



Co-ordinating Committee for Media Reform

PROMOTING A DEMOCRATIC AND ACCOUNTABLE MEDIA:

November 2011

A response to the 12 questions put by the Leveson inquiry.

INTRODUCTION

The Co-ordinating Committee for Media Reform is a newly-formed umbrella organisation of advocacy groups, academics and individuals campaigning for meaningful reform of the UK media. The CCMR was established to represent the interests of civil society in the light of the Leveson Inquiry and the Communications Review and to draw up policies designed to sustain the public interest and foster a more democratic media system. The responses below represent a coordinated submission from several members of the CCMR but they should not to be seen as representative of all organizations and individuals within CCMR. Authors are credited in italics preceding each section.

Culture, practices and ethics:

1 The Inquiry needs to understand how newsrooms operate, particularly in the tabloid and mid-market sectors. Can you provide a personal account of culture, practices and ethics in any part of the press and media?

*Goldsmiths Leverhulme Media Research Centre news research team: Angela Phillips, Professor Natalie Fenton, Professor Aeron Davis, Peter Lee-Wright, Dr Des Freedman, Professor James Curran, Dr Tamara Witschge, Justin Schlosberg. (The journalists' quotes in this section were drawn from on-going research by this team over the last five years that includes over 200 interviews. This research is discussed in full in N. Fenton (ed.) (2010) *New Media, Old News: Journalism and Democracy in the Digital Age* published by Sage; and P. Lee-Wright, A. Phillips and T. Witschge (2011) *Changing Journalism* published by Routledge.*

1. In the peculiarly hierarchical and chronically insecure atmosphere of a British national newspaper, nobody, from the editor down, has the kind of security of employment enjoyed, for example, by most academics. According to Andrew Marr, former editor of the *Independent* newspaper: 'The truth is that, except for editors who are highly influential in trusts or companies owning their titles, editors are hirelings. Proprietors regard their editors as talented and interesting servants...The newspaper editor gets status and the apparent respect of the social elite of modern London, but the proprietor gets what he wants' (Marr, 2004:235).
2. This insecurity is transferred down through the staff and, young reporters, even on the most liberal newspapers, are under the thumb of the news desk. Although they accrue cultural capital (status) through finding their own stories, their first loyalty must always be to 'the desk' (see Phillips, Ch 5 *New Media Old News*). On the more serious newspapers this means prioritizing the stories you are told to report rather than

your own leads. On 'popular' newspapers junior reporters are not just told what to report but how to report it. The editors come up with the story lines while the reporters merely colour them in. One young reporter on a highly commercial newspaper explained how she chose who to interview:

They want attractive people in the paper, they want blondes, they want nice-looking girls: the younger the better. You know that's what they want so that's what you get because otherwise you'll either be in for a shouting at or you'll have to do it again (Reporter, popular evening paper, 2003).

3. The practice of hiring young journalists on very short term, often weekly, rolling contracts is like keeping a dog on a very short leash. Each time they move in the wrong direction they can be restrained so that, in the end, in order to gain a measure of employment protection, journalists are expected to 'internalize' the requirements of the newsroom and produce news according to the style and political inflection of the newspaper. On popular newspapers there is little or no space for independent ethical reflection.
4. All British newspapers are signed up to the Press Complaints Commission's (PCC) voluntary code of conduct whose first clause insists that: 'The Press must take care not to publish inaccurate, misleading or distorted information, including pictures' (PCC, 2008). A journalist explains how the sincerity of a story can be sacrificed while still retaining a fig leaf of 'truth':

It isn't [that it's] untrue. It is giving prominence to a minor feature. There has to be some kernel of truth. It may be twisted or biased but there must be some truth. [The paper] works on the presumption that negative news sells -- always go for the negative line even if it isn't typical. There is nothing untrue but it isn't a balanced representation. It's been twisted to conform to an idea [...] if you leave ethics out, it's good professional journalism and it sells papers (Reporter, mid-market popular daily, 2008).

5. At the *Daily Express*, (a British national tabloid newspaper) a string of anti-Gypsy articles appeared in the paper in the run-up to the enlargement of the European Union. One day the newspaper ran a telephone poll asking: 'Should we let gypsies invade Britain?' Later that week it ran a story suggesting that a 'massive invasion' of Gypsies would lead to 'economic disaster'. Journalists on the paper had, by now, had enough and called a well-attended union meeting that passed the following motion:

This chapel [union branch] is concerned that *Express* journalists are coming under pressure to write anti-gypsy articles. We call for a letter to be sent to the Press Complaints Commission reminding it of the need to protect journalists who are unwilling to write racist articles which are contrary to the National Union of Journalists' code of conduct. (Ponsford, 2004)

The letter was duly sent to the PCC, the regulatory body established to offer protection to people who are abused by the press. It does not, however, offer similar protection to journalists who are put under pressure to be abusive. Robert Pinker, then acting chairman of the PCC, defending this position at the National Union of Journalists (NUJ) conference, said: 'It is not our job to be involved in disputes between employers and staff.' He also suggested that such a clause would affect sales

by making newspapers, 'so sanitised that people will not want to read them' (Pinker, 2004).

6. Journalists do get things wrong. The test of sincerity is the effort aimed at achieving some fit between what one believes and what one says and making an effort to correct wrongs. Theoretically, the growing use of bylines alongside email addresses and comment spaces online, should improve transparency and make journalists more careful about accuracy. This opening up of an exchange between writers and readers could be a positive and democratizing step but what does accountability mean in a world in which work that is produced under one name might have been written by three other people? A reporter explained how a randomly chosen story was put together:

Reporter: My story would have only been 250 words. They must have added to that, they must have then cut and paste with that.

Interviewer: So basically this story is pasted together: something that the newspaper had picked up from the Sun with bits from PA and then stitched together with yesterday's story?

Reporter: Yeah, I think so, that looks like what's happened, yeah.

Interviewer: And yet it's gone under your single by-line. I mean what is the by-line policy?

Reporter: They don't have policies. I think this is an old fashioned view of the world.

Interviewer: So why do they bother to put names on at all?

Reporter: I don't know. I think because they just think that it looks more authoritative with a name. I think they don't care, that's the problem. They don't care so your name's sometimes on it, someone else's name's sometimes on it (Reporter, national daily, 2008).

