Media Reform Coalition[1]

The elephant next door: a survey of international media ownership regulations

In the storm of activity surrounding the Leveson Inquiry's examination of press standards, little attention has been given to the elephant in the room: who owns the press. Although it is rarely discussed in the UK, ownership regulation is not unusual internationally. This report provides a survey of the strong restrictions on media owners imposed by many countries around the world. We have divided ownership rules into four types: national restrictions, local restrictions, restrictions on cross-media ownership, and restrictions on foreign ownership. Regulatory regimes do not exist in a vacuum, so we have tried to contextualise each country's media landscape where possible. While every national context is different, we believe that a clear view of what exists in other countries can help inform our options in the UK.

1. The case for ownership regulation

There has always been a broad political consensus in the UK that ownership of the media has a distinctive character compared to other assets. As a House of Lords report stated in 2008:

> *"Media ownership is regulated differently to ownership of most other business activities because of the media's place in a healthy democracy... They provide the range of voices and opinions that informs the public, influences opinion, and supports political debate."*[2]

In 2012, Lord Justice Leveson's Report into press standards called for the development of a new system for both measuring and tackling media concentration of ownership, in a tacit acknowledgement that the existing regime has been inadequate in curbing on-going concentration, particularly in the local news sector. His recommendations also highlighted the need for measures which distinguish between market competition and plurality:

> *"The levels of influence that would give rise to concerns in relation to plurality must be lower, perhaps considerably so, than the levels of concentration that would give rise to competition concerns."*[3]

[1] Formerly the Coordinating Committee for Media Reform; our submissions to Leveson were made under this previous name.
[2] House of Lords, 'The ownership of the news, Volume I: Report' (2008), p. 62
[3] Leveson, 'An Inquiry into the Culture, Practices and Ethics of the Press' (2012), p. 45

Similarly, many countries also start from the assumption that ordinary competition law is not in itself sufficient to regulate media ownership[4]. European law is also broadly in favour of media ownership regulations. The European Charter on Fundamental Human Rights explicitly recognises the importance of media pluralism, and European courts have tended to regard proportionate and non-discriminatory regulation as being justified by this general interest objective[5]. The European Court of Human Rights has held that states are under a *positive obligation* to ensure that "the public has access through television and radio to... a range of opinion and comment, reflecting *inter alia* the diversity of political outlook within the country."[6] In 2007, too, the Council of Europe recommended countries limit "the influence which a single person, company or group may have in one or more media sectors"[7].

Given all this, we reiterate our statement in our 2011 report, 'The Media and the Public Interest':

> *"No media organisation should be too large and hence too powerful, either within a news sector or in aggregate across news sectors. Over recent decades regulation on ownership has slipped – but could be strengthened once again."*

Unchecked media concentration over several decades has allowed some media groups to accumulate vast amounts of revenue and influence, with adverse consequences for ethical journalism and democracy. One such consequence has been the development of intimate relationships between political and media elites which, according to Lord Leveson, "has not been in the public interest".

2. Ownership rules in the UK

Ownership of the media in the UK is principally regulated by the 2002 *Enterprise Act* and the 2003 *Communications Act* which amended it. The latter was deregulatory in its approach, and aimed to liberalise and simplify ownership rules[8]. Its changes included:

- Lifting restrictions on mergers of ITV companies – but retaining the '20/20' rule, whereby no company holding a national ITV licenses can merge with a company owning 20 per cent of the national newspaper market or more than 20 per cent of the newspapers in a region
- Lifting the rules preventing a company owning 20 per cent of the national newspaper market from owning Channel 5
- Increasing the scope for cross-media mergers
- Increasing the scope for radio mergers
- Allowing companies from outside the European Economic Area to own UK TV and radio companies

[4] Chris Goodall, Enders Analysis 'Media Ownership Rules' (2012), p. 4
[5] Smith and Tambini (2012), p. 40
[6] ECHR: Case of Manole and others v Moldova
[7] Media Reform Coalition, 'The Media and the Public Interest' (2011), p. 7
[8] House of Lords (2008), p. 68

The 2011 *Media Ownership (Radio and Cross-Media) Order* further removed restrictions on accumulation at the local level.

