Guardian Media Group
A Communications Review for the Digital Age
Submission to the Department for Culture Media and Sport June 2011

Executive summary

- The present Government review must avoid the temptation to set regulation in stone. Entirely new statute introduced in the present cycle of evolution in the media markets could risk quickly becoming bad law. Attempting a completely new codification of media and communications regulation as a response to continuing convergence would be unhelpful and could stifle growth and limit flexibility.

- The challenge for this review is to appreciate how to set the best framework for content, which favours that which is well-sourced, verified and to be trusted, while deterring the speculative, ill-informed and malicious.

- The Communications Review must address itself to the present consultation from the Department for Business, Innovation and Skills on the reform of the competition regime and the introduction of a new, unified Competition and Markets Authority.

- It is arguable that we already exist under conditions where certain dominant players exert a degree of power which has the potential to restrict or distort competition in the UK market. Ministers must not allow themselves to be seduced by the media 'superpowers' into making the public interest and our national economic interests a subset of the corporate goals of these very large organisations.

- Economic regulation must also have the public interest goal of safeguarding and encouraging the creators of original content. The risk is that the UK will become a world-class laboratory for original content, without attracting proportionate financial reward.

- Relaxing outdated rules on commercial radio will go some way to easing the pressure on players in the sector.

- The legal framework surrounding plurality requires revision. A new plurality law should bear the following features: an intervention power that is not contingent on a transaction taking place; a greater role for independent regulators, and a lesser and more transparent involvement of the Secretary of State; recognition that economic regulation and plurality regulation overlap; recognition of the impact on technology and its potential to constrain choice; and clear timetables for decision-making and statutory minimum periods for consultation.

- The Government must avoid the temptation to give itself powers to regulate the press. The PCC must raise its game, by conducting meaningful investigations and providing real remedies for parties with genuine grievances. At the same time, newspapers themselves should step up to the plate by providing meaningful first instance remedies for readers and others affected by the activities of news organisations.

- One area of particular concern about the present regulatory arrangements and their uneven patchwork nature is the accompanying risk of regulatory creep, for instance in the case of ATVOD.

- If there is to be some form of codification, it is possible to provide for a statutory set of regulatory objectives that all regulators should have regard to in conducting their affairs. This flexible stance based on regulatory principles would guide regulators to adopt an aligned approach, which would make their conduct more predictable and fairer to the affected parties.

1. About GMG

Guardian Media Group (GMG) is the country's leading commercial media organisation controlled entirely within the UK.

Despite its home-grown status, the Guardian is one of the most successful international media brands, with its website ranking alongside the publicly funded BBC's as a source of trusted, impartial and informative content worldwide.

GMG is owned by the Scott Trust, which exists to secure the independence of the Guardian in perpetuity. The Group has a portfolio of assets and investments which provide financial stability for the core business Guardian News & Media (GNM). The Group's portfolio of investments includes:

- Trader Media Group: one of Europe's largest specialist media companies, and publisher of the Auto Trader website and magazine. Trader Media Group is jointly owned by GMG and Apax Partners

- Emap: the B2B publishing, events and information business, also jointly owned by GMG and Apax Partners

- GMG Radio: radio stations across the UK under the Real Radio, Smooth Radio and Rock Radio brands

As well as being a leading national quality newspaper (which recently celebrated its 190th birthday), the Guardian has championed a highly distinctive, open approach to publishing on the web and has grown its global audience to 50 million unique browsers a month (ABCe, May 2011). Its future strategy is aimed at further digital growth, ensuring the Guardian's long-term financial sustainability, and recognising the primacy of all things digital in the future of news media.

The Guardian has an audience of 16.1 million unique users in the US (ABCe, May 2011). The latest version of the Guardian's iPhone app has been downloaded more than 400,000 times and has generated more than 70,000 active subscriptions since relaunching in January 2011. The role of mobile devices in accessing content is a fast-growing phenomenon. guardian.co.uk has seen access from mobile devices more than double in the last year to reach over 10% of its total traffic.