7. The production cycle of newspapers means that journalists rarely know exactly how their work will look on the page. Sub-editors routinely re-write copy, perhaps because a bigger story has broken and everything has to be cut to accommodate it, or because several different people are working on the same story, or because it doesn't read well or follow the right style. What is new is that with the speed-up of work on the internet, and the need for several daily deadlines, new material is routinely being added to a story without any change of the original byline (Phillips, 2010b) and the 'cobbled together' results are ending up online and in the newspaper. As one journalist put it:

I mean they add stuff in [...]. We'll get the paper the next day and there's big chunks of stuff that have been shoved in from the internet [...]; and they [other specialist reporters] are pulling their hair out going 'well that's not true and it's got my name on it' (Reporter, national daily, 2008).

8. On the internet, where everything is accessible and checkable, journalism could be moving towards a greater accountability. Kevin Marsh, editor-in-chief of the BBC College of Journalism looks to a future in which journalism is all about '[g]athering data and helping each individual in the audience mine it for a unique take' (Marsh, 2008: 33). Alan Rusbridger, editor of *The Guardian* appears to be moving his newspaper in this direction: subject specialists will in future be allowed to publish directly to the web without going through a news editor (Smith, 2008), a move which will also make them directly responsible, and therefore accountable, for their own

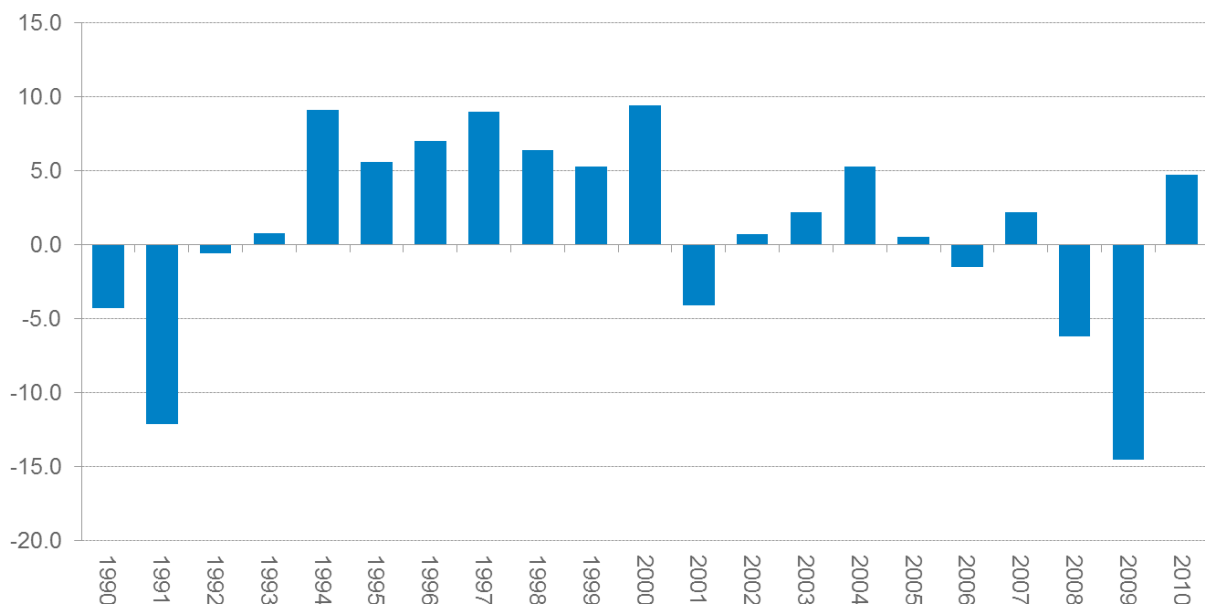
ethical judgements. However this view of the future of journalism does not quite square with a present in which, according to research from Cardiff university (Davies, 2008: 74) some thirty per cent of news stories in the five ‘most prestigious’ national newspapers are unattributed re-writes of Press Association stories in which there is little possibility of audiences being able to ‘mine’ the original data because they have no idea where it comes from. There is nothing necessarily wrong with the increased use of Press Association copy, given the amount of space that newspapers now have to fill each day. What is dubious, from an ethical point of view, is the practice of doing so without attribution. If individual journalists have no ownership of what goes out under their name, and no obligation to attribute work taken directly from other journalists; if there are few practical means of ensuring a fit between what they individually believe and what they ‘say’ (or at least their institutions require them to say), it is hard to see how they can act with sincerity in their attempts to be accurate.

2 Seminar debates have suggested that commercial pressures were not new, were not unique to the press, and did not impact adversely on standards of journalism or ethical behaviour. The Inquiry would be interested in submissions on this, with examples where possible.

Goldsmiths Leverhulme Media Research Centre news research team: Dr Des Freedman, Professor Aeron Davis, Angela Phillips, Peter Lee-Wright, Professor Natalie Fenton, Professor James Curran, Dr Tamara Witschge and Justin Schlosberg.

1. Diane Coyle (Leveson seminar, 6 October 2011) was right to argue that the current financial pressures facing the press ‘are both long-standing, not specific to the UK and not specific to the [broadsheet] press or the tabloids’. This argument, however, must not be used to justify leaving unchanged the current regulatory and funding models. Simply because commercial pressures are neither specific to news organisations nor in any way new does *not* mean that the system cannot be improved better to serve the public who, as the phone hacking scandal has demonstrated, have been severely let down by existing arrangements. Furthermore, the proposal that declining revenues, fewer staff and a more cut-throat competitive atmosphere does not have an impact on journalism standards and ethical behavior is simply wishful thinking (see Davies 2008, Fenton [ed] 2010). Finally, the argument that current economic difficulties *require* media organisations to cut back on their provision is not sustainable.

