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Berne, 14-15 May 2015

**Plenary session 2:**

**How to ensure and assess Media Pluralism and Diversity of Media Content**

**'Monitoring Media Pluralism – an exercise in futility?'**

**Background paper**

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[\*In addition to this background paper, [a summary paper](#) and [PowerPoint presentation](#) are also available on the EPRA website.]

1. Introduction
2. Evolution of methodologies and processes
3. Key elements of the developing methodologies and processes - goals
4. Key principles, practicalities and emerging wisdom
5. Conclusions

**1. Introduction**

When I wrote this paper at the end of April, the launch of Apple Watch was still much in the news, and discussion was taking place about its potential behaviour-changing – or behaviour-shifting - capabilities, giving rise to what is termed 'glance' journalism, glance being defined as a 'new subatomic particle of news' by the Nieman Journalism Lab at Harvard University<sup>1</sup>. Glance journalism, like so many new technology-spawned developments in news production will be greeted with both enthusiasm and anxiety. It is a positive in that it provides a new platform, a market for wearable apps, and a new outlet for 'ultra-concise notifications' and 'alerts from news apps' – new forms of news summaries small enough to fit on a tiny watch screen but eye-catching enough to make the wearer want to tap on it to read. It's a qualitatively different device from the phone, in ways that affect both the editorial and commercial experience. The content will have to be 'relevant (are you engaging the user at the right time?), personal (are you approaching them in the right way?) and glanceable (does your product deliver value even in the short bursts of attention you can get from a quick look at the watch?)'.<sup>2</sup> On the negative side, the implications for democracy in respect of serious engagement with news will be questioned.

With the onward march of technology, of course, this is only *one* example of what lies in store. Predictions as to the impending impact of 'wearables' with built-in technology are focusing mainly on privacy issues. That is the case with Amazon's new icloud-based 'Echo' device, running on Amazon Web Services, which, with voice recognition and voice command, will be able to sit in a

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<sup>1</sup> Cited in Laura Slattery, 'Give news in the smartwatch era a fleeting glance', The Irish Times, 23 April 2015)

<sup>2</sup> <http://digiday.com/publishers/five-challenges-apple-watch-poses-publishers/> at Nieman Journalism Lab.

room and answer questions, and take orders for anything from online purchases to news, and directions as to viewing choices, effectively bypassing the remote control or EPG. News on the Echo is derived from a variety of sources, including some local radio stations. With a companion app on Fire OS, Android, iOS, and desktop browsers it will be capable of being accessed anywhere.<sup>3</sup> Add a camera and the possibilities to rival other audiovisual devices appear myriad. Despite this, it is estimated that even these newest devices will be replaced by even more amazing technology within five years.

In many ways all of this is a very far cry from the old world of even a decade or two ago: 'In the old world, you mostly had the choice between regional and nationwide publishers addressing domestic audiences and the few globalists who 'cover the world for those who run it', as the Guardian's Director of Digital Strategy, Wolfgang Blau, quoting a friend Dan Gillmor, put it in a piece on the European Journalism Observatory website.<sup>4</sup>

What the above technological developments tell us at the outset is that they are acquiring a great capacity to monitor everything we do in life, even in private, and the potential for us to monitor them is extremely limited. Society's ability to address potential abuses in a timely-way is very limited, such is the inevitable policy gap between the cutting edge of technology and the 'lagging edge of social norms'.<sup>5</sup>

Any attempt at monitoring, therefore, as we have long-since realised, must be substance-based, rather than platform-based; it must be technology neutral. However, it is also clear that any monitoring will have to take account of these new platforms as they arise and gain currency (though not all may do so to any statistically significant degree), not only because of the economic strength of Apple and Amazon and their ilk, their global reach and their power in relation to sourcing and choice of content but also because – or to the extent that – the products are qualitatively and editorially different from traditional media.

Of course, that prompts another fundamental question: are they just products, which incidentally include elements of media in a much broader offering, and therefore should they be classed as 'media' at all? Do we need to fine-tune our definition of media as well as fine-tuning current attempts to devise appropriate methodologies and an effective process for monitoring media pluralism?<sup>6</sup> Most media now, including newspapers, are in effect multi-platform publishers. Even traditional broadcasters, including public service broadcasters, since the development of hybrid TV systems, offer audiences a whole range of options for accessing audiovisual content which go far beyond traditional linear TV. However, it is also a fact that search engines and online portals are being used by the public directly or indirectly for journalistic content or access to journalistic content, while journalists themselves are using them to produce or add to their own journalistic output, just as they are using content which has been produced by the users themselves – so-called 'citizen journalists' - who share them online. A key indicator of their relevance in assessing pluralism and diversity is their opinion formation power and a potential test for measuring that, according to

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<sup>3</sup> See: [www.amazon.com/oc/echo](http://www.amazon.com/oc/echo).

<sup>4</sup> Incidentally, Gillmor, whose main activity is teaching digital media literacy and promoting entrepreneurship at Arizona State University's [Walter Cronkite School of Journalism and Mass Communication](http://www.asu.edu/waltercronkite), is writing a book/web project entitled *Permission Taken*, about the increasing control that companies and governments are exerting over the way we use technology and communicate, and how we can take back some of that control.

<sup>5</sup> Trevor Hughes, CEO of the International Association of Privacy Professionals, cited in Karlin Lillington, 'Many tech tools seem incapable of protecting our data', *The Irish Times* 23 April 2015.

<sup>6</sup> The CMCRP report 2014 in Canada, available at <http://www.cmcrp.org/>, points out the consequences of poor definitions of what is meant by 'media'.

a German analysis (see KEK report discussed below), is whether they are 'journalistically and editorially arranged'.<sup>7</sup>

At a minimum, as the EBU has pointed out, pursuit of public interest objectives in this regard requires 'a proper understanding of the multi-platform environment and the role of digital intermediaries, such as content aggregators, online distributors, audiovisual platform operators, search engines and social media.'<sup>8</sup> It also requires 'a fair balance' between 'these intermediaries who often operate in an unregulated environment, even though they offer European audiences a platform to access audiovisual works', and regulated European audiovisual media providers, so as 'to ensure that accessing content of public value is not impeded by powerful global players outside the EU.'<sup>9</sup>

Internet and social media are inherently democratic in that – depending on universal access - they enable potentially everyone, not just traditional media actors, to participate. They provide greater possibilities than traditional media for individuals to express themselves, communicate, create content and access content. Consequently, they offer obvious opportunities to foster pluralism.<sup>10</sup> Indeed, the abundance of media and media outlets we now have is a triumph of technology and a great asset to democracy, an unprecedented opportunity for so many people in society to move from being passive onlookers to become actively engaged in issues that have relevance for them, to air their views and have a chance to have their voices heard, to have a say directly in matters – including political – that affect them. On the other hand, the argument prevails that there is now too much diversity, with the resultant fragmentation leading to polarisation, with citizens no longer being exposed to a wide range of views, resulting in a decline of shared experiences.<sup>11</sup> Moreover, the rise of a handful of powerful global giants means that other voices are often just cries in the wilderness.

Similarly, as Karppinen put it, 'it is increasingly clear that limitless number of options is not a value in itself. As the logic of exclusivity is shifting from the production to the filtering of information, it can be argued that the real issue for contemporary media policy is not lack of information but access to new and challenging content, exposure to different ideas, and particularly to new and innovative ideas and opinions of various alternative or minority groups, as opposed to satisfying pre-existing needs.'<sup>12</sup> Karppinen's point, however, is that 'the communicative abundance has not diminished the fact that some actors and groups have more communicative power, and thus resources to get their

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<sup>7</sup> The German Commission on Concentration in the Media (Kommission zur Ermittlung der Konzentration im Medienbereich, KEK), Turning from a Television-Centred View to a Broader Focus on Media - Requirements for a Present-Day Regulation to Secure Plurality of Opinion in the Media, Fifth Report, Summary available at: <http://www.kek-online.de/information/publications/media-concentration-reports.html?L=1>

The report assesses the nature and functions of various kinds of social media, microblogs, wikis etc, concluding inter alia that that search engine operators cannot be kept outside the scope of an assessment under media concentration law. In its previous (fourth) report, KEK referred to 'a hierarchy of Internet offerings ... formed according to their degree of impact on opinion-formation, using as criteria their journalistic relevance, their journalistic genre, the status of their providers, the scope of media reference and their journalistic performance.'

<sup>8</sup> Available at:

<http://www3.ebu.ch/files/live/sites/ebu/files/Knowledge/Initiatives%20-%20Policy/Topical%20Issues/Media%20Freedom%20and%20Media%20Pluralism/EBU%20contribution%20for%20CoE%20Ministerial%20Conference%20-%20Nov%202013.pdf>

<sup>9</sup> <http://www3.ebu.ch/member-support/advocacy-policy-development/media-convergence>

<sup>10</sup> See ARTICLE 19, New Media: Fostering Pluralism, statement of 29 July 2011, available at:

<http://www.article19.org/resources.php/resource/2480/en/new-media:-fostering-pluralism>

<sup>11</sup> Karppinen, 'Rethinking media pluralism and communicative abundance', *Observatorio (OBS\*) Journal*, 11 (2009), 151-169. Also, Karppinen, *Rethinking Media Pluralism*, Fordham University Press, 2012:

'Instead of something that could simply be measured through the number of media outlets available, media pluralism should be understood in terms of its ability to challenge inequalities and create a more democratic public sphere.'