In a difficult market for all newspapers, the Guardian's print incarnation has performed well. The latest NRS figures show that the Guardian is the only national newspaper to have grown its print readership over the past year – up 3 per cent against declines in the quality market of between 8 and 15 per cent. This comes in the year in which the Guardian was named Newspaper of the Year at the British Press Awards.

Yet despite these successes, there is huge pressure on all publishers, GNM included, as we experience the greatest change in publishing since the invention of printing and its proliferation in the late 15th and early 16th centuries.

2. GMG’s approach to the future – digital first

In June 2011 Guardian News & Media (GNM), publisher of the Guardian, revealed plans to become a digital-first organisation, placing open journalism on the web at the heart of its strategy. GNM has launched a major change programme to deliver this transformation.

The new strategy comes in response to inexorable trends affecting the entire media sector, which has seen rapid growth in digital audiences but also financial challenges for newspaper publishers due to a migration away from print and a squeeze on advertising revenues. While print remains critical to GNM, the strategy will involve changes to its newspapers over time and investment in digital initiatives such as a new US operation based in New York and new mobile offerings.

GMG’s view on convergence in the news media is that every newspaper is on a journey into some kind of digital future. That does not mean getting out of print, but it does require a greater focus of attention, imagination and resource on the various forms that that digital future is likely to take. The Guardian has consistently led the way in terms of digital innovation and is currently showing year on year audience growth of 40 per cent. The Guardian is expanding into America and continuing to pioneer an approach that is fully networked with the rest of the web.

The digital-first strategy will target growth in digital audiences, engagement and revenues, while maximising revenues in print. GNM will move to a direct model with greater numbers of print subscribers, which will also allow the company to launch new cross-media content offerings. Resources will be moved from print and reinvested in digital growth areas, and there will be investment in new brand marketing.

But, like other media organisations, we are only at the beginning of this journey. As such, the present Government review must avoid the temptation to set regulation in stone in a way that responds to the lessons of the past twelve months, but fails to address the country’s needs for the next ten years. Indeed, there is a risk that entirely new statute introduced in the present cycle of evolution in the media markets could risk quickly becoming bad law, and we explore the alternative of a principles-based approach in this submission.

3. Our approach to journalism – towards openness and mutuality

In embracing the digital transformation of our business, we also recognise that this is not just an issue of pounds and pence. It is also a question of how we do our journalism. We are moving from the age of mass transmission of information to a new world of mass communication in which people can communicate with each other on a large scale without the need for a traditional intermediary such as a newspaper or a broadcaster. We believe that journalism still has a central role in this new world – if it can remain relevant and find the necessary business model.

It is therefore crucial at this stage that the regulatory environment does not restrain this important transition.

For the first time, the public can become publishers with the merest effort. Our response has been to welcome them into this world and to engage people in an open and 'mutualised' way. At the Guardian and Observer, we have more than 450 journalists[1] on Twitter and 80 different single-subject sites or section feeds. Our journalists are reaching beyond the walls of our organisation, seeking ideas, feedback and help and joining conversations. Reporters are using open media as a new way of finding sources, communities and audiences. And we are increasingly providing a platform as well as acting as publisher – an approach which began with our *Comment is Free* site in 2006. We are taking the same approach in cultural coverage and in our network of scientific and environmental blogs. We can benefit from expert content and increased audiences and the blogs we link to have the opportunity to share in audiences and revenue.

This is an open and collaborative future for journalism – one which will promote trust and participation. It can be regarded as 'mutual'. The more open we are the more audiences will become engaged and the stronger the future we will have. The challenge for this review is to appreciate how to set the best framework for content, which favours that which is well-sourced, verified and to be trusted, while deterring the speculative, ill-informed and malicious.

4. The need for review – a flexible and light touch response

Against this background, we welcome the Communications Review. There are undoubtedly significant changes across all areas of the communications market – content, devices, platforms, distribution and networks. This is a period of extreme change, in which the sector is moving faster than corporate entities can necessarily cope with. Change can be painful, and the wrong response to it can stifle innovation and, worse, destroy businesses.

