2016 Annual Colloquium on fundamental rights Public consultation* on "MEDIA PLURALISM AND DEMOCRACY"

Fields marked with * are mandatory.

Introduction

Media freedom and pluralism are essential safeguards of well-functioning democracies. Freedom of expression and media freedom and pluralism are enshrined in the EU Charter of Fundamental Rights and they are at the core of the basic democratic values on which the European Union is founded.

The second Annual Colloquium on Fundamental Rights will take place on 17-18 November 2016. It will provide the stage for an open exchange on the many different aspects of media pluralism in a digital world, and the role of modern media in European democratic societies.

The colloquium should enable policymakers at EU and national level and relevant stakeholders — including NGOs, journalists, media representatives, companies, academics and international organisations — to identify concrete avenues for action to foster freedom of speech, media freedom and media pluralism as preconditions for democratic societies.

The Commission's objective with this public consultation is to gather broad feedback on current challenges and opportunities in order to feed into the colloquium's discussions. The questions asked are thus meant to encourage an open debate on media pluralism and democracy within the European Union — without, however, either prejudging any action by the European Union or affecting the remit of its competence.

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- ○ Yes, my contribution may be published under my name (or the name of my organisation);
- ○ Yes, my contribution may be published but should be kept anonymous (with no mention of the person/organisation);
- ◉ No, I do not want my contribution to be published. (NB — your contribution will not be published, but the Commission may use it internally for statistical and analytical purposes).

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A. Identifying information

1. In what capacity are you completing this questionnaire?

- ○ Individual/private person
- ○ Civil society organisation
- ◉ Business
- ○ Academic/research institution
- ○ Other (please specify)

2. If you are answering this consultation as a private citizen, please give your name.

3. If you are answering this consultation on behalf of an organisation, please specify your name and the name of the organisation you represent.

Guardian Media Group is a British-owned, independent, news media business. Its subsidiary, Guardian News & Media (GNM), is the publisher of theguardian.com and the Guardian and Observer newspapers.

Is your organisation included in the Transparency Register?

- (●) Yes
- ( ) No

If yes, please indicate your Register ID-number

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If your organisation is not registered, we invite you to register here. Please note that it is not compulsory to register to reply to this consultation. Responses from organisations that are not registered will be published as part of the individual contributions.

Citizens have a right to expect that European institutions' interaction with citizens associations, NGOs, businesses, trade unions, think tanks, etc. is transparent, complies with the law and respects ethical principles, while avoiding undue pressure, and any illegitimate or privileged access to information or to decision-makers. The Transparency Register exists to provide citizens with direct and single access to information about who is engaged in activities aiming at influencing the EU decision-making process, which interests are being pursued and what level of resources are invested in these activities. Please help us to improve transparency by registering.

4. If you are an individual/private person:

a) What is the country of your nationality?

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ United Kingdom
- ☐ Other (please specify)

Other (please specify)

b) What is your age group?

- Under 18
- 18-30
- 31-40
- 41-50
- 51-60
- 61-70
- Over 71

B. Media freedom and pluralism

5. In the context of media freedom and pluralism, what should be the role of the State, if any, in the regulation of media? What should be the role of self-regulation?

In the United Kingdom, GNM has experienced moves by Parliament and Government to impose onerous regulation on the news media. In 2013, a Royal Charter on press regulation was established, which incorporated key recommendations from an inquiry into the culture, practices and ethics of the British press (The Leveson Inquiry). The Charter embeds into law a system of press regulation that allows one or more independent self-regulatory bodies to be established. Any such body would be recognised and overseen by the Press Recognition Panel (PRP) and those publishers who joined a recognised regulatory body might expect to receive more favourable treatment if action was taken against them in the courts. Further details of this are set out below.

There is currently no recognised regulator. Some newspapers have signed up to the Independent Press Standards Organisation (IPSO), which has no intention of applying for recognition by the PRP. A number of small publications have joined IMPRESS, which aims to be “Leveson-compliant” and is awaiting the outcome of its application for recognition to the PRP.

GNM does not support the PRP process. GNM has been clear that it views Parliament's decision to use a Royal Charter as its chosen tool as opaque and medieval. Despite emerging in the aftermath of the Leveson Inquiry, the idea of a Royal Charter did not feature anywhere within that substantial report. Three national news organisations, including the Guardian, are not currently members of either IPSO or IMPRESS, deciding instead to put in place their own self regulatory arrangements in place.

GNM’s decision to remain outside of the Government’s process, and the process of regulation pursued by the majority of industry, is a reflection on the inadequacies of the current candidates to become regulators. It is also a reflection of the fact that the "deal" on press regulation was struck without the consensus required to give that settlement credibility, outlined at question ‘6’.

The use of a Royal Charter to embed a system of press regulation is an example of a growing trend amongst policymakers to seek a middle ground solution between self-regulation and full state-backed regulation. The Royal Charter creates a system of apparently voluntary self-regulation, enforced through potentially swingeing and punitive statutory costs clauses (in the Crime & Courts Act 2013) that have the potential to significantly impact a news industry that is already undergoing significant financial stress. This approach has led to on-going arguments between, on the one hand, those who believe that the Royal Charter is an appropriate way to implement the Leveson report and, on the other hand, those who believe that the involvement of the state in the regulation of the press is a step too far (the latter being mainly members of the established press).

GNM believes the interests of press freedom are best served by a system of industry self-regulation, whether by a body such as IPSO, or on a publication-by-publication basis. That was the underlying thrust behind the Guardian and Observer's decision to establish their own independent system of self-regulation. This includes an Editors' Code of Practice, a Readers' Editor and a Review Panel. The last of these is to ensure independence, so that where complainants do not feel their issues have been adequately resolved through the internal complaints procedures, they have the chance to have their complaint adjudicated by an independent panel.