<sup>12</sup> Karppinen (2009 at p.166), citing van Cuilenburg, 1998; Sunstein, 2007; Webster, 2007; Hargittai, 2007; Hindman, 2008.

voices heard than others.’ The ‘distribution of communicative power’, he argues, should be the ‘normative starting point’.<sup>13</sup>

## 2. Evolution of methodologies and processes

The pursuit of media pluralism is not new. It was an issue when we only had the printed press, intensifying as broadcasting developed, initially as a State monopoly in many countries, and reaching a heightened level as a consequence of the abundance of so-called ‘new’ media, online and social media that have emerged and become ubiquitous and increasingly influential in the past decade or so but particularly those in the hands of a small number of powerful global companies. In response, media pluralism as a democratic goal has moved in Europe from a desirable policy pursuit<sup>14</sup> to a positive obligation on States, following from the jurisprudence of the European Court of Human Rights<sup>15</sup> and more recently the European Charter of Fundamental Rights. The debate on the effects of the inclusion of media pluralism in the Charter, and the question of EU competencies in that regard, led to recognition of the central role to be played by Member States at national level, in what are quite different media landscapes, and the concomitant supportive role to be played by the European Commission.<sup>16</sup> Media pluralism is now perceived as central to democratic participation and a central plank of freedom of expression and information. Accordingly, the quest for appropriate and effective methodologies for identifying areas of concentration and factors posing a threat to media pluralism has gained momentum and has increased in intensity and sophistication at national and international level in the past few years. National governments and media regulators, international organisations (such as the Council of Europe, UNESCO, the OSCE), NGOs (such as ARTICLE 19, Freedom House, Access Info Europe), have all contributed to the debate on how best to promote media pluralism in a local and global media environment. Underpinning these attempts there has been a wealth of academic research and a growing volume of metrics and statistical analyses.

A starting point for development of methodologies had (and has) to be to a concerted effort to clarify the underlying public interest values and goals. A public interest test applicable to media mergers was the approach taken in some countries, particularly in the UK<sup>17</sup> and such a test was

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<sup>13</sup> Ibid.

<sup>14</sup> For instance, Article 21(4) EU Merger Regulation 139/2004 stipulated that plurality of the media was one of the examples of ‘legitimate interest’, which would allow States to take ‘appropriate’ measures’. In 2014, the European Commission published a White Paper ‘Towards more effective EU merger control’ with an accompanying Commission Staff Working Document – COM(2014) 449 final) and SWD(2014) 217 final and 218 final.

<sup>15</sup> Cases include: *Verein Alternatives Lokalradio Bern v Switzerland* (1986): a licensing system not respecting the requirements of pluralism, tolerance and broad-mindedness without which there is no democratic society would thereby infringe Article 10 §1); *Informationsverein Lentia* (1993), at §38 and *Tierfabriken v Switzerland* (2002) at § 73: the fundamental role of freedom of expression in a democratic society ... cannot be successfully accomplished unless it is grounded in the principle of pluralism of which the State is the ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely; *Dink v. Turkey*, nos. 2668/07 and others, § 137, 14 September 2010: States are required to create a favourable environment for participation in public debate by all the persons concerned (‘les Etats sont tenus de créer, tout en établissant un système efficace de protection des auteurs ou journalistes, un environnement favorable à la participation aux débats publics de toutes les personnes concernées’). See also Ewa Komorek, “The European Court of Human Rights, The Council of Europe and the Issue of Media Pluralism” [2009] 3 *European Human Rights Law Review* 395-414.

<sup>16</sup> See Council of the European Union, Council conclusions and of the representatives of the Governments of the Member States, meeting within the Council, on media freedom and pluralism in the digital environment, November 2013, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/educ/139725.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/139725.pdf)

<sup>17</sup> Enterprise Act 2002, section 58(2B) and (2C)(a); Communications Act 2003. However, concern with organic change as opposed to merger or dominance (competition law) situations, led Lord Leveson in the UK in 2012 to question whether a public interest test would be sufficient to secure media pluralism. See Ofcom, *Measuring media plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport* 6 June 2012 and 5 October 2012, available at

recently reassessed and updated in Ireland on foot of new media mergers legislation passed in 2014, which explicitly refers to *protecting* the public interest in plurality of the media and *securing* the public interest.<sup>18</sup>

Definitional clarifications and updates were (and are) also necessary at the outset, given the (continuing) rise of new digital players/intermediaries.<sup>19</sup> How to differentiate and treat these powerful new entrants into the market by reference to the nature of their functions was also imperative: were they or some of them, in effect, similar to established news media; did they exercise editorial or editorial-like judgements; what was the nature and scope of their influence or potential to influence; which of or what aspects of their activities would contribute positively to or lead to concerns about media pluralism, and so on?<sup>20</sup> This kind of exercise needs to be ongoing in such a dynamic market.

No single method will suffice as it is a complex issue; a combination of methods is needed, mixed methodologies. A combination of hard data and market surveys – quantitative and qualitative – are pivotal. The hard data serves as an evidential base to inform approaches to measuring or assessing levels of plurality and to identifying what best to measure and to what specific purpose(s).<sup>21</sup>

Among the many contributions to the debate over the past decade are the following, set out in chronological order to simply chart the thrust and progression of the debate. Only the title and in most instances a short description are given here. Aspects of some of them will be discussed in more detail at a later stage in this paper. The monitoring scheme used in Catalonia by the Audiovisual Council to monitor pluralism in news programming, which comprises very detailed quantitative data collection, is not outlined here, as it is the subject of a separate presentation at the EPRA meeting in Berne.<sup>22</sup>

**2007 Council of Europe**, Recommendation 2007(2) on media pluralism and diversity of media content (*Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies*) recommended that member states define and implement an active policy in the field of content diversity, which should not be considered to be automatically guaranteed by the multiplication of the means of communication offered to the public.

**2007 European Commission Staff Working Document: Media pluralism in the Member States of the European Union**<sup>23</sup>:

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[www.ofcom.org.uk](http://www.ofcom.org.uk); House of Lords, Select Committee on Communications, Media Plurality, 4 February 2014, available at <http://www.publications.parliament.uk>. The Leveson Report is available at: <http://www.official-documents.gov.uk>.

<sup>18</sup> Competition and Consumer Protection Act 2014, Part 4, s.74, available at :

<http://www.oireachtas.ie/documents/bills28/acts/2014/a2914rev2.pdf>

<sup>19</sup> For example, the literature has distinguished between *external* and *internal* plurality, in addition to geographical pluralism, political pluralism (see Doyle 2002), etc., and recognised and defined phenomena such as 'cultural capitalism', i.e. the ability to define and influence events (Barnet, 2010), and 'exposure diversity', i.e. understanding which sources are actually used by audiences (Napoli 2011, Helberger 2012), in addition to source diversity and content diversity. See summary of the literature in Ofcom's report 2012 for Leveson.

<sup>20</sup> See Robin Foster, *News Plurality in a Digital World*, Reuters Institute for the Study of Journalism, July 2012, available at <http://reutersinstitute.politics.ox.ac.uk/publication/news-plurality-digital-world>.

<sup>21</sup> For example, the Reuters Institute's research data based on online surveys; Ofcom's wide-ranging research; the multi-State comparative studies carried out by bodies such as the Council of Europe, Access Info Europe, and others referred to in the text.

<sup>22</sup> The reports of the Council are available at [www.cac.cat](http://www.cac.cat).

<sup>23</sup> Available at:

[http://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/media\\_pluralism\\_swp\\_en.pdf](http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/media_pluralism_swp_en.pdf)

“The European Union is committed to protecting media pluralism as an essential pillar of the right to information and freedom of expression enshrined in Article 11 of the Charter of Fundamental Rights. Since the early nineties the discussion on media pluralism has played an important role within the European Union. ....” The Commission undertook to ‘procure an independent study in order to define indicators for assessing pluralism’ and provided a number of headings to be used to develop such indicators. ‘The identification of concrete indicators marks a new approach and will enable citizens and all interested parties to assess more objectively media pluralism in the Member States. A successful study will help to introduce a greater measure of clarity into a debate on a very complex and multifaceted issue’, the Commission stated.<sup>24</sup>

### **2008 UNESCO: Media Development Indicators: A framework for assessing media development**<sup>25</sup>

The paper suggests five major categories of indicators that can be used to analyse the media development of a country. Each category is broken down into a number of component issues which in turn contain a series of broad indicators. The document makes clear that as indicators ‘they are diagnostic tools, not commandments – conceptualised with the purpose of assisting media development programmes, not imposing conditionality.’

