

DMG Media response to Ofcom's consultation on The Future of Media Plurality in the UK

1. This submission is made on behalf of DMG Media, publishers of the Daily Mail, Mail on Sunday, Metro and i newspapers; MailOnline, metro.co.uk and inews websites; and New Scientist magazine. This response focuses on the issues raised in the Call for Evidence of which we have direct experience, namely online intermediaries, algorithms and market changes.

A. Executive Summary

2. We welcome the fact that Ofcom is reviewing its approach to media plurality and the current media ownership rules. We agree that the media landscape has changed fundamentally since the Communications Act was passed in 2003. In fact, we would argue that it has changed even more radically than the consultation document recognises.
3. The market for news provision is no longer divided, as it still was in 2003, between broadcasters, with mixed private and public funding and operating under state licence and regulation, and newspaper publishers, privately funded and self-regulated. Nor is the greatest threat to plurality any longer the possibility of one company acquiring a commanding position in either or both the broadcasting and newspaper industries. However, it should be noted that, given the consolidation of the advertising industry in recent years, we find it hard to see that ownership of a broadcaster by an advertising agency would be compatible with media plurality.
4. As the Ofcom News Consumption Survey quoted in the consultation document shows, in 2020 the internet was the most important source of news for every age group under 44, and the second most important over all age groups.¹ There is no reason to believe the move to digital news consumption will stall – in reality, as broadcasters come under the same economic pressures which have afflicted the newspaper industry over the last decade, it is more likely to accelerate. Indeed,

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0013/201316/news-consumption-2020-report.pdf p.14

Ofcom's latest 2021 News Consumption Survey shows the lead of television over the internet as a news source has narrowed from 10pc to 6pc.²

5. On one level digital news is a crowded market. Rather than being kept in separate silos, as was intended by the media ownership rules, broadcasters and newspaper groups compete directly in digital news, along with numerous other suppliers, including digital natives and news operations owned and operated from outside the UK.
6. However, while digital news creation is at present unquestionably pluralistic, the online platforms which act as gatekeepers to the public in the consumption of news are virtual monopolies. For those who seek news through search Google is overwhelmingly dominant, with an 87.7pc share of the UK market³; for those who consume it through social media Facebook (including Instagram, which it owns) is also dominant, with a 62pc share.⁴
7. Our view, based on our experience as a news publisher, is that the market dominance and global reach of these two companies means they are now the most significant threat to media plurality in the UK. In Section B of this response we will show how Google uses its market dominance to favour some news publishers and discriminate against others. Section C will show how political pressures and proposed legislation threaten to turn Facebook into a quasi-regulator, with equally damaging consequences for plurality of news provision.
8. Through a series of initiatives, from the 2019 Cairncross Review onwards, the government has recognised the threat platform dominance poses to a pluralistic news publishing industry. The Digital Markets Unit (DMU), in which Ofcom is a participant, has the potential to play a vital role in protecting media plurality by enforcing a competitive marketplace in digital advertising, and regulating the platforms' algorithms to ensure they operate in a way which is fair, consistent and transparent.
9. However, while the DMU is up and running, the legislation needed to make it an effective regulator has still to materialise. We had hoped that the DCMS consultation on a new pro-competition regime for digital markets⁵, launched in July, would set out detailed proposals for the new Competition Bill needed to give the DMU statutory powers. Instead it asks for views on questions of

² <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/news-media/news-consumption>
p.16

³ <https://www.statista.com/statistics/280269/market-share-held-by-search-engines-in-the-united-kingdom/>

⁴ <https://www.statista.com/statistics/280295/market-share-held-by-the-leading-social-networks-in-the-united-kingdom-uk/>

⁵ <https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets>

principle already addressed in a number of previous consultations. It appears the commercial regulation digital markets urgently require is still some way off.

10. In contrast, in social media it is proposed legislation itself which to large extent raises the threat to plurality. The Draft Online Safety Bill, in which Ofcom plays a central role as the regulator, would impose huge financial penalties on social media companies which fail to introduce and enforce codes of conduct to block content which is 'legal but harmful'. For different reasons, blocking of content is already beginning to happen in the USA, with worrying consequences for freedom of expression. We will give some detail of this in Section C.
11. We had hoped this legislation would include an exemption that would ensure content produced by legitimate news publishers would remain entirely outside its scope. Unfortunately, while it is clear the duty of care does not oblige social media companies to apply their codes of conduct to news publishers, there is nothing to prevent them doing so if they choose to. Our experience in the US suggests that, due to political pressure and the administrative convenience of setting one set of rules for all, this is exactly what will happen in the UK. We will be seeking to persuade the Joint Committee on the Draft Online Safety Bill that it should be amended to give news publishers a full and effective exemption.

B. Platform dominance and the threat to plurality in search

12. MailOnline is the most visited news website in the UK (excluding broadcasters)⁶ and the fifth most visited in the world⁷. It would be logical therefore to expect, when a member of the public uses Google to search for a news subject such as 'Covid', 'Boris Johnson' or 'Brexit', that MailOnline stories would generally appear high up in the first page of search results. That is not the case. Data from search analytics companies Sistrix and NewsDashboard UK shows that Google overwhelmingly favours the Guardian and BBC in search results and discriminates heavily against other news websites, particularly MailOnline. Indeed, MailOnline's share of search visibility for many important news search terms is close to zero – for example, for the term 'Covid' it was just 0.22pc for the month of July this year.
13. In our submission to the Competition and Market Authority's Market Study on Digital Advertising we charted how Google's algorithms have consistently reduced MailOnline's search visibility since 2013. Search visibility is significant

⁶ <https://pressgazette.co.uk/huffpost-cuts-brutal-uk/>

⁷ <https://pressgazette.co.uk/top-50-largest-news-websites-in-the-world-sputnik-drudge-and-fox-see-biggest-traffic-falls-in-february/>

because it measures not the choices made by users, but the choices made by Google's algorithms when users make requests for particular search terms. The Sistrix search visibility index⁸ is the industry standard and measures Google's ranking across sets of representative keywords.

14. Particularly striking evidence that MailOnline was being discriminated against by Google came in 2019, when an algorithm change in early June cut MailOnline's search visibility by 50pc, while other news websites' visibility improved. Three months later, following protests to Google at the highest level, MailOnline's search visibility was equally suddenly restored. At neither point did we make any changes to the structure or presentation of the site which would explain its rejection or subsequent re-acceptance by Google's algorithms.
15. At the time we were only able to guess why Google had reduced MailOnline's search visibility. However, when reviewing evidence for the CMA market study, it became apparent to us that the June algorithm change coincided with the introduction by Google of its Unified Pricing rules for digital ad markets. These rules had the effect of limiting the use by publishers of header bidding, a means of setting price floors which enabled us to fill more of our ad inventory with better-paying non-Google demand.
16. We have since learned that other major publishers which made use of header bidding, such as the News York Times and Conde Nast magazines, also saw search visibility drop in June 2019, though not as dramatically as MailOnline. The consequence of Unified Pricing was that by the end of the three-month period June-September 2019, Google had forced MailOnline to sell twice as much ad inventory through Google's ad exchange, while Google paid half as much for each ad slot.
17. For most of 2020 MailOnline overall UK search visibility index hovered at around 100 – only a quarter of the best figures recorded in 2012-15, but similar to the level before the dramatic drop in June 2019. However, from January this year we started to see another steady decline in MailOnline's overall search visibility index, which has now stood for several months at just over 50, around half the level seen through most of 2020, and one-eighth of the 2012-2015 peak. (See Tables 1 and 2).