The effects of this sustained and multi-dimensional evolution – and even revolution – are difficult to predict. Because of this, legislative solutions can be inflexible and quickly obsolete. Given the emphasis in the Secretary of State's letter on growth and deregulation, we would advise against the introduction of an entirely new and over-arching regulatory framework. We have a reasonably effective regulatory framework at the moment – it is not perfect, but it is capable of adapting to external change. Attempting a completely new codification of media and communications regulation as a response to continuing convergence would be unhelpful and could stifle growth and limit flexibility.

There are two provisos attached to this, regarding economic regulation and plurality (see below).

[1] @guardiantech = 1,657,988 followers
@guardianbooks = 180,176
@guardian = 131,797
@arusbridger = 36,402
@jemimakiss = 25,947

5. Economic regulation

The first proviso concerns economic regulation: it is established under the Treaty of Rome and under domestic competition legislation that Government and regulators should take steps to prevent market abuse and correct market failure where there are conditions which restrict or distort competition. Not to do so destroys economic value, stifles innovation and harms consumers. The Communications Review must address itself to the present consultation from the Department for Business, Innovation and Skills on the reform of the competition regime and the introduction of a new, unified Competition and Markets Authority[2]. A consultation on those changes closed on 13 June.

It goes without saying that such provisions should be maintained and be vigorously applied in relation to the regulation of the media and communications sectors, where new products and services can quickly acquire a dominant position in an evolving market. Indeed, it is arguable that we already exist under conditions where certain dominant players exert a degree of power which has the potential to restrict or distort competition in the UK market. These include:

- Google: in the provision of search engine and aggregation services

- News Corporation: in newspaper publishing and broadcasting (more so now the BSkyB acquisition is set to be approved by the Secretary of State)

- Amazon: in the sale and distribution of creative content

- Facebook: in the provision of social networking services

None of these interests is UK based or controlled, yet they are able to exert considerable economic influence for good or ill on the creative industries, news dissemination, devices, platforms, distribution and networks. Their status as global media 'superpowers' must not be under-estimated. While they all produce excellent products, which consumers find attractive and useful, policy-makers must recognise the potential for long-term damage to healthy and diverse media markets. Ministers must not allow themselves to be seduced by the media superpowers into making the public interest and our national economic interests a subset of the corporate goals of these very large organisations. Welcome as investment and innovation is, it cannot be accepted regardless of the price to the national interest. We would also encourage our national competition regulators to exert their jurisdiction over these operators, recognising that, while their operations are global in nature, their local market effects vary considerably.

A particular concern in relation to these very large transnational operators is the lack of a level-playing field in terms of the regulation that applies to them versus that which applies to largely domestic operators such as GMG. For example, we have the Authority for Television on Demand (ATVOD) seeking to regulate our video content on the Guardian website and YouTube channel, while YouTube as a platform appears to escape such scrutiny. A Government with avowedly deregulatory instincts such as the present one must consider how it addresses this unevenness.

[2] http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/11-657-competition-regime-for-growth-consultation.pdf

In addition to these global media superpowers, we have a significant distorting effect on our media markets from the BBC. The Guardian is, of course, a strong supporter of the BBC and its commitment to high quality output. It strengthens the quality of our democracy and of public discourse. However, we have seen that the BBC can sometimes over-reach its public service remit, for example in some of the activities of BBC Worldwide.

We are conscious that the new Chairman of the BBC Trust has recognised the potentially disruptive effects the BBC can have on other communications businesses[3]. However, even with the straightened financial regime being faced by the Corporation, it remains an enormous player, fully subsidised, against which commercial organisations must compete in torrid market conditions. Any review of the communications sector must have a watchful eye on these market effects, and consider what response, if any, is required.