Some generic considerations that provide a useful starting-point in selecting media development indicators were adopted in this paper:

- using quantitative measurements whenever possible
- choosing indicators where measurement data is sufficiently reliable in quality to permit confident decision-making
- disaggregating indicators by gender or other population characteristics
- ensuring that indicators are separated out to address one key issue at a time
- considering the practical implications of cost and time for collecting measurement data.

Chapter 2 deals specifically with media pluralism and diversity. It advocates *inter alia* positive measures to be taken by States (2.1) and that States ensure compliance with measures to promote pluralism (2.2), providing a list of actions States may undertake in relation to each. It stresses the need for a diverse mix of public, private and community media (2.3) and the need for an independent and transparent regulatory system (2.4).

### **2009 Council of Europe Report: ‘Methodology for monitoring media concentration and media content diversity’**

This report was prepared by the Group of Specialists on Media Diversity (MC-S-MD), November 2008<sup>26</sup>. It provided a definition of ‘monitoring’:

“We understand the term “monitoring” to mean building awareness about the state of the media system, and observing the changes to that state over time. Indicators for media concentration include the existence of positive measures by the state to promote pluralist media both in regulation and its implementation.” (It refers to the data obtained by the Dutch Media Authority Media Monitor.)

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<sup>24</sup> For an account of all of the initiatives taken by the EU up to 2014, see Ewa Komorek, “The problem which refuses to go away. Recent developments in the EU approach to media pluralism”, *Communications Law* (2014) 2 CL 40-46.

<sup>25</sup> Available at <http://unesdoc.unesco.org/images/0016/001631/163102e.pdf>

<sup>26</sup> [http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf%282009%299\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf%282009%299_en.pdf)

The Report urges member states *inter alia* to “set up, if this has not been done yet, specialised bodies for, and establish systems of, monitoring media landscape, with special emphasis on media pluralism and diversity.” And as no member state (among those who replied to the questionnaire) had legal definitions of these two concepts, in order to measure/monitor media diversity and pluralism, the report urged that at least a working definition should be formulated. Member states should also start regular collection of basic data showing the market structure of their media systems, including data on owners, as well as exploring ‘whether the “apparent” diversity (lots of existing communication channels) also means “real” diversity. In other words, what proportion of individuals has access to and can afford to pay for these channels.’

**2009** Media Pluralism Monitor (MPM) developed by a consortium led by the University of Leuven, following successful tender to conduct study indicated by the European Commission in its Staff Working Paper 2007 (above). The MPM is discussed further below.

**2011** European Commission appointed a High Level Group on Media Freedom and Pluralism (HLG) - established in October 2011 by Vice-President Neelie Kroes with a mandate to draw up a report for the Commission with recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe. The group, which was to be independent, was invited to make recommendations on issues such as:

- limitations to media freedom arising from political interference (state intervention or national legislation);
- limitations to media independence arising from private and commercial interference;
- the question of the concentration of media ownership and its consequence for media freedom/pluralism and on the independence of journalists;
- existing or potential legal threats to the protection of journalists' rights and their profession in Member States;
- the role and independence of regulatory authorities;
- existing or potential measures in favour of quality journalism, ethics and media accountability, within the respective competences of national, EU and international authorities.

EC Vice-President Kroes also established the Media Futures Forum,<sup>27</sup> to advise on the impact of the so-called digital revolution, and initiated the Centre for Media Pluralism and Media Freedom (**CMPF**) at the Robert Schuman Centre for Advanced Studies at the European University Institute of Florence, with the **long-term mission** of accompanying the process of European integration on media pluralism and freedom, and the **short-term mission** of developing a policy report on European Union competencies on media freedom and media pluralism. See further below.<sup>28</sup>

**2012** OSCE, Pluralism and Internet Governance 2012<sup>29</sup> (an earlier report on the same topic was published in 2005).

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<sup>27</sup> The Forum, which comprised a number of people involved in various roles in the media, reported in September 2012. It called *inter alia* for a true digital single market to be established by 2015 and avoidance of new barriers to entry: [http://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/forum/exec\\_sum.pdf#page=1&zoom=auto,-107,848](http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/forum/exec_sum.pdf#page=1&zoom=auto,-107,848)

<sup>28</sup> For further detail, see Elda Brogi and Pier Luigi Parcu, ‘The Evolving Regulation of the Media in Europe as an Instrument for Freedom and Pluralism’, p.6, EUI, 2014, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2397725](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2397725). The paper traces and analyses the evolving debate and issues arising at EU level.

<sup>29</sup> Report of 8th South Caucasus Media Conference, Tbilisi, Georgia 20-21 October 2011, available at <http://www.osce.org/fom/90788>

The report contains a section on 'The role of the Internet in promoting pluralism: International standards and practices'. The section discusses *inter alia* self-regulation of the Internet and makes the point that 'self-regulation requires the support of the bulk of the industry to work, and getting that support means that the industry will co-operate, rather than fight, the regulator.' Self-regulation, it says, 'protects the industry's self-determination' and 'through self-regulation, the industry can act as an arbiter between state objectives and user demands.'<sup>30</sup> Other issues addressed include principles of openness, accountability and the way forward for traditional media online.<sup>31</sup>

**2012** Robin Foster, "News Plurality in a Digital World", Reuters Institute report.

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

Digital intermediaries, Foster says, can be classified into four broad groups: news aggregators like Yahoo, search engines like Google, social media like Facebook, and digital stores /devices like App.

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

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

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

From this Foster identifies four main concerns: *distribution bottlenecks; editorial-like judgements; future economic models; political influence*. 'A new framework for news plurality will need to last for at least the next decade. It must therefore reflect and respond to these four concerns. Policymakers and regulators must pursue a balanced approach, taking care not to chill innovation or penalise success while acting where justified to address evident plurality concerns. A range of tools will need to be considered.'

He suggests:

- 'Securing effective competition: active use of existing competition rules to ensure that news consumers and suppliers are protected from any anti-competitive behaviour.

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<sup>30</sup> Paper delivered by Eve Salomon, at p.25.

<sup>31</sup> Paper delivered by Georgina Henry, 'From traditional to new media: The case of the guardian', p.33 et seq.

- A new plurality dialogue, involving government, intermediaries and other relevant parties, to ensure that intermediaries understand and are fully engaged with UK citizenship priorities, and are properly accountable to the public.
- Incorporation of digital intermediaries within the new plurality review framework proposed recently by Ofcom.
- Consideration of remedies or backstop regulatory approaches, particularly in the area of access, that might be called on should intermediaries over time prove to be a threat to plurality.<sup>32</sup>

**2012** Ofcom's Report on measuring media plurality, 19 June 2012<sup>33</sup>:

This report incorporated Ofcom's replies to five questions posed by the Secretary of State. First it provided a useful and succinct statement of the underlying goals of plurality, its definition and scope:

- 'Plurality matters because it makes an important contribution to a well-functioning democratic society through informed citizens and preventing too much influence over the political process.
- We have defined plurality as a) ensuring there is a diversity of viewpoints available and consumed across and within media enterprises and b) preventing any one media owner or voice having too much influence over public opinion and the political agenda.
- Plurality needs to be considered both within organisations (i.e. internal plurality) and between organisations (i.e. external plurality).
- In terms of scope, a review of plurality should be limited to news and current affairs but these genres should be considered across television, radio, the press and online.'

It recognised that an 'effective framework for measuring media plurality is likely to be based on quantitative evidence and analysis wherever practical' but also that 'there are also areas where a high degree of judgement is required. The appropriate approach to exercising such judgement is ultimately for Parliament to debate and determine.'

#### Metrics

With regard to metrics, it had this to say:

- There are three categories of metrics relevant to measuring media plurality: availability, consumption and impact. All should be included in a review of plurality, but the consumption metrics, especially reach, share and multi-sourcing, are the most important.
- In addition to metrics, other relevant contextual factors should be considered, for example governance and regulatory frameworks such as those which ensure impartiality.
- Given the dynamic nature of the news market, the metrics framework itself should be assessed during each review to ensure its continuing efficacy and relevance.

Online news should be included in a plurality review. Ofcom favoured periodic reviews of plurality:

- 'We have considered the merits of different potential triggers for a plurality review, in the absence of a merger. On balance, we believe a periodic review every four or five years provides the best approach. We do not believe reviews should be triggered by metrics or

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<sup>32</sup> Useful details of how these approaches may be put into practice are set out in the report. The discussion of Ofcom's proposals for a plurality framework, plurality measurement and periodic review is of particular interest.

<sup>33</sup> Available at: <http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/statement>

complaints, nor do we believe there should be scope for discretion to trigger a review between the fixed periodic reviews.

