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House of Lords Communications and Digital Select Committee inquiry: The future of news: impartiality, trust, and technology

I am a Reader in International Media Law at the School of Journalism, Media and Communication at the University of Sheffield. My evidence is informed by the research I conducted for my monograph on *Press Freedom and Regulation in a Digital Era: A Comparative Study* (OUP, forthcoming May 2024).

Key Questions

1. *What impacts (positive and negative) do large technology platforms and online news aggregators have on the UK's news environment, including media plurality? And how might this change?*

One of the most disruptive aspects of the transformation from the printed to the digital press has been the disaggregation of the different components of a traditional newspaper. As a result of digitalization, internet users can find articles on specific topics with the help of news aggregators, search engines and social media while bypassing the publishers' actual sites. This disintermediation of news content poses a risk for editorial integrity. It is harder to maintain overall balance when the emphasis is on standalone stories. What is more, online platforms have little incentive to prioritise public interest news given that sensationalist content, coupled with attention-grabbing headlines, often referred to as click-bait, is likely to drive news engagement. Headlines are the most-read part of online articles, and are crucial to increase the click-through rate, the proportion of visitors to a website who click on a link to a news article. Given that a rising number of news articles are accessed via social media, search engines or news aggregators, the function of headlines has shifted. In the past, headlines gave readers skimming through a paper an indication of an article's topic and of its importance. In the digital environment, they are primarily meant to lure readers into clicking through and engaging with the article. The fact that headlines are disaggregated from the body of the article and from the rest of the newspaper, and that readers always effectively arrive at a notional 'front page' if they decide to click through, means that it is much more difficult for them to gain a clear understanding of the source and the importance of a given article. Since readers pay overall a more fleeting attention to online newspaper articles compared to those of the print editions, their risk of exposure to less reliable news is heightened.

To the readers' lack of orientation adds the fact that news accessed via newsfeeds or search results are in competition with a wealth of other online content such as gossip, humour, memes, posts by family and friends, and also content from groups and communities of interest. This blurring between personal and public information is especially pronounced in the case of the Facebook Feed, the platform's constantly updated, computer-curated selection of posts the users encounter when visiting their home page.¹ The Feed has often been

paralleled with the 'Daily Me', Nicolas Negroponte's futuristic vision of a virtual, daily newspaper tailored to each reader's individual preferences.² This early notion of an individualised news offering is not far removed from the Feed's blend of posts by 'people, places and things that you care about' as well as of ads.³ Facebook allows users to sort their Feed to only see recent posts or posts from Favourites. By default, Facebook prioritises the most popular stories, albeit users can choose to temporarily view the most recent stories first. Popularity is driven by user interaction, and the more users consume, comment and share news, the more visible they become, firing up further engagement. This self-fulfilling, cyclical process does not unfold in a vacuum, but is closely shaped by Facebook's ever-changing design choices. The ranking of Feed posts is not only influenced by one self's and one's connections' activity on Facebook, i.e. the number of comments, likes and shares a post receives, but also by the type of post in question, such as photo, video or status update, as well as by other, not fully transparent algorithmic rules.

2. *How are perceptions of due impartiality evolving and what challenges do news organisations face around impartial reporting?*

The UK regulatory framework whereby broadcasting is subject to obligations of due impartiality; the press is expected to separate fact from comment, and aspires to objectivity, but is free to editorialise; while both are committed to obligations of due accuracy, has been transported without much reflection, almost by default, to the digital era. The Ofcom Broadcasting Code does not apply to online content, raising concerns that PSBs such as ITV and Channel 4 might not maintain the same accuracy and impartiality standards online as on air. The concern is less pronounced in the case of the BBC's virtual presence which, despite not being subject to the Code, falls under Ofcom's overall purview. This regulatory patchwork creates a real risk that audiences might be confused and that their expectations might be frustrated.