Economic regulation must also have the public interest goal of safeguarding and encouraging the creators of original content. Ministers will be aware of the extent to which search engines and aggregators benefit from and enable others to benefit from content without recompense to those who invested in the creation of that content. The imbalance in this relationship threatens to disincentivise the production of original content and ultimately diminish the volume of content produced. Economic regulation needs to take account of these potentially harmful effects, their consequences for our creative industries and the detriment to the consumer interest.

Without adequate safeguards for the protection of IP, the risk is that the UK will become a world-class laboratory for original content, without attracting proportionate financial reward. Furthermore, the challenge for Ministers – if they are serious about growth with a direct benefit to the domestic economy – is not to place new restrictions on UK content providers who are increasingly competing with overseas-based players who do not carry the same regulatory burdens.

Finally – in relation to economic regulation – we would like to see a further loosening of the regulatory regime for commercial radio. Commercial radio plays an important role in the provision of public service content, despite the huge discrepancies in funding between the commercial sector and the BBC, which enjoys a dominant, well-resourced radio presence that consistently creeps into the space targeted by commercial radio broadcasters. The commercial radio industry faces very serious challenges. John Myers' 2009 review for the DCMS reported that 50% of local commercial radio stations were loss-making, according to figures compiled by RadioCentre, the industry body. Furthermore, 66% of stations were either loss-making or generating a profit of less than £100,000. Myers concluded that the industry was, as a whole, loss-making. Additionally, the industry has, over the past two years, had to contend with fragile local markets and a substantial drop in Government spending. Relaxing outdated rules will go some way to easing the pressure on players in the sector. For example, the industry would benefit from greater freedom to network content.

[3]Patten asks Ofcom to assess BBC proposals: http://www.ft.com/cms/s/0/aa7276f4-a5b8-11e0-83b2-00144feabdc0.html#axzz1R8x38MxG

6. The media and our democracy – a new model for protecting plurality

The second proviso concerns plurality. Since the 1949 Royal Commission on the Press, it has been common ground that too great a concentration of ownership in the media is a bad idea. But plurality is not just a nice to have. It should be the starting point for any public policy debate in the field of communications, such as the present one. It must not be 'tucked in' behind business, economic, managerial or technological arguments. It is a primary issue and must be treated as such.

It seems clear to us that the legal framework[4] surrounding plurality requires revision, and the Secretary of State has himself said as much[5] in relation to the present review[6]. The existing provisions arise largely as a result of amendments usefully brought to the Bill as it passed through the House of Lords.

The current powers of intervention have only been used twice[7], and they have not inspired confidence. The proposed acquisition by News Corporation of that part of BSkyB it does not already own generated very widespread opposition. Tens of thousands of citizens registered their opposition as did other civil society organisations and media businesses.

Yet, despite this, a complex deal to carve out Sky News from BSkyB was cut behind closed doors, away from the public gaze or meaningful Parliamentary scrutiny. Public consultations after the various stages of this labyrinthine process have had as their object the need to shield the Secretary of State from judicial review, as well as to elicit suggested changes to the deal. There are concerns about the remedy itself as well as process, with few commentators considering that Sky News can be both a viable and an independent subsidiary of News Corporation under the complex arrangements fashioned.

If the present law to safeguard plurality is imperfect, how do we improve it? A new plurality law should bear the following features:

- an intervention power that is not contingent on a transaction taking place[8]: this would enable the regulatory authorities to keep markets under review and respond to evolving market circumstances as is likely to be necessary under the fast-changing conditions that the media sector is experiencing

- a greater role for independent regulators, and a lesser and more transparent involvement of the Secretary of State, if there is to be any involvement at all: the recent interventions, while well-intended, do not bear the hallmark of modern and

[4] Enterprise Act 2002, section 59, and the Government's guidance on the public interest considerations for media mergers (PDF 306kb) explains when intervention by the Secretary of State is possible, and the process for considering mergers on public interest grounds. See: http://webarchive.nationalarchives.gov.uk/20100512144753/http://www.bis.gov.uk/files/file14331.pdf