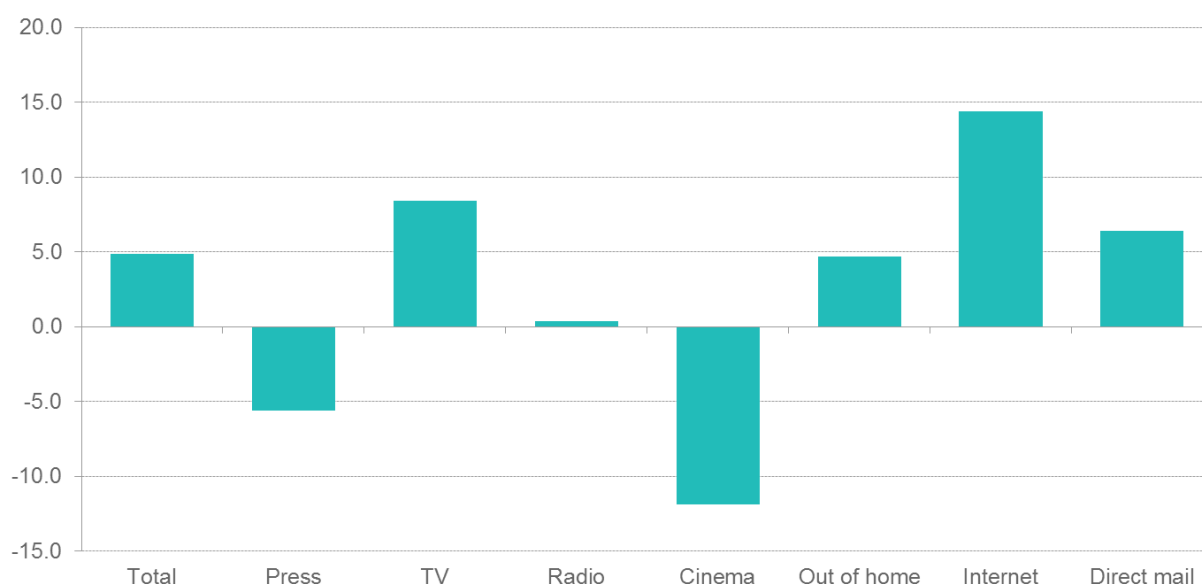
2. First, it is true, of course, that whole swathes of the media—and not just the news—have been affected by the recent downturn in advertising and wider economic instability. We can see, for example, that advertising has only just emerged from a



Source: Advertising Association/WARC expenditure report (2011)

However, this increase was not shared equally across all media sectors with the press, in particular, facing a significant decrease—of 5 per cent—in the last year (see figure 2).

Figure 2: Annual percentage change in adspend, 12 months to June 2011 (at current prices)



3. This disastrous drop is matched not simply by the slow but steady decline in print circulation but by a substantial decline in the numbers of people viewing news bulletins on the five existing public service broadcasters, from 100 hours per year per viewer in 2005 to 88 hours per year in 2009 (Ofcom 2010: 10). This fall has then, in turn, been used to justify a 19 per cent cut in news and current affairs budgets across the PSB networks, from £363m in 2006 to £292m in 2009 (Ofcom 2010: 8). So while the commercial pressures are neither new nor confined to the news sector alone, it is clear that there are *specific* concerns related to the online migration of advertising and audiences.
4. There are two main responses to this particular situation. First, there is an attempt to search for additional revenue sources and, in particular, to monetise digital audiences through the creation of paywalls and digital subscriptions. It is too early to assess the success or otherwise of, for example, the *Times* in erecting a paywall for its online edition but it is notable that, unlike FT.com, it does not provide any specialist information. It seems unlikely that paywalls will be a successful model for ‘generalist’ news in the short-term. As long as there is at least one source of news that is free in a similar format, there will be little reason to pay and therefore little certainty that revenue from digital sales will compensate for lost advertising and print sales.
5. Second, there is the view, held by a large proportion of the news industry, that news organisations must do whatever it takes to ensure their survival. Cost-cutting, bureaux closures, the pursuit of multi-platform efficiencies and the intensification of

competition within specific market segments are all justified by precarious economic conditions. Above all, no additional economic or regulatory demands should be imposed on companies in such dire financial circumstances.

6. The situation is particularly acute in regional and local news where conglomeration has seen a diverse ecology of media ownership now reduced to a handful of major media groups who have bought local and regional news businesses using leveraged debt finance. This has led to aggressive business plans that have undermined local news in the following ways:
 - Costs have been cut whilst output increased, meaning fewer journalists work on more stories, with inevitable decline in quality and depth.
 - The leveraging that has taken place to finance this conglomeration has led to groups requiring returns of around 30-40% each year to service debt and enable dividends to their shareholders.
 - Local offices have been closed and production centred on regional editorial offices, leading to reporters being remote from the communities they serve – and seen as such by readers and viewers.

7. We are left, following this approach, with the prospect of a significant democratic deficit given that the sectors left most vulnerable—investigative journalism, foreign coverage, regional and local news—are precisely some of the areas most central to the ability of news to serve democracy: to hold power to account and to produce well resourced, innovative and relevant stories.

8. However, what these responses fail to make clear is that the highly challenging circumstances currently facing news organisations have not suddenly turned the whole news sector into a financial disaster. Indeed, profits in 2010 for the bulk of news providers and distributors in the UK were significantly *up* from 2009.

Company	Profits in 2010 (£m)	Up or down from 2009
Trinity Mirror	101.5	Up 39.6%
Daily Mail and General Trust	247	Up 22.9%
Telegraph Media Group	60	Up 53%
Northern and Shell	30.3	Up 240%
Archant	8.2	Up 157%
BSkyB	1170	Up 157%
ITV	321	Up 200%
Pearson	670	Up 28%
Press Association	5.7	Down 12.3%
Newsquest*	88.5	Down 52%

* figures from 2009 and 2008 respectively. All figures taken from company reports.

9. When it comes to Google, an increasingly powerful actor in the news industry, the situation is particularly encouraging. According to the *Evening Standard*:

accounts for Google UK Limited, recently filed at Companies House, showed it made a pre-tax loss of £22 million with a turnover of £240 million. Yet the

parent company, Google Inc reported to the American stock market in January that the UK had generated £2.15 billion in revenues. It should also be noted that the UK is Google's biggest overseas subsidiary. Google Inc's profit before tax was £6.98 billion in 2010. Analysts believe that on that basis, UK profits could or should be 10% of that figure. (Spanier 2011).

10. While Google, as well as some other companies listed in the table above, do not make the bulk of their profits from news, we can nevertheless conclude that some major organisations active in the British news and media industries continue to make substantial profits despite the volatility of the period.
11. This situation makes it possible to speak of a range of alternatives to how news is funded and organised in order to ensure that resources are made available to produce independent, quality journalism, to protect editorial standards and to promote ethical behaviour. This might include:
 - Levies on the turnover of profitable communications companies to finance new news outlets with specific remits to serve communities and constituencies currently under-served by the news media.
 - The extension of VAT exemptions to cover digital advertising and sales but only on condition that the recipients make a specific commitment to maintain sufficient resources for quality journalism or to support new public interest news ventures.
 - Amending charity law so that local newspapers may be operated as charitable organisations.
 - The introduction of tax incentives for community groups and co-operative bodies to fund takeovers and investment and to facilitate transfers.
 - An increase in the Community Radio Fund to a level that has significant impact as a lever for other investment and as a driver of quality hyperlocal news and informational content.
 - Matching local authority spending on communications and advertising to support new local or regional news ventures in areas which are currently under-served.