- In addition, there may be merit in an “exit trigger” (i.e. a plurality review being triggered by the exit of a news organisation) but only if a mechanism can be designed that avoids subjecting the market to continuous review, and avoids too heavy a reliance on discretion. The need for such a trigger will also depend on the frequency of the periodic reviews.
- Further consideration is required to determine whether the existing merger process would sit within a new proposed plurality regime or continue in parallel with it. Either scenario may be desirable but the regulatory framework needs to be consistent and avoid a double jeopardy outcome such that more than one plurality review is triggered by the same cause.’

*Limits on news market share:*

- Absolute limits could take the form of a prohibited share or a prohibited transaction.
- A prohibited share would provide the clarity of a simple binary rule. However, setting absolute limits leaves no room to take account of the broader context, and this creates a risk that it is not possible to address issues of commercial sustainability and innovation in an appropriate manner. On balance, we do not believe introducing a prohibition on share to be advisable currently.
- The only prohibited transactions currently are those subject to the “20/20” rule. This prevents an organisation with more than 20% of national newspaper circulation from holding a share of 20% or more in a Channel 3 licence or licensee. The case for retaining or removing it in the context of a new proposed plurality regime (including the existing merger framework) needs to balance the benefits of clarity and certainty on the one hand versus flexibility on the other. We believe it is for Parliament to decide where this balance should be set.
- Any review of plurality needs to consider what level of plurality is sufficient. However, an assessment of sufficiency at any point in time is challenging as it requires a subjective judgement there is no analytic test analogous to the economic criteria used in competition analysis, and no single accepted measure for plurality nor consensus as to where the level should be set. Further, it is unrealistic to seek an absolute statutory definition of sufficiency, as the market is dynamic and notions of sufficiency change.
- A first step could be to describe sufficiency in qualitative terms. We believe the features of a plural news market would include many or all of the following: a diverse range of independent news voices; high overall reach and consumption with consumers actively multi-sourcing; sufficiently low barriers to entry and competition to spur innovation; economic sustainability and no single organisation accounting for too large a share of the market.
- It may also be possible to develop a view as to what levels of the key consumption metrics provide an indication of a potential plurality concern, so that these levels are taken into consideration within a plurality review, without being regarded as absolute limits.
- It will be for Parliament to consider whether it can provide any further guidance on how sufficiency should be defined, and possibly, in so doing, the extent to which the current level of plurality delivers against this. Absent such guidance, this may have to be left to the discretion of the appropriate body empowered by Parliament to undertake any plurality reviews.

**2013** Publication of the Report of the High level Group on Media Freedom and Pluralism (HLG) entitled: A free and pluralistic media to sustain European democracy (13 January 2013).<sup>34</sup>

The HLG report acknowledged that the main responsibility for maintaining media freedom and pluralism lies with the Member States but that the European Union also has an important role to play. It argued that beyond cross-border issues which arise in the Single Market, including competition policy issues, the EU also has a role in upholding the fundamental rights of EU citizens. It therefore recommended *inter alia* that the 'EU should be considered competent to act to protect media freedom and pluralism at State level in order to guarantee the substance of the rights granted by the Treaties to EU citizens, in particular the rights of free movement and to representative democracy.' It took the view that the 'link between media freedom and pluralism and EU democracy, in particular, justifies a more extensive competence of the EU with respect to these fundamental rights than to others enshrined in the Charter of Fundamental Rights.' It advocated further harmonisation of EU legislation. A public consultation which followed the publication of the report showed wide divisions in responses to individual recommendations made by the HLG.<sup>35</sup>

**2013** Parliamentary Assembly of the Council of Europe, Motion for a resolution on "*Increasing transparency of media ownership*". The motion welcomes "*the recent research by Access Info Europe on the transparency of media ownership and considers that "it is necessary to adapt the existing standards of media transparency in Europe and the Assembly should make proposals on this matter"*". (30 January 2013)<sup>36</sup>

**2013** Centre for Media Pluralism and Media Freedom (CMPF), EUI, European University Institute Policy Report "European Union Competencies in Respect of Media Pluralism and Media Freedom", highlights that the EU has a clear responsibility to act, and at the very least to clarify its competence. (February 2013)<sup>37</sup>

It also points out that exploring media freedom and media pluralism implies a full understanding of media systems in relation to both their international and national contexts. It therefore explores the area of media pluralism in the light of national political systems and social realities, national and international market conditions and players, technological developments, and legal frameworks and competencies.

It further discusses how to effectively measure and compare media freedom and media pluralism, stating *inter alia* (p.17): 'The narrower the analytical perspective, the better the chance of outlining the single or the few most appropriate national socio-political dimensions of media freedom and pluralism. Measuring media pluralism implies the selection of those indicators which are the more appropriate to the key focus of the study, and better able to explain the socio-political context within which media pluralism is embedded.'

**2013** Mediadem, EU funded research project (2010-2013)

The aim of the project was to identify which policy processes, tools and instruments can best support the development of free and independent media. One of its reports "*The regulatory quest for free and independent media*" examined the different forms of media regulation then in place in

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<sup>34</sup> Available at: <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf>

<sup>35</sup> See the summary of responses to the public consultation at: <https://ec.europa.eu/digital-agenda/en/news/summary-replies-public-consultation-independent-report-high-level-group-media-freedom-and-pluralism>

<sup>36</sup> See <http://www.assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19448&Language=EN>

<sup>37</sup> See <http://cmpf.eui.eu/Documents/CMPFPolicyReport2013.pdf>

the 14 countries covered by the project with a view to identifying common patterns, best practices and emerging problems. (March 2013)<sup>38</sup>

**2013** European Commission, Green Paper ‘Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values’ (COM 2013) 231 final) contains a section (p.13) on media pluralism in which it outlines the considerations of how people interact and relate to news. It observes, for example, that:

Filtering mechanisms, including personalised search results, make it more likely for people to receive the news in their area of interest, and from a perspective with which they agree. On the one hand, such filtering and personalisation mechanisms have a clear potential for empowering citizens, by allowing them to navigate efficiently through the information overload that characterises the digital environment and to receive tailor-made services corresponding to their individual needs. On the other hand, this may decrease the role of the media as editors in the public sphere and strengthen the role of platform providers, for example online companies.

**2013**, The European Parliament adopted a *Resolution on standard settings for media freedom across the EU*.

The Resolution called on Member States and the Commission to take appropriate measures to ensure better monitoring and enforcement of media freedom and pluralism across the EU, given that this right had become legally binding with the entry into force of the Charter of Fundamental Rights (Article 11 (2)). The resolution calls on the Commission and Member States, among many other things, to act upon monitoring media freedom and pluralism in all Member States and publishing the findings in annual reports followed up by proposals for action. (21 May 2013).<sup>39</sup>

**2013** European Broadcasting Union (EBU), EBU contribution to the Council of Europe (CoE) conference of Ministers, November 2013 and EBU response to EC Public Consultation on the independent report from the High Level Group on Media Freedom and Pluralism, June 2013.

Both documents stress the role of public service media and the importance of media literacy in relation to pluralism. The document for the CoE recognises that: ‘Pursuing public interest objectives in this landscape requires a proper understanding of the multi-platform environment and the role of digital intermediaries’, while the ‘primary goals and values of the current audiovisual regulatory framework (protection of consumers and vulnerable groups, promotion of cultural diversity and media pluralism etc.) remain just as relevant.’

Importantly also: ‘Exponential growth of audiovisual content quantity on the Internet should not to [sic] be mistaken for a growth in terms of quality, choice and diversity. Real choice for citizens can only be ensured by conditions that enable a diverse offer of high quality content. Thought must be

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<sup>38</sup> Many of the sections of the report refer to aspects of media pluralism. See: <http://www.mediadem.eliamep.gr/wp-content/uploads/2012/09/D3.2.pdf>

<sup>39</sup> See the very detailed and wide-ranging motion at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0117&language=EN#title1> . Resolution of 21 May 2013 reported by EPRA at [http://www.epra.org/news\\_items/standard-settings-for-media-freedom-european-parliament-adopts-resolution](http://www.epra.org/news_items/standard-settings-for-media-freedom-european-parliament-adopts-resolution)

given to ensuring that technological innovation serves social and cultural goals and not merely economic profitability.'