[5] http://www.guardian.co.uk/media/2011/mar/21/jeremy-hunt-news-corporation

[6] Ofcom restated its advice that a review was needed in its recent letter to the Secretary of State on the BSkyB issue: "…the Government should consider undertaking a wider review of the statutory framework to ensure plurality in the public interest in the longer term. We believe that the current system is deficient in failing to provide for intervention to be considered where plurality concerns arise in the absence of a relevant corporate transaction involving media enterprises, for example as a result of organic growth." See Ofcom letter of 22 June 2011 at http://www.culture.gov.uk/images/publications/Ofcom_to_SoS-_further-advice-UIL_220611.pdf

[7] In relation to the BSkyB acquisition of a stake in ITV (2006) and in the present full acquisition of BSkyB by News Corporation

[8] In this regard, we agree with the Secretary of State's suggestion that this should be the case

transparent regulation; while the regulation of the media is a public policy and a public interest issue, this must be balanced against the need to avoid political interference in the process

- recognition that economic regulation and plurality regulation overlap: market dominance in its various forms can undermine plurality by weakening the ability of other players in the market to invest in news content, the essential component of plurality; economic regulation cannot be separated from plurality or public interest regulation and, as such, all competition regulation relating to news organisations should be conducted at national rather than EU level

- recognition of the impact on technology and its potential to constrain choice

- clear timetables for decision-making and statutory minimum periods for consultation: both are essential for maintaining public and business confidence in the regulatory process, and reduce uncertainty

7. Standards in journalism in the digital age

If we are to safeguard plurality in news media, then it goes without saying that the standards adhered to in the generation of that output must be of the highest order. The phone-hacking scandal has shown us that standards can fall far short of what the public is entitled to expect. Given what we have said about plurality above, the hacking issue is troubling in its own right, and it raises profound questions about media regulation.

The inability of the Press Complaints Commission to address this issue in an effective and timely manner, and the need for individuals to seek private legal remedies in order to stir police and prosecution authorities into meaningful and proportionate action, both point to a profound system failure.

However, the Government must avoid the temptation to give itself powers to regulate the press. These would be highly controversial and would lead to an unhealthy conflict between Ministers and the press.

The PCC must raise its game, by conducting meaningful investigations and providing real remedies for parties with genuine grievances. At the same time, newspapers themselves should step up to the plate by providing meaningful first instance remedies for readers and others affected by the activities of news organisations who feel they have been unfairly treated.

The role Guardian's Readers' Editor was created in 1997 as an extension of the paper's letters page. It has now grown into an Ombudsman role, which works from a position of independence[9] within the Guardian to deal with the complaints and queries of readers about Guardian journalism in print and online. The newspaper receives in the region of 26,000 emails a year regarding editorial standards, which require a response. We operate within the framework on the PCC's articles[10] but apply our own more rigorous editorial guidelines and professional standards.

[9] The Readers' Editor is an employee of the Scott Trust
[10] http://www.pcc.org.uk/cop/practice.html

The Readers' Editor adjudicates in matters of complaint, and will, if necessary, provide an apology. Importantly, the Readers' Editor will determine how to address the issue online.

The Readers' Editor model is one that is evolving and has much to commend it. It is consistent with norms of modern regulation in the professions and in the provision of goods and services, where a strong in-house capability to provide a meaningful response to a consumer complaint is the most effective way of dealing with the majority of issues.

8. Regulatory creep – ensuring the right conditions for growth

The Communications Review letter places a lot of emphasis on the conditions for growth in the media and communications sector. At heart, the sector is no different from any other when it comes to models of regulation. Excessive or disproportionate regulation will tend to stifle growth. A light touch model, with sure and certain safeguards to protect the public interest, will foster it.

One area of particular concern about the present regulatory arrangements and their uneven patchwork nature is the accompanying risk of regulatory creep, where regulators seek to exploit market evolution to conduct a 'land grab', with the aim of regulating organisations they have not previously come into contact with. This problem is sometimes exacerbated by the fact that regulators operate in regimes under which they recover fees from those they regulate. This creates a perverse incentive to grow the regulatory envelope as a means of business development.