Many of these arguments are further developed in the 'Funding Models' briefing paper produced by the Coordinating Committee for Media Reform.

For more information, please go to www.mediareform.org.uk

3 Some seminar attendees suggest reader loyalty limits competition between titles. Professional competition to be first or best with a story, though, could be a powerful force. Other participants suggested some papers put journalists under significant pressure to produce a story within a tight timeframe. The Inquiry would be interested in experiences of the competitive dynamics in journalism and how that impacts on the way in which journalists operate, with examples where possible.

Goldsmiths Leverhulme Media Research Centre news research team: Professor Aeron Davis, Angela Phillips, Peter Lee-Wright, Dr Des Freedman, Professor Natalie Fenton, Professor James Curran, Dr Tamara Witschge and Justin Schlosberg.

1. Over several decades, news journalism has been forced steadily to become more productive, rational and market-oriented. Since the 1970s, the following trends can be observed with some consistency. There is substantially more news but also greater competition and fragmentation with fewer consumers per outlet (Tunstall, 1996, Franklin, 1997, 2005, Curran and Seaton, 2003, Davies, 2008).
2. Global competition, market segmentation and entertainment alternatives have meant a steady decline of advertising revenues for most single, commercial news outlets. Consequently, national news producers have presided over a steady decline in audience figures over the period. In an effort to remain profitable, papers have raised prices well above inflation, increased outputs and news sections while simultaneously cutting back on staff. Tunstall (1996) estimated that, between the 1960s and 1990s individual output had at least doubled. Davis (2002) recorded that, between the mid 1980s and mid 1990s, the *Financial Times* and *Sun* increased their pagination by just over 60% but their journalist numbers by between 15 and 22%. The *Times* increased in size by 125% but added just 22% to its editorial staff. More recently, Davies (2008) concluded that journalists are now having to fill three times as much news space as they did in 1985.
3. Research undertaken by the Goldsmiths Leverhulme News Research team showed the extent to which newsrooms constantly monitor what each other are doing. To a certain extent this is nothing new and is to be expected in a competitive market. However, in an online world this leads to almost constant monitoring and pursuit of story lines that may be driving web traffic and trending elsewhere. As a result the more celebrity/entertainment news attracts hits the more that story will be run almost instantaneously through the majority of other similar news organizations. Contrary to what might be expected from the expansion of space for news in the digital age what we actually get is a flattening and increase in homogeneity of news across different outlets. The speed at which this happens means that ‘exclusives’ or ‘breaking news’ are becoming more and more difficult to deliver. The need to be on top of everything all the time, provide content to fill larger and larger news space with fewer and fewer journalists employed inevitably leads to less checking of facts and an increasing need to bring new news on a 24 hour cycle.

4 With the advent of the internet and 24 hour news as well as declines in revenue and circulation, we have heard that fewer journalists are having to do more work. The seminars also raised the issue of the casualisation of the workforce. The inquiry would be interested in experiences of how this may have changed the culture in newsrooms and what it might mean in terms of journalistic practice, with examples where possible.

Goldsmiths Leverhulme Media Research Centre news research team: Professor James Curran, Professor Aeron Davis, Angela Phillips, Peter Lee-Wright, Dr Des Freedman, Professor Natalie Fenton, Dr Tamara Witschge and Justin Schlosberg

1. For the majority of reporters in employment, working conditions have clearly become more difficult as union recognition has declined, journalist rights have eroded and new working conditions been imposed. In 2006 (NUJ, 2006) 31% of journalists were found to work part-time or were on ‘flexible hours’, and 41% were ‘freelance’ (there is an overlap between these groups). Such calculations may be over-estimates as it is

difficult to work out how much the use of freelancers or new technologies has filled the gap. However, these and many other interview-based accounts strongly suggest that more news is being produced quicker, with far fewer human resources and under poorer working conditions (see Franklin, 1997, Davies, 2008; Fenton, 2010).

2. Surveys of working journalists and news content both suggest that news-gathering and production has suffered in a variety of ways. One of these is the increased dependency of journalists on outside 'information subsidy' supply, in the form of public relations material and news wire copy. Lewis et al.'s study (2008) of 2,207 newsprint items and 402 broadcasts, found that 19% of press stories and 17% of broadcasts were entirely or mainly reproduced PR material. 49% of press stories were either entirely or mainly dependent on news wire agency copy, much of which itself has come from press releases.
3. Wide-ranging interview-based research with journalists (Fenton, 2009, Davis, 2010, Lee-Wright et al, 2011) also showed a series of worrying trends in the way news was gathered and reproduced and a variety of traditional corners cut. These included: a general propensity to rely on press releases and other PR material (often unattributed); greater pressure for multi-skilling and reproduction of stories on multiple media platforms; rising newsroom pressures and stress levels and the replacement of experienced journalists with cheaper, inexperienced counterparts; relentless efficiency drives leaving less time to communicate with sources directly and check information/quotes; a wide-spread propensity for monitoring rival news operations and then cannibalising that coverage; a decline in foreign, investigative and other costly forms of news coverage. Critics have labeled the new end product 'Newszak' (Franklin, 1997), 'Infotainment' (Delli Carpini and Williams, 2001) and, most recently, 'Churnalism' (Davies, 2008).
4. Arguably, under such conditions, it is easy to speculate that traditional practices and ethics in the newsrooms would be altered. Hacking on an industrial scale can also be viewed within this perspective, in that it is also a more cost-effective and quick way to generate story leads.

5 The issue of stories that attract a high degree of press attention but subsequently turn out to be false was raised at the seminars. The Inquiry would be interested in submissions from editors, reporters and subjects of such stories - why they occur (what are the pressures that drive press interest), and how they occur (what checks and balances are or should be in place to stop this happening and why do they sometimes not operate)?

Nick Jones and Joy Johnston (Journalists)

1. An increasingly rapid turnover of headlines on the rolling news channels has only served to exacerbate the troubling phenomenon surrounding the growth in stories which suddenly gain currency but then turn out to be false. Breaking news attracts viewers to services like the BBC News channel and Sky News and within minutes a story is up and running. For their part, the national newspapers feel duty bound to offer readers even more detail and background information; hence the competitive spiral which can so often lead to unfounded speculation.