6. Could you provide specific examples of problems deriving from the lack of independence of media regulatory authorities in EU Member States?

GNM believes that the Royal Charter settlement is a significant example of a political settlement that was imposed on the media industry, rather than a settlement informed by industry experts and reached in agreement with industry.

GNM has publicly outlined its substantive concerns about the provisions on exemplary damages and costs that are set out in the Crime and Courts Act 2013 (CCA), which seek to impose punitive financial penalties if publications do not join a regulator. Not least, there are serious issues about whether these provisions contravene Article 10 of the European Convention on Human Rights. The provisions of the CCA appear to have been drafted with undue emphasis on penalising a publisher defendant, without recognising the potential for claims to be made by an unreasonable claimant. These clauses also provide for an element of double jeopardy, in the sense that even if one is a member of an approved regulator and has been fined by that regulator, the clauses in the CCA enable a judge to punish a publisher again.

There is considerable uncertainty about the operation and implementation of many of these provisions, and we would be happy to provide a more detailed briefing on this topic if helpful.

7. What competences would media regulatory authorities need in order to ensure a sufficient level of media freedom and pluralism?

Please see questions 11 and 12 for a discussion of current plurality and media ownership rules.

The complexities of media convergence mean that it is not just press regulators and media ownership rules that contribute to media freedom and pluralism. Relevant regulators include those that oversee news content such as video and those that oversee areas of internet regulation such as net neutrality. If legislation is to act as a framework to promote media pluralism, it must recognise the various stages of the consumption of content. That means looking beyond the creation and publication of that content to other areas including the promotion and discovery of content, the way that it is customised and targeted, and the systems by which it is delivered. Two examples demonstrate the complexity of plurality.

First, in June 2016, Facebook published its "News Feed Values" for the first time, a set of guidelines that set out the principles that sit behind its news algorithm. In parallel, Facebook made changes to its algorithm to favour content from friends and family, as opposed to news publishers that users 'like' on the Facebook platform. The list of values set out the basis on which Facebook sets the parameters of the News Feed algorithm. The changes came a month after Facebook came under attack following a Gizmodo report that Facebook was 'suppressing' certain types of news in its trending topics section.

GNM has historically worked productively with Facebook. Yet in common with many news publishers, GNM was given no warning of the changes to the news algorithm. The shift of bias towards content from friends and family is likely to have significant consequences, potentially increasing the polarisation of views by reinforcing pre-existing biases. The focus of the revised algorithm on the virality of news content is also likely to result in a reduction in the distribution of professional, properly sourced, accountable journalism. GNM's concern is that the outcome of these changes will be to reduce user exposure to a plurality of voices, question 33 below for further details.

Second, digital publishers' business strategies increasingly rely on the ability to understand how, when, where and by whom their content is consumed. This information is vital to enable the development of business models around the display of advertising to consumers of that content, and also to enable news brands to adapt their business models, products and services to take into account trends in consumption by an evolving global audience. The very largest digital intermediaries own vast data pools about each individual, having accrued and refined significant data about their user base on an individual and in aggregate level. A recent Princeton study (https://webtransparency.cs.princeton.edu/webcensus/) to audit which companies are engaged in tracking users across the web has revealed the dominance of Google and Facebook and "shows Google and Facebook in a more dominant position than ever. Google Analytics was by far the most popular third party, present on 61 percent of sampled websites. DoubleClick and Google's GStatic service

took second and third place… Google owns seven of the 10 most loaded third-party domains. The remaining three are all owned by Facebook."

While the Princeton study found that news websites are most likely to have the most trackers present on their websites, the reality is that news publishers such as the Guardian have a fragment of the insight that digital intermediaries such as Facebook are able to offer advertisers. As platforms such as Facebook further automate the collection of data about individuals using techniques such as artificial intelligence, this gap in insight is likely to increase. In the context of media plurality, it is likely that smaller independent publishers will find it even harder to compete in the advertising market against the insight advantage that digital intermediaries can offer. The ability of these very large platforms to accrue such a mass of granular data on billions of users is creating an enormous imbalance in power between large platforms on the one hand, and publishers on the other, impacting on the ability of digital news publishers to create sustainable businesses. Over time, this will ultimately impact on the range of voices creating and publishing journalism online.

We note the European Commission's Digital Single Market programme and other work on the digital economy. In GNM's response to the European Commission consultation on Online Platforms, we argued that there is currently an asymmetry of both power and regulatory burden between publishers and platforms. A goal of the Digital Single Market should be to ensure publishers can reach a reasonable, fair and equitable settlement for distribution of the content in which they invest, across these dominant digital platforms.

8. What should be the role of public service media for ensuring media pluralism?

In the UK, the role and remit of the BBC has just been subject to extensive examination through the review of the BBC's Royal Charter. This process has included a substantial focus on the relationship between the BBC and its commercial competitors.

The current BBC White Paper does not argue that the BBC should reduce its scale or scope, or that it should sell commercial assets. However it does state that the BBC's content must be distinctive and it has been suggested that this would mean that 'soft news' on the BBC news website would not be allowed. The BBC will be expected to share its content more widely, and to open up its archive so that the public and other broadcasters are able to share in it. On Governance, the BBC will be externally regulated by Ofcom but with a unitary BBC Board.

