible an increasing abundance of new programme services. A few statistics illustrate the huge scale of the transformation. In a single week in 1980 British viewers could choose from 300 hours of television provided by three channels (BBC 1, BBC 2 and ITV). By the turn of the new century, UK households with multi-channel television could choose from over 40,000 hours provided by over 250 channels and

the number of UK (analogue) terrestrial channels had grown to five with the arrival of Channel 4 in 1982 and Channel 5 in 1997 (DTI/DCMS 2000: 1.1.2). The expansion has continued, with the take-off of digital TV. According to the latest report produced by Ofcom, the new regulator and competition authority for the converging electronics communications sector established in 2002, (Ofcom 2006a: 208), the year 2005 saw 1.4 million hours of output broadcast on all UK television channels. By now three quarters of UK homes could receive digital television whether by satellite (BSkyB’s pay-TV platform), by cable (Virgin Media’s pay-TV platform) or by the terrestrial ‘Freeview’ service (a joint venture of the BBC and BSkyB). A number of operators (including the BBC) were developing on-demand content and TV-over-broadband services. TV-over-mobile was also being developed.

The impact on television audience shares

These changes have inevitably impacted on the audience shares of the traditional mainstream broadcasters, who have responded to the multi-channel challenge by expanding their channel portfolios beyond the supply of ‘generalist’ services to include new ‘niche’ services for distinct audiences. Thus the BBC has launched channels for youth (BBC 3) and for children (CBBC, CBeebies), in order to provide an alternative to a diet of US children’s channels provided by cable and satellite. It has also launched a cultural and educational channel (BBC 4), a political channel (BBC Parliament) and a 24-hour news service (BBC News 24). Other mainstream broadcasters – ITV and Channel 4 – have also developed new channels – respectively, ITV2 and ITV3; and E4, FilmFour and FilmFour Weekly – to meet the competition. Table 2 illustrates the inexorable nature of the downward trend in the mainstream channels’ audience shares. On the other hand, the 2007 figures showed that with by now over three quarters of UK homes viewing multi-channel TV, their audience shares remained impressive.

The Communications Act 2003; the new regulatory framework

As a result of new technologies and governmental ‘de-regulation’, by the end of the 1990s the duopoly structure had effectively been replaced by a distinct three-way regulatory structure: (1) the internally self-regulating, licence-fee funded BBC; (2) the advertising-funded ‘public service’ broadcasters, externally regulated by the ITC (with C4 retaining the most clear public

Table 2: TV Percentage Annual Share of the Audience 1981–2006.

<i>Channel</i>	<i>1981</i>	<i>1985</i>	<i>1990</i>	<i>1995</i>	<i>2000</i>	<i>2004</i>	<i>2006</i>
BBC1	39	36	37	32	27.2	24.7	22.8
BBC2	12	11	10	11	10.8	10	8.8
ITV	49	46	44	37	29.3	22.8	19.6
C4		7	9	11	10.5	9.7	9.8
C5					5.7	6.6	5.7
Others					16.6	26.2	33.3

Source: The data is from Broadcasting Audience Research Board Ltd (BARB) (2007).

service character, and C5 the least); and (3) a third pillar of externally (ITC) but very lightly regulated satellite and cable TV channels, largely funded by subscription, but also some advertising. This '3-tier' regulatory situation has now been institutionally rationalized by the single regulatory framework provided by New Labour's 2003 Communications Act. This legislation merged into a single Office of Communication (Ofcom) all the different pre-existing electronic communications regulatory bodies (for TV, radio, broadcasting standards, spectrum management, and telecoms). Ofcom now presides over the entire 'converging' electronic communications sector (though not the Internet), with the notable exception being that the BBC continues largely to regulate itself, though Ofcom exercises authority over issues of economic competition.