A recent example of this has been seen in the attempts of the Authority for Television on Demand (ATVOD) to regulate content on the Guardian's website, arguing that we are a provider of 'On-Demand Programme Services'. We rejected this, arguing that we are a multi-platform provider and that our audiovisual content is ancillary to and expands upon our original text-based service. Notwithstanding this, ATVOD has now formally notified us that all the video content on guardian.co.uk as well as our YouTube channel are an On-demand Programme Services and that, as a provider of these services, we are required to be regulated by ATVOD with regard to that content.

ATVOD's origins are in the 2007 Audiovisual Media Directive. However, its efforts to expand into this territory run entirely contrary to the purposes of that Directive which were expressly not to regulate online versions of print newspapers. With the Guardian already subject to regulation by the PCC, to suggest that it should be subject to dual and different regulation by ATVOD is a signal example of regulatory creep that runs contrary to the Government's ambitions to create the right conditions for growth. As things stand, ATVOD's conduct provides a most salient example of a disproportionate regulatory burden being sought to be placed on a digital business model.

9. Conclusion – a flexible approach based on regulatory objectives

If the concept of a new Communications Act that seeks to impose a unitary regulatory architecture on the sector is to be rejected, then how should the Government proceed? We believe that an alternative approach is possible. We recognise that the current regulatory arrangements are a patchwork quilt, with different regulators occupying different parts of the sector, and a mix of statutory and non-statutory regimes. We have the requirement on broadcasters to provide balanced reporting. We have the laws on obscenity and to prevent people from stirring up racial or religious hatred. It is an eclectic mix, but leaving aside the public interest laws on plurality and the need for the PCC to raise its game, it is a mix that is flexible and, crucially, can work.

Furthermore, in this review, there is a vital need to address the interests of the consumer. The pitfall to avoid is yet another review of the communications sector that is almost entirely inward-looking and sector-centric. The consumer holds the key to unlocking many of the challenges ahead. Our millions of daily interactions with our readers teach us a number of things about what consumers want from the media. Consumers want choice, not just in news but also in other areas, like sports and children's TV. They want an accountable press and safeguards for their privacy. They want an even-handed approach, reflecting a common set of principles – fairness means consistency and predictability as well as equity.

If there is to be some form of codification, we would argue that it is possible to provide for a statutory set of regulatory objectives that all regulators should have regard to in conducting their affairs. This flexible stance based on regulatory principles would guide regulators to adopt an aligned approach, which would make their conduct more predictable and fairer to the affected parties.

The use of regulatory objectives has already been tested and is evolving well with regard to the reform of the regulation of legal services under the Legal Services Act 2007. Principles for the regulation of the communications sector might include:

- the need to act in the consumer interest
- the promotion of freedom of expression
- support for a diverse media sector owned by diverse interests with a plurality of voices
- the avoidance of dominance by powerful players
- the need for fit and proper persons to be in control of media organisations
- fairness, transparency and openness in regulatory dealings
- the promotion of innovation and sustainable growth
- participation by people of all backgrounds in the business of communication
- the protection of young people and vulnerable adults
- the right to a meaningful remedy
- consideration of the impact of rapid technological change

This list is not exhaustive. But it would be important not to create an over-extensive series of objectives whose aims were thereby blunted. The regulatory objectives could – for example in the case of competition and plurality – reinforce other explicit statutory provisions and restate the extent to which Parliament regards such provisions as essential to our national economic and democratic well-being. They would need to align themselves with the Human Rights Act, itself under review. However, we believe that the sector is important enough to make this worthy of exploration for its potential benefits.

Appendix – response to questions posed

Q1. What could a healthier communications market look like? How can the right balance be achieved between investment, competition and services in a changing technological environment?

It is essential that any future regulatory landscape takes account of the potential impact on our domestic communications industry of global media ‘superpowers’ such as Google, Facebook, Amazon and News Corporation. All of these organisations have a substantial impact on creativity, content, media plurality, distribution and control. Ministers must look behind siren calls for deregulation from organisations with this level of impact on our domestic markets, but relatively low levels of accountability. These are all operations which at a corporate level do not generate shareholder or investment benefits within the UK, yet exert very significant levels of market control.