In short, these laws have left media ownership in the UK primarily subject to two mechanisms: first, the 20/20 principle, and secondly, discretionary intervention by the government under the Enterprise Act if the relevant Secretary of State considers a merger to raise plurality concerns.

Intervention notices are subject to a Public Interest Test set out in section 58(2A) to (2C), and involve Ofcom, the Office of Fair Trading, and government departments. In our 2011 report on 'The Media and the Public Interest', we criticised this test in detail for being messy, inconsistent, and subject to political influence. Indeed, only two interventions under the Enterprise Act have ever been made: one concerning Sky's purchase of ITV shares in 2006, the other involving News Corporation's bid to fully acquire BSkyB. In the first case, the merger was approved (with some sell-off of bulk shares mandated), and in the second, it appeared on the verge of approval before the revelations of 'hackgate' scuppered the deal[9].

In 2006, Ofcom reviewed the media ownership rules of the UK and recommended that no changes be made[10]. In 2012, it released another report on media plurality measurement and regulation, which made some new recommendations.

During his stint as Secretary of State for Culture, Olympics, Media and Sport, Jeremy Hunt had asked the regulator five questions, including what options existed for measuring cross-media plurality, what could trigger a plurality review in the absence of a merger, and whether it was "practical or advisable to set absolute limits on news market share". Ofcom proposed a minor level of change, but not much. Its advice included:

- Plurality reviews should not be triggered by metrics or complaints, and instead should take place simply every four or five years, with no scope for discretion
- An additional 'exit trigger' should would allow review outside this schedule when a news organisation dies or passes out of the market
- No prohibition on any given market share
- No further prohibitions on transactions beyond the current 20/20 rule
- Parliament to decide whether that rule should be changed or tightened.[11]

The report did, however, state:

> *"We believe the features of a plural news market would include many or all of the following: a diverse range of independent news voices; high overall reach and consumption with competition to spur innovation; economic sustainability, and no single organisation accounting for too large a share of the market."*

[9] Richard Craufurd Smith and Damien Tambini, 'Measuring Media Plurality in the United Kingdom', Journal of Media Law (2012), p. 43
[10] Ofcom, 'Review of Media Ownership Rules' (2006)
[11] Ofcom, 'Measuring media plurality' (2012)

We agree. The question is: how can that be achieved?

3. Ownership rules abroad

We have divided our survey of ownership rules into four categories: restrictions that operate on a national level, restrictions on a local level, restrictions on cross-media ownership and restrictions on foreign ownership. The first two are separated because, in the UK, the national and local markets are utterly different, and any new regulatory regime would need to treat them very distinctly.

Different kinds of ownership regulation exist all over the world, and this is not a complete survey, but we have attempted to describe the key features in place in a range of other liberal democracies. We have not included provisions of ordinary competition law.

Below is a table indicating the different kinds of regulation present in different countries, based on a table produced by Ofcom in 2006[12], and updated to incorporate changes since then.

Country	Limits on TV ownership	Limits on radio ownership	Limits on press ownership	Limits on cross-media ownership	Limits on foreign ownership	*Notes	Recent change?
Australia	✓	✓	X	✓	✓*	Only case by case review, no hard limits	✓
Canada	✓	X	X	✓	✓	-	✓
Denmark	✓*	✓*	X	X	X	Controls on “influence” in boards & companies	X
France	✓	✓	✓	✓	✓	-	X
Germany	✓	✓	X	✓	X	-	X
Luxemberg	X	✓	X	X	X	-	X
Netherlands	X	X	X	X	X	-	✓
Spain	✓	✓	X	X	✓	-	✓
USA	✓	✓	X	✓	✓	-	✓

[12] Ofcom (2006),

A) National Ownership Rules

Canada

Canada governs newspaper ownership through legislation and broadcast ownership through the Canadian Radio-Television and Telecommunications Commission.