Against the background of this regulatory maze, a novel understanding of the standards of accuracy, objectivity and impartiality in the online domain is emerging. Legacy print outlets consider the segregation between fact and comment to be challenging in the era of live-blogging. However, the move towards opinion-based journalism is more problematic in the area of broadcasting, especially given that the majority of the UK public still values impartiality in current affairs programmes.⁴ Broadcasters, unregulated by the Ofcom Code online, relax strict impartiality in blog posts and in journalists' social media presence. When Jon Snow broadcast an emotional video on children in Gaza on YouTube and on the Channel 4 website, Channel 4 was supportive of his decision. Had this video been aired on live TV, it might have fallen foul of Ofcom's due impartiality rules.⁵ Emotions run higher when BBC impartiality rules are ignored. When star pundit, Garry Lineker, tweeted that the government's new Illegal Immigration Bill was an 'immeasurably cruel policy' and that the

¹ In the following reference will be made to Facebook rather than to its parent company, Meta.

² N. Negroponte, *Being Digital* (Hodder and Stoughton 1995), 153.

³ Facebook, 'How feed works' <<https://www.facebook.com/help/1155510281178725>> accessed 5 April 2023.

⁴ Ofcom, 'News consumption in the UK: 2020', 13 August 2020 <

https://www.ofcom.org.uk/_data/assets/pdf_file/0013/201316/news-consumption-2020-report.pdf> 94.

⁵ J. Deans, 'JonSnow Gaza video backed by Channel 4' (*The Guardian*, 31 July 2014) <<https://www.theguardian.com/media/2014/jul/31/jon-snow-gaza-video-backed-channel-4>>.

language used resembled that 'used by Germany in the 30's', Ofcom's chief executive held that this episode went to the heart of BBC's reputation. At the same time, she considered that greater room for freedom of expression might be appropriate in the case of freelancers if compared to news presenters.⁶

The recently revamped BBC social media guidance states that 'Those presenting Flagship Programmes on the BBC carry a particular responsibility to help to balance commitments to both freedom of expression and impartiality, because of their profile on the BBC. This responsibility extends to their use of social media, both for professional and for personal use, during the periods when these Flagship Programmes are on air, and for a two-week window before and after the series.' This guidance creates thus a special category of high-profile freelancers with large social media followings. It creates greater legal certainty by aligning the regime applicable to them with that applicable to staff members. It is, however, unlikely that the conflict will subside. The bigger question, the tension between BBC's public service ethos and its submission to celebrity culture, remains.

4. *What factors affect trust in news and how might this evolve?*

a) *To what extent is trust linked to perceptions of impartiality, or to other trends in online news?*

b) *What impact do concerns around disinformation have on trust in the information environment? (And to what extent does this differ between different sections of society?)*

a) News organisations, faced with shrinking budgets and a fierce competition for readers, are often presented with a stark choice between speed and accuracy. In an age of viral news, the temptation is there to publish first and verify later.⁷ In the face of overall low levels of trust in professional media, many newsrooms have invested in hubs which fact-check user-generated content. At the same time, their own news reports are scrutinized - and occasionally suppressed - by online platforms and by external fact-checking sites, situated on the cusp between 'traditional journalism and digital network logics'.⁸

b) The public's mistrust in the news and their denigration as 'fake news', whilst drawing on a long historical tradition, has been fuelled in recent times by the rise of the digital ecosystem's disinformation industry. Advances in artificial intelligence, most recently embodied by ChatGPT, risk further blurring the line between truth and falsity and undermining public trust in journalism. A much-professed solution to the problem of mis- and disinformation is fact-checking. The main difference between traditional journalistic fact-checking and its modern-day incarnation is that the former is *ante hoc*, identifying errors before publication, while the latter is *post hoc*, checking something that has already been published. This reversal of the ordinary verification process signifies a

⁶ J. Gregory, 'Gary Lineker row goes to heart of BBC reputation – Ofcom boss' (*BBC*, 14 March 2023) <<https://www.bbc.co.uk/news/uk-64953421>> accessed 17 May 2023.

⁷ C. Porlezza, 'Accuracy in journalism' in *Oxford Research Encyclopedia of Communication* (City Research Online, 2019) <<https://openaccess.city.ac.uk/id/eprint/22556/>> (hereafter Porlezza, 'Accuracy in journalism').

⁸ W. Lowrey, 'The emergence and development of news fact-checking sites. Institutional logics and population ecology' (2017) 18 (3) *Journalism Studies* 376, 381.

departure from the contested notion of objectivity. Fact-checkers blatantly take sides, all the while dressing their judgements in a cloak of pseudo-scientific reproducibility. They purport to cut through the false balance of the 'on-the-one-hand, on-the-other-hand journalism', but risk eroding their legitimacy and being exposed to accusations of bias. Openly embracing opinion-led journalism is more problematic for broadcasters than for the press.