Essentially, the Act subjects all UK-licensed broadcasters to a basic tier of regulatory obligations, regarding such matters as taste and decency, rules on advertising and sponsorship, the requirement for impartiality and accuracy, and the European Union's 'Television Without Frontiers' television quotas that specify that a majority of the programming should be European in origin. The new regulatory framework subjects the 'public service broadcasters' – which are still officially held to include ITV (Channel 3) and Channel 5 – to Ofcom's regulatory oversight of their delivery of a number easily quantifiable and measurable content obligations, such as quotas for independent and original productions, targets for regional productions and regional programming, and the availability of peak time news and current affairs programmes. Here, the BBC and Channel 4 are subject to the heaviest degree of these programming obligations and Channel 5 the lightest. Finally, these mainstream broadcasters are all required to draw up programme statements consistent with their varying degrees of public service remit and they are required to report annually on how they achieve them, with Ofcom – or in the BBC's case, the BBC Trust – ensuring compliance. Ofcom is required to review the broadcasters' self-evaluations of their performance and also periodically to produce reports on the state of public service broadcasting. Reflecting the government's concern that regulators respond equally to the needs of consumers (in the market) and citizens (in society), the legislation required Ofcom to establish an internal Consumer Panel and a Content Board to help determine the regulation of broadcasting content.

The deregulation of media ownership rules

Controversially, the Act completed the incremental deregulation of media ownership rules conducted by the Conservatives through the 1990s. In particular, their 1996 Broadcasting Act, following a 1994–5 review of cross-media ownership, replaced the traditional approach of placing quite strict limits on accumulations of interests within and between licensed television services with a new scheme based on a measurement of audience share that allowed for a considerable consolidation of the ITV sector. Over the next few years, ITV effectively became dominated by two companies in England and Wales (Carlton and Granada) and one company (Scottish) in Scotland. The reason for this policy turn appeared 'to lie in the "economic" arguments submitted to the [government] by...large UK media firms and...the Government's receptiveness to these arguments' (Doyle 2002: 85–103, 102). These arguments centred on the perceived need to promote economic efficiency and to establish 'a framework which would strengthen the economic performance of the UK media industry' (Doyle 2002: 104–21, 113). Essentially, the same argument was a major motive for New Labour's 2003 Communications

Act. According to the White Paper, preceding the Act, regulatory reform was intended to ‘... help make the UK home to the most dynamic and competitive communications market in the world’ (DTI/DCMS 2000: 10).

In particular, New Labour’s Act opened up the way for the creation of a single ITV by abolishing audience share restrictions on mergers of ITV companies. The Act retained the cross-ownership rule that prevented a national newspaper proprietor with a market share of more than twenty per cent from holding an ITV licence or owning more than twenty per cent of a licensee. However, the Act removed this cross-media restriction for ownership of Channel 5. It lifted the disqualification of non-European Economic Area companies’ ownership of UK terrestrial broadcasting licences. It also liberalized the ownership rules governing radio, significantly increasing the scope for radio mergers, and removed the ban on common ownership of national TV and national radio licences. All in all, the Act left little left in the way of media-specific rules for controlling UK media concentration. Instead, general competition law would play the main role.

However, an important new element of media-specific regulation was introduced in recognition of the importance of the media for pluralism as well as simply economic competition. The Act now made provision for a ‘plurality test’, whereby the Secretary of State (Minister) has been given powers to intervene in the case of media mergers that raise issues of media plurality. Accordingly, the grounds on which a broadcasting or cross-media merger or acquisition might be blocked by the ‘plurality test’ will depend on whether there is sufficient plurality of persons with control of media outlets and the availability of a wide range of quality television and radio. This measure had been introduced at the Communications Bill’s third reading in response to House of Lords protests about the extent of media ownership deregulation. Moreover, in recognition of the possibility that the extensive deregulation may not provide adequate protection against media concentration, Ofcom is required to review ownership patterns in the United Kingdom at three year intervals and to report on key issues. It falls to the government to decide what action, if any, to take (for detail see Gibbons and Humphreys 2008).

The market structure of broadcasting and industry concentration

What are the implications of the new regulatory framework for pluralism and diversity in UK broadcasting? Clearly, the first thing to note from the above account is that the preservation of an important role for public service broadcasting marks an important point of continuity with the past. The five free-to-air terrestrial broadcasters all carry varying degrees of public service content regulation, though it is fair to question whether ITV and Channel Five should continue to be seen as public service broadcasters *per se*. What about plurality and diversity of channels/platforms, and their ownership (or control)?