GNM believes that the settlement is, broadly speaking, positive in terms of preserving the BBC's funding and independence, whilst also recognising the impact that the BBC has on the wider market. It is not perfect - the question of the composition of the unitary board is controversial, with the Government

looking to appoint key figures such as the Chair and Deputy Chair. The BBC is right to raise concerns about the government using a right to appoint at least half the membership of the board to influence the direction of the Corporation. However, the Government's White Paper proposals such as National Audit Office oversight of the BBC's accounts, and Ofcom scrutiny of the performance of BBC commercial subsidiaries, could drive a new level of accountability around how the BBC spends an annual budget of £4 billion of public money.

The new regulators of the BBC will however need to display vigilance to ensure that the BBC abides by its Charter obligations in relation to cooperation with the private sector. The BBC has for example, consistently missed targets set for it to link out from the BBC's website to those of its commercial competitors. A linking policy was set out by the BBC Trust in BBC Online's service licence. In May 2013, the BBC Trust reviewed that service licence, setting out that BBC online should "encourage users to broaden the range of their media consumption by offering links to external websites and other functions which allow users to navigate beyond BBC Online." The Trust's review document set a "service licence target to provide 22 million monthly external click-throughs by 2013/14", and an expectation for "BBC management to continue to increase the number of external click-throughs, and make them more effective and consistent across the products." The BBC Executive's Performance against Public Commitments (PAPC) report in 2013/2014 listed the volume of click-throughs as falling well short of the 22 million monthly target, standing at 16.75m, over 20% below target. This number grew to 17.8 million in the 2014/2015 PAPC report, still 19% below the target set for the BBC Executive in 2013.

Given this experience, GNM agrees with measures in the Government's White Paper to exert far tighter control over the BBC's online news presence. We would like to see those parameters clearly set out in service licences, not just as voluntary commitments. Those licences should ensure that the BBC will meaningfully attribute the source of stories, step up its commitment to linking out to external commercial sites, and consider how it hosts external content within the BBC's walled garden.

In these uncertain financial times for news publishers, the BBC's certainty of funding and prescribed position as the principle gatekeeper of the public sphere should bring significant regulatory responsibilities. It is vital that the BBC accepts this responsibility by fostering improved partnerships with news publishers in the commercial sector.

9. How should public service media be organised so that they can best ensure the public service mandate?

As noted above, the governance and transparency of the BBC has been reviewed and the organisation will be externally regulated by Ofcom but with a unitary Board. In addition, the National Audit Office will be the financial auditor, and we believe that this independent oversight is a good step forward for financial and operational accountability. There are also some additional reporting requirements: expenditure must be reported by genre, including news, and expenditure on highest earners should also be reported.

During the review of the BBC's arrangements we argued that previous oversight and transparency arrangements were built for a different age. At the heart of our concerns is a desire for fair competition with the BBC where we compete with them commercially. We have been concerned about cross-subsidy between the publicly funded and commercial arms of the BBC's news divisions. The White Paper sets out that Ofcom is the right body to put in place a fair trading framework that sets out the principles by which the BBC's public service broadcasting activities and its commercial activities interact in order to ensure they do not unduly distort competition in the market. The BBC board will take primary responsibility for ensuring compliance with these rules. To give industry confidence that the BBC is operating fairly, Ofcom will be responsible for considering appeals from stakeholders under the framework about the BBC's activities, and how the BBC has assessed fair trading complaints. Ofcom will also have the ability to step-in to review concerns about fair-trading and to impose requirements in relation to interaction between the BBC's public service broadcasting activities and new commercial subsidiaries. This reform is a positive step forward to ensure that the BBC achieves its public service mandate, without unduly impacting on the commercially funded activities of the rest of the market. However, there is a strong case for the BBC being prevented from competing with commercial media where they are using state aided assets in order to do so.

10. Have you experienced or are you aware of obstacles to media freedom or pluralism deriving from the lack of independence of public service media in EU Member States?

- (●) Yes
- ( ) No

If yes, please give specific examples.

While the BBC's role as an impartial provider of news is vital in a world of information abundance, the obligation to be impartial - in addition to the Parliamentary scrutiny that the BBC receives as a result of its unique funding arrangement - means that the BBC sometimes appears unable to pursue stories that are challenging for the Government of the day with the same vigour as independent commercial news organisations can.

For example, throughout the reporting of the Snowden files, we were concerned about the unwillingness of the BBC to cover the consequences of the intelligence agencies actions for citizens in more depth. Coverage often focused on the harm done as a result of the disclosure of the data, rather than the implications of the revelations for the privacy of individuals in the UK and overseas. In her book, "This New Noise", Charlotte Higgins interviewed Professor Richard Sambrook, now an academic at Cardiff University, formerly a journalist and executive at the BBC for 30 years. Sambrook believes that "If Edward Snowden had contacted Panorama or Newsnight could they have been able to do a piece at a meta-level, a headline level, but they could not have done what the Guardian did with Snowden. I find it uncomfortable to say that but it's the truth. So what does that tell you about the BBC? It tells you that in the end there is a limit to its independence. We thought we were genuinely independent. And we weren't."

The Snowden case study demonstrates why a media plurality framework that helps to support the existence of multiple well-funded professional commercial news organisations to thrive is so important. And furthermore, why the interaction between the media plurality framework and rules around the use of State Aid to fund the commercial ventures of public service media are vital to ensuring that the commercial sector is given room to invest in - and expect a return on - challenging, high quality, independent journalism.

11. Are you aware of any problems with regard to media freedom and pluralism stemming from the lack of transparency of media ownership or the lack of rules on media ownership in EU Member States?

- (●) Yes
- ( ) No

If yes, please give specific examples.

In the UK, the current framework for safeguarding plurality is very narrow, with protections being restricted to the Public Interest Test, which was introduced by the Communications Act 2003 (which in turn amended the Enterprise Act 2002). By way of background, the issue of media plurality shot up the agenda in 2011 following News Corporation's attempts to acquire BSkyB.