Most of Canada's rules exist at the local level or concern foreign ownership. But, following a number of mergers in the cable sector, the CRTC has since 2008 enforced a cap preventing any company from owning broadcasting assets holding more than a national 45 per cent audience share. This figure is determined by adding together each asset owned by a given company based on Nielsen ratings as a proportion of the same ratings compiled across Canada. The rule responded specifically to a long-term trend of major TV networks buying up speciality cable channels, and was intended to prevent them from buying too many (or merging with each other to become dominant players).

France

France has a strong history of media regulation. Newspapers are supported by government subsidies (as is the national news agency, Agence France Presse) and their ownership is limited by the 1986 *Press Law.*[13] Companies cannot acquire a new publication which will boost their total national circulation beyond 30 per cent. This rule applies only to daily publications but counts even if the company creates its own new paper or even simply experiences higher circulation on one it already owns[14].

In broadcasting, the Higher Audiovisual Council enforces ownership limits based on three criteria: capital share, number of licenses, and audience share. Firstly, there is a hard limit on control of TV companies. Nobody can hold – either directly or indirectly – more than 49 per cent of a national broadcast licensee, providing its average annual audience share exceeds 2.5 per cent. A 'national' broadcaster is defined as having a potential reach of over 10 million people (around 15 per cent of the national population) and includes radio, cable and satellite. Shareholders must inform the CSA when their holding exceeds 10 per cent in any given company.

These limits apply to both analogue and digital television, but there are other restrictions which apply only to analogue. A '15/15' rule means that nobody holding an interest of over 15 per cent in a national analogue licensee can hold over 15 per cent in any other; a '5/5/5' rule prevents them from holding an interest of over 5 per cent in more than two. In addition, no entity can hold more than one license for national analogue television, seven for digital television, or two for satellite television.

Finally, there are restrictions based on audience share:

- You cannot own both a national TV license (analogue or digital) with an audience share of over 2.5 per cent AND a license for local analogue TV.

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[13] Alison Harcourt, 'The European Union and the Regulation of Media Markets' (2005), p. 193
[14] Loi relative à la liberté de communication (1986)

- You cannot hold local analogue TV licenses with a cumulative reach over 12 million people, or digital TV licenses with the same cumulative reach. These limits do not work in combination.
- You cannot hold more than one local TV license (analogue or digital) in the same broadcast area.

Germany

Media regulation in Germany falls to individual state governments, but in the early 90s they mutually established the Commission on Concentration in the Media Industry (KEK). KEK can intervene in the TV or radio markets if a company's combined media holdings (including newspapers) comprise more than 30 per cent of annual viewer share. A 25 per cent holding of the television market can also trigger intervention.[15]

It is worth noting Germany's complex approach to measuring audience share across mediums. KEK applies different weightings to shares in different formats, on the basis that different kinds of media exert varying influence on the public sphere. For example, when the Axel Springer publishing group attempted in 2006 to take over Pro7/Sat1 Media AG, a large private television company, the raw TV audience share of the combined company would have been a perfectly legal 22 per cent. KEK, however, chose to incorporate a weighted figure representing Springer's print holdings. The company's 26 per cent share of the daily newspaper market was weighted down by one third, equating to a 17 per cent share of TV audiences. At 39 per cent, the deal was over the threshold (although the decision was later overruled)[16].

Spain

Spain had high hopes for pluralism after Franco's death in 1975 and Socialist governments initially placed severe limits on ownership of the country's three national TV broadcasters. Successive waves of liberalisation have allowed greater national concentration to take place, but serious monopolies have still been prevented[17].