⁸ <https://www.sistrix.com/support/sistrix-visibility-index-explanation-background-and-calculation/>

Table 1. MailOnline UK overall search visibility index (desktop) – last 10 years (source: Sistrix)

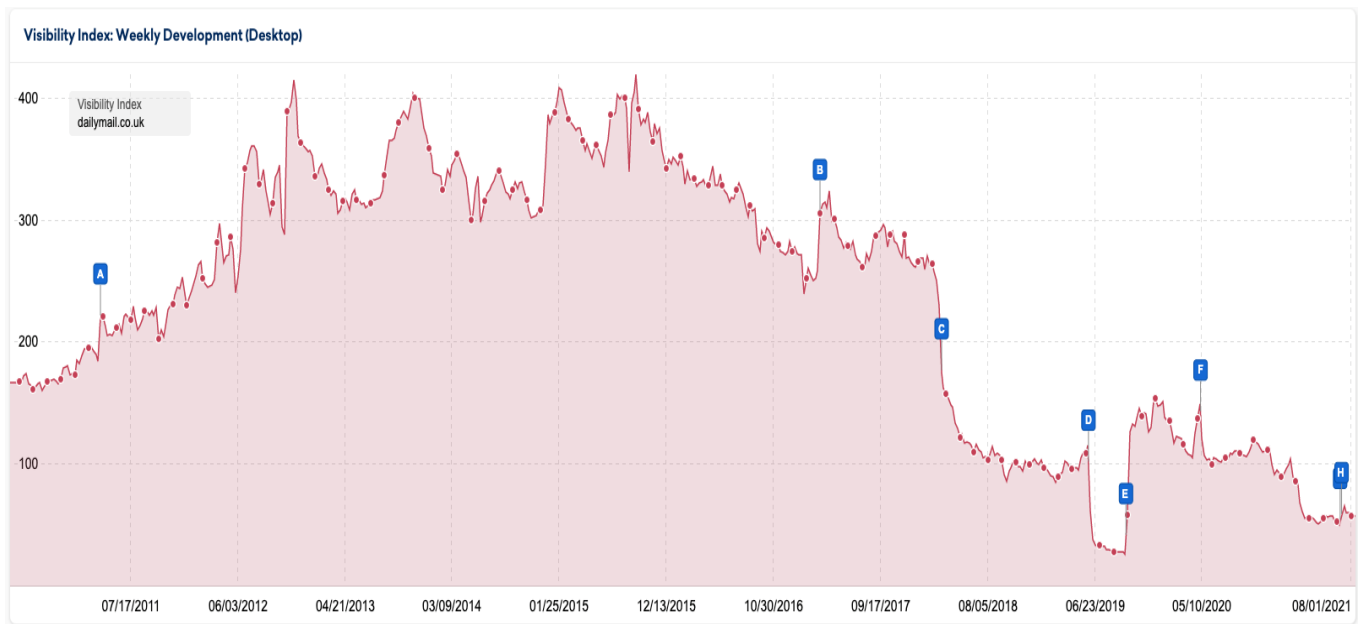
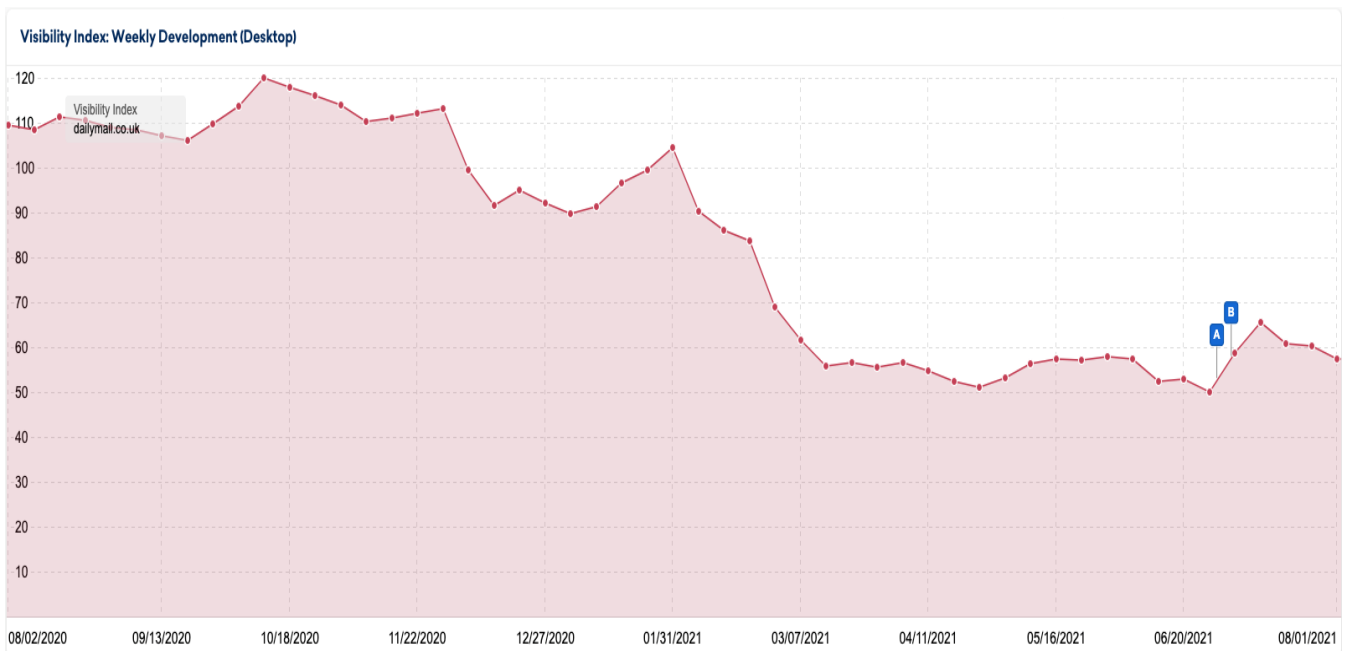


Table 2. MailOnline UK overall search visibility index (desktop) – last 12 months (source: Sistrix)