Fundamentally, plurality needs to be protected for the good of consumers of news in a democratic society. All other criteria and objectives such as encouraging multi-sourcing, low barriers to market entry, commercial sustainability and high reach and consumption should contribute towards protecting consumers from a restrictive set of news and opinions.

UK policymakers have long recognised the benefits of being exposed to a range of voices, including the outgoing Prime Minister David Cameron, politicians across the party political spectrum, and the telecommunications regulator Ofcom. In its 2013 report on Media Ownership and Plurality, Ofcom states that "the principle remains that the Government should seek to promote the availability and consumption of a range of media voices".

Following the publication of the Leveson Inquiry, there has been a lack of clarity about which institution in the UK policy arena is responsible for the development and implementation of plurality policy and what action should be taken to change the rules that govern media plurality. Under the previous coalition government (which ran from 2010 - 2015) politicians committed to bring forward a Communications Bill which was expected to solidify the media plurality framework in the UK. However, moves to do so have been repeatedly delayed.

Ofcom was asked by the Secretary of State for Culture, Media and Sport in 2011 to develop a measurement framework for media plurality. This framework can be used to assess media plurality in the UK and in each of the nations. It has now concluded and we are unaware of when or whether it will be used. GNM welcomed Ofcom's intention to include media ownership and online platforms in the measurement framework. However, in evidence to Ofcom, GNM noted that the framework was a relatively blunt tool, focusing primarily on objective metrics, with little to no focus on more subjective tests of media plurality such as influence on public affairs.

We remain concerned that over the last two or three years, substantive consideration of the issue appears to have been shelved by the Government. We agree with Ofcom's position that it is for the Government and Parliament to address the question of what constitutes 'sufficient' media plurality. GNM believes that it is also for these two bodies to set out legislation that gives Ofcom the powers and guidance to be an independent protector of plurality.

12. Please indicate any best practice on how to ensure an appropriate level of transparency and plurality of ownership in this area.

In the GNM response to the House of Lords Communications Committee 2013 inquiry into media plurality, we suggested a range of competences that should sit with member state regulators. These suggestions hold true today, and include:

"44. Ofcom should be required to review plurality at regular intervals, not just at the point of transaction, thereby enabling emerging threats to plurality to be identified. In its report on plurality, Ofcom stated that an appropriate timeframe was a periodic review of plurality every four or five years.

45. If Ofcom finds that there is insufficient plurality, it would have the power to ask the Competition Commission to investigate further and devise remedies. The new framework would also allow Ofcom to initiate public interest interventions in media mergers as well as the Secretary of State, as recommended by the Lords Communications Committee in its 2008 First Report. Ofcom has suggested that a review of media plurality take place every four to five years, which would provide certainty to the market, and prevent a decision on whether to review being subject to the discretion of a politician or Ofcom.

46. We also believe that Ofcom's ability to review media plurality should not fall victim to the Government's attempts to reduce the regulator's powers. For example, the duty of Ofcom to review the media ownership rules every three years (section 391 of the Communications Act 2003) was changed through the Public Bodies Act 2011 so that a review will be conducted at the discretion of the Secretary of State. This regime negates the significance of natural growth or attrition and fails to provide a framework that can cope with more significant shocks such as the closure of a title. The requirement that Ofcom reviews plurality periodically, not just at the point of transaction, is the only suitable way to deal with this.

48. Periodic reviews should not detract from the requirement that Ofcom initiate an immediate review upon a proposed transaction.

49. If a transaction is proposed then Ofcom should asses the impact on plurality based on four criteria …

i. News market share
ii. Platform dominance
iii. Distribution dominance
iv. Influence on public affairs

50. Some of the factors above are principles-based, some might be more suited to objective testing and others not. The respective role of elected politicians and regulatory bodies is not straightforward. However we should bear in mind the balance in the roles played by the regulator and the Secretary of State in the proposed takeover of BSkyB by News Corp. Ofcom should, we believe, have responsibility for establishing what are the circumstances that (a) best promote plurality; and (b) produce efficient and effective decision-making processes."

13. What is the impact of media concentration on media pluralism and free speech in your Member State? Please give specific examples and best practices on how to deal with potential challenges brought by media concentration.

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Though explicit and implicit in statute, media concentration has only been
measured to date through the proxy of news market share.

In 2013, News Corp attempted to buy BskyB, a proposed transaction which raised
plurality issues under the UK competition regime under the rules referred to
in '7'. The events which occurred have been well documented, and led to the
collapse of the deal and the establishment of the Leveson Inquiry. They
demonstrated the inadequacies of the existing media plurality framework to
take into account what Ofcom Chief Executive, Ed Richards described as
'political influence' in his evidence to the Leveson enquiry. The News Corp
takeover of BSkyB was only averted because Parliament exerted enough pressure
to delay the plurality judgement, at which point the existence of the
phone-hacking scandal at The News of the World came to light. The threat of
supra-parliamentary powers had to compensate for weak media ownership rules.

The publication of all of the correspondence relating to the News Corp
takeover of BSkyB only occurred because the Leveson inquiry was triggered by
GNM's exposure of phone hacking at the News of the World. Lord Justice Leveson
commended the role of the Guardian in exposing wrongdoing at the News of the
World, stating: "That is, indeed, the function of the press: to hold those
with power to account. It is, in fact, what the Guardian did in relation to
the News of the World". As Lord Leveson states, this additional transparency
is required to ensure that there can be no accusations of any referral being
made for political reasons.