The 1988 *Private Television Act* established that no individual or institution could hold more than 25 per cent of the shares in any of the three national licenses available. Since then, however, rules have been relaxed through a mixture of royal decrees and amendments incorporated into 'general acts' passed annually along with the country's budget. These methods, generally intended to avoid dedicated parliamentary debate, have allowed regulation to evolve piecemeal in response to the concerns of media lobbyists.

[15] CTRC, 'Media Ownership; Rules, Regulations and Practices in Selected Countries and Their Potential Relevance to Canada' (2007)
[16] Smith and Tambini (2012), p. 49
[17] Carles Llorens, 'Spain's Media Concentration Policy: A Patchwork Crucial to the Understanding of the Spanish Media System', International Journal of Communication 4 (2010)

- The 1988 *Private Television Act* established that no person could hold more than 25 per cent of the shares in any of Spain's three national broadcast licenses.
- The first Conservative government, elected in 1996, approved a decree which raised the threshold of shares from 25 per cent to 49 per cent.
- Another major reform, in 2003, allowed any shareholder to hold 100 per cent of the shares in a national television station, provided it held no more than 5 per cent in another.
- Reforms in 2005 allowed new national TV licenses to be granted beyond the three that already existed.

The most profound change, however, came in 2009 with a royal decree which legalized mergers between media owners. While local rules still remained in place (see below), national broadcast licenses are were allowed to hold simultaneous shares in multiple national stations as long as their average audience share (over the 12 months prior to the acquisition) remains below 27 per cent. This figure was carefully chosen to prevent a merger only between the two dominant commercial stations. An extra pluralism safeguard, however, prevents any such acquisition from negating the presence of at least three independent national licensees. These changes were codified the following year in the 2010 *Broadcasting Act*

Spain does not enforce any sector-specific limits for asset ownership in the newspaper sector, or any cross-media constraints beyond normal competition law.

United States

The United States has no newspaper or radio ownership restrictions on a national level. National broadcast television is regulated by the Federal Communications Commission, which enforces a number of ownership rules.

First, no one person may own TV stations with an aggregate reach of more than 39 per cent. 'Reach' is defined as a percentage of all the TV-owning households in the Designated Market Area to which the station in question is assigned. There are 210 DMAs in the US, defined by Nielsen market analyses.

Second, there is a 'dual TV network' rule, which prevents anyone from owning more than one of the four main TV networks (ABC, CBS, Fox, and NBC). This, however, is not the whole picture. High cable pickup in the USA means that networks are not the only influencers of public opinion. While audience ratings for network TV are often technically higher than for cable, cable news channels like CNN and Fox News exert significant political weight, and cable viewership has been giving the networks a run for their money since the start of the century[18]. Widespread franchising and the repeal of local content mandates in 1996 also means that Big Four network content is replicated across the country regardless of actual ownership.

[18] USA Today, 'In 2010, cable TV's ratings put networks on notice' http://usat.ly/XFEDBe

B) Local ownership rules

Australia

Australia has a number of provisions affecting local radio and television under the 1992 *Broadcasting Services Act*. As in the USA, and, to a lesser extent, Spain, these are of particular importance because the country's sheer size makes 'local' a much wider consideration than in the UK.

Under the 1992 *Broadcasting Services Act:*

- Nobody may be in a position to exert control on more than two commercial radio licensees in the same license area, or more than one commercial TV licensee.
- Nobody may be in a position to control commercial TV licenses in two or more licenses areas whose total population exceeds 75 per cent of the national population.

These rules are clarified in statute with specific clauses regarding directorship, company control, and so forth.

Denmark

Denmark does not actually impose ownership limits on media beyond ordinary competition law. However, broadcasting licenses are governed by a stringent set of concerns.

Under the 1997 *Danish Broadcasting Act,* licenses for local TV or radio are only granted if:

- The majority of board members reside in the local area
- The sole objective of the company is to provide local radio/TV
- Commercial companies (other than newspapers) do not have a dominant interest or "any decisive influence" in the company

Individuals are also prohibited from serving as board members or having practical influence on programming at more than one local radio or TV station.