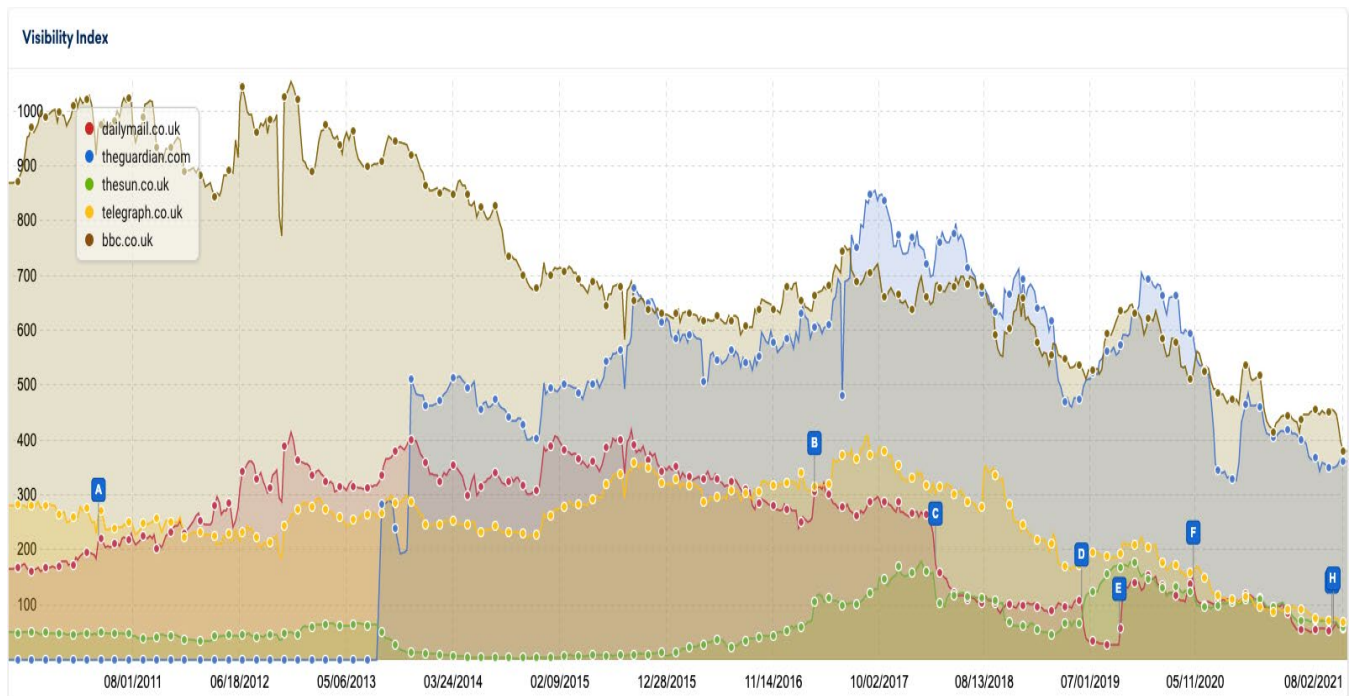


- When MailOnline’s search visibility is plotted against its main UK rivals a disturbing pattern emerges. Pre-2015 Google heavily favoured the BBC, with the Guardian, MailOnline and Telegraph broadly grouped together⁹. From 2015

⁹ The Guardian had no visibility pre-2013 because at that point it changed to its current domain name, theguardian.com. The Sun had very low visibility 2013-15 because it was behind a paywall.

onwards two distinct groups start emerging. The Guardian and BBC are consistently favoured, with a visibility index currently standing at around 400, and the Mail, Telegraph and Sun are grouped together with consistently poor visibility, currently standing at around 50-75. (See Table 3 - this chart does not include the Express and Mirror, both of which score slightly below MailOnline).

Table 3. UK competitive search visibility last 10 years (source: Sistrix)



19. The implications for freedom of expression and media plurality should be obvious. How Google’s search algorithms work is the company’s most closely-guarded secret. Google tells the public:

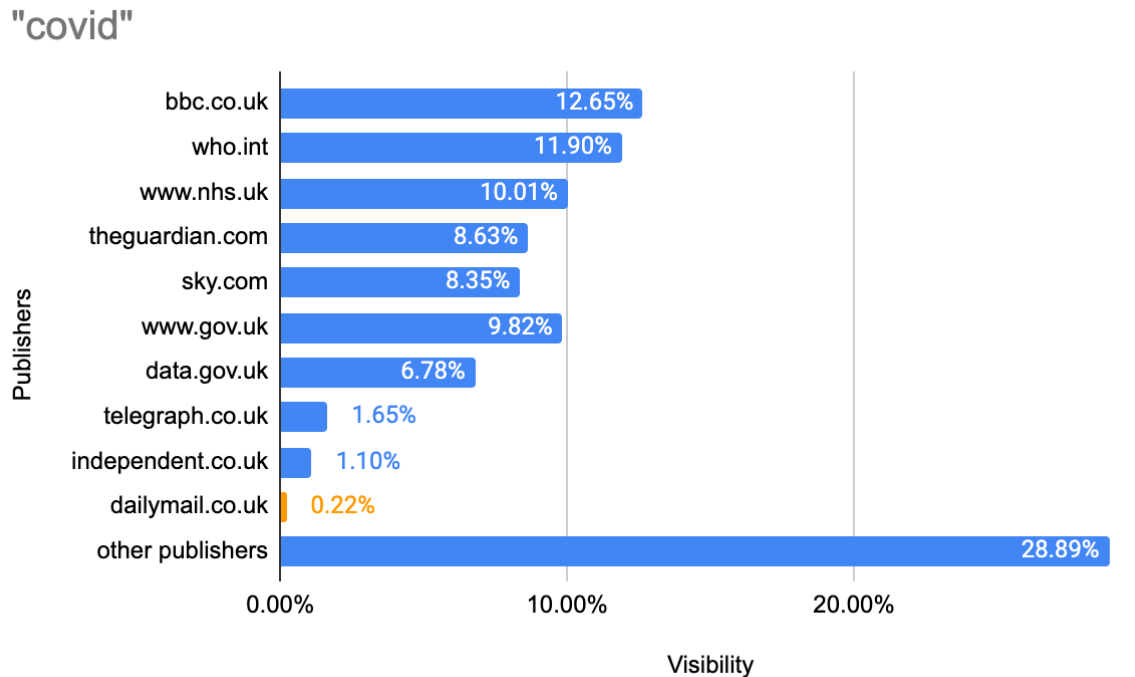
‘To give you the most useful information, Search algorithms look at many factors, including the words of your query, relevance and usability of pages, expertise of sources and your location and settings.’

The public place great faith in Google, and imagine that when they search for news on politics, health, business, or any number of other topics, Google’s emphasis on relevance and expertise means the content they are shown has been picked because it gives the most reliable and useful information. Unless they are students of search visibility, they have no idea that when they search for news Google invariably takes them to two left-leaning news sources, the Guardian and BBC.