As such, GNM supports Lord Leveson's recommendation that the Secretary of
State be required to make public his reasons for referral; and further, that
all correspondence relating to a transaction be published, serving to remind
interested parties and politicians of the quasi-judicial status of the
process.
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14. Are you aware of any problems related to government or privately financed one-sided media reporting in the EU?

- Yes
- No

If yes, please give specific examples.

15. Please indicate any best practice to address challenges related to government or privately financed one-sided media reporting while respecting freedom of speech and media pluralism.

C. Journalists and new media players

16. What is the impact of media convergence and changing financing patterns on quality journalism?

In a recent article on “How technology disrupted the truth”, GNM Editor in Chief Katharine Viner wrote that “The shift to digital publishing has been a thrilling development for journalism…it has induced “a fundamental redrawing of journalists’ relationship with our audience, how we think about our readers, our perception of our role in society, our status”. It has meant we have found new ways to get stories… new ways to tell stories…new ways to distribute our journalism, to find new readers in surprising places; and it has given us new ways to engage with our audiences… But while the possibilities for journalism have been strengthened by the digital developments of the last few years, the business model is under grave threat, because no matter how many clicks you get, it will never be enough. And if you charge readers to access your journalism you have a big challenge to persuade the digital consumer who is used to getting information for free to part with their cash.”

In “Brexit dismal media outlook” - published on 1st July, analysts Enders suggested that in a post Brexit world, in 2016 they expect conditions to deteriorate further:

- National newspapers advertising growth at -20 to -25%
- Local advertising growth at -10 to -20%
- Digital advertising growth at 10 to 16%

In the context of digital advertising growth, the vast majority of increases are going to the two dominant platforms: Google and Facebook. Morgan Stanley analyst Brian Nowak has suggested that “in the US, 85 cents of every new dollar spent on digital went to the two companies in the first quarter of 2016." Online publication Digital Context Next has calculated that "Using Facebook and Google’s public earnings, it’s very simple to back into the math…. These calculations show nearly 90% of the growth going to the two companies. If you’re in the “Everyone Else” group, you’re competing for $300 million of the $2.7 billion in Q1 growth."

Katharine Viner adds “The number of journalists in the UK shrank by up to one-third between 2001 and 2010; US newsrooms declined by a similar amount between 2006 and 2013. In Australia, there was a 20% cut in the journalistic workforce between 2012 and 2014 alone. Earlier this year, at the Guardian we announced that we would need to lose 100 journalistic positions. In March, the

Independent ceased existing as a print newspaper. Since 2005, according to research by Press Gazette, the number of local newspapers in the UK has fallen by 181 - again, not because of a problem with journalism, but because of a problem with funding it."

The emergence of new intermediaries such as ad blockers threaten to further undermine crucial revenue streams for news publishers. Three Group intends to deploy Shine's Technologies' technology network level ad blocking across Three's networks in Italy and the UK. Three's stated objective is to improve consumer experience but it is clear that these measures arise from commercial, rather than consumer considerations. While ads served by individual publishers such as the Guardian would be blocked, Three's technology would not impact on advertising served within Facebook's ecosystem. This would leave publishers in a situation where they would have to pay Three to serve ads - or join them in some kind of acceptable ads policy - while the very largest, increasingly dominant platforms ability to serve ads is unaffected. In so doing, ad blocking creates a further cost of business for independent news organisations, further jeopardising the financial sustainability of high quality journalism.

One further area that could impact on the consumption of news is the move by some telecoms providers to zero rate social services on mobile networks. In June 2016, it was announced that Ireland's eir network has agreed the deal to zero rate Facebook, Twitter and Instagram. This could drive readers away from the consumption of news content via first party publisher websites, and towards consumption on third party platforms. While GNM embraces distribution via search and social platforms, the reality is that publishers are in a weaker commercial position where they depend on striking deals with platform owners and where content is viewed away from the first party publisher website.

Furthermore, in the longer term, the consumption of news via social media portals has the potential to undermine the relationship between consumers and the news brands that they historically knew and trusted. In an increasingly complex digital world, GNM strongly believes that preserving the connection between citizens and independent trusted news brands is important, and that commercial deals which further undermine this link should be subject to close regulatory scrutiny. While the context of this scrutiny is likely to be through the lens of the Net Neutrality Regulation, it is vital that ensuring media plurality is seen as one of its aims.

17. Have you ever experienced, or are you aware of, any limitation imposed on journalistic activities by state measures?

- (●) Yes
- ( ) No

If yes, please give specific examples and further information, including justifications given by authorities and the position taken by journalists.

There has always been a considerable amount of limitation imposed on journalistic activities by state measures in the UK compared to, for example, the United States. So we have operated for many years in a situation where we have very restrictive defamation laws which put the burden of proof on the media, and contempt of court laws around reporting of the criminal. There has also been in recent years an increased tendency to introduce wide ranging criminal provisions which impact on journalists - such as the Bribery Act and various Terrorism Acts which have no express public interest or journalism protections. Nonetheless we also acknowledge, that the UK, by for example abolishing blasphemy laws and decriminalising defamation, which is still prevalent in many EU states, is progressive and liberalising. In addition to the moves to impose press regulation set out above, GNM highlights three examples of attempts to impose limitations on journalistic activities.