As is clear from what has been said already, the two dominant free-to-air operators are the publicly owned BBC, with a 2006 audience share of 31.6 per cent, and privately owned ITV, with 19.6 per cent (see Table 2 above). Until the 1990s, the decentralized ITV structure, with fifteen separate regional franchises (plus a breakfast TV franchise), was characterized by a remarkable plurality of ownership. Reflecting its policy on regionalism and its public service concern for pluralism, the then regulator, the IBA, had ensured that the ITV franchises were operated by different companies with generally diverse internal ownership structures. However, as suggested above, starting with the Conservatives’ Broadcasting Act 1990, which replaced

regulator-discretion with statutory regulation, there occurred an incremental deregulation of the ITV ownership rules, culminating in New Labour's 2003 Communications Act abolishing altogether any obstacle to the single ownership of ITV. This allowed the (by then) two remaining ITV players in England, namely Carlton and Granada, to merge into a single 'ITV plc' for England and Wales, and the Scottish Media Group to gain control of the main Scottish franchises (Grampian and Scottish). While the ITV licences retain positive requirements to regional programming and production, most of the regional identity of ITV has therefore disappeared (Humphreys 2006: 334). The two smaller terrestrial broadcasters are the publicly owned Channel Four, with a 2006 audience share of 9.8 per cent, and privately owned Channel Five, with 5.7 per cent (see Table 2). In 2000, Channel Five came under the majority ownership (66.6 per cent) of the major European RTL group, owned by Bertelsmann, one of the world's largest media companies.

The UK pay-TV market, too, is concentrated. The leading provider of pay-TV in the United Kingdom is BSkyB, whose only large shareholder (35 per cent) and effective controller is News Corporation (Rupert Murdoch). As seen in Table 1, Rupert Murdoch's News International, the UK subsidiary of his global News Corporation, also owns a number of UK national newspapers, accounting for 34.4 per cent of the latter market in (Jan-June) 2006. News Corporation itself was one of the largest global media companies, with operations in film, broadcasting, newspapers and book publishing. According to figures from Ofcom's latest market report (2006a: 199), in the year ending on the 31st March 2006 BSkyB had a UK subscriber base of 7.7 million, which represented over two thirds of the UK pay-TV market. The rest of the market was dominated by Virgin Media, the rebranded name of the recently merged cable television company NTL/Telewest (previously separate companies), with around 3.32 million subscribers. As Ward et al. (2004: 206-7) note, this dominance of UK cable TV by a single company followed an intense concentration process - in 1992, there had been as many as 29 cable companies - in a sector marked by high sunk costs and daunting competition from BSkyB, while the combination of high sunk costs and the considerable market power of BSkyB made it highly unlikely that the latter would ever face a competitor in the satellite TV field.

However, these two pay-TV platforms did face competition from a new 'third force' in UK broadcasting, namely Freeview, which offered a free-to-air alternative source for a basic package of multi-channel viewing. Freeview, a BBC-led joint venture involving BSkyB (which also supplied some channels), was granted a digital terrestrial TV licence by the then regulator, the ITC, following the closure of ITV's digital terrestrial pay-TV venture, ITV Digital, in 2002. Since then, Freeview has become a major part of the UK government's plans to switchover from (and switch off) analogue to digital broadcasting. According to Ofcom (2006a: 199), at the end of March 2006 Freeview's subscribers numbered 7.1 million, making it the United Kingdom's second most popular choice of platform for multi-channel viewing, very close behind BSkyB. Freeview is without any question an important support for public service broadcasting in that it has provided the UK public with a low-cost alternative (the only cost being the one-off expenditure on the digital set-top box) multi-channel platform to the two aforementioned pay-TV operators. Also, as Ofcom (2006a: 184) notes, it has provided 'some protection to the five main channels [with their varying degrees of public service obligations] from the steep falls in audience share typically associated with analogue terrestrial homes moving to satellite or cable, [though] this protection is diminishing'.