20. This pattern is repeated across many search terms, as the following charts demonstrate. The most striking is Table 4, which shows shares of UK mobile

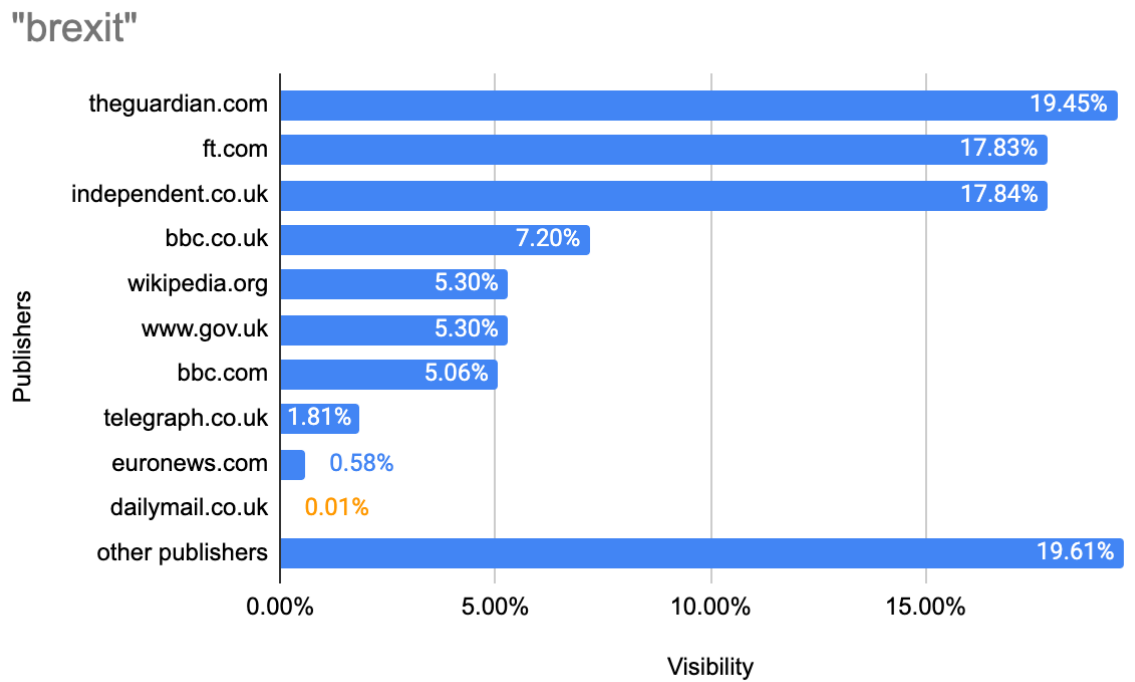
search visibility for the term 'Covid' during July this year, in which MailOnline scores 0.22pc, while the BBC scores 12.65pc – 58 times the visibility of MailOnline – putting it ahead of the World Health Organisation and NHS websites, and the Guardian on 8.63pc.

Table 4. 'Covid' - UK Mobile Overall Share of Search Visibility, July 4 – August 2, 2021.
(source: NewsDashboard UK)



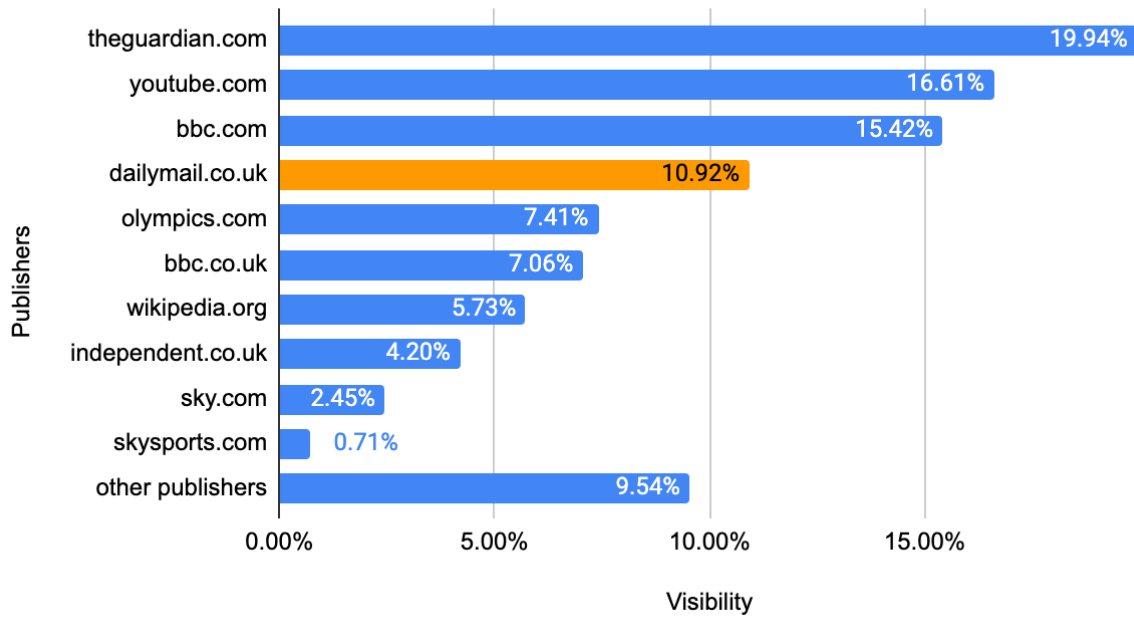
- When it comes to politics, the Guardian is the winner for the term 'Brexit', along with other pro-Remain websites. Table 5 shows the Guardian scored 19.45pc, while the FT, not normally a good performer because of its paywall, won 17.83pc of Google search requests. Despite Brexit being a subject to which MailOnline devoted a great deal of coverage – indeed some credited the Daily Mail with winning the referendum for Leave – MailOnline received close to zero – a derisory 0.1pc. This was a fraction even of the share achieved by euronews.com, which though now owned by an Egyptian telecoms' billionaire, was founded as a pan-European news broadcaster and remains strongly pro-European.

Table 5. 'Brexit' - UK Mobile Overall Share of Search Visibility, July 4 – August 2, 2021.
 (source: NewsDashboard UK)