First, the Government recently introduced the Investigatory Powers Bill, which seeks to regulate surveillance of UK citizens. The Bill contains severe threats to journalists' confidentiality and protection of sources, and a lack of safeguards against improper access to the communications data of journalists by law enforcement agencies. Communications data can reveal a journalist's sources and a whole range of activity, tracking phone records that include time, place and contact. While GNM welcomes some safeguards in place to provide additional protection for journalists' communications, these protections do not go far enough. A coalition representing the news media industry, NGOs, unions and bodies representing news media editors, have all expressed concern about the lack of appropriate safeguards to prevent the Government accessing journalistic communications. At the heart of our concerns, is a determination on the part of the Government to prevent journalists - and the media organisations they work for - having prior notification to law enforcement and intelligence agency requests to access the communications data and content of journalists. We would be happy to provide further detail on this issue if of interest.

Second, there have been attempts to reduce the transparency of Government through limiting the availability of freedom of information (FOI) requests. News media organisations such as GNM have a keen interest in ensuring that the FOI regime works in the public interest and that journalists are able to scrutinise the activities of public bodies. In the UK, the Freedom of Information Act 2000 has been a powerful tool for uncovering wrongdoing, inefficiency, and incompetence as well as for revealing the challenges that public authorities face. The Act has been subject to repeated attacks from politicians since its introduction, and in 2015 the Government-appointed Commission (heavily weighted with anti-FOI members) was established as a response to the Supreme Court ruling of R (Evans) v Attorney General. The Commission considered a number of possibilities for reducing the operation of the Act. Happily, the proposals were dropped following widespread anger from many areas, however we would be surprised if no further moves were made in the future on this topic.

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Third, we have seen a trend towards the privatisation of public services and
institutions in a manner that reduces transparency. Given that many
transparency obligations apply only to public sector organisations,
privatisation narrows the availability of data.

One current example of this trend is the move by the Government to privatise
the Land Registry, the body which holds data on land and property ownership.
Land Registry data plays a key role in the day-to-day activities of many
journalists who produce high quality investigative journalism in the public
interest, for example in the case of the Panama Papers. GNM is concerned that
the privatisation of the Land Registry would skew the strategic incentives of
the leadership of a privatised Land Registry to seek to further monetise
access to vital ownership data in the future, making it prohibitively
expensive to access data in useful quantities. It would take it out of the
realm of FOI and could water down obligations to maintain publication of
existing data at reasonable rates, monitor standards and instruct the release
of new datasets.

Other legislation that is relevant includes the Bribery Act 2010, which limits
publishers ability to pay whistleblowers for stories, and the Official Secrets
Act which has been used by the Government to attempt to make Guardian
reporters disclose their confidential sources about the phone-hacking scandal.
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18. Please indicate any best practice that reconciles security concerns, media freedom and free speech in a way acceptable in a democratic society.

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Please see details of the Investigatory Powers Bill in the answer to question
17 above.
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19. Have you experienced, or are you aware of, limitations related to privacy and data protection imposed on journalistic activities?

- (●) Yes
- ( ) No

If yes, please give specific examples and further information.

In addition to the challenges we have noted elsewhere in this response, commentators have claimed that data protection laws are ‘the new libel’. In our experience, we have seen an increase in actions taken against the media under UK data protection rules, specifically the Data Protection Act 1998 (“DPA”). An example of this is Steinmetz and others v Global Witness Limited which concerned whether the DPA can be used to prevent an NGO from reporting allegations of corruption by a multi-billion dollar international mining conglomerate. Subsequently, the European Court of Human Rights considered the issue in Satakunnan Markkinapörssi Oy And Satamedia Oy V. Finland. The judgement confirmed the point made by the UK Information Commissioner’s Office’s recent guidance on data protection and the media, that there is no blanket protection for journalistic activities under the data protection legislation.

In relation to privacy rules, we note the recent development in the case of Supreme Court Judgment in PJS v News group, which was met by the UK media industry with significant concern. The Supreme Court ruled to uphold an anonymised privacy injunction that had been obtained in order to prohibit publication of the details of a sexual encounter between him and two other people. The judgement concluded that, notwithstanding considerable volumes of internet publications and articles in the press outside of this jurisdiction, it was not pointless to maintain the interim injunction. This constitutes an erosion of media freedom, with the press unable to report that which is available to the public online. We question whether this is fair, and note that it will also drive users to consume news online via platforms rather than news media organisations, due to an arbitrary distinction.

20. Have you experienced, or are you aware of, problems linked to hate speech and threats directed towards individuals exercising journalistic activities?

We have undertaken a detailed review of the problems that many people in public life, politicians, campaigners and journalists - including the Guardian's own editorial team - face from hate speech and threats. We have published these findings at https://www.theguardian.com/technology/series/the-web-we-want.

Katharine Viner, editor-in-chief of Guardian News & Media, explained the rationale for the review:

"It's an attempt to imagine what the digital world could and should be: a public space that reflects our humanity, our civility and who we want to be. It asks big questions of all of us: as platform providers, as users and readers, as people who write things online that they would never say in real life… Since the Guardian opened up its online articles to comments by readers in 2006, tens of thousands of conversations have taken place below the line between readers and journalists, and between readers and other readers. Many of these conversations have been excellent; thoughtful, engaged and rewarding. But some subjects - latterly Islam, refugees and immigration- have become magnets for racism and hate speech, while others - feminism, domestic violence and rape - can attract highly misogynistic responses."

As part of this series, the Guardian commissioned research into the 70m comments left on its site since 2006 and discovered that of the 10 most abused writers eight are women, and the two men are black. To date, 1.4 million comments (2% of the total) have been blocked by Guardian moderators because they violated the Guardian's community standards. Most of these are abusive to some degree (they may use insulting language, or be ad hominem attacks) or are so off-topic that they derail the conversation.

We have also undertaken a confidential staff survey to understand the experiences of our editorial colleagues. We found that a significant majority of journalists have, in the last five years, experienced comments on the Guardian site or on social media, which they felt went beyond acceptable criticism of their work to become abusive. The figure was slightly higher for women than for men.