The fact-checking movement is a manifestation of the rise in the norm of transparency as a new journalistic norm.⁹ Transparency in news organizations' news production processes has been embraced in American newsrooms as an antidote to the problem of 'fake news'. The New York Times's longest-serving public editor, Margaret Sullivan, recently recommended 'radical transparency' about reporting techniques and primary information as an antidote to public distrust in mainstream media and as a media literacy tool.¹⁰ However, this has not been a universal trend. German newsrooms, for instance, have been more reluctant to adopt this norm in their everyday practice. They have viewed it as a distraction from their actual work and have questioned the link between transparency and credibility.¹¹ Certainly, there is a potential tension between the rise in the norm of transparency and the ever-important right to protection of journalistic sources. Being aware of this tension, Lord Justice Leveson recommended that the press be as transparent as possible in relation to information *in the public domain*, not as regards confidential sources.¹²

If fact-checking is a contentious solution to the problem of 'fake news', another often-proposed answer is the promotion of quality media content. The promotion of accurate information has been the second prong of technology companies' two-pronged strategy to combat the influx of mis- and disinformation. Facebook, for example, has been providing free ad space at the top of result pages for educational pop-ups from the WHO and national health authorities in response to the pandemic. This is a potentially promising way of countering misinformation. However, it may raise competition and discrimination concerns. Also, it is one thing to promote accurate official information and another to prioritize trustworthy media content. Interventions to facilitate due prominence of certain types of content could strengthen media pluralism and contribute to a better-informed citizenry, but they could also be seen as unwelcome interferences with media freedom. The Journalism Trust Initiative (JTI), a Reporters Without Borders (RSF) project aiming to develop and implement indicators for trustworthiness of journalism, shies away from a definition of hierarchy of content. It considers that such a hierarchy could smack of censorship.¹³ Instead, it recommends the adoption of technical standards that could inform journalism practice and content governance and that would need to be respected by news

⁹ H. T. Vu and M. Saldaña, 'Chillin' effects of fake news: Changes in practices related to accountability and transparency in American newsrooms under the influence of misinformation and accusations against the news media' (2021) 98 (3) *Journalism & Mass Communication Quarterly* 769 (hereafter Vu and Saldaña, 'Chillin' effects').

¹⁰ M. Weaver, "'Media must be more open to save democracy', says former standards editor' (*The Guardian*, 2 June 2023) <<https://www.theguardian.com/education/2023/jun/02/media-must-be-more-open-to-save-democracy-says-former-standards-editor>> accessed 12 June 2023.

¹¹ M. Koliska and K. Chadha, 'Transparency in German newsrooms. Diffusion of a new journalistic norm?' (2018) 19 (16) *Journalism Studies* 2400.

¹² Leveson, *An Inquiry: Executive Summary* 15 para 63.

¹³ Journalism Trust Initiative, 'Help desk: Is the JTI judging or ranking news content, and wouldn't that be a form of censorship?' <<https://www.jti-app.com/helpdesk>> (hereafter Journalism Trust Initiative, 'Help desk').

media outlets and internet intermediaries respectively. The JTI standards aim to complement, not replace existing standards operated by self-regulatory bodies, and to add a further independent and voluntary compliance level.

Besides such standard-setting initiatives, there is one type of news content that is widely regarded as an embodiment of the values of accuracy and reliability, namely public service news.¹⁴ In the UK, public service broadcasters (PSB) are among the most trusted news brands, and regulatory initiatives seek to prioritise their content on smart TVs, within TV platform recommendations as well as on electronic programme guides (EPGs) and other user interfaces.¹⁵ The promotion of PSB is certainly laudable. However, the less favourable treatment of reliable press publishers in that regard might be inequitable. A line of counterargument could point to the fact that the press is not subject to the same impartiality and pluralism requirements as PSB, and hence does not merit the same kind of prominence. However, certain nationwide as well as local or regional newspapers enjoy high levels of brand trust.¹⁶ If the 'complementarity argument', which goes some way towards explaining the regulatory disparity between the press and broadcast sectors, is to given some credence, then reliable news sources from both sectors should be afforded equal prominence on online platforms and user interfaces so as to allow the strengths of both systems to play out in a digital environment. This is of paramount importance to ensure that the 'the best obtainable version of the truth' is allowed to prevail over the cacophony of falsehoods and trivia online.