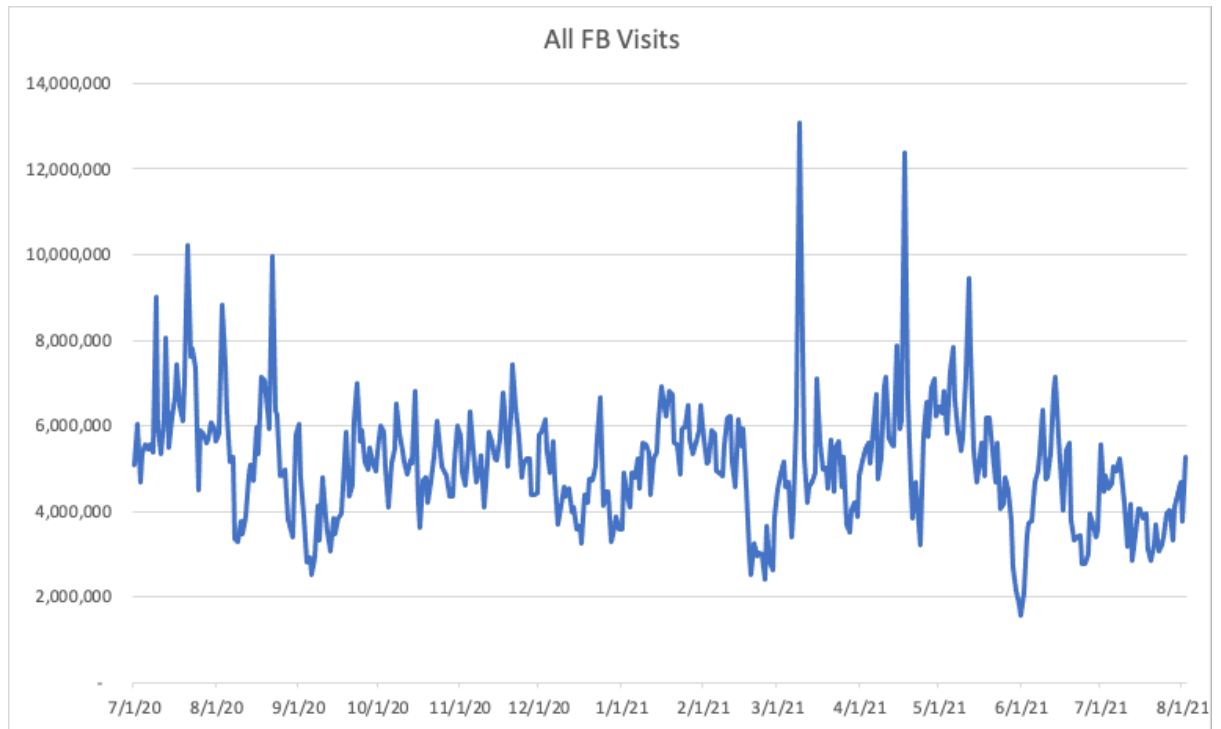
22. Google might argue – though without any justification – that on ‘serious’ issues such as these a ‘tabloid’ news website should not expect as much traffic as a ‘serious’ website. But even on more ‘tabloid’ subjects such as the Olympics, Google still favours the Guardian and BBC, as Table 6 demonstrates. The chart lists the BBC’s British and American websites separately but taken together they received a 22.48pc share, and the Guardian 19.94pc, both around twice as much as MailOnline’s 10.92pc.

"olympics"



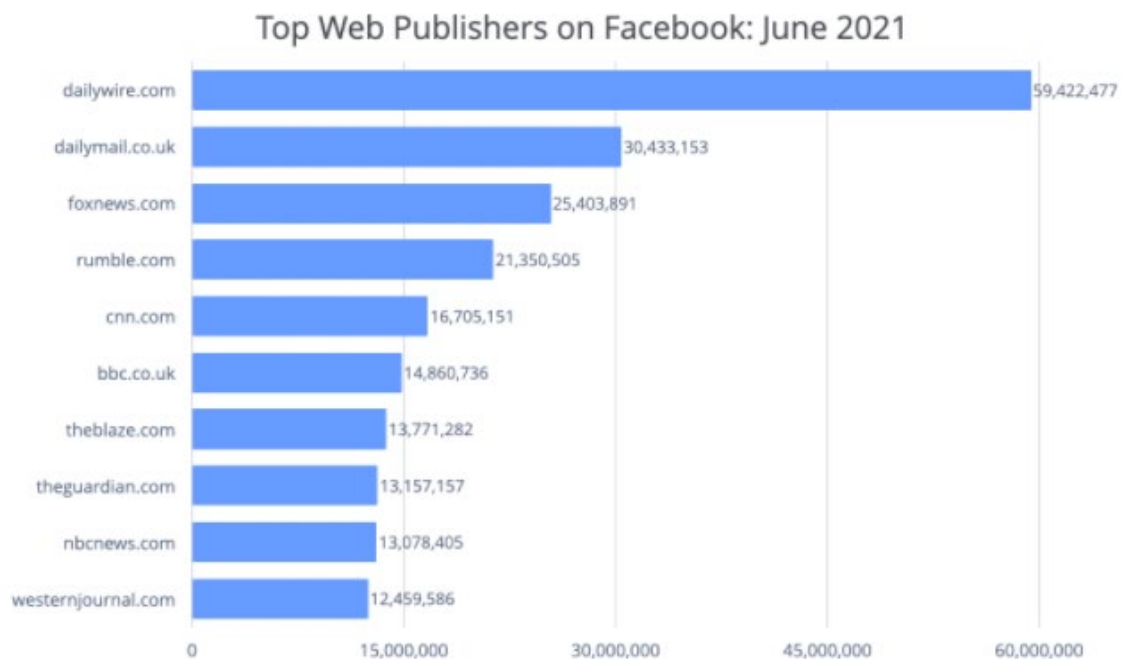
23. In contrast traffic for Facebook, where results are determined by users sharing rather than choices made by the platform's algorithms, and therefore demonstrate which news the public rather than the platform prefers, tells a very different story. Despite fluctuations caused by individual stories going viral, MailOnline traffic has remained largely consistent over the last year, as table 7 shows.

Table 7. Facebook article views – 12 months to August 1. (source: Adobe)



24. Indeed, global figures for June this year show MailOnline is the second most popular English-language news website across the whole of Facebook, receiving twice as many visits as the BBC and Guardian combined (see Table 8).

Table 8. Top publishers on Facebook, June 2021 (source: Newswhip)



*Source: NewsWhip API from June 2021

25. What are the reasons for this stark discrepancy? Google never explains how its algorithms work, so we cannot be certain why it discriminates so consistently against some publishers and in favour of others. We believe we now have a convincing case that its two dramatic algorithm changes in June and September 2019 were dictated by its commercial self-interest, and part of its successful campaign to maximise its profits by preventing publishers from using header bidding in digital advertising.
26. For the rest, it certainly appears that Google’s bias against MailOnline is much more pronounced when its algorithms are ranking political stories, than for stories of more general interest. Whether this is a deliberate company policy, or simply the result of unconscious bias on the part of Californian web engineers programming algorithms preferring websites that echo their own ‘woke’ left-liberal views, we cannot know.
27. It may also be the case that, as the platforms receive more and more criticism for their monopolistic practices, Google favours websites which give it more positive coverage. It is noticeable that, while the Guardian has been highly critical of Facebook for a number of years, its coverage of Google is studiously neutral. Its report on the recent CMA Privacy Sandbox action, which forced Google to accept CMA oversight of its new user tracking technology, ran to just six very bland paragraphs¹⁰, even though it was a world first move by a regulator. MailOnline ran 24 considerably more critical paragraphs¹¹. Similarly a number of commentators (including, to be fair, the Guardian’s John Naughton) remarked on the uncritical nature of Amal Rajan’s recent interview with Google CEO Sundar Pichai, presented as a major news coup across a number of BBC, TV and radio channels¹².
28. Our concerns about the commercial effects of discrimination in search led us to argue successfully that the Competition and Markets Authority should include search in its Digital Advertising Market Study. We maintained that it was impossible to plan our business without fair warning and explanation of algorithm changes, and without remedies when those changes cause commercial damage. The Market Study’s Final Report found:

‘It is clear that many publishers rely on Google and Facebook for a significant

¹⁰ <https://www.theguardian.com/technology/2021/jun/12/competition-watchdog-to-work-with-google-to-stop-chrome-tracking>

¹¹ <https://www.dailymail.co.uk/news/article-9676257/Google-promises-not-harm-rivals-new-Chrome-proposals.html>

¹² <https://www.theguardian.com/commentisfree/2021/jul/17/the-bbcs-interviewer-found-himself-on-a-sticky-wicket-with-googles-ceo>
<https://www.telegraph.co.uk/tv/2021/07/12/amol-rajan-interviews-review-refreshing-change-bbcs-usual-gotcha/>
<https://www.dailymail.co.uk/news/article-9788077/BBC-media-editor-Amol-Rajan-criticised-Sundar-Pichai-interview.html>

*proportion of their traffic and that changes to key search algorithms by either of these can have a significant impact on publisher businesses. We would, therefore, consider it reasonable that publishers have sufficient explanation of how these algorithms work and sufficient notification of changes to them where they might notably impact upon their businesses. We consider that provision to publishers of sufficient explanation about how the key search algorithms work as well as explanation and notification of changes to these are areas that would appropriately be covered by the proposed code of conduct.'*¹³

29. Worryingly, search ranking is not the only weapon Google uses to discriminate against publishers it does not favour. As well as denying publishers traffic, it denies them revenue, by using its dominant position in the digital advertising market to block advertising. MailOnline has been damaged by this in a number of different ways in recent weeks.
30. On July 28 Piers Morgan wrote a column for MailOnline in which he criticised the American gymnast Simone Biles over her withdrawal from the Olympics¹⁴. Google switched off all ad-serving on the page – which, because of its control of the digital advertising market meant no ads appeared at all, even if supplied through rival ad platforms. The reason it gave was that the comment section under the article contained ‘dangerous or derogatory’ content. When challenged to produce examples it cited just one comment, which contained an obscure reference to freemasonry.
31. Like all news websites, MailOnline is aware that reader comments carry risks, and precautions have to be taken against readers posting abusive comments. This is not limited to conservative-leaning websites, as the Guardian demonstrated when it conducted a survey of comments on its site¹⁵. MailOnline maintains rigorous policies to flag and remove any comments which breach its house rules¹⁶, which include a ban on comments which are defamatory, false or misleading; insulting, threatening or abusive; obscene or of a sexual nature; or offensive, racist, sexist, homophobic or discriminatory against any religions or other groups. Nevertheless, commenters sometimes go to considerable lengths to disguise abusive comments. If Google had identified comments which had otherwise escaped scrutiny and brought them to our attention, we would have been more than happy to deal with them. That has not happened, and the ad-serving ban remains in place, despite no reasonable explanation being given.

¹³ CMA Digital Advertising Market Study, Appendix S, p.10

¹⁴ <https://www.dailymail.co.uk/news/article-9835069/PIERS-MORGAN-Sorry-Simone-boast-GOAT-selfishly-quit.html#comments>

¹⁵ <https://www.theguardian.com/technology/2016/apr/12/the-dark-side-of-guardian-comments>

¹⁶ https://www.dailymail.co.uk/home/house_rules.html

32. Two days later, Google switched off ad-serving on our US home page altogether, which meant we received no revenue. No warning was given, and when MailOnline spotted what had happened and protested, we were told the ban was 'due to the perceived presence of dangerous or derogatory content'. What this content was, we have no idea. After four hours, Google 'determined that the content did not fall under the scope of the policy', and ad-serving was reinstated. On this occasion Google told us there had been a human error and it would reimburse us for our lost revenue.
33. Then on August 1, we received a third enforcement action from Google. This time Google told us that an incorrect 'ad serving disabled' label was applied across our top level domain, which inadvertently prevented approximately 10,000 ad requests from being served. Whilst this issue only impacted a small percentage of revenue, it again shows the high-handed approach that Google takes to blocking content from some publishers.
34. On top of these blocks, starting at the end of June, the MailOnline home page in both UK and US was classified as brand unsafe within Google's buy-side ad platforms. This has a very damaging effect on revenue, as many advertisers instruct their agencies not to buy inventory on sites with a brand unsafe rating. Again, there was no warning or explanation. When we protested, we were told ad demand was light because it was July and the aftermath of Covid was affecting ad demand generally.
35. The point of itemising these incidents is that they all show a cavalier abuse of Google's dominant position in the advertising market, driven by hostile perceptions of MailOnline's editorial content, which Google is either unwilling or unable to explain. To use a newspaper analogy, there would be outrage if WH Smith was routinely refusing to stock certain newspapers, or refusing to remit publishers revenue from sales, because it disagreed with articles the newspapers had published. The same cannot be allowed to happen online, where it is more insidious because it is not obvious to users.
36. It is a blatant interference with editorial freedom and, when the digital advertising market is dominated by one platform, it is also a very serious threat to media plurality. If Google decides for undeclared reasons that it does not like MailOnline's editorial content and consequently blocks or severely restricts advertising, there is nowhere else to go. Because even non-Google ad demand is delivered through Google's 'pipes', Google has no effective rival and its word is law.
37. Slowly, the government is putting in place regulatory structures to deal with these problems. The Digital Markets Unit recommended by the CMA has now

started work and is drawing up codes of conduct in advance of the forthcoming Digital Competition Bill, which will give it statutory powers. Its original remit was economic – to prevent Google reinforcing its dominant market position by directing traffic to publishers which are compliant with that domination, and away from those such as MailOnline which seek to protect their revenue by using methods such as header bidding to secure advertising from non-Google sources.

38. However, as we have shown, Google’s policy of picking winners and losers also has consequences for freedom of expression and media plurality. Like any monopoly, Google finds crowded, untidy markets inconvenient. Its policy in digital advertising has been to squeeze out other players, either by buying them, or by acting as a quasi-regulator and imposing rules that deny them the data they need to function. This is the real purpose of its Privacy Sandbox initiative, which has nothing to do with privacy (Google will still be able to track users with impunity) and everything to do with moving the entire advertising ecosystem on to its Chrome browser, and therefore into its walled garden.
39. News publishers are not just businesses, they are also participants in the political process – in particular those which are not broadcasters and are therefore free to editorialise and campaign on the great issues of the day. Google’s policy in the UK over the last decade has been to direct search to the two publishers which epitomise the left-liberal establishment – the BBC and the Guardian – and marginalise conservative voices such as the Mail, Telegraph and Sun, even when, as with Brexit – they are clearly articulating the views of the majority of voters.
40. Whatever one’s political views, democracy cannot thrive unless all voices can be heard. That is why Ofcom is charged with ensuring media plurality. And that is why it is vital that Ofcom uses its participation in the Digital Markets Unit to make certain not only that its code of conduct ensures platform algorithms and content safety ratings are fair, consistent and transparent, but that those principles are applied in a way which ensures media plurality, and a fair hearing for all shades of opinion, conservative as well as left-liberal.