Luxembourg

Luxembourg had no media law to speak of until the 1991 *Electronic Media Law*[19]*.* This prevents any entity from owning more than 25 per cent of the voting rights in any domestic radio station, and restricts them to having shares in only one. Companies applying to transmit via 'low power radio stations' must provide regulators with a complete list of their owners, directors and managers – and a copy of their accounts each following year.

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[19] Harcourt (2005), p. 175

Spain

Spain has a particularly active local market. Poor infrastructure in the first part of the 20th century created a decentralised media landscape where regional players are often more important than national ones. 2003 reforms to the 1988 *Private Television Act* established rules affecting broadcast concentration across national and regional levels.

- Holders of national TV licenses may not also hold shares in regional or local licenses when the population of both areas exceeds 25 per cent of the entire Spanish population.
- Companies with shareholdings in a regional station cannot hold shares in a local station subject to the same population limits.
- Holders of 5 per cent of the capital or voting rights in a regional broadcasting license cannot significantly participate in a local license under the same area when the population covered exceeds 25 per cent of the region's total.
- Anyone with 5 per cent of capital or voting rights in any license-holder (national, regional or local) cannot also hold interests in a licensee whose programs can be simultaneously received in the same area.

In addition, there are rules preventing local concentration of radio ownership. Under the 1987 *Telecommunications Act,* later amended in 2005, a person can control up to 50 per cent of the radio broadcasting licenses available in a certain area, provided there are no more than five overlapping licenses there. Where there is only one frequency available in a given area, nobody can control more than 40 per cent of radio licenses in the same region. These percentages are calculated excluding public radio stations and applied separately to analogue and digital radio.

United States

As in Australia, 'local TV' in the vast United States means something rather different than it does in the UK. The FCC enforces rules on local TV and radio ownership presenting concentration within Designated Market Areas[20].

Ownership of more than one station in any DMA is forbidden unless

- Their service areas – known as 'signal contours' – do not overlap, OR
- one of them is *not* among the four stations ranked highest in market share, AND
- at least 8 other providers are still operating in the DMA

Local radio ownership, meanwhile, is restricted depending on the size of the market. The number of commercial radio stations one person can own is limited depending on the total number of stations in that market, and comes with a further restriction on how much of their portfolio can be on one service (i.e. AM or FEM).

A person may own control or operate radio stations as follows:

[20] Federal Communications Commission, Broadcast Ownership Rules Guide (2011)

- In a market with 45 or more stations: up to 8, with no more than 5 in one service
- In a market with between 30 and 44: up to 7, with no more than 4 in one service
- Between 15 and 29: up to 6, with no more than 4 in one service
- Fewer than 14: up to 5, with no more than 3 in one service

Note that 'radio markets' are defined not by DMA but by signal contour overlap.

C) Cross-media ownership rules

Australia

In Australia cross-media ownership may be prevented or restricted where a transaction will trigger an 'unacceptable three-way control' situation.

Such a situation exists when a person who wishes to acquire a new commercial radio license in any given license area is also in a position to control:

- A commercial TV license with a license area where the population overlaps with more than 50 per cent of that in the radio license area
- A second radio license in the same license area
- A newspaper associated with the same license area

From 2007, the *Broadcasting Services Act* further prohibits acquisitions of interests where they will cause an 'unacceptable media diversity situation'. The details can be found in section 61AC of the BSA, but the upshot is that the BSA blocks any transactions which would result in less than five independently controlled 'media operators' in a metropolitan area (which usually means state capitals), or four in a regional area.