5. *Are there any actions the Government should take to address concerns around due impartiality, trust, and the influence of technology platforms?*
 - a) *Are changes needed to the Media Bill?[10]*
 - b) *Are changes needed to the way the Government addresses mis- and dis-information?*

a) The draft Media Bill proposes a privileged position for PSB content on user interfaces beyond the EPG, such as on smart TVs, set-top boxes and streaming sticks.¹⁷ While a measure of discrimination in favour PSBs is appropriate in view of their preeminent role in a democratic society, it is necessary to reflect on wider changes that impact our information ecosystem. As discussed earlier, it is necessary to adopt a more wholistic view and to develop transparent criteria for the identification and prominence of diverse public interest content online along the lines of the Council of Europe's Recommendation on promoting a favourable environment for quality journalism in the digital age.¹⁸

¹⁴ Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age', 17 March 2022, 11, 12.

¹⁵ Newman, 'United Kingdom 2023'; Ofcom, 'Review of prominence for public service broadcasting. Recommendations to government for a new framework to keep PSB TV prominent in an online world', 4 July 2019 <https://www.ofcom.org.uk/data/assets/pdf_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf>; Ofcom, 'EPG prominence. A report on the discoverability of PSB and local TV services' <https://www.ofcom.org.uk/data/assets/pdf_file/0026/116288/report-psb-local-tv-discoverability.pdf>.

¹⁶ Newman, 'United Kingdom 2023'.

¹⁷ Draft Media Bill, cl. 28.

¹⁸ Council of Europe Recommendation CM/Rec(2022)4 of the Committee of Ministers on promoting a favourable environment for quality journalism in the digital age', 17 March 2022.

b) In the UK, the Online Safety Act attempts to strengthen the norm of accuracy in the online communication infosystem by introducing a false communications offence alongside a threatening communications offence. These norms are meant to replace existing offences in the Malicious Communications Act 1988 and the Communications Act 2003.¹⁹ The false communications offence, as currently worded, criminalises the sending of a message known to be false with the intent of causing non-trivial emotional, psychological or physical harm to a likely audience without reasonable excuse.²⁰ The Act exempts recognised news publishers and UK-licensed broadcasters from the scope of this offence, thus questionably drawing a line from other news providers.²¹

Online platforms subject to considerable fines will be inclined to take down content perceived to be false without evidence of harm but on the mere basis that this content might cause harm to an indeterminable audience. The Act does not define what amounts to 'non-trivial emotional, psychological or physical harm', raising the possibility of unduly stifling freedom of expression if the bar is set too low. In addition, it does not specify what would constitute a reasonable excuse. While in the case of the abolished harmful communications offence the contribution to a matter of public interest was a possible, though not necessarily absolving excuse, the same does not necessarily apply to false communications.²² The Act does not explain what a possible excuse might be. A citizen journalist reporting on President Trump's suggestion to use disinfectant as a cure for Covid-19 might hence find themselves criminally liable. They might not have the intent to cause harm. However, if intent to harm is inferred from the communication act itself, as exemplified in a fact-sheet that tested the operation of the Bill by way of a series of case-studies, then the door is opened for legitimate content to cross the threshold of criminal liability.²³

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¹⁹ Malicious Communications Act 1988, s. 1; Communications Act 2003, s. 127.

²⁰ Online Safety Act, s. 179.

²¹ *ibid.*, s. 180.

²² Law Commission, 'Harmful Online Communications: The criminal offences. A consultation paper', 11 September 2020 < <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2020/09/Online-Communications-Consultation-Paper-FINAL-with-cover.pdf> > 136 accessed 18 May 2023.

²³ Department for Culture, Media and Sport, 'Online Safety Bill: Communications offences factsheet', 19 April 2022 < <https://www.gov.uk/government/publications/online-safety-bill-supporting-documents/online-safety-bill-communications-offences-factsheet> > accessed 18 May 2023.