C. Platform dominance and the threat to plurality in social media

41. While the threat to media plurality in search lies in the government’s failure so far, despite good intentions, to legislate for regulation to preserve it, perversely it is proposed legislation itself which poses the greatest threat in social media.

42. No one would dispute that the Draft Online Safety Bill is well-intentioned, and its primary targets, child sexual exploitation and terrorism, are evils which should be expurgated from the internet. However, the draft bill does not stop at these obvious and incontestable aims. It also requires social media companies, under threat of draconian penalties, to turn themselves into news content regulators by introducing codes of conduct to prevent the sharing of content which is ‘legal but harmful’.

43. The definition in the Bill of ‘legal but harmful’ is vague in the extreme:

Content is within this subsection if the provider of the service has reasonable grounds to believe that the nature of the content is such that there is a material risk of the content having, or indirectly having, a significant adverse physical or psychological impact on an adult of ordinary sensibilities (“A”).

For the purposes of subsection (3), in the case of content which may reasonably be assumed to particularly affect people with a certain characteristic (or combination of characteristics), or to particularly affect a certain group of people, the provider is to assume that A possesses that characteristic (or combination of characteristics), or is a member of that group (as the case may be).¹⁷

44. Doubtless the intention is to protect individuals from trolling. But this is also precisely the argument – that no opinion can be expressed if any person or group of people find it offensive – which has been used to justify the deplatforming of speakers in universities, and has caused many of them to become bastions of intolerance.

45. The threat to freedom of expression is exacerbated by the fact that the draft bill also gives the Secretary of State for Digital, Culture, Media and Sport arbitrary and undefined powers to designate ‘*priority content that is harmful to adults*’.¹⁸ In the hands of a ruthless and authoritarian government this could rapidly become a tool to suppress political opposition.

46. We, and the rest of the news publishing industry, have argued ever since the original Online Harms White Paper was published in April 2019 that the combination of a vague, all-encompassing definition of ‘legal but harmful’ and draconian penalties for code breaches would cause social media companies to

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf s.46 (3) and (4).

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf s.46 (2)

set the their algorithms to block any content might present a risk, wherever it came from and however legitimate it might be as a contribution to public debate.

47. We explained that freedom of expression, and legitimate journalism had to be protected, and required a cast-iron exemption from the bill. After all what is the point of legislating to clean up the internet if you also force social media companies to block legitimate journalistic content because someone disagrees with it and claims it is causing the harm?
48. The DCMS listened to our concerns, and when the draft bill was published Culture Secretary Oliver Dowden wrote in the Telegraph:

The last thing we want is for users or journalists to be silenced on the whims of a tech CEO or woke campaigners. So, this legislation also includes strong safeguards for free speech – including a new general requirement for social media companies to protect freedom of expression when moderating content. If someone feels their content has been taken down unfairly, they’ll have the right to appeal.

We’ve also placed a protective bubble around journalistic and “democratically important” content. News publishers’ content won’t be in scope – whether it’s on their own sites or on other online services. The largest platforms will also have to protect posts on areas of political controversy, and companies won’t be able to discriminate against particular political viewpoints.¹⁹

Unfortunately, the way the bill is currently drafted, the Secretary of State’s ‘protective bubble’ may be pricked very easily indeed.

49. To be fair, the bill contains a good definition of a news publisher.²⁰ It is clear that content published on news publishers’ own websites will not fall within the scope of the bill. It is also clear that as far as social media platforms are concerned the duty of care, under which they can be fined up to 10pc of global revenue if they fail provide and enforce codes of conduct, does not apply to news publishers’ content.
50. However, it is also the case that while the draft bill imposes no obligation on social media companies to ‘moderate’ (i.e. block or take down) content from

¹⁹ https://www.telegraph.co.uk/news/2021/05/11/social-media-firms-fail-protect-children-barred/?utm_content=telegraph&utm_medium=Social&utm_campaign=Echobox&utm_source=Twitter#Echobox=1620801912

²⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf s.40

recognised news publishers, neither does it place them under any obligation NOT to do so.

51. Instead it relies on a duty for social media companies to ‘protect journalistic content’:

A duty to operate a service using systems and processes designed to ensure that the importance of the free expression of journalistic content is taken into account when making decisions about... how to treat such content (especially decisions about whether to take it down or restrict users’ access to it)²¹

52. This is very weak indeed – all a social media company will have to do to justify blocking or taking down news publishers’ content (which is specifically included in this section of the bill) is to show that it has given consideration to freedom of expression. The fact that the authors of the bill expect that social media companies WILL block or take down legitimate content is demonstrated by the inclusion of an appeals process:

A duty, in relation to a decision by a provider to take down content or to restrict access to it, to make a dedicated and expedited complaints procedure available to a person who considers the content to be journalistic content and who is—

(a) the user who generated, uploaded or shared the content on the service,

or

(b) the creator of the content (see subsection (11)).

53. This appeals process is also very weak. News is a perishable commodity. If Facebook blocks a story, there will be no value at all in having it restored after an appeals process which may take weeks or even months – particularly if similar stories from rival publishers are not blocked. It will also impose an extra burden on publishers, which will have to employ staff to monitor whether content is being blocked and to take cases through the appeals process. Doubtless high-profile cases will demand the use of lawyers, which will multiply the cost.
54. This is not our only concern. We also fear one of the consequences of the Bill will be the development of a parallel system of press regulation. Our titles (with the exception of the New Scientist) are already regulated by IPSO, which has a well-established Code of Practice, complaints procedures, and rulings made by an independent committee with lay and industry members.

²¹ Ibid s.14

55. What will Facebook's code of conduct look like? We do not know. Will it define key concepts like accuracy, privacy and the public interest in the same way as the Editors' Code we currently follow, or differently? Is it compatible with freedom of expression and democracy in the UK for an American-owned commercial monopoly to be deciding what journalism the British public are entitled to read and what they are not? And is Ofcom the right body to oversee this, given that it is state institution regulating broadcasters which operate under licence, according to a code of practice which demands impartiality and prohibits causing offence, both of which are issues expressly excluded from the Editors' Code?
56. We ask these questions not only because they are very important points of principle but because our experience in the USA, where we are also one of the largest digital news publishers, shows that Facebook is rapidly turning into a quasi-regulator of news, and a very unsatisfactory one at that.
57. For a long time, Facebook was the great champion of the First Amendment and was notoriously prepared to allow just about any content which was not clearly illegal. It and other platforms also relied on s.230 of the United States Communications Decency Act, which gave it immunity from libel so long as it did not edit the content it hosted.
58. Then last year Facebook suffered a major advertiser boycott²², following which it and Twitter banned Donald Trump. This is not the place to argue the rights and wrongs of that decision. However, the company also started blocking a lot of other content, some of it at the behest of 'fact-checkers' which in some cases we strongly suspect are lobby groups under another guise.
59. One major issue was the possibility of Covid being the result of a lab escape at the Institute of Virology in Wuhan, seen by some as a conspiracy theory associated with Donald Trump. A decision by Facebook to block content has now been reversed following a change of view by the Biden administration.²³ Determining the origin of Covid is central to finding ways to prevent it, and it is deeply worrying if Facebook is suppressing/allowing debate to keep itself in step with the left-liberal orthodoxy of the day.
60. There have been others. When President Biden announced a very ambitious climate change programme that was noticeably short of detail on how the targets were to be achieved, our US website published a speculative story