A healthy communications market must therefore provide for competition regulation to guard against and protect consumers and the economy from the harmful effects of market dominance and behaviour which restricts or distorts competition. At the same time domestic players must not be burdened with additional regulation to which their extremely large, global competitors are not subject.

Ultimately, it is free and effectively functioning markets that will ensure that the sector remains strong and healthy. In our view, the best approach may not necessarily include an entirely new statutory architecture, which could act as a straight-jacket for an industry which is having to adapt to and accommodate the impacts of very fast-paced change.

Q2. What action can be taken to facilitate greater innovation and growth across the wider competition regime, and how can deregulation help achieve this?

See above. An entirely new Bill may not be the best answer. It is important to retain flexibility in the system, so that the sector can adapt to changing circumstances. Care should be taken to avoid regulatory creep and duplication. Regulation is currently asymmetric and piece-meal, but that does not mean that it is wholly ineffective.

Q3. Is regulatory convergence across different platforms desirable and, if so, what are the potential issues to implementation?

Not necessarily. For example, we believe that it is important to maintain the separation of regulatory regimes regarding balance for broadcasters and newspapers. The public is well used to balance in broadcast news coverage, and the strong broadcast news brands are well suited to delivering that. Any attempts to remove the requirement for balance in broadcasting should be strongly resisted.

Newspapers are different. The public is used to partiality and partisanship in the coverage provided by newspaper brands, and the diversity of opinion, news angles and story selection is a reflection of the strength of our democracy. Accordingly, when newspaper brands move across platforms, from print to digital, it is essential that they are able to maintain their partiality in order to maintain plurality of opinion. The public is well-used to digesting shades of political opinion associated with particular newspaper brands, and factors this in when consuming such news media.

Q4. What barriers can be removed to facilitate greater exports and inward investment and make the UK more globally competitive in digital communications?

In the media sector, the Government should recognise the degree to which many of the emerging global media 'superpowers' are controlled and owned outside the UK. This means that domestic content production and distribution can be crowded out by corporate interests, which are not necessarily well aligned with the public interest or the policy objectives of Government, and which are not subject to the same regulatory regime as UK-based players.

While we would not advocate protectionism, the role of the media in assuring freedom of expression and democratic debate has to be recognised. As such, the ownership structures of large media organisations should be of interest to Ministers who are concerned to assure the continuance of strong and flourishing democratic debate in the UK. Furthermore, Government should take care not to exacerbate the existing regulatory imbalance between the media superpowers and domestic media organisations (see Q1).

While we are not persuaded that an entirely new regulatory architecture is required or desirable in the present circumstances, given its potential inflexibility, we do have some sympathy with the concept of principles-based regulation and regulatory objectives governing all regulatory conduct in the UK media and communications market. The example of the regulatory objectives set out in the Legal Services Act 2007[11] springs to mind as a possible model.

Q5. What further market and regulatory developments would lead to widespread take-up of superfast broadband? What regulatory action would government need to take to make superfast broadband more readily available in a) urban areas; and, b) rural areas?

No observations, save that we would welcome steps to encourage take-up where there are currently significant geographic or demographic gaps, for example among older people or the economically disadvantaged.

Q6. What are the competing demands for spectrum, how is the market changing and how can a regulatory framework best accommodate any rapidly changing demands on spectrum and market development?

No observations.

[11] See http://www.legislation.gov.uk/ukpga/2007/29/section/1. The regulatory objectives are defined in s1 as
(a)protecting and promoting the public interest;
(b)supporting the constitutional principle of the rule of law;
(c)improving access to justice;
(d)protecting and promoting the interests of consumers;
(e)promoting competition in the provision of services within subsection (2);
(f)encouraging an independent, strong, diverse and effective legal profession;
(g)increasing public understanding of the citizen's legal rights and duties;
(h)promoting and maintaining adherence to the professional principles.