Therefore, 'sustained investment in original content must be a key policy priority. But it will be meaningless without additional steps to ensure wide and easy access to such content for all audiences, across the growing range of distribution platforms.' .... 'Specific incentives therefore need to be in place to promote the most efficient use of the different relevant technologies.' Thus, the EBU recognises the importance of access to content, which includes consideration of content distribution models and 'findability of programmes and services'<sup>40</sup>, and likewise the importance of net neutrality, openness and non-discrimination. The EBU also identifies a number of key determinants of pluralism when it states: 'public policy safeguards for **transparency**, monitoring **access practices** and effective "**backstop**" **powers** for regulatory authorities where platform practices become a threat to plurality will provide citizens with the necessary **trust** to use and engage with these platforms.' [emphasis added]

**2013** European Citizens Initiative for media pluralism: The purpose of the initiative, comprising organisations, media, and professional bodies from throughout Europe, was to run a European Citizens Initiative (ECI) demanding a new directive on media pluralism. (August 2013)<sup>41</sup>

**2013** Access Info, the Open Society Media Programme and the Sub-Committee on Media and Information Society of the Parliamentary Assembly of the Council of Europe co-organised a conference on the transparency of media ownership in Europe in Brussels. The goal of the conference was to exchange views with stakeholders about the recommendations developed by Access Info which are open for public consultation. These recommendations include disclosure to a national regulator and to the public of the essential basic information, transparency of influence, oversight by independent body and transnational access via a shared system. (24 September 2013)<sup>42</sup>

**2013** EPRA meeting, Vilnius, where presentations included those from Mediadem and Ofcom. The former referred, inter alia, to the integrated notion of media as implying that new and conventional media should be considered as part of the same regulatory field. See EPRA website (<http://www.epra.org/>) for further details. (October 2013)

**2013** Council of the European Union and the representatives of the Governments of the Member States, meeting on 25 - 26th November, adopted Conclusions on media freedom and pluralism in the digital environment, inviting the Commission to keep supporting the independent monitoring tools for assessing the risks to media pluralism in the EU.<sup>43</sup>

This marked an important stage in the debate as it clearly recognised the primary responsibility of the Member States, and the supporting role of the Commission. The Council invited the Member States to:

18. ensure the independence of their audiovisual regulatory authorities;
19. take appropriate measures to achieve genuine transparency of media ownership;
20. take appropriate measures to safeguard the right of journalists to protect their sources and to protect journalists from undue influence;

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<sup>40</sup> On this issue it instances the report of Communications Chambers, London, "PSB Prominence in a Converged Media World" for the BBC, available at:

<http://www.bbc.co.uk/blogs/aboutthebbc/posts/Ensuring-prominence-for-public-service-content-as-media-converges>

<sup>41</sup> See: <http://www.mediainitiative.eu/>

<sup>42</sup> See: <http://www.opensocietyfoundations.org/reports/pluralism-and-freedom-media-europe>

<sup>43</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/educ/139725.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/139725.pdf)

21. take appropriate measures, depending on their national context, to prevent possible negative effects of excessive concentration of media ownership.

It also invited the Commission 'within its competence' to:

22. continue to support projects that aim at enhancing the protection of journalists and media practitioners;

23. continue to support the independent monitoring tool for assessing risks to media pluralism in the EU (Media Pluralism Monitor), which is implemented by the European University Institute of Florence, and encourage its further use by Member States and all relevant stakeholders;

24. strengthen, through non-legislative actions, cooperation between Member States' audiovisual regulatory authorities and promote best practice as regards the transparency of media ownership;

25. assess the effectiveness of these measures in order to consider any further steps.

Finally, it invited the Member States and the Commission within their respective competences to:

26. safeguard, promote and apply the values enshrined in the Charter of Fundamental Rights of the EU and in this context address challenges to media freedom and pluralism across the EU in full compliance with the principle of subsidiarity."

**2014** European Audiovisual Observatory, publications including: *Iris plus*, Enabling Access to the Media for All.<sup>44</sup>

**2014** Reuters Institute released the UK results from the implementation of the EU Media Pluralism Monitor pilot project. (October 2014)<sup>45</sup>

**2015** EUI – CMPF REPORT: *Monitoring Media Pluralism in Europe - Testing and Implementation of the Media Pluralism Monitor 2014* (Policy Report-December 2014, published January 2015)

A number of difficulties had been identified with the Media Pluralism Monitor (MPM) due to its breadth, the large number of indicators and the complexities and practical problems in implementing it. The CMPF was therefore assigned the task by the European Commission of updating, simplifying and conducting a pilot-test implementation of the MPM.

In order to pilot test the MPM tool, the CMPF selected a sample of nine countries in which to implement it. The CMPF set about simplifying and streamlining the MPM, focusing on news and current affairs and reducing significantly the number of legal, economic and socio-political indicators that were included in the MPM2009.

The stated goals were:

- (1) re-designing the MPM in order to improve its applicability,
- (2) updating the internet related indicators,
- (3) creating a full methodological operationalisation, standardisation and guidance on the application of each MPM indicator,
- (4) testing and enhancing the applicability and validity of the overall revised instrument.

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<sup>44</sup> IRIS plus 2014-3, European Audiovisual Observatory, Strasbourg, 2014

<sup>45</sup> Available at:

<https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Media%20Pluralism%20Monitor%20Pilot%20Test%20-%20Executive%20Summary%20UK%20Report.pdf>

The **data collection and fieldwork** were regarded as key to the methodology testing. The purpose of the data collection and fieldwork was to test the applicability of the indicators in general, as well as in different contexts, and to verify the estimations of the necessary resources that are involved in the MPM's implementation. (at p.25)

The creation of an **online platform** to collect data from the country teams was signalled in the report as one of the key practical innovations of the tool developed within the pilot-test implementation, and this, the authors of the report state, gives an added value to the feasibility and transparency of the project itself. '... this tool makes the transition between step one, data collection, and step two, scoring, an automatic operation.' In addition, 'the tool is online and this allows an on-going monitoring of a country's implementation and the possibility to check and compare, in real time, the logic of the replies and the results, and the collection of feedback, as well as the scrutinising of the work of the country teams.' It also 'provides a database, as the data collected through the platform can be processed also for different and diverse purposes other than the media pluralism assessment.' The online platform 'allows better accountability, verification and transparency for the whole research process' and 'also creates a user-friendly archive of the research process ...' (p.28)

**Panels of experts and discussions with stakeholders** are an additional part of the process, as some qualitative measurement is needed to help address some of the shortcomings in the quantitative measurements. According to the report, the use of country experts provided avenues for useful practical feedback on the indicators. It may be observed that seeking such feedback is a way of testing the process itself as well as the indicators.

### 3. Key elements of the developing methodologies and processes – goals

The various studies and policy reports in Europe and around the world devoted to the issue of promoting pluralism in the media have set out on different courses, with different approaches to identifying and tackling the problems and barriers. Some focus primarily on analysis of content, some on particular media sectors, such as broadcasting, some on structural issues and others on market issues. Indeed, some of the studies and reports listed above range across a very large number of aspects of media, including defamation, working conditions of journalists, annual monitoring, etc., but if all of these are to be factored into a monitoring tool it will be in danger of becoming too complex and burdensome in terms of resources. The discussion which follows attempts, therefore, to pinpoint some of the more salient principles, observations and ideas emanating from them.

The model that has been pursued in the **European Media Pluralism Monitor (MPM)** is one to enable risk management, in other words to provide a mechanism to identify the problem or risk areas so that they can be further monitored or dealt with by national authorities before they crystallise into something bigger. Although the MPM is very prescriptive in some respects (e.g. in relation to the composition of the panels of experts involved in the qualitative evaluations), it is not prescriptive as to what is to happen when risk areas are flagged. In that sense it merely provides information and an analytical and evidential basis for Member States on which to act as they see fit. To the extent that it is based on theoretically informed and empirically-driven research, it can provide a valuable alarm system and benchmark. It is important, though, that there should be appropriate data from a variety of existing sources, such as Nielsen, NGOs, etc., factored in to underpin it, as well as any necessary new targeted data collection, along with the requisite data from companies themselves. Much of this will occur at the national level and will depend on the national authorities. The

evidential nature of data is central to the workability and durability of the endeavour. However, the purpose of what is being collected must be clear and proportionate to the overall goal, both in terms of its scope and the resources required. The methods of collection, particularly where they involve hard-pressed national regulators and other bodies, must be relatively straightforward and clearly sign-posted.

The CMPF report of January 2015 recognises much of this but one gets a sense that the process will still be very detailed and burdensome. The stated goals in the pilot exercise, as set out above, are laudable.

However, the number of indicators still being pursued and the complexities and shortcomings of the 'scoring' system being developed, suggest that a lot more fine-tuning and orientation will be needed if the monitor is to become an effective tool. The CMPF points to its creation of an online platform to collect data from the country teams as one of the practical key innovations of the tool developed within the pilot-test implementation. This is online and in real time so will facilitate further streamlining and adaptation on an ongoing basis.

A useful appendix/follow-up to the CMPF pilot, if not already in place, would be a set of guidelines for legislators, regulators and others as to the essential information that should be kept in order to make the monitoring effective and the template/format in which the information will be required for periodical reviews. This would aid both understanding of the overall process and scheme, as well as make it easier in practice.

Leaving the work of the CMPF aside for the moment, there have been a number of interesting initiatives at national level in several countries in the last year or two that deserve consideration and may provide useful avenues for the outworking and improvement of the MPM. Some of these are outlined briefly below. There are others but it is not possible to include all here.