Although existing cross-media holdings were 'grandfathered', the new rules have resulted in a situation where companies looking to expand their holdings must effectively choose one medium to do it. Australia's media is now dominated by large organisations specialising in one of the three regulated media (although many retained cross-media holdings in unaffected sectors, such as magazines, weekly newspapers, pay TV and the internet).[21]

Canada

From 2008, CRTC has imposed rules on cross-media holdings in local markets, following an unprecedented period of media consolidation. Companies are limited to two types of media in any given market; in one city, for example, they might own TV and radio assets, TV and newspaper, or radio and newspaper, but never all three.

[21] J. Givern, 'Cross-media ownership laws: refinement or rejection?', UNSW Law Journal 30 (2007)

Deals between TV distributors of any kind are also forbidden if they result in one company or person controlling the delivery of programming in any given market.

France

The 1986 *Press Law* distinguishes between cross-ownership at a national and local level.

Nationwide, no entity can hold more than two of the following positions:

- Holder or indirect controller of licenses for TV services (either analogue or digital) operating in areas with a combined population of 4 million
- Holder or indirect controller of licenses for radio services operating in areas with a combined population of 30 million
- Owner or editor of daily newspapers in ‘general circulation’ with a combined share of national circulation in excess of 20 per cent

Locally, no entity can hold more than two of the following positions:

- Holder or indirect controller of one or more licenses for analogue or digital TV
- Holder or indirect controller of one or more licenses for radio services whose combined potential audience in the area exceeds 10 per cent of the total audience
- Owner or editor of one or more daily newspapers.

In all cases, the TV service, radio station or newspaper can be national or local – it only needs to be distributed or available in the area under consideration.

The Netherlands

The Netherlands formerly had several specific restrictions on cross-media ownership, but these have been first relaxed (in 2007) and then abolished entirely (in 2011).

The initial *Media Act* established the following restrictions:

- No single party with a 25 per cent share of national newspaper circulation could own more than one third of a commercial broadcaster
- No single party owning more than a 50 per cent share in a given local market could own any commercial broadcasters in that area unless there was also a local public service broadcaster (but one was almost always present)

In 2007 the *Temporary Act on Media Concentrations* replaced these rules with two prohibitions. The first was on any merger in the newspaper market which would lead to a circulation share greater than 35 per cent. The second was on any mergers which would lead to a cumulative market share of over 90 per cent in at least two of the three major mediums: daily newspapers, TV broadcasts, and radio broadcasts (measured by circulation, viewer figures, and listener ratings respectively).

These three markets together counted for 300 per cent, so that, by way of example, a company would be blocked from acquiring a 20 per cent share in the newspaper market if it already owned another 10 per cent in the same market, a 40 per cent share in the radio market, and a 30 per cent share in the TV market. However, no measures would be taken if this threshold was breached by organic growth rather than a particular transaction.

The act was extended in 2009 to January 2012, but repealed at the start of 2011 after newspaper publishers argued that it endangered their ability to operate daily newspapers at all, and that internet news was able to provide sufficient pluralism. However, this is not to say that assessment for mergers and acquisitions in the media sector has been relaxed. Competition law still governs media concentration and is in some cases stricter than the *Temporary Act;* some mergers allowed under the *Temporary Act* were refused by 'vanilla' regulators[22].

United States

As in local radio regulation, the FCC imposes on cross-media ownership based on a sliding scale that varies by the size of the market, based on the number of independently owned "media voices" (TV stations, radio stations, major newspapers, or cable systems).

Entities may own the following number of broadcasters depending on market size:

- In markets with at least 20 independent voices, up to 2 TV stations and 6 radio stations (or 1 TV station and 7 radio stations)
- In markets with at least 10 independent voices, up to two TV stations and 4 radio stations
- In smaller markets, up to 2 TV stations and 1 radio station.

In all markets, any entity must also comply with the local radio and TV ownership limits.

The USA has traditionally preferred 'bright line' rule-making, and fixed limits rather than intervention thresholds, in order to create certainty for market decisions and limit the discretion of federal agencies.[23] But cross-media ownership of newspapers and other formats has had a chequered history due to repeated reviews by the country's court system.