²² <https://www.cnbc.com/2020/08/04/some-major-companies-will-keep-pausing-facebook-ads-as-boycott-ends.html>

²³ <https://www.theguardian.com/technology/2021/may/27/facebook-lifts-ban-on-posts-claiming-covid-19-was-man-made>

looking at the sort of measures which might be required to meet the targets. One suggestion was restrictions on meat consumption.²⁴

61. A Facebook-funded single-issue fact-checker called Climate Feedback read the story as though it was a factual news report and said it was inaccurate on the basis that Biden's plan did not include restrictions on meat consumption. As a result, Facebook blocked access to the story.
62. Unlike IPSO here in the UK, neither Climate Feedback nor Facebook give news publishers any opportunity to defend their journalism before issuing what they call 'strikes' against stories. We complained to Climate Feedback, explaining how it had misread the story. It partially corrected its strike²⁵ – so it is now contradictory – but Facebook's ban is still in place.
63. We have no issue with Climate Feedback disagreeing with our story, even if it failed to understand that hyperbole is a perfectly acceptable journalistic device to demonstrate the lack of substance in a politician's promise. What is not acceptable is for Facebook to take an arbitrary decision to censor a story at the behest of one body with an agenda, and without any process.
64. Facebook has also blocked stories about the four homes owned by Black Lives Matter co-founder Patrisse Cullors, who has described herself as a 'trained Marxist'. Details of the properties, which did not include street addresses, first appeared on a property website. When the New York Post and DailyMail.com, our US website, published versions of the story²⁶, Ms Cullors complained to Facebook and the stories were blocked, again without reference to us. She did not complain about an article on the Black Enterprise website which, although it did not publish pictures of the properties, linked to the New York Post, which did. Ms Cullors has since resigned from Black Lives Matter.
65. Facebook's initial strike was not communicated to us, and when we published another article about developments in the story, we were warned that a second strike might result in all our Facebook content being demonetised.
66. The story was blocked under a Facebook Community Standards rule under which it restricts access to images of private residences if they give the address or neighbourhood and the owner objects to the posting. The rule was no doubt

²⁴ <https://www.dailymail.co.uk/news/article-9501565/How-Bidens-climate-plan-affect-everyday-Americans.html>

²⁵ <https://climatefeedback.org/claimreview/bidens-climate-plan-doesnt-say-anything-about-limiting-meat-consumption-contrary-to-daily-mail-fox-news-claim/>

²⁶ <https://www.dailymail.co.uk/news/article-9468847/BLM-founder-defends-3MILLION-property-portfolio-claims-questions-tactic-terror.html>

introduced to prevent private individuals harassing other private individuals by posting pictures of their homes with malevolent comments.

67. However it makes no provision for journalism, unlike the Editors' Code of Practice, which protects the individual's reasonable expectation of privacy in their home, but also allows exceptions where the public interest is engaged. An example of this was the MPs' expenses scandal, which gave rise to the publication of numerous pictures of MPs' homes. In the case of Ms Cullors, according to the Black Lives Matter Global Network Foundation she has not been paid by it since 2019 and only received \$120,000 pay during the whole period 2013-19. In these circumstances, how a leader of such a significant social and political movement accumulated four residences must be a legitimate subject for public debate.
68. The case has clearly concerned Facebook, which has referred it to its Oversight Board, to whom we have made a submission, suggesting that if Facebook is going to block journalistic content it needs to amend its Community Standards to allow editors to defend their journalism, particularly where the public interest is involved.
69. But this brings its own risks. It is quite clear that through the operation of its Community Standards and its Oversight Board, Facebook is turning itself into a quasi-regulator. We are very concerned that if this is given the sanction of official approval by Parliament through the Online Safety Bill, with Ofcom as the oversight regulator, Facebook will start receiving complaints from individuals seeking to chill legitimate journalistic inquiry into their activities, and lobby groups seeking to censor journalism which does not fit their agendas.
70. Facebook began blocking journalistic content in the USA following an advertising boycott organised by the campaign #StopHateForProfit. Although it is not linked, the UK organisation Stop Funding Hate has been trying for some years to censor news coverage it disagrees with by persuading advertisers to boycott conservative publications. Its most recent campaign was against broadcaster GB News, where it tried to organise a boycott even before the station launched, purely on the basis that it was promising a 'non-woke' news agenda.
71. We believe it is incompatible with freedom of expression and media plurality for legitimate, responsible news content to be subject to blocking and take-down by a commercial organisation which is subject to commercial pressures, operates without due process, and has no authority to make judgments about the value of journalism.

72. Attempting to remedy this by turning Facebook into a quasi-regulator would make matters worse, not better, as it would create a competing, parallel system of regulation for the press, administered by a company which is bound to put its own commercial interest in maximising profits and maintaining market dominance before other considerations.
73. For these reasons we will be asking the Joint Committee on the Draft Online Safety Bill to advise the government to amend the legislation to give content produced by recognised news publishers the complete exemption from its provisions which we have been asking for ever since the White Paper was published. We are working with lawyers on ways this could be drafted.
74. We very much hope that Ofcom, as the regulator designated to implement this legislation, will support us in this initiative, which we believe is essential to preserving media plurality in the UK.

D. Conclusion

75. We must be absolutely clear that what we are asking for is not that Google and Facebook are made to become effective content regulators, but that they are prevented from acting as content regulators at all. They are commercial businesses which have exploited market dominance to the point where they have revenues greater than most nation states. That does not mean they have any authority at all to determine what legitimate journalism their users should read and share online. On the contrary, the fact that their own commercial interests are tied so closely to their continued market dominance should completely disqualify them from acting as they do at present, as judge, jury and executioner on content produced by responsible news publishers.
76. In time, anti-trust actions in the US will hopefully bring about the commercial break-up of Google and Facebook. In the shorter term, and for smaller nations such as ours, the answer lies in commercial regulation. Google and Facebook are only able to make arbitrary decisions about news publishers' content, and those decisions are only as damaging as they are, because there is nowhere else to go. Media plurality will not survive if search and digital advertising is overwhelmingly controlled by one dominant platform and social media by another.

77. Legitimate journalism must be exempt from content regulation by commercial platforms, and the algorithms governing search ranking and content rating must be subject to commercial regulation to ensure they operate in a way that is fair, consistent and transparent. The Draft Online Safety Bill must be amended, and the Digital Competition Bill must be expedited without any further delay.

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