## **UK**

In 2013, the Department of Media, Culture and Sport issued a consultation paper on media ownership and plurality seeking views on a measurement framework for media plurality.<sup>46</sup> It took specific issues raised by Lord Leveson in his 'Inquiry into the Culture, Practice and Ethics of the Press' 2012<sup>47</sup> as its starting-point. These were:

- the types of media it should include;
- the genres it should cover;
- the types of organisation and services to which it should apply;
- the inclusion of the BBC; and,
- the audiences with which it should be concerned.

Lord Leveson recommended that the Government should consider whether periodic plurality reviews or an extension to the public interest test within the markets regime in competition law is most likely to provide a timely warning of, and response to, plurality concerns that develop as the

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<sup>46</sup> Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/225790/Media\\_Plurality\\_Consultation\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225790/Media_Plurality_Consultation_2013.pdf)

<sup>47</sup> See also, the Media Reform Coalition, 'The elephant in the room: a survey of media ownership and plurality in the United Kingdom', available at:

<http://www.mediareform.org.uk/wpcontent/uploads/2014/04/ElephantinthetroomFinalfinal.pdf>

result of organic growth, recognising that the proposal for a regular plurality review is more closely focussed on plurality issues. He also pointed to the need to find mechanism(s) to catch not only mergers but 'organic' growth.

The House of Lords, Select Committee on Communications, First Report of 2013-2014 session, entitled 'Media Plurality',<sup>48</sup> proposed a framework, which addressed many of these issues, particularly the issue of periodic reviews:

'The centre-piece of our approach is that the Government should introduce a statutory periodic review of the plurality of the media markets to be undertaken by Ofcom on a 4–5 yearly basis, which will reshape the role for Government, Parliament, regulator and competition authorities in protecting the public interest.' (Chapter 5)

'Ofcom's periodic assessment of plurality should be based on a limited number of different measures which address availability, consumption and impact.'

'There should be a role for Parliament in setting guidance for this new framework of assessment, but the metrics themselves to be used in assessing plurality should not be set down in statute. Instead, there should be flexibility for Ofcom to interpret statutory guidance, design the assessment framework and select appropriate metrics according to the circumstances at the time of the review, but with an emphasis, wherever possible, on longitudinal consistency of the measures applied.'

'For the most part, we do not expect periodic reviews to result in any direct market intervention. Only in the most extreme circumstances should interventions in the interests of plurality be imposed outwith the context of a transaction.'

Ofcom, in its response to the Secretary of State (Culture, Media and Sport) to develop a measurement framework for media plurality, produced a draft report, 'Measurement Framework for Media Plurality' and opened a public consultation on it in March 2015.<sup>49</sup> Essentially, it proposed to build on the framework it had developed in 2012 (see above).

Among its proposals are:

- that any online news source that originates content, or which has an influence over the selection of news content, should be measured by the framework. Influence may be exerted through the curation of content, by the selection of titles or by adjusting the prominence of titles or stories. Under this approach, online news, aggregators and digital intermediaries would all be captured by the framework.
- Measuring content remains complex and one of the key challenges is that people are unlikely to be fully aware of the impact the media might have on them. [Ofcom believes, however,] that the stated importance of a news source is the most useful proxy for impact.
- ... quantitative metrics are an important part of assessing the level of media plurality, but these metrics alone are insufficient for a full assessment of plurality. 'We continue to

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<sup>48</sup> Available at <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldcomm/120/12004.htm>

<sup>49</sup> The consultation document is available at: [stakeholders.ofcom.org.uk/binaries/consultations/media-plurality-framework/summary/Media\\_plurality\\_measurement\\_framework.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/media-plurality-framework/summary/Media_plurality_measurement_framework.pdf)

propose that any measurement framework should capture and consider contextual factors alongside quantitative metrics.’

By way of comment, these and other reports, some of which are considered below, address a number of important issues related to monitoring. There is considerable consensus among them that procedures need to be clear and user-friendly, provide certainty to those subject to them and should not be overly complex. Economic sustainability has to be taken into account and not be overly scored as a threat or be undermined. The appropriate depth of analysis, flexibility, certainty, streamlined procedures, engaging the appropriate (in constitutional terms) bodies in the process, are all issues that emerge.

Monitoring to be worthwhile has to be a regular, ongoing and long-term endeavour. Accepting that periodic review is necessary, how often will reviews be required, given the changes to the media landscape and composition brought about by the pace of convergence? Regular reviews (4-5 years)<sup>50</sup> would seem adequate to allow for refinement/modification in response to technical or market changes, to alert companies of concerns.

### **Canada**

In Canada, much deliberation and debate has gone into the categorisation of media and what the appropriate bases on which to measure risks to pluralism are. For example, in a Canadian study by the CMCRP in 2014, three categories of media were adopted: (1) platform media; (2) content media; (3) online media. Issues of audience share, impact, consumer behaviour, revenue data, etc. have all been contemplated and assessed for what they can deliver. The CMCRP’s long-term academic-led, data-driven analysis, which focuses primarily on ownership and concentration, spans more than a dozen sectors including ISPs, search engines and social media.<sup>51</sup> The current phase of the research up to 2016 has extended the reach to cover films, music and book industries.

### **The Netherlands**

The Media Monitor of the Dutch Commissariaat voor de Media publishes annual reports which provide information relevant to pluralism and accessibility of the media to the public. According to the presentation delivered at the EPRA meeting in Vilnius, they regard that what is needed for a ‘future proof monitoring system’ is: a functional and platform independent approach; a user oriented approach; an international approach; a practical approach.

The CvdM suggests that a monitoring system should have a dual focus: news media (1) and the use of it (2). The focus on news media, it says, is legitimate because of its particular role in democratic societies with regard to citizens’ opinion formation (i.e. the news function). The second focus is based on the user approach, which is considered increasingly important.

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<sup>50</sup> The Dutch regulator suggested a cross-national and longitudinal study on the diversity of news media exposure via a survey every two years among European citizens – e.g. Eurobarometer. Ofcom proposed that reviews take place every 4-5 years *routinely* and not triggered by metrics or complaints. This is the practice also in the US but criticism has been voiced there that there is no *meaningful continuity or consistency* or accumulation of *longitudinal data and research findings, systematic tracking of policy decisions on media diversity and pluralism* between successive reviews or in respect of the process or methodology (per Philip M. Napoli, Rutgers University). The Canadian CMCRP collected data every four years up to 2008 and annually since.

<sup>51</sup> The Canadian Media Concentration Research (CMCR) project, available at <http://www.cmcrp.org/>. It uses three common tools to assess media concentration levels over time: Concentration Ratios (CR), the Herfindahl – Hirschman Index (HHI), and the Noam Index, in a form of triangulation.

Three main research questions are formulated which could be the basis of the monitoring system.

1. What is the diversity of exposure to media of citizens (via written press, television, radio and internet) in the European Member States and how does it develop within and vary between platforms?
2. What is the diversity of exposure to news media of citizens (via written press, television, radio and internet) in the European Member States when gathering information specifically about news and current affairs?
3. How does supplier concentration develop in the European news market?

The methodology suggested is a cross-national survey, preferably integrated into an already existing survey such as the European Commission's Eurobarometer.<sup>52</sup>

With regard to the optimal or appropriate extent and scope of monitoring, a commonly raised question is whether to focus solely on news and current affairs, as favoured by the Dutch media regulator, among others, or to include broader formats of entertainment on the basis that they, too, have considerable opinion-forming power. Arguably, to include entertainment at least initially and perhaps even in the longer term would be too onerous and resource-intensive but on the other hand to focus solely on news and current affairs could give too narrow a frame and, it has been suggested, could discourage major operators from producing their own news services.

### **Norway**

Norway has developed a method for quantitative content analysis of news online which might be useful in the wider monitoring scheme. The research design is based on a triangulation approach, using qualitative and quantitative measures combined with automated computer-assisted analysis. One of the discoveries was that methodologies designed for measuring broadcasting news content do not suffice in the online news environment. Online research methods needed to be redesigned to account for the medium-specific news features on the internet. Computer-assisted coding methods can contribute depth and scale to such an analysis, as it can extract and assemble detailed data on large quantities of articles. The new design developed in Norway therefore uses a combination of automatic coding methods with established content analysis for television news.<sup>53</sup>

### **Germany**

The fifth report of the German Commission on Concentration in the Media (KEK),<sup>54</sup> while focussed primarily on private broadcasting, is useful in a number of respects. It provides some interesting observations on and analysis of the nature of the Internet, particularly in relation to public opinion-formation. With regard to how to weight each different type of media when interplaying with the other types, particularly in comparison with television, it refers to its own approach but also to that of the Bavarian State Media Authority,<sup>55</sup> as well as the study by Hans-Bredow Institute (HBI)

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<sup>52</sup> See: <http://www.cvdm.nl/wp-content/uploads/2013/04/ALL-NATIONAL-REPORTS.pdf>; also [epra.org](http://epra.org) for the presentation by the Dutch at the meeting in Vilnius.