From 1975 to 2003, the FCC upheld an absolute ban on any entity from owning either a TV or a radio station in addition to a daily newspaper, if the broadcast station's service area covered the newspaper's city of publication. In 2003, however, it attempted to loosen these rules by introducing a sliding scale similar to that applying to TV and radio stations. This act was struck down by an appeals court[24] after being challenged by a group of radio activists. In 2007, the FCC proposed to evaluate transactions on a case-by-case basis, subject to a series of presumptions, and these were also struck down (in 2011). But similar rules have been supposed for the future, and may come into force again, so they are worth examining in detail.

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[22] Dutch Media Authority, 'Mediamonitor: The Dutch Media in 2010' (2011)
[23] Smith and Tambini (2012), p. 56
[24] Ofcom (2006), p. 50; the case was Prometheus Radio Project vs FCC

Briefly put, the rules established a presumption in favour of media mergers between TV stations and newspapers, as long as:

- The merger was taking place in one of the top 20 Nielsen DMAs,
- The TV station was not ranked among the top four stations, AND
- There would remain at least eight independent voices in the DMA.

In other circumstances, or in smaller markets, this presumption was to be reversed, and the burden was placed on companies to show "clear and convincing evidence" that the merger was in the public interest.

This negative presumption, however, could become positive again under two circumstances:

- Where the newspaper or broadcast station is "failed" or "failing" as defined by FCC rules
- Where the proposed combination results in a "new source of a significant amount" of local news in the market.

"A new source" is defined as a station which will offer for the first time at least seven hours of local news programming per week. Broadcasters approved under this positive presumption must report to the FCC every year to show compliance.

All decisions would be subject to a discretionary public interest review regardless of presumptions.

One drawback of these rules is that the burden on companies to prove compliance would have given an advantage to large organisations with the resources to make their case effectively. They would also have been more lax than the absolute ban, and would have presumed in favour of mergers in the biggest DMAs. On the other hand, they provided scope for agency discretion while giving media companies clear guidance on the circumstances in which mergers were likely to be approved or disapproved.

D) <u>Foreign ownership rules</u>

A number of countries have chosen to enact regulations limiting foreign ownership of media companies. The rationale for such rules is usually that they help preserve the 'national character' or community of the nation, and ensure (in theory) that media owners have the best interests of their operating country at heart.

Australia

Australia once had detailed restrictions on foreign ownership under the 1992 *Broadcasting Services Act,* but most of these were repealed in 2006.[25]

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[25] Australian Communications and Media Authority, archived page http://bit.ly/Y59xmq

Prior to the 2006 amendments, the following rules applied:

- No foreign person allowed to control a commercial TV license.
- No foreign persons to have company interests in such a license exceeding 20 per cent in aggregate.
- No more than 20 per cent of directors in each license permitted to be foreign persons.
- No foreign person permitted to have company interests exceeding 20 per cent in a pay-TV license; the total company interests held by foreign persons could not exceed 35 per cent.[26]

In addition, the country's Foreign Investment Policy allowed its government to limit foreign interests in national and metropolitan newspapers when they reached 40 per cent in total or 15 per cent for any single shareholder. Since 2007, however, it has simply defined media as a "prescribed sensitive sector" [27], allowing the government to consider and veto acquisitions or investments on a case by case basis. [28]

Canada

Canada imposes an effective 46.7 per cent cap on foreign ownership of broadcasting license holders. While explicit limits on foreign ownership do not exist in statute, relevant legislation gives regulators the power to impose them, which they have done according to government directions which remain broadly in force.

Canadian politicians have long been concerned with foreign interference in the media, especially from the United States[29]. The 1968 *Broadcasting Act,* which established the CRTC, tasked it with policing ownership "to safeguard, enrich, and strengthen the cultural, political, social and economic fabric of Canada." The 1991 act of the same name reiterated that the "Canadian broadcasting system shall be effectively owned and controlled by Canadians."