2. But the press and broadcasters are not entirely to blame. An online army of citizen journalists and pundits are feeding the rumour mill via websites, Twitter and the whole panoply of social networking offered by the internet. Given the pressures of instant journalism – and the uncontrollable world of the blogosphere – there is an even greater responsibility on officialdom to play its part by doing more to keep the public informed and calm the feeding frenzies which all too often can dominate the news agenda.
3. A great deal has been done by police forces, emergency services, government departments and local authorities to up their game when communicating with the public. But much more needs to be done, especially at weekends, when there is invariably a dearth of official information and when unfounded speculation so often gets out of hand. British officials should be required to take a leaf out of the American handbook when dealing with emergencies and unprecedented events. US authorities recognise that when handling a crisis, the task of keeping the public informed has to be an essential component of their strategy. Time and again during American disasters and major incidents there is almost always a ready supply of instant television footage of police officers, fire chiefs, local administrators etc making public statements. They recognise that the task of informing the public has to be one of their priorities.
4. A greater openness on the part of British authorities would have a calming effect on news desks across the print and broadcast media. A public reminder from a police chief at the scene of an incident, a word of warning from the Crown Prosecution Service or a more rapid response – especially in vision – from a government department or local authority, would more than serve its purpose.
5. There are countless examples where speculation has been allowed to run unhindered. After the motorway pile up near Taunton in November 2011 – in which seven people were killed – the rolling news channels were still predicting that the death toll would reach double figures long after the Police must have had a much clearer picture; the speculation continued for almost two days – on into Saturday and Sunday after the crash on Friday evening – feeding through into press coverage. More regular updates could – and should – have been offered by the Police and emergency services.
6. Similarly the ordeal of Christopher Jefferies, wrongly accused of the murder of the Joanna Yeates in Bristol in December 2010, might not have been so distressing if the Police and Crown Prosecution Service had reacted immediately, once tabloid newspapers started what Jeffries himself subsequently described as an “extraordinary tissue of fabrication and misrepresentation.” Dominic Grieve, the Attorney General, did subsequently take action against two newspapers – the Daily Mirror and the Sun – and both were fined for contempt of court for their coverage of Jeffries’ arrest as a suspect. But again – as in the case of the misplaced focus on Robert Murat after the harrowing disappearance of Madeline McCann at Praia da Luz in 2007 – the tabloids were able to feed off the rolling news channels which had television footage of the two men which played along with speculative story lines.
7. The inquiry by Lord Justice Leveson into media practices should take account of the impact which largely unregulated online competitors are having on the coverage offered by 24-hour news services and the follow-up reporting of the national press.

Despite the steps which have been taken by many public institutions to be more accessible, there must be recognition by the powers-that-be that they should do more to serve the public interest when there is a danger that a running commentary appears to be getting out of hand.

8. Wild speculation is fuelled by a lack of on-the-record information and there is still a deeply-ingrained reluctance on the part of many officials to recognise that they must do more to engage with the news media when a crisis or incident is being played out across press, television, radio and now the internet. Journalists have a responsibility not to engage in wild speculation but equally British public authorities have to recognise that the seemingly limitless expansion in news and information outlets means that officialdom cannot stand idly by.
9. A few words to camera by those responsible could so easily have a calming effect on the way unexpected and often distressing events are being reported. Once these words of warning have been issued, journalists cannot hide behind the excuse that “no comment” is the only response which they have received and, as with the case of Chris Jefferies, there can – and should be – a day of reckoning for those who have engaged in willful misrepresentation.

**6 One seminar attendee suggested that the National Council for the Training of Journalists does not teach ethics. The Inquiry would be interested in experience of how ethics are taught and promulgated amongst journalists.
Standards**

Tim Crook, Goldsmiths, Department of Media and Communications

1. At Goldsmiths, University of London, in the Department of Media and Communications, journalism ethics forms an integral part of all journalism teaching. All students on all media practice courses are given the Student Departmental Pocket Guide to Media Law and Ethics in England and Wales. Dimensions of professional ethics are taught and introduced in all practice media courses through briefings and workshops pertinent to the specific medium i.e. documentary film, radio, or photography. All students on the MA Practice Journalism Programmes are obliged to do a 30 CATS Media Law & Ethics course assessed by 3 hour unseen examination.
2. All undergraduate students specializing in print/online journalism and television journalism are encouraged to select the 3rd year theory option Media Law & Ethics examined by academic essay.
3. Media Law & Ethics is formally taught in the following courses:
MC53046A (all third year undergraduate students [joints & singles programmes] and visiting international students)
MC71058A (MA practice journalism students studying on radio, television journalism, & journalism MA programmes & MA digital journalism)
MC71058B MA theory programmes (MA theory students studying on media communications, transnational, political communications, screen studies etc MA programmes) at 30 cats and 15 cats.

4. The courses investigate the nature of media law and ethical regulation for media practitioners primarily in the UK, but with some comparison with the situation in the USA and references to the experiences of media communicators in other countries. The students are directed towards an analysis of media law as it exists, the ethical debates concerning what the law ought to be, and the historical development of legal and regulatory controls of communication. The theoretical underpinning involves a course of learning the subject of media jurisprudence- the study of the philosophy of media law, and media ethicology- the study of the knowledge of ethics in media communication. The course evaluates media law and regulation in terms of its social and cultural context. It is taught in one and a half hour lectures and two-hour seminars that involve the discussion of multi-media examples of media communication considered legally and/or morally problematical.
5. The undergraduate and theory MA students attend seminars structured in the frame of 'moot court trials' where they have to represent the adversarial positions in imaginative scenarios based on actual case law. The students take it in turns to sit on 3 judge adjudicatory panels that are observed by the rest of the student group discussing and coming to their 'rulings.' The MA Practice students are provided participant workshops where they have to exercise editorial judgement in interactive and role performed news days with constructed scenarios with problematical multi-media materials. These are based on training sessions devised and provided by the course tutor, Tim Crook, to BBC journalist professionals.
6. These courses are accredited by the Broadcast Journalism Training Council and Periodical Training Council.

7 Attendees proposed that the general law, as it applies to everyone, should be the only constraint on the press. The inquiry would welcome submissions on whether, and if so why, the press should be subject to any additional constraints in relation to behaviour and standards, for example relating to accuracy, treatment of vulnerable individuals, intrusion, financial reporting or reporting on crime, other than those imposed by existing laws.