We believe that the experiences of these journalists are similar to those at other publications and to those in comparable professions, such as politicians. The survey was undertaken on a confidential basis but we would be happy to discuss some of the general findings with representatives of the Commission if that would be helpful.

21. Are you aware of cases where fear of hate speech or threats, as described above, has led to a reluctance to report on certain issues or has had a generally chilling effect on the exercise of freedom of speech?

- (●) Yes
- ( ) No

If yes, please give specific examples and further information.

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In our staff survey, a majority of respondents agreed that online abuse of
journalists affects journalism negatively, and slightly under half agreed that
it creates poor conditions for press freedom. Anecdotally we have heard from
several people at various publications that there are journalists who have
moved away from writing about certain topics that proved controversial.
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22. Have you experienced, or are you aware of, problems concerning journalists' safety and security in the EU?

- ( ) Yes
- ( ) No

If yes, please give specific examples.

23. Please indicate any best practice for protecting journalists from threats against their safety and security.

24. Have you ever experienced or are you aware of pressures put by State measures on journalistic sources (including where these sources are whistleblowers)?

- (●) Yes
- ( ) No

If yes, please give specific examples.

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Please see the answer to question 17 above. In addition, we also note our
experience following our publication of files released by Edward Snowden in
2013. The activity of law enforcement culminated in the destruction of
computer hard drives containing information provided by the whistleblower, the
exile of the whistleblower who has now claimed asylum in Russia, and the
detention of journalist Glenn Greenwald's partner David Miranda at London's
Heathrow Airport under Schedule 7 of the Terrorism Act 2000. This latter event
led to a court case, David Miranda v Secretary of State for the Home
Department, which found that the powers used to detain Miranda were flawed.
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25. How would pressures on journalistic sources be best addressed?

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GNM is currently undertaking a project to understand the current climate for
whistleblowers operating in a digital world in which communications can easily
accessed and traced without the knowledge of journalists or the media.
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26. Please indicate any best practice for protecting the confidentiality of journalistic sources/whistleblowers.

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Please see question 25.
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27. Have you experienced, or are you aware of, censorship (including self-censorship) in the EU?

- (●) Yes
- ( ) No

If yes, please give specific examples.

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Please see our answers to questions 17 and 21.
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28. Have you experienced, or are you aware of, any obstacles to investigative journalism, which may include legal provisions in force or a lack of resources?

29. Do you consider that the level and intensity of investigative journalism, the number of journalists engaged in such activity, the resources available, the space in print and the time available in audiovisual media for the publication of results of investigations has changed over time?

- (●) Yes
- ( ) No

If yes, please give specific examples.

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Please see our answer to question 16.
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30. Please indicate any best practice facilitating investigative journalism

D. Hate speech online

31. What would be the most efficient ways to tackle the trivialisation of discrimination and violence that arises through the spreading of hatred, racism and xenophobia, in particular online?

GNM believes that education and digital citizenship must play a role in reducing online discrimination, hatred, racism and xenophobia. This may be in the school classroom context, and we also believe that there is a need to examine the roles of law enforcement agencies, tech companies and publishers. We have heard of examples where reports to the police of malicious hate speech and threats against journalists have been met with a response along the lines of “why don’t you leave the social media site?”. We believe that this is similar in other public professions. We note that for many, social media sites are increasingly a core part of their profession – many journalists use sites such as twitter as a professional tool – and therefore there is no real choice but to engage.

In the UK, in the aftermath of the EU Referendum, the task of improving police awareness and practice is particularly pressing as there has been a sharp rise in hate crime reported to police, including online hate crime. The amount of hate crime reported to British police online, including some assaults, increased by more than 500 per cent in the week after the country voted to leave the European Union, according to the National Police Chiefs' Council. Several public figures have been subject to threatening abuse, racist abuse and death threats on the basis of their position on Brexit, for example the MP David Lammy.

GNM believes that where this abuse is online, platforms have responsibilities on this issue too, including in relation to publishers. We note the Commission’s recent Code of Conduct on illegal online hate speech (“the Code”). While we welcome the direction of travel in giving these issues increased consideration, we note that the Code must be considered first steps rather than the solution. The content that has been targeted under the code is expressed as being illegal, and as such should already be banned, and so we question whether a broadly drafted and voluntary Code is adequate.

We are disappointed that, as far as we are aware, publishers have not been consulted in the drafting of the Code, and there are several ambiguous areas where it is not clear what the impact on publishers and journalists will be. For example we may be included in “cooperation between [IT Companies] and other platforms and social media companies to enhance best practice sharing” but it is not clear how. We believe that this lack of consultation does not recognise that some of the signatories to the Code are, in effect, gatekeepers to news content and therefore the decisions that they make about the availability or removal of news content are decisions about the public interest and freedom of expression.

GNM believes that the Commission should, in the formulation of codes such as this one and in its wider policy, consider how tech companies’ private commercial interests can impact upon the sharing of news content and on the effective censorship of news content. There may be situations where additional obligations should be imposed on tech companies. For example in this instance it may be appropriate, when content is published by a third party website posted on social media and then removed by the tech company, for a tech company to first contact that third party website.

32. How can a better informed use of modern media, including new digital media ('media literacy') contribute to promote tolerance? Please indicate any best practice.

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Platforms and sites that host conversations, including GNM, have
responsibilities to set standards for the kinds of conversations that they
want to see. Our community standards and participation guidelines are
available on the website and cover all aspects of community interaction and
moderation on the Guardian website, including comments on blogs or articles.