In 1968 the Canadian government issued an order in council instructing the CRTC to refuse a license to any company it believed was effectively controlled outside Canada. An applicant had to demonstrate that 80 per cent of its voting shares were owned by Canadians, and that its chair and directors were Canadian citizens. The 1991 *Broadcasting Act* did not rescind this order.

In 1997 the federal Cabinet updated the CTRC policy to allow greater foreign ownership through holding companies. The new rules retain the 80 per cent Canadian control threshold for direct ownership of broadcasters, but require only 66.6 per cent for holding companies. Foreign citizens can therefore own up to 20 per cent of a broadcaster and up

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[26] Ofcom (2006), p. 51
[27] Australia's Foreign Investment Policy (January 2012) http://www.firb.gov.au/content/policy.asp?NavID=1
[28] Communications Law Centre, University of Technology Sydney, 'Media Ownership Fact Sheet' http://bit.ly/U4dOc4
[29] Transport Canada, 'Restrictions on Foreign Ownership in Canada' (2003), p. 6

to 33.3 per cent of its owner, achieving an aggregate share of 46.7 per cent. Amendments to the 1993 *Telecommunications Act* passed in July 2012[30] have relaxed these rules for phone providers, but do not apply to broadcasting activity[31].

France

France forbids foreign ownership of capital or voting rights above 20 per cent in any company holding a terrestrial broadcasting license[32]. These rules were established in the 1986 *Freedom of Communication Act* and are enforced by the CSA, but in practice apply only to owners outside the European Economic Area, due to the restrictions of the EU's single market. Terrestrial broadcasting, in this case, means radio and TV broadcast in the French language, but does not include satellite or cable channels.

Spain

Spain's 1988 *Private Television Act* established constraints on non-EU ownership. These were reformed in 2009 by royal decree, but nationals from outside the EEC are still forbidden from directly or indirectly holding over 49 per cent of any broadcasting license holder. Non-EEC nationals can also only buy new shares if a reciprocal principle with the country of origin is acknowledged.

United States

Under the 1934 *Communications Act,* as amended, the FCC cannot grant a license for radio or TV broadcasting to:

- Any foreign person or representative thereof
- Any company organized under the laws of a foreign nation
- Any company in which more than 20 per cent of capital or voting stock is owned by any foreign persons, companies or governments

Furthermore, the FCC has the right to apply a public interest test to, and veto, any company directly or indirectly controlled by *another* company:

- of which more than 25 per cent of stock is owned by foreign persons, OR
- which is organized under the laws of a foreign nation

There are a complex set of guidelines and rules surrounding the interpretation of this act and the test to be applied to indirect foreign ownership. Among these is the presumption that investment from World Trade Organization members is always compatible with the public interest.

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[30] MacMillan LLP, news update on Telecommunications Act amendments (2012) http://bit.ly/PH6Hhy
[31] Osler, Hoskin & Harcourt, report on plans to amend Telecommunications Act (2012) http://bit.ly/GTmvzB
[32] Freedom of Communication Act of September 30th, 1986

4. Conclusion

This report shows that rules and limits on media ownership are common in many countries, and are seen as necessary protections against undue concentration that may harm the public interest. While none of them provide a perfect solution to the problems of press standards and ethics that were highlighted during the Leveson Inquiry, it is clear that they can play a productive role in fostering plurality.

The Media Reform Coalition believes that the UK should take a lead in tackling media concentration. Proposals submitted to Lord Justice Leveson suggested a number of remedies, including a 20 per cent cap on ownership in markets for national newspapers, television, radio and online news, calculated by audience share, as well as a 15 per cent limit on total cross-media revenues.

We believe that such limits on ownership are vital if we are to see more transparent and democratic relationships between press and politicians, and if we are to avoid the reoccurrence of the unethical behaviour amongst news providers revealed in recent months.

For more information, please contact info@mediareform.org.uk or visit www.mediareform.org.uk