Professor Julian Petley, Brunel University

1. Although the Human Rights Act and the law pertaining to breach of confidence can be used in certain circumstances to protect privacy and punish invasions of it by the press a Statutory Privacy law, with clear and specific public interest safeguards would have greater democratic legitimacy than the current arrangements.
2. Parliament should prescribe the definition of the 'public interest' in a specific privacy law, and the courts should interpret it on a case-by-case basis. Contrary to the nonsense written in much of the press about judges being 'dictators in wigs', this is how our constitutional arrangements prescribe that our democracy should work.
3. A key case in relation to the definition of the public interest is *Von Hannover v Germany* (2005), in which the European Court of Human Rights stated that it

Considers that a fundamental distinction needs to be made between reporting facts – even controversial ones – capable of contributing to a debate in a democratic society

relating to politicians in the exercise of their functions, for example, and reporting details of the private life of an individual who, moreover, as in this case, does not exercise official functions. While in the former case the press exercises its vital role of ‘watchdog’ in a democracy by contributing to imparting information and ideas on matters of public interest ... it does not do so in the latter case.

Similarly, although the public has a right to be informed, which is an essential right in a democratic society that, in certain special circumstances, can even extend to aspects of the private life of public figures, particularly where politicians are concerned ... this is not the case here. The situation here does not come within the sphere of any political or public debate because the published photos and accompanying commentaries relate exclusively to details of the applicant’s private life.

As in other similar cases it has examined, the Court considers that the publication of the photos and articles in question, the sole purpose of which was to satisfy the curiosity of a particular readership regarding the details of the applicant’s private life, cannot be deemed to contribute to any debate of general interest to society despite the applicant being known to the public.

4. The Court also cited approvingly Resolution 1165 of the Parliamentary Assembly of the Council of Europe on the right to privacy which, in 1998, criticised the ‘one-sided interpretation of the right to freedom of expression’ by certain media which attempt to justify infringing the rights protected by Article 8 of the Convention by claiming that ‘their readers are entitled to know everything about public figures’. In addition, the Court endorsed the principle that ‘anyone, even if they are known to the general public, must be able to enjoy a “legitimate expectation” of protection of and respect for their private life’. A similar line was followed by Baroness Hale (albeit not in a case involving privacy) in *Jameel v Wall Street Journal Europe SPRL* (2006), when she argued that the public have a right to know only if there is

a real public interest in communicating and receiving the information. This is, as we all know, very different from saying that it is information which interests the public – the most vapid tittle-tattle about the activities of footballers’ wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it.

In this respect it’s perhaps worth quoting Max Clifford’s remark on Radio 4’s *The Media Show* on 18 May 2011 to the effect that ‘I’ve got to be honest and say I’ve probably broken more stories than anyone in Britain in the last 25 or 30 years, although I’ve stopped a lot more than I’ve broken. But probably [only] 20% of the stories I’ve broken you could justify on the grounds of public interest, a real public interest, that’s all’.

5. Crucial to any understanding of how the courts actually deal with privacy cases (as opposed to how newspapers would like the courts to deal with them) was the judgement in 2004 by Lord Steyn in the case of *In Re S (FC) (a child) (Appellant)* to the effect that, when it comes to balancing Articles 8 (privacy) and 10 (freedom of expression) of the European Convention on Human Rights,

first, neither article has as such precedence over the other. Secondly, where the values of the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each.

In *Max Mosley v News Group Newspapers* (2008) Mr Justice Eady described this ‘intense focus’ on the individual facts of the specific case as a ‘new methodology’ which is

obviously incompatible with making broad generalisations of the kind which the media often resorted to in the past, such as, for example, “Public figures must expect to have less privacy” or “People in positions of responsibility must be seen as ‘role models’ and set us all an example of how to live upstanding lives”. Sometimes factors of this kind may have a legitimate role to play when the “ultimate balancing exercise” comes to be carried out, but generalisations can never be determinative.

6. In every case “it all depends” (i.e. upon what is revealed by the intense focus on the individual circumstances)’. He also argued that

one of the more striking developments over the last few years of judicial analysis, both here and in Strasbourg, is the acknowledgement that the balancing process which has to be carried out by individual judges on the facts before them necessarily involves an evaluation of the use to which the relevant defendant has put, or intends to put, his or her right to freedom of expression. This is inevitable when one is weighing up the *relative* worth of one person’s right against those of another [...] it is not simply a matter of personal privacy versus the public interest. The modern perception is that there is a public interest in respecting personal privacy. It is thus a question of taking account of conflicting public interest considerations and evaluating them according to increasingly well recognised criteria.

Well recognised, it would seem, by everyone involved except editors of certain newspapers, who repeatedly insist on attempting to run intrusive stories which will almost inevitably be subject to pre-publication injunction. Alternatively, of course, they are simply chancing their arm, which would certainly explain why they frequently don’t even bother to turn up to contest an injunction once one has been requested.

7. Exactly the same line was followed by Mr Justice Eady in the much mis-reported case of *CTB and Newsgroup Newspapers + Imogen Thomas* (2011), in which he pointed out that

one can rarely arrive at the answer in any given case merely by reference to generalities. It must all depend upon the particular facts of the case. It follows too that there can be no *automatic* priority accorded to freedom of speech. The relative importance of the competing values must be weighed by reference to the individual set of circumstances confronting the court. Of course the court will pay particular regard to freedom of expression, but that does not entail giving it automatic priority. All will depend on the value to be attached to the exercise or proposed exercise of that freedom in a particular case. It will rarely be the case that the privacy rights of an individual or of his family will have to yield in priority to another’s right to publish what has been described in the House of Lords as “tittle-tattle about the activities of footballers’ wives and girlfriends”.

8. A recent event such as the Christopher Jefferies case clearly demonstrates that certain newspapers are perfectly prepared to commit what they must know are flagrant breaches of the laws pertaining to both defamation and contempt, and the resulting

penalties which have been imposed upon them by the courts are far too low to act as any kind of deterrent. The same is true of penalties in cases of breach of privacy.