Alongside plurality of market players and diversity of channels, the diversity of commissioning within channels as a means to meet the needs and interests of viewers is held to be an important part of the regulator's approach to UK programming diversity (see Ofcom 2006b: 13). Traditionally, the BBC and ITV were vertically integrated broadcasters, producing most of their own programmes. However, from the 1980s the picture began to change. Channel Four introduced a new 'publisher broadcaster' model to UK broadcasting, by commissioning or buying in all its programmes. This model was imitated by Carlton, one of the leading ITV companies, and also by Channel 5. Moreover, the BBC also opened itself up to commissioning from external production units, partly because the Conservatives' Broadcasting Act 1990 introduced a positive requirement that the terrestrial broadcasters each devote at least 25 per cent of their air-time (excluding non-news programmes) each year to the transmission of a range and diversity of productions from the independent production sector. Although the main terrestrial broadcasters are the main buyers, demand from commercial digital channels as well has grown. As a result, the United Kingdom has a large and thriving independent production sector. Ofcom's latest survey evidence (2006b: 19) suggests that in 2006 the independent production sector accounted for 44 per cent of the market for UK-originated programmes (the remaining 56 per cent being 'in-house' production by the broadcasters). However, concentration in the sector is significant. Ofcom (2006b: 19) points to the concentration of UK production (both in-house and independent) in the London area; hence the need for continuing regulatory requirements for programming from beyond the metropolis. Moreover, larger production companies accounted for much of the programming commissioned by the BBC and ITV. Also, concentration in the independent production sector was considerable. Four 'super-indies' (Hi Entertainment, All3Media Group, Talkback Thames and Endemol UK) had 2004 revenues of £100 million or over, and three (TWI, Television Corporation and RDF Media) had revenues of between £50 million and £100 million. It was estimated that these top seven firms accounted for nearly half of the combined independents' revenues (Ofcom 2005: 202-4; Humphreys 2006: 333).

As regards radio, as Ward et al. (2004: 208-9) have noted, the BBC is the 'major player in the overall radio sector and far surpasses the market share of any individual commercial group'. The BBC offers five national radio channels (Radio 1, 2, 3, 4 and 5), two national digital channels, 5 Live Sports Extra and 6 Music, and operates 40 local radio stations (and the World Service). In 2006 there were 320 local commercial stations broadcasting on analogue and/or digital radio. In addition, there were seven UK-wide commercial radio stations (Ofcom 2006a: 54). However, six groups owned 65 per cent of the commercial stations: GCap Media, The Local Radio Company (TLRC), Classic Gold Digital, UTV Radio, Emap and the UKRD Group. Three other groups, with fewer stations, were also important by virtue of their significant shares of listening. They were: Chrysalis, the Guardian Media Group and the Scottish Media Group, which owns Virgin Radio (Ofcom 2006a: 62-3).

The Internet, regulation and public service

According to UK government statistics (see UK Statistics Authority 2008) an estimated 14.3 million UK households could access the Internet from home in 2006 and 69 per cent of these had a broadband connection. The 2003 Communications Act did not provide for any regulation of Internet content. While content posted on the Internet falls under all the general

laws of the land, given the nature of the medium, practical regulation and enforcement can clearly pose a problem. UK Internet regulation combines features of 'self' and 'co'-regulation. On the one hand, the Internet Service Providers (ISPs) practice a degree of self-regulation, while 'co-regulation' is provided by a non-governmental organization, the Internet Watch Foundation (IWF). Funded mainly by the industry stakeholders (the ISPs and so on), it works in partnership with Government, ISPs, telecommunication companies, mobile operators, software providers and the police to minimize the availability of illegal Internet content. It operates a hotline allowing the public to report illegal material, which it then passes on to the police if the material was posted in the United Kingdom, or if not, then it notifies the National Criminal Intelligence Service who in turn notify Interpol.

Of course, by its very nature, the Internet allows freedom of expression and external pluralism on a tremendous scale. However, from the point of view of democratic pluralism, notably with regard to fulfilling the information needs of an informed public, it is not entirely unproblematic. Although the Internet has certainly the positive potential to improve the citizenry's media access and usage, there exists clearly the danger that citizens may be overwhelmed by a superabundance of poorly edited or downright unreliable information. A strong case can therefore be made for public policy intervention to ensure a strong 'public service communications' presence on the Internet not least in order to provide a reliable and trustworthy source of information. Accordingly, with the Government's blessing, the BBC has developed an extensive web service (<http://www.bbc.co.uk>), with the aim to provide a universal service of innovative and distinctive content, spanning a wide range of themes, including news, sport, art and education, in line with its overall remit. According to the latest BBC Annual Report (BBC 2006: 42), by the end of the reporting period 2005/2006 the average monthly reach of [bbc.co.uk](http://www.bbc.co.uk) had reached 56 per cent of the UK online audience. According to the Guardian Media Directory (MediaGuardian/Gibson 2007: 234) it was the United Kingdom's fifth most popular website.

Note

1. These calculations are based on ABC figures for the period January–June 2006 (see Mediaguardian/Gibson 2007: 20).

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