<sup>53</sup> For more information, see: <http://monc.b.uib.no/ressurser-3/>; Helle Sjøvaag and Eirik Stavelin, "The Methodology of Online News Analysis: A Quantitative Approach to Ephemeral Media", *The International Encyclopedia of Media Studies: Research Methods in Media Studies*, 2014; or, Helle Sjøvaag and Eirik Stavelin, "Web Media and the Quantitative Content Analysis: Methodological Challenges in Measuring Online News Content", *Convergence*, 2012.

<sup>54</sup> Summary in English available at: [http://www.kek-online.de/fileadmin/Download\\_KEK/Medienkonzentrationsberichte/5th\\_KEK\\_Report\\_Summary\\_and\\_Conclusions.pdf](http://www.kek-online.de/fileadmin/Download_KEK/Medienkonzentrationsberichte/5th_KEK_Report_Summary_and_Conclusions.pdf)

<sup>55</sup> The Bavarian State Media Authority (BLM) has developed a model to measure potential power over public opinion based on empirical data. This model's focus lies in the assessment of quantitative figures of reach in the respective media markets as well how they can be offset with the audience shares. It consists of a five-step approach. Firstly, the types of

“Information Repertoires of the German Population”, which developed a concept for a regular (e.g. annual) survey on cross-media information repertoires of the German population.<sup>56</sup> Although it must be acknowledged that the HBI study is on a smaller scale than a pan-European one, and was conducted earlier in time than the CMPF pilot studies, the methodologies used are instructive and have the merit of simplicity and connectivity to other existing resources. Briefly put, the methodology was as follows:

- **Phase 1:** a synopsis of the academic and political discussion about user-related indicators for the plurality of opinion as well as an inventory of existing usage data.
- A qualitative pre-study, consisting of two to three group discussions with interviewees from different milieus (e.g. “information elite” and “information refusers”) ensured that even extreme patterns of information use can be described adequately.
- **Phase 2:** a pilot survey in order to reconstruct information repertoires of the population or certain demographic groups and describe them with regard to the role of different media types, offerings, communication services and specific providers.
- Questionnaires ... were coordinated with potential cooperation partners, especially with the responsible parties for the long-term study mass communication, the ARD/ZDF online study, the media analysis and the media user typology.
- The project is linked with a project to be executed by the Formatt-Institute (Dortmund) – for example, the Dortmund categories were used in the HBI survey. The complementarity established opens further connection opportunities.

The report, which draws on a recent decision the Constitutional Court, usefully reminds us also that ‘Media-specific concentration control aims at preventively countering the creation of predominant power over public opinion because adverse developments could be reversed, if at all, only to a certain degree and with great difficulties.’ The “positive” securing of plurality is the essential core of the plurality obligation, the report says, which entails not merely a minimum standard but rather a duty of optimisation. The report refers to the Court pointedly stressing this danger of multi-medial predominance over opinion and refers also to the Court’s criteria in relation to public opinion formation, namely: “topicality, broad impact and power of suggestion”.

The report also refers to ‘**The Relation between Competition Law** (only external growth of companies is covered; the purpose is to maintain economic competition) **and Media Concentration**

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media that are relevant for opinion-formation, such as television, radio, newspapers, magazines and Internet are agreed upon. Thereafter the audience reach of these relevant media are calculated, based on accepted and regular audience reach surveys, and thereafter the comparable indicators for the different media are determined. In a fourth step, the weighting of the relevant media types is specified, on the basis of a representative survey. Finally the limits for the presumption of predominance over public opinion are determined. The relevance of the single types of media for public opinion-formation was determined in the study ‘Relevance of the media for public opinion-formation’, which was carried out by the institute TNS Infratest, commissioned on behalf of the BLM. However, the KEK considers it inadequate for its purposes because ‘it does, for example, not take into account how intensively each medium is used qualitatively (intensive reading versus incidental media usage). ... the weighting of each type of medium is also severely limited in its significance by the fact that it is restricted to information services, whereas entertainment formats have also influence on the formation of public opinion.

<sup>56</sup> A previous related study (see: <http://www.hans-bredow-institut.de/en/forschung/media-repertoires>) considered how users assemble their personal repertoires from the entire offering in the media and how the gradually accreting media were integrated into existing repertoires. That project’s central aim was to acquire and describe media repertoires: the nature of a repertoire reveals how the particular types of new and old media are combined and what functional differentiations can be observed. It noted not only the current composition of media repertoires but also their development over time.

**Law** (includes both internal and external company growth; its purpose is to secure plurality of opinion). Therefore, merger control is not enough on its own.'

A further widely-recognised consideration about integrated companies is well expressed in the report which states that 'when assessing a company's power over public opinion, its position on media-relevant related markets must be taken into account. Interlinkages with other media-submarkets deserve particular attention as they bear the risk of multiplying journalistic influence in the form of multimedia power over opinion. Vertical combinations may be problematic under the aspect of diversity, in the case that the horizontal concentration on the upstream and downstream markets has progressed to the point where the market entry of competing TV channels to the procurement markets or the sales markets is restricted or endangered.' In other words, integration can pose problems for pluralism but, so too, can a lack of integration, where companies that do not have the direct linkage may not be able to compete and thus reduce the diversity of content available to the audience.

Furthermore, [t]he large media companies pursue cross-media strategies on the Internet. In various ways they are present online or associated with other companies there. On the one hand, they transfer their traditional media brands into the Internet (diversification). Thereby online professional journalistic content consists mainly of contents that are also published in traditional media in an identical or similar manner or that have already been published. On the other hand, the companies invest in a broad spectrum of online offerings that no longer have direct connections to their traditional business models, for example in e-commerce services.

The KEK report also has interesting observations to make about the integration of broadcasters with production companies and owners of film and sports rights in the assessment of media concentration, as the attractiveness of the programming is a key factor in the competition for viewers and advertising customers.

## **Ireland**

In Ireland, the existing legislation dealing with media mergers and acquisitions was updated in the Competition and Consumer Protection Act 2014. While the relevant part of the Act deals only with media mergers, it is interesting in a number of respects including:

- definitions (e.g. 'diversity of content' means the extent to which the broad diversity of views (including diversity of views on news and current affairs) and diversity of cultural interests prevalent in Irish society is reflected through the activities of media businesses in the State including their editorial ethos, content and sources;
- the inclusion of 'relevant criteria' aimed at protecting the public interest in plurality of the media in the State;
- the notification requirements including penalties for contravention;
- possible two-stage examination: initial examination by the Minister and full examination, where deemed necessary under the criteria, to be carried out by BAI, the national broadcasting regulator, which on completing the detailed process, including taking account of any submissions, relevant research and the opinion of an advisory panel where one is established for the purpose, 'shall form a view as to whether the result of the media merger is likely to be contrary to the public interest in protecting plurality of the media in the State';

- guidelines on the general applicability of the ‘relevant criteria’ to media mergers, i.e. the criteria set out in the Act aimed at protecting the public interest in plurality of the media in the State. The guidelines are to include indicators of diversity of content and of diversity of ownership and control of media businesses
- report and research. The Broadcasting Authority of Ireland must publish a report on the operation of media in the State. This must be done within 1 year of the commencement of the Act and must be updated every three years thereafter. The BAI shall also conduct periodic methodological research on matters relating to plurality of the media, which may include the development of appropriate measurement indices.

### **Academic input**

There has been very considerable academic input into the debate on monitoring for media pluralism. Academic work also underpins and elucidates the theoretical approaches, concepts, definitions and principles that form an important part of the framework. Some of that work is directly referred to in this paper and academic articles and publications are included in the text or references in many of the reports and papers referred to.<sup>57</sup>

## **4. Key principles, practicalities and emerging wisdom**

Common themes in the literature and pilot studies include the following and portray considerable agreement on core principles, if not necessarily on aspects of the proposed processes.

### **Accountability**

Accountability of whom, to whom? Media organisations (which must include all significant influential elements of integration, e.g. advertising agencies), must be accountable to audiences and users; plurality assessments must focus on the interest of the citizen (HL, UK).

Doubts remain as to how to ensure appropriate levels of accountability of the new digital intermediaries (R. Foster) Suggestions include a new plurality dialogue involving government, intermediaries and other relevant parties; active use of Competition laws, which provide remedies to prevent or tackle concentration, including by enabling authorities to refuse license requests and to require media organisations to divest some of their existing media operations (UNESCO 2008); remedies and back-stop powers (Foster);<sup>58</sup> complaints mechanisms.