We have given our comments and moderation policy very close consideration, and
continue to consider whether there are situations where we should encourage or
remove discussions. For example, we took a decision at the beginning of 2016
to, as a default position, remove comments from articles about race, migration
and Islam because an overwhelming majority of these comments tend towards
racism, abuse of vulnerable subjects, author abuse and trolling. In many
cases, conversations were then channelled to a handful of articles on a given
topic.

Our journalism and our relationship with our readers is distinctive, and a
core part of that relationship results from our open approach to journalism:
we want to be engaging with our readers in constructive debate, building
stories together, learning from our readers.  We have lots of communities who
find each other below the line on our website, and our journalists use social
media to get stories. For example The Counted, a Guardian investigation in the
US, revealed the true number of people killed by law enforcement and told the
stories of who they were. We did this via an interactive, crowd-sourcing data.


Therefore, decisions to reduce the ability to comment are taken carefully,
walking a line between, on the one hand freedom of expression and, on the
other, upholding a debate that is constructive. It is part of a wider project
here to create an environment where our audience can help us broaden our
journalism with their expertise, their knowledge, their considered thoughts
and opinions, and where they can use our site as a platform to make
connections with the world and with those around them.
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E. Role of free and pluralistic media in a democratic society

33. How do developments in media freedom and pluralism impact democracy? Please explain.

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There is no longer a clear or easy relationship between media plurality and a
diversity of viewpoints, and the situation gets increasingly more complex as
the online world continues to develop.

The internet has significantly reduced the barriers to entry for content
creation and publication: it has lowered costs and made it more practical for
individuals to become creators and publishers, reaching out to a mass
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audience. And so we have seen individuals, salespeople, celebrities, politicians and campaigners make their content available. New intermediaries such as Facebook allow these messages to spread, to be duplicated and repeated, varied, disagreed with, applauded and ridiculed.

That is a plurality of voices of sorts - certainly it has quantity on its side. But at this point, we must ask 'for what reason do we value plurality?' And we must ask whether there are qualities that we should look for in these voices - not all voices are based on fact or reason.

Some voices perpetrate half-truths, misinformation and opinion dressed up as fact. The November 2015 Paris attacks saw claims of incidents on social media spread rapidly, including allegations that the Louvre and the Pompidou Centre had been hit and claims that Francois Hollande had had a stroke as he was removed from the Stade de France. During the EU Referendum, UKIP's "Breaking Point" poster falsely insinuated that a horde of desperate refugees was about to enter Britain, although they were not. Leave campaigners claimed that Brexit would allow £350 million to be given to the National Health Service - now a discredited figure. Arron Banks, who funded Leave.EU, has said the "facts don't work" when it comes to election strategising.

GNM believes this highlights the value of trusted news organisations which truth-check, ensuring that stories are based on evidence, subject to editorial advice, intelligence, insight from colleagues, subject to legal scrutiny and so on.

Tom Steinberg, the founder of MySociety, reflected after the Brexit result: "I am actively searching through Facebook for people celebrating the Brexit leave victory, but the filter bubble is SO strong, and extends SO far into things like Facebook's custom search that I can't find anyone who is happy despite the fact that over half the country is clearly jubilant today and despite the fact that I'm *actively* looking to hear what they are saying."

The 2016 Reuters News Report demonstrates significant concerns amongst citizens about the impact of algorithms on the news that they consume. The report identified that 65% of British consumers say they fear missing key information, while 61% of them fear they might miss challenging viewpoints. These numbers are replicated across Europe. Citizens appear to be as concerned as we are about the shift to closed, fact-free democracies in a social media world.

The value of plurality is related to the benefits for individuals when they are exposed to a range of views that challenge them. The filter bubble means that someone can be exposed to hundreds of views and opinions, but none of them will be challenging, and the value of plurality is therefore threatened.

34. Who do you think is the most suited to help increase media literacy? Please rank and explain why.

	The most important - 1	2	3	4	5	6	7	The least important - 8
Family	○	●	○	○	○	○	○	○
Friends	○	○	○	○	○	○	○	○
School	○	○	○	○	○	○	○	○
Public authorities	○	○	○	○	○	○	○	○
Media, including online providers	○	○	○	○	○	○	○	○
Dedicated learning systems using e.g. radio, TV, mobile phones and the internet (please specify)	○	○	○	○	○	○	○	○
Civil society	○	○	○	○	○	○	○	○
Other (please specify)	○	○	○	○	○	○	○	○

Other - please specify

35. Please give specific good examples or best practices for increasing media literacy.

36. What would be concrete ways for free and pluralistic media to enhance good governance and transparency and thus foster citizens' democratic engagement (e.g. self-organisation for political purposes, participation in unions, NGOs, political parties, participation in elections)?

37. What are best practices of free and pluralistic media contributing to foster an informed political debate on issues that are important for democratic societies (e.g. in terms of the nature of the content or in terms of format or platforms proposed)?

38. Which measures would you consider useful to improve access to political information across borders? Please indicate any best practice.

39. Do you consider that social media/platforms, as increasingly used by candidates, political parties and citizens in electoral campaigns play a positive role in encouraging democratic engagement?

- ○ Yes
- ○ No

If yes, please give specific aspects and best practices that you would recommend.

If no, please give specific aspects and examples of negative impacts, and possible alternatives to address them.

40. Do you consider that there are specific risks or problems regarding the role of platforms and social media — in relation to pluralism of the journalistic press or more generally — as regards the quality of the democratic debate and the level of engagement?

- ◉ Yes
- ○ No

If yes, please give specific examples and best practices that you would recommend to address these risks or problems.

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Please see our responses to questions 7, 16, 20, 21, 31, 32 and 33.
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Contact

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