9. At the barest minimum, no newspaper should be allowed to benefit financially from illegally and unjustifiably breaching someone's privacy; thus any extra sales revenue generated by such stories should be automatically forfeited as part of the penalty for publishing them. But penalties also need to be both punitive (imposing a significant and substantial penalty for breaching the law) and exemplary (discouraging such breaches in future both on the part of the defendant and of other newspapers).
10. Since newspapers have repeatedly demonstrated that they are not in the least deterred by the relatively small fines currently levied by the courts, penalties clearly need to be greatly increased, being equivalent to the loss of at least a week's total revenue and, in the worst cases, at least equalling the heaviest fines levied by Ofcom for breaches of its *Programme Code* (for example, the £2m levied in 2007 on GMTV for cheating viewers who entered its premium-rate phone-in competitions).

8 Editors at the seminars argued that the Editors' Code was a good set of standards to work to. The Inquiry would be interested in submissions from all parties on the coverage and substance of the Editors' code including accuracy and redress for those who are affected by breaches of the code.

Coordinating Committee for Media Reform: Many of these arguments are further developed in the 'Ethics' briefing paper produced by CCMR.

For more information, please go to www.mediareform.org.uk

Limits of the code

1. Part of the problem with the existing code is it does not provide adequate protection for journalists concerned about ethical practice at the organisations they work for. As things stand, the only action open to such journalists is to sacrifice their jobs. In 1989 two reporters, Rose Waterhouse and David Connett, quit the *Sunday Times* over the way their copy was changed in the 'Death on the Rock' story—the shooting by the SAS of unarmed IRA volunteers in Gibraltar. The same year, on *The Times*, the arts editor Tim de Lisle resigned over being ordered to run a blurb for a Sky TV programme. In 2003, Kay Wertz, a *Sun* feature writer resigned over the paper's pro-Iraq war bias. This year a *Daily Star* reporter resigned over being pressured to write anti-Islam stories. On his resignation on 4 March 2011, Richard Peppiatt published a savage open letter to the paper's owner detailing at least four occasions on which he had had to concoct fake stories (Peppiatt 2011). These cases clearly demonstrate the fact that editors, proprietors and journalists cannot be considered to be a single interest group. Working journalists require separate representation and protection in any organisation established to protect and promote ethical journalism.

2. On the initiative of the Express group NUJ chapel, the union developed its policy for a 'conscience clause' to be introduced into journalists' contracts, to enable them to refuse to work unethically without facing the loss of their jobs. The idea of a conscience clause was raised by the NUJ when giving evidence to the Commons Select Committee on Privacy and Media Intrusion in 2003. The committee recommended such a clause (Hagerty 2003) but it was rejected out of hand by both the PCC and the Society of Editors. According to Robert Pinker, long serving member of the Press Complaints Commission, defending this position at an NUJ conference: 'It is not our job to be involved in disputes between employers and staff.' He also suggested that such a clause would affect sales by making newspapers 'so sanitised people will not want to read them' (quoted in Phillips 2008). The conscience clause is now in the union's Code of Conduct. The text of the clause is: 'A journalist has the right to refuse assignments or be identified as the creator of editorial which would break the letter or the spirit of the code. No journalist should be disciplined or suffer detriment to their career for asserting his/her rights to act according to the code.'
3. Recommendations:
 - A new body, The News Publishing Commission, should be established replacing the PCC which should include working journalists who would be appointed by their own trade body and not by their editors.
 - As part of its remit, the body would have the job of establishing a whistle blowers code and interceding on behalf of journalists who are concerned about unethical practices.
 - The new ethical code would include a 'conscience clause' supporting journalists who refuse to work in ways that breach the code of practice.

Right of reply

1. Most news publishers now provide some opportunity for people to respond online (though this can be restricted to opinion pieces). However, despite the opportunities available to correct, many news publishers do not correct visibly, and do not publish corrections clearly on or around the original article published (there are, of course, exceptions). Most importantly, few publishers distinguish between general comments by people with an interest in the article and people or organisations referred to within the piece who may wish to respond directly or correct a factual inaccuracy. A more ethical practice would give a right of reply immediately below the article, to those who have been mentioned. This should become normal practice and it should also be legally enforced.
2. The right of reply should be available to any person or organisation named in in print or online. Where organisations or groups of people are impugned it should be possible for the complaint to be taken up on their behalf by a newly constituted News Publishing Commission. By insisting on an enforceable right of reply the British news media would be immediately opened up to alternative points of view at very little cost and with a minimum of disruption to existing practices.
3. There are a number of different existing examples of rights of reply that could provide models or starting points. The Finnish Freedom of Expression Act is a particularly apposite example and by enshrining the right of reply in a law that positively upholds

freedom of expression, it demonstrates that the freedom of expression afforded to the press does not trump the freedom of expression afforded to the individual.

4. Recommendations:

- A statutory right of reply should be introduced applying to any person who has been directly mentioned in an article. Decisions about the length, placing and timing of the reply should be decided by the News Publishing Commission (see below).
- The right of reply should be enforceable, in the first instance by a News Ombudsman and, in the event of dispute by a tribunal or court (see below).
- Print publications should provide a corrections and clarifications page where all replies are recorded, with basic details and a link to the on-line reply.
- In particularly serious cases, the right of reply should be offered with the same prominence, and in the same position, as the original article.

9 It has been argued that the statutory regulation and impartiality requirements that apply to broadcasting do not chill investigative reporting on television. Broadcasters are able to rely on the printed press to break controversial stories and then follow on behind. The inquiry would be interested in submissions on the extent to which the regulatory regime for broadcasting casts a chill on broadcast reporting and the relationship between the printed press and broadcast media as a result of the different regulatory environments.

Justin Schlosberg, Goldsmiths, Department of Media and Communications (part of the Goldsmiths Leverhulme Media Research Centre news team and undertaking a PhD in this area)

1. There is nothing new in the relative dependence of broadcasters on the agenda setting functions of the press. It was vividly demonstrated recently in the coverage of high profile controversies led by broadsheet exclusives involving Wikileaks and MPs expenses. According to one television news editor “we would sort of joke about how we were *The Telegraph*’s horn blower – but you’re going to do it because the story’s there, the journalism’s there and you’ve got to credit the fact that they’ve got it”.
2. But given the relative time and space constraints of the medium, television acts as a super layer of story selection and prioritisation. And by virtue of its extended influence and universal audience reach, television confers salience on news stories and acts effectively as a bridge between the news agenda and the public agenda. It is partly for this reason that current affairs has enjoyed a rich and acclaimed history in British television but has sadly experienced a marked decline in output over the last two decades (Born 2005, Holland 2006)
3. This decline has little to do with the chilling effects of regulation. Rather, resource constraints affecting the news industry as a whole have had a particularly acute impact on television current affairs in view of the relative costs of filming over printing. ITV cut its four current affairs outlets in the early 1980s down to one over the last twenty years. Although the BBC’s Panorama regained its prime time slot in 2007, its output was crucially cut by 50%. It is self-evidently harder to cover complex public interest news stories in a half hour time slot.