### **Transparency**

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<sup>57</sup> See, for instance, in addition to the academic publications already referred to, the work of Robert Picard, Oxford; Petros Iosifidis, City University, London; Natali Helberger, University of Amsterdam; Crauford-Smith and Tambini, UK; and for a recent article Carles Llorens and Andreea Madalina Costache, ‘European Union Media Policy And Independent Regulatory Authorities: A New Tool To Protect European Media Pluralism?’, *Journal Of Information Policy* 4 (2014): 396-420

<sup>58</sup> A good example could be the back-stop powers retained by the Irish Office of Film Classification in relation to some PEGI rated video games. IFCO request that all video games classified “18+” by PEGI be submitted to the Censor’s Office: see IRIS 2007-8:15/24

Obligations should be placed on media businesses themselves to furnish information (enforced transparency) as an aid to monitoring but the requirements must not be too onerous; they must be proportionate, confined to necessary information relating to priority issues; while providing certainty, there must also be some flexibility built in to safeguard commercially sensitive material and opt-outs where some information is less relevant to particular entity/entities. The use of guidelines can help to reduce the onus on companies and provide them with clarity and certainty. Monitoring processes, too, should be open and transparent, in design and implementation, and should be subject to wide consultation with stakeholders and public. Periodic review, feedback and feed-in should be part of the process.

Access Info Europe, the Open Society Media Programme, surveyed 19 European countries and found a number of shortcomings. It has produced a set of recommendations, which include disclosure to a national regulator and to the public of the essential basic information, transparency of influence, oversight by an independent body and transnational access via a shared system.

## **Access**

Ease and extent of access to the market for both entrants and users are crucial matters and must form part of any monitoring. The concepts of universality and visibility are central to the realisation of effective, fair and non-discriminatory access. Rather than just the availability of content, content distribution models which enable as many citizens as possible to actually access a plurality of media content are important, as is visibility of services of public value on the main platforms.

## **Extent and scope of monitoring**

While it appears wise to start small and monitor only a representative number of countries and to confine the monitoring to news and current affairs content, as has been done, the reality is that the picture produced will be a narrow one that will have to be expanded. Extending it to all Member States, which is now underway, will test both the methodologies and the process but what is monitored will in time have to be extended to at least some forms of wider cultural and entertainment offerings that can be shown to have public opinion forming power, as the German KEK has recognised. Curran (2010), also, sets out a range of arguments about the ways that entertainment genres have democratic meaning.

Others, including the European Parliament in its 2013 Resolution, argue for inclusion of a very wide range of aspects of media business in the monitoring of pluralism, covering, for example, defamation, protection of sources and whistleblowers, working conditions of journalists. The Parliament also 'underlines' the importance and urgency of *annually* monitoring media freedom and pluralism in all Member States and reporting on a yearly basis on the matter, on the basis of the detailed standards developed by the Council of Europe and the OSCE and the risk-based analytical approach and indicators developed by the independent study drawn up for the Commission, in liaison with NGOs, stakeholders and experts .... and so on. It is very prescriptive and extremely wide-ranging, potentially involving a lot of resources and a lot of actors at State level, as well as the EUI. However desirable it may be to have as comprehensive a view of the whole media anatomy, the level and extent of monitoring must be practical and proportionate to the overall goal.

Much discussion has revolved around the question of the best method of monitoring and what the most appropriate methodologies are, e.g. metrics versus periodic review. It would appear that what is regarded in much of the literature as the best approach is a metrics based review, followed by

periodic reviews, with Ofcom suggesting that the metrics framework itself should be assessed during each review to ensure its continuing efficacy and relevance.’

Mixed method, quantitative and qualitative, and triangulation are favoured in a number of the reports and studies examined.

Ofcom in its response to Lord Leveson stated that there are ‘three categories of metrics relevant to measuring media plurality: availability, consumption and impact. All should be included in a review of plurality, but the consumption metrics, especially reach, share and multi-sourcing, are the most important.’

### **Policies on new media education and internet literacy**

The OSCE: ‘Pluralism and Internet Governance’ 2012 at 3 stresses the importance of Internet literacy to strengthen independent decision-making regarding content by the users. The EBU takes a similar view. Many other reports referred to in this paper also stress the importance of media literacy.

Karppinen (2009 at p.166) referred to this also: One thing that seems evident based on the above discussion is that instead of analyzing only what is produced or what is available, more emphasis needs to be put on user competencies, questions of media use, digital literacy, and other aspects related to exposure diversity.<sup>59</sup>

### **Practicalities**

In practice, the success of any oversight or monitoring endeavour is more readily assured where there is partnership or at least cooperation with industry, as industry has a level of knowledge in many respects that no government or regulator will have, and its buy-in is important.

Making use of existing tools and resources such as audience reach surveys and usage data, either national or multi-national, for comparative purposes, is clearly advisable. Pooling resources for smaller States could be considered. Linkage between initiatives, studies undertaken and findings made by different bodies either within States or across EU Member States could be helpful both in terms of useful information exchange but also complementarity and avoidance of unnecessary duplication. Clearly, EPRA already performs a very useful and effective role in this regard.

Procedures need to be clear and user-friendly, provide certainty to those subject to them and should not be overly complex. Economic sustainability has to be taken into account.

## **5. Conclusions**

To go back to the title of this paper, is media monitoring as an approach to ensuring media pluralism an exercise in futility? There is no doubt that the goal of monitoring in order to assess the current level of media pluralism, in an effort to ensure there is a certain level of plurality, is a worthwhile one. In a sense, monitoring is but one step in tackling a complex web of structures, convergence, integration, consolidation, concentration, fast-paced change, global reach and power, content sourcing and distribution, consumption, and so on.

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<sup>59</sup> Karppinen, ‘Rethinking media pluralism and communicative abundance’, *Observatorio (OBS\*) Journal*, 11 (2009), 151-169.

On its own, the MPM as currently devised and being streamlined by the CMPF, as I understand it, has the capacity to provide useful base-line information, including comparative data, and to pinpoint potential risk areas. On its own, it cannot do much more than that, other than act as an incentive or catalyst to national authorities to take reparatory measures. The measures that can be taken ex post facto when a deficit or problem area is flagged are limited, as many of the studies point out. Measures cannot be retrospective, nor can they be easily imposed in a situation short of a merger, acquisition or gap created in the market. To be effective in practice, the monitoring will need to be supported by other tools ranging from legal and regulatory mechanisms to policy strategies. It will also depend on what is done to address genuine shortcomings identified. It needs to work in conjunction with other approaches, e.g. benchmarking, provision of guidelines, drafting of codes, stimulating, incentivising, dialogue.

How the MPM does its part of the job is also in question. It is testing a set of indicators, a certain set of methodologies and a process. Whether any or all of those elements is adequate or sufficiently fine-tuned yet is open to question, as are the scale of resources, burden and spread of work involved, the sustainability and flexibility of the model. Above all, as a tool, it needs to be realistic, proportionate; it cannot easily keep apace unless it gets to the heart of the problems and is designed to accommodate any significant new 'media' gaining a significant foothold in the market. The CMPF report is optimistic and an update on subsequent developments is being provided for the EPRA meeting in Berne (see [epra.org](http://epra.org).)

The process itself is as important as the mechanisms and methodologies. It should not be overly elaborate and overly demanding on regulators and others expected to provide information. Explanatory memoranda and explicit guidelines should be available. Those in the pilot monitor appear extremely complex. The prospect of multi-issue monitoring becoming disproportionate to the objective and benefits derived has to be avoided. Monitoring for media pluralism will have to be constant and consistent if it is to be effective and allow for rapid responses to problems. Once embedded, it may be possible to have a low level of reporting by Member States on an annual basis and only run the full monitoring programme every 4 or 5 years. As CMPF point out, there is potential in their re-design for live time watchfulness. Otherwise, monitoring and reviewing is so widespread and frequent now, whether required by law or policy, that it risks overwhelming regulators and other such bodies, leaving little time for the core tasks with which they are charged.

Is the level of detail and intensity of the data collection – while impressive - and the process itself really necessary? Is it too complex even in this 'simplified' form? What does it actually benefit the countries themselves or the state of plurality? It will give policy-makers and regulators a stronger basis for intervention/assessment, an external and objective set of measurements but beyond that will it provide a good return on the amount of work and resources involved? If too complicated and time or resource consuming, and in need of constant updating, the chances are the monitor will be abandoned or fall into disuse unless there is a strong perceived benefit from it.

To conclude, we have had an array of initiatives, as outlined earlier in this paper. We are now at the stage of learning the lessons. Having learnt the lessons, the next step will be the ways to proceed.

There are positive, enabling roles that governments and policy-makers can play. For instance, high quality content is at a premium and central to the multi-platform digital world. Open, competitive, targeted funding schemes (such as the BAI's Sound and Vision scheme) are one way of encouraging and generating quality. Investment in good quality broadband for all is another. Strengthening net neutrality principles, regulation to ensure non-discriminatory access, creating navigational tools, promoting media literacy, can all help significantly.

When all is said and done, it is reassuring that news is readily available and is being accessed on whatever device. Any growth in supply and access must be welcomed, whether it is at the social media end of the spectrum or in the traditional media or both. Even if social media and search engines only mean that some people receive the personalised news they are interested in or stumble upon news sources and news rather than directly seeking it out, they serve a purpose. An informed and engaged citizenry is what participatory democracy is all about.

ENDS

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