Q7. How should spectrum be managed to deliver our growth objectives whilst also meeting our policy objectives of furthering the interests of citizens and consumers in relation to communications matters?

No observations.

Q8. How should the UK engage on an EU/International level in relation to spectrum?

No observations.

Q9. Is the current mix of regulation, competition and Government intervention right to stimulate investment in communications networks?

No observations.

Q10. Are there disproportionate regulatory barriers to investment in content? If so, what are they and how can increased investment in UK content production be encouraged?

Original content creation in the UK is an essential part of our democratic and cultural life. Digital innovation and technology have permitted a wide-scale increase in access to content creation opportunities. The Guardian has changed its journalism to take advantage of this in the interests of its readers, making editorial content creation an open and mutual process, as we have discussed in this submission. Save for the statutory safeguards on taste, decency, and not inciting racial or religious hatred, we see no particular reasons to introduce any form of state regulation of this activity.

Encouragement for the content creation sector starts with a strong Further and Higher Education framework for the development of such capacity in the UK market. Further to that, individual decisions about forms of grant support or tax reliefs to foster certain types of original content creation are a matter for HM Treasury and the Government of the day, having regard to the overall level of resources available to the Exchequer. It seems to us that the generation of original content is an important part of our economy and of our democracy. It is both a knowledge-based and a creative industry and merits appropriate levels of support from Government, including measures to prevent crowding out by non-UK production.

In addition, certain forms of editorial and news content production fulfill an important public interest function, for example court reporting, the reporting of the proceedings and deliberations of local government and reporting the proceedings and deliberation of unelected bodies that nonetheless impact on the lives of citizens. There is concern that, with the pressure on local newspapers that we have seen in recent years, and the growth in local authority self-published ‘freesheets’, this form of editorial scrutiny is seriously on the wane. We recognise the efforts of the DCMS to foster local television; however, we would say that there is potentially an important loss of democratic resource in the decline of local print media, and consideration should be given to what steps Government can take to encourage local newspapers where they fulfill important democratic duties.

Q11. Should the core focus of public service broadcasting be on original UK content?

There is a wide debate on public service broadcasting and this is not the place for it. However, given what we have said above, it seems to us that there are certain outputs of public service broadcasting that may in future be provided by other media businesses, for example local newspapers and their websites. If, therefore, support is to be targeted at UK only content, as this question implies it possibly should, we would argue that support for such content generation in the public interest should be targeted at who is doing the production rather than simply at the organisation because of its history.

Q12. What barriers are there to innovation in new digital media sectors, including video games, telemedicine, local television and education?

No observations.

Q13. Where has self- and co-regulation worked successfully and what can be learnt from specific approaches? Where specific approaches haven't worked, how can the framework of content regulation be made sufficiently coherent and not create barriers to growth, but at the same time protect citizens and enable consumer confidence?

Convergence does create the risk of regulatory creep. We have already provided the example of ATVOD seeking to regulate video content on newspaper websites, which we regard as entirely inappropriate and a fetter on the growth and evolution of the newspaper sector.

Self-regulation of newspapers through the Press Complaints Commission has been found wanting, as we have said above. We believe that self-regulation by newspapers is an important part of our democracy, and Ministers must resist the temptation to regulate the press directly or indirectly through new statutory provisions, as we would become a much less free country as a result. However, it seems clear that the PCC must strengthen its practices and procedures so that it is seen to take strong action where there are unacceptable standards of conduct, as we have seen in the phone-hacking scandal for example. Newspapers should themselves enhance their in-house complaints handling procedures to provide a meaningful and low-cost point of access to a remedy for readers and the wider public.

Clearly, there has been much debate over the evolution of the privacy jurisdiction in recent months. Our view is that the courts are being nudged to a more rational approach, and a new statutory framework is not required. And in broad terms, we welcome the provisions of the Draft Defamation Bill as moving the needle towards a fairer and freer media which acts responsibly and serves our collective democratic interests.