4. This problem has been compounded by a ‘climate of caution’ following the BBC’s castigation by Hutton Report in 2004 and subsequent reallocation of resources away from operational, and particularly investigative journalism. It has fostered a culture of compliance and a new breed of public service journalism that BBC insiders have described as ‘less questioning’ and ‘more directed’.
5. Both BBC and commercial broadcasters have become increasingly sensitive to perceived legal threats which are related to increased investment in legal ‘posturing’ by the targets of investigative reports. One BBC journalist pointed to the chilling effect of a growing tendency to settle rather than fight cases in the court:

I think sometimes the BBC in recent years has been too quick to cave in actually and pay out on these cases and that is a real problem. I think – I can’t go into details about this I’m afraid – but there is one case that I’m thinking about [...] where the BBC settled in our view far too early and amongst the journalists I work with it raised big questions about really whether the BBC was prepared to be robust enough and fight and what it would mean to actually settle this case early. Because often settling cases early may be a way of limiting your ultimate losses in the libel courts, but it also has a chilling effect because if you settle cases early it means effectively that you can’t go back and investigate those people again because you’ve already settled.

Public interest

10 The Inquiry has heard strong arguments for the importance of a free press in a democratic society. The Inquiry would be interested in submissions on the special role to be played by the press in a democracy, what ‘freedom’ requirements need to be in place for that role to be played and the whether this role places any obligations or responsibilities on the press.

Goldsmiths Leverhulme Media Research Centre news research team: Professor James Curran, Professor Aeron Davis, Angela Phillips, Peter Lee-Wright, Dr Des Freedman, Professor Natalie Fenton, Dr Tamara Witschge and Justin Schlosberg.

1. There is a basic split between ‘first amendment fundamentalism’ and ‘public good’ theories of the press. The former argues that the only concern of public policy should be to secure a press free from government; and that the securing of this freedom is a guarantee that the press will serve the public. The latter argues that the press should be both free of government and also serve the public good, and that freedom from government is not sufficient to ensure that the public good is served.
2. Most people (ourselves included) fall into the latter camp. Political philosophers from the 18th and 19th centuries (e.g. Paine, Jefferson, JS Mill, Lock) to the 20th (e.g., Lippmann, Dewey, Dahl, Habermas) argue the press and public media should serve the public good by contributing to the functioning of democracy.
3. This has led people to specify the requirements that the press should fulfill in order to contribute to the functioning of democracy (see Keane, 1991, Norris, 2000, Curran, 2002 and 2011 for discussion). A popular shortlist includes offering a full news service that adequately briefs the electorate; acting as a check (‘watchdog’) on the activities of powerful institutions and individuals; providing a medium of public

debate that enables significant differences of opinion to be expressed; and representing the public to power.

4. The fulfillment of these requirements imposes certain obligations on the press. These obligations are not being met. Thus, to adequately brief the electorate, the press should be accurate and credible; identify problems that need to be addressed, and air possible solutions to these; and report important developments outside Britain.
5. Yet, the British press is not accurate and credible. It has been highly distrusted for several decades, scoring very low on MORI polls since 1983 (Ipos-MORI, 1983-2011), usually hovering between 10 and 20% trust levels. What is less well known is that in every Eurobarometer public opinion survey, the UK consistently comes bottom when the public are asked about trust in their press (Eurobarometer). In the last World Values Survey (2005-08) only 13.8 per cent of the UK public trusted the press. This was the second lowest trust rating of the 56 countries surveyed. The lowest was Australia, where Rupert Murdoch's papers have a dominant market position and free market regulatory policies have gone beyond those of the UK.
6. The British press does not adequately brief its citizens. By comparison with other European countries, the British press is very entertainment-centred, insular, and devotes very little attention to other European Union countries (Curran et al 2009; Aalberg and Curran 2012). The British press is also very soft-news focused and insular in comparison with the press in 10 other countries across the globe (Curran et al 2012).
7. British news media in general (not just the press) report politics in a deficient way. Studies of UK electoral coverage repeatedly show that news reports focus on leader personalities and party competition ('horse-race' coverage) rather than on the policy issues held to be important to citizens. For example, Deacon et al.s (2005) study of the 2005 UK election found that 44% of coverage focused on the electoral process itself ('horse race' issues) and 8% on 'political propriety'. The most important electoral issues, according to polls (MORI, 1997-2009), such as health, the economy and taxation, were each covered in only 3-4% of stories.
8. The British press is only an intermittently effective watchdog of government and powerful institutions. It is heavily dependent on elite and official sources (Davies 2008; Curran et al. 2012). During the Thatcher and early Blair eras, a large section of the national press went almost into coalition with the government (Curran and Seaton 2010).
9. The British press has repeatedly failed as a medium of debate, most notably in the run-up to the 2007 credit crunch, and 2008 economic crash. Dissenters from neo-liberal orthodoxy gained very little access to the press.
10. The British press is unrepresentative, and has been so since 1945 (when comparisons were first made between editorial political and public political preferences (Butler and Butler 2000). This limits the press's ability to adequately represent the public.
11. These are problems that improved self-regulation or the introduction of co-regulation – though desirable - will not adequately address. As indicated elsewhere, steps need to

be taken to limit the dominance of press oligarchs, and actively promote greater pluralism. In our view, there is nothing inherently incompatible with fostering press freedom and press pluralism. Indeed, in 2008, Freedom House gave significantly higher 'freedom of the press' ratings to democratic-regulated media systems, such as Finland and Sweden (with press pluralism subsidy schemes) than to democratic-neoliberal media systems, such as the UK and US (Freedom House, 2008).

11 We've heard arguments that sometimes it will be in the public interest for journalists and media organisations to do things that would otherwise be ethically or legally questionable. The inquiry would be interested in submissions on the extent to which, if at all, should acting in the public interest be a complete or partial defence in relation to unlawful or unethical activity in pursuit of journalism; and, if so, subject to what conditions.

See above response to question 7

12 In practice any public interest argument would need to be considered in the context of specific cases. The Inquiry would be interested in submissions on who should be responsible for reaching decisions on whether something is in the public interest, and on what basis. Illustrative examples would be helpful.

See above

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